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Absolutism, utilitarianism, and moral military decision making.

Kristine V. Nakutis
University of Massachusetts Amherst

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ABSOLUTISM, UTILITARIANISM, AND MORAL MILITARY DECISION MAKING

A Thesis Presented

by

KRISTINE V. NAKUTIS

Submitted to the Graduate School of the University of Massachusetts Amherst in partial fulfillment of the requirements for the degree of

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ABSOLUTISM, UTILITARIANISM, AND MORAL MILITARY DECISION MAKING

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by

KRISTINE VARNUM NAKUTIS

Approved as to style and content by:

Fred Feldman, Chair

John G. Robison, Member

Gareth B. Matthews, Member

John G. Robison, Department Head
Department of Philosophy
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CHAPTER 1

UTILITARIANISM AND WAR

Introduction

Moral issues are a major part of our everyday lives, but for a member of the military, they can take on whole new meanings. Whenever a person is handed a weapon and trained to use it against another human being, that person needs to understand and accept the ethical responsibilities placed on him/her and the consequences that may result. One aspect of military service is the possibility for participation in war and that war of any form is an act between persons and many different consequences may occur from these acts to include killing. Some individuals may argue that killing is wrong no matter what circumstances are involved. However, the wrongfulness of killing may not be absolute. This insight has led many philosophers to question whether absolutist or utilitarian theories could be adapted to help develop moral restrictions for conduct during times of peace and war. Some philosophers have used utilitarian theories to determine whether killing may be justified in certain extreme cases. Their attempts, as I will attempt to show, have not been very successful.

Military conflicts are developed around specific goals. These may be near term goals such as defending a sector, freeing friendly prisoners or more long term goals such as liberating a country. Securing these goals must be accomplished within guidelines and not performed according to the notion "success, no matter what the consequences." It is important for soldiers to know and understand the limitations on
their actions as required by rules and regulations. Different forms of education have been used to instruct soldiers on proper conduct, but there may not be a perfect training tool. The United States Army has developed their Army value system as a simple method to guide moral decisions, but there presently does not exist a moral military decision making process. Some have suggested employing utilitarian theories to guide the conduct of war. However, because of some weaknesses in utilitarianism, employing utilitarian theories may be useful in education soldiers on "what not to do" rather than "what to do" in certain cases. My concern is if utilitarian theories are true, a soldier's decision to act may be motivated by faulty reasoning and consequently cause immoral outcomes. Richard Norman advocated a similar view by noting:

If utilitarian morality is concerned simply with doing good, with promoting as much well-being and relieving as much suffering as possible, it may appear to justify using some people against their will in order to do as much good as possible. 

It is this line of reasoning that leads me to contend that there is a weakness in certain utilitarian as well as absolutist theories when used for educating military personnel in appropriate decision making. I propose to develop and support a moral military decision making process by employing a combination of both absolutist and utilitarian methods. After clarifying a few philosophical and military terms used in this thesis, I will review three articles that propose various methods of developing rules of war. These methods have weaknesses when reviewed individually, but may support a decision making process when used in combination. 

**Utilitarianism**

I would first like to clarify a few terms that will help explain some of the
statements and arguments in this paper. The first term I would like to address is 'utilitarianism.' This approach of morality dates back to the late seventeenth century and has developed over the years with the work of philosophers such as John Stuart Mill, Jeremy Bentham and Henry Sidgwick. Utilitarian theories tended to regard pleasure and/or happiness as the single factor in human good. Utilitarian theories also considered the morality of actions as contingent on the consequences or results of the actions. Today there are various forms of utilitarianism that emphasize particular and sometimes contested aspects of utilitarian thought. One of the best-known forms is hedonic act-utilitarianism. Simply put, hedonic act-utilitarianism (HAU) declares that an act is morally right if and only if it maximizes hedonic utility. This theory of normative ethics of behavior requires some clarification.

On most occasions, an individual is presented with various alternatives to choose to perform. Each one of these alternatives will generally cause different consequences for the agent performing the act as well as others that may or may not be affected by the act. The consequences produce measurable pleasures and pains that help rank the acts to determine the best act to perform. HAU uses the notions of "hedons," the unit of measure for pleasures, and "dolors," the unit of measure for pain, to help rank the acts. Acts are assigned hedons and dolors according to the value of pleasure and pain each act produces thus determining the overall utility of the act. An individual presumably should then choose the act that produces the most utility. According to utilitarianism, an individual is required to perform the act with the greatest amount of utility; to not do so, violates utilitarian principles.
For another view of HAU, Richard G. Henson provides some qualifications for his view of hedonic utilitarianism:

(1) At any given time, any given person is at some ‘hedonic level’ or other, positive or negative or neutral—that is, either happy (in some degree or other) or unhappy (in some degree or other).

(2) The range of possible hedonic levels forms (or approximates) a continuum—one’s hedonic level can move up or down either continuously or by very small increments.

(3) There is in principle some ‘hedonic metric’ such that the hedonic state of a given person at a given time can be compared with any state of himself at another time or with that of another person at any time.

(4) This ‘hedonic metric’ is such that cardinal numbers (positive and negative) can be assigned to hedonic levels.

(5) A hedonic arithmetic and calculus are thus possible: a person’s ‘hedonic sum’ can be (in principle) computed for any given period of time and his ‘hedonic index’ (that is, average hedonic level) for that time computed; and hedonic sums and indexes of groups of people can similarly be determined.\(^3\)

These thoughts are what Henson considers the measurement of pleasure that would be supported by the hedonistic utilitarian. These elements allow us to compare and contrast acts on their outcome value. Henson does not look at these assumptions as implying that an act is right if it “produces the greatest net pleasure” or produces “a balance of happiness over unhappiness.” Rather, he views his theory as focusing on the notion that “happiness is cardinal as true.”\(^4\) A problem occasionally occurs with the concept of happiness which has caused difficulty among philosophers. Happiness is a concept that is very difficult to define since it is interpreted differently by different people. Because of this, happiness may be considered unmeasurable. It has been argued that:

utilitarians commonly speak as if there were some entity, happiness, which is in some respect homogeneous and in principle measurable, that the different parts or constituents of happiness can somehow be reduced to a single scale and weighted objectively and decisively against one another.\(^5\)
It may be difficult to place a standard of measure on happiness even though it has been attempted. It is not my intention here to argue for or against the notion of happiness and how it fits on the hedonistic scale for utilitarianism. For my purposes, I will use the before mentioned notion of hedons and dolors as a calculating means to aid in choosing the best possible act to perform.

**War**

With the understanding of hedonic act-utilitarianism prescribed, I will now focus on some terms that need to be defined to better interpret their military application. The first term needing a definition is “war.” Unfortunately, this is not an easy word to define. The problem has been suggested that “war cannot be defined because it is so all pervasive, invades so many areas of human experience in so many different ways, that it transcends the categories in which we seek to organize the world and our experience of it.”  

With this in mind, can we ever determine what “war” is? There have been various attempts to define the concept by examining animal analogies believing that “the animal analogies reveal the human species as innately violent and therefore naturally disposed to war.” In order to focus on a specific area of war, Paskins and Dockrill analyze war in terms of its military dimension:

The kind of fighting we have in mind has four characteristics:

(a) It is always likely to be fighting to the death, i.e. to the death of individual human beings.
(b) The fighting, very likely to the death, that we have in mind is fighting between groups organised for such fighting, or between such organised groups and disorganised or unorganised opponents.
(c) The fighting we have in mind employs weapons designed for the purpose.
(d) The fighting we have in mind is separable from quarrels over matters relating to whatever the fundamental categories are in which the
people living in that world understand their social, political, religious, economic, etc., life.  

The above passage indicates certain criteria are needed to claim an activity to be a "war" as understood in their military dimension. So gang warfare, the war between the sexes or class wars would not be classified as "wars" in this interpretation. The decision for the United States to claim a hostile action a war requires more than the above definition. The government of the United States must pass measures through Congress to declare a hostile action a war as outlined in the Constitution of the United States. The Vietnam conflict was never declared a war according to the requirements of the Constitution. However, the Vietnam conflict could effectively be interpreted as possessing the four characteristics of the military dimension of war. Vietnam veterans of the conflict would possibly believe themselves to be "war" veterans despite the lack of its classification as a war by the United States government.

U.S. Catholic Bishop View of War

A controversial discussion over warfare is whether or not a war can ever be justified; however, the debate over just and unjust wars is beyond the argument of this thesis. There are, however, several points that will support subsequent chapters of this thesis. In 1983, the United States Catholic Bishops authored a letter discussing the defense of peace from a just war tradition. The bishops outline their interpretation of just-war theory in great detail, with an emphasis on the right to protection from aggression but highlighting the restraints in waging war dictated by the standards of proportionality and discrimination. The bishops did not deny the need for hostile actions:
Certainly war has not been rooted out of human affairs. As long as the danger of war remains and there is no competent and sufficiently powerful authority at the international level, governments cannot be denied the right to legitimate defense once every means of peaceful settlement has been exhausted. Therefore, government authorities and others who share public responsibility have the duty to protect the welfare of the people entrusted to their care and to conduct such grave matters soberly.

But it is one thing to undertake military action for the just defense of the people, and something else again to seek the subjugation of other nations. Nor does the possession of war potential make every military or political use of it lawful. Neither does the mere fact that war has unhappily begun mean that all is fair between the warring parties.9

According to this view it is permissible to defend oneself against aggression in order to preserve freedom, but unacceptable to seek war against another as a means to overthrow them. St. Augustine viewed war as “both the result of sin and a tragic remedy for sin in the life of political societies.”10 Regardless of the reasons behind conflicts, war seems inevitable according to the views of the bishops. Because of this fact, they developed a list of jus ad bellum criteria to ensure persons knew what made it right to go to war against another people. A war would be considered “just” if the conflict met the following criteria:

A. Just Cause
B. Competent Authority
C. Comparative Justice
D. Right Intention
E. Last Resort
F. Probability of Success
G. Proportionality11

The key items that are relevant to this thesis are the criteria of just cause and proportionality. I will explain these criteria individually.
**Just Cause**

The notion of the doctrine “just war” dates back to early Christian ethics and was advocated by individuals such as St. Augustine and St. Thomas Aquinas. A recurrent theme for a just war is the requirement of a just cause. St. Thomas Aquinas stated one of his three conditions for war is that “a just cause is required, namely that those who are attacked should deserve it on account of some fault.”

For the Bishops, a just cause for war is viewed as acceptable when there is a need to confront an undeniable and clear danger such as the need to safeguard innocent victims or protect human rights. This is met with some opposition:

The difficulty at the present time is that there is consensus neither about the content of the notion of just cause nor about its procedure. After many years of deliberation, the United Nations has produced a kind of definition of ‘aggression’ but one which lays down neither a workable content nor a workable procedure whereby the justice of particular causes can be determined: anyone can say that they are resisting aggression, but there is inadequate agreement on what ‘aggression’ is.

This allows the interpretation of “just cause” to be open to infinite possibilities. The United States has embarked on several military operations that they interpreted as just causes. The invasion of Panama in 1989, which was entitled “Operation Just Cause,” was aimed at preserving the conditions of cooperation that would be in the best interest as discerned by the United States. Another goal was securing the arrest of Panama’s dictator, General Manuel Noriega, since he was under indictment in the United States federal courts system for trafficking drugs. After several threats against military and civilian American citizens stationed in Panama, the President of the United States, George Bush, believed to have a just cause to invade when he stated that:
General Noriega's reckless threats and attacks upon Americans in Panama created an imminent danger to the 35,000 American citizens in Panama. As president, I have no higher obligation than to safeguard the lives of American citizens.14

This invasion was never declared a war, but President Bush did offer four purposes for ordering the invasion:

(1) to capture Manuel Noriega and bring him to the United States to stand trial in federal court;
(2) to protect U. S. citizens who were in danger;
(3) to maintain the integrity and neutrality of the Panama Canal; and
(4) to restore democracy to Panama.15

These four goals of the invasion were deemed as sufficient to support the just cause behind the invasion.

Proportionality

The second item of significance is proportionality. In today's world, a conflict in one part of the world ultimately can affect others in the international community. With this in mind, the bishops maintain that "proportionality means that the damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up arms."16 Regarding proportionality, Paul Ramsey writes:

It can never be right to resort to war, no matter how just the cause, unless a proportionality can be established between military/political objectives and their price, or unless one has reason to believe that in the end more good will be done than undone or a greater measure of evil prevented. But, of the tests for judging whether to resort to or to participate in war, this one balancing an evil or good effect against another is open to the greatest uncertainty.17

The notion of proportionality was advocated in 1972 by the International Committee of the Red Cross during the second session of the Conference of Government Experts on
the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. They noted that proportionality was necessary as a means to protect civilians in combat areas. The proposed provisions required the following:

Those who order or launch an attack, shall refrain from doing so when the probable losses and destruction are disproportionate to the concrete military advantage sought by them... When there is a choice among several objectives for obtaining the same military advantage, those who order or launch an attack shall choose the objective which presents the least danger to the civilian population and objects of a civilian character.\(^{18}\)

Proportionality was a clear key factor in the nuclear arms dispute among various countries. The use of nuclear weapons would cause such great devastation and destruction, that some people did not see how their use could ever be proportional to any means.

**Combatants versus Non-Combatants**

To help clarify the targets and goals of war, a distinction must be made between combatants and non-combatants which will aid in determining whether an act of killing involves innocent victims or culpable individuals. Jeffrie G. Murphy discusses this distinction in his paper “The Killing of the Innocent.” Initially some may tend to define a combatant as a soldier engaged in fighting. However, this definition may be too narrow. Murphy states that:

If a combatant is understood solely as one who performs an action which is a causally necessary condition for the waging of war, then the following are going to be combatants: farmers, employees at a city water works, and anyone who pays taxes.\(^{19}\)

The idea here is that farmers provide food for the soldiers, employees help provide support for continuous city operations, and tax money is used to help fund the war
effort. John Ford grants that even children,

buy war stamps, write letters of encouragement to their brothers in the service, and even carry the dinner pail to the father who works in the aircraft factory. 20

So are these persons considered combatants and thus open to possible targeting by enemy forces? This problem makes it necessary to redefine “combatants.” A possible new definition may be “those who are engaged in an attempt to destroy one another.”

The farmer, in virtue of being a farmer, may be causally connected to the destruction of an enemy force, but is not necessarily engaged in the direct destruction of them.

Murphy puts it this way:

The farmer is aiding the soldier qua human being whereas the general is aiding the soldier qua soldier or fighting man. And since your enemy is the soldier qua soldier, and not qua human being, we have grounds for letting the farmer off. If we think of a justified war as one of self-defense, then we must ask the question ‘Who can be said to be attacking us such that we need to defend ourselves against him?’ Viewed in this way, the farmer seems an unlikely candidate for combat status. 21

This interpretation opens up some possible ambiguous cases. What about workers in ammunition plants? They provide support for the war effort by producing ammunition that will be used to kill enemy soldiers. The United States military has historically marked these sites as potential targets as a means to hinder enemy resupply efforts. The August, 1998 attack by the United States on chemical factories in Sudan was justified, according to U.S. government officials, because they had evidence of chemical ammunition production at the target sites. The Sudanese government claimed the factories produced medical drugs and its destruction severely disrupted their supply. So was the U.S. justified in this act? Murphy states the following in this case:

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I should hope that reasonable men would accept that the burden of proof lies on those claiming that a particular group of persons are combatants and properly vulnerable. I should hope that men would accept, along with the famous principle in the criminal law, the principle 'noncombatant until proven otherwise' and would attempt to look at the particular facts of each case as carefully and disinterestedly as possible. I say that I hope this, not that I expect it.22

The main goal of the U.S. attack was to destroy the production capability at the factories as well as to minimize the loss of life. According to these goals, the attack was successful in both respects since the production capability was destroyed and the strike was conducted during the night hours when the number of personnel working inside the factories was minimal.

From the previous examples, one may not be able to determine what the distinction between combatant and noncombatant actually is. The following simple definitions may also be insufficient:

(i) Combatants are those individuals whom one can reasonably be convinced are engaged in an attempt at the destruction of another.
(ii) Noncombatants can be considered all those of whom it is not reasonable to believe are engaged in this destruction.

This distinction between combatants and noncombatants is still crude and needs refinement. In The Ethics of War, Barrie Paskins and Michael Dockrill offer a better proposal for the distinction:

It is one thing for a person to do something whose point relates to war, but quite another thing for a person to be engaged in such activity as one of those parts of life in which, if anywhere, the meaning of his life is to be found. The purchase of the war stamps is merely an episode in the child’s life, not an activity constitutive of whatever meaning the child’s life contains. By contrast, work as a volunteer soldier or an unwilling conscript is activity of the kind that confers meaning (or meaninglessness) on a person’s life. Similarly, the activity of a guerrilla or freedom fighter in their hours off work is the kind of thing that confers meaning on a person’s life in a way that a child’s purchase of
war stamps does not.
In our use of the word, therefore, ‘noncombatant’ has a rather narrow meaning. A noncombatant is a person who is not a combatant, and a combatant is a person who (i) is engaged in activity which has a military dimension which (ii) is among the activities which confer, if anything does, meaning on the person’s life.23

The view of “meaning on the person’s life” is an interesting one and I believe holds some significance. A person’s occupation does not always determine his or her classification as a combatant or noncombatant. For example, during the Gulf War a Saudi Arabian truck driver was considered a noncombatant according to the above explanation by Paskins and Dockrill. However, a Saudi Arabian truck driver delivering ammunition for allied forces was presumably considered a combatant. This could be explained by the fact that his cargo of ammunition made him a possible target by enemy forces; not because he was “engaged in” combat, but because the meaning of his life had taken on a new militant purpose of supporting a war effort. What if the cargo had been food supplies for allied troops? The driver would then be considered a noncombatant since he was supporting the troops, not as soldiers, but as human beings. Thus, the meaning of one’s life may be a key aspect in the differentiation of combatants and noncombatants.

Paul Christopher discusses this distinction in his book The Ethics of War & Peace. He discusses the view of noncombatants as having the status of being innocent:

During wartime, combatants are those who are either directly or indirectly involved in attacking one belligerent nation’s constituents on behalf of another nation or political group. The term combatants refers primarily to members of the armed forces, but can include certain political leaders who are engaged in planning and carrying out the war effort as well as civilians who are working on behalf of the military. . . we will use the term combatant to refer to those opponents who can justifiably be attacked in wartime, and the terms innocent and
noncombatant interchangeably to refer to all of those categories of persons who are protected from attack under international law.\textsuperscript{24}

His version of the distinction illustrates the need for international law which depicts who is and who is not authorized to be targeted during military operations. Christopher goes on to show how the status of individuals may change from combatant to noncombatant and back again. He indicates how the position of a person can change depending upon their status:

When a nation’s soldiers act on behalf of their nation in carrying out policies requiring the use of force, they may be defended against. Upon capture or surrender, however, a soldier’s status as a combatant is terminated, and he (or she) reverts to his (or her) former category as an innocent. . .This change in status from combatant to noncombatant can occur either because of surrender, or capture, or because of injury.\textsuperscript{25}

International law has rules governing the treatment of the injured and prisoners which Christopher claims gives them the status of “innocent” individuals or noncombatants. These international laws are developed to ensure the fair treatment of individuals during conflicts, but the problem comes in enforcement of these laws. The United Nations tries to work as an international governing body to control hostile actions, but even their authority is limited

The UN was created to keep the peace, and its Members have agreed to refrain from the threat or use of force in their international relations. But this does not mean that armed conflict has ceased.\textsuperscript{26}

Since war is inevitable, it is critical to understand the differentiation between combatants and noncombatants, but how do we do this? It is difficult to say for every situation a soldier faces is different and it is hoped through education and training that soldiers will make correct decisions on what action to perform.
It is through education and training that members of the military will be able to make informed decisions on what acts are permissible. Therefore, in the following three chapters I will illustrate some theories that may aid in developing methods to help this educational process. The theories have their individual strengths and weaknesses for various reasons. I will discuss these and will offer a proposed method of employing the theories as a moral military decision making process.
Notes


4 Henson, 322.


7 Paskins and Dockrill, 105.

8 Paskins and Dockrill, 105-106.


10 U. S. Catholic Bishops, 244.


13 Paskins and Dockrill, 216.


15 Bowman, 692.
16 U. S. Catholic Bishops, 248.


20 Paskins and Dockrill, 222.

21 Murphy, 347.

22 Murphy, 347.

23 Paskins and Dockrill, 222.


25 Christopher, 95-96.

26 Bailey, 91.
CHAPTER 2

NAGEL’S ABSOLUTISM AND UTILITARIANISM

In his article, “War and Massacre,” Thomas Nagel asserts that when the conduct of war goes wrong, actions are usually defended on legal grounds and not moral grounds. Nagel argues for the need to re-focus the conduct of war on a moral basis and not primarily on a legal one. His concern is that even though there exists a moral basis for the rules of war, it seems to be lacking any enforcement based on incidents that he saw occurring in Vietnam.

