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Military deception is institutionalized as a practice in warfare to the same extent that warfare is institutionalized as a social practice among the community of nations. However, throughout the philosophical history of the West and except for the context of warfare, there has existed a strong moral presumption against, if not outright proscription of, virtually all forms of deception in human affairs. While, in almost every context of social intercourse, one would be held morally blameworthy for deceiving another, certain military deceptions perpetrated in wartime traditionally are heralded as examples of great military cunning and skill--hardly attributes to be regarded as morally blameworthy at all.

The purpose of this study is to define exactly what is meant and not meant by military deception, to trace the history of the ethical issues raised concerning it over the past two millennia as evidenced in the writings of principal contributors to the just war tradition, to propose an ethical account for military deception as a morally acceptable practice in war, and to identify the residual issues that the proposed account leaves less than completely resolved.

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THE ETHICS OF MILITARY DECEPTION

A thesis presented to the Faculty of the U.S. Army Command and General Staff College in partial fulfillment of the requirements for the degree

MASTER OF MILITARY ART AND SCIENCE

by

JOHN MARK MATTOX, MAJ, USA
B.A., Brigham Young University, Provo, Utah, 1984
M.A., Indiana University, Bloomington, Indiana, 1994

Fort Leavenworth, Kansas
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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (Reference to this study should include the foregoing statement.)

ABSTRACT

THE ETHICS OF MILITARY DECEPTION, by MAJ John Mark Mattox, 116 pages.

Military deception is institutionalized as a practice in warfare to the same degree that warfare is institutionalized as a social practice among the community of nations. However, throughout the philosophical history of the West and except for the context of warfare, there has existed a strong moral presumption against, if not outright proscription of, virtually all forms of deception in human affairs. While, in almost every context of social intercourse, one would be held morally blameworthy for deliberately deceiving another, deception of a wartime enemy traditionally is heralded as an example of great military cunning and skill--hardly attributes to be regarded as morally blameworthy at all.

The purpose of this study is to define exactly what is meant and not meant by military deception, to trace the history of the ethical issues raised concerning it over the past two millennia as evidenced in the writings of principal contributors to the just war tradition, to propose an ethical account for military deception as a morally acceptable practice in war, and to identify the residual issues that the proposed account leaves less than completely resolved.

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CHAPTER 1

MILITARY DECEPTION AS A MORAL-PHILOSOPHICAL ISSUE

Deception and the Principles of War

In 1861, a devotional book entitled *Prayers Suitable for the Times in which We Live* was published for use by soldiers of the Confederate Army. It begins with a prayer that contains the following supplication: "Suffer no malice, or treachery or stratagem--whether civil, diplomatic, or military, to hurt us; no cunning to circumvent us; no surprises to come upon us unawares; no falsehood to betray us. That which we cannot see we beseech Thee to prevent."[1]

Although the specific prayer from which this supplication comes is entitled "A Prayer for the Times," even the briefest reflection leads to the conclusion that the fear of falling prey to some form of deception is not a concern had only by Confederate soldiers in the American Civil War. Rather, it is a concern that could rightfully occupy--and certainly has occupied--the minds of soldiers throughout history. This is so because, as Clausewitz states, and as war planners are aware, the desire "*to take the enemy by surprise* . . . is more or less basic to all operations, for without it superiority at the decisive point is hardly conceivable."[2] This holds true, according to Clausewitz, "without

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[1] *Prayers Suitable for the Times in which We Live* (Charleston: Evans & Cogswell, 1861).

[2] Carl von Clausewitz, *On War* [*Vom Kriege*] III.ix (1832), ed. and trans. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1984), 198.

exception,"[3] even though the influence of any particular surprise will vary according to the circumstances of its employment.

Current U.S. Army doctrine agrees with Clausewitz's assessment of the importance of surprise. Indeed, surprise long has been considered one of the foundational principles for the successful prosecution of war.[4] It consists in "striking the enemy at a time or place or in a manner for which he is unprepared."[5] Its importance lies in the fact that it "can decisively shift the balance of combat power,"[6] thus enabling forces to "achieve success well out of proportion to the effort expended."[7]

From at least as early as the Trojan War,[8] military leaders have sought to achieve tactical and strategic surprise. However, although surprise is an ancient military principle, its importance has by no means diminished. If anything, surprise has become more important, albeit more difficult to achieve. This is so because "Rapid advances in surveillance technology and mass communication make it increasingly difficult to mask or cloak a large-scale marshaling or movement of personnel and equipment."[9] Hence, complete surprise might be unachievable. Nevertheless, even partial surprise serves to

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[3] Ibid., 198.

[4] Headquarters, Department of the Army, FM 100-5, *Operations* (Washington, D. C.: GPO, June, 1993), 2-5.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Andre Michalopoulos, *Homer* (Boston: Twayne Publishers, 1966), 24.

[9] FM 100-5 1993, 2-5.

increase combat power inasmuch as it destabilizes the enemy and makes the enemy proportionally less able to respond in a timely or effective way.

Since the enemy can be surprised in terms of tempo, size of force, direction or location of main effort, or timing,[10] numerous tools can be brought to bear to achieve surprise. These include an unexpectedly rapid movement, effective intelligence and operational security, the application of unexpected combat power, and unexpected variations in tactics and methods of operation.[11] However, it is significant that, among all of these tools, the official doctrinal statement singles out *deception* as preeminently important in achieving surprise[12] by throwing the enemy commander off balance,[13] misleading him, and prompting him to plan and conduct his activities in a manner that unwittingly serves the friendly commander's objectives.[14] In fact, further reflection suggests that any of the tools listed above can be brought to bear not merely to surprise but also to *deceive* the enemy concerning friendly aims or capabilities.

Recognition of the vital role of deception of all kinds in military operations is clearly evident in the Joint Chiefs of Staff Memorandum of Policy 116: "Historically, military deception has proven to be of considerable value in the attainment of national security objectives, and a fundamental consideration in the development and implementation of military strategy and tactics. Deception has been used to enhance,

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[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid., 2-2.

[14] Ibid., 6-9.

exaggerate, minimize, or distort capabilities and intentions; to mask deficiencies; and to otherwise cause desired appreciations where conventional military activities and security measures were unable to achieve the desired result."[15] That deception is now, and for the foreseeable future will be, an essential component of U.S. military tactics, operations, and strategy is clear: "The development of a deception organization and the exploitation of deception opportunities are considered to be vital to national security. To develop deception capabilities, including procedures and techniques for deception staff components, it is essential that deception receive continuous command emphasis in military exercises, command post exercises, and in training operations."[16]

The Moral-Philosophical Problem

Unquestionably, then, deception is thoroughly institutionalized in both the strategic military practices of the United States and in the operational art of the U.S. Army, just as it has been in many other armies throughout history. However, this institutionalization gives rise to a rather perplexing moral-philosophical problem. Even if deception is morally acceptable in at least certain military contexts (and indeed one does not, on the basis of the preceding discussion alone, enjoy any logical entitlement to the conclusion that deception thus contextualized actually *is* morally acceptable), that alleged moral acceptability is largely without parallel in the remainder of the whole of human experience. Certainly, in private conduct, one is almost never given moral license to act

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[15] Headquarters, Department of the Army, FM 90-2, *Battlefield Deception* (Washington, D. C.: GPO, 1978), iii.

[16] Ibid.

in an intentionally deceptive way. Moreover, governments (at least democratic ones) are rarely, if ever, recognized as having the right to deceive those subject to them, even if the deception is for an ostensibly good aim.

In moral terms, because deception involves the intentional misleading of moral agents, it seems to be tantamount to lying. If this be true, however, then the claim that military deception is a morally acceptable practice appears to be riddled with theoretical difficulties. In order to appreciate the magnitude of the moral-philosophical problem at issue, consider, for example (among many examples that could be given), the position of one of the canonical figures of the Western philosophical tradition, Immanuel Kant. Kant holds that there exists no condition in which lying constitutes other than a morally blameworthy act. According to Kant, even if one defines lying as nothing more than "an intentionally untruthful declaration to another man,"[17] one still could not be justified in concluding that the lie did no harm. "For a lie always harms another; if not some other [specific] human being, then it nevertheless does harm to humanity in general, inasmuch as it vitiates the very source of right."[18] If Kant is right, then lying in the context of armed international disputes should be a matter of particularly acute moral concern for soldier and noncombatant alike, because *everyone*--both soldiers *and* noncombatants--could fall victim to its ill effects. One the most obvious ill effects of lying would be the erosion of

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[17] Immanuel Kant, "On a Supposed Right to Lie because of Philanthropic Concerns" [Über ein vermeintes Recht aus Menschenliebe zu lügen], supplement to *Grounding for the Metaphysics of Morals* [*Grundlegung zur Metaphysik der Sitten*], trans. James W. Ellington (Indianapolis: Hacket Publishing Company, 1992), 64.

[18] Ibid., 64-65.

confidence in any utterance made on behalf of a nation, its military, or a segment of its military as pertaining either to the prosecution of war or to the restoration of peace. As Kant argues, "truthfulness is a duty that must be regarded as the basis of all duties founded on contract, and the laws of such duties would be rendered uncertain and useless if even the *slightest exception* to them were admitted. To be truthful (honest) in all declarations is, therefore, a sacred and unconditionally commanding law of reason that admits of no expediency whatsoever."[19]

Because Kant's prohibition against lying is absolute by reason of its being "an unconditional duty which holds in all circumstances,"[20] the necessity to avoid it would seem to constitute a duty that extends both to soldiers on the battlefield and to the war-making politicians who direct them.

Were Kant's categorical condemnation of lying not enough, one could, with profit, consider the position of the philosopher widely regarded as the father of Western just war theory: Saint Augustine. Augustine unambiguously asserts that "none doubts that it is a lie when a person willingly utters a falsehood for the purpose of deceiving: wherefore a false utterance put forth with will to deceive is manifestly a lie."[21] Augustine dramatically argues for the absoluteness of the prohibition against lying by identifying

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[19] Ibid., 65.

[20] Ibid., 66.

[21] Augustine, *On Lying* [*De mendacio*] 5, trans. H. Browne, in *The Nicene and Post-Nicene Fathers,* ed. Philip Schaff, First Series, vol. III (Grand Rapids: Eerdmans Publishing Company, 1956), 460.

eight categories of lies, which he implicitly offers as a thorough (if not exhaustive) rendition of the various circumstances in which lies occur:

1. Deliberate distortions of religious doctrine
2. Lies told to injure another person unjustly
3. Lies told in order to capitalize on another person's suffering
4. Lies told for the sheer lustful joy of lying
5. Polite lies told in order to be "pleasing by agreeableness of talk"
6. Lies told for the purpose of protecting innocent persons from injury
7. Lies told to protect from capital punishment one who is guilty of a crime, in the hope that he will amend and reform
8. Lies told to protect one from the necessity of considering himself to be ritually impure (as, for example, in the case of the religious performances required of the Jews)[22]

That Augustine appeals to numerous scriptural passages in support of his position is not at all surprising. Additionally, however, he also forcefully applies his neoplatonic philosophy to the task of proving that lying can never be justified under any circumstances. The very act of lying, according to Augustine, inverts the hierarchical order of nature by giving priority to man's mundane, temporal interests, in preference to man's eternal, spiritual interests: "Since then by lying eternal life is lost, never for any

[22] Ibid., 469. Augustine takes pains to note that while the sixth and seventh cases above are not uncontroversial, the demands of morality are such that even these cases do not override one's absolute duty to tell the truth.

man's temporal life must a lie be told."[23] Likewise, whatever benefits might accrue through the act of lying, the Augustinian or the neoplatonist would hold that they accrue merely to the physical body. Moreover, the same lie that is told to preserve the body cankers and destroys the soul, again inverting the order of nature by giving precedence over the temporal body at the expense of the eternal soul. In this light, even those cases that Augustine acknowledges to be controversial admit of the reasoned conclusion that to tell the truth is better than to lie, even when the lie would afford the only apparent means to avert dire consequences or to preserve one's life: "Why should a man corrupt his own soul with a lie in order that another may live in the body, when, if he were to give his body to be corrupted with such an object, he would in the judgment of all men be held guilty of nefarious turpitude?"[24]

Those who find Augustine's metaphysically based treatment of the prohibition against lying to be uncompelling might profitably consider Suárez' natural law interpretation of Augustine in the seventeenth century. Here again, even in its de-theologized form, one finds that Augustine's argument yields the conclusion that the moral prohibition against lying must be absolute:

> In regard to the natural law, however, so long as the subject-matter remains unchanged and the same intrinsic circumstances persist, we cannot, solely on the basis of extrinsic occasions, interpret a prohibitory law as not binding. For it is not possible to eliminate the evil from such subject-matter while its intrinsic conditions persist, and consequently not possible that the natural prohibition should be eliminated, even though some extrinsic end, or the circumstances, may vary.
>
> This is made particularly clear by the example of lying, which I assume to be so intrinsically evil that it cannot be permissible because of any occasion or extrinsic necessity, so long as it continues to be lying. This view accords with the

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[23] Ibid., 462.

[24] Ibid.

teaching of St. Augustine (*On Lying* and *Against Lying to Consentius*; also, *Letters*, viii [xxviii in Migne ed.] *To Jerome*; and following letters).[25]

Thus, whether one views lying from the rationalist perspective of Kant or from the more metaphysically based perspective of Augustine, the general disapproval of lying by the Western philosophical tradition (for which Kantianism and Augustinism represent a broad, although certainly not exhaustive, spectrum of foundational commitments) appears to be clear and unequivocal. Therefore, even though certain instances of lying might gain approbation under the terms of some (say, certain consequentialist) accounts of morality, still it may be said that to the extent that one regards lying as an intrinsically evil practice, the prohibition against it is necessarily absolute. If that is so, however, on what moral-philosophical grounds is it possible to justify the practice of military deception?

The Search for a Moral-Philosophical Account of Military Deception

Three alternatives present themselves as possible accounts for the moral status of military deception.

The first alternative is simply to argue that military deception is tantamount to lying. If so (as argued above), the practice seems difficult if not impossible to justify on moral-philosophical grounds. (Moreover, as a practical matter, while the solution posed by this alternative is by far the most elegant, namely, the discontinuance of all deceptive

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[25] Francisco Suárez, *A Treatise on Laws and God the* Lawgiver [*De Legibus, ac Deo Legislatore*] (1612) II.XVI.12, in *Selections from Three Works of Francisco Suarez,* trans. Gwladys L. Williams, Ammi Brown, and John Waldron, in *The Classics of International Law* (New York: Oceana Publications, Inc., 1964), 320.

practices, it is by far the most difficult to imagine being put into multilateral practice within the international community.)

The second alternative is to adopt the position of the military realist and to argue that military deception is, in fact, nothing more than lying as traditionally understood, but that because 'all is fair in war,' one need not have any moral scruples concerning its practice. However, the position that all is, in fact, fair in war is totally unacceptable for adoption by the armed forces of the United States because it involves a moral commitment (or perhaps more properly, a *lack* of moral commitment) that runs altogether counter to the demands of the customary law of war, the international treaties relative to the humane conduct of war--to which treaties all civilized nations are signatories, the Federal statutes which govern the conduct of U.S. military personnel, and the value system which the U.S. armed forces claims to espouse. That is to say, far beyond merely providing justification for military deception, acceptance of this alternative would impose upon American military personnel the necessity to abandon many if not all of their personal and institutional moral commitments in time of war!

The third and perhaps most promising alternative is to argue that although military deception and lying are ultimately governed by the same moral principles that reason imposes upon all rational beings, military deception is, in fact, something essentially different from lying as understood by, for example, Augustine and Kant. This seems to be the position adopted almost universally by the prominent legalists and just war theorists since the Middle Ages. What is wanting, then, is an adequate account of how lying and military deception differ, and hence, of how military deception might be

understood to constitute, within certain specifiable parameters, a morally acceptable activity.

Purpose of the Present Study

The purpose of the present study, then, is:

1. To provide a philosophical account, supported by historical evidence, of the moral status of military deception
2. To elucidate the justification for the claim that military deception is a morally appropriate activity
3. To specify the limits within which the claim justifiably can operate

Chapter 2 discusses the perceptual limits of deception. It delineates and delimits how 'deception' applies to a consideration of the moral dimensions of 'military deception.'

Chapter 3 situates the discussion of the moral status of military deception within the larger moral-philosophical context of the theory of just war--the theory which, of all the Western theories of warfare, bests illuminates the moral justification for military deception in harmony with other moral considerations unique to war.

