

Humanising Hell

A normative look at the state's permissibility of placing its
soldiers in harm's way

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I. Abstract

Being a soldier entails the fact that you may be placed in harm's way, for the benefit of your state and fellow citizens. As a soldier, you are at the same time the human instrument of war, as well as the legitimate human targets. I find this a fascinating juxtaposition. Because of this, I wanted to explore the state's permissibility of placing soldiers in harm's way, by way of asking

“What demands can the state morally place on their soldiers, in terms of risking their soldiers' lives”.

This thesis is a normative look at what demands the state morally can place on their soldiers when these demands conflict or infringe upon the soldiers' right to life.

To explore the research question, I have dedicated chapters which each grapple with a possible solution to the answer. The analysis of the thesis, therefore consists of three chapters in total.

In the first chapter, I seek to say something about whether placing soldiers in harm's way is permissible because of the good it produces. This relates to the utilitarian concept of aggregation. I approach this chapter both through an intuitionistic methodology, as well as a theoretical one, with contractualism as my method of choice. I refute aggregation, because of its horrid implications for the individual. Additionally, allowing for aggregation does not sufficiently account for the individual value of all people within the groups. However, this chapter rested on the assumption that soldiers and civilians were morally equal. Chapter two explores why this may not be the case.

In chapter two, I explore whether there are any compelling reasons to treat soldiers morally unequal to civilians, given what their role entails. I do this by exploring the implications of the arguments of two esteemed just war theorist, and how they relate to the soldiers right to self-defence and self-preservation. I find that both the theorists accept that soldiers have a weaker right to life, because of their role.

However, I argue that the reasoning only holds to account for why soldiers can be killed in war and not what made them liable to be placed in a position which infringed on their rights, in the first place. This is to say that it may be reasonable to argue that the soldiers lost their right to life because of their role and the fact that their role entails the right and duty to kill. However, arguing that the implications of a role are reason enough to place people within this role is a tautological fallacy.

The third chapter seeks to answer whether it is ever permissible to place soldiers in harm's way. I argue that it is, but simply relying on a democratic decision is not sufficient. I sketch out certain conditions, which I argue for why they should be present in a moral treatment of a soldier. Without these conditions, I argue that the state has treated the soldier as if her life is not considered valuable. I base this conclusion on a general intuition, I have about sacrificing your life, and by exploring its implications, both in a general sense and within the context of war.

The aim of answering such a research question is not first and foremost to say something prescriptive about how states should act, but rather what would be a moral treatment of soldiers, by the state. That being said, considering the fact that people lay their lives on the line for the state, states do owe these soldiers to value their lives to the best of their abilities.

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¹ Covid-19, if it for some reason is lost to posterity.

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Any faults, inconsistencies or inaccuracies found in this thesis are my own.

Oslo, November 16th, 2020.

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IV. Introduction

IV.I Research question

“The humanising of war? You might as well talk about the humanising of Hell! [...]

The essence of war is violence! Moderation in war is imbecility!”

These are the supposed words of British naval Admiral Lord Fisher as he partook in the first Hague peace conference in 1899 (Crawford & Pert, 2015, p. 30). Despite Lord Fisher’s disinclination, moderating war has been the preserve of scholars for centuries. These scholars’ approach is something I intend to align myself with, by posing the research question:

“What demands can the state morally place on their soldiers, in terms of risking their soldiers’ lives”.

A way to further morality in war is accepting that war is a fact in human society, while simultaneously striving for a higher threshold of what constitute tolerable behaviours (Bomann-Larsen, 2007, p. 1). This thesis poses a normative question of what constitutes moral treatment of soldiers by their states.

A fascinating thing about war is that it comes into conflict with a foundational moral value of not taking lives (Bomann-Larsen, 2009, p. 63). Soldiers are in the juxtaposition of both being the main perpetrators of taking lives in war, while also being war’s human targets. In *just war theory*, the legitimacy of warfare is front and centre. Themes often concern when and how it is permissible for soldiers to act in connection with each other, and with civilians (Lazar, 2017b, p. 38).

However, the moral relationship between soldiers and their own state has mostly been excluded from the general discussion (Dobos, 2019, p. 257). In this thesis, I want to move the spotlight over to the moral relationship between the state and their own soldiers.

IV.II Outline

Before really getting into the outline of the thesis, I wanted to pause at the thesis question for just a moment longer. It is rather well-established that being a soldier entails the possibility of death, to a much more invasive degree than what other professions do. The concept of having military forces is arguably a rather a utilitarian one, in that it allows for sacrificing some, in order to save the many.

By looking at

“What demands can the state morally place on their soldiers, in terms of risking their soldiers’ lives”,

I want to be able to say something about when and on which grounds risking soldiers’ lives is a permissible action by the state, and when and on which grounds it is not.

In order to answer this question, my thesis has the following structure:

The following will be the methodology chapter. Here, I will be presenting my approach to normative political philosophy, as well as how it relates to two well-established approaches. I thereby move right on to the analysis portion of the thesis.

My analysis has three chapters, all approaching the research question differently, but, as I will argue, consecutively informing each other. Although I do use theory and background information throughout the thesis, I decided against dedicating chapters to them. This is because I found it more pertinent to introduce them as they become relevant for the discussion. This is to not to detach theory and background information too much from the analysis, as well as the fact that the different chapters draw on different theories and background information, and this is a way of not muddling them.

Before getting into the chapters of the analysis, I present the main thought experiment, which I reference throughout. Although thought experiments, in general, are something which is

peppered throughout the analysis, I grant this one some extra attention. The main thought experiment presents a quite stylised example of an occupational war, which is something I return to in all three chapters of the analysis. The reason this is set apart from the other thought experiments is so I will not have to repeat myself excessively.

My analysis chapters seek out to explore different overriding intuitions, which all relate to the thesis question.

The military's *raison d'être* is being capable of defence (Wadham, 2017, p. 252). Any action done in defence may be justifiable if defence is the better outcome. In the first chapter, I explore whether placing soldier's in harm's way is a justifiable act by the state because it maximises the general good. This relates to the utilitarian concept of aggregation. The concern of the first chapter is, therefore, to see if we can defend or refute aggregation as the justification of placing soldiers in harm's way. In this chapter, I assume that soldiers and civilians are morally equal. I will approach this chapter both intuitionistically and theoretically, through contract theory, for reasons I will explain in the methodology chapter.

What is it about soldiers, which change their moral status from that of a civilian? This is a theme often discussed by contemporary *just war* scholars. In the second chapter, I will look at the soldier's role and how it relates to self-defence, to try to see whether the soldier's action within war makes them liable to be sacrificed by the state. This approach explores why soldiers may not be considered the moral equals of civilians. I will view the arguments of two esteemed, but opposing philosophers within the field, namely Michael Walzer and Jefferson McMahan. I do this in order to see if their reasoning can shed light on the role-specific reasons for when and why states can place their soldiers in harm's way.

As I do not find satisfactory arguments in the two foregoing chapters, the third chapter seeks to answer whether it is ever permissible to place soldiers in harm's way. I argue that it is, but simply relying on a democratic decision is not sufficient. I thereby sketch out certain conditions, which I argue for why should be present in the moral treatment of a soldier. Without these conditions, I argue that the state has treated the soldier as if her life is not considered valuable. I base this conclusion on a general intuition, I have about human value, and by exploring its implications, both in a general sense and within the context of war.

IV.III Literary context

The thesis question is naturally situated within the ideas and discussions of just war theory. Just war theory tackles the ethical questions that arise in and around situations of war. Just war theory aims to find moral rules for what some would describe as immoral situations (i.e. war) (Lazar, 2017b, Chapter 4).

Ethical concerns in war may place its origins at the beginning of time. Amongst theologians, philosophers and scholars who have been ascribed definitional power over these concepts, one can count Cicero, St. Augustin, St. Thomas Aquinas and Grotius, to name a few (Johnson, 2017). The structure of just war theory, as we know it today, dates back to around 1270 and the work *Summa Theologica* by Saint Thomas Aquinas. His contribution was to discuss how one should ethically act in war, in addition to the established topic of when it was permissible to go to war (Coats, 1997, p. 3; Lazar, 2017a).

Aquinas' distinction can be seen in what we in contemporary just war theory *Jus ad Bellum* and *Jus in Bello*. *Jus ad Bellum* is concerned with the moral legality of going to war, while *Jus in Bello* is concerned with moral action in war. More specifically, *Jus in Bello* refers to in which ways the use of force in war should be limited, while *Jus ad Bellum* is the notion that there are restrictions on under what conditions it is permissible to engage in war (Johnson, 2017). While *Jus ad Bellum* can be considered to be the realm of the governing powers, *Jus in Bello* can be said to concern itself with the conduct of soldiers (Sagdahl, 2013). My thesis is not inherently connected to one of these, because the relationship between soldier and state do not fall squarely into either. However, they are both still relevant to the cases of the thesis.

Jus in Bello and *Jus ad Bellum* are not only terms used in normative discussions, in the modern world, they are also terms that describe the international laws of war. Principles of *Jus ad Bellum* are reflected in the UN charter, while principles of *Jus in Bello* are reflected in what is termed international humanitarian law and the laws and customs of armed conflict (International Committee of the Red Cross, 2015).

The rule of law and the philosophy of morality, however overlapping in theme, are not concerned with the same conclusions. While the lawyer's occupation is to execute justice on the grounds of what the lawmakers have deemed 'just' in light of the practical world, the philosopher's concern is questions of what justice *is* (Bor, 1974, p. 539). That being said, the institutions of international law still have implications for moral philosophers.

There are broadly two contending positions amongst just war scholars. These are the traditionalist position and the revisionist position. The traditionalist perspective was introduced by the American philosopher Michael Walzer (Lazar, 2017b, p. 38). The revisionist perspective grew out as a critique of the traditionalistic perspective. One of these revisionists is Jefferson McMahan. The traditionalists anchor morality to the legal framework of war by trying to argue for why these rules and institutions are moral. Most, presumably, find the laws both valuable and pragmatic. Rather, it is the idea that the laws can be vindicated through moral reasoning, which is rejected (Lazar, 2017b, p. 38). These are archetypes; therefore, elements of both perspectives are found amongst most theorists (Lazar, 2017a).

The Australian philosopher Seth Lazar points out that the literature of international law place no constraints on killing soldiers in any respect under these principles (Lazar, 2017b, 4.1).

My unique approach to the field is that my thesis question explores the states' moral permissibility of having soldiers risk their lives. This means that my thesis questions the lack of constraint on killing soldiers, by looking at the permissibility of the state to place the soldiers in harm's way in the first place.

V. Method

Political philosophy is a normative approach to the political sphere. It aims to seek out justification for normative beliefs or to explore which *normative* beliefs can be justified.

The methodology in political philosophy, therefore, works similar to methodology within most other approaches, in that the methodology is used to justify the legitimacy of the answer you seek. Methodology is a means to an end, in which case knowledge is such an end (Andersen & Hepburn, 2020, Chapter Introduction). This applies both for normative approaches, which try to justify normative beliefs as well as other branches of political science, which tries to justify *descriptive* beliefs.

To start, I want to underline my approach to the research question. By asking the question

“What demands can the state morally place on their soldiers, in terms of risking their soldiers’ lives”,

I am trying to grasp what can be considered a *moral way of sacrificing a soldier* by the state.

That is to say; I am trying to grasp the meaning of what a *moral sacrifice* would be in this given case, and what it would not be.

V.I Morality

To be as clear as possible, I think it is important I take some time to underline precisely what I mean by what “grasping the meaning of moral” means. Think of this part of the methodology as an operationalisation of the research question.

To do this, I would like to start by providing a very well written account by the esteemed scholar G. A. Cohen of three central questions in political philosophy, and why they differ (Cohen, 2011, p. 227).

These questions are

1. What is justice²?
2. What should the state do?
3. Which social states of affairs out to be brought about?

Cohen is very clear that these three questions are distinct, but not distinguished as often as they should be. I share Cohen's opinion that not only are they distinct, but their answers also are not necessarily identical (Cohen, 2011, p. 227).

My question relates to the first of these three. I seek to say something about *which principles* would provide the *moral treatment of soldiers*. The question is, therefore, a question of what *constitutes morality*, which is unlike a question of *which state of affairs should come about*, or *what the state should do*. This distinction is important because the answer to what someone should do is not always to act the most moral, most fair or most just (Cohen, 2011, p. 228).

There are many reasons for why this may be the case, but one reason may be that there are other concerns which weigh heavier for the state (Cohen, 2011, p. 227). These concerns could be to act pragmatically, strategically or to ensure a certain standard of life for all inhabitants.

Additionally, the moral treatment of one group can easily go on accord of the moral treatment of another. It may be immoral not to comfort your crying toddler, but it may be *more* immoral to let go of the hand of the man who is about to sink into quicksand, in order to comfort the child. However, making general assessments of which of two contradicting considerations should have precedence, requires more time and pages than I have been afforded in this thesis.

What exactly it is that constitutes morality as it relates to the demands the state can make of soldiers, is the prerogative of this thesis. It is the question which I intend to answer.

V.II Methodology

We use methodology in order to justify our conclusions. Diligent application of methodology is a way of ensuring that the conclusions reached are as sound and valid as possible.

² Cohen clarifies by saying he means "what are the correct principles of justice" (Cohen, 2011, p. 227).

In normative theory, whether or not your justified conclusions can ever constitute the allusive concept of *truth*, is debated (Kelly, 2005, p. 7; Sencerz, 1986, p. 90)³. That being said, many contemporary theorists believe it should not matter (Daniels, 2018, Chapter 4.3). What matters is the way we came about these beliefs, and whether our reason for concluding this way or that way is reasonable.

Because of this epistemic difference in normative methodology, there is an added emphasis on transparent reasoning, which I shall strive to achieve. A reason for this is because the arguments are not always as self-evident as they are in the descriptive realm. A philosophical argument would always be debatable, to the best of my knowledge. Because it is hard to say something concrete about whether the argument relates to something true (their alethic value), we need to thoroughly emphasise whether we have reason to come about such an argument (their doxastic value) (Malnes, 2020, Chapter 4; Merriam-Webster, 2019).

Cohen stresses this point, in his article “How to do Political philosophy”. Transparency on what you are doing, and what you believe doing it will achieve, is the best way of ensuring your arguments are as clear to the reader as possible (Cohen, 2011, p. 226).

There are two methodological approaches, which I deem most relevant to my thesis. These are Reflective Equilibrium, made famous by John Rawls, and Frances Myrna Kamm’s intuitionistic approach. Throughout, I rely on a hybrid of these approaches. I will explain exactly what I mean by that in a moment.

V.II.I Reflective Equilibrium

In political philosophy, reflective equilibrium is by many considered to be the unsurpassed methodological approach to understanding normative politics (Mikhail, 2010, p. 2). In any regards, it is one of the best-established approaches within the field. It has its origins in the mid-19th century with the works of Nelson Goodman, but was made famous by John Rawls, and has been built upon, by amongst others, Norman Daniels (Daniels, 2018, Chapter 2.1).

³ My position is that knowledge, although oftentimes dependent on experience, is not necessarily always contingent upon experience. As an example, you may need experience to understand a concept, but you do not necessarily require experience to understand the argument (DePaul & Hicks, 2016, Chapter 1.1).

Reflective equilibrium is both the name of the method, as well as the result of the process (Daniels, 2018, Chapter 1). The method aims to modify our beliefs by ‘weighing’ intuitions and principles against each other.

We can talk of both wide and narrow reflective equilibrium. Daniels is very adamant that wide reflective equilibrium is the only one which sufficiently can justify normative beliefs (Daniels, 2018, Chapter 3.1). Wide reflective equilibrium introduces a third aspect, background theory, which Daniels argues gives the reflective process more epistemic value (Holmgren, 1989, p. 47). He believes the narrow approach is only appropriate for a specific case, and the results cannot be generalised, the way the result of the wide approach can.

The reflective process is done by considering your intuition about something, by testing it against principles and relevant background theory⁴ (Daniels, 1980, p. 84). Thereby, you modify your intuitions and principles until they cohere with each other (Daniels, 2018, Chapter 1). Principles and intuitions control and influence each other’s value as relevant beliefs.

Reflective equilibrium treats both principles and intuitions as valuable, giving neither precedence over the other. Throughout my thesis, I have relied on a process likened to the *reflective process*, but I have not afforded the same general weight to principles, as reflective equilibriumists would.

