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15 Utilitarianism and the ethics of war

War has an obvious impact on human well-being, one that is almost always deleterious. Whatever good a given war might conceivably produce or whatever evils it may forestall, by definition it involves death and destruction, mayhem and misery. Even in periods of peace, the need to be prepared for war also affects human well-being, diverting human and material resources along channels that, viewed by themselves, are less productive of well-being than obvious alternatives to them. It is not surprising, then, that Jeremy Bentham and James Mill were concerned with the causes of war and how best to avoid it. However, neither they nor John Stuart Mill, who wrote about some of the violent conflicts of his day, addressed in sufficient detail two key ethical questions: (1) when, if ever, are we morally justified in waging war and (2) if recourse to arms is warranted, how are we permitted to fight the wars we wage? Nor have contemporary utilitarians examined these questions with the care they deserve. After reviewing briefly what Bentham and the Mills had to say about war, this essay addresses these two questions from a utilitarian perspective.[1]

BENTHAM AND THE TWO MILLS

Bentham disapproved of war and sought its elimination. "All war is in its essence ruinous," he wrote; "mischief upon the largest scale."[2] An anachronism in the modern world, war damages the interests of the masses, forcing them "to murder one another for the gratification of the avarice or pride of the few."[3] The few, in turn, rarely suffer the miseries brought about by the wars they direct. Bentham firmly rejected the idea that war benefits the national economy. It leads, rather, to higher taxation and increased executive power, and the

colonies and trading privileges that are sometimes won by war do little or nothing to increase a nation's wealth. On the other hand, he believed that the frequency of war could be reduced by free trade, the development of international law, a foreign policy that was open to scrutiny and based upon non-interference with other nations, and by an effort to combat popular enthusiasm for war by debunking concepts like national honor and martial glory.

Bentham was not an out-and-out pacifist, however, because he believed that genuinely defensive wars could be justified. Noting in *Principles of International Law* that all states regard themselves as bound to protect their subjects against injuries from the subjects or governments of other states, he wrote that "the utility of the disposition to afford such protection is evident."[4] In that essay, he goes on, in his characteristic systematizing way, to catalogue various types of war, to review their typical causes or triggers, and to suggest some means for preventing them. For example, defensive confederations can reduce or eliminate wars resulting from fear of conquest.

Suppose a state sees itself as aggrieved or finds its rights violated. Is it reasonable to go to war against its aggressor? That will depend in part on the "state of his [the aggressor's] mind with relation to the injury." If there is no bad faith (*mala fides*) on his part, then "it can never be for the advantage of the aggrieved state to have recourse to war, whether it be stronger or weaker than the aggressor."[5] Whatever the injury in question, the expense of war will always outweigh it. However unjust the aggression may appear, it is better, Bentham believes, to submit to it than to encounter the calamities of war. Even if the aggressor is acting in bad faith, whether recourse to war is worthwhile will depend on the circumstances. Unless the aggressive attack represents the first step toward national destruction, prudence may well dictate yielding.

In *Principles* Bentham outlined "A Plan for an Universal and Perpetual Peace" based on two propositions: reducing the armed forces that any European nation may possess and emancipating all "distant dependencies." To promote its own welfare, he contended, Britain should give up its colonies and found no new ones. It should avoid all military alliances and any trade treaties intended to exclude other nations, and it should reduce its naval forces to the minimum necessary to defend its commerce against pirates.

Early in his career, James Mill was not particularly critical of war. At one point, he favored renewed hostilities against France and volunteered to defend the capital if an invasion came.[6] Over time, however, he grew increasingly opposed to war, coming to share many of Bentham's views – for instance, that war damages the national economy and brings suffering and ruin to the masses:

> To what baneful quarter . . . are we to look for the cause of the stagnation and misery which appear so general in human affairs? War! is the answer. There is no other cause. This is the pestilential wind which blasts the prosperity of nations. This is the devouring fiend which eats up the precious treasure of national economy, the foundation of national improvement, and of national happiness.[7]

On the other hand, Mill joined Bentham in believing that wars of self-defense and possibly even preventive wars might be justified.

In his essay "Law of Nations," James Mill argued for (1) developing a clear code for identifying the rights of nations and regulating their conduct with one another and (2) establishing a tribunal for executing that law promptly and accurately. Nations should have recourse to war only when some right has been violated, when that violation is a serious one, and when remedying it requires the extreme measure of war. Further, the only just ends of war are compensation for the injury received and security against any fresh injury, and the law of nations should outlaw any violence not conducive to those ends. Consistent with this, Mill held that although combatants may attack other combatants, they are not justified in inflicting harm on them beyond what is necessary to take them out of the fight. Thus, belligerents should take prisoners whenever possible, and they should treat them humanely. When it comes to civilians, "forbearance and preservation" rather than destruction "ought to be the rule . . . only to be infringed upon special and justifying circumstances."[8] The advantage that an invading army can gain from seizing and destroying the property of ordinary citizens "bears, unless in certain very extraordinary instances, no sort of proportion to the evil inflicted upon the individuals" and should therefore be forbidden by the law of nations.[9]

For his part, John Stuart Mill seems never to have discussed the causes of war or how to avoid it, and he said little about the ethics of war in general. However, in his discussions of current events, he occasionally made some pertinent remarks. In "A Few Words on

Non-Intervention," for instance, Mill argued that nations should not take sides in civil wars or uprisings against an established government except to counterbalance the intervention of other outsiders.[10] When the people are struggling against their own government for free institutions, there is obviously no question of supporting the government against them. On the other hand, if an oppressed people are to win enduring liberty, Mill maintained, then they must do so themselves. The situation changes, however, if they are struggling against foreign rule or a domestic tyranny supported by outsiders. Then the reasons for non-intervention no longer apply.