Chapter 4 reviews the writings of the canonical figures of the just war tradition as pertaining to military deception. From among the ancients, it considers the pertinent works of Cicero, Ambrose, and Augustine. It continues with a consideration of the pertinent works of mediaeval and modern just war theorists, to include Aquinas, de Legnano, de Victoria, Belli, Ayala, Suárez, Gentili, Grotius, von Pufendorf, Wolff, and de Vattel.

Chapter 5 gives special attention to the treatment of military deception by the Hague and Geneva Conventions and their associated protocols. It then proposes a moral-theoretical framework to account for military deception within the context of the just war tradition. It also features an evaluation of the framework in the light of Aristotelian, Kantian, and utilitarian ethical commitments.

Chapter 6 responds to likely criticisms of the account, proposed in chapter 5, of the moral status of military deception. It concludes with some observations on the contemporary relevance of this discussion to U.S. military personnel and with some brief reflections on the possible future status of military deception in the light of the technologies of the information age and the political imperatives of the emerging world order.

CHAPTER 2

THE LOGICAL LIMITS OF MILITARY DECEPTION

Constructing a Model

Depending upon one's purpose, one can classify various types of military deception in a variety of ways.[1] However, given our focus on the ethical dimension of military deception rather than upon its strategic, operational, or tactical dimensions, a detailed and nuanced taxonomy that highlights these distinctions is unnecessary. Indeed, the points at issue apply with essentially the same effect to military deceptions executed either on the strategic, operational, or tactical level. Likewise, a taxonomy that distinguishes military deceptions on the basis of their intended purpose[2] is, for present purposes, unnecessary. Rather, in order to make military deception the subject of *moral* evaluation, it is of critical importance to distinguish whether the deception under consideration is a deliberate one. However, classificatory schemes for military deception routinely fail to take this critical matter into account. As a result, they either fail to reveal (or else completely ignore) the ethical concerns associated with military deception. Consider, for example, the following model (figure 1) by Daniel and Herbig[3]:

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[1] See, for example, FM 90-2, chapter 1.

[2] See, for example, FM 90-2, 1-9 - 1-11.

[3] Donald C. Daniel and Katherine L. Herbig, "Propositions on Military Deception," in Donald C. Daniel and Katherine L. Herbig, *Strategic Military Deception* (New York: Pergammon Press, 1981), 4.

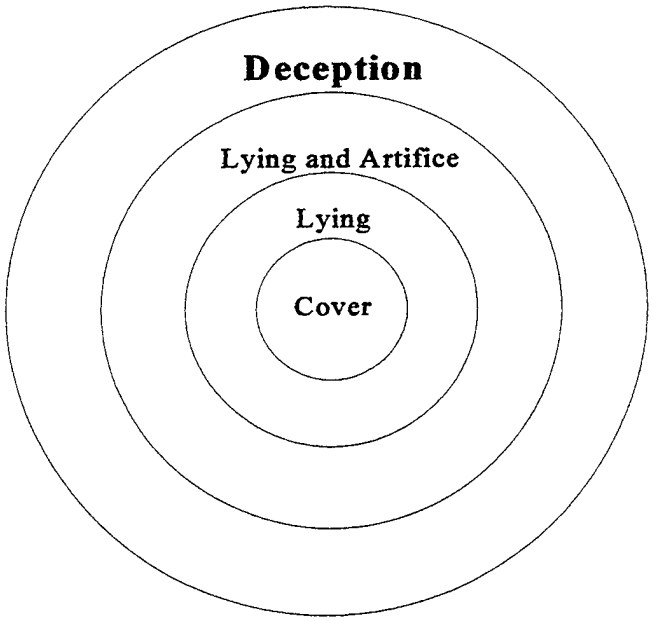

Figure 1. The Daniel and Herbig Model of Military Deception

This model places 'cover,' the military term for secret keeping and camouflage, at the middle of the figure, because "no matter what his or her other goals, a deceiver wishes to protect the existence of some truth, be it knowledge of an already existing reality (e.g., the capabilities of a weapon) or an intended reality (such as the scenario for a weapon's use)."[4] The model illustrates both 'lying' and the special case of 'artifice' as encompassing 'cover,' because "to lie is also to withhold information, but it is something more as well: a liar *acts* to draw his victim away from the truth. . . . Liars create and perpetuate falsities and seek to fasten a victim's attention to them. In a narrow sense, to

[4] Ibid.

lie simply means to make an untrue statement, but in a broader sense it can also involve manipulating the context surrounding the statement in order to enhance its veracity. This [latter point] is what is meant by artifice, an important element of nearly all strategic deceptions."[5] Daniel and Herbig justify the placement of 'deception' in the outer circle as follows:

> Just as lying subsumes cover, so does deception subsume lying in both of its senses. Although the terms are often used interchangeably, deception and lying are not exact synonyms. Lying looks primarily to one side of the interaction between liar and audience. It stresses the actions of the teller of falsehoods. Deception is a term of wider scope because it also stresses the reactions of the receiver of those falsehoods. Someone whose false tale is not believed is still a liar, but he has not deceived. One does not fail at lying because the audience is not convinced, but one does fail at [having attempted to perpetrate a] deception if the audience does not believe the lie.[6]

This model, with its accompanying description, is probably adequate for a discussion of most aspects of military deception. However, despite any superficial evidence to the contrary (i.e., the model's use of the language of moral discourse, e.g., reference to 'actions,' 'falsehoods,' etc.), it is quite inadequate as a tool for understanding the ethical dimensions of military deception. Although on a charitable reading, Daniel and Herbig almost certainly mean to argue that lying always involves an *intent* to deceive, irrespective of whether or not the attempt at lying actually proves to be deceptive in its effect, their argument does not provide a basis for the assignment of praise or blame to the practice of military deception. Moreover, if one takes the term 'cover,' as used by Daniel and Herbig, to include all cases in which all that one knows is

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[5] Ibid.

[6] Ibid., 4, 5.

not disclosed, it follows that all cases of nondisclosure are lies. This, however, seems extreme; for it is not at all clear that if one fails to disclose all that he or she knows about every instance, he or she is therefore a liar.

The point, however, is not to take issue with Daniel and Herbig's model, per se; it is, rather, to demonstrate that this or similar models indeed might account satisfactorily for some important aspects of military deception while completely failing to account for the *moral status* of military deception.

With the aim of developing a moral-theoretically adequate model of military deception, one might, with profit, modify Daniel and Hartig's model thus (figure 2):

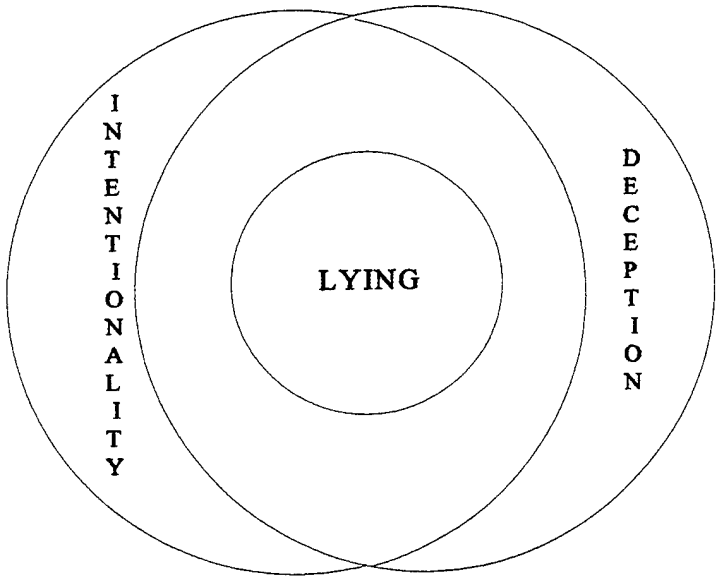

Figure 2. Proposed Revision #1 of the Daniel and Herbig Model

As this model suggests, lying is found within the intersection of intentionality and deception. This is so because lying is, by definition, an act which involves the intent to

deceive. However, as this model also suggests, the universe of all lies is not coextensive with the intersection of the universe of 'all things intentional' and the universe of 'all things deceptive.' The claim advanced by this model, and one for which I shall argue, is that it is not necessarily the case that all intentional deceptions are morally blameworthy (i.e., they are not all lies, properly speaking). The question arises, therefore, as to where 'military deception' is situated with respect to the modified model. Inasmuch as I shall argue that certain military deceptions are morally blameworthy (i.e., lies properly speaking) and others are not (i.e., still intentional deceptions, but something other than lies properly speaking), the relationship of military deception to other components of the model is probably best represented by figure 3:

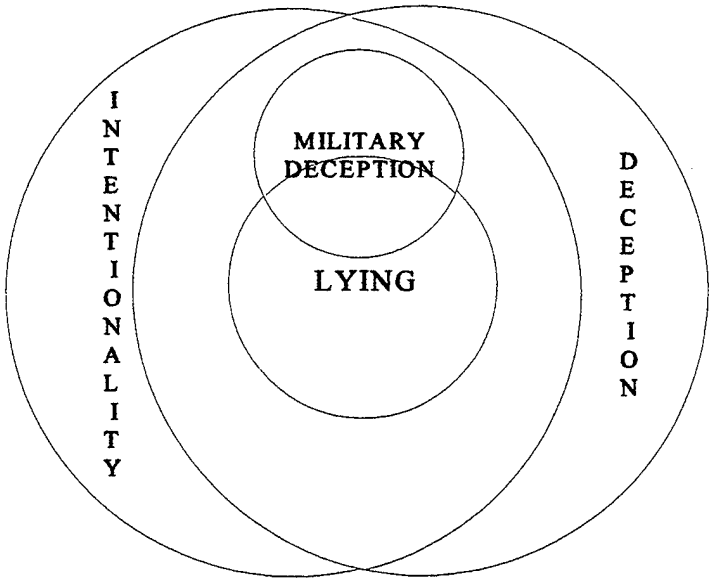

Figure 3. Proposed Revision #2 of the Daniel and Herbig Model

As figure 3 suggests, some military deception involves the morally blameworthy act of lying, while other military deception involves intentional deception, but not lying per se. In keeping with the purposes set forth in chapter 1, I shall argue hereafter in favor of this moral-theoretical distinction as a reasonable means for understanding the proposition that it is possible for one to deceive a wartime enemy and simultaneously to meet the demands of morality.

Military Deception and Intentionality

It is important to note, however, that there occur certain deceptions in war that, while broadly labeled as military deceptions, lie beyond the scope of moral inquiry because they do not raise any issues of right or wrong, praiseworthy or blameworthy conduct. This claim can be illustrated by classifying military deceptions vis-a-vis the idea of intentionality. Accordingly, three cases become evident:

1. Actions which deceive in accordance with the intentions of the deceiver
2. Actions intended to deceive, but which do not deceive in accordance with the intentions of the deceiver
3. Deceptions which arise independent of the intentions of a deceiver.

A paradigmatic example of case (1) is the famous "Mincemeat" ruse of World War II, in which Allied intelligence operatives dressed a corpse as a British courier, attached to the corpse a briefcase filled with false war plans, and planted the corpse on a

beach so as to ensure that the corpse would fall into Axis hands.[7] Prior to the execution of this ruse, Hitler (and virtually everyone else) expected the Allies to invade southern Europe through Sicily. However, after Hilter saw and initialed the German intelligence report on the "Mincemeat" courier's documents, which indicated that the Allies would invade Sardinia instead of Sicily, he immediately altered his orders to reflect this newly obtained, but false, intelligence.[8] Clearly, this was exactly what those perpetrating the deception had hoped would happen; moreover, Hitler's reaction was a direct result of the Allies' deception plan.

An example of case (2) comes from German attempts, also during World War II, to conceal the location of their V-2 rockets. Recalling, undoubtedly, the success of the Allied bombing campaign against V-1 rocket sites, the Germans built a series of decoy storage sites for their V-2 rockets. Prior to the Normandy invasion, the Allies knew very little about how the V-2 rockets were arrayed in German-occupied France. After the invasion, however, the Allies captured a map showing the V-2 rocket sites west of the Seine. The map identified not only the actual rocket sites, but the decoy sites as well. Since the decoy sites were numbered from fifteen to twenty, running east to west, the Allies correctly inferred that there were fourteen decoy sites east of the Seine. Moreover, the Allies again correctly inferred that the ratio of actual sites to decoy sites was constant on both sides of the Seine. As a result, the Allies were able to estimate, to an accuracy of

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[7] For the full account of this extraordinarily successful ruse, see Ewen Montagu, *The Man Who Never Was* (Philadelphia and New York: J. B. Lippincott, 1954).

[8] Ibid., 142, 143.

88 percent, the Germans' intended rate of V-2 rocket fire. None of this would have been possible had not the Germans attempted so methodically to deceive the Allies.[9]

What Military Deception *is Not*

Cases (1) and (2) are related in that they both describe the condition in which one party intends to deceive another, even if the deceiver is not particularly concerned as to how the target will be deceived. Clausewitz notes this phenomenon when he states, "The use of a trick or stratagem permits the intended victim to make his own mistakes, which, combined in a single result, suddenly change the nature of the situation before his very eyes."[10]

Case (3), however, is distinguished by the fact that it involves deception, but not intentionality. That is, it describes deceptions that are, in reality, the result of 'self-deception' and not the result of the intentional deception of one subject by another moral agent. Alternatively put, they are deceptions that lie wholly within the universe of 'all things deceptive,' but wholly outside the universe of 'all things intentional.' Deceptions of this kind, even if they occur in war, cannot be called military deceptions because of their accidental character. Moreover, they are not subject to moral evaluation because they involve no intentionality.

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[9] R. V. Jones, "Irony as a Phenomenon in Natural Science and Human Affairs," *Chemistry and Industry* (London: Society of Chemistry and Industry, 1968), 473, quoted in Headquarters, Department of the Army, FM 90-2, *Battlefield Deception* (Washington, D. C.: GPO, 1978), 1-15.

[10] Clausewitz, III.X, p. 202.

In order to understand the psychology of self-deception as it relates to the moral evaluation of military deception, one must first minimally consider that any sign (i.e., anything whatsoever that is interpreted to represent or stand for something else) is subject to *mis*interpretation. According to Sergej Karcevskij, the noted Slavic semiotician and linguist, "A sign and its signification do not form a perfect fit. Their extensions do not coincide point for point, for a single sign always has several semantic functions and a single signification is always expressed by several signs. Every sign is potentially a 'homonym' and a 'synonym' at the same time--that is, constituted by the intersection of these two conceptual series."[11] Karcevskij illustrates his concept of the sign thus (figure 4):

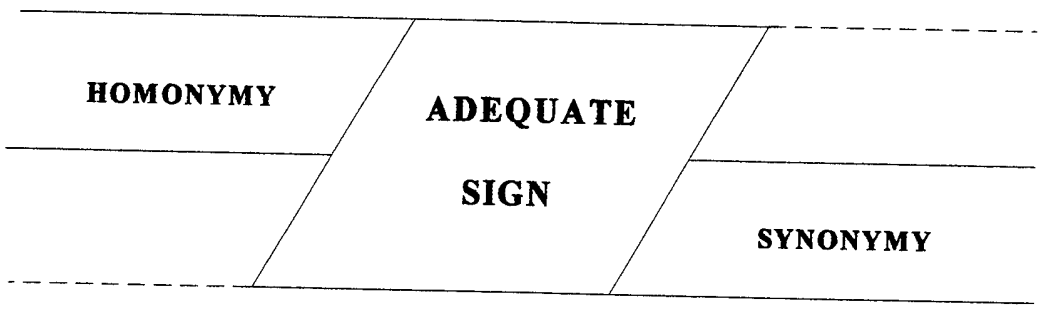

Figure 4. Karcevskij's Model of the Linguistic Sign

[11] Sergej Karcevskij, "The Asymmetric Dualism of the Linguistic Sign," *The Prague School: Selected Writings, 1929-1946,* ed. Peter Steiner (Austin: University of Texas Press, 1982), 49.

Of this conception he states: "The signifier (sound)[12] and the signified (function) slide continually on the 'slope of reality.' Each 'overflows' the boundaries assigned to it by the other: the signifier tries to have functions other than its own; the signified tries to be expressed by means other than its sign. They are asymmetrical; coupled, they exist in a state of unstable equilibrium. It is because of this asymmetric dualism in the structure of its signs that a linguistic system can evolve: the 'adequate' position of the sign is continually displaced as a result of its adaptation to the exigencies of the concrete situation."[13]

Signs are dynamic phenomena, and their semantic parameters differ from person to person and from circumstance to circumstance. For example, consider the acoustic sign [or].[14] On the homonymic side of Karcevskij's model, [or] can be used to refer to unrefined minerals (i. e., *ore*), the means of propulsion for a row boat (i. e., *oar*), or as a comparative function word (i. e., as in the phrase 'ice cream *or* cookies'). Each of these uses involves different portions of the 'semantic space' accounted for by the acoustic sign [or]. More important to the present discussion, however, is the synonymic side of Karcevskij's model. In that connection, consider that the written word *oar* might itself involve interpretations that comprehend different segments of [or]'s 'semantic space.'