Means and Ends

Nagel’s search for a moral theory to guide the conduct of war is viewed by him as a problem of means and ends. In order for a hostile act to be justified, the means must be justified in the end result. Nagel uses the example of an incident that occurred on 16 March, 1968 that came to be known as the My Lai Massacre. The incident involved a United States Army unit engaged in a search and destroy mission against suspected enemy Viet Cong forces in northeastern South Vietnam. The unit, led by Lieutenant William L. Calley, Jr., entered the village of My Lai and proceeded to kill 350 Vietnamese including women and children without any form of provocation from enemy forces. The incident was ignored for approximately eighteen months until it was forced to be reviewed as a potential crime:

For a while, the massacre seemed shrouded in secrecy, but national and international outrage forced the military to provide some details about it and eventually to bring charges against Calley and fourteen other officers and enlisted men... Calley’s sensational trial from November 1970 until March 29, 1971, focused public attention on both the horror of the Vietnam War and the problem of guilt for war crimes.
The major concern with this incident was that the United States’ soldiers killed the Vietnamese without any provocation or apparent reason. Those who pushed for prosecution contended that despite having been given an order to kill by the higher chain of command, Calley and his unit did not necessarily have the right to decimate the Vietnamese village. Nagel states “there are limits on what may be done even in the service of an end worth pursuing—and even when adherence to the restriction may be very costly.” So were Calley’s actions justifiable as a means to an end? Calley may have believed he was acting in a proper way, given his orders and the circumstances at hand, however his actions should have been questioned under moral considerations.

Nagel notes:

> If he believes that the gains from a certain measure will clearly outweigh its costs, yet still suspects that he ought not to adopt it, then he is in a dilemma produced by the conflict between two disparate categories of moral reason: categories that may be called utilitarian and absolutist.

This generates Nagel’s principle argument for the disparity between utilitarian and absolutist theories. This argument lays forth that the former gives focus to what *will happen* where as the latter focuses on what one *is doing*.

Nagel believes this conflict arises out of the need to determine not only what outcome is best, but whether the means necessary for the outcome will be permissible. There may be some cases that require the use of inappropriate means in order to produce the best outcome. In these cases, Nagel would suggest that it is wrong to bring about the outcome even though it may be the best one available. For Nagel, “when one of the choices is to do terrible things to another person, the problem is altered fundamentally: it is no longer merely a question of which outcome would be worse.”

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He sees the need to review how the actions are carried out and not focus merely on the probable consequences. For crisis situations, Nagel suggests, a moral dilemma may occur when one must choose between what will happen and what one is doing. In some cases every possible option may be inappropriate for one reason or another. This dilemma is the heart of his argument.

**Straightforward Utilitarianism**

Although the dilemma between the two theories is his main focus, Nagel devotes the majority of his article to discussing its absolutist factor. According to him, the utilitarian component is “straightforward by comparison, and has a natural appeal to anyone who is not a complete skeptic about ethics.” He holds the general view that one should maximize good and minimize evil:

Utilitarianism says that one should try, either individually or through institutions, to maximize good and minimize evil (the definition of these categories need not enter into these schematic formulation of the view), and that if faced with the possibility of preventing a great evil by producing a lesser, one should choose the lesser evil.

As he indicates, Nagel does not go into great detail over his definition of utilitarianism since, according to him, it is essentially “straightforward.” Because Nagel offers this vague definition of utilitarianism, he leaves himself open to debate. This problem is apparent when Nagel’s utilitarian (NU) version is formulated as follows:

**NU:** An act is morally right if and only if it maximizes pleasure (good) and minimizes pain (evil).

NU is not equivalent to the previously discussed HAU. For example, suppose SGT Tom has three choices (a1, a2, and a3) available to him at a certain time. The acts themselves are not important to the example; the fact that the acts cause pleasures and
pains does affect the example. Suppose the acts would produce the following amounts of pleasures and pains:

<table>
<thead>
<tr>
<th>Alternatives</th>
<th>Pleasure</th>
<th>Pain</th>
<th>Hedonic Utility</th>
</tr>
</thead>
<tbody>
<tr>
<td>a1:</td>
<td>100 hedons</td>
<td>99 dolors</td>
<td>+1</td>
</tr>
<tr>
<td>a2:</td>
<td>90 hedons</td>
<td>10 dolors</td>
<td>+80</td>
</tr>
<tr>
<td>a3:</td>
<td>10 hedons</td>
<td>9 dolors</td>
<td>+17</td>
</tr>
</tbody>
</table>

According to HAU, the only right act in this example is a2, since it maximizes utility at +80 compared to the other two acts. The problem is that a2 does not maximize pleasure whereas a1 does. Neither does a2 minimize pain: a3 produces only 9 dolors, whereas a2 produces 10. Thus, a2 does not satisfy either condition as stated in NU. It produces neither more pleasure than its options, nor does it not produce less pain than its options. Therefore, on the basis of NU, a2 would not be the right act to choose to perform. According to the conditions in NU, no alternatives in this example would be acceptable to perform. The trouble with NU is the requirement to maximize two independent variables. As this case depicts, it may not always be possible to maximize pleasure and minimize pain for a particular action. Because of this, I believe Nagel is being too broad in his interpretation of utilitarianism which tends to weaken his argument. Despite this weakness he does identify some problems with utilitarian theories:

\[\ldots\text{despite the addition of various refinements, it continues to leave large portions of ethics unaccounted for. I do not suggest that some form of absolutism can account for them all, only that an examination of absolutism will lead us to see the complexity, and perhaps incoherence, of our moral ideas.}^8\]

Despite its shortcomings, Nagel believes utilitarianism can justify certain restrictions on
the conduct of warfare, but absolutism holds a stronger argument for controlling actions as will be demonstrated.

On the surface, there seem to be utilitarian reasons for observing the provisions placed on actions in war. These provisions are those generally accepted by rational individuals which include not annihilating a village to kill a few possible enemy soldiers or employing nuclear weapons against a weak adversary. These approaches may, in the long run, do more harm than good:

An exceptional measure which seems to be justified by its results in a particular conflict may create a precedent with disastrous long-term effects. It may even be argued that war involves violence on such a scale that it is never justified on utilitarian grounds—the consequences of refusing to go to war will never be as bad as the war itself would be, even if atrocities were not committed.\(^9\)

Nagel believes that the dilemma between the theories will not always be resolved. Because of this problem, he offers a “somewhat qualified defense of absolutism,”\(^1^0\) that he believes will lead to a moral judgment that is unable to be reduced or overruled by other principles. Nagel is quick to caution us that:

... while there may be other principles just as fundamental, it is particularly important not to lose confidence in our absolutist intuitions, for they are often the only barrier before the abyss of utilitarian apologetics for large-scale murder.\(^1^1\)

This seemingly negative view of utilitarianism leads us to Nagel’s absolutist position

**What is Absolutism?**

Absolutism is a view that certain act-types are *always* wrong or *always* obligatory at every time and every place no matter what the consequences and that “there are nonoverrideable moral principles which ought never to be violated.”\(^1^2\) An
example of a common absolutist belief would be that it is always wrong to kill innocent people. Absolutism may take several forms and one extreme form of absolutism is pacifism: "the view that one may not kill another person under any circumstances, no matter what good would be achieved or evil averted thereby." A pacifist argument for not participating in war has been formulated and suggested by Paskins and Dockrill:

1. Killing human beings is prima facie wrong;
2. In doing, or preparing or threatening to do, something which is prima facie wrong one should be very sure what one is doing;
3. In taking part in war it is impossible to be sure what one is doing;
4. Therefore, one should not engage in war.

Their argument is an attempt to defend pacifism, yet it is invalid since the conclusion is not supported by the premises. Regardless, their attempt at a pacifist argument suggests that a soldier may not know if he will ever kill another human being in war and, therefore, any participation in acts of war would be wrong. Nagel believes pacifism "creates no problem of interpretation (and it) draws the conflict with utilitarian considerations very starkly." A utilitarian may say that one may participate in war if participating maximizes utility even if killing may be involved in the process. A pacifist would have to disagree since killing is an aspect of war and any type of killing is wrong. Participation in war is, therefore, not allowed. Pacifism may be an extreme version of absolutism, but Nagel notes it is not the emphasis of his argument.

Nagel's focus is toward other forms of absolutism that allow violence as long as it is for just causes and certain restrictions are followed. One restriction, he assumes, requires an understanding of the difference between murder and acceptable killing in warfare. One philosopher who has written about this is G. E. M. Anscombe. She noted
that “the policy of deliberately killing large numbers of civilians either as a means or as an end in itself... was common practice.”\textsuperscript{16} Throughout history, nations have used attacks on civilian populations as a means to attempt to bring conflicts to an end. Examples of this include incidents during World War II in March 1945 where U.S. officials targeted Japanese civilians in an effort to break down morale and thus collapse the Japanese war effort:

In U.S. firebomb raids, 330,000 Japanese civilians were burned to death and 31 square miles of Japan’s most densely populated urban neighborhoods were burned to the ground. More than 8 million civilians fled.

Civilian morale plummeted, but because of fierce traditional loyalty to the emperor that made no difference to the war effort.\textsuperscript{17}

Similar occurrences also happened in Germany during World War II:

In Germany, the study found the civilian economy ‘had a surprising resiliency.’ The industrial city of Hamburg, for instance, was virtually wrecked by Allied bombs in August 1943. But five months later it had reached 80 percent of its prewar production level.

After four years of strategic bombing, Germany was ‘mortally wounded,’ but the effects of the impending collapse ‘had not reached the enemy’s front lines when they were overrun by Allied forces.’\textsuperscript{18}

These two examples indicate that targeting noncombatants as a means to end a conflict have been utilized, however, they were not very successful in ending the conflicts. Nagel views the practice this way:

It gives evidence of a moral conviction that the deliberate killing of noncombatants--women, children, old people--is permissible if enough can be gained by it. This follows from the more general position that any means can in principle be justified if it leads to a sufficiently worthy end.\textsuperscript{19}

Nagel saw this happening in Vietnam with the use of antipersonnel weapons, napalm, aerial bombardments, extensive relocation of civilians, etc. Although these acts were
said to have unfortunate consequences, the actions were usually defended by military officials as necessary to the long-term success or failure of the war. These “unfortunate consequences” are what Nagel believes absolutism can prevent.

Even though absolutism focuses on what one is doing, it does not obligate an individual to ignore the consequences that may occur from performing an act. For Nagel, absolutism “operates as a limitation on utilitarian reasoning, not as a substitute for it.” He believes that, just like utilitarians, absolutists can strive to maximize good and minimize evil, as long as one does not have to violate an absolute restriction in the process. If a conflict occurs between the prohibition of an act and its consequences, the prohibition takes priority over the consideration of the consequences. For Nagel:

It requires us to forgo certain potentially useful military measures, such as the slaughter of hostages and prisoners or indiscriminate attempts to reduce the enemy civilian population by starvation, epidemic infectious diseases like anthrax and bubonic plague, or mass incineration. It means that we cannot deliberate on whether such measures are justified by the fact that they will avert still greater evils, for as intentional measures they cannot be justified in terms of any consequences whatever.

Nagel had hoped utilitarian considerations would deter the use of such extreme measures during conflicts, but events such as the My Lai incident proved this hope was in vain. He noted that once the opportunity was available to those who calculate the utility of national interest, the need for peace and freedom sometimes outweighed the loss of innocent lives. This is where Nagel sees a weakness in absolutism, since it can be viewed as permitting “one to do horrible things to people in some circumstances but not in others.” Here Nagel seems to be questioning his own view of absolutism and to clarify this matter he sees the need to explain some concerns.
Technical Matters

In order to ensure an understanding of Nagel’s reasoning, he sees it necessary to elucidate a few technical matters. The first matter is to clarify what actions absolutist prohibitions can be applied to. It is ordinarily understood that killing involves the taking of the life of another human being, and an absolutist position generally prohibits bringing about the death of an innocent person. Unfortunately, soldiers are put into situations where they may be faced with this very predicament.

Nagel is concerned with cases in which someone is destined to die, but who actually dies depends upon what one does. For example, a medic may only have a limited supply of life saving medicine for his unit. If too many soldiers require this medicine to survive, some will eventually die because of the limited supply. Would the medic, then, be at fault for these deaths? Nagel would have to say no, since the medic did not cause their deaths for “not everything that happens to others as a result of what one does is something that one has done to them.” The medic did not bring about the resulting deaths by doing something to them. Catholic theology has attempted to address this distinction through the doctrine known as the law of double effect.

The law of double effect attempts to make a distinction between intended and unintended consequences. The expression pertains to the fact that actions may sometimes have two sets of consequences, “one set being the intended consequences for whose sake the action is performed, and the other set being unintended side-effects.” Military targets are attacked as a means to kill combatants and defeat an enemy force which is itself permissible. Unfortunately, a foreseeable but an unavoidable side-effect
of the action is that a number of noncombatants living close by are apt to be killed. It would be wrong to deliberately cause the deaths of the noncombatants, but the law of double effect would say the deaths were permissible as a side-effect of the act.

Nagel has his own assessment of double effect. He stresses the fact that even if the result is predicted, the act is not necessarily murder and does not fall under the absolutist prohibition. In applying this law to acts of war, it allows a limited amount of noncombatant losses as a "side-effect" of hostility toward legitimate military targets. However, Nagel has a problem with this theory:

despite its importance and its usefulness in accounting for certain plausible moral judgments, I do not believe that the law of double effect is a generally applicable test for the consequences of an absolutist position. Its own application is not always clear, so that it introduces uncertainty where there need not be uncertainty.23

Because of this, Nagel prefers to remain with the simple distinction between what one does to people and what merely occurs to them as a result of what one does.

Another technical matter has to do with a frequent criticism of absolutism. Nagel shows it is "sometimes suggested that such prohibitions depend on a kind of moral self-interest, a primary obligation to preserve one's own moral purity no matter what happens to the rest of the world."26 Nagel notes that absolutism is not the only moral theory that suggests each person maintain their own moral purity. For absolutism, he sees two distractions behind the belief that moral self-interest underlies moral absolutism. The first suggests that there exists a need to preserve moral self-interest as a source of an obligation. For if someone commits murder, he/she may sacrifice moral purity only because murder is already wrong. The prevailing incentive
against committing murder cannot be that it makes someone an immoral person. The
second distraction is the notion that “one might sacrifice one’s moral integrity
justifiably, in the service of a sufficiently worthy end, is an incoherent notion.” If an
individual were justified in producing such a sacrifice, then one may not be sacrificing
moral integrity by embracing that procedure: one would be protecting it.

Absolutist Restriction on Warfare

Nagel believes the absolutist restrictions on the conduct of war can be
categorized into two kinds:

1. Restrictions on the class of persons at whom aggression or violence
   may be directed, and
2. Restrictions on the manner of attack, given that the object falls within
   that class.

These two categories may lead to a combined principle that reads a “hostile treatment
of any person must be justified in terms of something about that person which makes
the treatment appropriate.” According to Nagel’s theory, once individuals are able to
understand and control their hostility against certain persons as well as the means used
against them, we will be able to control the conduct of warfare.

Class of Persons

The targets of hostile actions are a key aspect in Nagel’s theory. He presumes
that an individual does not stop considering someone else a person simply because they
start fighting between themselves. He goes on to say:

If hostile, aggressive, or combative treatment of others always violated
the condition that they be treated as human beings, it would be difficult
to make further distinctions on that score within the class of hostile
actions. That point of view, on the level of international relations, leads
to the position that if complete pacifism is not accepted, no holds need
be barred at all, and we may slaughter and massacre to our hearts’
What I hope is that this is not how the average person views relationships between humans and likewise relationships between nations as well. It seems to come down to whether one fights clean or fights dirty. Fighting dirty usually means "to direct one's hostility or aggression not at its proper object, but at a peripheral target which may be more vulnerable, and through which the proper object can be attacked indirectly." 

Fighting dirty can be applied to many different acts to include running for office, brawls, as well as to the conduct of individuals and nations engaged in war. What is important to keeping a fight "clean" is to direct an attack at the true target of hostility, and not at minor targets that happen to be susceptible.

An example of misdirected hostility can be examined in the following example. A particular airline has limited catering services available due to budget constraints, thus they no longer serve full meals to their passengers. A passenger on one of their longer flights becomes upset about the mediocre snack he received instead of what he expected to be a full meal. He commences to verbally abuse the flight attendants through derogatory remarks about their gender, appearances, race, etc. Was it morally wrong for him to direct his hostility at the attendants? Probably. The flight attendants are simply doing their job by serving the food they have available. The disruptive passenger would serve better moral ends by directing his hostility at the airline corporation and not its flight attendants.

Cases of this sort may differ in seriousness to the extent where brutal physical harm may be caused. Regardless, the same principle should be followed: that hostility or aggression should be directed at its true object. This
means both that it should be directed at the person or persons who
provoke it and that it should aim more specifically at what is provocative
about them. The second condition will determine what form the hostility
may appropriately take.\textsuperscript{32}

Nagel asserts that it is obvious that the relationship between persons is essential to this
principle. He believes that any intentional action should be addressed between
individuals as a subject and an object:

\begin{quote}
whatever one does to another person intentionally must be aimed at him
as a subject, with the intention that he receive it as a subject. It should
manifest an attitude to \textit{him} rather than just to the situation, and he should
be able to recognize it and identify himself as its object.\textsuperscript{33}
\end{quote}

He speaks that to treat someone as a “subject” is to treat them as a “person.” This sort
of terminology “clearly invokes Kant’s concept of ‘respect for persons’ and his
distinction between treating human beings as persons and treating them as mere objects,
mere means to an end.”\textsuperscript{34} Hostile military actions usually have this distinction defined
as allies and adversaries, but the scope of individual attitudes sometimes weakens the
view of the victim as a subject. Instead, the aggressive behavior “takes on the character
of purely bureaucratic operation.”\textsuperscript{35} This happens when an individual assaults someone
who is not the true object of the intended hostility.

The interpersonal relationships between subject and object appears to be an
important aspect of Nagel’s belief in absolutism:

\begin{quote}
If absolutism is to defend its claim to priority over considerations of
utility, it must hold that the maintenance of a direct interpersonal
response to the people one deals with is a requirement which no
advantages can justify one in abandoning. The requirement is absolute
only if it rules out any calculation of what would justify its violation.\textsuperscript{36}
\end{quote}

Nagel’s claim of requiring “the maintenance of a direct interpersonal response to the
people one deals with" is further explanation of the need for focusing military
operations on treating human beings as persons. He does note that there may be
extreme circumstances that would make an absolutist view unreasonable. This may be
the case when an individual has no choice but to perform a terrible action. Nagel notes
that "even in such cases absolutism retains its force in that one cannot claim
justification for the violation; it does not become all right."37 Nagel’s explanation of
his reasoning is that he relates absolutist restrictions with the feasibility of trying to
justify actions directly to the victim. An example of this could be when a soldier
bayonets an enemy soldier and says, "It’s either you or me!" The soldier is attempting
to justify his action to the victim and might succeed in this context since bayoneting
another person is an interpersonal, face-to-face action. Nagel doesn’t believe you can
say to Hiroshima victims, "You understand, we have to incinerate you to provide the
Japanese government with an incentive to surrender."38 A utilitarian could possibly be
able to offer justification for the latter example if the utility of the act was satisfactory.