Mill followed the American Civil War closely. He was scathingly critical of the South and hoped that the war would last long enough, as in fact it did, to become unequivocally anti-slavery in character. In the context of rebuking those who wished that the North had not resorted to arms or who were pushing for it to come prematurely to terms with the South, he remarked:

> [W]ar, in a good cause, is not the greatest evil which a nation can suffer. War is an ugly thing, but not the ugliest of things: the decayed and degraded state of moral and patriotic feeling which thinks nothing *worth* a war, is worse . . . A man who has nothing which he is willing to fight for, nothing which he cares more about than he does about his personal safety, is a miserable creature . . . As long as justice and injustice have not terminated *their* ever renewing fight for ascendancy in the affairs of mankind, human beings must be willing, when need is, to do battle for the one against the other.[11]

Mill discussed rebellion and insurrection in various other contexts as well.[12] When was such political violence justified? It was defensible, he thought, only if it had a just cause. For Mill, this involved suffering, oppression, or tyranny, the intensity of which was so great that overcoming it was worth "almost any amount of present evil and future danger."[13] Even with a just cause, however, for rebellion or insurrection to be warranted, it must also have a reasonable chance of success.

WHEN, IF EVER, MAY WE WAGE WAR?

It is extremely unlikely that any war, viewed as a whole, has been a welfare-optimal event or series of events. There will almost certainly have been some alternative state of affairs that the nations in question

could have brought about instead that would have been better on utilitarian grounds. Indeed, there will often have been an outcome open to the belligerents that would have been better for each of them individually. That's why wars so often look like collective folly. However, the decision that an individual state faces is not how all states should act, but rather how *it* should act in the particular situation in which it finds itself.

When, then, should a state go to war? From a utilitarian perspective, it is not enough that the war's benefits outweigh its costs, taking into account the interests of all. There must also be no alternative course of action open to the state that would lead to better results (for example, not responding to the provocation, conceding land or influence, surrendering, or relying on nonviolent, civil resistance). Formalizing this idea and filling in a few details, we can say that utilitarianism entails the following principle:

> A state is morally justified in waging war *if and only if* no other course of action available to it would result in greater expected well-being; otherwise, waging war is wrong.

This principle is formulated in terms of *expected* outcomes. Some utilitarians, however, prefer to frame the theory in terms of *actual* outcomes. There are considerations for and against both approaches.[14] In practice, though, there is little difference between them because the only way we have of trying to maximize actual well-being is to act so as to maximize expected well-being.

If a state is justified – if it acts rightly – in waging war, then it is morally permitted to do so. Is it also required to wage war? The answer is that a state is morally required to wage war, as opposed to being merely permitted to do so, if and only if waging war would result in greater expected well-being than anything else it could do. This implies that, if the well-being expected from some other course of action (A) is equivalent to that of waging war (W), and no course of action B, C, D, ... etc. has equivalent or greater expected utility, then although a state must choose either A or W, it is not required to select one rather than the other. It acts rightly if it opts for either. This may sound like a purely theoretical point. But given the difficulties of estimating expected well-being, the possibility of ties may not be so remote.

Two further points should be clarified. First, there are various kinds of war that states can fight. This entails that a state will often

be presented not simply with a choice between waging war and not waging war but rather between the latter and various possible wars of differing scope, type, or intensity. Second, the decision whether to wage war is not a one-time, once-and-for-all decision. Even if war is initially warranted on utilitarian grounds, circumstances can change so that a state ceases to be justified in continuing it.

The utilitarian approach to war is simple, but it is also attractive. Commonsense morality, I believe, would recoil at the suggestion that it can be right to wage war when there is an alternative to fighting that would have better results. And if well-being is understood in a broad sense that acknowledges the importance of liberty and self-determination for human flourishing (as Mill and many subsequent utilitarians have thought), then commonsense morality might well accept the explicitly utilitarian proposition that wars should be waged only when nothing else would bring about greater well-being. One does not have to be a utilitarian, however, to believe that this normative standard is basically correct. One can consistently endorse it while nevertheless believing that utilitarianism does not provide a fully satisfactory general account of right and wrong. A non-consequentialist, that is, could well believe that utilitarianism is deficient as an overall normative theory, perhaps because it sometimes demands too much of us or fails to place sufficient weight on our individual projects and attachments, and yet believe that wars ought to be waged only when doing so satisfies the utilitarian standard.