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[12] Karcevskij refers to "sound" because he is illustrating his concept in the context of the audible linguistic sign. However, signs need not, of course, be auditory in nature. Indeed, for our purposes, we might with profit conceive of a much broader spectrum of potential signifiers besides auditory ones.

[13] Karcevskij, 1982, 54.

[14] The bracket convention is used here to indicate that I am referring to the *acoustic signal* represented by the symbols in the brackets, and not to the English word that is spelled with the Roman letters *o* and *r*.

For example, a group of seasoned seafarers might draw fine distinctions between types of oars that would escape the notice of someone unschooled in nautical matters. This point alone gives rise to the distinction *oar* (general) and *oar* (technical). However, one should also recognize the existence of *oar* (metaphorical) as occurs in the phrase, "put in one's oar" (i.e., to meddle or interfere in someone else's business) or in the phrase "rest on one's oars" (i.e., to cease further effort or to relax).[15] The differences in each of these distinctions lead us to the conclusion that, as far as their precise dimensions are concerned, both the acoustic sign [or] and the written sign *oar* cover different amounts of 'semantic space' from person to person and from circumstance to circumstance.

Military deception involves the deliberate introduction of false or misleading information into an opponent's intelligence-producing cycles in order to "cause the opponent to make decisions on the basis of false assumptions."[16] Therefore, owing to the fluid nature of signs, it is, of course, sometimes possible to manipulate them with the intention of deceiving those to whom the signs are presented by attempting to influence the way in which they are likely to interpret the signs. *Whenever the deliberate manipulation of the connection between sign and meaning occurs in military deception, that manipulation is subject to moral evaluation.* That is not to say, by any means, that the evaluation that results necessarily must be either a positive or a negative one, but

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[15] These usage examples are borrowed from *Random House Webster's College Dictionary* (1991), s.v. "oar."

[16] Stephen J. Cimbala, "Mainstreaming Military Deception," *International Journal of Intelligence and Counterintelligence* 3:4 (1989): 510, 511.

merely that the fact of the manipulation itself is subject to moral evaluation. Indeed, the matter of intentionality is of critical importance in the light of the present discussion.

Deception that occurs in the absence of intentionality, as in case (3) cannot possibly be the object of moral evaluation because the misinterpretation at issue is merely a creation of the deceived subject--not purposeful manipulation by another agent. It is, rather, simply a case of self-deception, concerning which Audi states, "Taken literally, self-deception seems to imply that a self deceiver both believes and disbelieves the same proposition: disbelieving it as agent of the deception, believing it as victim."[17]

The Japanese attack on Pearl Harbor on December 7, 1941, provides some striking examples of wartime self-deception. Although it is true that the Japanese military perpetrated numerous deliberate deceptions (and hence, deceptions subject to moral evaluation), the events surrounding the attack were also riddled with numerous self-deceptions on the part of the Americans. As various studies have argued,[18] the United States responded to many of the intelligence indicators of an attack on Pearl Harbor by disallowing the possibility of any such attack, even in those cases in which an attack on Pearl Harbor constituted the most likely enemy course of action, based on the United States' analysis of the available intelligence. It is instructive, for example, to consider just how far deception was from the minds of the leadership of the American Pacific Fleet

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[17] Robert Audi, "Self-Deception and Practical Reasoning," *Canadian Journal of Philosophy* 19 (June 1989): 247.

[18] See, for example, Gordon W. Prange, *At Dawn We Slept: The Untold Story of Pearl Harbor* (New York: McGraw-Hill, 1981); Roberta Wohlstetter, *Pearl Harbor: Warning and Decision* (Stanford: Stanford University Press, 1962); etc.

in 1941. Take Echuca, the chancellor of the Japanese consulate at Honolulu, was actively involved in gathering intelligence for the Japanese High Command. In the course of his intelligence-gathering mission, he actually expressed disgust at the lack of what one might call 'semiotic sensitivity' on the part of U.S. forces. To Echuca, it was clear that the Pacific fleet operated on a peacetime basis even during the period of relatively heightened Japanese-American tensions that prevailed throughout 1941. The ships of the Pacific fleet did not appear to be particularly on the alert, paid almost no attention to camouflage, returned to Pearl Harbor on weekends, and granted shore leave to many officers and men. Echuca, himself a sailor, expressed nothing less than disgust that, in the face of an obviously critical political situation, his war-time enemy-to-be seemed so utterly oblivious to the available signs of a Japanese attack.[19]

When, on the morning of December 7, 1941, the Opana mobile radar station on Oahu detected inbound Japanese attack aircraft, the controlling headquarters summarily dismissed the signal as sign of a flight of B-17 aircraft scheduled to arrive that morning from the United States.[20] Although the timing of the arrival of friendly aircraft certainly constituted an unfortunate coincidence, coincidence of this kind affords no justification for military personnel charged with defensive mission to disallow, *a priori*, the possibility of an enemy air attack. (After all, to provide advance warning of enemy air attack was the very reason for the radar's emplacement!) Here again, the deception involved was American self-deception in a military setting, not military deception by the Japanese.

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[19] Prange 1981, 356.

[20] Ibid., 499-502.

Perhaps the most striking example of American self-deception at Pearl Harbor is the case of the "Grew Memorandum." On January 27, 1941, the United States Ambassador to Japan Joseph C. Grew sent the following memorandum to the U.S. State Department: "My Peruvian Colleague [Peruvian Ambassador to Tokyo, Ricardo Rivera-Schreiber] told a member of my staff that he had heard from many sources including a Japanese source that the Japanese military forces planned, in the event of trouble with the United States, to attempt a surprise mass attack on Pearl Harbor using all of their military facilities. He added that although the project seemed fantastic the fact that he had heard it from many sources prompted him to pass on the information.[21] Ambassador Grew enjoyed a strong reputation as a skilled diplomat, an expert on Japanese society and culture, and an extremely accurate and reliable intelligence source. All of this notwithstanding, the War Department's chief intelligence officer (Brigadier Sherman Miles, acting Assistant Chief of Staff for Intelligence) later explained that Ambassador Grew's memorandum was discounted "because it was inconceivable that any source in the know would have communicated that to the Latin-American Ambassador."[22]

In these three examples, it is clear that the decision makers involved fell prey to self-deception because of their ongoing refusal seriously to entertain the possibility that the ominous signs of war should be taken at face value. Moreover, if there is any assignment of blame to be made for the omissions that resulted in these self-deceptions, there is none to blame but the self-deceivers themselves, namely, the Americans. This is

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[21] Ibid., 31.

[22] Ibid., 34.

not to say that the Japanese High Command bore no moral responsibility for the military deceptions that they perpetrated in their surprise and attack on Pearl Harbor. Rather, it is merely to point out that self-deception and military deception are, morally speaking, entirely different phenomena.

Another aspect of deception that falls outside the scope of the present discussion pertains to a phenomenon that might be called the 'social constitution' of signs. The valuation placed on signs of all kinds--linguistic and non-linguistic--differ in some measure (and sometimes the difference is a dramatic one) not only from person to person but also from culture to culture. Hence, the unintentional misinterpretation of a sign may well arise from the fact that the one assigning an interpretation to the sign--especially in the context of war and diplomacy--has failed to view the sign from the perspective of the culture that generated the sign. To borrow another example from Pearl Harbor, the American failure to try to view the world through Japanese eyes and to assign interpretations accordingly contributed significantly to American self-deception. By evaluating the risks associated with an attack on Pearl Harbor with American perceptions of what constituted proper planning considerations, the U.S. military leadership concluded that a Japanese attack on Pearl Harbor could be excluded as a genuine possibility because it was simply too risky an undertaking. American analysts projected their cultural values upon Japan and expected a perfect or near perfect correspondence. By so doing, however, they ignored the possibility that the Japanese were making decisions on the basis of a very different set of assumptions than the one they were accustomed to using. As Handel argues:

> In many instances, the stronger defender, who is interested in perpetuating a status quo that works in his favor, does not fully comprehend the potential attacker's desperate frame of mind. On the eve of Pearl Harbor, the United States was unaware of the degree to which Japanese military and political leaders felt concerned. These leaders were cognizant of the United States' superior war potential and knew that unless the United States was ready to accept Japanese terms after an initial campaign, Japan could not win in the long run. Nevertheless, the Japanese felt they had no choice but to attack.[23]

American valuations of Japanese intentions simply did not allow for the logical possibility that the Japanese war minister would say with reference to Pearl Harbor: "Once in a while it is necessary for one to close one's eyes and jump from the stage of the Kiyomizu Temple."[24] This semiotic insensitivity resulting in American self-deception prompted Prange to observe, "We cannot stress too strongly that all the American failures and shortcomings which contributed to the Japanese victory at Pearl Harbor stemmed from the root disbelief that the Japanese would undertake the risky venture."[25]

Whether this latter critique is entirely correct or not is not nearly so important in the context of the present study as is the fact that it reveals that not all deception in war is relevant to an appraisal of the moral status of military deception. One might be subject to a moral critique because of factors that cause that person to be self-deceived, but that is an altogether different matter than the one of concern here. The present concern deals exclusively with that deception that is the result of actions deliberately taken by a belligerent to gain some advantage over an opponent. That interpretations can be

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[23] Michael I. Handel, *War, Strategy, and Intelligence* (London: Frank Cass, 1989), 243.

[24] See Steven J. Rosen and Walter S. Jones, *The Logic of International Relations* (Cambridge: Winthrop, 1977), 196.

[25] Prange 1981, 730.

associated erroneously with signs is beyond dispute, but if any moral blame of the kind that is of interest to us in this study is to issue for that assignment, it can issue only if the erroneous assignment is the calculated result of a second party that has manipulated the sign with the expectation that those to whom the sign was made actually would make the erroneous assignment.

With these parameters in mind, I shall now proceed to an analysis of the status of military deception within the philosophical structure of warfare in the West.

CHAPTER 3

MILITARY DECEPTION AND THE THEORY OF JUST WAR

The Structure of Warfare in the West

War is itself a social phenomenon. Moreover, it is an intentional act. Of the party initiating the war, it always may be said, in the words of Clausewitz, that *"War is . . . an act of force to compel our enemy to do our will."*[1] The essential characteristics of 'violence' and 'intentionality' give rise to the fundamental question with which Western moral philosophy confronts the phenomenon of war: "Is the intentional application of violence ever morally justified?" To the extent that an affirmative answer to this question can be given, war becomes justifiable, in principle, as a morally acceptable activity. Concurrent with that affirmation, and in somewhat surprising contrast, pacifism (in its absolute form, at least), becomes untenable as a moral-philosophical position, because pacifism proscribes both war specifically and violence generally. Assuming that this is so (and, indeed, a detailed defense of this proposition would lead very far afield from the present study), a corollary question arises: "If war is a morally acceptable activity, does morality require that the application of violence in war be constrained?" The general consensus in the Western philosophical tradition is that morality does, in fact, dictate that such violence be constrained (even if, as Clausewitz argues, the motivation to constrain it

[1] Clausewitz, I.I.2 p. 75.

generally stems more from pragmatic concerns than it does from moral ones[2]). In the context of the present study, however, the important point is that any morally based tendency toward moderation and away from unconstrained violence effectively rules out military realism (simply put, the theory that 'all is fair in war') as a tenable moral philosophical position. Given that what remains as a logical, and at the same time morally tenable, position with respect to war is some form of constrained violence, the question may be asked (and has been asked for 2,500 years of Western philosophical history), "Should those wars which are morally permissible (i.e., wars whose violence is not unlimited) also be *just* wars?" Given the choice between wars fought in a just manner and those fought in an unjust manner, reason would impose that in order for a war to be morally acceptable, it must also be just. Figure 5 below summarizes the distinctions relevant to the present study:

⬅ Pacifism ⬅	Just War ➡	Military Realism ➡
War is never morally justifiable	War is sometimes morally justifiable	War is not a proper subject of moral discourse
	Violent action is constrained	Violent action is unconstrained

Figure 5. The Philosophical Structure of Warfare in the West

[2] Clausewitz, 1.1.3, p. 76: "If wars between civilized nations are far less cruel and destructive than wars between savages, the reason lies in the social conditions of the states themselves and in their relationships to one another. These are the forces that give rise to war; the same forces circumscribe and moderate it. They themselves, however, are not part of war; they already exist before the fighting starts. To introduce the principle of moderation into the theory of war itself would always lead to logical absurdity. . . . If, then, civilized nations do not put their prisoners to death or devastate cities or countries, it is because intelligence plays a larger part in their methods of warfare and has taught them more effective ways of using force than the crude expression of instinct."

The Theory of Just War

Finally, then the question arises, "What constitutes a just war?" The attempt to answer this question has resulted, over many centuries, in a theory of just war that is typically presented under two major headings: *jus ad bellum* and *jus in bello. Jus ad bellum*, or 'the justice *of* war,' specifies those criteria that define the right of one state or sovereign power to engage in violent action against another. On the other hand, *jus in bello*, or 'justice *in* war,' seeks to delimit violence incidental to the actual prosecution of war. That is, the *jus in bello* component of the just war tradition stands as witness to the claim that "it is not permitted to employ unjust means in order to win even a just war."[3]

Jus ad Bellum

The traditionally recognized elements of a just war (*jus ad bellum*) can be summarized as follows:

1. Just cause
2. Comparative justice
3. Right intention
4. Competent authority
5. Last resort
6. Public declaration
7. Reasonable probability of success
8. Proportionality

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[3] Richard Shelley Hartigan, "Noncombatant Immunity: Reflections on its Origins and Present Status," *The Review of Politics* 29:2 (April, 1967): 204.

9. Peace as the ultimate objective of war[4]

A *just cause* is indisputably the premier element of all *jus ad bellum* thought, and one which extends throughout the length and breadth of the just war tradition. It is that the reason for resorting to war in search of a resolution of an international dispute must, itself, be a just reason. Traditionally, just causes have included the defense of the innocent against armed attack, the recovery of persons or property wrongly taken, or the punishment of evil.

The idea of *comparative justice* is closely related to that of just cause. The theory of just war rests on the philosophical assumption that, although war exists as an ethical possibility, there also exists a *strong* presumption against war as a means to be used by states in resolving their international difficulties. Comparative justice requires that, in addition to a state's having a just cause for the prosecution of war--a position which, for good or ill, both parties in a dispute are likely to claim--the claims of an aggrieved party be of such magnitude that the presumption against war is overridden.

Although, as a practical matter, the notions of just cause and of comparative justice presuppose the ability of the aggrieved party to produce tangible evidence of wrongdoing on the part of the offending party, which wrongdoing justifiably could be

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[4] The traditional list of *jus ad bellum* and *jus in bello* criteria typically varies in minor degree from author to author. The reason for this is not so much one of a basic disagreement as to what, in the case of *jus ad bellum*, constitutes a just war or as to what, in the case of *jus in bello*, counts as the minimally acceptable standards of conduct for those engaged in wartime hostilities as it is one of presentation. Some authors combine two or more traditionally accepted just war notions under a rather more general heading, while others opt for a greater range of distinctions. (In this study, I shall tend to the latter approach inasmuch as it enables us to examine the specific details of the theory of just war with a much higher degree of resolution than otherwise would be possible.)

righted or compensated for by engaging in war, just war theory traditionally has claimed that the outward disposition of the party contemplating the resort to war is not a sufficient guide as to whether the resort to war is actually justified. The inward disposition of the aggrieved party's members is also important. Hence, a *right intention*--the internal motivation of those who would engage in armed conflict--must itself be just. Evidence of right intention might include, among other things, the pursuit of peace negotiations in an effort to terminate the conflict as quickly as possible, the avoidance of potentially unreasonable demands (as might be the case with a requirement for unconditional surrender), etc. The intent of the party contemplating war must be in accord with the just cause and must not involve any desire for territorial expansion, intimidation or coercion. It should be devoid of hatred for the enemy, implacable animosity, or a desire for vengeance or domination.[5]

The decision to go to war can be weighed or declared only by one who, by virtue of his or her position in the social framework, is generally recognized as possessing *competent authority* to make such a declaration. Traditionally, this is a person or body with no political superior, that acts as the duly authorized representative of a sovereign state.