V.II.II Intuitions

Intuitions are non-inferential moral judgements (McMahan, 2000, p. 104). By non-inferential, I mean that they are not justified *by something else*, but rather comes about on their own. However, many things come about non-inferentially. What is unique with intuitions is that there is something about them which gives us reason to believe that our intuition is compelling, much the same way we are compelled to believe things we observe (Malnes, 2008, p. 198).

You may agree with the principle that it is generally wrong to steal. However, you may come across a case, in which you have a firm belief that it is in fact, right to steal. This belief is

⁴ Daniel’s inclusion of background theory is meant to inform us on which principles and intuitions we should discard or retain (Daniels, 1980, p. 86).

justifying through the conviction it has on you. Like observations, we treat the propositional content of intuitions as evidence (Pust, 2019, Chapter 2.4).

What I refer to as *intuitions*, Rawls calls *considered judgements*, as to not confuse them with a more colloquial idea of what intuitions are (Daniels, 1979, p. 267; Rawls, 1951, p. 182). I am content with the terminology *intuitions*, given that the reader understands that I do not refer to concepts such as prejudice, bias, or that feeling you sometimes get that you are not alone in a room. They are not emotional responses, but rather judgements about somethings permissibility (Kamm, 1993, p. 8).

V.II.III Thought experiments

In my approach, I use either hypothetical cases or simplified versions of real-life cases in order to explore my intuitions about the cases (Kamm, 1993, p. 7). These are my thought experiments, which I sometimes also refer to as examples or scenarios.

Thought experiments or *method of case* are perhaps the most common tool in analytical philosophy (Angelucci & Arcangeli, 2019, p. 763; Ludwig, 2007, p. 129). A thought experiment is ideally constructed in such a way that general objections do not apply to them, and in this way, we are able to explore and reevaluate our intuitions and held principles thoroughly (Sorensen, 2019, p. 797).

Thought experiments have the ability to distil complex matters into a more comprehensible format, making the matter more tangible (Brown & Fehige, 2019, Chapter I). Relevant features can be separated to those irrelevant for the question at hand, and still provide us with a useful framework, which can apply to real-world scenarios (Gendler, 1998, p. 21).

Let me illustrate how though experiments should not be used. Author G.K. Chesterton once was asked what book he would most value if stranded on a deserted island. Chesterton replied “Thomas’s Guide to Practical Shipbuilding” (Sorensen, 2019, p. 791). Chesterton was presumably aware that the thought experiment’s aim was finding a source of entertainment, in which one would not easily tire of. However, he chose to underline the silliness of the supposition, rather than to answer the more practical goal of the experiment (Sorensen, 2019, p. 793).

Semantically, he has answered, pragmatically he has not (Sorensen, 2019, p. 795). It is the aim of the thought experiment, rather than the suppositions of the thought experiment which

should be of concern under scrutiny, unless, of course, the supposition leads to misleading framing of arguments (Walsh, 2011, p. 469).

V.II.IV Kamm's Intuitionistic approach

Kamm likens her approach to the fairy tale of the "Princess and the Pea". If we have a strong intuition that something is wrong, we need to get to the bottom of what it is about the case, which gives us such an intuition (Kamm, 1993, p. 8). She argues that it may be necessary to work through a large variety of cases, as slight differences in case, may result in substantial moral differences (Kamm, 1993, p. 8).

Kamm believes that approaching a case from a theoretical standpoint is misguided (Daniels, 1998, p. 947; Kamm, 1993, p. 5). What I mean by approaching a case from a theoretical standpoint is treating the theory, with the principles it includes, to be logically prior to the case forces us to accept implications that go against our intuitions (Daniels, 1998, p. 947). Kamm does not think intuitions should take the back seat to principles or theories. If theories or principles go against our intuitions, she asks, why do we find the theory valuable, to begin with (Kamm, 1993, p. 6).

Unlike the adherents of Reflective Equilibrium, Kamm believes there is a fallacy in relying on principles to adjust our intuitions. That is not to say they are not incompatible with Kamm's intuitionistic approach, but they do not provide justification for a belief, in and of themselves (Kamm, 1993, p. 9). The reason for this is because she believes our principles are rooted in our intuitions. For Kamm, *principles* are the product of the process. They are valuable if they fit our intuitive responses (Kamm, 1993, p. 7).

The critique against both intuitions and thought experiments are concern that emotions will lead to performance errors (Sorensen, 2019, p. 799). I think what both reflective equilibrium and Kamm's intuitionistic approach strives for is providing a clear way of understanding the reasoning behind our conclusions. Such as with other scientific approaches, you may not find some concept of *truth*, at your conclusion, but your process should be so clear that others are able to infer the same conclusion through your reasoning.

V.II.V My approach

As mentioned above, my approach to the thesis question draws on both the approaches of Kamm and Rawls. Generally, I strive for a reflective process; however, I do share Kamm's idea that principles are based in intuitions.

As mentioned in the introduction, my thesis is structured in a way, where I answer the question "*What demands can the state morally place on their soldiers, in terms of risking their soldiers' lives*", in a three-step process.

One question to such an answer could be "any demands are moral as long as they result in maximised welfare". In the first chapter, I refute this. Here, I rely on a theoretical approach as a supplement to the intuitionist one. The reason for this is because my first chapter is concerned with refuting a theoretical principle, namely the utilitarian principle of maximising value. Although I do believe it is possible to refute aggregation on purely intuitionistic grounds, I believe that contractualism can help elucidate aspects of aggregation, in a more structured way than pure intuitionism can.

However, the theoretical approach falls short in the second and third chapter. Having refuted aggregation in the first chapter, I move on to explore whether there is something about the role of the soldier, which makes them morally different than civilians. Here I found that contractualism does not do much in the way of refuting or supporting the cases explored. The same applies to the final chapter, where I try to establish what could be a permissible way of risking soldiers' lives.

VI. Analysis

The analysis is made up of three chapters. As you may recall from the introduction, the first chapter concerns itself with the state's permissibility of placing soldiers in harm's way, if this maximises the general good. In the second chapter I will look at how the role of the soldier may account for why placing them in harms way could be permissible. The third chapter sketches out qualifications on my idea of what constitute permissible sacrifice of the soldiers by the state.

Before delving into the chapters, I will be presenting a reoccurring thought experiment, which helps frame the chapters.

VI.I A recurring thought experiment

In the analysis, I will be using a main thought experiment which will be recurring throughout, and which I will present shortly. Although I will be using other thought experiments as well, I find it reasonable to afford this specific thought experiment extra attention, as it is a purified example of a traditional war-setting. I believe the thought experiment will help make the themes I battle in the analysis, more coherent and analytical. Additionally, it will save space to name this classical situation, and refer back to it, rather than to reintroduce it, throughout the analysis. Recalling that the thesis question is:

What demands can the state morally place on its soldiers, in terms of risking their soldiers' lives?

To help us look at the what the role of the soldier should entail, and the limits of the state onto its soldiers, let us picture the following scenario, which I call 'Cannon Fodder'⁵:

A state, or in any case, the authorities making the decisions in a state, are faced with a dilemma. It has come to the attention of the decisionmakers, that the state faces an

⁵ Cannon fodder is a term used for expendable soldiers, and although I recognise that it is a rather loaded term, my intent is not to claim that states who send soldiers into combat necessarily treat or view them as expendable. Because cannon fodder is a term which we associate with impermissible treatment of soldiers, and because my aim is to pinpoint what is permissible and what is impermissible treatment, I find the term relevant to use, even if only to subliminally invoke an implication of the thesis question in the mind of the reader.

ultimatum. The decision the state face is whether to deploy a group of soldiers to a frontier, where they are put in harm's way, with a very high risk of death. The alternative to deploying the group is having the majority of the population face dire consequences in a situation of occupation.

Essentially, the soldiers are faced with an extremely high risk of death for the benefit of the population. The consequences on the population should be severe enough to give the state every incentive to protect its majority population. The question is not whether this decision would generate a practical outcome, as it should be obvious it very much will. Instead, the question is in what way would it be morally permissible behaviour of the state onto its soldiers to execute this idea?

By using the 'Cannon Fodder' scenario, I will explore different intuitions and principles relating to the thesis question.

What then, makes the scenario different from or similar to other operations in which a soldier may participate? To start, I believe there to be an imminence and clarity in 'Cannon Fodder', which adds pressure on our moral intuitions. The general population will suffer if the decisionmakers do not act in accordance with the ultimatum they face. Our stakes and scope are clear. The clarity is perhaps more exaggerated compared to real-world scenarios, which is beneficial when exploring intuitions (Kamm, 1993, p. 7).

A critique of the "Cannon Fodder Scenario" could be that the scenario is outdated, compared to the realities of modern western warfare. To this critique, I have two objections. The first is that the scenario aims at exploring moral implications, which are just as relevant today as ever, namely what permissible treatment of a soldier is. Exploring this within the confinements of the 'Cannon Fodder Scenario', is not the same as having our results being applicable only in the 'Cannon Fodder Scenario'. The second objection is that having an outdated scenario is not the same as having an improbable one. Although situations similar to conventional warfare, is decreasing, soldiers are still being put in harm's way (Hoffman, 2006, p. 396). Additionally, we have contemporary examples of occupation-like situations. Crimea in 2014 is such an example (Kubicek, 2017, p. 144).

Chapter 1: Favouring the many on account of the few.

The central problem of the research question is whether or not we should accept that soldiers could run a high risk of injury or death, in order to spare the general population, the costs of what a military invasion would entail for them. This research question is a particular case of a general problem, namely, how to best weigh contending concerns. In this first chapter, it is a general problem of how to weigh concern, which I will explore.

In political theory, there are different perspectives on what kind of prioritising is fair when choosing between contending concerns. One such perspective is utilitarianism. Utilitarians rely on aggregation to argue for why favouring the group which culminated will benefit the most, is the best course of action (Driver, 2014, Chapter 4).

They would accept that soldiers die if the alternative outcome was generally less beneficial on the group level. Simply put, they would favour the many on account of the few. In this chapter, it is precisely this reasoning, which I will try to refute.

In this first chapter of the analysis, I want to explore whether there are any compelling reasons for sending soldiers to their death, simply because it will benefit the greater population. This chapter will assume that soldiers and civilians are morally equal. The reason for this is because exploring the role-relative reasons for why soldiers may be treated differently than the general population is the preserve of the following chapter.

I will approach the chapter in two different ways. The first is through intuition, which I defined earlier in the method chapter of the thesis. The second is a theoretical approach. The theory which I have decided to use is contractualism. Contractualism and utilitarianism have been frequently used against each other. A reason for this is that both utilitarianism and contractualism are impartial moral theories. What this means is that it seeks to say something about how we should behave generally. I believe this theory would be interesting to explore, especially in connection with aggregation.

1.1 Contractualism

Before getting into the analysis, let me clarify the concept of contractualism. Contractualism is a product of the enlightenment, with Jean-Jacques Rousseau often considered to be the father of this social contract theory (Ashford & Mulgan, 2007, Chapter 2). The general principle within the theory is that all people have equal moral status (Ashford & Mulgan, 2007, Chapter 2). Although it might seem that way, the equal moral status of people does not pose a problem to our following chapters, where the role of the soldier plays a much more significant part. We can justify the role-specific reasons we have for differentiating between people without discarding the equal moral status of people (Waldron, 2000, p. 721). The reason for this is because there may be specific reasons for why some people do not retain their moral status, despite having had an initial claim.

Two modern and esteemed philosophers within this contractualist tradition are John Rawls and T.M. Scanlon. Rawls' theories are more concerned with how to structure a political society⁶. Scanlon, on the other hand, is focused on determining moral principles (Ashford & Mulgan, 2007, Chapter 2). Because my approach is to find the moral limits of the state, rather than to say something about how they should structure their military, I find it more expedient to lean towards Scanlon's ideas of contractualism.

Scanlon's idea of contractualism means to behave in a way no one in a similar situation could reasonably reject (Pogge, 2001, p. 119). This idea requires some deciphering.

To act as if everyone has equal moral status is to act in a way that seemingly tries to appreciate the value of human life. Contractualism believes that an act is wrong if it cannot be justified to others (Scanlon, 1998, p. 189). What this means is that if we act in a way that is not possible to justify to others, we are not respecting their lives. For Scanlon, a principle, or way of acting, is justified as long as others cannot *reasonably* reject it (Ashford & Mulgan, 2007, Chapter 3).

Reasonable is a somewhat undefinable word and is used differently in different settings. Scanlon makes the distinction that reasonable is not about what would advance someone's interests, or what would produce agreements all can get behind (Scanlon, 1998, p. 194). Instead, reasonable is a moral point of view (Ashford & Mulgan, 2007, Chapter 2). For

⁶ Not to be confused with Rawl's method of Reflective Equilibrium (RE). However, he uses his method of RE, to come about his contractualist theory (Daniels, 2018, Chapter 3.2.2).

example, it would be *irrational* of me to pester an irritated owner of a well to give some of her water to the needy. The reason it would be *irrational* is that it probably would not produce the desired outcome. It is, however, a *reasonable* demand to make of the well-owner (Scanlon, 1998, p. 192).

For Scanlon, what is a reasonable claim is determined in relation to other claims. It may be reasonable to demand water from a well-owner. However, if we learn that there is hardly any water left in the well and that the well-owner herself dying of thirst, the claim becomes less reasonable. That is not to say that we must always prioritise the worst off (Scanlon, 1998, p. 224). The worst off does, however, often have the most reasonable claim.

It may also be relevant to mention that *wrong* is the theory's moral predicate. What this means is that a *right* principle or a *right* course of action are simply those that are *not wrong* principles or courses of action (Ashford & Mulgan, 2007, Chapter 1). An example of this could be that it would be permissible to lie, as long as no one can *reasonably* reject this action.

In the first subchapter, I will more thoroughly introduce aggregation. I will then try to use contractualism to refute an aggregationist account for why we should favour a large group with a small group, on account of a little group with a large claim.

1.2 When burdens and benefits are unequal

In this subchapter, I will look at who we should favour in a situation of unequal distribution of burdens and benefits between the groups. In 'Cannon Fodder', we assume that the majority population is a group which vastly outnumber the soldier group, as this mirrors the general relationship between soldiers and the people they seek to protect.

1.2.1 Utilitarianism

For many, it is instinctively satisfying to place a higher value on saving the largest number of people. A reason for this is that preferring a large number of people often means preferring a more significant amount of overall happiness or benefit.

A strong, and perhaps most familiar contender for this view is the theory of utilitarianism. In short, utilitarians believe that maximising the overall goods, often referring to welfare or happiness, is the morally right course of action (Driver, 2014, para. 1). Do note, however, that

utilitarians do not hold that preferring the most people *in and of itself* is the right course of action. Utilitarians rely on the concept of aggregation. What this means is that it is the *total amount of benefits culminated*, which is the force that determines the moral course of action. It is considered an agent-neutral theory, which means that it gives every person the same overall aim (Hirose et al., 2015, Chapter 14.2).

1.2.2 General intuitions on aggregation

Aggregation is central to this discussion, as it is an established argument for why it is permissible to prefer the larger group. If we are to dispute why we should favour the majority, disputing the morality of aggregation is an excellent place to start. Let me present a famous thought experiment by T. M. Scanlon. This, because I believe it can help to examine our intuitions about aggregation. I will refer to this experiment as the “World Cup”.

World Cup (Scanlon, 1998, p. 235):

The finale of the World Cup in football is being televised, with millions of engaged viewers worldwide. The event is broadcasted by way of a television transmitter room. Jones works in the transmitter room. He has just had electrical equipment fall upon him, giving him severely painful but unharmed, electric shocks. Jones will not die or receive permanent injury from the shocks.

The only way to stop Jones receiving the electric shocks is to pause the football match for fifteen minutes. The question is whether you believe someone should rescue Jones at once, pausing the game for 15 minutes. Pausing the game will make many millions of viewers upset. The alternative is to wait an hour until the match is through.

According to pure aggregation, we should let the man suffer through the hour left of the game. The reason for this is that whatever pain he is receiving for the hour the game goes on, will indeed not surpass the multitude of annoyances experienced within the fifteen minutes the game is off television. To put it in numbers, if the man is experiencing pain of 90 on a scale from 0 to 100, and one million football fans are experiencing a pain of 5 on the same scale, their pain still outnumbers the technicians by 5.000.000 pain levels opposed to 90.