Widespread acceptance of the utilitarian criterion of justified war would be a profound and salutary change. Throughout history, wars have been defended in terms that either ignore consequences altogether or focus on consequences that have little or nothing to do with human well-being, that is, with how well or poorly real people will fare as a result of war. For example, wars have often been defended as necessary to uphold national honor or avenge some historical grievance. And even when consequentialist-sounding considerations are adduced in support of war, policy-makers typically discount or neglect altogether the consequences for other peoples, and they rarely think through the probable gains and losses of fighting in a detailed and objective way. They may claim, and frequently do, that there is no viable alternative to war, that the stakes are extremely high, and that the consequences of not fighting would be too terrible to

contemplate, yet these claims are almost always overconfident and unsubstantiated.

THREE COMMON OBJECTIONS ADDRESSED

Many of the common objections to utilitarianism as a comprehensive moral theory are inapplicable to its criterion of justified war, which is a relatively specific normative principle of limited domain. However, there are three objections to utilitarianism that are widely seen as having special force when applied to its treatment of war. Let us examine these.

The first objection is that utilitarian reasoning is susceptible to abuse – in particular, that it can be, and has been, used to justify all sorts of immoral wars. To be sure, wily leaders have often rationalized the wars they wished to fight by spurious appeals to the greater good. However, they have not refrained from also exploiting various non-utilitarian rationales – appealing, for example, to religious duty, to the glory or honor of the nation, or to some historical injustice it has allegedly suffered. The devious or deluded can twist almost any moral principle into supporting morally objectionable policies. Utilitarianism is no more prone to misuse of this sort than are other moral theories. Even if it were, this would not show that it fails to provide a satisfactory normative criterion for assessing wars, only that the criterion has to be handled with care. Furthermore, the proper response to superficial and fallacious consequentialist arguments for war is not to abandon consequentialist thinking to the ignorant and unscrupulous, but rather to examine with as much specificity and meticulousness as possible the likely results of waging war in the given circumstances, taking into account the interests of all.

But what are those interests? Utilitarians wish to promote the well-being of sentient creatures as much as possible. For them, well-being is all that ultimately matters. The second objection, however, is that well-being is an uncertain concept, and that it is hard to know what really does make people's lives go better or worse. Now it is true that philosophers have different conceptions or definitions of well-being and also that, whatever conception of well-being one favors, there is much we do not know about the social and psychological factors that conduce to human flourishing. However, even if we have a lot left to learn, we already know quite a bit about the things that

promote well-being, on the one hand, or impair or thwart it, on the other. Moreover, when it comes to war, we are not dealing with subtle questions of value. Killing and maiming people, orphaning children, destroying farms and factories, dislocating civilians, ripping up the economic infrastructure of a country and damaging its cultural heritage – these are patently destructive of well-being. On the other hand, there is no question that physical and psychological security, personal liberty, political self-determination, and respect for territorial integrity promote well-being and that war may sometimes protect these values.

But even if we can make plausible assessments of comparative value, our knowledge of the future is tenuous and uncertain. This is the basis of the third objection, namely, that when it comes to specific questions of war and peace, the future is too unpredictable for us to make reliable judgments about the likely consequences of the alternatives open to us. It has to be granted that, when making decisions, people can and frequently do overlook some courses of action altogether, and with regard to the alternatives they do consider, they often miss some possible outcomes or miscalculate their probability. Further, human reasoning is often plagued by faulty background assumptions, wishful thinking, and various cognitive errors. And especially when it comes to war, emotion and social pressure can further cloud people's judgment. Our epistemic situation is far from hopeless, however. We often foresee reasonably well where our actions will lead, and our anticipations of the future frequently prove more or less correct. When it comes to war, in particular, it may be possible to learn from the past. At the very least, history can teach us to be more modest and circumspect and to acknowledge our own fallibility.

Hardly anyone has used the utilitarian standard to assess particular wars. If they were to do so, it seems clear that it would imply that many wars were morally unjustified and should not have been fought and that neither side acted in a way that promoted the well-being of all. About some wars, it may not be obvious what careful utilitarian reflection would show. I shall consider below some strategies for making the utilitarian criterion easier to apply in practice, but when it comes to big, complicated real-world questions of war and peace, we have no reason for assuming that the correct normative principle, whatever it may be, will always give us simple and effortless answers. And, as suggested earlier, the fact that an ethical criterion is

sometimes, or even often, difficult to apply does not show that it is incorrect.

INTERMEDIATE PRINCIPLES

In *Utilitarianism*, Mill speaks of the importance of following "intermediate generalizations" or "corollaries from the principle of utility" instead of "endeavour[ing] to test each individual action by the first principle." He continues:

> It is a strange notion that the acknowledgment of a first principle is inconsistent with the admission of secondary ones. To inform a traveller respecting the place of his ultimate destination, is not to forbid the use of landmarks and direction-posts on the way . . . Whatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by.[15]

Applied to the context of war, Mill's remarks imply that even if utilitarianism provides the correct criterion for distinguishing justified from unjustified wars, the theory itself, recognizing the difficulty of applying that criterion accurately, may recommend that policymakers follow certain secondary or lower-level principles. Doing so may reduce the epistemic and other difficulties that can impede employing the utilitarian criterion successfully.

What principles might successfully play this role? Two possibilities suggest themselves: pacifism and the principles of just war theory. Let's consider these in turn.