While it is true that war is traditionally regarded as the *ultima ratio regum* (i.e., the ultimate argument of kings) neither king nor any other sovereign authority is justified

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[5] See, for example, Augustine, *Reply to Faustus the Manichaean* [Contra Faustum Manichaeum, Libri XXXIII], trans. Richard Strothert, in *The Nicene and Post-Nicene Fathers*, ed. Philip Schaff, First Series, vol. IV (Grand Rapids: Eerdmans Publishing Company, 1956), 301.

in engaging in war if there be any means of avoiding it. That is, the prevailing circumstances must clearly indicate that the decision to go to war is the *last resort* and that no means short of war would be sufficient to obtain satisfaction for just grievances or wrongs against the state.

In order for a war truly to be the last available means for the resolution of international difficulties, it must be one which the sovereign authority is willing publicly to declare. At least two compelling reasons exist for this requirement. First, a *public declaration* gives occasion for the aggrieved nation to state the reasons which impel it to war as a demonstration that all other means short of war for peaceful resolution of the conflict have been utterly exhausted. Second, the preparation of a public declaration serves as an occasion for national reflection concerning whether all means short of warfare truly have been exhausted prior to the commitment of the nation's resolve, its energies, and its resources to the war-making enterprise. The public declaration can also come in the form of an ultimatum that sets forth those remedies short of war that are still available, with the requirement that the offending party avail itself to a resolution of the conflict via those remedies prior to a specified time.

According to the tradition, a just war is one which offers a *reasonable probability for success* toward the aim of resolving conflict. Wars that present little or no hope of serving as vehicles for obtaining satisfaction for just grievances, are not morally justifiable. (This, of course, is to be understood in light of the proviso that certain key moral values might be so important as to merit defense even in the face of seemingly overwhelming odds.)

Applying the notion of *proportionality* involves what is essentially a utilitarian calculation of expected outcomes. The threshold requirement is that the moral good (as assessed in accordance with some rational grounds) expected to result from the prosecution of the war exceed the amount of evil that naturally and unavoidably follows from its prosecution. As with many utilitarian calculations, although the results may neither be known nor knowable in advance, anything less than a sincere effort to gauge the relative weight of good and bad that the war is likely to produce would not meet the demands of this element.

A just war will have *peace as its ultimate objective*. For example, it will not be a war of endless territorial conquest. The restoration of happiness and the avoidance of future violence--in short, peace--must be the end for which the war is fought.[6]

These nine elements, or combinations thereof, traditionally are taken to specify the individually necessary and jointly sufficient conditions for engaging in a just war.

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[6] For examples of some representative lists of *jus ad bellum* criteria, see the May 3, 1983, Pastoral Letter on War and Peace issued by the National Conference of Catholic Bishops in *Catholics and Nuclear War,* ed. Philip J. Murnion (New York: Crossroad Publishing Company, 1983), 277-280. See also James Turner Johnson, "The Just War Idea and the Ethics of Intervention," address delivered at the United States Air Force Academy on 17 November 1993, The Joseph A. Reich, Sr. Distinguished Lecture on War, Morality, and the Military Profession, number six (Colorado Springs: United States Air Force Academy, 1993), 22-25. By way of comparison, Hartigan summarizes the *jus ad bellum* criteria thus: 1) the war must be declared by the legitimate public authority; 2) a real injury must have been suffered; 3) the damage likely to be incurred by the war may not be disproportionate to the injury suffered; 4) there must be reasonable hope of success; 5) all possible means of peaceful settlement must have failed; 6) those prosecuting the war must have the right intention; and 7) only legitimate and moral means may be employed in prosecuting the war. (Note that this latter element is, properly speaking, a *jus in bello* element.) See Hartigan 1967, 204.

Furthermore, they jointly form the permissibility criteria for a just war. That is, given that the conditions specified by these nine criteria are met, a state thereby would be considered as having acquired moral *license* to engage in war, although not necessarily the moral *obligation* to do so.

Jus in Bello

The fundamental assumption of *jus in bello* is that a war initiated on just grounds can cease to be a just war if it is not fought in a just manner. Traditionally, two elements constitute the criteria for *jus in bello*. These elements define the just application of force within the context of an existing conflict:

1. Proportionality
2. Discrimination

The *jus in bello* element of *proportionality* differs from the *jus ad bellum* element by the same name in that the former pertains to actions taken *once a war has begun*, whereas, the latter pertains to considerations expected to be entertained by a sovereign power *before* that power determines to engage in war. In the present context, 'proportionality' refers to the requirement to apply the minimum force necessary, consistent with 'military necessity,' for bringing the conflict to a just and peaceful resolution as quickly as possible. Means which cause gratuitous suffering or otherwise cause unnecessary harm fall outside the scope of that considered to be a 'proportional' application of force. This element includes the prohibition against torture and traditionally has served to facilitate the placing of limitations on such things as, for example, the kinds of weapons that can be used.

Discrimination enjoins upon belligerent parties to distinguish between combatants and noncombatants with the former normally constituting the only acceptable objects of violent action. Discrimination includes the establishment of a definition of noncombatancy and the avoidance of direct, intentional harm to those so defined. It also presumes that appropriate efforts will be made by all parties involved in a conflict to protect noncombatants. Traditionally, noncombatants have included wounded soldiers, prisoners of war, clergymen, women, children, the aged, and the infirm, all of whom were presumed not to be engaged in the war effort.[7]

Deception in a Just War

The theory of just war allows for the rational possibility that military deception may occur either in the context of *jus ad bellum* or of *jus in bello*. Nations can and do attempt to deceive each other in the context of *jus ad bellum*. However, an important point to bear in mind is that the *jus ad bellum* elements pertain principally to decisions made by the political apparatus of a state, and not to decisions made by its military apparatus. Since the *jus ad bellum* criteria for a just war constitute the necessary and sufficient conditions for obtaining moral permission to engage in war, they have served in the West to create the tacit expectation that no civilized nation would engage in war without first satisfying each of the *jus ad bellum* elements. It follows, therefore, that a state could use that expectation to perpetrate a successful deception (1) by creating the

[7] Murnion 1983, 280; Johnson 1993, 23.

impression that it would not initiate a war without first complying fully with the *jus ad bellum* demands of just war theory--a compliance which is manifestly impossible to achieve without serving notice to a potential enemy--and (2) by then failing, in a way calculated not to be foreseen by the enemy, to fulfil an obligation imposed by one or more of the *jus ad bellum* elements.

In contrast, the *jus in bello* elements directly pertain to decisions ultimately implemented on the battlefield. Most questions surrounding the ethics of military deception arise in the context of *jus in bello*. Hence, as we shall see in chapter 4, the vast majority of the just war literature that has undertaken to define what constitutes morally permissible military deceptions has to do with *jus in bello.*

To understand the distinction between military deceptions perpetrated under *jus ad bellum* and those perpetrated under *jus in bello*, consider yet once more to the example of Pearl Harbor. The attack came as the result of a grand politico-military strategy. The Japanese government took great pains to maintain the appearance that it was engaging in serious diplomatic negotiations when in fact the principal purpose of the negotiations was to conceal its preparations for the attack. The Japanese ruse contemplated the formal termination of diplomatic relations minutes before the first bombs fell on Pearl Harbor. The fact that the Japanese timetable was disrupted and diplomatic relations were not actually severed until after the attack began is, itself, irrelevant. The important fact is that, whatever self-deception the United States may have fallen victim to at Pearl Harbor, the United States was also the victim of military deception because the ruse perpetrated by the Japanese was intentional.

In contrast, it is important to note that during the attack, the Japanese appear not to have manifested any kind of deceptive intention, malicious or otherwise. The targets of the attack clearly were intended to be *bona fide* military targets, and the amount of force used was not disproportional to the military objective. (Indeed, history suggests that, if anything, the force applied was insufficient). Consequently, one might conclude that the Japanese attack on Pearl Harbor represents a case of military deception within the context of *jus ad bellum*, but not within the context of *jus in bello.* That is to say, the deception involved at least one element of *jus ad bellum* (namely, public declaration) but no elements of *jus in bello.*

Of course, it is not necessarily the case that all cultures apply the theory of just war to govern their wartime conduct. Moreover, among those that do apply it, there are bound to be interpretive differences. Nevertheless, the proliferation of Western culture in this century, coupled with the fact that most of the nations of the world are signatories to international agreements rooted in just war principles make the approach taken in this study the one most likely to provide a comprehensive view of the world's shared understanding (such as it is) of the ethics of military deception.

CHAPTER 4

MILITARY DECEPTION IN THE WESTERN PHILOSOPHICAL TRADITION

A Long Philosophical History

The concern over the ethical propriety of deception in military operations is by no means a new one. It extends at least as far back as pre-Christian Roman times. It resurfaced during the Patristic period, again in late Antiquity, throughout the Middle Ages, during the Enlightenment, and perhaps most recently in the important international treaties written in the present century to govern the conduct of war.

Cicero

Among the earliest figures in the Western philosophical tradition to comment directly on the moral dimensions of military deception is the great Roman orator, Marcus Tullius Cicero (106-43 B.C.). Of paramount importance to Cicero in the conduct of war is the maintenance of good faith with the enemy. If a promise is made to the enemy, either by an individual on behalf of a nation or by an individual soldier acting in a personal capacity, it must be kept. Cicero gives two examples at length in order forcefully to dramatize this point:

> Again, if under stress of circumstances individuals have made any promise to the enemy, they are bound to keep their word even then. For instance, in the First Punic War, when Regulus was taken prisoner by the Carthaginians, he was sent to Rome on parole to negotiate an exchange of prisoners; he came and, in the first place, it was he that made the motion in the Senate that the prisoners should not be restored; and in the second place, when his relatives and friends would have kept him back, he chose to return to a death by torture rather than prove false to his promise, though given to an enemy.
>
> And again in the Second Punic War, after the Battle of Cannae, Hannibal sent to Rome ten Roman captives bound by an oath to return to him, if they did

> not succeed in ransoming his prisoners; and as long as any of them lived, the censors kept them all degraded and disfranchised, because they were guilty of perjury in not returning. And they punished in like manner the one who had incurred guilt by an evasion of his oath: with Hannibal's permission this man left the camp and returned a little later on the pretext that he had forgotten something or other; and then, when he left the camp the second time, he claimed that he was released from his oath; and so he was, according to the letter of it, but not according to the spirit. In the matter of a promise one must always consider the meaning and not the mere words.[1]

Cicero holds that, in every case, soldiers have a solemn obligation to conduct warfare within the bounds of the traditionally recognized rules of war.

> Our forefathers have given us another striking example of justice toward an enemy: When a deserter from Pyrrhus promised the Senate to administer poison to the king and thus work his death, the Senate and Gaius Fabricius delivered the deserter up to Pyrrhus. Thus they stamped with their disapproval the treacherous murder even of an enemy who was at once powerful, unprovoked, aggressive, and successful.[2]

Cicero forbids deceptions of the kind that arise when truces or other similarly recognized devices are used in a dishonest way for the purpose of gaining unfair advantage of the enemy--even if the grievance against the enemy is justified. Likewise, he detests legalistic hair-splitting of the kind that results in the enforcement of the letter of international agreements in utter disregard for the spirit of the agreement.

> Injustice often arises also through chicanery, that is, through an over-subtle and even fraudulent construction of the law. This it is that gave rise to the now familiar saw, "More law, less justice." Through such interpretation also a great deal of wrong is committed in transactions between state and state; thus, when a truce had been made with the enemy for thirty days, a famous general went to ravaging their fields by night, because, he said, the truce stipulated "days," not nights. Not even our own countryman's action is to be commended, if what is

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[1] Marcus Tullius Cicero, *De Officiis,* I.xiii.40, trans. Walter Miller (Cambridge: Harvard University Press, 1913), pp. 43-45.

[2] Ibid., p. 45.

> told of Quintus Fabius Labeo is true--or whoever it was (for I have no authority but hearsay): appointed by the Senate to arbitrate a boundary dispute between Nola and Naples, he took up the case and interviewed both parties separately, asking them not to proceed in a covetous or grasping spirit, but to make some concession rather than claim some accession. When each party had agreed to this, there was a considerable strip of territory left between them. And so he set the boundary of each city as each had severally agreed; and the tract in between he awarded to the Roman People. Now that is swindling, not arbitration.[3]

Of that "swindling," Cicero goes on to say that "such sharp practice is under all circumstances to be avoided."[4]

Ambrose

Ambrose (A.D. 340-397), the Roman governor of northern Italy,[5] Bishop of Milan, mentor to Augustine, and Catholic saint, may well be the first Christian author to address military practices as ethical concerns. Ambrose, like Cicero, argues that in order for any warrior to be truly just, he must deal justly with the enemy as well as with comrades and countrymen. "How great a thing justice is," says Ambrose, "can be gathered from the fact that there is no place, nor person, nor time, with which it has nothing to do. It must even be preserved in all dealings with enemies."[6] From the context it is clear that "enemies" here includes political entities against whom wars can be waged as well as personal enemies. "For instance, if the day or the spot for a battle has been

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[3] Ibid., I.x.33, p. 35.

[4] Ibid.

[5] Paul P. Christopher, *The Ethics of War and Peace* (Englewood Cliffs: Prentice-Hall, Inc., 1994), 25.

[6] Ambrose, *Duties of the Clergy* [*De Officiis Ministrorum*] 1.29.139, trans. H. De Romestin, in *The Nicene and Post-Nicene Fathers*, ed. Philip Schaff and Henry Wace, Second Series, vol. X (Grand Rapids: Eerdmans Publishing Company, 1969), 23, 24.

agreed upon with them [i.e., an enemy], it would be considered an act against justice to occupy the spot beforehand, or to anticipate the time."[7] Naturally, therefore, any deception thus wrought to gain advantage over one's enemy would, by Ambrose's reckoning, be unjust.

Augustine

Aurelius Augustinus (A.D. 354-430), later known as Saint Augustine, the Catholic bishop of Hippo in North Africa, is in many ways the pivotal historical figure in the philosophical treatment of military deception. As the de facto father of just war theory in the West, it is Augustine who makes the first serious attempt to synthesize and, if possible, to reconcile, the just war tradition (which he inherits from the Romans) with the doctrines of Christianity (which he encounters via Ambrose). Indeed, it is in the writings of Augustine that the moral problem first crystalizes; and hence, his comments on the subject merit our special attention. Moreover, his treatment of military deception acquires particular importance when viewed against the backdrop of his position, encountered in chapter one, concerning the moral status of lying.

Augustine elevates the discussion of military deception from the level of moral discourse to that of Christian theology. It becomes a theological concern for Augustine

[7] Ibid., 24.

because the biblical text appears to sanction its use in the case of Joshua during the conquest of Canaan.[8]

> And the LORD said unto Joshua, Fear not, neither be thou dismayed: take all the people of war with thee, and arise, go up to Ai: see, I have given into thy hand the king of Ai, and his people, and his city, and his land:
>
> And thou shalt do to Ai and her king as thou didst unto Jericho and her king: only the spoil thereof, and the cattle thereof, shall ye take for a prey unto yourselves: lay thee an ambush for the city behind it.
>
> So Joshua arose, and all the people of war, to go up against Ai: and Joshua chose out thirty thousand mighty men of valour, and sent them away by night.
>
> And he commanded them, saying, Behold, ye shall lie in wait against the city, *even* behind the city, but be ye all ready:
>
> And I, and all the people that *are* with me, will approach unto the city: and it shall come to pass, when they come out against us, as at the first, that we will flee before them,
>
> (For they will come out after us) till we have drawn them from the city; for they will say, They flee before us, as at the first: therefore we will flee before them.
>
> Then ye shall rise up from the ambush, and seize upon the city: for the LORD your God will deliver it into your hand.
>
> And it shall be, when ye have taken the city, *that* ye shall set the city on fire: according to the commandment of the LORD shall ye do. See, I have commanded you.
>
> Joshua therefore sent them forth: and they went to lie in ambush, and abode between Beth-el and Ai, on the west side of Ai: but Joshua lodged that night among the people.
>
> And Joshua rose up early in the morning, and numbered the people, and went up, he and the elders of Israel, before the people of Ai.
>
> And all the people, *even the people* of war that *were* with him, went up, and drew nigh, and came before the city, and pitched on the north side of Ai: now *there was* a valley between them and Ai.
>
> And he took about five thousand men, and set them to lie in ambush between Beth-el and Ai, on the west side of the city.

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[8]Joshua 8:1-22. The passage is quoted *in extenso* because of the enormous influence which Augustine's treatment of it exerts on subsequent moral theorists and jurists.

And when they had set the people, *even* all the host that *was* on the north of the city, and their liers in wait on the west of the city, Joshua went that night into the midst of the valley.

