

Whitman

UTILITARIANISM AND THE LAWS OF LAND WARFARE

Act in such a way that you will always treat humanity, whether in you own person or in the person of any other, never simply as a means, but always at the same time as an end.

Immanuel Kant
Groundwork of the Metaphysics of Morals

The creed which accepts as the foundation of morals "utility" or the "the greatest happiness principle" holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness.

John Stuart Mill
Utilitarianism

Virtually all the problems of practical morality that philosophers grapple with revolve around the alleged dilemma between means and ends. Is it possible for certain ends to justify any means whatsoever used to achieve those ends? Are there certain courses of action that are absolutely forbidden regardless of the ends these actions might achieve? Kant and Mill are two of the more renown standard bearers on each side of this debate, with each, as the quotations suggest, apparently embracing opposite horns of the means/ends dilemma.

While this tension between means and ends infects much of our moral life, nowhere is this dilemma more starkly drawn and so difficult to resolve than in wartime. In wartime the tension between winning and fighting morally may take on any number of forms, all involving very grave and painful decisions. At what point, if ever, do the exigencies of combat outweigh the rights of individuals, particularly noncombatants? How much risk must soldiers accept in order to protect innocent lives? Is there

ever a time when a nation's need to prevail in wartime (or merely survive) outweighs the moral obligation to respect human rights?

Questions such as these--questions of means versus ends--lie at the heart of philosophical inquiry into just war theory. And it is just these kinds of questions that highlight the very difficult nature of moral judgment in wartime. They exhibit a dualistic nature that can lead to paradoxical results. On the one hand we make judgments concerning who is the just side, i.e., who is the aggressor and which is engaged in the just war. On the other hand we make judgments concerning when a soldier or nation is fighting in a just and moral manner, i.e., in accordance with the rules of war as embodied in the war convention. The former judgments are what medieval philosophers referred to as judgments of *jus ad bellum* or the justice of war. The latter judgments concern the justice in war or *jus in bello*. Unless one is prepared to accept that there is no place for morality in wartime (and I think few people are truly committed to such a position and all the baggage it entails¹), what makes moral judgment in time of war so problematic is this dualistic nature--*jus in bello* versus *jus ad bellum*, fighting morally versus winning, means versus ends.

As with any dilemma, there are three possible resolutions.

1. Embrace the *jus in bello* horn and never act contrary to the war convention.

¹See Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977) Chapter 1 for a good argument against such a view (what he calls the "realist" position).

2. Embrace the *jus ad bellum* horn and, assuming your side is just, do whatever it takes to gain victory.

3. Try to get between the horns of the dilemma and do justice to the moral requirements as embodied in both *jus in bello* and *jus ad bellum*.

In general, 1 is a kind of moral absolutism favored by Kantians, while 2 is a kind of consequentialist position favored by utilitarians. Both positions are subject to familiar arguments and counterexamples. For example, what if the only course of action that will prevent a complete Nazi victory in Europe (with all the horrible consequences that would entail) is one that would require the loss of many innocent civilian lives?² Would we still want to embrace the Kantian position? Conversely, if in order to secure victory against an brutal aggressor with a minimal loss of life (to both combatants and noncombatants on each side of the fighting), would it be morally permissible to engage in a campaign of terror bombing against civilian population centers?³ The utilitarian position would seem to favor such a strategy, while our moral sensibilities, and for that matter the war convention, would prohibit it. In order to deal with these kinds of questions, we need an answer that lies somewhere between the horns of the *jus in bello/jus ad bellum* dilemma. The problem is how to navigate our way to that point.

²Such a situation may have existed for Churchill in late 1940 and early 1941 when he made the decision to bomb German cities from the air.

³The atomic bombings of Japan might be an example of this type of situation.

To this end I will argue for and defend the following claim:
The Laws of Land Warfare--specifically that body of law found in the Hague and Geneva Conventions--are best understood and justified by appeal to a kind of rule utilitarian ethic.

As a corollary to this claim, I also hope to show that one of major advantages to this view of the war convention is that soldiers and their leaders are best educated on the Laws of Land Warfare and will more readily comply with these laws when understood and justified by appeal to utilitarian considerations.