(a) the pacifist principle. By this I mean the tenet that it is always wrong to wage war. Any humane person will want people to believe, and to be disposed to act on the belief, that war is a dreadful thing and should be strenuously avoided. The pacifist principle, however, goes further than this, affirming categorically that a state should never wage war. Why might utilitarians want people to follow this principle? They might desire this if they believed that waging war is never – or only extremely rarely – the optimal course of action. If so, this could then lead them to a kind of sophisticated pacifism, which holds that although in theory war might be morally justified, in fact this happens so rarely that we will get the best results if we internalize in ourselves, teach our children, and proclaim to others the principle that war is categorically wrong and that no nation should ever again fight one. Even if adhering to this pacifist principle leads us on rare

occasions to err morally by failing to fight wars that the utilitarian standard requires us to fight, we still do better in the long run, the argument continues, by cleaving to pacifism and refusing ever to entertain war as an option. This is because the danger of misapplying the utilitarian criterion and fighting wars that are morally wrong dwarfs the possibility that by sticking to the pacifist principle we will neglect to fight wars that we ought to fight.

Although clever and provocative, this argument is ultimately unconvincing, I think. It might seem obvious that a world in which everyone believed that wars should never be fought would be a better world because no wars would be fought. But whether that is true depends on what the imagined world without war would be like. If such a world had more injustice, oppression, or aggression – in short, more misery and less well-being – than a world with the occasional war, then it might not be a better world. Furthermore, to follow the sophisticated pacifist and repudiate all war may or may not be the best way to bring it about that human beings fight no wars. It depends on whether most other people also categorically repudiate war. If they have trouble accepting pacifism or have trouble sticking to it when push comes to shove, advocating it might not be the best strategy for lessening the frequency of war, let alone ridding the world of it altogether.

Suppose, what seems entirely plausible, that in the foreseeable future the vast majority of people are not likely to be brought to believe that we should never, ever wage war regardless of the circumstances. Imagine, then, that a nation finds itself in a situation similar to those that in the past have provoked nations to fight. There will certainly be people arguing for going to war on various grounds, moral and otherwise, sound and spurious. Suppose further that it would indeed be wrong to fight the war in question. How is that war to be effectively argued against without looking at the facts, that is, without bringing a utilitarian perspective to bear? Simply to reaffirm one's categorical opposition to war, as our sophisticated pacifist does, and to say "we don't have to look at the details to know that this war would be wrong" will be unconvincing when the war party is making arguments, giving reasons, and pointing to facts. By requiring us to focus on the human costs and benefits of any possible war, to examine likely outcomes, and to weigh alternative courses of action, utilitarianism invites decision makers to be specific and empirical. If a prospective war is indeed

wrong (as we are now supposing), then arguments that focus on consequences and alternatives are likely to be more effective in opposing it than is refusing to debate the particulars of the situation with the proponents of war. Most countries face the decision whether to wage war only at infrequent intervals when the circumstances seem exceptional, when what is at stake appears very important, and when emotions run high. It is precisely here that the absolutist rejection of war that the sophisticated utilitarian-minded pacifist wants us to teach is likely to be ineffective and to be set aside as only a generalization open to exceptions (which, of course, is exactly what it is for our sophisticated pacifist).

(b) the principles of just war theory. Another, more plausible possibility is that utilitarians should recommend following the principles developed over the centuries by various thinkers in the just war tradition as specifying when it is morally legitimate to wage war. Specifically, just war theory holds that a war may permissibly be fought if and only if (1) it has been authorized by a legitimate authority, (2) it has a just cause, (3) it is undertaken with the right intention and (4) as a last resort, (5) the harm the war will do is not out of proportion to the good it will achieve, and (6) there is a reasonable prospect of success.[16]

The proposal, again, is that utilitarians should adopt these principles as intermediate principles in Mill's sense. Although ultimately subordinate to the utilitarian criterion, they would provide the workaday framework in which the morality of resorting to war is to be examined. Somewhat easier to work with than the utilitarian criterion itself, these principles draw our attention to considerations that are clearly relevant from a utilitarian perspective. This is obvious for principles such as last resort, proportionality, or reasonable prospect of success, but one can also discern a consequentialist rationale for others, such as right intention and just cause, that appear on their face thoroughly non-consequentialist. For instance, although intention in and of itself is irrelevant to utilitarian analysis, it is doubtful that a government that is not sincerely trying to act on the basis of moral principle will end up waging a war that is morally permissible according to the utilitarian criterion. Thus, examining a prospective war with the aid of the just war guidelines reduces the likelihood that in deciding either to wage or to refrain from war we will contravene the utilitarian criterion. Furthermore, these six principles are widely

known, and many people find them intuitively plausible. Cadets and midshipmen encounter them at the US service academies.

If utilitarians see practical merit in employing the just war principles, how exactly should they understand these rules? One possibility is to consider them as merely pragmatic guidelines or "rules of thumb"[17] that assist in the application of the utilitarian criterion but that lack any normative weight in their own right. Rules of thumb assist our decision-making, but are rightly put aside, without compunction or regret, when one thinks one is in circumstances to which they do not apply or in which reliance on them would lead one astray.