And it came to pass, when the king of Ai saw *it*, that they hasted and rose up early, and the men of the city went out against Israel to battle, he and all his people, at a time appointed, before the plain; but he wist not that *there were* liers in ambush against him behind the city.

And Joshua and all Israel made as if they were beaten before them, and fled by the way of the wilderness.

And all the people that *were* in Ai were called together to pursue after them: and they pursued after Joshua, and were drawn away from the city.

And there was not a man left in Ai or Beth-el, that went not out after Israel: and they left the city open, and pursued after Israel.

And the LORD said unto Joshua, Stretch out the spear that *is* in thy hand toward Ai; for I will give it into thine hand. And Joshua stretched out the spear that *he had* in his hand toward the city.

And the ambush arose quickly out of their place, and they ran as soon as he had stretched out his hand: and they entered into the city, and took it, and hasted and set the city on fire.

And when the men of Ai looked behind them, they saw, and behold, the smoke of the city ascended up to heaven, and they had no power to flee this way or that way: and the people that fled to the wilderness turned back upon the pursuers.

And when Joshua and all Israel saw that the ambush had taken the city, and that the smoke of the city ascended, then they turned again, and slew the men of Ai.

And the other issued out of the city against them; so they were in the midst of Israel, some on this side, and some on that side: and they smote them, so that they let none of them remain or escape.

In his *Questions on the Heptateuch*, Augustine notes that God directed Joshua to set up ambushes in his battle for conquest of the city of Ai. Concerning God's command to Joshua, Augustine observes: "This teaches us that such things are legitimate for those who are engaged in a just war. In these matters the only thing a righteous man has to worry about is that the just war is waged by someone who has the right to do so because not all men have that right. Once an individual has undertaken this kind of war, it does

not matter at all, as far as justice is concerned, whether he wins victory in open combat or through ruses."[9]

This passage presents some unusually perplexing problems which we shall explore at length below. For the moment, however, suffice it to say that, according to Augustine, once it has been established that the war being fought is a just war, one need not have scruples about the use of stratagems, ruses, or other deceptive tactics in war.

In somewhat surprising contrast, Augustine urges Count Boniface, a Roman governor in North Africa, that "when faith is pledged, it is to be kept even with the enemy against whom the war is waged."[10] Whenever a nation makes a pledge to another, the pledge is to be regarded as inviolable. Cicero certainly held the same opinion. However, Augustine notes a problem which seems to have eluded Cicero, namely, that it is not always possible to maintain good faith with the enemy and at the same time to maintain the safety of one's own nation or city--both of which Cicero considered to be imperatives:

> Hence it is a fair question whether the Saguntines acted rightly when they would rather have their whole city perish than break the faith which bound them to the Roman commonwealth itself. . . . But I do not see how they comply with Cicero's argument, in which it is said that war should never be engaged on, except in defence either of faith or safety. For we are not told which of the two is to have preference, if both faith and safety run jointly into the same danger, so that the one cannot be preserved without the loss of the other. For it is obvious that if the

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[9] Augustine, *Questions on the Heptateuch* 6.10, quoted in Louis J. Swift, *The Early Church Fathers and Military Service* (Wilmington, Delaware: Michael Glazier, Inc., 1983), 138.

[10] Augustine, *Letter* 189.6, trans. J. G. Cunningham, in *The Nicene and Post-Nicene Fathers*, ed. Philip Schaff, First Series, vol. I (Grand Rapids: Eerdmans Publishing Company, 1956), 554.

> Saguntines had chosen safety they must have abandoned faith; if faith had been kept they must certainly have relinquished their safety--which is what happened.[11]

Augustine can do nothing but hold that both maintaining the safety or security of the state and keeping good faith with the enemy are important; but he acknowledges that it might not be possible to determine in advance of a particular crisis--or perhaps at all--which of the two should take precedence. Harkening again to the account of Joshua, however, Augustine seems to offer a solution to the dilemma. The solution is a transcendental one: Augustine justifies Joshua's actions as an appropriate response to a divine command and cites his actions as evidence of the propriety of military deception in general (assuming, of course, that the war is just). In Russell's words, "Since God had ordered Joshua to lay ambushes for the people of Ai, similar ambushes, ruses and stratagems that were otherwise prohibited could be employed."[12] This, however, raises the question of whether Augustine allows ruses and stratagems to be employed because (1) they were, in the case of Joshua, specifically divinely directed; (2) the war itself was divinely directed; or because (3) ruses and stratagems *as such* are morally permissible in the context of just warfare. In (1), the fact that God authorized Joshua to engage in military deception at the battle of Ai does not necessarily imply that the use of deception would be morally permissible in any other case without specific divine authorization. In (2), we might conclude that since the war was divinely authorized, whatever actions, to

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[11] Augustine, *City of God* [*De civitate Dei*], trans. Henry Bettenson (London: Penguin Books, 1984), XXII.6, p.1032.

[12] Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 23.

include deceptive ones, that Joshua deemed necessary to take in order to achieve his military objective were morally permissible. Still, the fact that God authorized their use in *this* war does not necessarily imply that God would approve of their use in other settings. Moreover, in the case of just wars not specifically the result of a divine command (i.e., those wars approved by God by reason of having been authorized by a political sovereign acting in the role of God's lieutenant on earth), the same epistemological uncertainties that attend the war itself would likewise attend the more specific issue of the propriety of the use of deceptive measures. Thus, given the assumption that the state is, on a variety of Augustinian accounts, divinely authorized to do things that individuals are not allowed to do, we might ask whether the state is likewise given general license to deceive in the context of war. This all sounds very consequentialist, a philosophy rarely comfortable either with Augustinism or with Christian theology in general. While a case-by-case dispensation of divine approval for the state to act in what would otherwise be considered a morally deficient way is consistent with the whole of Augustinism, it is not clear that Joshua 8:1-23 confers general authority upon the state or upon its sovereigns in this particular way.[13]

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[13] Grotius offers a general observation concerning divine intervention in war, which expresses the concern stated here: "If at times God does something of this kind [i.e., something which men normally are morally restrained from doing], it is not for us to take that as an example, in view of the most perfect right of dominion which He has over us, but which He has not granted to us over one another. . . . And yet God Himself, lord of men in His own right, is wont to spare a community of evil men, however large, for the sake of a very few good men; in this He makes manifest his fairness as a judge, as the conference of Abraham with God regarding Sodom [Genesis 18:22-33] teaches us" (Hugo Grotius, *The Law of War and Peace* [*De Jure Belli ac Pacis Libri Tres*] III.1.IV.3, trans. Francis W. Kelsey (New York: Oceana Publications, Inc.,1964), 601.

On the surface, (3) is arguably closest in spirit to Augustine's intent expressed in *Questions on the Heptateuch* 6.10. However, it is here that the principal problem arises: the grounds upon which Augustine justifies the use of measures involving deliberately deceptive practices for the benefit of the individual or group perpetrating the deception simply are not clear. The problem which this fact poses for Augustine has to do with the question of whether or not a deliberate deception in a just war counts as a lie. If so, then the permission to deceive in an otherwise just war seems to conflict not only with his exhortation to maintain good faith with the enemy[14] but also with his ethics in general; for, as Augustine states, "none doubts that it is a lie when a person willingly utters a falsehood for the purpose of deceiving: wherefore a false utterance put forth with will to deceive is manifestly a lie."[15]

Even if one could settle on one of these three approaches as clearly preferential to the others, it must be conceded that one in search of a strictly rationalist account of the problem--an account which does not rely on the transcendental--will not find the answer in the writings of Augustine. Later theorists will attempt such an account, but many of them will continue to appeal, either directly or indirectly, to the authority of Augustine to support their positions.

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[14] Augustine, *Letter* 189.6, *The Nicene and Post-Nicene Fathers* I, 554.

[15] Augustine, *On Lying* 5, *The Nicene and Post-Nicene Fathers* III, 460.

Thomas Aquinas

Thomas Aquinas' (1225-1274) response to the question of "Whether it is lawful to lay ambushes in war?"[16] constitutes the most systematic treatment of the subject up to this point in the intellectual history of the West. The rigorous method applied by this great doctor of the Roman Catholic Church indicates his commitment to produce a philosophical account that accords both with the revelations of Judeo-Christianity and with the demands of reason. Although he frames his inquiry specifically in terms of ambushes, the context supports the interpretation that Aquinas' intends for his argument to apply to a broader array of military deceptions.

Aquinas advances three reasons why one would not be justified in laying ambushes. The first reason stems from the injunction found in the Mosaic Law that "Thou shalt follow justly after that which is just."[17] Because ambushes are merely a special case of deception, and deception is, by its very nature, unjust, then one rationally could not be justified in laying ambushes, even in a just war.[18] The second reason states that ambushes specifically and deceptions in general are "opposed to faithfulness"[19] in the same way that lies are. Since men are bound to keep faith with one another, he says on

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[16] Thomas Aquinas, *Summa Theologica* II-II, 40, 3, trans. Fathers of the English Dominican Province (Benzinger Brothers, 1947; Hypertext version: New Advent, Inc., 1995, 1996), 1.

[17] Deuteronomy 16:20.

[18] Aquinas 1996, 1.

[19] Ibid.

the authority of Augustine that "it is wrong to lie to anyone."[20] He further demonstrates that extrapolation of the Augustinian position is unnecessary since Augustine specifies that in addition to the general faith that one is to maintain with one's fellow man, one also has an obligation to keep faith with one's enemies. This too would lead, according to Aquinas, to the conclusion that "it is unlawful to lay ambushes for one's enemies."[21] Finally, Aquinas reasons that ambushes and deceptions violate the Golden Rule on two accounts:

1. That even one's enemy is one's neighbor
2. That no one would wish for his neighbor to ambush or deceive him[22]

Aquinas then counters these objections with Augustine's claim, based on Joshua 8, that God Himself commanded Joshua to ambush his enemies and that, therefore, one could, within the context of a just war, justly ambush an enemy.[23] We have already considered the philosophical difficulties surrounding this claim in the discussion of Augustine. Aquinas does not address these difficulties. Instead, he pursues another line of reasoning through which he seeks to justify the Augustinian position. His argument is one that dominates in the succeeding historical debate and also that contains themes to which we shall have occasion to return hereafter:

> I answer that, The object of laying ambushes is in order to deceive the enemy. Now a man may be deceived by another's word or deed in two ways.

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[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Ibid.

> First, through being told something false, or through the breaking of a promise, and this is always unlawful. No one ought to deceive the enemy in this way [i. e., in those cases in which deception would involve the breaking of a promise] for there are certain "rights of war and covenants, which ought to be observed even among enemies," as Ambrose states (*De Officiis* i).
>
> Secondly, a man may be deceived by what we say or do, because we do not declare our purpose or meaning to him. Now we are not always bound to do this, since even in the Sacred Doctrine many things have to be concealed, especially from unbelievers, lest they deride it, according to Mt. [Matthew] 7:6: "Give not that which is holy, to dogs." Wherefore much more ought the plan of campaign to be hidden from the enemy. For this reason among other things that a soldier has to learn is the art of concealing his purpose lest it come to the enemy's knowledge, as stated in the Book of Strategy [*Stratagematum* i, 1 by Frontinus]. Such like concealment is what is meant by an ambush which may be lawfully employed in a just war.[24]

Aquinas offers no justification for his claim that military secrets should be hidden from the enemy in the same way that one should exercise discretion in revealing sacred truths to the spiritually illiterate or unprepared. Indeed, it is not at all clear that the analogy between the two notions (which Aquinas appears to assume to be self-evident) really exists at all. Somewhat more compelling is his next argument, which lends itself both to Aristotelian and neoplatonic interpretations: "Nor can these ambushes be properly called deceptions, nor are they contrary to justice or to a well-ordered will. For a man would have an inordinate will if he were unwilling that others should hide anything from him."[25] In Aristotelian terms, one could imagine a human will that allows ambushes specifically or military deceptions in general to occupy a mean between the extremes: on the one hand, of a will which insists on the full disclosure of all that one knows, so as to avoid the possibility of deception altogether, and on the other, of a will which desires total

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[24] Ibid.

[25] Ibid., 1-2.

secrecy so as to enable its possessor to deceive at every turn. In neoplatonic terms (an interpretation more compatible with Augustinism than with Thomism), one could think of any deviation from the well-ordered will that Aquinas describes to constitute a perversion of the hierarchy of being and value. In any event, Aquinas himself seems content that he has proven his case, inasmuch as he concludes his argument by stating, "This suffices for the Replies to the Objections."[26]

Giovanni da Legnano

In his 1360 work, Giovanni de Legnano (died 1383) advances an argument that obviously parallels Aquinas'.[27] He, too, begins by citing Joshua 8 in support of Augustine's position. Next, he notes that the Augustinian interpretation seems to conflict with the injunction found in Deuteronomy which commands "that which is just shalt thou follow justly."[28] The problem, as de Legnano notes, is that "to follow a thing by trickery is to follow it unjustly, since it savours of deceit."[29] Moreover, de Legnano points out that trickery is both "opposed to happiness"[30] and also a thing necessarily opposed to the Golden Rule; for one would never desire to be the object of someone else's trickery.

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[26] Ibid., 2.

[27] Giovanni de Legnano, *Tractatus De Bello, de Represallis et De Duello* (1360), chapter lxii, ed. Thomas Erskine Holland (New York: Oceana Publications, Inc., 1964), 271.

[28] Deuteronomy 16:20.

[29] de Legnano 1964, 271.

[30] Ibid.

De Legnano resolves this apparent dilemma by restricting the scope of meaning of the word 'trickery' as it applies to military deception. While one is never justified in making a statement for the express purpose of deceiving another, or in breaking a promise which one has made to another--even to an enemy, it is nevertheless the case that one need not feel any moral duty to make a full disclosure of all that he knows. Thus, "a man may be deceived by our words or acts merely because we do not disclose to him our intentions or our secrets. This mode of deceit," de Legnano observes, "is lawful."[31] Since "not even the secrets of Holy Scripture are at all times to be disclosed, lest men scoff at them,"[32] one need not be disturbed by the fact that "it is a special instruction among military documents, that secrets are not to be revealed to enemies."[33] This view, he argues, is in no way counter to Aquinas' position that full faith must be kept with the enemy.

Francisco de Victoria

Although otherwise an important contributor to the development of the theory of just war, Francisco de Victoria (1468?-1546) does not address the issue of military deception per se. He does, however, emphasize the need for belligerents to keep faith one with another

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[31] Ibid.

[32] Ibid. See Matthew 7:6.

[33] de Legnano 1964, 271.

and not fail to "abide by their undertakings,"[34] by which he appears to mean that belligerents are obliged to fulfil any stated commitments they have made one to another. The seriousness with which he regards the matter is evident in his position that if the enemy has broken faith, then former enemy combatants found among the offended party's enemy prisoners of war may, with propriety, be killed in reprisal for the breach of faith.[35]

Pierino Belli

In the 1563 edition of his *Treatise on Military Matters and Warfare,* Pierino Belli (1502-1575) states that "deceptions which involve no treachery may rightly and properly be employed."[36] Deceptions of this kind are, properly speaking, "stratagems,"[37] and, according to Belli, the ancient military histories abound in examples of them.[38] Moreover, he claims that the ancient historians who report their use commend and praise those "who had the discernment to use them at the proper time."[39] Belli joins in praising them. Indeed, he argues that it is "With wit and arms, then, war should be waged against the enemy--and with wiles too, if they involve no wrong or treachery (for in these there is

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[34] Francisco de Victoria, *On the Law of War* [*De Indis Relectio Posterior, sive De Iure Belli Hispanorum in Barbaros*] (1565), trans. John Pawley Bate (New York: Oceana Publications, Inc., 1964), 181.

[35] Ibid., 181-182.

[36] Pierino Belli, *A Treatise on Military Matters and Warfare* [*De Re Militari et Bello Tractatus*](1563), chapter XIV, trans. Herbert C. Nutting (New York: Oceana Publications, Inc., 1964), 88.

[37] Ibid.

[38] Ibid., 89.

[39] Ibid.

no room for valour and glory).[40] He echoes Cicero's point, however, that one need only ensure that faith is not breached when dealing with *legally* recognized combatants. For example, one may, according to Belli, fail to keep a promise made to a pirate and not be guilty of having broken faith with the enemy, "for a pirate is outside the category of legitimate combatants and the common enemy of every one."[41]

As for warfare against 'legitimate' enemies, Belli is considerably more particular to ensure that good faith is maintained between belligerents. For example, while, as Zouche later notes, Belli "frankly confesses that he has nowhere found the number of days fixed for commencing a war after a declaration,"[42] he also observes "that by natural reason it is fair that some time should intervene in which a belligerent may fortify and prepare himself for defense; otherwise one who declares and commences a war practically at the same moment may be accused of bad faith."[43] He adds, however, that one who has given cause to have a war declared against him "ought to show himself prepared, especially if the cause is recent, grave, and inexcusable."[44]

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[40] Ibid.