1.2.3 Deciding ‘Cannon Fodder’ through aggregation

In ‘Cannon Fodder’ we face a similar situation. According to aggregation, we should avoid having the majority population suffer, as their combined suffering would surely outnumber the pain and possible death faced by the soldiers. Here, we assume that the relative suffering

is not equal. However, the number of people that experience some suffering in the majority population would make the cumulative suffering much larger than the suffering of comparatively few soldiers.

I believe that “World Cup” is excellent at illustrating some problems of aggregation. My intuition is that letting Jones suffer in “World Cup” is unnecessarily cruel. A reason for this is that Jones’ individual pain is so much higher than any of the football watchers’ individual pain would be if we decided to pause the broadcast for fifteen minutes. On these grounds, it seems unreasonable that one person’s real pain should be allowed to spare many people their small annoyances.

Contractualists would concur. Scanlon writes that it is unreasonable to reject the claims of one person, on account of their merely being *more* claims by the people in the group of television watchers (Scanlon, 1998, p. 235). Just as utilitarians do, Scanlon *weighs* claims. However, unlike them, he does so on the *individual level*⁷. Unlike utilitarians, who would view the two outcomes, and decide upon the outcome with the overall most happiness or benefit, Scanlon would weigh the claims of any individual television watcher up against the claims of Jones to decide which outcome to prefer.

Aggregation seems intuitively problematic because it can allow for great suffering on the individual level, because of what could be seen as great suffering on the group level. A theory that gives preference to protecting people from small annoyances, over protecting people from real suffering, do not treat each individual as valuable.

1.2.4 Scanlon’s rescue principle

To illustrate how Scanlon weighs his claims, let me present a principle he holds.

The Rescue Principle (Ashford & Mulgan, 2007, Chapter 9; Scanlon, 1998, p. 224):

If you can prevent something very bad from happening to someone, with a minor or moderate sacrifice to yourself, it would be wrong not to do so.

By letting Jones suffer, not only are we resorting to aggregation, which intuitively seems problematic, we are also overruling the rescue principle. When burdens are unequal, there is a very strong case to be made for giving preference to the claim of the person with the worst

⁷ What this means is that only individuals have claims, while groups do not.

potential outcome. Through the rescue principle, it is easy to argue for why it would be wrong to let Jones' suffer.

Aggregation, when the relative pain between people are very different, is both intuitively problematic and problematic for contract theory. Therefore, deploying our soldiers in 'Cannon Fodder' is problematic if we assume that the pain they experience is much greater than the pain the majority population will experience when faced with the occupation.

However, assuming that soldiers sent into battle would have it significantly worse than civilians in a war-torn state, may have been a too simplistic assumption. We can hardly believe that all citizens in 'Cannon Fodder' will be better off than any given soldier. In a situation where the burdens and benefits are equal, the rescue principle would become irrelevant. Can a contractualist approach contend with aggregation, when no one is significantly worse off? Or to put it another way; should we favour the many over the few, when all individuals have equal claims?

1.3 When burdens and benefits are equal

Our second sub-chapter takes a different look at the distribution of burdens and benefits in 'Cannon Fodder'. I will do this, because I believe it is unreasonable to assume that being occupied is significantly better for the individual civilian, than what being sent to battle is for the soldiers.

The "World Cup" thought experiment is excellent for illustrating my initial intuition about aggregation. However, we have good reason to believe that the majority population is faced with significant harm, unlike what the television watchers are in "World Cup" (although an avid football supporter might disagree with me on this point).

My intuition, as well as the contractualist argument against aggregation, was mainly grounded in the fact that aggregation is problematic when it allows for something really bad to happen to a person, even if the alternative is not *that* bad for other individuals. However, this does not refute aggregation when no group is significantly worse off.

1.3.1 Aggregation when claims are equal

An example of aggregation where the potential loss and gains are more equal than in "World Cup", is a thought experiment which I will call "Organ Donor". It has its origins in works by

Grand Dame of thought experiments Philippa Foot and has been built upon by Judith Jarvis Thomson (Foot, 2002, p. 89; Thomson, 1985, p. 1396).

Organ Donor (Thomson, 1985, p. 1396):

We imagine a very competent surgeon, who has five patients with failing organs in her care. Two of them need a lung each; two need a kidney each, and the last needs a heart transplantation. She knows that without the transplants, all five will die.

Into the clinic walks a healthy person in for her yearly check-up. After taking her vitals, the surgeon realises that the healthy patient happens to be a perfect donor-match for all five. The surgeon asks the healthy patient whether she could take her organs, to save the lives of the five. She informs the healthy patient that it will, however, result in her death. The healthy patient does not agree to die for the benefit of the five.

The question is whether it would be permissible of the surgeon to take her organs anyway.

As Jarvis Thomson points out, most people would find the surgeon taking the organs to be highly problematic and immoral (Thomson, 1985, p. 1396). If we assume that death is the undesired outcome for all the people involved in the surgeon's plan, all other things being equal, should it not be better to have more people live?

Intuitively, I do not think killing the healthy patient to save the lives of the five is the most moral outcome. Partly, I believe this has to do with claims. I believe you can reasonably argue that the healthy person has special claims to her organs, derived from the self-ownership of her body. This is an argument for why she may not have any obligation to give them away. Even without any special claims to her own organs, you would still have to argue for why the other patients have *more* of a claim to them than she does.

Central to this discussion is that I believe "Organ Donor" illustrates that aggregation can be problematic, even when the losses and gains between the considered groups are similar. As such, it is not intuitively satisfactory to rely on aggregation, when we are deciding who to favour in 'Cannon Fodder'.

However, in 'Organ Donor' my reasoning is agent-specific, which means that there is *something* about the healthy patient, which makes her claims stronger than the dying ones. Whether civilians have *more of a claim* to be favoured or soldiers have *less of a claim* is the

reserve of the following two chapters. As for now, I want to look at whether contractualism can be used to refute aggregation when we assume all actors to have the same claim.

1.3.2 The contractualist approach

What then, would be contractualism's solution to a case of equal claims? In cases where the rescue principle no longer applies, their guiding principles of weighing claims tend to diverge into different solutions. I will illustrate some of these approaches and discuss how they relate to our 'Cannon Fodder' case.

I will simplify by assuming that both outcomes in 'Cannon Fodder' are equally painful and that all individuals have equal claims. Regardless of whether this is the case or not, suffering under a tyrannical regime is still arguably considered very bad. Therefore, viewing the scenario as having two equally painful outcomes on the individual level, is not much more of a stretch, than what viewing them as starkly unequal is.

1.3.3 Taurek's non-aggregating position

The philosopher John Taurek presented a non-aggregating argument, commonly known as "Coin Toss". When faced with a decision between two groups, he believes that it would be *just as permissible* to save a group of few people as it would be to of a group of many people. This is a conclusion many have described as counter-intuitive (Hirose, 2014, p. 109). What Taurek's coin toss implies is that without aggregation, we should behave as if the two scenarios were equal, meaning that the number of people affected by the outcomes, does not matter *at all*. He presents a case which is something as follows.

Coin toss (Hirose, 2014, p. 110):

Picture a situation where you own a bottle of a lifesaving drug. You have also been approached by six different people, who are all in need of the said drug, in order to live. Sadly, the amount of drug that you have is not enough to supply all six people with their needed amount.

The six people need different amounts of the drug to live. $1/5$ of the bottle is individually sufficient to save five of the people, meaning your one bottle is precisely enough to save five of the six people. Unfortunately, the sixth person needs the entire bottle to survive. You are now left with a choice. Should you give your bottle to the one who needs it all, or give $1/5^{\text{th}}$ to each five?

Taurek believes we should toss a coin to decide which of the groups should receive the medicine.

Taurek rejects aggregation and claims that the only reasonable thing to do in this situation is to treat the two groups as equal to each other. He believes that the fairest way to decide who gets the medication is to *toss a coin* (Taurek, 1977). Even most opponents of aggregation believe that the right course of action is to save the five (Hirose, 2014, p. 111).

Let us look at Taurek's reasoning for rejecting this course of action. All other things being equal, no individual in the larger group can claim that dying is worse for them than it is for anyone in the smaller group (the group of one person). Taurek believes that in order to account for every person receiving equal respect, they should all have an *equal chance* of surviving.

The way to ensure this, says Taurek, is to toss a coin. If the coin, par example, lands on its head, the group of five receives the medicine. Conversely, if the coin lands on its tail, the single person receives the medicine. They all have a 50% chance of receiving their needed medicine. The reasoning is that all of the six individuals have an equal probability of receiving the medicine, and is therefore treated with equal value.

I Find Taurek's argument very unappealing. Even though I am inclined to agree that there is a fair amount of equality in giving each individual a 50% chance of survival, treating the group of five precisely like the group of one, makes me feel like we are overlooking four people somehow. If contractualism is concerned with considering each individual, treating them as if they were not there seemingly is contrary to this principle.

Taurek's argument becomes even less appealing to me if we apply it to 'Cannon Fodder'. Assuming the burdens of the majority and the burdens of the soldiers are precisely the same. We should treat the two groups as equal and not take into account the number of people who could be suffering if we follow Taurek's principle.

From Taurek, we learn that the way to ensure that everyone receives equal respect is by ensuring everyone has the same chance to avoid suffering. For the sake of argument, we can assume the general population in 'Cannon Fodder' is around 10.000.000. We can assume the soldiers to be 20.000. Taurek seems to believe that regarding these two groups as equal by tossing a coin, is the best way of avoiding aggregation. I, however, agree with the criticism. It

seems counter-intuitive to let the many millions be treated as a unit on par with a unit of twenty thousand people.

1.3.4 Scanlon's and Kamm's weighted lotteries

One way for contractualists to deal with this sort of problem is to treat the two groups as equal, such as Taurek has. However, Scanlon disagrees with Taurek and propose an alternative way of coping with the problem. Inspired by Frances Kamm, Scanlon presents a counter-argument to Taurek's coin toss (Otsuka, 2000, p. 289).

Kamm's argument is known as "the weighted lottery" (Hirose, 2014, p. 137). A weighted lottery would entail giving each individual an equal probability, in relation to all other individuals in the scenario, rather than giving each group equal probability. In numbers, this means that each person is given a $1/N$ chance of being saved, with N being the total number of people. Scanlon likes the idea of a weighted lottery, as it ensures that everyone is considered (Timmermann, 2004, p. 107). To illustrate this, let me present another thought experiment, similar to "Coin Toss".

Sailboat (Inspired by (Taurek, 1977)):

Imagine you are on a sailboat, as a storm is about to erupt. On the horizon, you spot two islets—one to your east and the other to your west. You can clearly see there are people on both. You understand that the storm will flood and drown anyone on the islets. Due to the wind, and the way the storm is progressing, you only have time to travel to one of the islets. Because of that, you are only able to save one of the groups.

Again, the question is "who do you save?". "Sailboat" is very similar to Taurek's "Coin Toss", but somewhat more straightforward, which makes it easier to introduce new elements. To start, we imagine that the islets have respectively two people on the eastern islet and one person on the western one.

Scanlon writes that even though contractualists do not support aggregation, they should favour saving the people on the eastern islet, as there are more of them. He writes that if we do not afford more weight to the group of two, we are treating one of the people in that group as if she did not exist (Scanlon, 1998, p. 234).

He reasons that if the decision-making is identical both in a scenario where there is one person on each islet and in a scenario where there are two people on the one and one on the other, surely the "second person" in the second scenario is not considered (Otsuka, 2000, p.

289). Taurek's "Coin Toss" does not recognise this second person, and is therefore not giving them their due consideration, according to Scanlon. Using a weighted lottery, however, is a way of reflecting a positive value of saving each person, without aggregating (Scanlon, 1998, p. 234).

Recalling Kamm's principle, a weighted lottery dictates that each person in "Sailboat" should have $1/3^{\text{rd}}$ of a probability of being saved. Two of the people are in the same group, as they both are stranded on the same islet. This means that *the group* as a whole has a $2/3^{\text{rds}}$ probability of being saved. Kamm's weighted lottery would presumably have us do something like spin a wheel of fortune, with three equally large sections, to see who should be saved. After that, we should save the entire group this person is part of.

If we apply this logic to our 'Cannon Fodder' case, the soldier's group's chance of being favoured is about 0.2 per cent or 2‰⁸.

Although Kamm's weighted lottery inspired his approach, Scanlon's weighted lottery has some crucial differences. As we have established, Kamm's weighted lottery would afford the highest probability of being considered to the group with the most people. The reason for this is that there are more individual claims in that group, for which we need to account.

Scanlon, on the other hand, is absolute in his conclusion. His opinion is that the larger group of individuals always have a higher claim, all else being equal, as otherwise, we would not account for the people which makes up the difference between the two groups. He believes that unlike always choosing the largest group on account of aggregation, always choosing the largest group on account of respecting the additional person is not something the other group clearly could *reasonably* reject. Therefore, according to Scanlon, we do not need to spin a wheel to know who we should save (Scanlon, 1998, p. 234).

In Scanlon's world, the islet with two people would *always* have the stronger claim. Scanlon argues that this is not the same as aggregation, although it yields a similar outcome (although this point is contended by Otsuka and others (Otsuka, 2000, p. 290)). Scanlon believes that his solution affords each person equal value, rather than discarding their individuality by lumping them together (Otsuka, 2000, p. 290). Shortly, I will present how I believe he is contradicting his own argument.

⁸ This is assuming there are about 10 million people in total, with 20.000 being soldiers, making the fraction $\frac{20.000}{10.000.000} = 0,002 = 0,2\%$.

1.3.5 Kamm's criticism

I find Scanlon's reasoning problematic, and I am not alone. His critics disagree with Scanlon's belief that his principle will not open the door to aggregation (Scanlon, 1998, p. 235; Timmermann, 2004, p. 107). Some of his critics claim he flirts with both consequentialism and aggregation (Otsuka, 2000, p. 291; Timmermann, 2004, p. 108). I will not dwell too much on the criticisms. I will, however, illustrate a problem with Scanlon's reasoning, which is pointed out by Frances Kamm. She is illustrating why a larger group should not have *automatic* precedence over a smaller one.

Kamm writes that it is problematic not to view a case where one outcome positively affects 1000, and the other positively affects 1001, to be virtually equal (Kamm, 1993, p. 103). Scanlon's reasoning would have us choose the group of 1001, not on a 49,9% versus 50,1% basis such as Kamm would, but rather always to prefer the group of 1001, all else being equal. This intuitively seems unfair, and because of this, I find Scanlon's weighted lottery very disagreeable.

In a 'Cannon Fodder' case, where all claims were otherwise equal, Scanlon would not give the soldiers a chance to be prioritised. Through Kamm, they would have a minimal chance, but a chance non the less.

I believe Kamm's 'Weighted Lottery' provides much more consideration for the value of human life than what Scanlon's idea does⁹.

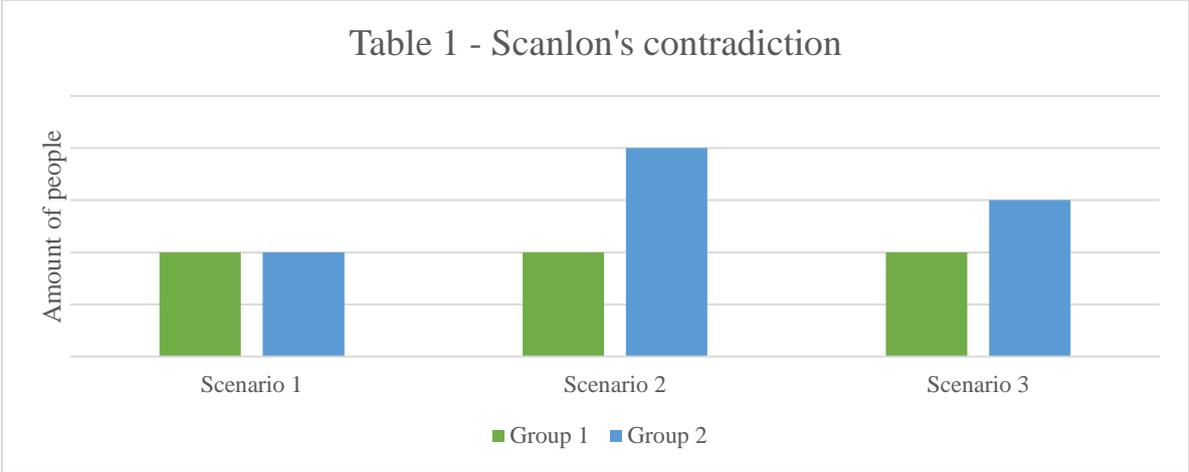
1.3.6 Scanlon's contradiction

I believe Scanlon falls victim to the same criticism he himself gave Taurek. Taurek would treat the people in group 2 in scenario 1 and 2, equally (see table 1). Taurek would treat a scenario with even-numbered groups (scenario 1, table 1) the same as a scenario with uneven numbered groups (scenario 2, table 1). Scanlon believes that if you do so, you are not sufficiently valuing the humanity of the additional people in the second group.