The Laws of Land Warfare, as embodied in the Hague and Geneva Conventions of 1907 and 1949, are attempts to navigate, however imperfectly, between the horns of the *jus in bello/jus ad bellum* dilemma. Although many of the articles in these conventions appear to offer absolutist kinds of proscriptions, they also contain numerous caveats in the service of utilitarian considerations. For example, in discussing "grave breaches" of the convention, certain actions directed against protected property and persons are expressly prohibited ("wilful killing, torture . . . extensive destruction") if "not justified by military necessity."⁴ Regarding the protection of civilians in wartime, belligerents are asked, "[a]s far as military considerations allow . . . to protect them against pillage and

⁴Article 50 of the *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* in United States, Department of the Army, Pamphlet 27-1, *Treaties Governing Land Warfare* (Washington: GPO, 1956) 41.

ill-treatment."⁵ As these examples indicate, the dualistic nature of moral judgments in wartime finds expression in a kind of dualistic war convention. Belligerents are expected to fight justly and in accordance with the war convention unless the imperatives of military necessity require otherwise. This is especially explicit in the preamble to the October 1907 Hague Convention No. IV.

According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, *so far as military requirements permit*, are intended to serve as a *general rule of conduct* for the belligerents in their mutual relations and in their relations with the inhabitants.⁶ (The emphasis is mine.)

The point of all this is to demonstrate that the war convention is not, and was never intended to be, a set of absolutist laws for the governing of wartime activity. On the contrary, the war convention promulgates general rules of conduct which may be superseded by the demands of military necessity. In fact, one might argue that the war convention is closer to the utilitarian horn of the dilemma than it is to the Kantian one. Of course for many this is a disturbing reading of the war convention. It seems to entirely vitiate whatever force the

⁵Article 15 of the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, in *ibid.*, 141.

⁶*Ibid.*, 5.

convention might have had and permit all nature of evil and suffering in the name of military necessity.

The usual response to this state of affairs is to minimize or ignore the utilitarian qualifications that are found throughout the war convention and cast the entire convention in Kantian/absolutist terms.⁷ This is not at all implausible given the emphasis the war convention places on the protection of innocent persons. Concern for human rights is clearly a central feature of the convention.

There are also other motivations for casting the war convention in such Kantian terms. When the proscriptions of the war convention are viewed as absolute and without exception, there is no room for interpretation and rationalization. For the soldier on the battlefield this can be extremely important. A soldier in combat finds himself in a very confusing, fearful, and dangerous situation. The battlefield environment is not especially conducive to careful deliberation on the intricacies and moral standing of the war convention. If the war convention is thought of at all, it is most likely seen as an obstacle to combat operations at best, and a threat to the soldier's life at worst. Taking measures to protect the lives of noncombatants can often complicate and slow combat operations as well as expose

⁷Examples of this approach to the war convention include Michael Walzer, *Just and Unjust Wars*, Anthony Hartle, *Moral Issues in Military Decision Making* (Kansas: University of Kansas Press, 1989), Sidney Axinn, *A Moral Military*, (Philadelphia: Temple University Press, 1989), and Thomas Nagel, "War and Massacre," *War and Moral Responsibility*, ed. Cohen, Nagel, and Scanlon (New Jersey: Princeton University Press, 1974), 3-24.

soldiers to additional risk. Yet we want soldiers to abide by the war convention, despite the burdens it may create. Viewing the articles of the war convention in absolutist terms is thought to further compliance, especially if accompanied with some form of punitive sanction.

To this last end, the laws embodied in the war convention are seen to be part and parcel of a soldier's professional military duty. Like a soldier's other duties, his duty to the war convention requires unquestioning acceptance and obedience. There is no room for doubt or second-guessing. A soldier's duty must be performed, including his duty to the war convention, even if his death is the end result. Such a view of the war convention dovetails quite nicely with the professional military ethos which requires obedience to orders and sees the soldier as the protector of the weak and unarmed.

This Kantian inspired, absolutist interpretation of the war convention, while having the advantage of simplicity (always obey the war convention), seems flawed on a number of accounts. First, as I indicated earlier, it is not the way the war convention is actually written. Second, and more importantly, it fails to adequately resolve the dilemma of *jus in bello* versus *jus ad bellum*. It requires the war convention to be obeyed absolutely, even if the result of that obedience is victory for the aggressor and defeat for the just side. Lastly, and perhaps most importantly, an absolutist interpretation of the war convention can tend to lessen respect for the convention as a realistic and viable guide to moral conduct during wartime. An

absolute moral standard which does not adequately consider the very painful dilemmas and risks which face soldiers during combat operations is a standard that will be ignored in favor of a "win at all costs" attitude. This is especially true if the soldier views his side as the just side (as virtually all soldiers are prone to do), and therefore sees victory for his side as a kind of moral imperative. The soldier ends up embracing the second horn of the *jus in bello/jus ad bellum* dilemma.