A second possibility, however, is to treat these secondary rules as genuinely moral in character, as having normative force. When a person has internalized a rule as part of his or her moral code, the person does not look at the rule instrumentally – it is not something the person can pick up or put down as the occasion demands. Rather, the person will tend to feel guilty when his or her conduct fails to live up to the rule and to disapprove of those who act contrary to the rule. This way of thinking about rules does not necessarily entail a rule-utilitarian criterion of right.[18] Sophisticated act utilitarians can agree that in some situations having people strongly inclined to act in certain rule-designated ways, to feel guilty about failing to do so, and to use that standard to assess the conduct of others can have enormous social utility.[19]

Is this one of those cases? To answer this question, one would have to determine whether policy-makers for whom the just war principles have normative force would be more likely to act in ways that conform to the utilitarian criterion than would those who view them as only rules of thumb. This is an issue that needs further discussion.[20]

THREE ALLEGED COUNTEREXAMPLES

When non-consequentialists criticize utilitarianism and other consequentialist normative theories, a standard technique is that of counterexample. The critic tries to imagine some scenario where utilitarianism implies a course of conduct that conflicts with our moral intuitions and then, on this basis, concludes that the theory should be repudiated. When it comes to war, however, it is difficult to find any real-world examples to play this role – that is, to find some

actual war about which utilitarianism implies, contrary to commonsense morality, that a state either should or should not have fought it. Perhaps, though, there are plausible hypothetical examples where utilitarianism has implications that would strike one as counterintuitive or seriously problematic. Let's consider three possibilities.

One alleged counterexample focuses on the possibility that utilitarianism might authorize a war that lacks a just cause. More specifically, it proposes that a large nation, whose economy – and thus whose citizens' well-being – depends on oil, would be justified on utilitarian grounds in seizing the oil reserves of a small nation because doing so would maximize benefit.[21] This is extremely fanciful. We must imagine that the small nation flat-out refuses to sell its oil at any price, that the larger nation has no other way of obtaining oil, and that no one foresaw this situation developing in time to avoid it.

Even granting this scenario, utilitarians have good reason to insist that wars should be fought only for a just cause – in this case, for insisting that states should respect the territorial integrity and political sovereignty of other states (assuming they are not tyrannical or genocidal). Already entrenched in international law, this is a political and moral right that it makes sense for utilitarians to uphold because of its importance for promoting human well-being in the long run. But having endorsed and advocated that right, utilitarians cannot then turn around and authorize its violation in an effort to capture extra utility. Practically speaking, it is impossible to institutionalize a right (and reap the benefits that this brings) and at the same time license violations of the right in particular situations. Permitting states to ignore the basic rights of other states whenever they believe that doing so would maximize utility would be a disastrous policy.

A second alleged counterexample imagines that a large aggressive nation wrongfully invades a small nation. If resistance would be futile, then utilitarianism implies, it seems, that the small nation would be wrong to resist.[22] This strikes some people as counterintuitive. Doesn't a nation have a right to resist even if resistance is ultimately hopeless? To make the case more extreme, suppose the larger nation intends to exterminate the people of the smaller nation. Don't they have a right to go down fighting? The short answer is that, yes, nations have a right to use necessary and proportionate force to defend themselves against armed attack, a right that it makes perfect

sense for utilitarians to uphold, given the importance of respecting the political sovereignty and territorial integrity of nations.[23]

One can, of course, sometimes act wrongly by exercising a right as when, for example, I utilize my right of free speech to say hurtful things to you. But part of the point of treating something as a right in the first place is to enable people to act in certain ways without being obliged to calculate the utility of their doing so. Thus, utilitarians support the right of free speech because of the myriad ways in which upholding that right contributes to the human good in the long run, even if people's exercising that right fails to maximize utility in some cases. Furthermore, to return to our example, it is by no means obvious that it will do no good for the small nation to resist. Even apparently hopeless resistance may accomplish something. It might force the aggressor nation to modify its immediate plans or dissuade it from undertaking similar campaigns in the future. Given this possibility, it is unlikely that one could plausibly criticize the victim nation for trying to stave off the worst. Moreover, we often admire people who fight for a noble cause even when they are doomed to lose.

As a general matter, however, we want to discourage nations from continuing to fight after it becomes clear they will lose. And while we may admire a subjugated people for taking up arms against its oppressor despite the certainty of defeat, we are unlikely to encourage the next subject nation to do the very same thing. Fighting to the last man may sound romantic, but utilitarians and all humane people disapprove of pointless loss. But, again, suppose you will die anyway: Shouldn't you try to kill as many aggressors as possible before you are overwhelmed? Again, neither utilitarianism nor commonsense morality is likely to criticize you for exercising a right (the right of an individual or a state to defend itself) that it is essential to uphold. On the other hand, however, there can be dignity in submitting to an unjust fate peacefully and with your head held high – going to your execution calmly, for example, rather than struggling with your guards in a desperate attempt to inflict some final injury on them.