However, despite his own reasoning, Scanlon seemingly would treat scenario 2 and scenario 3 as equal, as he would always prioritise the larger group. This is despite the larger group in the respective scenarios being of *different sizes*. How are we sufficiently valuing the humanity of

⁹ Although I argue that Kamm's approach adheres much better to contractualism than what Scanlon does, it is important to note that Kamm is not in favour of using a theoretical approach to cases (Kamm, 1993, p. 6).

the additional people in the large group of the second scenario, when we by Scanlon’s preference treat the scenario *the same* as the one where the larger group have fewer people?



The answer is, we are not sufficiently valuing the humanity of the ‘surplus’ person, by Scanlon’s reasoning. We are treating this additional person in scenario 2 as if they were not there. Scanlon’s argument falls victim to his own reasoning. It contradicts itself.

1.4 Conclusion

In this chapter, I believe I have done due diligence in arguing for why we cannot merely resort to aggregation in determining whether the state can sacrifice soldiers to protect the majority population.

I started by establishing why favouring the insignificant suffering of many on accord of a small group of people who experience real pain, is not intuitively compelling. We found that aggregation is intuitively problematic because it overlooks the claims of the individual. We also looked at how contractualism would account for their claims. However, I did recognise the need to explore my intuition on aggregation in situations that were more similar to our ‘Cannon Fodder’ case.

I wanted to shift the focus towards a more similar situation to what our soldiers may find themselves in, namely a situation where the suffering within the two groups was more equal. I, therefore, looked at how my intuitions and how contractualist arguments changed when we discussed aggregation when individuals in both groups had similar claims.

I looked at whether a contractualist approach could refute aggregationist arguments and found both Taurek’s and Scanlon’s approaches to be lacking. Both argued that their view accounted

for the equal moral status for all individuals, while I refute this. I agreed with Scanlon that Taurek does not sufficiently take into account the value of all people with his approach. However, this same criticism applies to Scanlon himself, as I have shown.

I argued for why Scanlon's criticism of Taurek; that treating different situations with a different number of people as equal is to not account for all individuals equally applies to both of them. In the end, Kamm's weighted lottery is the approach that best upheld the principles of contractualism and proved a worthy argument against aggregation.

This chapter has explored the general permissibility of sacrificing soldiers in order to save the general population and found that resorting to aggregation is not a convincing argument. However, in this chapter, we assumed moral equality between soldiers and civilians. In the following chapter, I will look at what the role of the soldier entails and see if there are any compelling role-specific reasons for why it may be permissible for the state to risk the lives of their soldiers.

Chapter 2: The right to life and self-defence

War conflict with the foundational moral value of not taking lives (Bomann-Larsen, 2009, p. 62). At the centre of it all stands the soldier, both as war's legitimate human targets, as well as war's human instruments.

Much of just war literature is dedicated to when and on what grounds harming others is justifiable (Lazar, 2017b, p. 38). In civil society, harming others is almost never permissible. The exception is when you are forced to harm in self-defence. The role of the soldier comes with responsibilities and rights, which are different from those of the general citizen have. Unlike in civil society, the soldier is allowed to kill on a mandate from the state.

In the foregoing chapter, I relied on the assumption that both the individuals in the general population and the soldiers were morally equal. In this chapter, we will explore why this may not be the case.

Before delving into the discussion, I will first clarify some relevant topics. The first is to discuss how roles can change the responsibilities and rights of an individual. Secondly, I will explain some general ideas of self-defence, and when this is viewed as permissible. In the lion share of the chapter, I will explore the discussion between Michael Walzer and Jefferson McMahan, as it relates to the soldier's right to self-defence.

I look to self-defence because I believe it could help elucidate on what grounds it may be permissible to send soldiers to their deaths. This because our idea of self-defence is tightly connected to our ideas of the right to life. I will explore the arguments of philosophers Walzer and McMahan, and I intend to see if their positions hold any well-founded reason for affording soldiers' right to life less weight than civilians' right to life, given the soldier's role.

Because the preserve of this chapter is to explore the role-specific reasons why soldiers may have a lesser claim to the right not to be killed than civilians do, I will lean on an intuitionistic methodology, rather than a theoretical one.

The reason for this is because contractualism does not sufficiently provide me with any tools to understand the philosophers' reasonings. As you may recall from the previous

chapter, contractualists uphold positions which no one can reasonably reject (Pogge, 2001, p. 119). For contractualism to pass judgement on either Walzer's or McMahan's arguments, we must be able to identify something within those arguments that are reasonable to reject. In my view, this is hard to do, as both arguments are logically coherent, and nor apparently unreasonable. They are neither supported nor rebuked by a contractualist reading. Instead, it is the implications of their argumentation which is what I intend to explore. This exploration is best done through an intuitionistic reading.

2.1 The role of the soldier

'Role' is not an easily defined term, but in broad strokes, a role could be said to be a function one holds in a specific position. A role often entails a combination of explicit and implicit expectations and norms. In a moral perspective, what is interesting about a role, is its apparent ability to change the moral and ethical considerations of the individual which enters into it (Thompson, 2005, p. 41).

Although not all soldiers are deployed into combat or face harm in other respects, a condition of the role is the possibility that they might. In plain terms, a soldier may die on the job, and most of them are well aware of this fact. Perhaps more contentious is another aspect of the soldier's role, namely that they kill on a mandate from the state (Barrett, 2019, Chapter 2.2). These two aspects are closely connected in the just war literature (Lazar, 2017b, p. 37). It is often the threatening nature of the soldiers' role that is used to justify their liability of being killed (Walzer, 1977, p. 145).

2.1.1 Roles in general

In his *Ethics for Adversaries*, Harvard Professor Arthur Applbaum presents that roles generally carry prescriptions which are not dependent upon the personal attributes of the person inhabiting the role (Applbaum, 1999, p. 10). What this means is that a role entails certain attributes, regardless of who holds the role. He calls this role relative and personality neutral prescriptions.

Applbaum illustrates the connection between responsibility and morality by giving a rather lengthy account of an 18th-century Parisian executioner Charles-Henri Sanson. By my reading, Sanson should stand as an inspiration to bureaucrats across the board. However, this is beside the point.

Samson was royal executioner, and not only kept his head but also his job as French society changed from monarchy, through revolution, to the republic (Applbaum, 1999, p. 17).

Applbaum points out Sanson's professionalism. He is here referring to Sanson's commitment to the role of executioner, regardless of the changing face of the 'employer'. Contemporary society also accepted the role that Sanson inhabited as detached from his person. In simple terms, he was not regarded to be at fault for killing those he beheaded (Applbaum, 1999, p. 15). Sanson killed on a mandate from the state, much as soldiers do. In most respects, soldiers are themselves not held accountable for following their orders (Axinn, 1989, p. 3). The moral responsibility of the killings remains with the decisionmakers.

The Sanson anecdote works as an excellent allegory for the relationship between roles and morality. As Applbaum writes, different roles can allow for actions which otherwise would be outside of morality (Applbaum, 1999, p. 16). On the one hand, Sanson is not morally responsible for killing the ones he executes, as deciding these deaths is the prerogative of the state. By extension, he has the right *not to be* held accountable for his action, given the role he inhabits. It is his obligation to the profession which shields him from scrutiny.

On the other hand, it is Sanson's commitment to the role which also inhibits him from acting upon real held sympathies or moral beliefs. This is the trade-off of the role. With certain rights, usually follows certain restrictions. In the military profession, the obligation to obey their state may exclude a soldier from accountability for their actions. In the words of Shakespeare in his Henry V (Shakespeare, translation from 1735 (1599), p. 53 (act 3, scene 1)):

“[...] for we know enough, if we know we are the King's Subjects: If his Cause be wrong, our Obedience to the King wipes the Crime of it out of us.”

Although he himself disagrees, Applbaum writes that many argue that the demand for personal neutrality makes redundant the obligation to act morally (Applbaum, 1999, p. 10). Through this perspective, the role you inhabit may broaden what is considered permissible action. This is very apparent for our soldiers. While killing is not permitted in most civil societies, for soldiers, it is part of their role. They function as the states legitimate use of force.

However, with the soldier's role-dependent right to kill, follows the role-dependent expectation of being in life-threatening situations.

2.2 Self-defence

Self-defence is the idea that you have the right to harm or kill another if the other person poses a threat to your own right to life (Coons & Weber, 2016, p. 1)¹⁰. Central to the right to self-defence is the idea that you have the right to life. I, therefore, find it natural to start by explaining what this right to life is. Further, I would like to make a distinction between self-defence and self-preservation, as I believe it is relevant to the discussion ahead.

2.2.1 The right to life

In human rights theory, there is a strong principle that all people have the right to life (Bomann-Larsen, 2009, p. 63)¹¹.

The right to life is often considered a negative right, which means that that it is the right not to be killed, rather than a general right to live. Additionally, it is commonly viewed as a natural right, which means you do not have to prove yourself worthy of it (Bomann-Larsen, 2009, p. 64). We assume that any individual inherently has the right to life.

However, this does not necessarily make the right absolute. Certain actions could deprive you of it. This is relevant for our ideas on self-defence. The idea of self-defence is based on the understanding that one has a right to life, unless one attacks an innocent or a non-threatening person, in which case one forfeits that right (Rodin, 2002, p. 70). Another understanding is that your right to life is no longer prioritised if you choose to threaten someone else's. It becomes secondary to theirs, and you are therefore liable to be killed.

The right to self-defence relates to the right to life in two contradictory ways. It both strengthens the right to life, by establishing that one can go to great lengths to defend it. Conversely, it also makes clear that the right is not absolute and could be “lost” or “given up” by certain actions. In the foregoing chapter, we assumed that all individuals had an equal claim to this right, at the time of decision-making. This assumption may have been false. The

¹⁰ For a thorough and critical discussion on what makes self-defence moral, see the great work *War & Self-Defense*, by David Rodin (Rodin, 2002, p. 40).

¹¹ Juridically, the right to life is established in plenty conventions and treaties. Examples include the Universal Declaration of Human Rights, the European Convention on Human Rights and the International Covenant on Civil and Political Rights (Council of Europe, 1950, art. 2; UN General Assembly, 1966, art. 6.1; United Nations, 1948, art. 3).

role of the soldier is by many considered to be in stark contrast with the right to life (Fiala, 2018, Chapter 2.1). This also affects their rights to self-defence.

2.2.2 Self-defence and self-preservation

I would like to make a distinction between self-defence and self-preservation¹². The right to preserve oneself and the right of self-defence is often quite often muddled in the literature (Sreedhar, 2008, p. 785).

Self-defence is an element within a broader concept of self-preservation. Self-preservation includes the idea of self-defence while also entailing other aspects of preventing or reducing harm (Sreedhar, 2008, p. 785). Self-preservation could include anything from hiding or lying to avoid harm, to making sure you have enough food and water to survive. In that respect, self-preservation must be grounded in a *positive* right to life¹³. Self-defence, on the other hand, is the particular action of harming or killing others in order to preserve oneself, which must be based on your right not to be killed.

When discussing self-preservation, the literature often concerns itself with self-defence, as this is the more extreme realm (Coons & Weber, 2016, p. 2). I believe this is related to how self-defence has a dual relationship with the right to life. Establishing the relationship between self-defence and self-preservation is helpful when discussing soldiers and their rights within a combat-situation.

The enlightenment philosopher Thomas Hobbes is widely considered to be the most famous advocate for the right to self-defence (Hobbes, 1881, Chapter 14; Sreedhar, 2008, p. 782; Waldron, 2000, p. 715). Hobbes believed that the right to self-defence should apply to everyone, regardless of moral standing. That is, with one interesting exception, namely the soldier on the battlefield (Sreedhar, 2008, p. 792).

Hobbes was of the opinion that the soldier should have the right to defend themselves by killing when faced with an adversary. However, he did not believe that they should have the right to withdraw from their post, even if they were convinced that remaining there would result in certain death (Hobbes, 1881, Chapter 21; Sreedhar, 2008, p. 792). In our terms, you could say that Hobbes believed that soldiers should have the right to self-defence when faced

¹² The distinction I make may not be the way the terms are applied by everyone. Still, I do believe I have grounds for making the distinction the way I have.

¹³ Unlike self-defence, which is grounded in a negative right to life, meaning the right to not be killed.

with an adversary. However, he did not believe that the soldiers should have the right to self-preservation by leaving their post¹⁴.

2.2.3 Contemporary practice

You can easily argue that Hobbes' ideas are reflected in the contemporary ideas of the military. IHL¹⁵ calls for distinguishing between combatants and civilians. The only legitimate human targets are other combatants (Crawford & Pert, 2015, p. 42). Lazar points out that the basis for such a distinction is that there is something about a combatant which rank them second to non-combatants in terms of the right to life (Lazar, 2017a, Chapter 4.2).

We also see severe consequences for those who leave their post or disobeys orders. In many countries, you could be tried for desertion, and in some even for treason (Sari, 2008, p. 371). The American Manual for court Martials states that desertion during wartime, as of 2019, still could be punishable by death (MCM, 2019, Art. 85 d – 3). This very much reflects the idea that the soldier does not have the right to leave their post. There is a legal lack of right to self-preservation, which by extension is an infringement on a positive right to life, for the soldiers.

2.3 Michael Walzer and soldier's right to self-defence

Michael Walzer is professor emeritus in political philosophy, known for providing an essential contribution to the modern discourse on just war theory (Lazar, 2011, p. 8). His defining work, *Just and Unjust Wars – A Moral Argument with Historical Illustrations*, or simply *On War*, was the first to place individuals' rights at the centre of just war theory (Lazar, 2011, p. 8). More than forty years after his book's original publishing date, Walzer is still considered one of the world's most important political thinkers (Reiner, 2015, p. e22).

Through his work, Walzer has tried to synthesise principles that are widely held in war and justify them through political theory (Lazar, 2010, p. 180). As you recall, this is a defining feature of the traditionalist approach to just war theory. He is of the position that war is an inevitable evil and that the moral imperative is to make war as fair as possible, *given the circumstances* (Walzer, 1977). He provides a normative defence of the international

¹⁴ Hobbes argument is that it is necessary to do so in order to preserve the commonwealth, which in turn preserves the rights and liberties of the people, and that doing otherwise means that the commonwealth is in vain and that one otherwise is situated in a state of nature (Hobbes, 1881, chapter 21).

¹⁵ International humanitarian law, specifically the *Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977

conventions on war, or rather a normative defence of the international institutions that try to regulate war (Bomann-Larsen, 2007, p. 5).

2.3.1 Distinguishing between soldiers and civilians

A feature of Walzer's work is trying to justify why only combatants may intentionally be targeted. He does this by way of presenting a *principle of distinction*, which have since incited much criticism¹⁶. In short, the principle states that combatants are legitimate targets, while non-combatants or civilians are not (Kasher, 2007, p. 152).

Walzer believes that everybody starts with the right to life; however, this right can be lost. (Lazar, 2017a, Chapter 4.1). If the right to life is lost, the person who lost it is liable to be killed, which means that killing them does not infringe upon their right to life.

Soldiers have lost this "immunity" from being killed (Barry & Christie, 2017, Chapter 2.1). Walzer argues that because a soldier poses a threat to enemy soldiers, she is liable to be killed (Walzer, 1977, p. 142). By allowing "himself to be made into a dangerous man," the soldier has forfeited her right to life (Walzer, 1977, p. 145). However, this right is only forfeited in relation to other soldiers, thus making it a particular forfeiture (Bomann-Larsen, 2007, p. 47).

2.3.2 The moral equality of soldiers

It is through the *doctrine of the moral equality of soldiers*, that soldiers have been made liable to be killed. The doctrine is based on the idea that soldiers are both victims of the state, as well as responsible moral agents (Barry & Christie, 2017, Chapter 2.1).