Utilitarian justifications do not sit well with Nagel, for the utilitarian view
"ignores the possibility that to treat someone else horribly puts you in a special relation
to him, which may have to be defended in terms of other features of your relation to
him."39 But this requirement could place a tremendous amount of restraint on an
individual if it becomes necessary to continuously justify each action to each individual
victim. An illustration of this can be seen in a passage from All Quiet on the Western
Front. A soldier has just killed an enemy soldier who has stumbled into the shell-hole
where he was hiding. After watching the enemy soldier die, he went through his
personal effects and learned his victim's name and found photos of his family:

Comrade, I did not want to kill you . . . But you were only an idea to me before, an abstraction that lived in my mind and called forth its appropriate response. It was that abstraction I stabbed. But now, for the first time, I see you are a man like me . . . Forgive me, comrade; how could you be my enemy?

This is an example of Nagel's suggested notion of persons as being subjects and objects. He believes this is important since "absolutism is associated with a view of oneself as a small being interacting with others in a large world. The justification it requires are primarily interpersonal." The above example can be seen as an honest exposition of how the soldier felt. At first the soldier was simply killing an "abstract" form. It was not until he saw the soldier as a human being, or "subject" as Nagel suggests, that he sought forgiveness for the act he committed. However, the widespread reality of practicing interpersonal relationships with enemy soldiers is unlikely. It might be impossible for a soldier to try to defend each action he or she performs. For example, an artillery soldier has the ability to hit a target several miles away from his position and may never see the object (victim) of his action. The interpersonal requirement that Nagel views as critical is lacking as battle line are further removed.

Nagel's interpersonal view of subject and object needs a great more expansion, in my opinion, for use as a means for the conduct of war. Today, few soldiers actually see the object of their military actions. Therefore, it is difficult to consider them as possible "subjects" Nagel suggests. The development of long range weaponry removes soldiers further and further away from the objects of their actions. The United States has repeatedly used long-range missiles to attack countries such as Iraq and Sudan. It
has been noted that "Americans don’t like close, bloody conflict, understandably
preferring the safe standoff warfare that can be waged by cruise missiles." Long-
range warfare can cause extensive damage to enemy targets while minimizing the loss
to friendly forces. The further removed from the battle, the less personal the conflict
becomes. Nagel’s absolutism may be hampered by this problem since justification of
absolutism requires interpersonal interaction. Thus, developing Nagel’s suggested
interpersonal interaction between individuals is somewhat improbable on today’s
extended battlefield.

Manner of Attack on Specific Classes of Persons

Throughout history, restrictions on the methods of war have been developed
among nations that include the restrictions on certain weapons, treatment of wounded
and prisoners, etc.. To reiterate his notion, Nagel sees two types of absolutist
restrictions on warfare: "those that limit the legitimate targets of hostility and those that
limit its character, even when the target is acceptable." His first task was to clarify
how attacks on some targets are allowed and others are not.

Nagel uses an example to help explain this distinction:

It may seem paradoxical to assert that to fire a machine gun at someone
who is throwing hand grenades at your emplacement is to treat him as a
human being. Yet the relation with him is direct and straightforward.
The attack is aimed specifically against the threat presented by a
dangerous adversary, and not against a peripheral target through which
he happens to be vulnerable but which has nothing to do with that threat.
For example, you might stop him by machine-gunning his wife and
children, who are standing nearby, thus distracting him from his aim of
blowing you up and enabling you to capture him. But if his wife and
children are not threatening your life, that would be to treat them as
means with a vengeance."
If someone throws a hand grenade at an emplacement, he makes himself vulnerable to a legitimate attack to stop his action. I do not believe most U.S. soldiers would commit an act of killing women and children as a means of stopping an attack from an enemy since the women and children are not a threat. If the women and children had weapons aimed at the soldier, then the means of self-preservation may override moral beliefs of not harming women and children. If threatening with the use of weapons, the women and children would then lose their noncombatant status and thus become vulnerable to military targeting. In this example, it does seem allowable for a soldier to fire a weapon at a legitimate threatening adversary who in turn is performing a similar threatening action against him or her.

One view that I share with Nagel is the objection to the use of weapons of mass destruction. These weapons—nuclear, thermonuclear, biological or chemical—are undiscriminating when they are used. Not only do they destroy military targets, they have the ability to harm or destroy all surrounding life as well. When these weapons are employed, the targets can seemingly be reduced to be less than human. This action can perhaps be compared to spraying aerosol bug killer over an area. The spray is indiscriminate at what or whom it affects. Anything that comes within its path can be affected by causing physical harm or even death regardless if the victims were the primary target of its use. The same can be said of weapons of mass destruction. Anyone who passes through the path of its devastation can be harmed or killed regardless of their combative status. Some of these weapons can have long term effects as well. The employment of nuclear weapons can cause high radiation levels that can
linger in the target areas for extended periods of time depending upon its concentration. Thus, even when a conflict has ended, the ability for civilians to rebuild their lives may be hindered due to this contamination. When using weapons of mass destruction, one takes aim not only at military targets, but at the survival of the country that is targeted.

At this point, Nagel takes a look at the means of targeting specific classes of persons. The above view helps to strengthen the need to understand the distinction between combatants and noncombatants. As mentioned in the previous chapter, the role of innocent beings is occupied by noncombatants. In absolutist practices, it is considered murder when a noncombatant is killed:

This has been thought to raise two sorts of problems: first, the widely imagined difficulty of making a division, in modern warfare, between combatants and noncombatants; second, problems deriving from the connotation of the word 'innocence.'

To answer the first problem, Nagel begins by attempting to distinguish combatants from noncombatants. The dividing line is not very distinct, but he does not view the task to be difficult. Some have viewed women and children as possible threats because women bear children who may eventually grow up and become soldiers. This suggestion is disturbing for some. More troubling to determine are support personnel who may or may not wear uniforms. They are categorized not on the basis of their status as human beings, but on whether or not they pose or support some form of an objective threat:

I believe they can be plausibly classified by applying the condition that the prosecution of conflict must direct itself to the cause of danger, and not to what is peripheral. The threat presented by an army and its members does not consist merely in the fact that they are men, but in the fact that they are armed and are using their arms in the pursuit of certain objectives.
Nagel’s view is similar to Jeffrie G. Murphy’s in that individuals who contribute to the threat by bearing arms or providing logistical support to those who fight are susceptible to potential targeting in warfare. Supporting soldiers with the basic necessities of life that sustain them as human beings, such as a farmer providing subsistence, does not constitute the right to be targeted.

The second problem concerns the notion of “innocence.” Nagel notes the emphasis here is not of moral innocence nor is it of moral guilt, but more on the immediacy of the threat by the individual. If it were, then we would be allowed to kill an evil, noncombatant librarian living in enemy territory who supported the malicious actions of his or her country. Also, we would not be allowed to harm a drafted soldier who was serving his duty to his country even though it was his belief that the military action was immoral and he did not wish to harm anyone. These two examples help to distinguish how:

moral innocence has very little to do with it, for in the definition of murder ‘innocent’ means ‘currently harmless,’ and it is opposed not to ‘guilty’ but to ‘doing harm.’

Nagel’s second group of restrictions is the limitation on what may be done even to combatants which are sometimes more difficult to delineate. Nagel understands that some of the restrictions “may be arbitrary or conventional, and some may have to be derived from other sources; but [he] believe[s] that the condition of directness and relevance in hostile relations accounts for them to a considerable extent.” Nagel explores several cases to explain his view. The first example explores the medical domain:

... medical attention is a species of attention to completely general
human needs, not specifically the needs of a combat soldier, and our conflict with the soldier is not with his existence as a human being. Medical personnel and wounded soldiers hold special status in combat situations. According to the rules of warfare, they are to be treated as noncombatants for the fact doctors are by profession bound to preserve life and not take it. Wounded soldiers are unable to participate in combat and therefore are designated off limits to targeting.

Another condition is the idea of “human needs” not simply “soldierly needs” which can be applied to certain circumstances. The use of cruel weapons that were designed to maim and dismember individuals seems beyond the extent of merely trying to stop enemy forces. The use of napalm and flame-throwers are examples since they cause “burns [which] are both extremely painful and extremely disfiguring—far more than any other category of wound.” These weapons can be viewed as dehumanizing their victims because these methods fail to separate the soldier from the human being. This may reduce the individual to be viewed as less than a person, which Nagel holds as important to the proper conduct of warfare. Another example is stopping a charging enemy soldier. The soldier may be easily stopped with a round of small arms ammunition. It would not be necessary to use a tank round to stop this soldier’s attack. Thus, the means of the attack should be proportionate to the target.

The final condition for proper means of attack requires that the same limitations of hostility used toward individuals, should be used in regard to attacks against enemy countries. This limitation of hostility should include the nation’s economy, agriculture, transportation system, etc. Nagel views nations as complicated individuals.
Aggressors need to abide by the same rules for nations as they would for human beings when it comes to performing hostile actions.

**Utilitarianism and Absolutist Conflict**

With his outline of utilitarianism and absolutism theories complete, Nagel returns to the conflict between the two. Some acts may be prohibited by absolutist guidelines yet justified under utilitarian guidelines. However, certain acts may be so unacceptable, such as murder and torture, that they cannot be justified by any means:

They are supposed *never* to be done, because no quantity of resulting benefit is thought capable of *justifying* such treatment of a person.\(^{51}\)

The conflict between the two theories develops when an individual rejects one theory over another when it comes to difficult decisions. Someone may exclude an absolutist command in favor of an action that produces more acceptable consequences thus adopting a utilitarian theory. The same may be true of an individual who holds utilitarian beliefs yet decides to act because of absolutist reasons. In either example, it may be “possible to feel that one has acted for reasons insufficient to justify violation of the opposing principle.”\(^{52}\) The problem becomes even more extreme when one has to decide how to act when issues of massive death and destruction are involved.

Nagel suggests that there may or may not be principles available that could help solve such difficult dilemmas. Not only is this unknown, but one:

must face the pessimistic alternative that these two forms of moral intuitions are not capable of being brought together into a single, coherent moral system, and that the world can present us with situations in which there is no honorable or moral course for a man to take, no course free of guilt and responsibility.\(^{53}\)

Because we are “only human,” Nagel assumes that “it is naive to suppose that there is a
solution to every moral problem with which the world can face us.\textsuperscript{54} Regardless, Nagel attempted to outline his view of how absolutism can be adopted to develop guidelines for the conduct of war. He did this through explaining two absolutist restrictions which control the class of targeted persons and the manners of attack against these persons. Absolutism may offer some general guidance for moral decision making. However, Nagel’s arguments are weak since the targeted persons are no longer simple, clear cut “subjects” and “objects” as Nagel would like to treat them.
Notes


3 Nagel, 124.

4 Nagel, 124.

5 Nagel, 125.

6 Nagel, 125.

7 Fred Feldman, “Mistaken Formulations of AUh,” (class lecture presented in Ethical Theory class at University of Massachusetts, February 1999), 1.

8 Nagel, 125.

9 Nagel, 125.

10 Nagel, 126.

11 Nagel, 126.


13 Nagel, 126.

14 Paskins and Dockrill, 162-163.

15 Nagel, 126.

16 Nagel, 127.

18 Wood, B5.

19 Nagel, 127.

20 Nagel, 128.

21 Nagel, 128.

22 Nagel, 129.

23 Nagel, 130.

24 Norman, 83.

25 Nagel, 130.

26 Nagel, 132.

27 Nagel, 132.

28 Nagel, 133.

29 Nagel, 133.

30 Nagel, 134.

31 Nagel, 134.

32 Nagel, 135.

33 Nagel, 136.

34 Norman, 175.

35 Nagel, 136.

36 Nagel, 136.
37 Nagel, 137.

38 Nagel, 137.

39 Nagel, 137.


41 Nagel, 137.


43 Nagel, 138.

44 Nagel, 138.

45 Nagel, 139.

46 Nagel, 140.

47 Nagel, 139.

48 Nagel, 140.

49 Nagel, 141.

50 Nagel, 141.

51 Nagel, 143.

52 Nagel, 143.

53 Nagel, 143.

54 Nagel, 144.
CHAPTER 3
BRANDT’S RULE-UTILITARIANISM

Richard B. Brandt’s main goal in his article “Utilitarianism and the Rules of War,” is to answer, from a moral standpoint: What ought to be the rules of war? His discussion is focused on the “moral proscriptions and prescriptions that should govern the treatment by a belligerent, and in particular by its armed forces, of the nationals of an enemy, both combatants and noncombatants.” Brandt chooses to answer this question through the examination of rule-utilitarianism. For Brandt, rule-utilitarianism can be defined in the following manner:

RU: applies to views according to which the rightness of an act is not fixed by its relative utility, but by conformity with general rules or principles; the utilitarian feature of these theories consists in the fact that the correctness of these rules or principles is fixed in some way by the utility of their general acceptance.

In order to restrict his thesis, Brandt’s aim is to discuss rules of war from the viewpoint of a ‘contractual’ rule-utilitarian. He believes this perspective is a very helpful one for considering the development of rules of warfare and that its implications “will confirm us both in conclusions about certain normative rules and in a conviction that a contractual utilitarian view of such matters is essentially sound.” Because of his tendency toward utilitarianism, Brandt opposes some of Nagel’s statements about absolutism as discussed in the previous chapter.

Nagel’s “Absolutism”

Brandt understands Nagel to be supporting two absolutist theses:

1. the general view that certain kinds of actions are, from a moral point of view, absolutely out of bounds, no matter what the consequences; and
2. a specific prohibition that applies this principle to the area of our
Brandt believes Nagel to be somewhat hesitant in his defense of these two theses. This hesitancy is implicated by Nagel when he suggests he is "offering only 'a somewhat qualified defense of absolutism,' and concedes that in extreme circumstances there may be exceptions to his absolutist principles after all." The only thing Brandt regards Nagel as committed to is his criticism of utilitarianism.

Nagel's tentativeness to support his own theories makes Brandt leery to even refer to Nagel's idea as "absolutism." Regardless, it is the only anti-utilitarian proposal that Nagel attempts to defend and this is what Brandt believes is worth discussing.

Brandt notes that a rule-utilitarian may agree with Nagel that there are some actions which could be considered morally wrong no matter what consequences are involved. Certain actions of this type are expressed as forbidden in military rules of war. These rules can be found in formal treaties such as those developed out of the Hague and Geneva Conventions. These rules are legally binding and military personnel are trained to understand and abide by them. The various services within the Department of Defense have developed guidelines based on these conventions, and the United States Army recognizes the rules of war as written in the Department of the Army Field Manual 27-10, The Law of Land Warfare. Some of these rules include the following:

It is especially forbidden . . . to declare that no quarter will be given. . . . It is especially forbidden . . . to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion . . .

It is especially forbidden . . . to employ arms, projectiles, or material calculated to cause unnecessary suffering . . .
The pillage of a town or place, even when taken by assault, is prohibited.

A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation, even in the case of airborne or commando operations, although the circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war. These rules of war can be interpreted as absolute in that they should never be violated. Brandt asserts that a rule-utilitarian would have to agree and that utilitarian considerations would not be able to morally justify violating these rules. A rule-utilitarian may go on to say that in accepting and abiding by these rules, in the long run, one may contribute to long-range utility. Brandt explains the rule-utilitarian as taking a two-level approach:

that in justifying the rules, utilitarian considerations are in order and nothing else is; whereas in making decisions about what to do in concrete circumstances, the rules are absolutely binding. In the rule-utilitarian view, immediate expediency is not a moral justification for infringing the rules.

Despite this conviction, Brandt makes a footnote about the conceivability of rules of war that could possibly allow an unthinkable action so as to prevent total devastation. In this view, an unthinkable act may be justified if founded on the grounds of it being a last resort for self-preservation to uphold a nation's autonomy. A nation may find it necessary to invoke a rule which supports last resort preservation and place all other restrictions aside. L. Oppenheim commented on this issue when he noted that if a
society is threatened to the point where its fundamental values are at risk, then the society as a whole could possibly be free from restrictions in order to do what “they deem to be decisive for the ultimate vindication of the law of nations.” For example, today the United States has a policy of “no first use” for weapons of mass destruction, such as nuclear, biological or chemical weapons. However, this was not the case in 1945. The United States viewed the atomic bombs dropped on Hiroshima and Nagasaki in 1945 as “the only measures capable of convincing the Japanese to surrender unconditionally and, hence, shortening the war and limiting further Allied casualties.” This action was seen as a means of last resort to end the prolonged fighting and extensive loss of life and to preserve the integrity of the nations involved in the conflict. The policy of “no first use” will hopefully keep this type of devastating act from being committed again.

Brandt sees Nagel as defending only one absolutist principle; the one which places restrictions on legitimate targets and weapons. Nagel defends that:

hostility or aggression should be directed at its true object. This means both that it should be directed at the person or persons who provoke it and that it should aim more specifically at what is provocative about them. The second condition will determine what form the hostility may appropriately take.

Brandt finds the application of this principle somewhat simple for the two-person cases that Nagel discusses. He finds it more difficult to apply the principle in “the identification of morally acceptable military operations” which can become more large scale and complicated. Brandt reinterprets Nagel’s principle in the following manner in order for it to be applicable to military operations:

Persons may be attacked ‘deliberately’ only if their presence of their
position prevents overpowering the military forces of the enemy in some way; and they may be attacked only in a manner that is reasonably related to the objective of disarming or disabling them.\textsuperscript{13}

Even with this reinterpretation, it is still too vague for Brandt to accept. For him, it leaves open cases such as attacks on support services or ammunition factories. As it stands by itself, Nagel’s principle is not self-evident to Brandt which leads him to formulate his utilitarian answer.

\textbf{Morally Justifiable Rules}

Before he can answer his question about which rules of war are morally permissible, Brandt sees the need to clarify the term “rules of war.” Brandt is referring to rules such as those that have been formulated through articles of the Hague and Geneva Convention and as stated in formal treaties. Military members understand that these rules are mandatory and military operations should be developed accordingly. For example, generals are not authorized to deliberately relocate the civilian population of a village simply because the village location would serve as a good site for the unit headquarters. Military members know, as LT Calley found out, that violation of these rules could lead to prosecution. Because of this, these rules are spoken by Brandt as having “authoritative status.”