A third alleged counterexample takes off from the idea that it is wrong for a nation to fight a war if there is a better course of action open to it. Suppose, then, that from a utilitarian perspective it would produce more good for a nation to fight a certain war than to refrain from fighting and to carry on as usual. Suppose further, though, that

there is a third thing it could do instead, say, launch an all-out drive to eradicate malaria in the third world, which would produce even more well-being than waging war. Utilitarianism implies that the nation should combat malaria rather than wage war.[24] This strikes some people as counterintuitive: If waging war is the right course of action when compared simply to not fighting, then how can that judgment change because of something that bears no intrinsic connection to the war or the issues it is about?

To begin with, the imagined scenario requires many improbable assumptions: for example, that the nation in question cannot both fight the war and mobilize against malaria; that it never previously realized the good it could accomplish by trying to eradicate malaria; and that the welfare cost of deferring the malaria campaign until after the war would be too high. But let us grant the imagined scenario. Still, the war in question might involve the nation's right to defend itself against attack, or it might be required to wage that war by treaty obligations or considerations of justice. If so, then utilitarianism may concur with commonsense morality that waging war takes priority over aiding other nations to overcome malaria – that is, that it is more important for states to do what justice requires or for them to be allowed to exercise their basic rights than it is for them to aid less advantaged neighbors or act in other supererogatory ways. Suppose, though, that this is not the case. Then, utilitarianism does indeed imply that the state in question should campaign against malaria rather than wage war. Although a surprising conclusion, perhaps, it is not obviously counterintuitive. Ordinary Americans sometimes say, "We shouldn't be fighting over there when there is so much to be done at home." Although our example concerns helping other nations rather than promoting domestic well-being, the quoted remark suggests that everyday morality is untroubled by the idea that a war might be wrong because it prevents us from doing something that would produce more good.

UTILITARIANISM AND THE RULES OF WAR

Let us turn now to the question of what an individual is to do, once a conflict breaks out. If the war is morally justified on utilitarian grounds, then one should support it. If not, then – some special circumstances aside – one should oppose it. As the great utilitarian thinker

Henry Sidgwick wrote, the duty of an individual whose nation is contemplating an unjustified war is clear; it is "to use any moral and intellectual influence he may possess – facing unpopularity – to prevent the immoral act." But "how far he should go in such opposition" is "difficult to say" and "depends so much on circumstance that an abstract discussion of it is hardly profitable."[25] It is even more difficult to say, in general, what an ordinary soldier should do if he comes to believe that he is fighting in an immoral war. Naturally, he will be reluctant to participate, but he may have conflicting moral, legal, and professional responsibilities. I shall not pursue this issue here.

Suppose, however, that the war is justified and that one is either a combatant or an official involved in directing the war effort. How, according to utilitarianism, is one permitted to fight that war? What constraints, if any, are there on one's conduct? It might seem that if the war is morally right, that is, if waging it maximizes expected well-being, then those involved in the fighting should be prepared to do absolutely anything as long as it helps to achieve victory.[26] This is erroneous for two reasons.

First, utilitarians seek to maximize net expected benefit; they care not only about how much good a course of action can be anticipated to produce, but also about the costs of bringing that outcome about. The fact that victory, viewed by itself, would be a better result than, say, surrender or negotiation does not entail that it is right to fight in any way that conduces to that victory. If the harm of fighting in some way is too great, then the utilitarian calculus will entail that the war cannot be fought that way, even if this makes victory impossible.

The second reason utilitarians do not believe that combatants and those who direct them are permitted to do absolutely anything to obtain victory, even if utilitarianism says that they are in the right, is that their conduct is restrained by what I shall call the "recognized rules of war." These rules are of two sorts. One major component is the international law of armed conflict, which is based on customary practice and a wide variety of treaties and agreements, such as the Geneva Convention, which the nations of the world have ratified over the past 150 years. These rules are extensive and detailed. For example, there are rules outlawing certain weapons (like poison gas), rules concerning the treatment of the enemy sick and injured, and rules governing the handling of prisoners of war and the population of an occupied country. There are also rules that forbid, for example, taking hostages,

declaring that no quarter will be given, abusing a flag of truce or Red Cross emblem, and soldiers' dressing in civilian clothing.

In addition, almost all writers on the ethics of war believe that combat is (or ought to be) regulated by three normative principles. These are the principle of necessity (which forbids violence that serves no legitimate military purpose), the closely related principle of proportionality (which holds that the use of force or violence must be proportionate to the value of the military objective being sought), and the principle of discrimination and civilian immunity (which requires combatants to distinguish between legitimate and illegitimate targets, to refrain from targeting civilians, and to minimize collateral harm to them). These three principles are reflected in various provisions of the law of armed conflict, but their normative validity is generally thought to be independent of it. Because both the laws of war and these three principles are widely recognized and endorsed (if not always respected in practice), I refer to them together as the recognized rules of war.

Utilitarianism clearly, staunchly, and unequivocally supports the recognized rules of war because adherence to them, even those rules that seem purely conventional or even arbitrary, reduces the carnage of war. From a utilitarian perspective, adherence to the rules is so important that even those who believe that act utilitarianism provides the ultimate criterion of rightness can agree that they should be treated not as mere guidelines or rules of thumb but, rather, as firm moral rules that should make up part of the personal and professional code of combatants. Although simple and, in a way, obvious, a utilitarian approach to the rules of war captures well why they matter so much. It is also easier to square, than are some other ways of thinking about those rules, with some of their distinctive and otherwise troubling features – in particular, the fact that the rules have to be such that states can reasonably be expected to endorse them; the fact that they apply to both sides equally whether they are right to fight or not; the fact that aspects of the rules seem somewhat arbitrary from the moral point of view (for example, the outlawing of poison gas but not flamethrowers or the fact that some combatants may be morally innocent); and the fact that the rules, while trying to minimize the violation of civilian rights, do tolerate their violation.