They are innocent because their state has *made* them become "dangerous men" (Barry & Christie, 2017, Chapter 2.1). Two combating soldiers are both acting as instruments of their respective states. Walzer writes, "armed he is my enemy, but he is not *my* enemy in any specific sense". Neither soldier is at fault for fighting (Walzer, 1977, p. 36). As long as they fight according to the rules of war (*Jus in Bello*), neither is accountable for their actions (Barry & Christie, 2017, Chapter 2.1).

However, Walzer still regards them to have some moral responsibility. Because the soldier has traded in her immunity to *become* dangerous and liable to kill, she is herself liable to be

¹⁶ Some believe Walzer does not account for enough nuances of what it entails to be a soldier, and what it entails to be a civilian (Deakin, 2014, p. 326). By which I mean that he places them in two rather large categories of combatant and non-combatant, not recognising their individual responsibility.

attacked (Barry & Christie, 2017, Chapter 2.1; Walzer, 1977, p. 145). The soldier is responsible, and therefore not innocent like civilians are.

2.3.3 Walzer's seemingly paradoxical logic

Walzer writes that soldiers have *allowed* themselves to become 'dangerous men' (Walzer, 1977, p. 145). You may be thinking that the soldiers had *allowed* themselves to become 'dangerous men', sounds like an autonomous action, while the state has *made* the soldiers become 'dangerous men', does not. I agree; I find Walzer's twofold reasoning paradoxical.

How does Walzer bridge this gap? He believes that there is some voluntarism in serving in the armed forces, which may very well be the case. Walzer may believe that the only legitimate soldier is one that has freely volunteered to the profession, in which case I am inclined to agree with the idea that the soldier *allowed* herself to become a 'dangerous man'.

However, voluntary conscription is not necessarily what Walzer is referring to. In his book, he writes "[...] and **though his options may have been few**, it is nevertheless accurate to say that he has allowed himself to be made into a dangerous man" (Walzer, 1977, p. 145).

My question is then, how few can these options be, while still claiming the soldier has made a choice? It is generally recognised that decisions made with a gun to your head are not considered choices at all. Has the soldier, for instance, *made* herself dangerous by partaking in forced conscription, instead of going to prison? Personally, I would like to see Walzer discuss in more detail what a *few options* may entail if he is to use it to argue for how the soldier has made an active choice to become dangerous.

The fact that you *are* 'a dangerous man' may be a good argument for treating you differently than someone who is not dangerous. However, Walzer seemingly argues that the fact that you *made* yourself dangerous is the justification for making you liable to be attacked in a way that civilians are not. While Walzer uses the qualifier *allowed*, which I read as not having to be an active choice, I would still like to see more reflection regarding what passive choices are legitimate, and which passive choices are force or duress.

Let us picture an example of a person faced with the option of joining the military, knowing this will entail a risk to her life, and the option of going to prison. I, for one, do not regard this as an actual choice, in an active or a passive sense. You have not *allowed* yourself to become a soldier, just because going to prison may be better for the length of your lifespan, than becoming a soldier could be. Going to prison is severe punishment and not a choice. Even a

substantial fine could be problematic, to my mind, because it places you in a situation of having to choose between ‘two evils’. Perhaps a lesser form of punishment, such as community service for a finite length of time, could be regarded as a choice, given that it would not be too invasive.

My point is that Walzer’s view on conscription may be a bit oversimplistic, or in any regard underexplained. Lazar believes that Walzer draws plausible conclusions from implausible premises (Lazar, 2017b, p. 47). In this specific instance, I find Lazar’s statement very resonant.

2.3.4 Soldier’s right to self-defence

Walzer is very clear that soldiers are instruments of their state. He says that although modern warfare tends to make combatting soldiers hate each other, they should not. War is not a relation between persons, but rather between states and their human instruments (Walzer, 1977, p. 36). However, it is important to note that by instrument, Walzer means that soldiers are the ‘tools’ which states use to execute war through and are therefore not responsible for the war itself.

Walzer believes that soldiers are liable to be killed because they have been made (and/or made themselves) ‘dangerous men’, and therefore pose a threat to other ‘dangerous men’. The way I read Walzer is that he believes that all combatting soldiers have lost their inherent right not to be killed, when in their role.

Self-defence is based on the idea that you can permissibly kill someone, because they made themselves liable to be killed, by infringing on your right to life. However, both soldiers are liable to be killed, and therefore seemingly no one has infringed on their right to life, more than a victim infringes on a killer’s right to life when acting in self-defence.

Picture two similar, but fundamentally different scenarios: In the first, a soldier’s life is being threatened by an adversary soldier. Both know that the only way to survive is to kill the other person. In the second scenario, an innocent man is faced with a threatening person who wants to kill him. The threatening person realises the innocent man is on to her plan of killing him. She knows that not to be killed in his self-defence, she has to follow through on her plan. The first soldier kills the second in self-defence, in scenario one, and the innocent man kills the threatening woman in self-defence, in scenario two. Both would by our standards of self-defence be permissible.

Although they are both permissible, you cannot transfer the arguments for why it is a permissible action of the innocent man entirely over to action of the soldier in scenario one. Unlike the innocent victim, the soldier does not retain her inherent right not to be killed. The soldiers meet as equals, both allowed to kill because they are both as liable to being killed. You may still have the right to self-defence, but not because your life is any more ‘worthy’ of defence than the opponent soldier is.

To summarise, a soldier may have the same right to practice self-defence in combat, as a civilian does in a threatening situation. However, the civilian has a stronger claim to act in defence of his life. The reason for this is because not only has the civilian’s aggressor made herself liable to be killed in effect of being threatening; the civilian has a right to life which is stronger than the aggressor’s right to life. The civilians, therefore, have a twofold reason for self-defence.

The soldier, on the other hand, does not have a more substantial right to life than her combatting soldier because they are both liable to be killed. Her only claim to self-defence is that the other party is threatening her as much as she is threatening them.

A third scenario could be imagined, is one where a civilian is threatening a soldier. It is hard to read what Walzer’s position would be but let us do some musings around the permissibility regardless. Let us picture a civilian who launches at a soldier, with an axe, for whatever reason. Could a soldier kill the civilian to hinder her from her murder-attempt?

As mentioned an earlier the sub-chapter, the Norwegian Scholar Lene Bomann-Larsen believes that soldier’s forfeiture is particular in that it only applies in relation to other soldiers (Bomann-Larsen, 2007, p. 47). In which case a soldier is not more liable to be killed by a civilian than a civilian is to be killed by them. I think Walzer could be inclined to agree. Walzer has an example of a German without pants¹⁷. He describes how a British platoon would avoid shooting a German soldier, as he was of no threat to them, being a pantsless and silly man. Walzer very much agreed with their position that they shoot ‘enemies, not men’(Bomann-Larsen, 2007, p. 80; Walzer, 1977, p. 139).

However, it would not be hard to understand if the civilian in our scenario beliefs that it is *her* life which is being threatened by the presence of the soldier. Perhaps military forces have

¹⁷ I am assuming ‘pants’ is referring to the American sense of the word, as Walzer is American, but I cannot be certain.

recently burned down her town, with no regard for the people living there. Why would she assume they would spare her?

This is a convoluted dilemma, and Walzer's exact position would be hard to grasp. That being said, I believe I have some backing when I am assuming that a soldier acting 'soldierly' toward a civilian would be treated as someone liable to be killed. A soldier acting 'civil' or 'like a man, rather than an enemy' towards a civilian should not be treated as more liable to be killed than any other civilian.

2.3.5 Soldier's right to self-preservation

Let us move on to explore Walzer's position on the soldier's right to act in self-defence.

First off, Walzer is quite unyielding in his position that soldiers cannot enhance their own security at the expense of the innocents (Walzer, 1977, p. 305). In his book *On War*, Walzer writes that "soldiers stand to civilians like the crew of a liner to its passengers" (Walzer, 1977, p. 306).

The way I read this, the soldiers still have the general right to self-preservation, but only after having ensured it does not infringe on the preservation of the civilians. The captain of the liner should be the last one in the lifeboat, so to speak. The civilian's self-preservation has precedence, which by extension means that the soldier's right to self-preservation is lower than the general right.

When faced with a situation that would either preserve the life of the soldier or preserve the life of the civilian, I believe Walzer would argue that the soldier should choose the latter. The soldier should risk her life if doing otherwise would risk the life of a civilian.

There are two implications from Walzer's reasoning that are related, but distinct. I find both of these to be problematic. The first is the arbitrariness in that he could accept that a soldier who has been forced to become a soldier, has a weaker claim to life than a given civilian who happened not to be forced. The second is that his reasoning signals that your liability to being killed as a soldier, is not reliant upon you actually being dangerous.

2.3.5.1 *The problem of arbitrariness*

The first implication is that you could favour the 'lucky' civilian over the 'unfortunate' soldier. Having *few options* when becoming a soldier, may be indicative of the groups being arbitrary.

A given soldier may have first been forced by her state to become a person who is liable to be killed in combat, for then having this forced liability be the reason why her *positive right* to preserve herself is infringed upon. This because the life of a civilian, has precedence over a soldier's life, simply because she *happened* not to be made a soldier by the state, and therefore is not liable to be killed.

I think Walzer's argumentation could have been sound if it only applied to soldiers who had voluntarily entered the role, or through some other reason were made liable to become a soldier. However, he applies the same reasoning to soldiers who may have entered the role under duress or pressure, without really defending why this is reasonable, to begin with.

This arbitrary preference for the civilian seems intuitively problematic when it is not backed up by a well-founded reason for why the soldier should be *made* dangerous by the state, in the first place.

Perhaps Walzer believes that the terror of war itself justifies stripping people of their rights and forcefully turn them into 'dangerous men'. This may very well be the case, but I believe that this kind of justification undermines the idea of distinguishing between combatants and civilian's in the first place, and therefore also undermines his *principle of distinction*.

2.3.5.2 *The problem of non-threatening soldiers*

The second implication is that the soldiers right to life is not contingent upon whether or not they are 'dangerous men'.

The way I read Walzer's ship-analogy, is that soldiers do not have the same right of self-preservation because their right to life is *generally* lesser. They do not have a negative right to life, in that they are liable to be killed. This affects their positive right to life; in that, they are secondary to the civilians.

This is all fine and well, but what is the reasoning behind the soldier's right to life being lesser? In combat with other soldiers, both combatants are liable to be killed because they are made *dangerous*. They may not pose a threat to each other every waking hour, but they do still pose a general threat. This is because both combatants are themselves an instrument of their state, and the adversary combatant is the legitimate human target of their state.

The civilians in our case are not presented as being threatened by the soldiers. It must mean that the soldiers' weaker claim of saving their lives are not grounded in the fact that the soldiers pose a threat. Unlike with the scenario of the combatting soldiers, it is not what their

role entails of consequence for the other party which decides their right to life, but rather the fact that they are in the role. Simply put, being a soldier is seemingly reason enough not to have an absolute right to self-preservation, the way civilians have.

We can add to Bomann-Larsen proviso of soldiers having forfeited their right to life, in regards to other soldiers (Bomann-Larsen, 2007, p. 47). My assessment of Walzer is that he agrees with Bomann-Larsen that soldiers have forfeited their negative right to life, in regards to other soldiers. However, soldiers have also forfeited their positive right to life, in regards to civilians, in the sense that soldiers cannot preserve their own life if this conflicts with preserving the life of a civilian.

The problem here is that the soldier is not posing a threat to other civilians but is still placed her second to them in term of the claim to life. This could all be fine and well if we assume that the soldier actively chose to enter her role. However, the soldier, in our example did not.

If a state made regular people liable to be killed, as soldiers are, it would be highly problematic because it would infringe on the civilian's inherent right to life. However, Walzer could reason that this infringement is permissible for soldiers, simply because these types of people *are soldiers*. Without accounting for why the state could make these people soldiers, to begin with.

Making someone into a human instrument and a human target of war means infringing on their general right to life. This entails both the positive right to preserve oneself, as well as the negative right not to be killed. This idea may be very permissible, but I think Walzer needs to better argue for why someone is liable to be placed in this situation in the first place.

2.4 Jefferson McMahan and soldier's responsibility

Jefferson McMahan is currently working as a professor of moral philosophy at Oxford University and is a prominent figure within contemporary just war theory. He is what Lazar considers to be a moral revisionist. This means that McMahan does not necessarily want to up-end the laws of war; however, he does reject the idea that you can morally defend them (Lazar, 2017b, p. 39).

Throughout his career, McMahan has been a vocal critic of Michael Walzer (Lazar, 2011, p. 8). His perhaps most anticipated work *Killing in War* bolsters McMahan's critique of the

traditionalist school (Lazar, 2011, p. 8). McMahan is one of many of his peers who are concerned with how Walzer's work fails to make his real-life examples apply to a more general theory (Lazar, 2017b, p. 37). Walzer replied to this criticism, insinuating that McMahan may be too reliant on theory, as the realities of war are too gruesome to allow for the attention we would *like* to pay to any individual morality (Walzer, 2006, p. 43)¹⁸.

However, the perhaps most distinct divide between Walzer and McMahan is their view on the relationship between Jus in Bello and Jus ad Bellum (McMahan, 2006, p. 693). Walzer believes we should differentiate between the Jus ad Bellum and the Jus in Bello of the war (Walzer, 1977, p. 38). It means that the legality of the war should not be muddled with the conduct of the war. This is because soldiers can only be held accountable for their conduct within the war, and not the legality of the war in and of itself.

McMahan disagrees. He believes that we should not write of soldier's culpability in partaking in an unjust war (McMahan, 2009, p. 38). His criticism is especially directed toward the moral equality of soldiers (Lazar, 2010, p. 181).

To understand what kind of responsibility McMahan places on his soldier, we must first understand the relationship between Jus in Bello and Jus ad Bellum.

2.4.1 Jus in Bello and Jus ad Bellum

One of the central discussions in just war theory is whether or not the morality of actions done within a war is contingent upon the morality of the war itself. What this means is whether a war waged on illegitimate or legitimate grounds necessarily make any action done within the war illegitimate or legitimate¹⁹. The debate is really about whether these are inherently linked or not.

If you recall, the term Jus in Bello means the 'just' way of acting within a war, while Jus ad Bellum means the 'just' grounds of going to war (Johnson, 2017). As explained in the literature review of the thesis, Jus in Bello and Jus ad Bellum are terms used for both legal as well as ethical concepts (Lazar, 2017b, p. 37).

¹⁸ This discussion draw parallels to discussions on ideal and non-ideal theory, which Laura Valentini gives a great map of (Valentini, 2012, p. 658).

¹⁹ Whatever illegitimate or legitimate may mean.

The traditionalists in just war theory seek to provide moral foundations for international law²⁰ (Lazar, 2017b, p. 38). Revisionist rejects this notion. They may not be opposed to having a framework of international law. Still, they argue that morally defending international law requires too many concessions on what morality is (Lazar, 2017b, p. 38).

In international law, the laws based on Jus in Bello are expressly stated to be separated from the principles of Jus ad Bellum (Crawford & Pert, 2015, p. 31). The idea was that failure to observe the principles of Jus ad Bellum shouldn't mean failure to observe any rules in conducting war. Nevertheless, this may be a pragmatic consideration, as much as a normative one.

2.4.2 The culpable soldier²¹

McMahan believes that the idea that all combatants are legitimate targets, while no civilians are, is not based on any coherent moral idea (McMahan, 2009, p. 1). This idea is contrary to the traditionalist view Walzer holds.

McMahan's statement targets both Walzer's idea of *the moral equality of combatants* and his *the principle of distinction* (McMahan, 2009, p. 6).

McMahan rejects the *moral equality of combatants*. According to the principle, the permissibility to kill in battle is not affected by the justness of the cause the soldiers are killing for (McMahan, 2009, p. 4). McMahan believes that it is morally wrong of a soldier to fight in an unjust war (McMahan, 2009, p. 6)²². He, therefore, finds that we should distinguish between just and unjust combatants. He believes that they have different moral statuses (McMahan, 2009, p. 6).

McMahan believes that the traditionalist idea that because soldiers pose a threat to one another, they are liable to be killed, is misguided (McMahan, 2009, p. 11). His argumentation is rather compelling. McMahan argues that many people who are not combatants pose a more significant threat in war than soldiers. He exemplifies with how some elderly professor working for the Manhattan Project posed more danger to most Japanese people than what

²⁰ In law, Jus ad Bellum is reflected in the UN charter, while Jus in Bello is reflected in what is termed international humanitarian law and the laws and customs of armed conflict (International Committee of the Red Cross, 2015).