In offering a utilitarian answer, Brandt is accepting a “contractual” utilitarian answer. By this, Brandt means that he “accept[s] the utilitarian answer to the question which rules of war are morally justifiable because utilitarian rules of war are the ones rational, impartial persons would choose (the ones they would be willing to put themselves under a contract to obey).”\textsuperscript{14} With this understanding in mind, Brandt
rephrases his fundamental question to read the following:

What rules would rational, impartial people, who expected their country at some time to be at war, want to have as the authoritative rules of war—particularly with respect to the permitted targets and method of attack?\textsuperscript{15}

Brandt suggests that rules chosen by “rational, impartial persons” would be those rules that would maximize the expected utility for countries at war. He proposes that these rules would be developed behind what he calls a “veil of ignorance.” This means, among other things, the persons would be starting with a blank sheet of rules and not know who they would be at war with or the type of weapon systems available at the time of the war. This is suggestive of what was accomplished by the Hague Conventions where representatives of numerous nations came together to develop rules of war. These representatives based their judgments for the rules of war on what they believed to be principles that would protect humanity that they would deem fair to follow if ever in conflict with one another. So how are we to handle these rules as nations come and go and weapon technology advances? This is where Brandt believes his contractual utilitarian theory can offer an answer. He states the following to be his contractual utilitarian theory:

(1) that rational, impartial persons would choose certain rules of war;
(2) that [he] takes as a basic premise (‘analytic’ in some sense) that a rule of war is morally justified if and only if it would be chosen by rational, impartial persons; and
(3) that the rules rational, impartial persons would choose are ones which will maximize expectable long-range utility for nations at war.\textsuperscript{16}

One might question what Brandt means when he requires “expectable” utility in his theory. To determine this, he says it is necessary to:

consider the things that, on the basis of available evidence, have more than a negligible probability of happening if $A$ is done, and which are
different from what probably will happen if $B$ is done. . . we consider then, two sets of things: events likely to happen if $A$ but not $B$ is done, and events likely to happen if $B$ but not $A$ is done. This gives us a view of what difference it makes which course of action is taken.\(^1\)

The expectable utility must be different for $A$ and $B$ in order for them to be alternatives. If an individual is faced with several alternative rules, the one which will maximize expectable utility, for Brandt, is the correct one to choose. With this stated, Brandt turns his attention to its clarification.

**Utilitarian Rules**

The first problem arises when one looks to decide what a rational, impartial person would choose. Brandt has “suggested that rational persons, choosing behind a veil of ignorance but believing that their country may well be involved in a war at some time, would prefer rules of war that would maximize expectable utility, in the circumstance that two nations are at war.”\(^1\) Why would one rule be preferable over another rule? Brandt thinks that regardless if someone is self-interested or altruistic, they would decide to abide by rules that would maximize expected utility. In order to control “utility-maximizing rules of war,” Brandt makes the following important restriction:

The rules of war, then, subject to the restriction that the rules of war may not prevent a belligerent from using all the power necessary to overcome the enemy, will be ones whose authorization will serve to maximize welfare.\(^1\)

I assume the understanding of “welfare” to mean the expectable utility of the rules. His reasoning for this restriction has to do with the gravity of war. As discussed in chapter one, “war” is a very difficult beast to define. There are numerous differences from one
conflict to another. The who, what, where, when and why of wars are seldom the same for any two conflicts.

Because of the varied nature of war, Brandt even notes that a problem may arise with attributing rule-utilitarianism to the conduct of war. He sees that “it is possible that the rules which would maximize expectable utility might vary from one type of war to another.” In order to use his contractual rule-utilitarian theory to answer his question, Brandt limits his position on “war,” to be the type which was experienced by Great Britain in World War II. The British experience was the following:

In the case of World War II, the British thought that Hitler’s Germany and its policies threatened the very basis of civilized society. The destruction of Hitler’s power seemed so important to the British that they were willing to stake their existence as a nation on bringing it about.21

Brandt takes the “position of a nation in a serious war is such, then, that it considers overpowering the enemy to be absolutely vital to its interests (and possibly to those of civilized society generally)—so vital, indeed, that it is willing to risk its very existence to that end.”22 But what if all the participants in a conflict think this same way? Conflicts may never come to an end if they did. Brandt thinks this occurrence is doubtful, but if it does happen “neither side will consent to or follow rules of war which seriously impair the possibility of bringing the war to a victorious conclusion.”23 Brandt believes he has already answered this concern with his restriction of “maximum welfare.” He claims existing rules of war already respect this restriction:

they are framed in such a way as not to place any serious obstacle in the way of a nation’s using any available force, if necessary, to destroy the ability of another to resist.24

A concern here is the notion of “available force, if necessary.” The interpretation of
this phrase can open a wide spectrum of possibilities. What would have happened if Saddam Hussein had seen it as a "necessary" action to use chemical or nuclear weapons against the invading enemy during the Gulf War? Historically, Iraqi forces had used chemical weapons during the Iran/Iraq war which caused a major concern to all allied forces:

Because Saddam Hussein used deadly chemicals in his wars against Iran and the Kurds, the possibility that he might resort to chemical and/or biological warfare was considered from the outset of the planning of the Persian Gulf War.\(^{25}\)

Regardless of the possible use of these types of weapons by Iraq, the need to strike was deemed more important. The devastating aerial bombardment and follow on land forces campaign could have been interpreted by Hussein as a threat to his nation and a justification for the use of such extreme measures for self-preservation. Brandt notes that Oppenheim makes a comment on this subject:

one of the assumptions underlying the recognized rules of war is that 'a belligerent is justified in applying any amount and any kind of force which is necessary for... the overpowering of the opponent.'\(^{26}\)

The use of weapons of mass destruction could have been the only means Hussein saw available to overpower his opponent in order to protect his country. Luckily, this was not an option that he chose to use. If he had chosen to use them, would he have been justified in doing so based on the notion of self-preservation and a means to overpower his opponent? It may be hard to determine, but Brandt develops his three rules restricting military operations which he believes could control such extreme actions.
Rules Restricting Military Operations

To help establish rules of war, Brandt offers three rules that restrict military operations. These rules include limitations on prospective targets and weapons of destruction. He notes these rules include, but are not limited to the following: (1) humanitarian restrictions of no cost to military operation; (2) humanitarian restrictions possibly costly to military victory; and (3) acceptance of military losses for humanitarian reasons.

(1). *Humanitarian restrictions of no cost to military operations.* Brandt's first rule takes a look into controlling troop actions which offer little expectable utility to the war effort, yet may bring about severe harm to civilians. He says "such behavior will naturally be forbidden by rules designed to maximize expectable utility within the understood restriction." For this restriction, Brandt offers examples of the treatment of prisoners of war and civilians. He states a "policy of good treatment of prisoners may be expected to make many nations of both sides better off, and at a cost which in no way impairs the ability of either to wage the war." There are many rules of war that protect the rights of prisoners as well as civilians during hostile actions. For example, Article 4 of the 1907 Hague Convention states that prisoners must be "humanely treated." Article 6 stresses the importance of the equal treatment of prisoners:

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government that captured them.

Brandt would view these two articles as presenting the means for providing greater
expectable utility to the nations who followed these rules. He states a "strict prohibition of wanton murder of prisoners has the clear support of utilitarian considerations." For example, the deliberate killing of prisoners could possibility cause conflict and encourage counterstrikes. On the other hand, returning prisoners to their units could serve to support the need to preserve life. In the long run, the fair treatment of prisoners could serve positively for all members of a conflict.

The same benefit can be said for the fair treatment of noncombatants in occupied territories. Article 25 of the 1907 Hague Conventions states "the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited." Article 27 continues supporting the protection of noncombatants:

In sieges and bombardments, all necessary steps must be taken to spare, as far as possible, building dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

Little military benefit is gained from intentionally destroying the livelihood of noncombatants in occupied territories and may cause more harm than good. Actions against civilians may cause resentment by the enemy and prolong the conflict. Brandt sees rules protecting noncombatants as a means of maximizing utility:

So utility is maximized, within our indicated basic limitations, by a strict rule calling for good treatment of the civilian population of an occupied territory.

The established rules for treating prisoners and noncombatants with the dignity they deserve as human beings will serve to increase expectable utility over time.
Oppenheimer noted that fair treatment of these individuals actually improves the outcome of war:

In contradistinction to the savage cruelty of former times, belligerents gradually adopted the view that the realization of the purpose of war was in no way hampered by consideration shown to the wounded, to prisoners, and to private individuals who do not take part in the fighting.

Brandt notes that "obviously these rules, which the maximization of expectable utility calls for, are rules that command our intuitive assent." Restricting harm to prisoners and noncombatants can, in the long run, serves to increase expectable utility at very little cost to ongoing military operations.

(2). *Humanitarian restrictions possibly costly to military victory.* Brandt’s second restriction deals with rules governing more difficult circumstances. These situations fall into a category that Brandt views as “neither clearly permitted nor definitely prohibited.” He discusses and suggests rules for several kinds of actions that fall into this category. His first instance is “doing something which will result in widespread destruction of civilian life and property and at the same time will add to the probability of victory but will not definitely decide the war.” Illustrations of this type of action are the use of nuclear weapons and area bombings. Brandt offers what he considers a “not ideally precise” rule for such actions:

substantial destruction of lives and property of enemy civilians is permissible only when there is good evidence that it will significantly enhance the prospect of victory.

The interpretation of “good evidence” and “significantly enhance” may require the use of judgment according to Brandt, but he believes the rule can be utilized as a sufficient
principle for action. An illustration of the use of this rule is the area bombing experienced by Hamburg, Germany. As indicated in the previous chapter, the bombing succeeded in destroying the city, but did not “enhance the prospect of victory” in the final outcome. The bombing backfired by allowing the outraged citizens to move to industrial war supporting efforts for the German military. Brandt thinks his rule could be accepted by nations in conflict “since following it could be expected to minimize the human cost of war on both sides, and since it does not involve a significant compromise of the goal of victory.”

Brandt is quick to clarify his intentions of using this rule to apply to what he considers “serious wars,” such as World War II. These “serious wars” are considered those in which the “stakes are virtually infinite.” Not all conflicts are this extreme and what may be at stake may be no more than a strip of land or national reputation. The expectable utility of rules governing these actions may be very important for one nation but may not be for another. What Brandt develops is a general principle that he sees as applicable to all types of war:

a military action (e.g., a bombing raid) is permissible only if the utility (broadly conceived, so that the maintenance of treaty obligations of international law could count as a utility) of victory to all concerned, multiplied by the increase in its probability if the action is executed, on the evidence (when the evidence is reasonably solid, considering the stakes), is greater than the possible disutility of the action to both sides multiplied by its probability.

The general principle attempts to set a limit for utility through the probability of the outcome given that the action is performed. Brandt seems to be referring to the notion of “expectable utility” as required in his contractual rule utilitarian theory. Because of
the need to set a limit on utility, this general principle may cause problems in its application, according to Brandt. To serve his purpose, he believes the use of his "serious war rule" will help since it sets limitless utility for victory. However, there must be concrete proof that the action will extend the likelihood of victory.

At this point, Brandt sees the need to clarify the development of his suggested rules:

In practice, it must be expected that each party to a war is likely to estimate the stakes of victory quite high, so that the rule which has the best chance of being respected is probably the first one mentioned, and not any modification of it that would be suggested to an impartial observer by the second, more general principle.

The reader may have been struck by the fact that these suggested rules are essentially institutionalized applications of a kind of act-utilitarian principle for certain contexts. This may seem inconsistent with the notion of a system of absolute rules themselves justified by long-range utilitarian considerations. But there is nothing inconsistent in the suggestion that some of the 'absolute' rules should require that in certain situations an action be undertaken if and only if it will maximize expectable utility.42

To illustrate Brandt's points, the following example can be employed. The aerial bombardments of Hamburg and Japan were performed as a means to bring conflicts to an end, yet these actions proved that they did not "increase the probability of victory" for their aggressors as previously discussed. A better understanding of how to employ the utility factors can be found in the following illustration. The allied forces could have had two actions to choose to perform against the Germans:

\begin{itemize}
  \item a1 Bomb Hamburg, Germany
  \item a2 Refrain from bombing Hamburg, Germany
\end{itemize}

The hedonic utility (HU) for these actions are determined by the hedons and dolors experienced by all participants. The following breakdown represents the HU for the
acts.

a1: Bomb Hamburg, Germany
Bring quick end to German resistance  +1000 hedons
Minimize loss of life to allied forces    +1000 hedons
Destroy German will to fight           +1000 hedons
Cause destruction and loss to German populace  -2000 dolors

a2: Refrain from bombing Hamburg, Germany
Limit destruction and loss to German populace  +1000 hedons
Continue war                          -1000 dolors
Increase loss of life to allied forces   -1000 dolors

According to HAU, the Allied Forces must chose to perform a1 since it maximizes hedonic utility. To perform this act, according to Brandt’s rules, they must generally believe that this act will “significantly enhance the prospect of victory.” It may have been allowable under Brandt’s rule for a serious war, but what consideration should be made about Article 27 of the Hague Conventions which prohibits the unnecessary bombardment of civilian structures? If the Hague Conventions are viewed as an established contract between nations, does the breach of it by one nation, free another from its agreement? This is sometimes the given explanation as to why Hamburg was bombed. It had been said that “since the Germans destroyed Amsterdam and Coventry, the British had a right to destroy Hamburg.”\(^4\) It would seem wrong for Germany to protest about the bombing of Hamburg since they had committed a similar act against others. A rule from *The Law of Land Warfare* actually recognizes a rule controlling this sort of reprisal:

Reprisals are acts of retaliation . . . for a purpose of enforcing future compliance with the recognized rules of civilized warfare . . . Other means of securing compliance with the law of war should normally be
exhausted before resort is had to reprisals. . . Even when appeal to the en-
emy for redress has failed, it may be a matter of policy to consider, before resorting to reprisals, whether the opposing forces are not more likely to be influenced by a steady adherence to the law of war on the part of the adversary.44

Brandt states this “rule” can govern the use of aerial bombardment as a reprisal if it maximizes expectable utility. Even though there are international rules against direct civilian destruction, Brandt suggests that the principle does not exclude the feasibility of employing extensive civilian bombing as a means to bring about a serious decline in civilian morale if it could bring about an end to a war through a national revolution. This may be true but “we know enough about how bombing affects civilian morale to know that such bombing could be justified only rarely, if at all.”45 Thus it may be difficult to determine what rule may bring about the most utility.

(3). Acceptance of military losses for humanitarian reasons. Brandt’s third rule is what he refers to as the economics of warfare, this is “when the ultimate outcome is not involved, either because the outcome is already clear or because the action is fairly local and its outcome will not have significant repercussions.”46 He breaks this down into two cases. The first case questions “when may one inflict large losses on the enemy in order to avoid smaller losses for oneself, given that the issue of the war is not in doubt?”47 In other words, once a victor has been decided it seems wrong to continue to cause further unnecessary harm to the enemy. Another problem is what if the expected loser, perhaps for national pride, becomes stubborn in giving up the fight? The stronger forces should not be allowed to lash out and cause severe destruction for no reason, nor should the losing factor carry on any unnecessary resistance so as to
prolong the conflict. Further destruction could possibly inhibit the ability of the noncombatants in the surrounding area from regaining their livelihood once the fighting is over. An example of this was evident toward the end of the Gulf War:

The real price of war can never be assessed, for in addition to hard costs, the fighting exacted incalculable regional costs in the form of long-term environmental damage, disruption of trade, and population displacement. Kuwaiti oil wells burned for nearly a year, polluting rainfall up to 1,500 miles away. 48

The Iraqi forces attempted to destroy any chances the people of Kuwait had to regain their pre-war oil production. The Iraqi forces set oil rigs on fire and dumped an enormous amount of oil into the gulf waters. This not only lacked any utility whatsoever, but it severely damaged the economic and environmental well-being of not only the people of Kuwait, but all the surrounding countries who used the waters of the gulf. Clearly there was no regard for the people who would be hurt by these actions.

Because of this, Brandt believes the rules of war should protect the inferior players:

superior power should show utmost patience and not make the terms of peace so severe as to encourage further resistance. On the other hand, long-range utility is not served if the rules of war are framed in such a way as to provide an umbrella for the indefinite continuation of a struggle by an inferior power. 49

The rule must allow for a country to be able to cause heavy enough losses to bring about surrender but not so heavy as to be out of proportion to the expected loss to both sides. Brandt believes that "some such rule appears called for by long-range utilitarian considerations." 50 The weaker belligerents also need to know when to give up so as not to continue further destruction of their own way of life.
The second case questions "should there be restrictions on the treatment of any enemy in the case of local actions which could hardly affect the outcome of the war, when these may cause significant losses?"\(^{51}\) Brandt notes that rules of this sort are already in place. The rules governing fair treatment of prisoners and the protection of noncombatants in occupied areas are depicted from such works as the Hague Conventions. This case sometimes places the military at a disadvantage because the protection of combatants and noncombatants may cause a hindrance to military operations. The disadvantages, however, would more than likely not affect the final outcome of any conflict. The advantage for both sides being equal in this case, "a considerable benefit can come to both belligerents in the form of the welfare of their imprisoned and occupied populations."\(^{52}\) The preservation of the rights of the individual is beneficial to both sides. Control by all parties could work out to produce the most expectable utility in the long-run for most situations. Brandt believes "such rules will naturally be accepted by rational, impartial people in view of their long-range benefits."\(^{53}\)

**Rules of War and Morality**

Brandt's argument throughout his paper is that there exist rules that "rational, impartial persons" would prefer to any alternative if they were ever engaged in a war. He also suggested these rules are "morally justified" and thus should be officially acknowledged and given "authoritative status." At this point, Brandt contemplates some questions concerning what rules may be "morally justifiable." He thinks it "may be suggested that there will be a considerable discrepancy between what is permitted by
such ‘morally justifiable’ rules of war and what it is morally permissible for a person to
do in time of war.” Brandt saw that Nagel noted certain acts were not morally
permissible, such as attacking food trucks or the use of flame-throwers. However,
Brandt is not clear whether Nagel “would say these would be permitted by morally
justifiable rules of war, or even that he recognizes a distinction between what is morally
permissible and what is permitted by morally justifiable rules of war.” Brandt
addresses some concerns about whether or not “morally justifiable rules of war could
not be derived from justified moral principles.”

Brandt sees a clear disparity between “what a person morally may do in wartime
and what is permitted by morally justified rules of war.” He believes the rules of war
must be developed in a way that allows for the determination of whether or not a
violation of the rule has occurred: “it must be possible to produce evidence that
determines the question and removes it from the realm of speculation.” Should
morally justified rules of war be necessarily self-evident? This may be difficult to
determine considering the brutal nature of war itself.

Brandt believes that individuals who have “firm moral intuitions” can see the
opposition between morally justifiable rules of war and what is morally permitted.
Brandt offers one form of rule-utilitarian theory that he sees as helpful to understand
this difference. This may be viewed as a form of conscience utilitarianism:

A rule-utilitarian theory of morality might say that what is morally
permissible is any action that would not be forbidden by the kind of
conscience which would maximize long-range expectable utility were it
built into people as an internal regulator of their relations with other
sentient beings, as contrasted with other kinds of conscience or not
having a conscience at all.
This theory places the weight of its utility on the conscience of individuals. This could establish a division between what are the morally justifiable rules of war and what would be morally permissible in view of the “ideal rules of conscience.” How does one choose what is morally justifiable based on the conscience of individuals? Brandt suggests that if a person had a choice, they would choose a set of rules that would “maximize expectable utility” for countries at war. Brandt asserts the following:

\[ \ldots \text{such a person would realize that international law, like the criminal law, has its place in human society, that not all decisions can simply be left to the moral intuitions of the agent, and that the rules of war and military justice are bound to be somewhat crude.} \]

If decisions should not be left to the “moral intuitions of the agent” does this conflict with the “internal regulators” of our conscience that Brandt suggests in his conscience rule-utilitarian theory? If his offering of conscience utilitarianism is weak in supporting his argument for rule-utilitarianism, perhaps it is due to his concern of not allowing all rules to be made based upon the “moral intuitions of the agent.” Given the opportunity to develop rules of war under a “veil of ignorance,” Brandt thinks that, regardless of the “moral intuitions” or “internal regulators,” individuals would choose a system that will produce the most good. He is only suggesting that an individual would “have to identify the sound moral principles which would be relevant to such a decision.”

Brandt brings up another question that may be interpreted in two ways. The question is:

whether a person should follow the actual military rules of his country or the morally justifiable ones.