Utilitarians and other humanitarian-minded people may seek to refine, clarify, or modify the recognized rules or even to introduce

entirely new ones in an effort to make the rules as welfare-promoting as possible. In Henry Sidgwick's words, utilitarians seek that "system of rules of international conduct for which it is desirable to obtain – and not unreasonable to hope – general acceptance."[27] In other words, they seek those rules of war that, given the world as it is and nations and people as they are, will bring about the most good – or, rather, salvage as much well-being as possible in the dreadful circumstances of war – taking into account, among other things, the likelihood of belligerent nations and the people who fight for them being brought to accept and comply with those rules. For the foreseeable future, however, utilitarians will be even more concerned with trying to see that the recognized rules are subscribed to as widely as possible, that potential combatants and their leaders are taught the rules and internalize a commitment to them, that more military organizations make adherence to them part of their organizational culture, and that mechanisms are found for institutionalizing and enforcing them.

CIVILIAN IMMUNITY

Let us consider more closely the very important civilian-immunity rule. From a utilitarian perspective, it is desirable to affirm and, as far as possible, entrench the right of civilians not to be attacked and to oblige warring states to take whatever steps they reasonably can to avoid injuring them or their property. Utilitarians want states and quasi-state actors to recognize, uphold, and institutionalize this right; to have military establishments pledge their allegiance to it and to train their troops to follow it; and to have individual soldiers internalize a commitment to the rule as part of their professional code.

Some philosophers, however, have doubted that utilitarians really can endorse civilian immunity without reservation, in particular, that they can ratify a categorical ban on directly targeting civilians. Douglas Lackey, for instance, maintains that utilitarianism entails that belligerents should simply choose the means of attacking the enemy that will cause the fewest deaths and injuries, counting combatant and civilian casualties as equivalent.[28] Because the utilitarian goal is harm reduction and because the lives of civilians are neither more nor less valuable than those of combatants, if attacking civilians would result in fewer deaths overall than would attacking combatants only, Lackey reasons, then that is the correct utilitarian

course of action. No doubt, one can imagine hypothetical scenarios in which this might seem plausible. But utilitarians will consider the matter in broader terms than Lackey thinks. To abandon the civilian-immunity rule and thus permit belligerents to target civilians whenever they think that doing so would be for the greater good would clearly have dreadful results. The direct and indirect civilian casualties of war are often shockingly high,[29] and one of the few things the world can do to reduce those casualties is to continue insisting that belligerents always discriminate between combatants and non-combatants.

If utilitarians looked at civilian immunity in the narrow, case-by-case way that Lackey suggests, then for them it would be, at best, only a rule of thumb. Although it usually promotes utility to respect civilians, their immunity should be put aside if the circumstances dictate doing so. I have been arguing that this is the wrong way for utilitarians to view the rules of war. But even if those rules are treated not merely as useful guidelines, but rather as rules that people feel morally obliged to follow, some utilitarians, such as Richard Brandt, appear to believe that they should be formulated so as to permit direct attacks on civilians in certain circumstances.[30] Many non-utilitarians also believe this. For instance, Michael Walzer allows that sometimes the rule of civilian immunity must yield to direct utilitarian calculation. More specifically, he believes that in certain special circumstances, which he calls a "supreme emergency," a state may be morally justified in directly attacking civilians if this is the only way to preserve a political community that would otherwise be destroyed.[31]

Walzer's stance faces problems as does the less developed position of Brandt.[32] First is the difficulty of specifying the exact circumstances that constitute a supreme emergency and thus permit a belligerent to override civilian immunity. Second is the fact that states could easily imagine that they are in a supreme emergency when they are not. Third is the precedent effect. Even if a nation acts rightly in violating civilian immunity, doing so sets a bad precedent, making it likely that in the future both it and others will break the rule when they should not.[33] For example, even if, as Walzer believes, Britain faced a supreme emergency in the early years of World War II, it continued bombing German cities throughout the war, long after any such emergency had passed. Further, the policy paved the way for American bombardment of Japanese cities, culminating in Hiroshima and Nagasaki.

For these and related reasons, Stephen Nathanson has refused to follow Brandt or Walzer, arguing instead from a utilitarian perspective that the civilian-immunity rule should not be revised, nor should exceptions to it be permitted. Rather, utilitarians should endorse it categorically.[34] Still, some utilitarians are bound to worry that, whatever the rule is, there will inevitably be exceptions to it – cases where it would be better to violate the rule than to adhere to it. Let us look at this more closely.