²¹ McMahan uses the terms culpable and responsible to mean to distinct things. Responsible is responsible, and culpable means being to blame. I like to picture a parent having to pay damages for their child's vandalism. The parents are responsible, but the child is culpable.

²² Unjust war is not clearly defined, but generally it is a war where (1) the aim should not be perused through war, or (2) where a war is waged against someone who have not acted in a way that has made them liable to be attacked (McMahan, 2009, p. 5).

most American soldiers did (McMahan, 2009, p. 12). It is therefore not the role you inhabit, but rather the permissibility of your aim, that defines the permissibility of the action itself (McMahan, 2009, p. 12).

McMahan writes that merely relying on the threat someone poses to justify why someone is liable to be killed, is unreasonable. He draws a parallel to a police officer killing a serial killer given that this is the only way to stop the killer's killing spree. The officer technically threatens the serial killer; however, she is not liable to be killed. The reason for this is because her aim is justified, while his aim is not. The police officers' killing of the serial killer is justified because she aims to hinder him from killing others (McMahan, 2009, p. 14).

2.4.3 The right to self-defence

The McMahanian view is that whether or not it is permissible to act in self-defence is contingent upon *the moral responsibility* you have for the threat (McMahan, 2009, p. 155).

As I argued in the foregoing section, the right to self-defence and self-preservation is limited for Walzer's soldiers. This limitation applies both with respect to other soldiers, as neither has a more substantial right *not to be killed*²³. Additionally, it applies in relation to civilians, where soldiers should give their right to life precedence²⁴. This weakened right to self-defence is grounded in the *soldier's moral responsibility* for having *allowed* themselves to become 'dangerous men', but do not have anything to do with the permissibility of the war itself. In short, soldiers are not responsible for whether the war in and of itself is just.

McMahan believes that the justness of killing in war should be the same as for killing in other contexts (McMahan, 2009, p. 156). Justification must be grounded in the victims' liability of being killed or in case killing them would produce the least amount of wrong (McMahan, 2009, p. 156). Self-defence is based on the idea that the attacker is liable to be killed because she has acted in a way that makes her *morally* liable to be killed. So far, McMahan's argument is relatively similar to the Walzer argument.

2.4.4 Soldiers and self-defence

McMahan, however, believes that different types of soldiers have differing rights to self-defence. Unlike Walzer, McMahan believes that a soldier's right to self-defence from a threat is contingent upon the other soldier's moral responsibility for the threat, as well as for the

²³ Argues for through the doctrine of the moral equality of combatants

²⁴ Argues for through the doctrine of distinction

permissibility of the threat itself. In plain terms, this means that the soldier's morality is contingent upon the morality of the war they fight.

In a 'Cannon Fodder' scenario, we can argue that the invading forces are posing an illegitimate threat by invading, while the soldiers within the state being invaded are posing a legitimate threat by retaliating. McMahan would seemingly grant these soldiers different rights.

A soldier posing a threat is not enough to act in a defensive action against her, as you may deduce from the example of the serial killer and police officer. Her threat must be *unjustified*, and she must be morally responsible for posing this threat²⁵, in order for the victim to be able to act in self-defence morally.

If the invading forces are the ones with an unjustified threat, and the invaded forces have a justified aim in trying to push back against the invaders, seemingly McMahan would argue that only the invaders are liable for an attack. This means that our invaded forces could retain all their rights to self-defence. They have not made themselves liable to attack, to begin with.

McMahan believes that practically all unjust combatants are liable to be killed in someone else's self-defence (McMahan, 2009, p. 183). However, the permissibility of this depends upon the degree of culpability the unjust soldier has of said action (McMahan, 2009, p. 183).

2.4.5 Unjust combatants

McMahan goes even further, by saying that while the perpetrator of the threat has to be *morally responsible for posing it*, they do not have to pose it *themselves* (McMahan, 2009, p. 157). I read this to mean that you could kill the scientists working on the Manhattan project, in morally justifiable self-defence. They may not be the ones flying the bombs over Hiroshima, but they indeed have some moral responsibility.

The more culpable the unjust soldier is, the less proportional the defensive action toward them could be. Here, proportionality refers to balancing the harm to the loss of the threat. This means that the defensive action should not be more severe than the harm the offensive action cause²⁶ (Rodin, 2002, p. 42).

²⁵ Implied here is that the person must be of sound mind.

²⁶ For instance, if someone threatens to break your finger, shooting them in the head would be considered an unproportioned response to their offensive action.

While killing a soldier which pose a very *culpable threat* could be excused by a weak degree of proportionality, killing a soldier posing an *innocent threat*²⁷, for instance, relies on a much stricter application of the principle of proportionality (McMahan, 2009, p. 176).

McMahan writes that duress can resolve a soldier of *all culpability*, but does not resolve her of *all responsibility* (McMahan, 2009, p. 183). He argues that she *allowed* herself to be conscripted, knowing that this meant that she might be forced to fight an unjust war (McMahan, 2009, p. 184). The point he is making is that even without being culpable, the soldier is still liable to be met with defensive action because she is still *responsible*. As I stated earlier in this chapter, I do not regard decisions made under duress to pass for indirect decision-making generally. To summarise McMahan's position, he may not believe that an innocent threat should be perceived as being the one to blame for the action, but she still has to take responsibility for being a participant of the action.

2.4.6 My problem with McMahan

I have a big problem with the implications of McMahan's reasoning. The problem is how responsible the soldiers are for the actions of their state.

Firstly, I would like to note that I appreciate McMahan's attempt at nuance soldiers' culpability, as well as the fact that he recognises that not all responsible actors are the soldiers, or instruments, executing the action. He would have us recognise who our 'dangerous men' are, unlike Walzer, who has confined this term to be within the role of the soldier.

That being said, McMahan places responsibility on the shoulders of soldiers that are actions that are way out of their control. This is a rather extreme position; he does not share with Walzer. McMahan places responsibility for executing the war itself, on the soldiers following command. He argues for why this placement is permissible through claiming they have allowed themselves to partake in an impermissible war.

First off, this could easily be a case of forced conscription as McMahan clearly states that being conscripted under duress still makes someone responsible, albeit less culpable. As I have argued in the chapter on Walzer, I find this very impermissible; given that the morality of the soldier is based on an action, she had such little say in.

²⁷ Threats that are epistemically justified, but wrong. Such as killing the twin of a dangerous serial killer, because you believe he is the serial killer (McMahan, 2009, p. 164).

Additionally, even if our soldier willingly conscripted, I find it unreasonable to expect a soldier to understand that she may be forced to fight an unjust war by joining the military. I think it places too high expectations of people's epistemic abilities.

Suppose a person is forced into the military. She is then made to fight in a war, which she, to the best of her abilities, believes is justified. In that case, I do not see what makes her morally different from a person who voluntarily conscripts herself, and who happens to fight for a government who decided to wage a justified war. If both soldiers pose a threat to each other's lives, I do not see the logic in the justified killing of the first soldier in self-defence, but not the second. Rather I do not see the logic in one being more justified, in killing the other because she happened to be lucky enough not to be fighting an unjustified war. I believe McMahan goes too far in making the victims of the culpable actors responsible for their victimhood.

It is first when we assume the soldier fighting the unjustified war is very well aware of this fact and has voluntarily joined the army anyway, that I could accept there to be responsibility placed on them, which changes their moral status from something outside the general soldier. I do like the idea of there being soldiers who should retain their rights, despite being threatening, because they are so justifiable. However, I believe it is misguided, in that it makes soldiers morally unequal based on irrelevant factors such as luck.

Regardless of the type of responsible soldier you are, I believe that McMahan is treating soldiers less like instruments of the state, than Walzer, and more like part of a symbiosis with the state. As if the soldiers are the arms and legs of the state. Instruments cannot be held morally responsible for the actions of their user, but if you are an extension of the state you might.

2.5 Conclusion

In this chapter, I have aimed to explore the role-specific reasons for why it may be permissible for the state to place their soldiers in harm's way. I started out defining what a role is, and to discuss some general ideas on self-defence and self-preservation. This, because self-defence and self-preservation relate to our right to life. The role of the soldier entails a risk to this right, and therefore exploring the soldiers' right to life could help elucidate when it would be permissible to place soldiers in harm's way.

Both Walzer and McMahan have a unique perspective on the relationship between the state and soldier's right to self-defence and self-preservation. Walzer argues all soldiers have lesser claims to self-preservation than what all civilians have. He reasons this by the fact that the role makes soldiers dangerous. However, I have argued that soldiers lesser claim to the right to life, is still present even when soldiers are not dangerous. The claim to the right to life is therefore not lesser because of their actions, but rather simply because the soldier is a soldier, and lesser right to life is part of the role.

The problem here is that if it is the role, which makes soldiers liable to be placed in harm's way. If the state wanted to justify placing someone in harm's way, they could not justify making someone a soldier by referring to the fact that they are a soldier, and soldiers are liable to be placed in harm's way. This would be an unreasonable tautology. Given that the justification lies in the role and not in anything outside it, how is the state justified in making people into soldiers?

McMahan shares Walzer's blind spot, in that they avoid justifying why someone could be made a soldier in the first place. McMahan, on his part, believes that the responsibility of an unjustified action is what makes people liable to be placed in harm's way. In this respect, he is more nuanced than Walzer, in that he believes that soldiers and civilians alike can have a differing moral responsibility of unjust actions. However, McMahan's problem is placing the responsibility of actions made out of the soldier's control on the soldier's shoulders.

For McMahan, it is the justification of your actions that makes you liable to be placed in harm's way. However, you do not have to be culpable in order to be responsible enough to be liable to be placed in harm's way. This means that the soldiers are responsible for the actions of their state. The state cannot justify placing soldiers in harm's way by pointing to the soldier's responsibility for the actions of the state, which they have yet to commit.

I agree with McMahan that the justification of the war is more relevant than what Walzer makes it out to be. But while Walzer absolves all soldiers of the justness of the War, I think McMahan is too heavy-handed in his distribution of responsibility. Both are extremes at either end of a spectrum. One categorically absolves civilians of taking the blow of war, and the other categorically absolves those who happen to fight a justified war.

The general problem is still that neither give any reasonable account for which grounds people should be made soldiers in the first place. This, however, is something I will explore more thoroughly in the following chapter.

Chapter 3: A permissible approach to risking a soldier's life

When exploring morality in the just war tradition, scholars have historically been concerned with either the rights between the combatting parties or the relationship between combatant and civilian. However, the moral relationship between soldiers and their own state has mostly been excluded from the general discussion (Dobos, 2019, p. 257). In the foregoing chapters, we found that neither common good nor any particularities about the role is sufficient to argue for why soldiers may be made soldiers in the first place. In this chapter, I want to explore if there are any permissible way the state can make someone a soldier, given that the role of the soldier entails a risk to the soldier's life.

To achieve this, I should first establish what I mean by exploring the limits of the state. I want to look at how demanding the state can be when these demands conflict with the soldier's personal rights. In its essence, the military institution is not compatible with extensive personal rights (Fiala, 2018, Chapter 2.1). Perhaps the most unique aspect of being a soldier is that the role entails a risk to your own life, an aspect which is uncommon in most other roles. As I explored in part two, a fundamental moral assumption is that all people have an inherent right to life. Because of this, I find it most pertinent to explore how the state may infringe on this particular right, by placing soldiers in dangerous and harmful situations.

To do this, I will first look at which rights a soldier generally has. Firstly, I will present some thoughts on what the role of the soldier is, before discussing whether there is any way of retaining the right to life within the role. I find that the best way to go about this is if the soldiers decide to waiver this right. I then go on to see whether this should be permissible in general. I conclude that I find waiving your right to life to be permissible, but that this is contingent upon two qualifications. After that, I use these two qualifications to explore some cases where the state risks the lives of their soldiers. Finally, I conclude with where I believe the moral limits on when and why a state could risk their soldiers' lives should be.

This is not to say I will rely on a traditionalist perspective. Instead, by exploring the limits, I want to affirm at which point the military profession could be moral, and from which point it relies on other values to underscore its importance. If anything, I believe that my approach

could be viewed as revisionist, and non-institutionalist, in that it seeks to point out where the moral foundations are lacking without necessarily discarding the institution on those grounds (Lazar, 2017b, p. 38).

Although I recognise that my arguments may be placed within this theoretical tradition, is not to say that I approach the chapter from a theoretical basis. Contractualism accepts actions as long as they are not unreasonable, regardless of the implications (Pogge, 2001, p. 119). Such as with the foregoing chapter, contractualism does not sufficiently contribute to the exploration of permissibility in these cases, and I therefore mainly rely on an intuitionistic approach.

3.1 The soldier and the state

We assume that there are moral limits on the state, in terms of what they could use their soldiers for. On the one hand, they can be placed in situations of imminent danger, and are expected to act in accordance with a command, even when this goes against their own desires or even needs. On the other hand, they are initially ordinary individuals, with all the rights and privileges this entail.

Is there a point where a soldier stops being a person with individual rights and becomes a ‘warrior’ with responsibilities and rights divergent from other people? As you may recall from the foregoing chapter, I believe that neither Walzer nor McMahan gives a good account of why it would be permissible to make someone a soldier in the first place. Because the role of soldier entails the possibility of being put in harm’s way, we need to look at when and why it would be permissible to place ordinary people in a role, where risking your life is part of that role.

The perspective of scholars and military professionals alike, throughout the twentieth century, was that of soldiers likened to the clergy or viewed them as mere instruments of the state (Dobos, 2019, p. 249). The former view is that of soldiers as something intrinsically different than other professions.

Ned Dobos, of the University of New South Wales, argues that working as a soldier is more similar to traditional jobs than former scholars have assumed (Dobos, 2019, p. 257). He explores the idea of an “occupational” shift of the military, where rights echo those of the regular labour force (Dobos, 2019, p. 253). He argues that the modern view is starting to shift

towards viewing the military as a workforce with traditional labour rights (Dobos, 2019, p. 253).

Viewing soldiers as mere instruments is indicative of having stripped them of their rights in a general and invasive sense. The purpose of instruments is to be used to achieve a higher goal. Concern for the instruments is mainly considered in terms of their value as instruments, not any intrinsic value, as I argued in the former chapter. However, a complete instrumentalisation does not reflect the contemporary understanding of soldiers.

Throughout the twentieth and twenty-first century, there has been an increased focus on the rights of individuals. We see this reflected in many aspects of society, such as international treaties on human rights or national fights for civil rights, which emerged in the wake of world war two. The modern moral perspective points in the direction that individuals inherently have certain rights. Being instruments of the state does not go on accord with the right to life.

The professor of military ethics, Martin Cook, presents the idea of an implicit moral contract in the military, between soldier and state (Cook, 2004, p. 123; Dobos, 2019, p. 254). Soldiers run a high risk of harm and have to engage in actions they may not be comfortable with. Risk is allowed because it is based on the implicit promise that the soldiers' actions are grounded in the good-faith judgements of the state.

You could argue that any decision made in a well-functioning democratic state is inherently moral. Decisions made in a democratic state could be viewed as unassailable, given that they came about through democratic, fair processes. This, because the democratic system protects fundamental political rights. Overriding these decisions could be very problematic if we are to value the individual rights of the people.

If conscription is the will of the people, and anyone who disagrees with the resolution had ample opportunity to influence the final decision, then, what is the problem? There are very compelling arguments for why a state may require a military. You do not even have to endorse the institution as a whole to agree that there is a benefit in the deterrence it provides. Simply put, it is a way of ensuring that the rights and liberties of the inhabitants of the state are being met.

However, having a military does imply that servicewomen and -men could be put in harm's way. The argument is that this should be permissible because the soldiers of the state, along

with all other adults, have the political right to affect the outcome of the state's decision-making. Some people believe that taxes are an infringement on their rights, but most accept taxes as unproblematic regardless, given that they have been decided through a democratic process. Why would soldier's right to not be put in harm's way be any different?

My position is this: A decision that imposes you to risk your life is a very special kind of decision. The decision may be upheld through political rights, but it imposes on a right, which I believe to be more fundamental than political rights, namely the right to life. Taxes, on the other hand, may impose on your property rights, but I do not find these to be inherently more fundamental than political rights. Taxes do not restrict your life; the way being sent into war does.