The first interpretation may be questioning whether the rules are legally binding.
Brandt considers genuine rules of war as legally binding since they have “authoritative status.” The second question arises: “Is a person morally bound to follow the ‘ideal’ rules of war, as compared with the actual ones (or the legal orders of his officer), if they come into conflict?” This poses a difficult question. Individuals may be given conflicting orders and then must choose to perform one of them. Do they follow the morally justified rules of war, the actual rules of war, or the orders of the officers appointed over them that they are sworn to obey? Brandt suggests “that sound moral principles would not permit obedience to an order forbidden by morally justifiable rules of war.” He does not believe that a military court would ever convict an individual for disobeying an order if the order violated a morally justifiable rule. St. Augustine believed this as well since he “attach[ed] great importance to the duty of obedience to the lawful authorities and considers a soldier is ‘innocent’ if he obeys an unrighteous command on the part of the ruler.” This is what makes leadership so critical. Leaders should not order their soldiers to perform acts that violate rules of war, but this sometimes has happened such as the My Lai Massacre.

The need to refer to “sound moral principles” seems to be Brandt’s answer to deciding how to determine morally justifiable rules of war. He does not explain what these “sound moral principles” are and how they can help decide which rules to obey and which to disobey. I find it difficult to believe that “sound moral principles” would work under a contractual rule-utilitarian theory, for what one country believes to be a morally justifiable principle may be a violation for another country according to individual beliefs. For example, there have been several situations where one group of
people believe that in order to protect their way of life they need to kill off their enemies or rivals through such means as the practice of ethnic cleansing. Two different rules may conflict in this case:

R1: If a group sees the need to protect and preserve one’s way of life, then it is necessary to kill off those who are against that way of life.
R2: If a group sees the need to protect and preserve one’s way of life, then it is not permissible to kill those individuals who disagree with another country’s way of life.

Rules may be a mere necessary evil. They are developed to guide actions on what most would consider moral grounds. However, there are those who may not recognize some rules because of their individual set of moral standards. The representatives of the larger, wealthier countries developed rules knowing they possessed the abilities to overpower the weak unrepresented countries. This can be viewed as a weakness in Brandt’s theory since the development of international rules of war was not done by representatives of all possible war participants.
Notes


3 Contractual rule-utilitarian is a term employed by John Rawls in his book *A Theory of Justice*.


5 Brandt, “Rules of War,” 146.

6 Brandt, “Rules of War,” 146.


8 Brandt, “Rules of War,” 147.

9 Brandt, “Rules of War,” 147.


15 Brandt, “Rules of War,” 150.

16 Brandt, “Rules of War,” 150.

18 Brandt, “Rules of War,” 152.


25 Bowman, 717.


30 Scott, 110.


32 Scott, 117.

33 Scott, 118.


Brandt, "Rules of War." 155
Brandt, "Rules of War." 156
Brandt, "Rules of War." 156
Brandt, "Rules of War." 156
Brandt, "Rules of War." 156
Brandt, "Rules of War." 157
Brandt, "Rules of War." 158
Brandt, "Rules of War." 159

Department of the Army Field Manual 27-10. 177.

Brandt, "Rules of War." 159
Brandt, "Rules of War." 160.
Brandt, "Rules of War." 160

Bowman, 713.

Brandt, "Rules of War." 160
Brandt, "Rules of War." 161
Brandt, "Rules of War." 161

Brandt, "Rules of War." 161
Brandt, "Rules of War." 161
Brandt, "Rules of War." 162.
Brandt, "Rules of War." 162.

Brandt, "Rules of War." 162.
57 Brandt, "Rules of War," 162.

58 Brandt, "Rules of War," 162.

59 Brandt, "Rules of War," 163.

60 Brandt, "Rules of War," 163.

61 Brandt, "Rules of War," 164.


63 Brandt, "Rules of War," 164.

64 Brandt, "Rules of War," 164.

65 Upon entering military service, service members are required to take an oath which makes them swear to obey the order of the officers appointed over them.


67 Bailey, 7.
CHAPTER 4

HARE'S RULES OF WAR

The final article I wish to review is Richard M. Hare’s “Rules of War and Moral Reasoning.” He wrote this as a response to the articles by Nagel and Brandt that I have previously discussed. Hare’s objective is to continue Brandt’s argument for the development of rules of war. His aim is to “convince the reader that a sound theoretical foundation can in principle be provided for moral thinking about war, and that this foundation is available to Brandt and to those who seek to put his conclusions into practice.” Hare sees the contrast between Nagel and Brandt “both striking and instructive, and [he is] convinced that a decision between two methods is of immense practical importance.” To further develop Brandt’s theory, Hare uses his two-levels of moral thinking, intuitive and critical, which were designed by Hare to consider problems of moral conflict. This suggested two-level theory approach may be the most useful among the ones I have discussed as a means to develop rules for decision making for the conduct of war.

To develop his argument, Hare discusses the proposals from Nagel and Brandt. Hare has the same problem as Brandt in accepting Nagel’s adherence to “absolutism” that Nagel attempts to support in his article “War and Massacre.” To review, Nagel is split between two methods of moral thinking that he refers to as “utilitarian” and “absolutist.” Hare views Nagel as trying to:

use utilitarian arguments, with all their consideration of the consequences for good or ill of alternative courses of action, but sometimes he wants to override such considerations with an absolute ban, founded upon simple general rules, on certain kinds of actions
In his attempt, according to Hare, Nagel failed to find a means to actually solve the conflict between the two ways of thinking. Hare notes that an example of this can be found in Nagel's discussion of the law of double effect:

... he claims it as a merit of that device that it avoids the problem that in certain cases 'nothing one could do would be morally permissible;' at the end of the paper he admits that his own position has this same consequence. Absolutism, or an impure absolutism which tries to incorporate utilitarian elements without coherently relating them to its own absolutist structure, is bound to have this trouble.

According to Hare, Nagel seems to get himself locked into a one level approach.

absolutism  This is where Hare finds the main problem

I can think of no other way of registering what happens in cases where conflicts of principles are decided that is open to the user of a one-level structure of moral thinking. Since, therefore, a one-level structure seems condemned either to having no determinate procedure for settling moral conflicts, or to having principles of ever increasing complexity, we can only be content with it if we are happy with the complexity or the indeterminacy. I am not yet taking sides on the question of how simple moral principles have to be. As we shall see, it depends on the purposes for which the principles are to be used. different sorts of principles are appropriate to different roles in our moral thinking.

With the general understanding of Nagel's problems, Hare believes Brandt has a method of overcoming this problem. Brandt, like Hare, has developed a two level approach to try to answer "What from a moral point of view, ought to be the rules of war?" Brandt believes there is a need to refer to "sound moral principles" as an aid to solving conflicts of rules. Moral principles and rules must work together and balance each other out. Brandt suggests these two criteria are required for military decision making.

I suggest that... a person would realize that international law has its place in human society, that not all decisions can simply be left to the moral intuitions of the agent. ... [1] only suggest that sound moral
principles would not permit obedience to an order forbidden by morally justifiable rules of war.\(^7\)

Brandt views the need of international law as the basis for the rules of war as developed under a veil of ignorance by those who could be expected to have to abide by them. These laws would be designed to produce the most utility for those affected. Hare notes that Brandt directs the need to work both with "simple general rules and with calculations about consequences [and has on his] hands the problem of reconciling the two ways of thinking." Hare views these sound moral principles and rules based upon international law as Brandt's two-level approach to developing a contractual rule-utilitarian theory for rules of war. Hare expands on Brandt's theories to clarify and explain the conflict between the two levels.

Two-Level Approach

Hare gives a clearer picture of this "two-level" approach in his work *Moral Thinking: Its Levels, Method, and Point*. This approach views the development of lower and higher levels of thinking which Hare entitles the "intuitive" and "critical" levels of moral thinking. He says these two "levels of thinking are both concerned with moral questions of substance, but they handle them in different ways, each appropriate to the different circumstances in which, and purposes for which the thinking is done."

For Hare, his proposed theory can be interpreted as a "two-level utilitarian theory, under which our moral thinking is rule-utilitarian at the *intuitive* level but is act-utilitarian at the *critical* level."\(^8\) These two methods collapse at the critical level for Hare. He attempts to discuss and clarify the distinctions through examples of moral conflicts intending to explain circumstances with conflicting duties.
Those who say that there can just be irresoluble conflicts of duties are always those who have confined their thinking about morality to the intuitive level. At this level the conflicts are indeed irresoluble, but at the critical level there is a requirement that we resolve conflict, unless we are to confess that our thinking has been incomplete. We are not thinking critically if we just say ‘there is a conflict of duties: I ought to do A, and I ought to do B, and I can’t do both.’ But at the intuitive level it is perfectly permissible to say this. The critical level is that... if you have conflicting duties, one of them isn’t your duty.  

There are many times where conflicts of this sort arise, that we ought to do A and ought to do B, but we cannot do both. How do we decide what we “ought” to do? Hare believes that “what is required is an understanding of the two levels of moral thinking and of the different ways that ‘ought’ is used in each of them.”

Intuitive Level

The intuitive level of moral thinking is viewed as the basic level at which ordinary people formulate and utilize principles to guide actions. Sometimes the phrase “rules of thumb” may be invoked to help explain how these principles are implemented. Hare dislikes this use of the term and prefers to refer to them as “prima facie principles”:

Such principles express ‘prima facie duties’ and, although formally speaking they are just universal prescriptions, are associated, owing to our upbringing, with very firm and deep dispositions and feelings. Any attempt to drive a wedge between the principles and the feelings will falsify the facts about our intuitive thinking. Having the principles, in the usual sense of the word, is having disposition to experience the feelings, though it is not, as some intuitionists would have us believe, incompatible with submitting the principles to critical thought when that is appropriate and safe.”

This is where moral education can play a major role. If we teach our children the “right” or “best” thing to do from an early age, they may grow with the understanding
of how to do the "right" or "best" thing. To do this, it seems essential to make principles somewhat clear and concise. This could make learning them easy for all levels of intelligence or education. The military does this with the use of the acronym KIS (Keep It Simple) when developing guidelines for soldiers. This is a critical point for Hare since his concern is that "there is a degree of complexity beyond which we are unable to learn principles." Thus, there is the need for simplicity to ensure the principles can be understood and applied easily.

Along the simplicity line, the United States Army has established seven simple values that are believed to be at the heart of what it means to be a successful soldier.

Values are what we, as a profession, judge to be right. They are more than words—they are the moral, ethical, and professional attributes of character. Our character is what enables us to withstand the rigors of combat or the challenges of daily life that might tempt us to compromise our principles such as integrity, loyalty, or selflessness. Ultimately, strengthening the values that make up our character enables us to strengthen our inner self, strengthen our bonding to others, and strengthen our commitment to a higher calling.

These values, which can be viewed as principles at the intuitive level, include the following: loyalty, duty, respect, selfless service, honor, integrity, and personal courage. Soldiers are educated on these values which are to be held sacred as a means for guidance. For example, duty, defined as "obedience and disciplined performance—despite difficulty or danger," is an extremely important quality to practice in the face of hostile action. Soldiers are taught that it is their duty to obey orders from their superiors. Samuel P. Huntington argues the need for soldiers to obey the legal orders of their superiors is of utmost importance to the military profession and therefore a rule of conduct.
For the military profession to perform its function, each level within it must be able to command the instantaneous and loyal obedience of subordinate levels. Consequently, loyalty and obedience are the highest military virtues: "the rule of obedience is simply the expression of that one among the military virtues upon which all the others depend." When the military man receives a legal order from an authorized superior, he does not argue, he does not hesitate, he does not substitute his own views: he obeys instantly. He is judged not by the policies he implements, but rather by the promptness and efficacy with which he carries them out. His goal is to perfect an instrument of obedience; the uses to which that instrument is put are beyond his responsibility. 17

Once orders are given they are to be obeyed without question which is the discipline the military tries to instill in their soldiers. Hare believes that this is the only way victory can be achieved in a just war 18 thereby exhibiting the success of the training. If soldiers disobeyed orders or were derelict in their duties, the military infrastructure could be jeopardized. But are all orders and duties absolute? What if they are unlawful or conflicting? Conflicts may arise among the seven values leaving soldiers with little guidance to decide how to act.

Hare identifies some problems with this line of intuitive thinking. Because circumstances are so diverse, no two situations will ever be exactly the same, thus different principles and methods of application will be required. He states that "although the relatively simple principles that are used at the intuitive level are necessary for human moral thinking, they are not sufficient." 19 Because situations are so diverse, every situation will have new aspects that make it distinct from other situations. The principles we have learned may have worked in the past, but may not necessarily work in the future. So how are we to decide whether or not the principles are appropriate? No matter how well we have intuited these general principles, we are
destined to find ourselves in circumstances where our principles conflict. This conflict will need to be clarified before a decision to act can be made. This is where Hare believes we must refer to the next level of moral thinking: the critical level.

Critical Level

Critical thinking has a two-fold mission: (1) select the best prima facie principles for intuitive thinking; and (2) resolve conflicts among the principles when the situation arises. For its first mission, Hare believes that “well conducted critical thought will justify the selection of prima facie principles on the ground that the general acceptance of them will lead to actions which do as much good, and as little harm, as possible.” The critical level of thinking does not require an appeal to intuitions as required by the intuitive level; to do so would embody the same sort of deficiency found at the lower level. Hare defines critical thinking as consisting in “making a choice under the constraints imposed by the logical properties of the moral concepts and by the non-moral facts, and by nothing else.” He previously referred to this theory as the “decision of principle.” These principles are not to be confused with the prima facie principles used at the intuitive level. A principle from the critical level is one used under “unlimited specificity.” To clarify his use, Hare makes a distinction between “generality” and “universality” in relation to specificity:

Briefly, generality is the opposite of specificity, whereas universality is compatible with specificity, and means merely the logical property of being governed by a universal quantifier and not containing individual constants. The two principles ‘Never kill people’ and ‘Never kill people except in self-defense or in cases of adultery or judicial execution’ are both equally universal, but the first is more general (less specific) than the second. Critical principles and prima facie principles, then, are both universal prescriptions; but whereas the former can be, and for their purposes have to be, highly specific, the latter can be, and for their
purposes have to be relatively general. Just how general they should be will depend on the circumstances and temperaments of individuals.\(^{23}\)

The specificity of the principles governing the performance of actions may sometimes be difficult to determine since it is virtually impossible to know every possible situation one will face as well as how to handle these situations. Hare believes that we can refer to the “principles imbibed in the course of our upbringing”\(^{24}\) to guide how we make decisions. Hare advocates the notion that these principles develop our moral language which will lead us to the second mission of critical thinking:

We acquire, mainly by education, a number of ‘relatively general principles’: these principles we usually follow unquestioningly so long as there is no conflict between them. If we have been well brought up this situation is satisfactory most of the time. But we are powerless to resolve conflicts between principles in a rational manner unless we resort to thinking at the critical level. . . Further we cannot at the intuitive level rationally examine the principles that we at first uncritically accept, or rationally replace those found to be unacceptable.\(^{25}\)

When our intuitive principles come into conflict, Hare believes we need to refer to critical thinking as a means to decide what decision to make. At this level, principles cannot be in conflict with one another. To ensure this is the case, Hare uses reference to utilitarianism as a means of conflict resolution:

According to Hare, upon such conflicts as tend to arise at the level of ‘unexamined’ principles, what is needed is critical thinking which proceeds under the constraints of logic and non-moral facts alone. Such critical thinking will, according to Hare, proceed on a basis similar to act-utilitarianism, considering all the features of the conflicting situation and deciding accordingly [presumably electing that which brings the most benefit] As Hare would have it, intuition alone cannot help in deciding cases of conflict, critical thinking must be done.\(^{26}\)

Hare advocates a type of utilitarianism that focuses on utility that has been interpreted
as "expected preference utility." This method evaluates outcomes by considering the extent to which preferences are satisfied and frustrated. The value of a satisfaction or frustration is weighted according to the strength of the preference. For example, if an act were performed, it could essentially satisfy the preferences of some individuals while frustrate the preferences of others. It would be necessary to calculate (with weighted intensity) the difference between the sum of the preferences that are satisfied and the sum of the preferences that are frustrated. This would yield the expected preference utility of the act. Hare notes that this manner of calculation may sometimes cause concerns since he believes that "preferences are certainly often alterable, and this fact has very wide implications for utilitarian theory." This may make it necessary to "make some assumptions about the general sorts of preferences people are likely to have and the relative weight that they are likely to place on them." What was a preference for someone today may not be a preference for that same individual tomorrow.

As mentioned earlier, Hare’s two-level approach has been interpreted as rule-utilitarian at the lower level and act-utilitarian at the critical level. One of the concerns is Hare’s claim that act-utilitarianism and rule-utilitarianism can collapse into one another when their employment is examined.

... Hare in fact claims, the act utilitarian and the rule-utilitarian approaches will lead to the same moral decisions. This is so because choosing between two alternative moral rules is logically equivalent to choosing between the act of adopting the first moral rule and the act of adopting the second... when we choose between two alternative moral rules at the critical level, even if we use the act-utilitarian conceptual framework in making our choice, this will in no way prevent us from taking account of the social effects of either moral rule, including its expectation effects."
Hare's moral theory has seemingly led to a development of moral reasoning for individuals. He expects us to use what we have learned through our moral education which are those principles that lead us to make decisions at the intuitive level. Through use and experience we are able to differentiate between intuitive principles when conflicts arise through critical thinking. Hare sees this as amounting to the employment of act-utilitarian and rule-utilitarian techniques.

Conflict Resolution

To help elucidate the need for conflict resolution it would serve to review an example scenario. When soldiers begin their service in the military, they must take an oath of service. Soldiers swear to "support and defend the Constitution of the United States ... and to bear true faith and allegiance to the same; and ... obey the orders of the President of the United States and the orders of the officers appointed over them."

This oath is essentially a promise to the United States Government and the people of the nation that they will perform their obligations of this oath. In the Army Field Manual, FM 100-5, Operations, it states:

The nation expects its Army to adhere to the highest standards of professional conduct and to reflect the ideals of American values. The American people demand a high-quality Army that honors the core values of the Constitution it is sworn to uphold—a strong respect for the rule of law, human dignity and individual rights.

This statement reflects America's expectation that the Army is to be a mainstay of what Americans hold as high moral values. The obligations of soldiers are thus extremely extensive including obligations to self, fellow soldiers, superiors, and the people of our nation. Where does the highest obligation fall?
Suppose I am ordered by a superior officer to perform some act that I believe to be unlawful, such as falsifying vehicle maintenance records. Performing this act will in no way harm anyone nor disrupt the mission of the unit. It would simply make my commander "look good" in the eyes of her superiors on how vehicles are currently maintained in the unit. What she has asked me to do, however, is to violate my integrity in reporting the truth of vehicle maintenance status. I am faced with two alternatives:

a1. Report false vehicle maintenance status

a2. Report true vehicle maintenance status

These two alternatives present a conflict between two prima facie principles (duty and integrity) requiring two contradictory actions. The essential problem is "to determine which of these principles should be applied to yield a prescription for this specific situation." The critical level of moral thinking offers us a method to judge the relative merits of the alternatives by referring to past moral judgments made about similar situations. The first step is to refer to basic prima facie principles.

According to Hare, critical thinking may serve as an aid in the selection of certain prima facie principles that may best guide our actions.

The best set is that whose acceptance yields actions, dispositions, etc. most nearly approximating to those which would be chosen if we were able to use critical thinking all the time.

In my example, I know it is my duty to obey orders from a superior officer. I also know that my integrity (defined as doing what is right, legally and morally) is at stake. Either I disobey orders, violating my obligation to my superior; or disregard my integrity,
violating my obligation to myself. Because these principles conflict, I cannot refer to
the basic intuitive values that I have learned I must now look to the critical level of
moral thinking to help guide my actions.