In place of an absolutist interpretation of the war convention, I would offer a utilitarian kind of interpretation. Specifically, I would embrace the kind of "two-level" utilitarian position advocated by R.M. Hare and R.B. Brandt.⁸ At one level we would have general rules or principles. Within the context of the war convention, these principles would include the rules and laws found in the present Hague and Geneva conventions. When confronted with a situation that requires some sort of moral decision, these rules will generally serve to guide our actions. Of course the moral foundation for these rules would be utilitarian in nature (i.e., these are the rules which tend to produce the greatest utility).⁹

In addition to this first level of general rules and principles is a second level--what Hare calls "specific rule

⁸R.M. Hare, "Rules of War and Moral Reasoning," and R.B. Brandt, "Utilitarianism and the Rules of War," *War and Moral Responsibility*, ed. Cohen, Nagel, and Scanlon (New Jersey: Princeton University Press, 1974), 46-61 and 25-45.

⁹How a utilitarian might arrive at these various general principles is the subject of Brandt's article, *op. cit.*

utilitarianism."¹⁰ This second level of moral deliberation would come into play when the first level of general rules and principles is for some reason inadequate. This inadequacy could manifest itself in a number of different ways. There simply may not be a general principle applicable to this particular situation. Or perhaps, within a certain context, the first-level rules are in conflict and prescribe opposing courses of action. It could also be the case that following one of the general, first-level rules clearly does not produce the greatest utility in this specific instance. There are other possibilities, but these seem the most likely reasons for ascending to this second level of deliberation. When this occurs, we must examine in great detail, and with as much specificity as required, the possible courses of action before us and the amount of utility each will produce. We then choose that course of action which, if universally adopted for all very specific cases of this type (even if the degree of specificity for this case makes it a single, unique instance), will maximize utility.

This two-level utilitarian interpretation of the war convention remedies the shortcomings I attributed to the Kantian, absolutist position earlier. First, it more closely mirrors the actual wording of the war convention with its concessions to "military necessity" and "military requirements." Whenever one is considering employing the military necessity qualification to an action, this automatically indicates a move from first level

¹⁰Hare, 57.

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.

The two-level utilitarian interpretation of the war convention also allows us to get between the horns of the *jus in bello/jus ad bellum* dilemma. We need not resign ourselves to the "moral blind alley" Nagel finds himself in, where "no course is free of guilt and responsibility for evil."¹¹ The two-level approach allows us to do justice to both our moral intuitions, viz., that the just side in an armed conflict ought to prevail and that just means ought to be used in the prosecution of wartime aims. As the war convention makes clear, the general rules and principles which make up the war convention may only be overridden by legitimate reasons of military necessity, and then only if it is required for the just side to prevail.¹² The decision to override the war convention is, of course, a second level, specific rule utilitarian kind of decision.

Finally, this two-level approach to the war convention, because it does recognize the force of our moral intuitions on both sides of the *jus in bello/jus ad bellum* dilemma, will

¹¹Nagel, 23.

¹²I add this final caveat only to underscore what I think must be included under the concept of military necessity--that the act is necessary to secure the victory of the just, and *not* the unjust, side. If military necessity is understood in this way, that final qualification is obviously redundant.

garnish more respect for and compliance to the convention. No longer will the convention be viewed as an unrealistic ideal suitable only for the classroom and legal experts. Instead, the war convention will be seen as a realistic, practical guide to moral decision-making during wartime. Furthermore, a utilitarian approach to the war convention will allow the military and its leaders to focus their education effort where it can do the most good--weighing and comparing various goods and evils.

In war, where the stakes are high and the risk of failure portentous, utilitarian arguments tend to gain increased credence no matter what our view of the war convention. Our education efforts should be aimed at insuring these utilitarian arguments do not become self-serving rationalizations based on a mistaken view of military necessity and expediency. We want to insure that soldiers at all levels, and especially the leadership, reason as good, honest utilitarians. To this end we ought to closely examine historical and hypothetical situations with a view towards understanding when one is morally justified in ascending to second-level, specific rule utilitarian moral decision-making. Then, once that ascent is made, we need to look at the various values (good and evil) that are at stake and work to appropriately and honestly compare and weigh them.