Suppose the ethical basis of democracy is that it upholds political rights, but that these political rights can impose on humans' right to life. In that case, we are valuing political rights higher than the right to life. I do not think this is the moral way to go about things. However, I do believe there is a way of ensuring valuing human rights above political ones and still having an army. That is if some people within the democratic state voluntarily waive their right to life.

3.2 Waiving your right to life

We can assume that some people willingly want to risk their lives for the benefit of their fellow citizens.

To start, I would like to discuss an overlaying principle. This principle is whether or not we should have the right, or rather the freedom to waiver our rights. Principally it seems immoral to breach someone's freedom. However, if they waive away this freedom or contract it away, infringing on their waived right, could go on accord with morality. Even sending soldiers into their deaths could be morally justifiable if they have waived their right to life.

I do not believe that there are compelling reasons for indiscriminately waiving all rights. However, I do believe waiving some rights, given the right circumstances can be warranted. This can even include the right to life, which will be the focus of this subsection.

3.2.1 What the right to life is not

First, I want to clarify a distinction between the right to life and a duty to live. I do not believe anyone has a general duty to live, although I do believe that everyone has an inherent right to life. When talking about a *duty to live*, we often speak in relational terms, not an intrinsic duty. If we could speak of a *duty to live*, often this would be a duty towards your loved ones or those in your care.

However, *not practising* your right to life is not the same as *waiving* your right to life. For instance, committing or attempting suicide is not waiving your right to life. To illustrate, it would not be more permissible to kill someone who recently attempted suicide. Their right to life is intact even if they themselves did not practice this right. I make this distinction to underscore a point about waiving rights. Waiving should be an active rather than a passive act.

I believe that you must *waiver your right to life*, to some degree, for the other party not to *breach this right to life*²⁸. This sub-chapter looks at individual rights. An assumption when placing individual rights above all else, is that it is inherently immoral to breach the rights of individuals. If we assume this to be true, the only moral way for the state to go against a soldier's right to life is if the soldier has waived her right so that she can fight for the state.

3.2.2 The case for waiving rights

A natural question to pose is on which grounds it should be permissible to waiver rights? I will shortly present a real-life case, which I believe could help elucidate this. This case is one where I intuitively believe that waiving your right to life, as a sacrifice to somebody else, seems permissible. By exploring my intuition as to why I believe this to be the case, I have established two qualifications for when you could permissibly waive your right to life. These two are *sufficient information* and a *valuable outcome*.

I was first made aware of the Daniel-Patterson case in the Michael Sandel book *Justice – What's the right thing to do* (Sandel, 2009, p. 72). In the 1990s, a case of medical ethics came up before the Stanford University Bioethics Committee (Nieves, 1998). It dealt with the fate of thirteen-year-old Renada Daniel-Patterson and her father, David Patterson. Renada was born with a single, unhealthy kidney. Upon realising he was a donor match for his child, her estranged father David donated one of his kidneys to her. After two years, Renada's body

²⁸ You may be wondering about self-defence. I believe that self-defence is not based on the other party having waived their right to life, but rather forfeited it, by infringing on your right to life.

started to reject the kidney. Her father then wanted to donate his second (and final) kidney. The bioethics committee denied this claim, after much deliberation.

For argument's sake, we can assume that giving up the last kidney would result in the death of David, but the fulfilled life of Renada. We can also assume that not receiving the kidney would result in the death of Renada, but the continued life of David. This *stylised* version is to help elucidate the conditions which I believe should be in place to make a sacrifice of this kind permissible.

In reality, it is possible to live on dialysis, but this often entails pain and the increased risk of early death. Additionally, an argument by the bioethics committee is the first kidney failed, giving a good indication that the second might do the same (Nieves, 1998). For our illustrations' sake, we will ignore these aspects.

I have a strong intuition that it should be permissible to waive your right to live in the *stylised* Daniel-Patterson case. I believe it would have to be contingent upon the following qualifications; sufficient information and valuable outcome.

1. Sufficient information

What I mean by this is that the person waiving their rights should have enough information and understanding about the outcome and effect of the waiver. Information and understanding also imply that they should have the mental faculties in place to understand an invasive decision. It also should include the absence of duress.

2. Valuable outcome

Secondly, I believe that there should be some degree of value to the outcome. Value is an elusive term, and without dwelling too long on the many understandings of value, I believe it has to go beyond a personal understanding (Crisp, 2001, Chapter 4.3). I will delve into the details of this in the sub-chapter following the next one.

I believe that what makes the Daniel-Patterson case compelling is the way it fulfils these two qualifications. It is easy to imagine a parent valuing the life of their child higher than that of their own. The value could be personal to David, as a father, getting to save his own child from death. Additionally, the sacrifice is valuable for Renada, who's life would be saved. Pinpointing what it is about the value which should be transferred is part of my intuitionistic process. As you will shortly see, I will move away from an emphasis on personal value alone.

Moreover, you could argue that the father has *sufficient* information, in our stylised Daniel-Patterson case. By sufficient information, I do not mean complete omniscience. Instead, I mean *enough* understanding of the risks and potential outcomes to make informed decisions. Even if David Patterson could not be guaranteed that his daughter would make it, you could imagine that he would only require a slightly more than zero change of her life being saved for him to want to risk it.

My intuition is that these two qualifications are what makes the sacrifice in the case seem permissible. I, therefore, want to transfer these two qualifications onto our soldiers to see if this would make it permissible for them to waive their right to life, in order to sacrifice themselves for the state.

3.3 Soldiers and sufficient information

Sufficient information is essential because, without it, decisions could be made on the wrong grounds. I will even claim that some uninformed decisions, those where information has been withheld, can not be considered decision at all. If soldiers are to waive their right to life, to the state, I believe they should have a basic understanding of what military service entails. Otherwise, their autonomy could be threatened in that they may not make the decision they otherwise would have made with sufficient information. However, whos' responsibility it is to acquire or communicate this information is not clear cut.

I recognise many states operate with compulsory conscription. I do not believe that all states with compulsory conscription need to be excluded from an individual-rights driven discussion, which this is. While the focus on individual rights requires a degree of voluntarism in the military, many states operate with rather a relaxed conscription. I will count the Norwegian military conscription to be amongst these less stringent systems²⁹. Most conscripted today have had the opportunity to withdraw if they so pleased.

²⁹ Please note that this is given the current structure. I recognize that at earlier points in time refusing military service could land you in jail, or other forms of punishment, and I do not consider punishment to be within the scope of 'voluntary conscription'.

Also, I am being told by my more clever and athletic friends that being too clever and athletic may result in forceful conscription, even in present day Norway. I will cover my back by saying that the factual situation is not important, as I am speaking generally. However, if this is the case, Norway should be excluded from the list of 'less stringent systems'.

3.3.1 Unilateral variation

Our Australian philosopher Ned Dobos presents three rights which he generally finds to be connected to workers. He believes these yield particularly interesting results when applied to the profession of the soldier (Dobos, 2019, p. 251). One of these three is the right against *unilateral variation*, meaning the right to not having to do Y if the agreement is you do X. In the workplace, an example of this could be the right to get back your former tasks after parental leave.

Unilateral variation relates to information of what the role entails. If a soldier waives their right to life, expecting that this will be used to achieve X, when it is in fact used to achieve Y, they have not been provided with the correct information.

In this scenario, the state-operated outside of the 'contract', if you like. Let me explain this by returning to the Daniel-Patterson case. We understand that Patterson's sacrifice is contingent upon his kidney being donated to his daughter. Assumingly, he would not want to die for any other cause. It would, therefore, not be morally legitimate to donate his kidney to someone else. He wanted to waive his right to produce X. If his life was taken in order to produce Y instead, I believe this to be a breach of his right to life.

3.3.2 What should we expect the soldiers to expect?

I am under the impression that most people who willingly sign up, or who accepts to join the military, understand that it entails a risk to their lives. I also believe that most understand that they could be expected to kill. I am convinced most states do an adequate job of communicating this.

Let us for argument's sake say that a soldier has entered the military with the understanding that her sacrifice of risking her life is done to protect the freedoms and lives of the citizens of the state, such as would be the case in 'Cannon Fodder'. As she enters the role, she realises that this is in fact not the case, she is to be sent on a humanitarian mission to the other side of the world. Dobos' discusses a case such as this (Dobos, 2019, p. 255). The question is, does she have reason to object?

Principally, I find it problematic to potentially have to die on grounds you did not agree to. However, and as Dobos point out, humanitarian intervention has become a staple of modern military life (Dobos, 2019, p. 255). You would assume that any person considering a military career would be aware of this fact, and that simply, it would be unreasonable for the soldier

not to expect this to be part of her career. I am therefore inclined to believe that this is an unreasonable expectation on the soldiers' part. It is readily available information, and if she did not want to sacrifice her life on these grounds, she should not take the chance of entering into the military. If she had had a good and informed reason to believe she would avoid this type of combat, it would be a different case, however.

3.3.3 Who is responsible for providing information?

Not all aspects of the military are as transparent or publicised as the prospect of going on a humanitarian mission. I want to explore a case of a misinformed but reasonable expectation.

Generally, it is considered a war crime to kill civilians (Fourth Geneva Convention, 1949, art. 3). A soldier may have a very strong notion that this is a rule they would never want to breach. Let us assume that a soldier has entered the role believing that running the risk of dying herself is worth it, in so far it contributes to the preservation of civilians. Her contingency for waiving her right to life is never to have to kill any civilian. Not killing civilians is not an unreasonable expectation to have. Instead, it is quite established that this is a breach of international humanitarian law.

However, there are exceptions to this rule. Let me present to you the doctrine of double effect. The doctrine of double effect states that it could be permissible to cause serious harm as a side effect, to attain very valuable goals (McIntyre, 2019). Some rely on this doctrine to argue that killing civilians is justified, as long as their deaths are not the intended aim, nor done as the means to an end³⁰ (Lichtenberg, 1994, p. 350).

Say our soldier is faced with a command to target a weapons factory, which her commander know the enemy is about to invade. Bombing the factory will ensure that the enemy loses access to valuable artillery, perhaps to such a degree that they have to capitulate. In other words, a very valuable outcome. However, inside the factory are civilian workers, and warning them would ruin the operation. You could argue that the operation in and of itself is permissible through the doctrine of double effect. However, if the soldier accepted risk to her life, believing she would not have to hurt civilians, is the state breaching the grounds on which she accepted her risk?

³⁰ Walzer states that it is not enough to *not try* to kill civilians, we must also *try to not* kill civilians (Lichtenberg, 1994, p. 355).

You could argue that it was naïveté on the part of the soldier, to expect never having to kill civilians. That being said, it is an aspect of Jus in Bello, which is under-communicated amongst laypeople. It might still be the soldier's responsibility to educate herself. However, if the state gains from under-communicating certain aspects of the soldiers' 'job description', I believe that this is an infringement upon their right to life.

I am not suggesting that states do this. Nevertheless, I would like to briefly discuss some empirical findings suggesting that there is room for improvement when it comes to the state's responsibility to inform.

3.3.4 The states' responsibility to inform

I would like to illustrate this room for improvement by presenting findings from 'Soldatundersøkelsen 2018', by the Norwegian Red Cross. Amongst other things, the Red Cross looked at the soldier's knowledge of the Hague and Geneva conventions (Røde Kors, 2019). They found that the number of soldiers in 2018 with adequate knowledge was significantly lower, with a decrease in 27%, comparatively to the numbers from 2013 (the last time the study was conducted). The study deemed the level of knowledge amongst the soldiers to be "low" (Røde Kors, 2019)³¹.

As you might recall from previous chapters, the Hague and Geneva conventions are what regulates Jus in Bello (meaning the conduct in war). A soldier lacking a general understanding of this is intuitively problematic. Further, part of the demands of the conventions is the states' responsibility to sufficiently provide their inhabitants' information of what these conventions entail (Axinn, 1989, p. 3).

The lack of knowledge becomes even more problematic when realising that knowledge of Jus in Bello is crucial to executing your responsibilities as a soldier. The duty to obey orders is generally of such importance that many states even consider it a crime to disobey (Dobos, 2019, p. 255). However, this does not apply when you are given an unlawful order, such as executing a war crime³². Therefore, knowing what is and what is not in accordance with lawful conduct in war is of utmost importance.

³¹ I would like to note that I use the 'Soldatundersøkelsen 2018' as an illustration. As evidence it would at best be anecdotal.

³² I should note that precedence dictate that soldiers seldom are held accountable for executing an order made by a superior (Walzer, 1977, p. 311).

I believe that it is permissible that a soldier could waive her right to life by entering the military. However, I believe it is the state's responsibility to communicate the scope of what the role entails. If a soldier enters the role, reasonably expecting the job to entail X and getting a job that entails Y, the state has not treated their soldier in a moral way, in my opinion. If states are serious about ensuring the rights of their combatants, they make sure their soldiers are informed, as otherwise, they would sacrifice their right to life on false grounds.

3.4 Soldiers and valuable outcomes

Value is an elusive term, and as such, fully grasping the concept is difficult. This part of the discussion tries to identify what value is sufficient in order to sacrifice your right to life³³.

3.4.1 More than personal value

I believe that solely relying on a personal value such as pleasure or hedonism is intuitively problematic. A horrid example from real life is that of the Cannibal Armin Meiwes (Eckardt, 2004). In the early aughts, he advertised for a willing victim to sacrifice their life so that he could eat them. He found a willing participant in his fellow German, the software engineer Bernd Brandes (Sandel, 2009, p. 73). Even if we make the leap of assuming that Brandes was of sound mind, and had sufficient information about his sacrifice, I find the value of his sacrifice to be intuitively different that the value in the case of Daniel-Patterson.

In the Meiwes case, allegedly, both men gained pleasure from the act, or at minimum the idea of cannibalism and being cannibalised. At the very least, we can deduce a hedonistic value for the man who wanted to sacrifice his life. However, I believe that this is not *sufficient*. Without being too particular as to what a 'more objective' value is, saving the life of a dying teenager, intuitively has more of this 'objective' value than what mere hedonistic pleasure does.

In short, there is a value in saving another life, which should have precedence to whatever pleasure a cannibal could derive from practising his desires. Perhaps waiving your right to life should be permissible in both cases, but at the very least I do believe that it should be *more permissible* in the Daniel-Patterson case than in the Meiwes case.

³³ For a great discussion on well-being and value, see (Crisp, 2001).

If you are inclined to be quarrelsome, you may say that there is an altruistic element to the Meiwes case as well. In which case, I might have to reluctantly agree with you. Your argument may be that Bernd Brandes did an altruistic action by sacrificing his body to a cannibalistic pursuit, benefitting someone else.

Altruism is certainly more than a personal value³⁴. Additionally, altruism may also be the driving force behind David Patterson's decision. So why is the altruism Bernd Brandes could be showing Meiwes anything *other* than the altruism David Patterson could be showing Renada Daniel-Patterson? I would argue that it is because they have different implications.

By sacrificing his life to save his daughter, David Patterson upholds the value of human life. Cannibalism degenerates this value because it implies that human life can be traded in for the mere pleasure of someone else. Ostensibly, the value of human lives is nothing higher than whatever is gained from cannibalism. I find this to be inherently problematic. I do not believe that it is moral to sacrifice yourself on grounds which implies a degeneration on the value of human lives to the extent that sacrificing your life for someone else's mere pleasure does.

If this is my intuitionistic reasoning, it should apply to the soldiers as well. I have established that I find sacrifice that implies that human life has low value is immoral. I have also found that there are values which could outweigh the value of human life on moral grounds, such as saving a human life. However, I have yet to establish exactly where this line is drawn.

3.4.2 The permissible kind of war

Firstly, I would like to present a type of war, where I believe that it should be permissible of the soldiers to sacrifice their lives, namely a typical war of survival. A type of war that is waged to hinder an adversary from occupying the state's territory and killing its inhabitants, such as is the case in "Cannon Fodder".

Many states stress the idea that their military is a defensive, rather than offensive one (Lieber, 2000, p. 74). You could argue that it is the idea of a survivalist war they invoke with this type of rhetoric. These states want to underscore that the military capabilities are there to ensure the protection of the citizens, first and foremost.

³⁴ Although I am sure you could argue that some people act altruistic because it makes them feel good. So, if a clarification is needed, let us assume both Brandes and Patterson operate out of *pure* altruism.