Besides helping to select specific prima facie principles, critical thinking has
another purpose which is to resolve conflicts among these principles. If the selection of
specific principles is conducted with some care and consideration, conflicts may arise
only in unique situations, according to Hare. He believes we may be able to “sort the
matter out intuitively, letting one principle override the other in this case, without
recourse to critical thinking.” To determine when one principle should override
another, Hare suggests the following:

To treat a principle as overriding, then, is to let it always override other
principles when they conflict with it and, in the same way, let it override
all other prescriptions, including non-universalizable ones. Note that I
say ‘treat as.’ It might be thought a defect in my account that I do not try
to say what it is for a principle to be overriding, but only what it is to
treat a principle as overriding… if someone treats a principle as
overriding all others, but does not let any other override it, then the
words he uses in expressing the principle are so used that they express
for him an overriding principle.

Hare believes prima facie principles can be overridden since they may be both
“universal (they contain no individual constants and start with a universal quantifier), in
another sense they are not universal (they are not universally binding; one may make
exceptions to them).” Allowing one principle to override another, since they may not
be universally binding, may not be the case for every situation. When the conflict is
more complex, the principles may need some qualification by putting the conflict of the
principle aside and focusing on the situation instead. Hare gives his interpretation of
This line of thinking:

'The principles, since they are in conflict, cannot be altogether relied on. I am compelled to depart from one or the other, and do not know which. So let me put the principles aside for the time being and examine carefully the particular case to see what critical thinking would say about it.'

This is not suggesting that the principles are not a concern in deciding action for an individual. Hare believes that over time experience will teach us which situations will suffice with prima facie principles and which situations will require answers from critical thinking. It is also possible to utilize both levels at the same time:

To say that it is impossible to keep intuitive and critical thinking going in the same thought-process is like saying that in a battle a commander cannot at the same time be thinking of the details of tactics, the overall aim of victory, and the principles (economy of force, concentration of force, offensive action, etc.) which he has learnt when learning his trade. Good generals do it. The good general is one who wins his battles, not one who has the best prima facie principles, but the best prima facie principles are those which, on the whole, win battles.

This illustration demonstrates how the two-level approach may incorporate a wide range of applicability. The average human mind has the ability to process an extensive amount of information at the same time. To work at the higher level without encompassing aspects of the lower level would probably be unsuccessful.

Returning to my example of the vehicle maintenance status reports, how should I choose to act in this case? To answer this we may need to look at what Hare discusses as "moral principles." Hare finds it somewhat difficult to find a definition of "moral." He sees the need of differentia to distinguish moral judgments from other judgments. To do this, he uses the notion of "overridingness" as the differentiating property:

We might suggest as a first approximation that a use of "ought" or "must" is a moral use in this sense if the judgments containing it is (1)
prescriptive; (2) universalizable; and (3) overriding...I may say in passing that, if the attempt to define 'moral' in these terms, or in a more developed version of them, were successful, I should not mind substituting the expression 'overriding-prescriptive-universalizable' for the expression 'moral,' in this sense, if it were not so cumbersome.40

Hare finds the need to qualify this definition once he admits the idea that moral principles may be overridden when he notes that "prima facie moral principles can be overridden, not only by other moral principles, but by non-moral prescriptions, without ceasing to be held as moral principles."41

With this qualification in mind, Hare establishes a two sub-class approach to understanding a man's moral principles:

(1) those universal prescriptive principles which he does not allow to be overridden, these will all be what I called 'critical moral principles,' and are therefore capable of being made so specific and so adapted to particular cases that they do not need to be overridden; (2) those prima facie principles which, although they can be overridden, are selected in the way above described, by critical thinking, in the course of which use is made of moral principles of the first sub-class.32

With this understanding, I must determine where my understanding of the moral principles of duty and integrity fall within these two sub-classes in order to determine if one can override the other. Part of Hare's theory has to do with what he believes is the need to understand the logical use of "moral" words:

...the first step that the moral philosopher has to take, in order to help us think better (i.e. more rationally) about moral questions, is to get to understand the meanings of the words used in asking them, and the second step, which follows directly from the first, is to give an account of the logical properties of the words, and thus of the canons of rational thinking about moral questions.43

Hare has some concerns about how we can interpret and use moral words. He believes that "the selection of principles for use in this world of ours, facts about the world and
the people in it are relevant. Hare stresses the idea that there must be a level of
moral thinking that is available beyond the level of logical properties of moral words
and reach a level of pure evaluation. He states that “the appeal to moral intuitions will
never do as a basis for a moral system.” His hope then is that by investigating the
meaning of the moral words we shall manage to generate logical canons which will
govern our moral thinking. In this case, I believe integrity must override duty. I hold
the belief that my primary obligation is to be true to myself. My commander may lose
some respect for me by my disobeying her order, but that is far less important, for me,
than my ability to live with myself knowing I have lied on official documents. The
consequences of all would cause more personal and possible collateral harm (if the
falsification was ever exposed) than a. Would I be prosecuted for disobeying the
order? Probably not.

Hare notes a problem with his approach to moral thinking. He realizes the
possibility of encountering individuals “who know of only the intuitive level of moral
thinking, to have any moral principles; for they cannot justify their ‘moral principles’ by
appeal to critical thinking.” These individuals may be unable to distinguish the
difference between moral principles and other principles. Would an officer, based on
his her ability to think critically, be able to make the distinction for a subordinate
soldier who may not have the ability? Hare believes it is possible:

We can, by saying that a principle is for them a moral principle if, either
(1) it is treated by them as overriding (and such people may well so treat
even prima facie principles, though it will put them in familiar straits if
ever the principles conflict), or (2) if they were constrained (perhaps by
such a conflict-situation) to do some critical thinking, however primitive,
they would justify the principle by appeal to some higher principle
treated as overriding. But it may be best simply to say that there is a
difficulty, in the case of such people, in distinguishing their moral
principles in the sense we are after: this is a sign of a gap in their
thinking rather than ours.\footnote{49}

This is evident in the mentoring that takes place between superiors and subordinates.
As Brandt indicated, military education and training should include schooling in the
understanding and application of laws of war. Hare suggests that “this training should
be backed up by legal enforcement where possible.”\footnote{50} I believe he is referring to
perhaps not the “training” of the laws of war, but the implementation of the laws of war
which should hold “authoritative status” as Brandt suggested, in order for them to be
binding. Hare saw this as a major concern during the Vietnam conflict. He stated that:

Even when armies are fighting wars which can be morally justified (if
any), the individual soldier ought to be enabled to have as clear an idea
of what he can legitimately do to the enemy as he has of when he can
legitimately turn his back on the enemy.\footnote{51}

Unfortunately, this is easier said than done. Hare believes the nature of war is so
unpredictable that military educators cannot prepare soldiers for every possible scenario
they might encounter. The North Vietnamese military practiced forms of military
tactics that the United States’ soldiers had never encountered before. This made it
difficult to handle new situations for which there was no standard protocol to follow.

Rules of engagement were developed while the war was in progress. To say these rules
were “general” or “universal” may have been difficult to determine since there was no
rule of measure.

\textbf{Difficulty with Moral Thinking}

Hare finds one difficulty with moral thinking has to deal with the problem of
incurring “consequences which run counter to the intuitions of the ordinary man.”\footnote{52}
This difficulty is critical to Hare’s two-level approach to moral thinking since the thinking man’s domain may be limited to the lower level. Both Nagel and Brandt have dealt with this problem; one more successfully than the other according to Hare. Nagel seems to use the “intuitions of the ordinary man” as a means to show the weakness that can be found in utilitarianism and its associated theories. Hare sees that Nagel can “think up cases in which a utilitarian calculation would seem to justify actions contrary to principles which most of us, at least when we are not philosophizing, hold sacred.”^55 When one looks at these cases, they may turn up to be either based upon weak utilitarian computations or unlikely to ever occur. Hare notes Nagel’s view of this when Nagel “refers to ‘the abyss of utilitarian apologetics,’ and a utilitarian can readily admit that it is possible by a too superficial or facile application of utilitarian arguments to justify courses of action which a more thoroughgoing utilitarianism would condemn.”^55 Nagel’s theories suggest that he believes the practice of utilitarianism is maintained at a higher level beyond what an ordinary person is capable of performing. Hare sees this concern as a reason why many individuals are turned off to utilitarianism.

For Hare, Brandt’s “two-level” approach to utilitarianism offers a way to counter assaults of theories such as Nagel’s. Hare states:

The ‘sacred principles’ of the ordinary man, and the rules of war which are a crude attempt to apply them to a particular practical sphere, have an established place in any complete utilitarian theory; unfortunately utilitarians have not sufficiently emphasized this, and therefore ‘absolutists’ have some excuse for ignoring it.^55 The “sacred principles” could be interpreted as being equivalent to the non-overriding principles Hare advocates using in critical reasoning. Hare notes that the notion of
"established place" has caused some perplexity since both utilitarianism and absolutism have failed to clarify it. He thinks the best "name" for it is what Ross called "prima facie." Hare thinks Nagel would have been more successful in his paper if he had avoided using the terminology "absolutist" and chosen to focus his view on a "deontologist" theory. However, Hare accepts that there is a deficiency in deontological theories in that "they have no coherent rational account to give of any level of moral thought above that of the man who knows some good simple moral principles and sticks to them."56 This individual is simply abiding by what he believes it is his duty to perform which is following "good simple moral principles" at the intuitive level. The problem occurs, for Hare, when philosophers put more thought into a decision than this particular individual is capable of performing. Hare believes that, on a critical level, philosophers "will be able to give account, either of how we are to come by these admirable principles, or of what we are to do when they conflict."57 To try to accomplish such an account, he holds it as necessary to embrace his "two-level" approach to moral thinking as a means to accepting principles.

Theoretical Foundation for Moral Thinking About War

The goal of Hare's paper has been to try to convince us that a "sound theoretical foundation can in principle be provided for moral thinking about war."58 Brandt's version of contractual rule-utilitarianism has been successful at accomplishing this according to Hare, whereas Nagel's move to "absolutism" falls short. Hare believes humanity has come a long way in securing "an improvement in our present customs, either by new international conventions or simply by the preservation and spread of
right attitudes in soldiers and their commanders and governments. Of course, technology has led to new weapons and methods of killing, but Hare understands that it is possible to control their use through what he calls "rational procedures" amongst the players. This would include deliberation at the critical level in developing universal prescriptions that would produce the best results for all involved:

This is asking a lot, but the history of such negotiations is not exclusively a history of failure. In World War II poison gas was not, after all, used, though many expected that it would be. In both the world wars the Red Cross was for the most part respected. Without some background of written or unwritten international convention, neither of these restraints might have been exercised, and the conventions owed more to rational thought than to emotion, even if the reasoning had more of prudence in it than of morality. Regardless of the reasoning behind the decision of not using chemical munitions or respecting the Red Cross, adherence to rules of war has saved an untold number of lives throughout history.

Besides these advantages, Hare reaffirms his opinion that Brandt has succeeded where Nagel has failed in attempting to justify the same types of rules:

But whereas Brandt is able to fit these rules into a rational system which also provides means for their selection and justification, Nagel, who is confined to one level of moral thinking, predictably finds himself torn between utilitarian arguments and absolutist ones, and thinks that in difficult cases he may be in 'a moral blind alley,' in which 'there is no honorable or moral course for a man to take, no course free of guilt and responsibility for evil.'

Hare thinks this is a major defect in Nagel's theory. The problem of "guilt" concerns Hare for he thinks it is an inappropriate term to use to discuss these problems:

A man with good moral principles will be very likely to feel guilty whatever he does in cases such as Nagel is speaking of. If he did not, he would not be such a good man. For a person, on the other hand, who is mainly concerned to avoid feelings of guilt, the best advice is to grow a
Hare also notes that if growing thick skin is unlikely, another means available is to adopt a set of absolutist principles that would conform to his actions thereby freeing him of any “guilt” that may have been caused by the consequences of his actions. Do we simply “take a moral holiday” and disregard what is done? Hare has to agree with Nagel in that “it is incoherent to suggest that one might ‘sacrifice one’s moral integrity justifiably, in the service of a sufficiently worthy end,’ it is not incoherent to suggest that one might so sacrifice one’s peace of mind.” He believes this may be brought about by the perplexity between moral integrity and peace of mind if “one equates having sinned with having a sense of having sinned.” Because of this, Hare offers a suggested justification for one attraction to absolutism:

If, say, we are theists and can convince ourselves that God has laid down some relatively simple rules and that by observing these we can keep ourselves unspotted and safe from hellfire, this may seem a good way of avoiding the agony of mind which comes, in difficult cases, from calculation of the consequences of alternative actions.

Hare gives Nagel some credibility for dodging this sort of hypocrisy. “for he remains enough of a utilitarian to see that the implications of consistent absolutism are unacceptable.” He thinks this is how Nagel leads himself into his own “moral blind alley.” Hare develops a way out of the alley which is:

...to treat the general principles of the absolutist as indispensable practical guides, but not as epistemologically sacrosanct, and to admit a level of thought at which they can be criticized, justified, or even on occasion rejected in their particular applications when conflicts arise or when a case is sufficiently out of the ordinary to call for special consideration.

This shows the problem Nagel encounters when he attempts to give his principles a
greater position than they should hold. He gets himself locked on one level which leads to conflicts between his absolutist and utilitarian positions. To get out of this alley, Hare’s two-level approach offers the notion of putting the principles aside if necessary and focusing on the situation. If it is a case “sufficiently out of the ordinary,” the principles may not help and critical thinking becomes absolutely necessary. Hare interprets another problem in Nagel’s theory: indeterminacy. Hare claims Nagel uses a general principle to discuss the need to focus on individuals as subjects to classify and maintain his insight. Hare finds it hard to accept this sort of principle as being realistic due to its ambiguity and uncertainty.

Hare notes that “we have grown accustomed to moral philosophers telling us that we can ascertain our duties to other people by appeal to an a priori principle that we ought to treat people as people.” This view is extremely adaptive and Nagel’s is just another version of this technique. Hare sees Nagel as failing to present the idea that one may be able to treat individuals as individuals by detesting them as well as showing admiration toward them. Thus, the easiest way to implement Nagel’s notion of “manifesting an attitude to them” would be to hate them. If we do this “then we can manifest this attitude by any barbarity that takes our fancy, in the assurance that we are not doing what Nagel’s principle forbids.” Hare views this as a useful means to safeguard what Nagel suggests as the “maintenance of a direct interpersonal response to the people one deals with.”

After the negative interpretation of Nagel’s “War and Massacre,” Hare states that he has “probably got Nagel all wrong.” He thinks Brandt’s rendition is more
generous in that perhaps Nagel’s “absolutism” would serve better if moral judgments were “universalizable.” In other words, we should:

... think of those affected by our actions, including the enemy, as people like ourselves, and do to them only what is permitted by a set of universal principles that we are prepared to see adopted for cases in which we are at the receiving end.  

This may be a version of “do unto others, as you would have done unto you.” The question arises to how far are we willing to go with this?

Hare’s interpretation of Nagel and Brandt gives new insight to the development of the rules of war. The United States Army has taken steps to develop its values as a means to guide the actions of soldiers. This can be seen as encompassing the first level of moral thinking that Hare advocates. The seven Army values were designed for the ordinary soldier because the Army saw the need for a “rock-solid ethical base” for decision making. Because military decision making is so critical at times, there was the need to develop and maintain strong individual and professional values because decisions frequently involve tough ethical choices. They are not merely cases of mechanical application of academic principles or bureaucratic policies. These choices may bring forth dilemmas of conscience and foster strong feelings.

This problem of conflicting values was recognized, yet there is little guidance on how to determine what choices to make. The critical level of moral thinking that Hare offers perhaps could be a useful tool.
Notes


2 Hare, 166.

3 Hare, 166-167.

4 Hare, 167.


8 Hare, “Rules of War,” 167.

9 Hare, Moral Thinking, 26.


11 Hare, Moral Thinking, 26.

12 Hare, Moral Thinking, 28.

13 Hare, Moral Thinking, 39.

14 Hare, Moral Thinking, 35.


16 Department of the Army Pamphlet 600-68, 8.

18 Hare does not discuss whether or not there is such a thing as a “just” war for he views it as beyond the subject of his paper.

19 Hare, Moral Thinking, 39.

20 Hare, Moral Thinking, 52.

21 Hare, Moral Thinking, 40.

22 Hare, Moral Thinking, 40.

23 Hare, Moral Thinking, 41.


26 Adu-Amankwah, 299.


28 Hare, Moral Thinking, 180.


30 Harsanyi, 95.

31 Department of Defense form 4 2, Enlistment and Reenlistment, 1.


33 Hare, Moral Thinking, 42.
The basis of this thought is a quote from an anonymous author, “The only obligation in any lifetime is to be true to yourself.”
54 Hare, “Rules of War,” 173.


56 Hare, “Rules of War,” 174.

57 Hare, “Rules of War,” 174.

58 Hare, “Rules of War,” 178.


60 Hare, “Rules of War,” 179.

61 Hare, “Rules of War,” 179.

62 Hare, “Rules of War,” 179.

63 Hare, Moral Thinking, 57.

64 Hare, “Rules of War,” 180.

65 Hare, “Rules of War,” 180.

66 Hare, “Rules of War,” 180.

67 Hare, “Rules of War,” 180.

68 Hare, “Rules of War,” 180.

69 Hare, “Rules of War,” 180.

70 Hare, “Rules of War,” 180-181.

71 Hare, “Rules of War,” 181.

72 Hare, “Rules of War,” 181.

73 Hare, “Rules of War,” 181.

74 Hare, “Rules of War,” 181.
74 Department of the Army Pamphlet 600-68, 5.

76 Department of the Army Pamphlet 600-68, 9-10.
CHAPTER 5
MORAL MILITARY DECISION MAKING PROCESS

My intention in this chapter is to discuss whether absolutist or utilitarian guidelines are sufficient to guide the decision making process for the conduct of individuals under the rules of war. This is the basic discussion I will focus on using the principles set forth by Nagel, Brandt, and Hare. I propose to demonstrate that there is a weakness in the theories when examined individually but together may offer a viable method for educating military personnel in moral decision making. I will review one case in which a difficult decision must be made.

Prisoner Problem

The case I would like to consider is what I refer to as the prisoner problem. To set up the case I present a scenario of a combat situation that presents the leader with the need to make a moral choice among alternative actions. The situation is the following: a small force is ordered to conduct a critical mission behind enemy lines when during the mission they encounter enemy soldiers who are taken prisoner by the small force:

The success of the small force in carrying out its mission will allow the seizure of a major transportation centre without a significant battle which would affect a sizable civilian population. If the battle does not occur, many combatants and noncombatant casualties will be avoided as well as extensive destruction of civilian property. The force carrying out the mission, however, takes several wounded enemy soldiers prisoner. The mission is such that accomplishment is not possible if the force keeps its prisoners in custody. If the prisoners are released, it is highly likely that the force will be compromised and that the mission will fail. Under the circumstances, the commander of the force must decide whether to kill the prisoners and whether such execution can be justified.
This case sets up various alternatives for the leader (call him CPT C) to choose to perform. The most probable alternatives can be viewed as the following:

a1: Kill prisoners, continue mission, seize transportation centre.

a2: Release prisoners, continue mission which is compromised and thus fail.

a3: Keep prisoners, continue mission, soldiers die and mission fails.

a4: Keep prisoners, cancel mission, soldiers survive.

Nagel's Method

To guide his decision, CPT C may find absolutist principles useful in choosing an alternative to handle the prisoners. To examine this scenario, I offer Nagel's absolutist view on what actions should be taken toward "legitimate targets of hostility." The status of the enemy soldiers changes once they are wounded and taken prisoner. They are no longer armed enemies and thus take on the status of noncombatant. Nagel would consider these prisoners "innocent" beings because they offer no immediate threat to the friendly force. The status of "innocent" beings could save the prisoners from execution under the absolutist principle "Never kill innocent human beings." An absolutist argument can be set up in the following manner:

1. It is always wrong to kill innocent human beings.
2. Prisoners of war are innocent human beings.
3. Therefore, it is always wrong to kill prisoners of war.