[41] Ibid., 88.

[42] Richard Zouche, *An Exposition of Fecial Law and Procedure, or of Law between Nations, and Questions concerning the Same* [*Iuris et Iudicii Fecialis, sive, Iuris Inter Gentes, et Quaestionum de Eodem Explicatio*]§X.2, trans. J. L. Brierly (New York: Oceana Publications, Inc., 1964), 172.

[43] Ibid.

[44] Ibid.

Balthazar Ayala

Balthazar Ayala (1548-1584) provides a host of examples from the writings of Plutarch, Justin, Livy, and others in support of Augustine's claim that "it is indifferent from the standpoint of justice whether the fighting is all open and above-board or whether trickery be used."[45] Indeed, he cites Xenophon's comment that the best way to secure victory is to trap the foe in every possible way, to trick him with hidden snares, guile, and fraud, and to wear him down by theft and rapine.[46] Philip of Macedon, Ayala argues, was considered particularly skillful as a general precisely because "he took much more pleasure in outwitting an enemy by a ruse than in beating him on the open field, saying that a victory won by guile and cunning never cost any lives of his soldiers, while that kind of victory which comes from the foughten field is ever a bloody one."[47] He also appeals to the authority of scripture, noting that "Joshua laid an ambush for his enemies on the command of God himself,"[48] and that David repeatedly refused to kill King Saul treacherously.[49]

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[45] Balthazar Ayala, *Three Books: On the Law of War, And on the Duties Connected with War, And on Military Discipline* (1582), VIII. 1,2, trans. John Pawley Bate (New York: Oceana Publications, Inc., 1964), 84. It should be noted, since Ayala fails to clarify the point, that Augustine's opinion concerning the use of trickery applies only to wars which are otherwise just.

[46] Ibid., 84-85.

[47] Ibid., VIII.3, p. 85.

[48] Ibid., VIII.1-2, p. 84. See Joshua 8.

[49] Ibid., VIII.5, pp. 86-87. See 1 Samuel 26.

Ayala discusses at length the fact that the ancient Romans "disdained all . . . frauds and deceptions."[50] Their disdain, however, appears not to have been the result of their having moral scruples about the use of military deception per se, but rather because they "had no wish to conquer save by sheer valor and downright force--what they used to call Roman methods."[51] This emphasis on conquest by bravery and force of arms alone stemmed from the premise, accepted by the ancient Romans and reported by Livy, that "you have finally conquered an enemy's courage only when you have extorted from him the acknowledgment that he had been beaten in a just and righteous war by no trickery or chance, but in a hand-to-hand measurement of strength."[52] Ayala continues by noting that later Romans "discarded this maxim of their ancestors and were quite ready to call the arts of dupery and deceit to the aid of themselves and the State."[53] Of course, that does not necessarily imply that the later Romans considered the use of military deception to be morally acceptable per se. Rather, being 'practical' people, they may have viewed the use of military deception to be a matter of regrettable expediency. In any event, Ayala gives us no reason to suppose that, even in later times, the Romans considered breaches of faith in the form of, for example, broken promises to the enemy, to be acceptable in war.

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[50] Ibid., VIII.4, p. 85.

[51] Ibid.

[52] Ibid., 86.

[53] Ibid., 85.

Francisco Suárez

Francisco Suárez (1548-1617) who, along with de Victoria, is a particularly prominent figure in the development of the just war tradition, comments only briefly on the question of whether the use of stratagem is permissible in war. Somewhat surprisingly, his consideration of the question is embedded in a much more extensive discussion on property ownership both before and after a war, and on war reparations. He agrees with Aquinas that stratagems "are permissible in so far as relates to the prudent concealment of one's plans, but not with respect to the telling of lies."[54] From this claim, it follows *a fortiori*, according to Suárez, that breaking faith with the enemy "is not permissible since it involves patent injustice."[55] He then establishes the connection between his discussions of stratagem and his discussion of war reparations, noting that if an enemy suffers a loss in war by reason of having fallen victim to a breach of faith (in the form of a broken promise or agreement), the enemy is entitled to full reparation. He stipulates, however, that reparation is required only if the breach of faith involved a promise made "from the beginning of the war by a just and mutual agreement."[56] He acknowledges that unexpected changes in the fortunes of the contesting belligerents may be such that one side cannot keep a promise previously made in good faith to the enemy without incurring grave loss. Even in this event, however, "the opposing side must be

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[54] Francisco Suárez, *A Work on the Three Theological Virtues: Faith, Hope, and Charity* [*De Triplici Virtute Theologica, Fide, Spe, et Charitate*](1621), Disputation XIII. 23, trans. Gwladys L. Williams et al. (New York: Oceana Publications, Inc., 1964), 852.

[55] Ibid.

[56] Ibid., 853.

warned that it is not possible to keep the promise made to it."[57] This warning frees the opposing side from any obligations it may have incurred as a result of the promise. It should be noted that, if anything, rather than diluting the force of the traditional position that belligerents must keep faith with each other, these stipulations serve to reinforce it. They give no permission for treachery in warfare; they merely specify which kind of promises ordinarily can be broken and provide a mechanism for terminating the binding force of those promises when their breakage becomes inevitable.

Alberico Gentili

In contrast to those who proceeded him, Alberico Gentili (1552-1608) addresses the topic of military deception at length, and he is sensitive to the philosophical nuances of the topic in a way that most of his predecessors are not.

Gentili names "craft and stratagem" as embodying "one principle which pervades all parts" of war.[58] He generally regards stratagems as being permissible, as contrasted with their use in, for example, sports and games, where "they are not permitted."[59] A discussion of the relationship between the use of stratagem in war on the one hand and in sports and games on the other is one to which we will have occasion to return. For the present, however, let us note the basic distinction that Gentili struggles to make between the two. In a rather difficult passage, Gentili argues:

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[57] Ibid.

[58] Alberico Gentili, *On the Law of War, in Three Books* [*De Iure Belli Libri Tres*] (1612), Book II, Chapter III, trans. John C. Rolfe (New York: Oceana Publications, Inc., 1964), 142.

[59] Ibid.

> the laws of games are such that the contest is directed to the purpose of the game. Therefore, those who have to contend in running have nothing to do but run; or if they do something else, they no longer contend in running. The contest of those who act otherwise is called a mad one [or, as the translator alternatively renders the last sentence, "That is, it is not a friendly contest, but a frenzied struggle for victory"].
>
> There is the same difference between war and the duel, and for duelists the conditions ought to be equal, since theirs is a contest of personal courage. That, however, is not the case in wars, where the test is the valour of kingdoms. In war, therefore, there is no strict law of that kind, but victory is sought in no prescribed fashion. Thus Virgil, who did not approve of craft in sports, but restored to Salius the first prize which was taken from him by stratagem, in dealing with an enemy gives equal place with valor, speaking through the mouth of a leader not destitute of glory: 'Who asks in dealing with an enemy whether it be craft or valor?'[60]

Gentili maintains, "A certain amount of craft is allowed by nature's law and not all deception is illegal"[61] (nor, one might infer, is it all, by Gentili's account, immoral). But exactly what amount of craft and deception would Gentili be willing to allow in war? Gentili, like many of his predecessors, holds that "Faith is the foundation of justice," and that therefore "It is not obligatory to keep faith, or even one's oaths, with pirates or brigands, for such men are not included in the number of the enemy."[62] Now, of course, pirates and brigands are, by definition, enemies of the state. However, what Gentili intends here is a more restrictive, even formal, use of the word 'enemy,' to wit, another sovereign political entity endowed (as recognized by the long legal tradition of the West) with the power to conduct war. Hence, he states that as pertaining to pirates and

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[60] Ibid.

[61] Ibid., 143.

[62] Ibid., 144.

brigands, "There is no faith with them, no oath in common,"[63] that is to say, no mutual recognition of sovereignty. On the other hand, Gentili notes, "in dealing with a just and lawful enemy [i.e., a political state of recognized sovereignty], we have the whole fetial law and many other laws in common."[64] Implicit in Gentili's argument is the conclusion that states recognized as sovereign in the international community are entitled to have certain expectations of other sovereign states, including the expectation that each will act in good faith with the other, whether in war or in peace. Specifically, Gentili maintains, "the wording of our agreements with our enemies should be free from every kind of trickery."[65] Because "Military life is . . . far removed from the subtlety of the Forum,"[66] oaths with an enemy should be governed by the maxim that "every interpretation is perverted and unnatural which is not clear to the ears of the common people."[67] He points out, for example, that "Hagon was unjust, and so were Clemomenes and the Thracians, who, when they had agreed upon a truce for several days, meanwhile committed a hostile act one night, just as if night were not included in the term 'day,' to say nothing of the fact that the agreement was not for one day, but for several, and as if operations were suspended only in daylight and not also in darkness."[68]

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[63] Ibid.

[64] Ibid.

[65] Ibid., Book II, Chapter IV, p. 145.

[66] Ibid., 145.

[67] Ibid., 146.

[68] Ibid., 147.

However, Gentili does not hold that all deception against an enemy is either unjust or immoral: "various contingencies may arise to justify telling the enemy a lie, and therefore there cannot be one decision of this matter or one answer to the question."[69] By this comment, however, Gentili does not advocate a kind of situational ethics or an ethics of expediency. Rather, he means that both reason and tradition differentiate between morally acceptable and morally unacceptable deceptions of an enemy. Hence, on the one hand, "In the making of a contract it is not lawful to lie to the enemy."[70] On the other hand, a direct lie that involves no oath or contract is not subject to the same moral critique: "we have never heard of an enemy being accused by his enemy because of such lies."[71] The reason for this is plain: one who trusts a known enemy has nothing to blame but his own credulity if he is deceived. Hence, Gentili echoes the time-tested maxim: "Distrust your enemy for all time."[72] Gentili breaks with Augustine on the strict philosophical point that "it is never just to tell a falsehood, even though it be an enemy who is deceived by it."[73] Gentili advocates the deception of one's enemy so long as no promise is broken. Moreover, that deception need not consist of words; for "feigned actions"[74] similarly possess the semiotic quality requisite for lying, to wit: the intent to deceive.

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[69] Ibid., Book II, Chapter V, p. 149.

[70] Ibid., 150.

[71] Ibid.

[72] Ibid.

[73] Ibid., 152.

[74] Ibid, 153.

Gentili's useful and unusually thorough consideration of this topic includes a wide variety of hypothetical and ancient historical case studies that reduce, by his account, to a formula highly reminiscent of that set forth in the Golden Rule: "Do not do to a friend what you would not wish to have a friend do to you. Do not do to an enemy what you would not wish to have an enemy do to you."[75]

Hugo Grotius

Hugo Grotius (1583-1645), widely regarded as the father of international law, states unequivocally that "all those stratagems of war are just which a prudent enemy has reason to fear, and in which no pretense of friendship is involved. . . . To this extent," he continues, " the guile which is of use against an enemy is good."[76]

Grotius additionally offers useful insights concerning the limits of that 'good faith' that is referred to by so many of his intellectual predecessors. Beginning with the premise that "it is our duty to fulfil, regardless of possible harmful consequences to ourselves, whatever promises we have made, in relation of course to matters under our control,"[77] he concludes with Cicero that "faith must be kept with the enemy in every way, . . . and even (so Ambrose specifies) when one is dealing with a treacherous

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[75] Ibid., Book II, Chapter VIII, p. 169.

[76] Hugo Grotius, *Commentary on the Law of Prize and Booty* [*De Iure Praedae Commentarius*](1604), Chapter VIII, trans. Gwladys L. Williams and Walter H. Zeydel (New York: Oceana Publications, Inc., 1964), 118.

[77] Ibid., 117.

enemy."[78] So important is the matter of good faith that Grotius modifies his previously stated definition of a just war in order to include good faith as a necessary component: "the conclusion set forth in an earlier part of this chapter--namely, that a war is justly waged by voluntary agents in so far as it remains within the sphere of the right contested and is waged among the persons obligated with respect to that right--should be interpreted, or supplemented, by the following phrase: *and in so far as it is permitted by good faith.*"[79]

Grotius suggests that fighting in good faith is even more important than fighting a just war. For example, if state *x* were to make a unilateral promise to state *y* (an unjust enemy) that state *x* would not invade state *y* for a period of six months, then by Grotius' account, state *x* could not justly invade state *y* during the period specified, even if state *y* decided for opportunistic reasons to invade state *x* during that period. The promise made by state *x* would be binding, even though foolish. Moreover, this is so regardless of whether the promise was voluntarily made; for a will that is coerced "nevertheless retains its voluntary character [since for one to say that his will was coerced merely means that circumstances required him to choose from among unsavory alternatives--but to choose nonetheless--] and, once it has been expressed (albeit to an adversary), has binding force."[80]

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[78] Ibid.

[79] Ibid., 118.

[80] Ibid., 117.

Given the overriding importance of fighting in good faith, "it would seem to follow," Grotius opines, "that a subject who has waged war in good faith is in nowise bound to restore those things which he has obtained from the spoils, even if he learns afterwards that the war was unjust"[81]--which restoration Grotius normally would require of those who wage unjust war.

Although Grotius considers morally obligatory the keeping of promises made to the enemy, that does not mean that he issues the enemy a *carte blanche* to do whatever he wishes on the assumption that the demands of morality will keep the other party in check. Rather, the enemy can, and does, by virtue of his own failure to observe his obligations, negate the efficacy of any promises made to him. Thus, Grotius' doctrine depends strictly "upon the supposition that the enemy has not previously departed from the particular contract that is the basis of the required good faith; for in such cases it will be evident, inasmuch as the obligation is mutual, that the terms of the promise may have lapsed, so to speak."[82] This, however, is his sole exception to the otherwise inviolable injunction against promise breaking. Presumably, then, unilateral promises made to an enemy are subject to the imperative to keep good faith.

In his classic work, *The Law of War and Peace*, the subject of the ethics of military deception receives substantial treatment. Here, as in his previously cited work, Grotius notes the long list of classical authors who praise the use of ruses and stratagems in war. However, he concedes that "there is no lack of opinions which seem to advocate

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[81] Ibid., 122.

[82] Ibid., 117.

the opposite view,"[83] clearly suggesting that Grotius considers the matter either to be one which is not settled, or one for which an argument is required. The final conclusion as to the propriety of military deception depends, says Grotius, upon whether deceit is inherently evil, or "whether it is in the category of things which from their very nature are not at all times vicious but which may even happen to be good."[84] Inasmuch as he allows deception under any circumstances, one must assume that Grotius does not consider deception to be inherently evil. At the same time, he recognizes the pernicious quality of any grant of permission to deceive, even in time of war. Just because one engages in war does not mean that he or she loses his or her moral agency. Accordingly, even combatants have the right to expect that their enemies' actions will be constrained by the demands of morality. The specific moral demand at issue surrounds the inviolability of one's word as one's bond: "all men who have attained to the use of reason are capable of possessing a right which has it origin in a promise."[85] Thus, Grotius makes the following crucial distinction: "the obligation to speak the truth comes from a cause which was valid before the war, and may, perhaps, in some degree, be removed by the war; but a promise in itself confers a new right."[86] That is to say, the making of a promise involves a higher-order moral obligation than merely the general moral obligation had by all people not to

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[83] Hugo Grotius, *The Law of War and Peace* [*De Jure Belli ac Pacis Libri Tres*], Book III, Chapter 1.VI.4,, trans. Francis W. Kelsey et al. (New York: Oceana Publications, Inc., 1964), 606.

[84] Ibid.

[85] Ibid., Book III, Chapter XIX.I.2, p. 792.

[86] Ibid., Book III, Chapter XIX.I.3, p. 793.

deceive. The act of war might, with propriety, include the perpetration of certain deceptions, but the act of making a promise can *never*, with propriety, involve false pretenses of any kind. On this basis, Grotius rejects the position taken by Cicero and others that one can both deceive *and* break promises made to pirates, brigands, and other such outlaws. One may be morally justified in deceiving outlaws, but one is *never* justified in breaking promises to them. "Who will say," asks Grotius, "that, if an agreement of any sort has been made [whether with pirates or any other persons], no obligation would have arisen from it?"[87] And, of course, that obligation is the irrevocable moral obligation to keep promises. Thus, if one promises a ransom to a brigand in order that a friend might be freed from captivity, the person so promising must pay the ransom.[88] At this juncture, however, Grotius makes a crucial distinction between the juridical demands of established law and the demands of morality: "if one violates a sworn or unsworn pledge given to a brigand he will not on that account be liable to punishment among other nations. *For because of the hatred of brigands the nations have decided to overlook illegal acts committed against them*" (emphasis mine).[89] Thus, Grotius urges that morality condemns one who would break a promise made to a lawless person even though, as a practical matter, nations choose to overlook the breach as a means of discouraging the lawless.