Our theory of moral obligation simplified--one ought to perform that action which produces the greatest utility--we are now free to concentrate on building up an axiology of values. In doing so we will be, in the words of G.E. Moore,

making plain what kinds of things are intrinsically good or bad, and what are better or worse than others, . . . pointing out what the factors are upon which their goodness or badness depends. And I think this is one of the most profitable things which can be done in Ethics, and one which has been too much neglected hitherto.¹³

I recognize that my arguments to this point will leave many unconvinced. There are any number of objection one might raise, objections I have only briefly addressed, if at all. In what follows I will attempt to answer what I consider the most serious and telling objections to my claim that the war convention is best understood and justified by appeal to the kind of two-tiered rule utilitarian ethic I have offered above.

The first objection concerns itself with the relationship between the concept of military necessity and utility. The worry is that soldiers and those who lead them will tend to conflate acts that are militarily necessary with acts that maximize utility, i.e. produce the greatest good. Once we see the war convention as founded on utilitarian principles it will become too easy for soldiers to perpetrate all manner of evil in the name of military necessity and victory. The claim is that utilitarianism does not provide enough of a safeguard against wrongful applications of the military necessity caveat found in

¹³G.E. Moore, *Ethics* (New York: Oxford University Press, 1912, reprinted 1978), 106-107.

the convention. Walzer raises this possibility as an objection another kind of utilitarian conception of the war convention, viz., Sidgwick's Rules.¹⁴

Sidgwick's rules make the following two-fold claim. It is not morally permissible in wartime to do "any mischief which does not tend materially to the end [of victory], nor any mischief of which the conduciveness to the end is slight in comparison with the amount of mischief."¹⁵ While Walzer admits that compliance with these rules would mitigate and eliminate a great deal of the brutality and wanton violence of war, he is concerned that the rules do not go far enough. In the end these rules leave too much to the discretion of soldiers and their leaders. It is far too easy, claims Walzer, to see the imperative of military necessity around every corner.

At the heart of this objection is a lack of trust in the military and its leaders. Many outside of the military profession, as well as many inside the profession, do not feel comfortable trusting the soldier (sergeant, lieutenant, captain, colonel, general) on the battlefield with distinguishing between acts which are genuinely militarily necessary (and therefore will produce the greatest good) and those that have the guise of military necessity but are morally wrong and therefore forbidden. If you look at the actual conduct of warfare, there is good reason for this attitude. History is replete with examples of

¹⁴Walzer, 129 ff.

¹⁵Ibid., 129. (Walzer is quoting Sidgwick here.)

military forces engaged in all manner of evil in the name of military necessity. Better to have the military err on the side of *jus ad bellum*, and perhaps fail to do what is necessary for victory, than commit a war crime.

Such an attitude, while understandable, is nonetheless wrong. It is analogous to treating the symptoms of an illness rather than treating the underlying disease. Our goal is compliance to the war convention, even under the most difficult and terrifying of situations, situations where life and limb are at risk. If we are to attain compliance under these often brutal conditions, we must engender respect for the war convention. We do not do that by stripping away the moral autonomy of soldiers and making all their moral decisions for them in advance. And yet, that is exactly what an absolutist interpretation of the war convention attempts.¹⁶

The reaction of the soldier to this kind moral strait-jacketing is predictable and understandable. He resents it and

¹⁶Even if this were the correct way to view the war convention, the task of specifying all the moral rules and prohibitions that apply on the battlefield would be a difficult task indeed. The objection that utilitarianism opens the door to pernicious rationalization and situational ethics applies with equal force to Kant's Categorical Imperative. In formulating the rule or maxim that Kant would have us universalize, the question of how to specify the situation and the applicable rule is problematic in the extreme. Kantian absolutism offers no advantage over utilitarianism in this regard. As Mill points out, "Not only have different nations and individuals different notions of justice, but in the mind of one and the same individual, justice is not some one rule, principle, or maxim, but many which do not always coincide in their dictates, and, in choosing between which, he is guided either by some extraneous standard or by his own personal predilections (*Utilitarianism*, 54). Our ethical judgments are always, in the end, situationally dependent.

chafes under the restrictions. He begins to see the war convention as a burden that bears no meaningful relevance to the situation he finds himself in. Little by little, under the stresses of combat, respect for the rule of law diminishes, and with no other plausible moral framework to replace it, the soldier may find himself alone in Nagel's "moral blind alley."¹⁷

More often than not, however, the moral ethic that reigns supreme on the battlefield is some form of utilitarianism. J. Glenn Gray nicely documents this phenomena in his book, *The Warriors*.¹⁸ That this happens should be of no surprise to anyone familiar with the workings of the military. The whole institution of the military, with its emphasis on teamwork and victory, is a very utilitarian organization. Often individual soldiers (the man on "point") or individual units (the company engaged in a diversionary attack against an enemy strongpoint so the rest of the battalion might bypass that strongpoint) are called upon to risk their lives for the greater good of the larger unit. This kind of utilitarian thinking is very entrenched in the military profession. When it comes to compliance with the war convention, we should take advantage of this pre-existing military ethic and work to insure soldiers understand that the convention does not conflict with this ethic but supports it. Instead of viewing the restrictions in the war convention as a burden, they should be seen as an aid to moral

¹⁷See this paper, 10.