I believe that risking your life in this type of war is permissible. The soldiers would, in effect, be sacrificing their lives for the lives and well-being of their fellow human beings. It upholds the value of human lives. This permissibility holds whether the adversary is intent on wiping out the entire population, or to massacre groups within.

Likewise, I would like to argue that risking your life in a humanitarian intervention should be permissible. As with the ‘survivalist war’, a righteous humanitarian intervention seeks out to protect human lives. I have no reason to see these types of conflict as inherently different for the people partaking in them. By which I mean that in both wars, lives are risked to protect the lives of others.

That being said, there are compelling arguments for why a state may not be entering a humanitarian intervention on as noble grounds as they would like to present. In international relations theory, ‘realists’ especially, voice this concern. The idea is that a state seldom sacrifices the lives of their inhabitants, without the ulterior motive of gaining from it themselves (Bellamy, 2016, p. 334).

If this is done deceitfully, it relates back to wrongful information, in which case the soldiers’ sacrifice would not be permissible anyways. However, if there is no deception involved, but the objective of the war is still other than upholding the value human lives, the next section will elucidate my view on this.

3.4.3 Objective but material value

Some wars are fought for materialistic gain (Long, 2013, p. 146). In Dobos’ article on the occupational shift, he refers to a statement made by David Luban (Dobos, 2019, p. 257). That some wars are simply waged so that people can “continue to gas up their SUVs at a comfortable price”. Of course, this is an oversimplification of the nature of war. However, I think it makes a valid point and an excellent example for discussing value further.

Should it be permissible to risk the lives of soldiers to achieve some material gain? Gas has an objective value, that much is obvious. If the soldier is willing to risk her life to reduce gas prices for her fellow citizens, why would that not be permissible?

I think that the fact the soldier herself believes the risk of losing her life is worth it is mitigating to the permissibility. In other words, it makes the sacrifice more moral if she views it as valuable herself than what the sacrifice would have been if she did not.

However, even though the state itself may not breach her right to life in such an instance, the value of human life is hardly preserved. This relates back to the Meiwes case. Although it is mitigating that Brandes wanted to sacrifice himself, comparatively to cases where the victim did not want such a fate, it still does not make the sacrifice permissible, in and of itself.

Although the value of gas is arguably an objective one, it seems intuitively problematic to only let this be decisive in this instance. It seems problematic because valuing human life to be less than material comfort seems to go against any idea of human value. Even though the state does not directly breach her right to life in this instance, they indirectly devalue human lives, if they let her die for such a cause.

Again, allowing for the loss of lives on account of material gain implies that monetary gain can outweigh the human value³⁵. From this example, we could see that even objective value in and of itself is not sufficient. The value must be equal or greater than the potential loss of the soldier's lives to make the sacrifice permissible.

3.4.4 Political wars

Lastly, we come to what I believe is a grey area, in terms of permissible sacrifice. Picture an adversary with territorial ambitions, ready to occupy the state our soldiers reside in. The state has no indication that the adversary will harm any of the inhabitants. However, the occupation does indicate the complete overthrowing of the state, its institutions and its norms.

The question is, does the value of protecting political rights outweigh the value of human lives?

First off, I would like to clarify a statement I made in the sub-chapter on the role of the soldier. I believe the right to life is more fundamental than political rights. What I mean is that I do not believe you can breach the right to life, as long as political rights are being met.

³⁵ Dobos' has a principle, which he calls the right to dignified treatment (Dobos, 2019, p. 257). He argues that placing material value above human life is in breach with this right.

However, *choosing* to sacrifice your life *for* political rights is not the same thing as being stripped of your right to life, justified through the fact that your political rights were retained. The first is a chosen action to achieve a particular value. The second is a fate forced upon you, not to protect political rights, but rather by utilising them.

The real question is then, does sacrificing human lives for political rights devalue human lives?

You could argue that states who breach the political rights of people are devaluing human lives, to begin with. In such a case, deploying soldiers to risk their lives for the state may be the only way of ensuring the value of human rights. I believe that there is some merit to this thought.

Suppose the political rights that are being threatened are such liberties as equality before the law, autonomy and self-preserving rights, such as access to food, water, shelter and medicine. In that case, I think it should be permissible. I believe these rights relate to the dignified treatment of human beings. Without these, there is an actual devaluation of human life going on.

But, what about a case of a benevolent dictator³⁶? Picture a situation of a government being peacefully overthrown by a benevolent dictator. The people are being provided for, but the result is that individuals have no means of political participation and perhaps no freedom of speech. These rights are certainly not luxuries, and having them be taken away is very invasive. Nevertheless, the question is whether it should be permissible to send willing people to their deaths to protect these rights.

It may be the case that democracy is the only way of sufficiently valuing human lives. This position assumes that being afforded certain political and human rights are what best values humanity. However, other forms of governing may have other virtues. A benevolent dictator might even be able to remedy problems such as ‘tyranny of the masses’³⁷. Who is to say that some of these virtues have precedence over the other?

³⁶ You could argue that it is a fake trope and that eventually, even benevolent dictatorship results in actions which breach human value. In which case, it would be very permissible to let people risk their lives.

³⁷ The idea that democratic decisions made by the majority may be disadvantageous or even abusive to the minority population (Oxford Reference, n.d.).

The question then becomes, is it worth risking soldiers' lives to protect democratic rights? I think the answer would have to be yes. In this discussion, we assume that the soldiers willingly sacrifice their lives for the cause. A sacrifice that is made in service for human rights; is not a sacrifice which conflicts with the furtherment of human value and dignity. It should be permissible to die on these grounds because the human value is still preserved. It is a permissible thing to do because it is *not a wrong* thing to do.

I do believe that this is fundamentally different from dying for material gain (given that the material gain is not necessary for survival). It is different because dying for material value does not further any fundamental human worth.

To summarise, I do believe that it should be permissible to risk your life for other objectives than saving human lives. However, not if this objective participates in devaluing the value of human lives.

3.5 Two concerns which should be discussed

3.5.1 To what cost should we treat soldiers morally

This discussion would be lacking if I did not address some criticisms which may arise. The implications of my rather strict idea of what constitutes justified treatment of soldiers could be troublesome, so say the least.

This discussion has been based on the individual rights of the soldiers. As such, it has relied heavily on voluntary conscription, as well as voluntary and informed participation in certain actions, to not infringe on the soldier's right to life. Voluntary conscription and informed participation, however, is not always a feasible method for attaining the military capabilities a state may be in need for.

Even in a valuable war, there are many reasons why people would not want to risk their lives to protect someone else's³⁸. With my emphasis that soldiers should have sufficient information on what the scope of the role entails, you could imagine that the number of

³⁸ Neatly illustrated by two lines in *An Irish Airman Foresees His Death* by William Butler Yeats.

*Those that I fight, I do not hate
Those that I guard, I do not love*

voluntary conscripts would be even lower. The fact of the matter is that the state may not be able to get enough soldiers to volunteer to risk their lives willingly.

You may ask, how could it possibly be moral to let the general population die and suffer, in order to avoid infringing on the right to life of some soldiers? You may rightfully state that not having forced conscription is at least as much of a threat to any given citizen's individual rights, as not having forced conscription is. I very much agree.

The answer to this dilemma is that it is not within the scope of my thesis. I have aimed to explore where the moral limits of how the state can treat their soldiers should be. My argument is not that states generally should give precedence to the individual rights of their soldiers when other concerns weigh just as heavy. My argument is instead that by not adhering to the principles which I have sketched out, the state cannot defend their actions as complying with a moral treatment of their soldiers.

If you recall from my methodology chapter, Cohen's three questions in political philosophy that are distinct, but not distinguished as often as they should be (Cohen, 2011, p. 227)³⁹. I have aimed to look at the former of the three questions, namely *what is justice* (in the treatment of soldiers). My aim has not been to explore which conflicting consideration the state should take. As Cohen writes, not everything the state should do is something which they should do in the service of justice.

My argument is that even states that practice voluntary conscription and good-faith decision-making, can breach their soldiers' right to life. My point is that they cannot rely on these arguments alone if the state wants to perceive themselves as treating their soldiers morally.

If their soldiers' rights, and especially their right to life is of concern for the state, I believe that the state owes certain things to their soldiers. However, this is not to say that upholding these rights are the most pragmatic or feasible way of attaining all goals, nor that moral treatment of some should be preferred over the moral treatment of others when these go on disaccord with each other.

³⁹ (1) "What is justice?" (2) "what should the state do?" (3) "which social state of affairs should be brought about?" (Cohen, 2011, p. 227)

3.5.2 Humanising hell

You may now be left with a feeling that a crucial element of the puzzle is missing. Because amid all this talk of valuing human life, I have conveniently side-stepped a highly relevant factor. The fact of the matter is that soldiers do kill other human beings. Death is part of the nature of war. Putting your life at risk often entails killing other people who have put their lives at risk.

I agree that it seems paradoxical to speak of valuing human lives, in war. However, I want to place the responsibility of a war which degrades human value, where it is due. As you may recall from the introduction, there is no paradox in accepting that war is in its essence inhumane, while simultaneously striving to place stricter standards for what should be considered tolerable acts against soldiers (Bomann-Larsen, 2007, p. 1)

In my subchapter on value, I argued for why I believe the state infringes on the soldier's life when the aim of deployment is not a valuable one. It is the state that sends their soldiers into an unjustified war, who is responsible for degrading human lives and infringing on their soldiers right to life, rather than the responsibility of the soldiers who are sent to attack them.

Not hating the decisionmakers that sent you into the trenches, but rather hating the soldiers you fight, "as if they were personally responsible for the war" is what Walzer says Marxists calls "false consciousness" (Walzer, 1977, p. 36). The point of my thesis has instead been to retain a consciousness of whos' responsibility it is when soldiers are treated unjustifiably by their state.

That is not to say that I share McMahan's view that killing soldiers of an unjust war should be *more* permissible. As I argued in the foregoing chapter, I share with Walzer the idea that soldier is a *role* and should not be treated as they were morally responsible for the actions of their state.

3.6 Conclusion

In the first chapter of the analysis, I established that resorting to an aggregationist argument for why it would be permissible to send soldiers into war, could be refuted both through

intuitionism and through contractualism. Here I assumed that both civilians and soldiers had equal moral status.

In the second chapter, I looked at the role-specific reason for why the equal moral status between soldiers and civilians may not be the case. I found arguments for why soldiers could be liable to be killed once they entered a war, but no satisfactory reasoning for them to be sent into war in the first place.

In this chapter, I have looked at whether there are any compelling reasons to send soldiers to risk their lives, given that their starting position is not as a soldier, but rather as a regular person. I explored whether it is justified to send soldiers to risk their lives when this is decided through a democratic process. I argued that even though political rights were retained, I found the right to life to be such a particular and fundamental right that justifying removing it, by the morality of the institution that decided such, is intuitively not compelling. It would infringe on a person's right to life.

The way of ensuring that the state does not infringe on its inhabitants right to life, I argue, is only if the state has gotten consent from the individuals themselves that they accept this risk to their life. To make the state liable to send soldiers into life-threatening situations, I believe they must waive their right to life. However, waiving your right to life is not justifiable on just any grounds. I established two qualifications for when waiving your right to life could be permissible.

The first was *sufficient information*. I argued that not being sufficiently informed of the scope of the role of the soldier, is an infringement on the right to life because you have waived your right on false pretences. It, therefore, becomes the responsibility of the state to ensure all service people sufficiently understand what their role entails.

The second qualification was *sufficient value*. I started not knowing exactly what would qualify as sufficient value. Through an intuitionistic assessment of my thought experiments, I decided that a principle which proved consistent with my intuitions was that the value must be such that it does not degrade the value of human lives. Although insufficient value may not infringe on the right to life of a given and willing soldier, it degrades the value of human lives in general and is therefore impermissible.

VII. Conclusion

This thesis has been an attempt at exploring the permissibility of states to place soldiers in harm's way. The question is a normative one, of what constitutes moral demands by the state as they relate to the soldier's right to life. This has mainly been done through an intuitionistic reading but has intermittently been supplemented by a theoretical approach.

The analysis was threefold, with three chapters that each explored different overriding intuitions, which all relate to the thesis question.

In the first chapter, I explored the permissibility of whether a state could resort to aggregation to justify risking the lives of their soldiers. This because risking the lives of soldiers would maximise the general good. I approached this chapter both through an intuitionistic reading, as well as a theoretical one, with contractualism as my method of choice.

I found that aggregation lacks intuitive appeal. This is because it gives precedence to avoiding the insignificant suffering of many when this culminative outweighs the suffering small group of people who experience real pain. I recognised the need to explore my intuitions when the claims of individuals in the small soldier group and the larger general population were more equal.

I looked at whether a contractualist approach could refute aggregation in this case and found both Taurek's and Scanlon's approaches to be lacking. Both argued that their view accounted for the equal moral status for all individuals, which I disagreed with. I argued for why Scanlon's criticism of Taurek; that he does not account for all individuals equally, applies to both of them. In the end, Kamm, who is not a contractualist, best upheld the principles of contractualism and proved a worthy argument against aggregation.

In the first chapter, I assumed that soldiers and civilians were morally equal. In the second chapter of my analysis, I wanted to explore this assumption. Here I looked at whether there was any role-specific reason for why soldiers should have a lesser claim to be considered than civilians. I did this by way of exploring what Michael Walzer's and Jefferson McMahan's arguments could tell us about soldiers right to self-defence and self-preservation.

For Walzer, the soldiers right to self-preservation and self-defence are diminished due to the nature of the combatant role. Being in a position where the prerogative is to kill is the reason these rights are infringed upon. McMahan contests this notion and presents that it is the justifiableness of the war itself, which determines whether the soldiers' right to self-defence and self-preservation. I find both of their arguments lacking.

In combat, you may have lost your right to life, because as "a dangerous man" as Walzer would put it, you are a threat to the combatant from the other state. However, your own state was at fault for placing you in this position in the first place. You would not be a "dangerous man" if the state had not breached your right to life by placing you in harm's way. As such, it is not the combating soldier who should answer for your death, but rather your own state. The adversary soldier should still be allowed to kill you in self-defence, but it is not her fault that your life has been infringed upon.

For McMahan, it is the justification of your actions that makes you liable to be placed in harm's way. However, you do not have to be culpable in order to be responsible enough to be liable to be placed in harm's way. What this means is that the soldiers are responsible for the actions of their state as if they were part of the state, rather than instruments of it. The state cannot justify placing soldiers in harm's way by pointing to the soldier's responsibility for the actions of the state, which they have yet to commit.

The general problem is still that neither give any reasonable account for which grounds people should be made soldiers in the first place. One categorically absolves civilians of taking the blow of war, and the other categorically absolves those who happen to fight a justified war. Neither sufficiently justifies why the state can treat their citizen this way.

The third chapter seeks to answer the question which the foregoing chapters have been unable to provide, namely what constitutes a moral demand by the state to risk the lives of their soldiers. I did this by first problematising relying on democratic institutions to account for why sending soldiers to their potential death would be permissible. This is because I find the right to life to be such a particular and fundamental right, that retaining political rights alone, would not justify infringing on it.

Thereby I established two qualifying factors that the only way for the state to not infringe on the right to life of its soldiers, was by the soldiers waiving away their right to life, to the state. Through a thought experiment on permissible sacrifice, I argued this waiver had to be dependent upon two qualifications, namely sufficient information and sufficient value. The

first of these relate to the consensual waiving of rights by the soldier, which is a prerequisite if the state does not want to infringe on the soldiers' right to life. The second relates to upholding the value of human life. I have established which types of conflict I believe degrade the general value of human lives. Although it may not be infringing on the right to life of the soldier herself, if she is consensually participating in a war that lacks sufficient value, it does breach the principle of not degrading the value of human lives and is therefore impermissible.

I have sought to establish what constitutes the moral behaviour in a specific relationship, namely that between soldier and state. I believe I have done due diligence in answering this question. I have established a strict set of qualifications, which I believe is the best way of ensuring that the state does not infringe on the rights of the soldier. That being said, they may be too stringent to apply to the considerations of the real world.

Although my ambitions for what implication this thesis could have on the military realm, has been a modest one, I still believe there is one take away which applies more generally, than just to the theoretical normative sphere. My principle of upholding the value of humans, could be strived for, without going on accord with other moral and pragmatic considerations.

VIII. Literature

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