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[87] Ibid., Book III, Chapter XIX.II.2, p. 794.

[88] Ibid., Book III, Chapter XIX. IV, p. 795.

[89] Ibid., Book III, Chapter XIX.V, p. 796.

Grotius discusses at length the character of promises made out of fear. His general position is that a promise made out of fear is as binding as one that was not made out of fear; for fear is an emotion not at all uncommon in warfare and must, therefore, be understood as occupying a recognized place in the moral backdrop against which wars, both just and unjust, are fought. However, when the one seeking the promise coerces it in a way that is "opposed to the nature of human liberty and of an act which ought to be free," he regards that promise void by reason of having resulted from an "unjust fear."[90] This case, however, appears to be exceptional, inasmuch as Grotius offers no clear example of it. Certainly, in the case of a formal war publicly declared on both sides, fear cannot constitute justification for a breach in promise keeping. Only in an "unlawful war"[91] does the potential exist to allow this exceptional case.

Grotius goes on to specify the two cases in which "one may be free from a breach of faith and yet not do what was promised,"[92] namely, that (1) the conditions governing a conditionally made promise cease to exist, or that (2) the agent making the promise provides adequate compensation in lieu of fulfilling the promise.[93] However, he further urges that "it is characteristic of a noble mind to abide by treaties even after an injury has been suffered,"[94] suggesting that, notwithstanding technicalities

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[90] Ibid., Book III, Chapter XIX. IV, p. 795.

[91] Ibid., Book III, Chapter XIX. XI.2, p. 799.

[92] Ibid., Book III, Chapter XIX.XIV, p. 800.

[93] Ibid.

[94] Ibid., Book III, Chapter XIX.XIX.4, p. 802.

of the law of nations that conditionally absolve one from the legal obligation to fulfil promises, one ought to be reluctant on moral grounds to break any promise.

Grotius' specification of the moral obligations arising from making truces during a war provides an instructive example of how he believes the notion of good faith converts into practice. "[A] truce . . . is binding on the contracting parties immediately after the agreement is completed. The subjects on both sides, however, begin to be bound as soon as the truce has taken the form of a law, and this requires some sort of publication abroad. . . . [I]f in the meantime subjects have done anything contrary to the truce, while they will not be liable to punishment, the contracting parties will, nevertheless, be bound to make good the loss." If the good faith of a truce is violated, the injured party is automatically free to take up arms without any declaration of hostile intent.[95] Of particular interest in this connection is the distinction that Grotius makes between public and private acts: "Private acts do not break a truce unless in addition there is a public act, that is, through command or approval. Private acts are understood to be in accordance with public command or approval if the guilty parties are neither punished nor surrendered, and if restitution is not made." Of important note here is the fact that, by Grotius' account, although there exists a definite connection between 'public' acts (i.e., acts done by agents in behalf of the state) and 'private' acts (i.e., acts performed by agents acting in their individual capacity), these acts do not have exactly the same moral status. Bad faith acts of individuals become the bad faith acts of states if, and only if, the state

[95] Ibid., Book III, Chapter XXI. XI, p. 838.

either explicitly endorses those acts or implicitly endorses them by failing to take corrective action.

The responsibility for acting in good faith in dealing with enemies does not terminate at war's end. Rather, what terminates is the right to invoke exemptions that the state of war might be regarded as having conferred with respect to breaking promises. Treaties of peace must be kept after hostilities have ended. In fact, Grotius claims that the breaking of peace treaties is specifically what the ancient Greeks had in mind when they used the phrase "'breach of faith'" as pertaining to war.[96] "A treaty of peace," Grotius writes, "is broken in [one of] three ways: by acting either contrary to what is involved in every peace, or against what was expressly stated in the treaty of peace, or against what ought to be understood from the nature of every peace."[97] Indeed, breaking such a treaty itself constitutes cause for the resumption of hostilities. Moreover, the victor incurs certain duties to act in good faith with regard to the vanquished, to include the acceptance of their unconditional surrenders.[98]

Grotius recognizes an obligation to maintain good faith even in instances in which it has not been given explicitly by means of uttered or written agreements. Indeed, "there are also signs of consent besides spoken and written words."[99] For example, "certain

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[96] Ibid., Book III, Chapter XX. XXVII, p. 814.

[97] Ibid.

[98] Ibid., Book III, Chapter XX. L., pp. 826-828.

[99] Ibid., Book III, Chapter XXIV.I, p. 857.

things are agreed to by silence,"[100] as in the case of "the person who comes either from the enemy or from a foreign country and entrusts himself to the good faith of another people or king,"[101] or "the person who asks or grants a parley"[102] with the full expectation that "it will be without hurt to those who take part in it."[103] He notes that "There are also certain mute signs which have a significance arising from custom. Such were in ancient time the use of fillets and olive branches; among the Macedonians the raising of spears, among the Romans the placing of shields over the heads, all signs of a suppliant surrender, which in consequence imposed the obligation to lay down arms. . . . At the present time white flags are the implied sign of a request for a parley; they will, therefore, be no less binding than if the parley had been requested by word of mouth."[104]

Grotius finds no inconsistency between the requirement to refrain from harming the parties to a parley and the permission that he grants for one or both sides to use the time gained by the parley to perpetrate a ruse or deception against the opposing side: "provided that the parties to the conference suffer no harm, it is not treacherous, but reckoned among honorable artifices, to divert the enemy from warlike plans by the pretext of a parley, and in the meantime to promote one's own advantage."[105]

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[100] Ibid., Book III, Chapter XXIV. II, p. 857.

[101] Ibid., Book III, Chapter XXIV. III, p. 857.

[102] Ibid.

[103] Ibid.

[104] Ibid. Book III, Chapter XXIV.V, pp. 858, 859.

[105] Ibid., Book III, Chapter XXIV. IV, p. 858.

His thorough treatment of the subject of good faith notwithstanding, Grotius does not claim to have exhausted the topic: "At this point I think that I can bring my work to an end, not because all has been said that could be said, but because sufficient has been said to lay the foundations. Whoever may wish to build on these foundations a more imposing structure will not only find me free from envy, but will have my sincere gratitude."[106]

Samuel von Pufendorf

Among those who accepted Grotius' invitation to build upon his theoretical foundation was Samuel von Pufendorf (1632-1694). Von Pufendorf argues that the fact that one possesses vices does not imply that others are thereby absolved from the responsibility to act in good faith toward him or her. One still must fulfil either the explicit promises made, or the implicit obligations owed, to even a vicious person. He adds, however, that "it is surely imprudent for a person to make an agreement a second time with a man by whom he has once been deceived without exacting a special security."[107] Von Pufendorf implies that *everyone*, no matter how vicious a person he or she may be, deserves to be dealt with on the basis of the assumption that he or she will act in good faith until outcomes prove otherwise. Whether morality can demand such a level

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[106] Ibid., Book III, Chapter XXV. I, p. 860.

[107] Samuel von Pufendorf, *On the Law of Nature and Nations (in Eight Books)* [*De Jure Naturae et Gentium Libri Octo*](1688), Book III, Chapter VI, trans. C. H. Oldfather and W. A. Oldfather (New York: Oceana Publications, Inc., 1964), 414.

of trust in everyone is not entirely clear. Von Pufendorf implies that he generally intends his observations about good faith in individuals to apply to states as well.

Von Pufendorf maintains that "an enemy whom [sic] one can openly combat, may lawfully be deceived by such stratagems as flight, the use of uniforms, insignia, and arms."[108] Moreover, he departs from the Augustinian tradition, taking the position that "feigned speeches as protect the innocent, appease the wrathful, relieve the downcast, or bring any advantage which could not have been secured by plain speaking, are free from every taint of lying and even merit praise for their prudence."[109] Far from attempting to break with the larger Christian tradition of which Augustinism is a part, he cites a host of biblical (not to mention classical) references in support of his position.[110] "Under the same head," says von Pufendorf, "come those who raise the drooping spirits of their troops in battle by a false report, and thus spur them on to win for themselves victory and safety, or who belittle before a battle the number of the enemy."[111] He further writes: "The heads of states may also sometimes avail themselves of false speech, since if their counsels and designs are divulged, they often are brought to naught, or else cause damage to the state. When these are not sufficiently protected by simple silence, it will be permissible to conceal them, misleading the curiosity of other men with feigned

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[108] Ibid., Book IV, Chapter I.12, p. 476. As we shall see hereafter, deceit involving these latter three items oversteps the bounds of what is currently regarded as permissible in just warfare.

[109] Ibid., Book IV, Chapter I.16, p. 480.

[110] Ibid. See, for example, Exodus 17, 19; 1 Samuel 19:12, ff.; 20:5, 28, 29; 2 Samuel 14:4, ff.; 2 Corinthians 9:2-4; etc.

[111] Ibid.

language."[112] Von Pufendorf continues in this consequentialist vein by placing a surprisingly mild moral restraint upon military deception, to wit, that one's war time deceptions cannot extend to acts that pose a positive harm to one's friends. However, he extends no such protection to the enemy. "For what prevents us from inflicting damage upon one by cunning and without any peril to ourselves, whom we may hurt by open violence?"[113]

On the other hand, von Pufendorf argues that, on pain of contradiction, the law of nature demands that no duplicity whatsoever exist either in the concluding of peace agreements or in the negotiations from which those agreements issue. Moreover, one is utterly without moral right to take actions, such as disseminating false reports of "crimes and atrocities about the enemy to impair his reputation,"[114] since such acts could only have as their inevitable result diminished prospects for the attainment of peace. Von Pufendorf maintains that if the war terminates in the subjugation of one people by another, the victor has no right to exercise authority over the vanquished unless "the vanquished . . . have given their word to the victors, and the latter . . . have laid aside their hostile attitude and temper towards the former,"[115] the true laying aside of which will be evidenced, in part at least, by the latter's acting in, and only in, good faith.

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[112] Ibid., Book IV, Chapter I.17, p. 481.

[113] Ibid., Book IV, Chapter I.19, p. 484.

[114] Ibid., Book IV, Chapter I.19, p. 485.

[115] Samuel von Pufendorf, *De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo* (1682), Chapter XVI.14, trans. Frank Gardner Moore (New York: Oceana Publications, Inc., 1964), 141.

In sum, von Pufendorf holds, "the most appropriate mode of action in war is force and terror; but it is nevertheless permitted to use trickery and ruses against an enemy, provided there is no breach of faith. Hence it is permissible to deceive an enemy by a pretended speech, or fictitious reports, but not at all by promises or agreements."[116]

Christian Wolff

Christian Wolff's (1679-1754) contribution to the literature on the ethics of military deception includes an argument, rigorously stated, that hinges upon a premise rarely if ever exploited in the works of the writers that precede him. The argument may be formalized as follows:

P1. Given any objective *x*, if a belligerent can rightfully obtain *x* in the course of war without the use of force, then he must seek to obtain *x* without the use of force.

P2. Some *x's* can be obtained in war by deception, which properly includes pretense, falsehood without the plighted word, and concealment.

P3. Deception does not require the use of force.

C. ∴ If any *x* can only be obtained either by deception or by force, one must use deception instead of force to obtain it.[117]

This argument is striking for its novelty and creativity. Although many before Wolff recognized the utility of deceptive practices in war, Wolff appears to be the first in the Western philosophical tradition to hold that states are morally *required* to use deception when it would minimize the necessity to use force.

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[116] Ibid., Chapter XVI.5, pp. 138, 139.

[117] Christian Wolff, *Jus Gentium Methodo Scientifica Pertractatum*, § 857, trans. Joseph H. Drake (New York: Oceana Publications, Inc., 1964), 442.

E. de Vattel

E. de Vattel (1714-1767) provides some important distinctions which, although arguably implicit in the writings of his predecessors, still serve to illuminate the issues relevant to the present topic. De Vattel argues that, except for treaties designed to become operative in the event of war, agreements between states are annulled when war breaks out because, among other reasons, "such agreements imply a state of peace."[118] For example, states at war would not be bound to honor trade agreements made between them prior to the outbreak of hostilities. With respect to agreements regulating the conduct of war, however, he argues that "Since parties intend by these treaties to regulate their conduct in the event of a quarrel, they renounce the right to annul them by the declaration of war."[119] On the basis of these arguments, one may conclude that unlawful or immoral deceptions in war could stem from breaches of treaties intended to regulate the conduct of war, but not from the disregard of any treaty that the state of war served to annul. Following the same line of reasoning, de Vattel argues, "a belligerent is bound to observe whatever promises he may have made to the enemy during the course of the war, for in treating with the enemy while he is actually at war with him he necessarily, though tacitly, renounces the power to break the agreement as a means of indemnification and because of the war, just as he annuls preceding treaties; otherwise nothing would be gained by

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[118] E. de Vattel, *The Law of Nations, or The Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns* [*Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite et aux Affaires des Nations et des Souverains*] (1758), Chapter X, trans. Charles G. Fenwick (New York: Oceana Publications, Inc., 1964), 296.

[119] Ibid.

treating with the enemy and it would be absurd to make the attempt."[120] By the same token, agreements made among belligerents become void when one side violates the agreement, thus terminating any obligation the offended side may have had with respect to the offender. Even in this case, however, de Vattel points out that "it is never lawful to act perfidiously because [one] is dealing with an enemy who on another occasion has failed to keep his word."[121]

Of particular interest is de Vattel's account of the evolution of discourse on the ethics of military deception. According to de Vattel, the premise that there exist occasions when one has a moral obligation to speak the truth to an enemy gave rise in ancient and mediaeval times to the question of what constitutes a lie (and, indeed, our rendition of the history of the ethics of military deception shows that de Vattel is correct). He then astutely identifies a key metaphysical distinction which, in many important respects, may be said to constitute the basis on which rests the dilemma that is central to this study:

> Many persons, and especially the theologians, looked upon truth as a sort of divinity, to which, for its own sake, and independently of its effects, men owe a certain inviolable respect; they condemned absolutely all language contrary to the thought of the speaker; they asserted that, on every occasion when a man could not be silent, he should speak the truth according to the best of his knowledge, and should sacrifice to their divinity his dearest interests, rather than fail to respect her. But philosophers of more exact and profound knowledge have cleared up that confused notion, which led to such erroneous results. They have recognized that truth should, in general be respected, as being the soul of human society and the basis of confidence between men in their mutual intercourse; and that, in consequence, a man should not lie even in indifferent matters, for fear of lessening

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[120] Ibid, 297.

[121] Ibid.

> himself by causing his word to be doubted even when he speaks seriously. Now, in thus basing the respect due to truth upon its effects, they were advancing in the right direction, and thereafter it was easy to distinguish between those occasions on which man is bound to speak the truth, or to manifest his thought, and those on which it is not so bound. The term *lies* is limited to words which a man speaks contrary to his thought on those occasions when he is under obligation to speak the truth; and another name, in Latin *falsiloquium*, is given to untrue statements, made to persons who, in the particular case, have no right to require that the truth be told them.[122]

This statement by de Vattel is of great importance, not because of his appraisal of the relative contribution of theologians and philosophers to the present discourse (indeed, he may be altogether mistaken on this point), but because it serves to bring the entire history of the issue full circle back to Augustine. Augustine and de Vattel agree that the question of whether it is always wrong intentionally to deceive is of critical importance. However, for Augustine, any false utterance, or sign of any kind, is always absolutely wrong; for de Vattel, a false utterance or sign is wrong only if its issuance would unjustly harm another.

De Vattel may, therefore, solve a problem, the solution to which seems to have eluded Augustine. While Augustine holds that stratagems must, in principle, be allowable because God authorized their use by Joshua, he never provides a basis for establishing their permissibility absent of a divine command. However, de Vattel, by beginning with the theologically and philosophically palatable premise that one should do no harm to another, argues that falsehoods can, in the specialized context of war, positively result in more good than harm to one's fellows; and thus he obtains the grounds necessary for his consequentialist approach to justify the use of military deception.

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[122] Ibid.