Under this argument, CPT C must choose to perform (a2), (a3) or (a4), since (a1) would include killing the prisoners and violating the guidelines of absolutism. Nagel's absolutism, however, offers little guidance for choosing between (a2), (a3) and (a4) since the absolutist must "focus on actions rather than outcomes." The consequences
and results from the actions are not a matter of concern for this theory since absolutism is concerned with what someone is doing and not with what will happen. Nagel notes that the "conflict between them arises because the alternatives we face are rarely choices between total outcomes: they are also choices between alternative pathways or measures to be taken." This theory could save the prisoners from execution, but it still does not give CPT C clear guidance on what other alternative action to choose. At this point, Nagel may direct CPT C to use absolutism in combination with a form of utilitarianism. CPT C should focus on the alternative that does not violate absolutist principles, such as killing innocent persons, but also maximizes utility. Absolutism, by itself, may fall short, but some sort of combination of absolutism and utilitarianism might be more successful.

Brandt’s Method

As the leader of this small force, CPT C knows he must make a decision that will bring about various consequences for himself as well as many others. With no formal education on the laws of war, CPT C does remember that his military identification card categorizes him in a Geneva Convention Class if he is ever taken prisoner of war. This classification was designed to safeguard and protect prisoners of war during hostile actions. So where does CPT C’s obligation lie? To himself, his soldiers, his orders, or his prisoners? To clarify these obligations, he understands that he owes it to himself to maintain his personal integrity by doing the legal act. He owes loyalty to his soldiers, for as their leader, his decisions will affect their lives. CPT C also has a duty to obey the lawful orders of his superiors which leads him to understand
the seizure of the transportation centre as a critical mission. His final obligation is to respect the sanctity of innocent lives and safeguard the prisoners. So how does CPT C decide to act? Brandt suggests that "sound moral principles" or values would serve as a guide to ensure the correct act is chosen. This is essentially referring to the need to concern oneself with the intuitive level of moral thinking. The sound moral "values" that CPT C faces include integrity, loyalty, duty and respect. An appeal to these values would not help CPT C to determine which alternative to perform. To illustrate this:

a1: violates integrity and obligation to obey rules of war and respect of the prisoners.

a2 and a3: violates the loyalty to his soldiers and duty to complete the mission.

a4: violates the duty to complete the mission.

The conflicts of these values sets up problems for rules of war. The Army values were developed as a quick reference guide for conduct, but they do not offer guidance when conflicts such as we have arise.

Brandt and Hare believe utilitarianism may offer more guidance. My first analysis of the prisoner problem under utilitarian considerations is from the hedonic act-utilitarianism (HAU) method. If CPT C was not educated in the laws of warfare and was a utilitarian, perhaps he would use HAU to guide his actions. HAU could offer the same four alternatives with the following hedonic values:

<table>
<thead>
<tr>
<th>Alternative</th>
<th>Hedonic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continue Mission</td>
<td>+1000</td>
</tr>
<tr>
<td>Seize transportation centre</td>
<td>+2000</td>
</tr>
<tr>
<td>Avoid battle and save numerous lives</td>
<td>+2000</td>
</tr>
<tr>
<td>Friendly force survives</td>
<td>+500</td>
</tr>
<tr>
<td>Kill enemy prisoners</td>
<td>-500</td>
</tr>
<tr>
<td>Total hedonic value</td>
<td>+5000</td>
</tr>
</tbody>
</table>
If the alternative action is chosen by CPT C through HAU considerations, the only choice would be (a1) since it maximizes hedonic utility. The best answer is to kill the prisoners, which is in complete opposition to absolutism, since in the long run this action will cause considerably less suffering than allowing them to live:

Unless we assume some condition such that the warring party to which the capturing force belongs would inevitably lose the war and that capturing the transportation centre would only prolong the war with the result of increased suffering, the logical action under [the humanitarian principle of human suffering ought to be minimized] will be to execute the prisoners and carry on with the mission.⁷

This line of reasoning shows that HAU yields the conclusion, in this case, that CPT C must select (a1). The problem with this choice is that it is not morally sound. The concern is with the act of killing the prisoners involved in (a1). A conflict may arise in
CPT C in which his morals as a human being may question his utilitarian reasoning.

Morally he cannot bring himself to kill the prisoners knowing they are innocent victims.

Thus, the argument against HAU may be the following:

1. If HAU is true, then CPT C must choose to perform (a1).
2. It is not the case that CPT C must choose to perform (a1).
3. Therefore, HAU is false.

This argument illustrates the point that HAU does not offer the guidance to make the morally correct choice since it directs one to choose an act with morally objectionable consequences. Perhaps some other form of utilitarianism would provide the basis for a more successful decision-making process.

Brandt suggests that focusing on rule-utilitarianism may be a helpful guide to military conduct. Brandt's contractual rule-utilitarian theory focuses on prescribing a set of rules that would maximize long-range expectable utility and are chosen by rational, impartial persons who believed they may be at war at some time. According to rules guiding the conduct of warfare, which alternative should CPT C perform? He knows his decision is critical for many reasons. He has received and must obey the lawful order to seize the transportation centre in order for the mission to succeed. His soldiers depend upon him and will follow whatever decision he makes. To guide his decision, CPT C must determine which universal rules would maximize expectable utility.

As indicated in the previous chapter, Huntington argued that there exists a need for soldiers to obey the legal orders of their superiors. The requirement to obey lawful orders is inculcated in soldiers when they begin their military training. Huntington
believed that it is of utmost importance to the military profession and therefore a rule of conduct.

For the [military] profession to perform its function, each level within it must be able to command the instantaneous and loyal obedience of subordinate levels. Consequently, loyalty and obedience are the highest military virtues: "the rule of obedience is simply the expression of that one among the military virtues upon which all the others depend." 6

According to Huntington's argument for the obedience of soldiers, it may be interpreted that there is a fundamental rule to obey lawful orders which outweighs all other rules of conduct. If Huntington's rule maximizes expectable utility, CPT C must decide to choose (a1), not because it maximizes utility (as HAU would require), but because, according to rule-utilitarianism, his act is in accordance with the prescribed rule which would produce the most utility. According to this reasoning, CPT C could be morally right in his action because he is obeying the rule requiring him to obey all lawful orders. If this line of reasoning is sound, then CPT C must choose (a1) which will fulfill the duty to obey orders and secure his loyalty to the survival of his soldiers. But is this action justified? One of the problems with employing a rule-utilitarian argument for duty to obeying orders is that it may absolve soldiers from being morally responsible for their actions. Hare notes the following:

The thesis is sometimes maintained that a soldier's duty is always to obey orders, and this is often brought forward as a defense when someone is accused of having committed some atrocity. It is said that, since it is a soldier's duty to obey his orders, and he is liable to blame if he disobeys them, we cannot consistently also blame him if in a particular case he obeys them - even though the act which he has committed is of itself wrong. We may blame his superiors who gave the orders, but not the man who carried them out. 7

The other side of the argument maintains that individuals should always be responsible
for their own actions for more often than not they could have done otherwise.

Christopher believes that "while we might accept the claim that soldiers should
generally obey superior orders, numerous examples of abuses, some with catastrophic
consequences, clearly demonstrate that there cannot be a universal prescription that all
orders must always be obeyed." He offers an example to illustrate this

One need only recall the defense of war criminals such as Adolf
Eichmann. "I could feel that the guilt was not mine, since... the men at
the top, the elite, the popes of the empire, laid down the laws. And I? I
had only to obey..." Such examples make Huntington's rule
utilitarianism justification for obedience indefensible.

This illustration shows the need to question the extent to which orders are followed.

Obeying orders may not always maximize utility. Thus, even though the order to seize
the transportation centre is lawful, there are other circumstances that need to be
addressed, such as the fact that killing the prisoners violates other rules of conduct.

As I indicated earlier, there are international and national guidelines developed
to control the conduct of war. These international laws, or rules of conduct for war,
were developed according to Brandt's requirements. The laws were designed by
individuals under a "veil of ignorance" since they did not know if they would ever be at
war with one another. They were intended to bring about the most good for those
individuals if ever involved in hostile conflicts. These rules were also designed as a
means to help guide military decisions. According to these rules of war, (a) is an
unauthorized act since is involves killing (or essentially murdering) the prisoners of
war. The need to comply with rules governing obedience to orders is now in conflict
with the need to obey the rules of war governing the treatment of prisoners. Which set
of rules maximizes utility? To solve this dilemma, one may invoke the notion of "military necessity" which may override the rules. According to international law, "military necessity" establishes a sufficient reason for performing actions "indispensable" to subduing the enemy as quickly as possible, but which would otherwise be prohibited. This effectively prohibits violence not done for military purposes, but permits almost anything done for military objectives.

This definition is somewhat vague since it is open to diverse interpretations. It is generally used for addressing "the tension inherent in attempting to minimize suffering through rules, while at the same time employing a method (violence) that necessarily causes the suffering of innocent people." How does one know when to limit the use of military necessity? Does this idea give soldiers a method of excuse for extreme actions? Telford Taylor offers his view on how to handle a situation such as the prisoner problem through use of military necessity.

These requirements [the laws of war] are followed more often than not, and for that reason millions are alive today who would otherwise be dead. But they are not infrequently violated; the rules read like absolute requirements. But circumstances arise where military necessity, or even something less, cause them to be disregarded. In the heat of combat, soldiers who are frightened, angered, shocked at the death of comrades, and fearful of treacherous attacks by enemies feigning death or surrender, are often prone to kill rather than capture. Small detachments on special missions . . . may take prisoners under such circumstances that men cannot be spared to guard them or take them to the rear, and that to take them along would greatly endanger the success of the mission or the safety of the unit. The prisoners will be killed, by operation of the principles of military necessity, and no military or other court has been called upon, so far as I am aware, to declare such killing a war crime.

This explanation offers one possible reason for placing aside rules of war that has been used to absolve individuals from wrong doing—mission success. Taylor's "necessity of
success" principle may have the following interpretation:

MN: An action is justified by military necessity if it will contribute significantly to the success of the mission.\(^{15}\)

This interpretation could be insinuating military necessity as possibly prevailing over the rules of war. It is known that rules of war have been violated throughout history and will probably continue to be violated in the future. Regardless, they are still useful to ensure military actions do not get out of hand. Taylor states that “violated or ignored as they often are, enough of the rules are observed enough of the time so that mankind is very much better off with them than without them.”\(^{16}\)

Brandt incorporates the notion of “necessity” in his theory when he suggests:

The rules of war, then, subject to the restriction that the rules of war may not prevent a belligerent from using all the power necessary to overcome the enemy, will be ones whose authorization will serve to maximize welfare... This restriction, incidentally, itself manifests utilitarian considerations, for a nation is limited to the use of means necessary to overcome an opponent. Clearly it is contrary to the general utility that any amount or manner of force be employed when it is not necessary for victory.\(^{17}\)

This essentially brings another rule into play which requires an extreme act to be within the guidelines of military necessity. Brandt is suggesting that invoking “necessity” in itself is viewed as a utilitarian method since one uses it to bring about a greater good through its use. For example, using Taylor’s explanation, it is allowable to kill the prisoners because killing the prisoners under the guidelines of “military necessity” would bring about the greater good. In CPT C’s situation, does this view warrant killing the prisoners? When a conflict among rules exists it becomes more difficult to decide which act to perform as well as difficult to decide which rule is among the set
that maximizes expectable utility. CPT C should choose the rule that produces the most utility as compared to other rules. For example, CPT C faces the following conflicting rules.

R1. If you are in a combat situation where a conflict of values arises and must decide how to act then you must not commit any war crimes.

R2. If you are in a combat situation where a conflict of values arises and must decide how to act then you must obey all lawful orders.

R3. If you are in a combat situation where a conflict of values arises and must decide how to act then you must perform the act if it is a military necessity.

(R1) and (R3) may be perceived as contradictory making the case more difficult. What are the consequences of adopting these rules as a guide to decide what action to perform? Brandt argues that we should choose the rule that maximizes expectable utility. The correct act to choose would be the act that is compatible with the best rules which would in fact maximize expectable utility. The right act to perform in wartime would be the act that conforms to the correct set of international rules--the set that would have been chosen if rational persons behind a veil of ignorance had chosen rules for the conduct of war in which they might be engaged. Brandt thinks that such individuals would choose rules that they believe to be utility maximizing. The difficulty arises in deciding which rules would maximize expectable utility on an international level in times of war. International rules would be essentially useless if there were no way to secure their acceptance by those who would be expected to abide by them if ever faced with participating in war. This is why Brandt suggests the needed requirement of authoritative status for these rules. Is it possible to develop and enforce such international laws? This extreme interpretation of the authoritative set of rules
could lead to the contention that Brandt’s rule-utilitarianism theory, as a guide for rules of war, is implausible because of this difficulty. It could then be unsuitable to make general rules be universally required or enforced. Because of this, an argument against Brandt’s version of rule-utilitarianism can be the following:

1. If Brandt’s contractual rule-utilitarianism is sufficient for guiding rules of war, then one must choose to perform acts that are in accordance with the international laws that were designed to serve as utility-maximizing rules.
2. It is not the case that one must choose to perform acts that are in accordance with the international laws that were designed to serve as utility-maximizing rules.
3. Therefore, Brandt’s contractual rule-utilitarianism is insufficient for guiding rules of war.

Premise (2) can be validated by appeal to the use of military necessity and inability to enforce international rules through authoritative measures. As a rule, military necessity may override the set of rules that were designed to maximize utility making them ineffective. However, the rules would still be valid since violation of the rules would not destroy their legitimacy. The second problem stems from the lack of an authoritative body to enforce the rules. The closest authoritative body of control is the United Nations that was designed as an international organization with the mission to "promote peace and international security as well as cooperation in the economic and social field." Because the world has such a diverse nature with different people, different methods of governing, and diverse history, it becomes difficult to impose and enforce international rules on such a world. Throughout history, new sets of international laws on the conduct of war have had to be developed as new weapons and methods of combat were developed. Thus, the best set of rules may not always remain
the best set of rules. If Brandt wants contractual rule-utilitarianism to guide the conduct of war through acceptance of the best set of rules designed to maximize expectable utility, I believe he needs more specification for guidance for when a conflict arises between rules that exist in this set of best rules.

Each of the proposed rules may maximize expectable utility depending upon how one interprets the concept of “utility.” If CPT C followed an absolutist set of rules that adhered to his belief in the sanctity of human life (R1) may bring about the most expectable utility. Therefore, he could not choose to perform (a1). In another possible world, CPT C may believe the rules that maximize utility encompassed the theory of military necessity, and he may not be concerned with the welfare of the prisoners. They are the “enemy” to him regardless of their “innocent” status. Why should he sacrifice his men and numerous innocent civilians for the sake of these few individuals? Under these assumptions, (a1) may be the best option through adherence to (R2) and (R3). (R2) may stipulate the need to perform (a1) since it is the only action that could guarantee the success of the mission and thus completing his order to seize the transportation centre. (R3) may also be interpreted as maximizing expectable utility since the mission may be deemed an act of “military necessity” thereby requiring CPT C to do “whatever it takes” to get the mission completed. This may include having to kill the prisoners to complete the mission. Thus, Brandt’s contractual rule-utilitarian theory fails to give adequate guidance to solve the prisoner problem and more expansion on his theory is needed.

Hare’s Method
The difficulty of conflicting rules in conflicting worlds may lead CPT C to refer to Hare's method of moral reasoning at the critical level. Since CPT C has a conflict at the intuitive level under the guidelines of rule-utilitarianism, he must now refer the dilemma to the critical level under the guidelines of act-utilitarianism. If he does refer to this level by employing act-utilitarianism of the hedonic form, he will get the same result as determined earlier in this chapter. The result will be the obligation to perform (a1) since it was the act that maximized utility. But this method was found to generate objectionable results on the grounds that (a1) involved killing "innocent" prisoners. To avoid the complication of objectionable consequences from employing HAU, one may interpret Hare's second level as a "specific rule-utilitarian" theory as Jeffrey P. Whitman does. This interpretation can be understood in Hare's definition of specific rule-utilitarianism:

I mean by specific rule-utilitarianism a type of rule-utilitarianism whose rules (or principles, as I prefer to call them) are allowed to be of unlimited specificity provided that they do not cease to be universal. It is thus the practical equivalence of [universalistic act-utilitarianism], namely an act-utilitarianism which accepts the meta-ethical view that moral judgments are universalizable. Positions [specific rule-utilitarianism] and [universalistic act-utilitarianism] are practically equivalent, because [universalistic act-utilitarianism], in accepting universalizability, admits that moral judgments made (on a utilitarian basis) about individual acts commit their maker also to principles applying to all precisely similar acts, and this is tantamount to accepting specific rule-utilitarianism.

As previously stated, Hare's theories are interpreted as collapsing into one another. For this reason, I will use this interpretation to help determine what decision should be made in the prisoner problem to avoid the problems of HAU.

CPT C has determined that the intuitive level has not provided him adequate
guidance to decide what action to perform. He must now move to the critical level. At the critical level, it becomes necessary to “abandon all the unreflective responses that are part of our moral training and make decisions based only on what [Hare] calls logic and facts.” To begin this process, steps must be taken. The first step is to identify the logical use of the words that will guide the action. This in itself is a two step process:

... the first step that the moral philosopher has to take, in order to help us think better (i.e. more rationally) about moral questions, is to get to understand the meanings of the words used in asking them; and the second step, which follows directly from the first, is to give an account of the logical properties of the words, and thus of the canons of rational thinking about moral questions. For these steps, CPT C must determine the moral words that are causing the conflict and the logical properties attached to those words. The second step is to determine the facts that will affect the preferences of the individuals involved. These facts “Hare believes should be taken into account when making moral decisions are those having to do with the preferences of those people affected by the decision that will have to be made.” CPT C must decide in his situation which individuals will be affected by his decisions. It is the preferences of these individuals that will factor into his decision making process.

A better understanding of the first step is to understand the notion of “logic” that Hare employs in his critical thinking. This “logical” interpretation of words has to do with how we use words to denote their meaning for moral considerations. How we use words in sentences helps to determine how we intend their meaning and logical properties to be interpreted. With this understanding, CPT C must decide how to interpret the values, which can be viewed as the moral words causing the conflict, that
he faces in regards to his moral intuitions. As an example of how this process works, Brandt offers an account of how to determine the moral and non-moral sense of terms such as "duty".

It is helpful to begin with the modifier 'moral.' What must we suppose about a duty or obligation in order to speak properly of it as a 'moral' one? (1) It must be a matter of conscience. That is, in part, failure to perform will, unless there is adequate justification or excuse, arouse guilt feelings in the agent and moral disapproval in observers, if they know the facts and are sensitive. (2) The requirement must command roughly community-wide support, not merely that of some class or caste. (3) Failure to perform, without excuse, will reflect on character--this being spelled out by reference to traits like honesty, respect for the rights of others, and so on. (4) The requirement is not one just of prudence or convenience, but a matter of principle. (5) The requirement must be construed to have stringency superior to that of claims of manners, custom, taste, law, and courtesy. 