¹⁸J. Glenn Gray, *The Warriors: Reflections on Men in Battle*, chapter 6 (especially 171-188).

decision making on the battlefield, and for that matter, an aid to eventual victory. Establishing a better state of peace than existed prior to the start of hostilities is the goal of any just war.¹⁹ Attaining this goal constitutes victory. The war convention, with its concern for protecting innocent persons and the prevention of unnecessary evil, is specifically aimed at that end. I am confident that when seen in this light, there will be greater respect for and compliance with the war convention.

A second objection, closely related to this first one, concerns the effect of utilitarian thinking on the moral sensibilities of the soldier. Whereas the first objection sees utilitarian calculations on the battlefield as a threat to the well-being of innocent noncombatants, this second objection focuses on the harmful effects such calculations have on the soldiers' moral health. The argument is that utilitarianism tends to ignore or slight certain important moral values such as fairness, justice, and respect for basic human rights. Furthermore, by slighting these values and requiring soldiers to commit evil in the name of some greater good, utilitarianism violates the soldiers moral integrity and dulls his moral sensibilities. And for those soldiers whose moral sensibilities may already be dulled by the brutality of combat, utilitarianism offers them a way to avoid responsibility for whatever evil (morally justified or not) they perpetrate on the battlefield.

¹⁹Walzer, chapter 7 (especially, 121-122).

There are two claims that make up this second objection and I will try to address each in turn. Turning first to the claim that utilitarianism ignores or slights important moral values, I wonder how that claim is to be understood. If the claim is that utilitarianism does not see these values as of absolute worth, i.e., as values which have infinite worth and may not be overridden, then the claim is absolutely correct. It is not clear to me that there is any one value of absolute worth that we might appeal to in moral decision making. But that moral reasoning could be so uncomplicated! Questions concerning an axiology of values is very difficult indeed. It is my view that the only fruitful course of inquiry in this regard is to examine and debate a large number of actual and hypothetical examples. Very broadly, utilitarianism counsels us to do that act which produces, or tends to produce, the greatest good. The question of what things are intrinsically good, and therefore to be maximized, is the question our moral education should focus on. To quote again from G.E. Moore, "making plain what kinds of things are intrinsically good or bad, and what are better or worse than others" is the great challenge of moral education.²⁰

If, however, the complaint against utilitarian calculation is not that it fails to pick out a particular value as absolute, but that it fails, in general, to take moral values seriously, the claim is quite simply wrong. The utilitarian calculus merely recognizes that the question of maximizing moral goodness (or

²⁰Moore, 106-107.

"utility") is always a difficult endeavor requiring great foresight, wisdom, and the recognition that there are many things of intrinsic moral goodness and value. If that constitutes not taking moral values seriously, I would be curious to know what constitutes taking them seriously. It is my opinion that utilitarian theory is the only theory of moral obligation that truly does take questions of moral value seriously.

Given what I have argued above, it should be quite clear that utilitarian calculation, rather than dulling our moral sensibilities and taking away our moral autonomy, makes us more aware of the many moral values at stake in our ethical decision making. When done forthrightly and without undue regard for our own welfare, utilitarian calculation makes us more aware, rather than less, of our moral responsibilities and ethical agency in this world. There is no easy algorithm we can follow to the morally correct decision. Instead, making use of our previous experiences and the experiences of others, we must attempt to measure and balance a whole host of moral values (some of which may be in direct conflict with one another and our own well-being) and choose that course of action which produces the most good. That is why our moral education, particularly the moral education we offer those in the military, must focus on the examination of many examples, both real and hypothetical, with an eye towards making explicit the values which are at stake and how they stack up against one another. The war convention is a good place to start, and serves the military well in the vast majority of situations. The difficulty, particularly for the leadership

in the military, is to know when it does not. It is then that we must move beyond the convention to that second level of deliberation, Hare's "specific rule utilitarianism."