Suppose, then, that some soldiers or those in charge of them believe that in their precise circumstances adhering to the civilian-immunity rule would jeopardize their ability to prevail. It cannot be denied that they might be correct, that it could be the case that violating the rule in that situation would be the utility-maximizing thing to do. Nevertheless, this is only a remote possibility. Even if we assume that directly killing civilians makes it possible to win a skirmish, battle, or campaign, it may contribute little to ultimate victory. And even if it does, victory for their side, especially when pursued this way, may not be the optimal outcome. It is extremely likely that there will be alternative courses of action that are welfare-superior to a belligerent pursuing victory in defiance of the recognized rules of war.

Even if the soldiers in our example were in an exceptional situation where, all things considered, civilian immunity should be disregarded, they will almost certainly lack reasonable grounds for believing that they are so situated. The temptation to violate civilian immunity generally occurs in circumstances that are far from conducive to making reliable moral judgments – soldiers in the heat of battle or military strategists emotionally absorbed by the effort to prevail over another state. Indeed, it is hard to imagine worse epistemic conditions for making a balanced, objective, long-term assessment of the costs and benefits of breaking a rule, general adherence to which is so important.

Finally, the well-trained and conscientious soldier or war leader will not find it easy to violate the civilian-immunity rule even if he believes doing so would be for the greater good. That rule is part of his personal and professional moral code, and violating it will go against his conscience. He may even have taught the rule to others or criticized them for violating it. Moreover, as a utilitarian he approves of this situation; that is, he approves of his having a character structure that makes it virtually impossible for him intentionally to kill

civilians. And he also knows that utilitarians will not blame or criticize him for adhering to a rule that they want to see instilled in combatants as deeply as possible.

No doubt, this is an issue that utilitarians need to explore further and more deeply. However, there is a strong case, I believe, for contending that belligerents should stick to the civilian-immunity rule unconditionally. Indeed, if there is ever a utilitarian rationale for treating a rule as, in practice, categorical and without exceptions, the civilian-immunity rule would seem to be such a rule. We get better results in the long run if military strategists and soldiers in battle never even entertain the idea of killing civilians. This could, hypothetically, lead them to forgo certain opportunities to maximize well-being by killing non-combatants. Even so, we achieve more good by insisting that they always follow this rule than we would from adopting any other stance.

NOTES

1. The second, third, and fourth sections of this essay draw on Shaw, "Utilitarianism and Recourse to War."
2. Bentham, *Principles of International Law*, p. 544 and p. 552.
3. As quoted by Conway, "Bentham on Peace and War," p. 87. This paragraph is indebted to Conway.
4. Bentham, *Principles of International Law*, p. 544.
5. Bentham, *Principles of International Law*, p. 545.
6. Yasukawa, "James Mill on Peace and War," pp. 179–184. This paragraph is indebted to Yasukawa.
7. J. Mill, *Commerce Defended*, p. 119.
8. J. Mill, "Law of Nations," p. 22.
9. J. Mill, "Law of Nations," p. 22.
10. J. S. Mill, "A Few Words on Non-Intervention," *Collected Works*, vol. xxi, pp. 109–124.
11. J. S. Mill, "The Contest in America," *Collected Works*, vol. xxi, pp. 141–142.
12. G. Williams, "J. S. Mill and Political Violence." This paragraph relies on Williams.
13. As quoted in G. Williams, "J. S. Mill and Political Violence," p. 110.
14. For further discussion, see Shaw, *Contemporary Ethics*, pp. 27–31.
15. J. S. Mill, *Utilitarianism*, *Collected Works*, vol. x, pp. 224–225 (chapter 2, para. 24).
16. For a brief account, see Shaw, "Just War Theory."

17. Smart, "Outline of a System of Utilitarian Ethics," p. 42.
18. Hare, *Moral Thinking*.
19. On the role of rules in utilitarian thinking, see Shaw, *Contemporary Ethics*, chapter 5.
20. For one perspective, see Shaw, "Utilitarianism and Recourse to War," pp. 397–401.
21. I thank Chris Eberle for pointing out this objection.
22. I thank Uwe Steinhoff for raising this point.
23. Shaw, "Consequentialism, War, and National Defense."
24. Jeff McMahan raised this objection in a discussion of the utilitarian approach to war at the Stockdale Center for Ethical Leadership's April 2010 McCain Conference titled "The Ethics of War Since 9/11," held at the US Naval Academy.
25. Sidgwick, "The Morality of Strife," p. 52.
26. Walzer, *Just and Unjust Wars*, pp. 133–134. Yasukawa believes that this was the view of James Mill ("James Mill on Peace and War," p. 191).
27. Sidgwick, *The Elements of Politics*, p. 238.
28. Lackey, *The Ethics of War and Peace*, pp. 64–65.
29. Nathanson, *Terrorism and the Ethics of War*, p. 202.
30. Brandt, "Utilitarianism and the Rules of War," pp. 156–160.
31. Walzer, *Just and Unjust Wars*, pp. 251–268.
32. For good critiques of Walzer and Brandt, see Nathanson, *Terrorism and the Ethics of War*, pp. 146–159 and pp. 195–205.
33. Cf. G. E. Moore, *Principia Ethica*, pp. 163–164; Austin, *The Province of Jurisprudence Determined*, p. 44.
34. Nathanson, *Terrorism and the Ethics of War*, chapters 14 and 15.