Brandt admits these conditions are somewhat vague and may need additional explanation to be supported. However, they do give general guidance on how to interpret the use of the logical properties of words. Brandt's example of the moral definition of "duty" can be used as one method to help determine how CPT C should define his conflicting moral principles. Brandt's qualifications for determining the moral sense of words can be simplified in the following manner:

(1) Matter of conscience
(2) Command community-wide support
(3) Failure to perform will reflect on character of individual
(4) Matter of principle
(5) Superior requirement

These criteria can be applied to the values CPT C faces in his conflict of alternative actions. He must decide where the utility of his values are ranked according to these
criteria. It is necessary to determine which act if performed would bring about the most utility for the values in conflict. The adherence or violation of a value can bring about various hedons and dolors to those involved in the situation. The values CPT C faces as mentioned earlier are integrity, loyalty, duty and respect. This may not, however, be an easy task since the values attributed to the alternative actions can all be construed as matters of conscience that command community-wide support. They can also be viewed as matters of principle and failure to perform them will reflect greatly upon CPT C’s character. The one possible discriminating criterion may be the need to determine which alternative action will generate the superior requirement of utility from the conflicting values. The violation of a value will produce dolors and the adherence to a value will produce hedons which will be experienced by CPT C. In this case, CPT C’s actions will result in him either violating or adhering to values that he should hold as important to his character as an officer and a person. The utility derived from the values adherence will determine the total utility for the act in regards to the first step of Hare’s critical level of thinking requirements. Applying this method to the example will yield the following results:

<table>
<thead>
<tr>
<th>Act</th>
<th>Value adherence</th>
<th>Utility</th>
</tr>
</thead>
<tbody>
<tr>
<td>a1: Kill prisoners</td>
<td>- respect</td>
<td>-100</td>
</tr>
<tr>
<td></td>
<td>- integrity</td>
<td>-100</td>
</tr>
<tr>
<td>Mission succeeds</td>
<td>+ duty</td>
<td>+100</td>
</tr>
<tr>
<td>Ensure safety of solders</td>
<td>+ loyalty</td>
<td>0</td>
</tr>
<tr>
<td>a2: Release prisoners</td>
<td>+ respect</td>
<td>+100</td>
</tr>
<tr>
<td></td>
<td>+ integrity</td>
<td>+100</td>
</tr>
<tr>
<td>Mission fails</td>
<td>- duty</td>
<td>-100</td>
</tr>
<tr>
<td>Compromise safety of soldiers</td>
<td>- loyalty</td>
<td>-100</td>
</tr>
</tbody>
</table>

112
This calculation helps CPT C to determine that, according to the conflicting values he faces, the best alternative to choose is (a4) since the values attribute to the maximization of utility.\textsuperscript{25}

The second step needs to be examined to help support the result of the first step. This step makes it necessary to examine how the alternative actions will affect the preferences of the individuals involved. Because preferences can vary from one individual to another, it is necessary to make assumptions about what kinds of preferences individuals are likely to hold as sacred. For this reason, it must be presumed that:

\ldots most people must have a strong preference to live and that they therefore have strong preferences for the means necessary for life, such as food and shelter, and, further, they have the preferences for the secure enjoyment of their lives. They do not want to live in fear of their lives or in fear of being prevented from living as they wish. We will assume that they assign a strong weight to these preferences, stronger than to other preferences they may have.\textsuperscript{26}

This understanding may give rise to the belief that actions designed to maintain the sanctity of life have a higher utility than those actions that may terminate life. Hare’s requirement of universalizability requires CPT C to view the preferences of all parties
to the action. He must then consider these preferences as if each were affecting him:

It is as though one person had many preferences about the outcome of a particular situation and had to decide what to do based on his consideration of all of them. The agent then makes a new preference based on his reflection on the particular preferences of all the parties... the choice made by the agent must be one he would be willing to accept were he to be in the position of any of those significantly affected by his choice. This does not imply that the preferences of all parties must be satisfied equally. It does imply that the reasoning the agent uses in making a decision must be comprehensible to all rational persons. Hare would say that this is a requirement of moral reasoning itself.27

According to this explanation, CPT C must calculate the utility of the individuals’ preferences involved in the actions. He must determine what utility would be produced by viewing the preferences of those involved. The prisoners would more than likely prefer life over death and would have a higher preference satisfaction by remaining alive. However, their preference satisfaction value does not rank as high as CPT C’s or his soldiers’ preferences. CPT C’s preferences are valued higher than the prisoners since his concern for himself is higher than the concern for the prisoners. The preferences for his soldiers rank the highest since CPT C is responsible for them and his decisions will affect their preferences based on what action he chooses to perform.

With this determined, CPT C develops the following preference utility rating for the four alternative actions:28

<table>
<thead>
<tr>
<th>Act</th>
<th>Utility</th>
</tr>
</thead>
<tbody>
<tr>
<td>a1: Kill prisoners</td>
<td>-50</td>
</tr>
<tr>
<td>Save self</td>
<td>+100</td>
</tr>
<tr>
<td>Save soldiers</td>
<td>+200</td>
</tr>
<tr>
<td>+250</td>
<td></td>
</tr>
<tr>
<td>a2: Release prisoners</td>
<td>+50</td>
</tr>
<tr>
<td>Compromise self</td>
<td>-100</td>
</tr>
<tr>
<td>Compromise soldiers</td>
<td>-200</td>
</tr>
<tr>
<td>-250</td>
<td></td>
</tr>
</tbody>
</table>
\begin{align*}
\text{a3:} & \quad \text{Keep prisoners} \quad +50 \\
& \quad \text{Compromise self} \quad -100 \\
& \quad \text{Compromise soldiers} \quad -200 \\
& \quad \text{Total} \quad -250 \\
\text{a4:} & \quad \text{Keep prisoners} \quad +50 \\
& \quad \text{Save self} \quad +100 \\
& \quad \text{Save soldiers} \quad +200 \\
& \quad \text{Total} \quad +350
\end{align*}

The appeal to the preferences of the individuals involved results in the same conclusion as the logical use of the values CPT C faces. CPT C must choose to perform (a4) since it maximizes utility for both the logical moral words and facts required in Hare’s theory. Thus, Hare’s critical thinking theory offers a viable result based on the utility of the logical moral words and preferences of the individuals.

However, Hare’s method of moral thinking may be viewed as a matter of judgment. No two situations will ever be the same, but education and training on a version of Hare’s theory may lead to a method that shows “what different sorts of moral guidelines exist and how they function on the critical and/or intuitive level.”

\textbf{Moral Military Decision Making Process}

Individually, absolutism and utilitarianism may offer ineffective support in guiding the development and implementation of a moral military decision making process as demonstrated in the prisoner problem. However, reformulating their use, structured in a similar way to the military decision making process, may offer a viable method to guide moral decision making for military personnel. The six step process would be simple to learn and implement since it is adapted from a known and practiced military doctrine. The six steps to the moral military decision making process would
be the following:

1. Identify the moral decision to be made
2. Identify the alternative courses of action
3. Identify and apply absolutist screening criteria (if applicable)
4. Identify and apply the logical moral principles and facts
5. Identify and compare utility of (4)
6. Make decision

This process may not include all the applicable ethical theories that are available for use, nor may it be applicable to every moral dilemma one may encounter. However, it may offer some practical guidelines to move from an intuitive level of thinking to the critical level of thinking thereby bringing about more informed decisions.

This process will be better understood by relating the prisoner problem and other examples to the six steps. The first step is to identify what moral decision needs to be made. This essentially occurs when the moral principles conflict at the intuitive level requiring more reasoning through the critical level. The decision may be necessary for a harmless dilemma such as deciding whether or not to falsify documents or as difficult as having to decide whether or not to take someone’s life. Regardless of the severity of the moral dilemma this process could still be applied.

Once the moral dilemma is recognized the next step is the development of alternate courses of action. For the prisoner problem, there were four identified alternate courses of action:

a1: Kill prisoners, continue mission, seize transportation centre
a2: Release prisoners, continue mission which is compromised and thus fail
a3: Keep prisoners, continue mission, soldiers die and mission fails
a4: Keep prisoners, cancel mission, soldiers survive.
These four alternatives were deemed as possible choices by CPT C given his required mission and present situation. CPT C's mission may have gone unhindered, but his case has been complicated by the prisoners. Thus, the actions were developed based upon the orders from his superiors and the additional complication of captured prisoners under his control.

Step three requires the identification and application of any applicable "absolutist screening criteria." These criteria are developed from absolutist guidelines which are those principles or rules that govern certain act-types as always wrong or always obligatory at every time and every place no matter what the consequences. These criteria may be difficult to determine since the use of practices such as "military necessity" may override absolutist principles if deemed as a requirement to mission success. This in itself may be viewed as employing critical thinking. As Whitman notes:

Whenever one is considering employing the military necessity qualification to an action, this automatically indicates a move from first level moral deliberation (guided by general moral principles) to second level moral deliberation (guided by specific rule utilitarianism). In making moral decisions during wartime, this degree of flexibility is what the war convention allows and what most soldiers and their leaders expect and desire.32

To support the moral military decision making process, absolutist guidelines should be maintained along both the general war convention rules as well as general guidelines of humanitarian concerns. These guidelines would then "screen off" any alternative actions that would require violating an absolutist principle. Screening off an act would be to remove the act from the list of possible courses of action. An absolutist screening
criterion for military decision making could be the following:

SC1: An individual should never commit any act that would involve the intentional death of an innocent person.

This possible absolutist principle can be supported through articles of the Geneva Conventions as well as United States military regulations that specify safeguarding innocent persons. It is possible that "viewing the articles of the war convention in absolutist terms is thought to further compliance, especially if accompanied with some form of punitive sanction." With this understanding, CPT C can essentially "screen off" alternative (a1) since it involves committing an act that is in violation of an absolutist principle. This act could be construed as a war crime, and if performed, could make CPT C susceptible to punishment. Since (a1) is screened off by the absolutist screening criterion, it is no longer an available option to CPT C. He is now required to choose between the remaining three options which are still in conflict with one another.

The prisoner problem offers a clear example of how an absolutist principle can screen off and alternative act as no longer an available option. Not every dilemma will have screening criteria that will be applicable to the situation. The example used in Chapter 4 created a dilemma of whether or not to obey the commander's order to falsify vehicle maintenance reports. There may not be any war conventions or humanitarian laws concerned with maintaining vehicle maintenance records. In this case step three would not be a concern and the procedure should be continued to the next step.

The fourth step requires the identification and application of the logical moral principles and facts relevant to the situation. This is a two step process in itself. The
first step can be exemplified by using Brandt’s five criteria for evaluating the logic of
moral words. These evaluation criteria can be useful for guiding the evaluation of
conflicting values at the critical level. Brandt’s five criteria are the following:

(1) Matter of conscience
(2) Command community-wide support
(3) Failure to perform will reflect on character of individual.
(4) Matter of principle
(5) Superior requirement

The previous section of this chapter illustrated how these evaluation criteria for moral
words helped determine what act CPT C should perform regarding the conflict of his
values. All the conflicting values he faced met the first four evaluation criteria equally,
but were different when judged against the superior requirement criterion. CPT C had
to compare the remaining three acts which yielded the following results:

<table>
<thead>
<tr>
<th>Act</th>
<th>Value Adherence</th>
<th>Utility</th>
</tr>
</thead>
<tbody>
<tr>
<td>a2:</td>
<td>Release prisoners</td>
<td>+ respect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>+ integrity</td>
</tr>
<tr>
<td></td>
<td>Mission fails</td>
<td>- duty</td>
</tr>
<tr>
<td></td>
<td>Compromise safety</td>
<td>- loyalty</td>
</tr>
<tr>
<td></td>
<td>of soldiers</td>
<td></td>
</tr>
<tr>
<td>a3:</td>
<td>Keep prisoners</td>
<td>+ respect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>+ integrity</td>
</tr>
<tr>
<td></td>
<td>Mission fails</td>
<td>- duty</td>
</tr>
<tr>
<td></td>
<td>Compromise safety</td>
<td>- loyalty</td>
</tr>
<tr>
<td></td>
<td>of soldiers</td>
<td></td>
</tr>
<tr>
<td>a4:</td>
<td>Keep prisoners</td>
<td>+ respect</td>
</tr>
<tr>
<td></td>
<td></td>
<td>+ integrity</td>
</tr>
<tr>
<td></td>
<td>Mission fails</td>
<td>- duty</td>
</tr>
<tr>
<td></td>
<td>Secure safety of</td>
<td>+ loyalty</td>
</tr>
<tr>
<td></td>
<td>soldiers</td>
<td></td>
</tr>
</tbody>
</table>

Once the product of the moral words is determined, the next step is to determine the
facts relevant to the situation. This requires the review of preference satisfaction
amongst the individuals involved. This step presented the following results:

<table>
<thead>
<tr>
<th></th>
<th>a2: Release prisoners</th>
<th>a3: Keep prisoners</th>
<th>a4: Keep prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compromise self</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Compromise soldiers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility</td>
<td>+50</td>
<td>-100</td>
<td>-100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-200</td>
<td>-200</td>
<td>-250</td>
</tr>
<tr>
<td></td>
<td>-250</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This step offered the same result as determined from the moral words. With these findings now determined, it becomes necessary to compare the results to determine the act that maximizes utility.

The military decision making process compares the advantages and disadvantages of the various courses of action. Step five of the moral military decision making process uses a comparison of the utility determined from the moral words and facts determined from the available courses of action. The following are the results:

<table>
<thead>
<tr>
<th></th>
<th>Moral Words</th>
<th>Facts</th>
<th>Total Utility</th>
</tr>
</thead>
<tbody>
<tr>
<td>a2:</td>
<td>0</td>
<td>-100</td>
<td>-100</td>
</tr>
<tr>
<td>a3:</td>
<td>0</td>
<td>-100</td>
<td>-100</td>
</tr>
<tr>
<td>a4:</td>
<td>+200</td>
<td>+300</td>
<td>+500</td>
</tr>
</tbody>
</table>

The comparison clearly shows (a4) as the morally obligatory act because it maximizes utility. Thus, the final step requires a decision to be made about what alternative action to perform. CPT C must choose to perform (a4) which is to keep the prisoners and
cancel the mission. This act will produce the most utility through the suggested absolutist and utilitarian guidelines.

**Vehicle Maintenance Report Case**

This method worked for the prisoner problem but needs to be tested by another example. I would like to complete the vehicle maintenance records case by applying the moral military decision making process.

**Step 1:** I am ordered by a superior officer to falsify vehicle maintenance records. Performing this act will in no way harm anyone nor disrupt the mission of the unit. It would simply make my commander “look good” in the eyes of her superiors on how vehicles are maintained in the unit. What she has asked me to do is to violate my integrity in reporting the truth of vehicle maintenance status.

**Step 2:** I am faced with two alternatives:

VMA1: Report false vehicle maintenance status.

VMA2: Report true vehicle maintenance status.

**Step 3:** It was previously determined that there are no absolutist screening criteria for this case. Therefore, the two alternatives must be evaluated at the next step.

**Step 4:** Part 1: The identified moral words that are in conflict are “duty” to my commander and my own personal “integrity.” Applying Brandt’s criterion of moral words yields the following utility factors:

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>VMA1</th>
<th>VMA2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Both values are a matter of conscience</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(2)</td>
<td>Duty to an unlawful order would not command community wide support</td>
<td>-100</td>
<td>+100</td>
</tr>
<tr>
<td>(3)</td>
<td>Maintaining integrity would uphold an individual’s character</td>
<td>-100</td>
<td>+100</td>
</tr>
<tr>
<td>(4)</td>
<td>Integrity is deemed a high matter</td>
<td>-100</td>
<td>+100</td>
</tr>
</tbody>
</table>
of principle
(5) Both values are equal in requirement\(^3\)
\[
\begin{array}{c|c|c}
\text{Total Utility Factor} & -100 & +100 \\
0 & 0 & \\
-300 & 300 &
\end{array}
\]
Part 2 requires the review of the preference facts that are attributed to those individuals involved in the case. My personal preferences are deemed as having a higher preference utility value than what my commander’s preferences would be in this case.

\[
\begin{align*}
\text{VMA1:} & \quad \text{Preference of commander} & +100 \\
& \quad \text{Preference of self} & -200 \\
& & -100 \\
\text{VMA2:} & \quad \text{Preference of commander} & -100 \\
& \quad \text{Preference of self} & +200 \\
& & +100 \\
\end{align*}
\]

**Step 5:** The next step is to compare the findings of Step 4:

<table>
<thead>
<tr>
<th>Moral Words</th>
<th>Facts</th>
<th>Total Utility</th>
</tr>
</thead>
<tbody>
<tr>
<td>VMA1: -300</td>
<td>-100</td>
<td>-400</td>
</tr>
<tr>
<td>VMA2: +300</td>
<td>+100</td>
<td>+400</td>
</tr>
</tbody>
</table>

**Step 6:** Conducting a review of Step 5 clearly illustrates that the morally obligatory act is VMA2 because it maximize total utility. Thus, I am morally obligated to report true vehicle maintenance status regardless of what my commander orders.

**Conclusion**

This method may seem to be quite involved at first glance, but with training and experience, the method could become an internalized evaluation system. The Army values and general codes taught at the basic entry level to recruits are extremely useful tools to introduce and instruct ethical standards to soldiers. As these soldiers rise in the ranks, their leadership roles and levels of responsibility increase. While this process is developed, these soldiers need to enhance their knowledge of these basic values and
understand how to incorporate them into reasoning at the critical level. Through the military educational system, this method could be incorporated into its academic curriculum to help ensure the moral education of the military is nurtured and ultimately maintained.

This method of critical thinking has not always been embraced by the military for it has been viewed that "critical thinking is not always appropriate, yet decision makers in combat cannot afford to spend valuable time thinking about whether to think." To remedy this problem a method called a "quick test" has been developed to determine whether or not critical thinking is appropriate:

... the quick test is used to decide rapidly and without excessive overhead when to critique and improve an assessment and when to go ahead and act on it. The quick test requires a balance among the costs of delay, the costs of error if one acts without further critical thinking, and the degree to which the situation is either unfamiliar or problematic.

Through education and experience one can be able to use the quick test and the moral military decision making process to make decisions. More experienced soldiers can identify situations more easily than less experienced soldiers. As no two situations will ever be exactly the same, exercise scenarios and situational training could be developed to make individuals familiar with the moral military decision making process.

I have attempted to show that absolutist and utilitarian theories may not stand alone for the development and implementation of rules guiding the conduct of war. The noted weaknesses in Nagel’s and Brandt’s theories indicate that there may not exist a perfect method for deciding how to act when a moral conflict arises. However, all three authors contribute a portion to developing a possible decision making process for
moral conflicts that I have suggested. As Hare indicates, absolutist principles are "indispensable practical guides" that may lead us out of our moral blind alley which helps my third step in the decision making process. Brandt’s suggested “sound moral principles” are critical guiding factors in determining what values may conflict in our actions which supports the fourth step in my process. Ultimately, it is Hare’s two-level approach to moral thinking that guides the total process of learning to use critical thinking.
Notes


2 These four alternatives are the most probable given the circumstances of the situation.

3 Nagel, 138.

4 Nagel, 131.

5 Nagel, 124.


7 Hartle, “Rules of War,” 110.


10 Christopher, 143.

11 Christopher, 143.

12 Christopher, 241.

13 Christopher, 158.

14 Christopher, 167.

15 Christopher, 167.

16 Christopher, 168.


23. Fotion, 13.


25. The innocent civilian individuals were not configured into this method. This was due to the fact that the results affecting the civilians were not a direct result from CPT C’s decision but a side-effect.

26. Fotion, 14

27. Fotion, 17.

28. Preferences are granted based upon relationship to the person who must perform the act and how he/she would want their preferences satisfied if in the situation.

29. Fotion, 21


31. Department of the Army Field Manual 101-5, 5-3. The military decision making process incorporates the following steps:
   1. Receipt of Mission.
   3. *Course of Action Development*.
   4. Course of Action Analysis
   5. Course of Action Comparison.
6. Course of Action Approval
7. Orders Production

32 Whitman, 265.

33 Whitman, 264.

34 The following information determines the superior requirement utility value:

<table>
<thead>
<tr>
<th>VMA1: Duty to commander</th>
<th>-100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integrity</td>
<td>-100</td>
</tr>
<tr>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VMA2: Duty to commander</th>
<th>-100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integrity</td>
<td>-100</td>
</tr>
<tr>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>


36 Cohen, Freeman, and Thompson, 175.

37 Hare, “Rules of War,” 180.
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