A third objection is one I find almost entirely unconvincing. However it is one that is often raised against any form of rule-utilitarianism and therefore one I will briefly address. The charge is that rule utilitarianism inevitably collapses into act utilitarianism. That is, if a situation arises in which following the rule that *tends* to produce the greatest good does not *actually* produce the greatest good, then the rule utilitarian should abandon the rule and do that act which produces the greatest good. But of course, if he does that, he is not really committed to the rules and therefore not a genuine rule utilitarian. If he doggedly sticks to the rules, come what may, he maintains his purity as a rule utilitarian but at the price of not always producing the greatest good.

Such criticism strikes me as analogous to judging a hunting dog by his pedigree rather than by his training and skill as a hunting dog. If he is a good hunting dog, what does his breed matter? The brand of rule utilitarianism I am advocating is not purebred. It specifically allows for such a move from straightforward rule utilitarianism to a kind of act utilitarianism (what Hare calls "specific rule utilitarianism"). I view this as a strength of the theory rather than a weakness. It allows a proper understanding of the role of moral rules and principles. Such rules and principles are made to aid us; we need not and should not become slaves to them. Rather, they are

the "landmarks and direction posts"²¹ that guide us in our moral judgments. This is not to say rules can or should be easily set aside without careful thought. Moore makes this point when he argues that we should never in concrete cases think like act utilitarians--a claim he justifies on act utilitarian grounds.²² While I wouldn't go so far as Moore here, I do believe that moral rules and principles, besides being instrumentally good (insofar as they tend to produce utility), are also intrinsically good (possess some utility in and of themselves.²³ If nothing else, setting aside these rules, even in cases where doing so may produce some greater good, can set a bad precedent for the future. That is, it may make it easier for others to set aside these same rules in situations where doing so does *not* really produce greater good in the long run. For this reason, and others I have alluded to earlier, the decision to set aside the rules of the war convention and move up to the second level of specific rule utilitarianism is a decision one should make only after careful thought and consideration.

This brings me to the fourth and final objection I intend to address. This final objection is one that I consider perhaps the most serious, but one I nonetheless find lacking. The objection

²¹Mill, *Utilitarianism*, 24.

²²Moore, *Principia Ethica*, 162.

²³J.J.C. Smart offers an extended argument for this view that rules possess intrinsic goodness that must be considered when conducting a utilitarian calculation in "An Outline of a System of Utilitarian Ethics," *Utilitarianism, For and Against* (Cambridge: Cambridge University Press, 1973) 42-56.

is just that there is no greater good that justifies the use of immoral, evil means. Within the context of the war convention, the claim is that there is no greater good which would justify violating the rules embodied in the convention.

In the end, my reply to this objection is just that the claim is not true. There are times, particularly for the soldier on the battlefield, when some greater good morally justifies the use of "evil" means to attain the good.²⁴ That is the premise that this entire argument rests upon--a premise which seems entirely correct to me. As moral agents on the battlefield, soldiers often find themselves in circumstances where there is no course of action open to them that will not cause some hurt or pain or displeasure. In order to do what is right in those situations they are forced to rely on some sort of utilitarian calculation to determine what course of action will result in the least harm and the most good. The point of this paper is to demonstrate how we might go about making that calculation (and educating soldiers on how to make that calculation). Specifically, I argue that Hare's two-level rule utilitarian approach seems the most plausible way to do this kind of moral decision-making on the battlefield.

I want to reiterate that my position does not involve the wholesale abandonment of the war convention. On the contrary, in the vast majority of cases, the rules of the war convention serve

²⁴I use quotation marks around the word *evil* in order to make the point that the act is only evil in the sense that it causes some sort of pain or disutility. Insofar as it is done for some greater good, it is not evil and certainly not immoral.

us well (i.e., produce the greatest good). My goal is to show that the war convention should be understood from a utilitarian perspective, a perspective that allows there may be instances when we fulfill our moral obligations by acting contrary to the rules of that convention. If we teach soldiers to understand the war convention in this way, I believe we will see better compliance with and respect for the war convention.

I hope my arguments, in some small degree, have advanced the claim that the war convention is best understood and justified by an appeal to a kind of rule utilitarian ethic. Is this approach to the war convention open to abuse? Most certainly so. As Mill observed, "There is no difficulty in proving any ethical standard whatever to work ill if we suppose universal idiocy to be conjoined with it."²⁵ The task for leaders and educators in the military, is to ferret out this kind of moral shortsightedness and idiocy. It is my belief and experience that a rule utilitarian approach to the war convention will make this task somewhat easier.²⁶

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²⁵Mill, 22.

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