With moral permission thus obtained, he argues that truth in the observance of formal or even tacit agreements with an enemy is absolutely essential (i.e., morally obligatory), "for it would be absurd to say that, by treating with the enemy, we did not mean to agree not to deceive him, for in that case the treaty would be a mere mockery and would amount to nothing."[123]

De Vattel builds into his definition of 'stratagem' the moral obligation to keep faith with the enemy when he defines a stratagem as a deception "practiced on the enemy, *without perfidy*, whether by word or act, and snares laid for in the exercise of *the rights of war*"(emphasis mine). [124]

In keeping with his generally consequentialist justification for using stratagems, he follows Wolff's lead by arguing that "as charity requires us to prefer the least severe methods in the prosecution of our rights, if by some stratagem or feint in which no perfidy is involved a belligerent can . . . surprise the enemy and overcome him, it is better, it is in truth more commendable, to succeed by such means than by a bloody siege or the slaughter of battle."[125] He does, however, impose two important constraints upon the permission otherwise conferred by his consequentialist argument. First, one cannot resort to perfidy even if so doing would lessen the shedding of blood.[126] Second, one cannot with justice induce an enemy to commit some "abominable" crime, such as

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[123] Ibid., 298.

[124] Ibid.

[125] Ibid.

[126] Ibid.

delivering up a town placed in his charge.[127] To do so is beyond the scope of honorable stratagem. The first constraint is rather surprising in light of de Vattel's overall argument; for either one justifies the uttering of falsehoods by the fact that so doing results in some other greater good, and so tows the consequentialist line, or one does not. Hence, this constraint begs the question, "Why should not perfidious practices be permitted along with falsehoods if both can produce a greater overall balance of good?" De Vattel's argument here seems to be a forceful one only to the extent that he demonstrates that perfidy always results in greater harm than good. That he should provide such a demonstration seems reasonable in light of the fact that his justification for lying to an enemy flies directly in the face of the tradition that holds lying always to be morally wrong. De Vattel's second constraint is equally surprising; for again, one is left to wonder why, on consequentialist grounds, inducing an enemy to surrender a town should be disallowed if doing so caused less suffering than would, say, the siege and invasion of that town. In short, these constraints do much to dilute deVattel's otherwise reasonably successful attempt to resolve the original Augustinian dilemma.

Summary

Despite his attempt to provide an original solution to the moral problem of military deception, de Vattel really succeeds only in redirecting the issue along differently grounded argumentative lines. The same is true for others (like Wolff) who, for all of their originality, do not provide any argument as to *why* one ought to accept their account

[127] Ibid., 300.

of the ethics of military deception. As for the rest, although their writings occasionally reveal novel contributions (and indeed, my intent has been to highlight those contributions as they arise in the history of this problem), their principal service has been to demonstrate that, by and large, the Latin West has enjoyed substantial continuity with regard to agreement on what is permissible under the rubric of military deception and what is not. However, as shown, they leave wanting a consistent philosophical account of *why* deception in war is not a moral evil in light of the admission that, in the vast generality of circumstances, moral agents should not deceive one another.

CHAPTER 5

PRODUCING A PHILOSOPHICAL ACCOUNT FOR MORALLY PERMISSIBLE MILITARY DECEPTION

Military Deception and the Current Moral-Philosophical Landscape

While the lengthy treatment accorded in the preceding two chapters to the literature on the ethics of military deception might surprise some readers, two observations are in order. First, my review of ancient and mediaeval sources, although lengthy, is merely representative, and not exhaustive. Second, the persistent attention paid by just war theorists to the moral dimensions of military deception attests to the issue's enduring significance. The next tasks of this study are (1) to show how the traditional Western views on the ethics of military deception have distilled into the present international understanding on the matter and (2) to frame a philosophically based justification for the intuitive basis upon which rests the claim that deception is permissible in war, provided that it is practiced in a matter consistent with the moral demands of 'good faith.'

The Hague and Geneva Conventions

The current internationally binding provisions that have distilled out of the long history of the question are codified in The Hague Convention of 1907 and Protocol I to the Geneva Conventions of 12 August 1949.

The Hague Convention succinctly states that "Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are

considered permissible."[1] Also pertinent is the provision that "it is especially forbidden . . . To kill or wound treacherously individuals belonging to the hostile nation or army [or] To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention [e.g., the red cross symbol, etc.]."[2] With respect to the duties of parlementaires appointed to enter into communications with an enemy, the convention declares: "The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery."[3]

The Geneva Convention provides a somewhat expanded treatment of the same themes:

> It is prohibited to kill, injure, or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under rules of international law applicable to armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:
>
> > the feigning of an intent to negotiate under a flag of truce or of a surrender;
> >
> > the feigning of an incapacitation by wounds or sickness;
> >
> > the feigning of civilian, non-combatant status; and
> >
> > the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

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[1] Headquarters, Department of the Army, Department of the Army Pamphlet 27-1, *Treaties Governing Land Warfare* (Washington, D. C.: GPO, December, 1956), 13.

[2] Ibid., 12.

[3] Ibid., 14.

> Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations, and misinformation.[4]

As these articles of international law clearly show, the current state of dialogue with respect to allowable deceptive practices in warfare is in harmony with the overall warfaring tradition of the West throughout its long history. Even here, however, we find merely a description of what is permissible without any detailed attempt at rational justification of the permission granted thereby to deceive. We can, however, acquire some insight concerning what might rightly constitute a rational justification for military deception by reflecting on the nature of war as a recognized (albeit unfortunate) social practice among humans in concert with justificatory attempts made by some of the philosophers and jurists we have already considered.

The Principle of Shared Expectations

Because war is itself a social phenomenon, it presupposes a shared understanding among its participants of what practices it, as a social phenomenon, entails. A similar claim could be made with regard to all social intercourse. For example, when one asks another person a non-rhetorical question, there exists an expectation, understood among all fully rational beings, that a response of some kind should issue from the one asked the question. Whether the response actually issues or not is quite irrelevant; the important

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[4] Headquarters, Department of the Army, Department of the Army Pamphlet 27-1-1, *Protocols to the Geneva Conventions of 12 August 1949* (Washington, D. C.: GPO, September 1979), 28.

point is that the expectation that an answer should issue is a *shared* expectation. Similarly, in most Western societies, if at a formal dance, a male suitor asks a lady he does not know to join him in a waltz, the shared expectation is that, if she were to accept the invitation, the two of them would move about the dance floor in a pattern containing certain predictable elements. Whether the male suitor knows how to waltz when he extends the invitation, or whether the lady knows how to waltz--regardless of whether she accepts the invitation--are irrelevant considerations. Again, the important point is that, if she accepts without some qualifications (e.g., saying "I shall gladly dance with you, but I don't know how to waltz."), then, in the absence of other special circumstances, there exists a mutually shared expectation that at least one of them knows how to waltz.

In a similar way, it may be said that war, inasmuch as it is a social phenomenon, implies certain shared understandings among its participants. This is so even if the participants do not agree on the particular details of how war ought justly to be executed. The very fact of disagreement itself implies at least the shared understanding that the disputed issues exist as matters requiring, and ideally attaining, some kind of settled status. As pertaining to the question, "What constitutes morally permissible deception in the context of war?" there seems to emerge a relevant, foundational expectation shared by rational agents, to wit: moral permission to deceive in war is not unlimited. Moral permission to deceive one's enemy appears to be constrained largely by the *jus ad bellum* dictate that peace must be the ultimate objective of war, and that, accordingly, the only violent actions morally permissible in war are those that will hasten the restoration of a just and lasting peace. With this in mind, the idea of good faith imposes itself as the *sine*

qua non of morally acceptable military deceptions. The relationship between peace as the ultimate objective of war and the expectation of good faith becomes evident in the words of de Vattel: without good faith, "War would degenerate into cruel and unrestrained acts of violence and there would be no limit to its calamities. . . . If there were no longer any faith between enemies, the only certain end to a war would be the complete destruction of one of the parties."[5] Why is it that the absence of good faith would destroy any basis for the restoration of peace? It is because the absence of good faith implies the intention by those who lack it *not to comply with rationally shared expectations*. Thus, without good faith, the absence of which is implied by the perpetration of illicit deceptions, there exists no rational basis for the minimization either of violence or of suffering, and hence no expectation that a just and lasting peace is actually the true aim toward which the war is prosecuted. As Grotius observes, "Violence is characteristic of wild beasts, and violence is most manifest in war; wherefore the more diligently effort should be put forth that it be tempered with humanity, lest by imitating wild beasts too much we forget to be human."[6] Likewise, he exhorts:

> Rightly the same Cicero says that 'it is an impious act to destroy the good faith which holds life together'. To use Seneca's phrase, it is 'the most exalted good of the human heart'. And this good faith the supreme rulers of men ought so much the more earnestly maintain as they violate it with greater impunity; if good faith shall be done away with, they will be like wild beasts, whose violence all men fear. Justice, it is true, in its other aspects often contains elements of obscurity; but the bond of good faith is in itself plain to see, nay more, it is brought into use to so great an extent that it removes all obscurity from business transactions.

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[5] de Vattel, 296.

[6] Grotius, Book III, Chapter XXV.II, p. 861.

> It is, then, all the more the duty of kings to cherish good faith scrupulously, first for conscience's sake, and then also for the sake of the reputation by which the authority of the royal power is supported. Therefore let them not doubt that those who instil in them the arts of deception are doing the very thing which they teach. For that teaching cannot long prosper which makes a man antisocial with his kind and also hateful in the sight of God.[7]

Finally, to quote de Vattel again,

> It would be an error equally abhorrent and disastrous to imagine that all duties cease and all ties of humanity are broken when two Nations go to war. Because they are reduced to the necessity of taking up arms for the defense and the maintenance of their rights, men do not therefore cease to be men. They are still subject the Laws of Nature; otherwise there would be no laws of war.[8]

Morally Permissible Deception: A Contest Analogy

Clausewitz observes that "war is nothing but a duel on an extensive scale."[9] Gentili's argument to the contrary (cited on page 62 of this study) notwithstanding, to think of war as a duel is useful in the present context because it highlights the fact that both duels and wars presuppose the observance of certain conventions or practices and thus carry with them certain expectations. For example, a duel presupposes that the duelers will separate themselves a certain number of paces and in a prescribed manner and that they will each fire at the other a certain number of shots at a prescribed time. Therefore, if the shared expectation is that the duellers will separate themselves by an interval of, say, ten paces, and then turn and fire one shot, then, if one of the duellers turns after five paces and fires multiple shots, that dueler has clearly failed to act in good

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[7] Grotius, Book III, Chapter XXV.I, pp. 860, 861.

[8] de Vattel, 296.

[9] Clausewitz, I.I.2 p. 101.

faith. This illustrates, among other things, how it is possible for one to act in a violent manner and to act in either good or bad faith at one and the same time. The juxtaposition of these notions rests on the shared expectation that the parties involved will act in a certain manner (i.e., in good faith, as evidenced by their mutual fulfilment of shared expectations).

Perhaps a richer analogy might issue from a sport such as American football. This example is valuable for the fact that it features, as one of the shared expectations of the opposing teams, the expectation that each team deliberately will attempt to deceive the other. By any account, a football play that is successful by reason of its embodying a well conceived and skillfully executed deception deserves the commendations of friend and foe alike. Indeed, it is entirely normal for a team that has fallen prey to its opponent's lawful (i.e., mutually understood and accepted to be allowable) deceptions to praise the opposing team for its demonstrated skill. However, that does not mean that the permission to deceive is unlimited as long as it constitutes a demonstration of skill. For example, if a team scored a touchdown with a play that included passing the ball out of bounds, into the spectator stands, and back into bounds in close proximity to the goal, that team would receive fully justified scorn for the attempt at deception. Clearly, this is so because the game of football includes no shared expectation that touchdowns be scored in a manner that requires the ball to be passed first out of bounds and then back in bounds. More accurately stated, it positively includes the shared expectation that all points will be scored as the result of play conducted completely within the boundaries of the playing field.

Note that rules themselves are not sacrosanct; they are changed from time to time under the direction of organizations that govern the sport. Hence, it is not the presence or absence of any particular rule or practice that counts as an illicit deception, per se; it is the violation of shared expectations concerning the extant rules, whatever the rules might be.

The same might be said of war as a social practice. For example, de Vattel, writing in 1758, observes, "It is reported that since the commencement of the present hostilities between France and England, an English frigate came within sight of the coast of France and made signals of distress in order to decoy out some vessel, and thereupon seized the boat and made prisoners of the sailors who generously went to its aid."[10] He comments that "If the report be true, the contemptable trick deserves severe punishment." He then provides the justification for his position: It [acting in bad faith by using a sign which, by commonly understood and accepted convention, is expected to be reserved for *bona fide* conditions of distress] tends to prevent the giving of charitable assistance, so sacred a duty among men, and so commendable even between enemies."[11] "Besides," he concludes, "to make signals of distress is to ask men for help, and thus impliedly to promise perfect safety to those who give it. Hence the act attributed to the frigate was a detestable breach of good faith."[12]

By way of contemporary example, the United States recently ratified an international treaty banning the use of most chemical weapons. Until that time, the

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[10] de Vattel, 298.

[11] Ibid.

[12] Ibid.

nation's policy had been to renounce 'first use' of chemical weapons. Now it has renounced their use, for all practical purposes, altogether. What now becomes of central importance in the present context is the matter of how faithfully the United States observes its treaty obligation. If, after having renounced the use of chemical weapons and having created thereby the expectation in the community of nations that it would not use them, it then proceeded to use them--even in the context of a just war--the United States would be justifiably subject to international scorn for having acted in bad faith. The sole exception to this would be the case in which an adversary of the United States departed from the agreement and used chemical weapons against the United States in a manner contrary to what that adversary had agreed to do. In that case, in the light of the just war tradition as it pertains to military deception, it seems that the United States would be released from its commitments and could retaliate with chemical weapons. Note, however, that the justification for retaliation would be merely a legal one, and not necessarily a moral one; for, both the just war tradition specifically and the Western philosophical tradition in general, especially as it is filtered through the lens of Christianity, maintain a very strong presumption against any right of retaliation, even against those who have acted in bad faith.

The Moral Basis for Military Deception

The discussion now comes full circle to the question of whether it is, in fact, morally permissible to deceive in warfare in the light of the almost universal moral prohibition against deliberate deception. A possible answer to that question is that military deception *is* morally permissible because of the shared expectations that arise from the nature of war

as a highly specialized form of social intercourse. Properly speaking, war is not a normal social setting. Hence, it admits of certain highly specialized--and highly specifiable--exceptions to the normal set of moral expectations for human conduct. For example, war permits the taking of human life, the restriction of personal freedom without due process of law, the destruction of public and private property, deprivation of the necessities of life, and so forth. It should be no surprise, therefore, that an institution that allows these things, and counts them as morally acceptable within the institutional context, should likewise allow deceptive practices. However, it should likewise be understood that these specialized permissions are governed by two very important keys. The first is that these practices are recognized as licit in war by the community of nations as a matter of the *shared expectation* that they can and almost certainly will occur in war. The second is that these practices occur only within very specifically defined limits.

Given this approach to understanding military deception, it is possible to argue that lying per se and military deception are, in fact, morally incommensurable in the same way that murder and the execution of persons convicted of committing a capital offense (or the taking of lives of combatants in war) are, by some accounts at least, morally incommensurable. To the extent that lying and military deception may be found to differ, one may argue that they are subject to significantly different criteria (some of which may overlap but not necessarily so) for moral evaluation.

Admittedly, this approach offers little for those who draw no moral distinctions of the kind I have drawn between murder and capital punishment. Likewise, those who find this solution unpalatable (i.e., morally deficient) will encounter similar difficulties finding

a moral justification for war at all. However, it should be recalled that the just war tradition is based upon a *very strong presumption against war*; it merely maintains that if a nation (for an individual has no moral entitlement to declare wars) finds itself unavoidably confronted with the prospect of war--as has happened countless times in the course of human history--that nation is morally bound to ensure that it both enters into and prosecutes the war as justly as possible, and in a manner that minimizes suffering and facilitates the restoration of peace. Moreover, long experience has shown that, at times, deception can be applied to hasten the accomplishment of these ends. That same experience has shown that deceptions of the kind which ultimately prove themselves to hasten these ends are deceptions undertaken in good faith.

Moreover, it should be noted that this solution in no way authorizes soldiers to deceive an enemy while acting in a private capacity. The permission to deceive, when it exists at all, extends only to persons who are acting in their official capacity as instruments of the state in the same way that an executioner acts as an instrument of the state when administering capital punishment. Of particular interest on this point is Plato's argument that governments, acting on behalf, and in the collective interest, of the governed, *can* indeed lie: "The rulers . . . of the city may . . . fitly lie on account of enemies . . . for the benefit of the state."[13] However, he quickly adds that no such entitlement extends to anyone except the rulers acting for the good of the state: "for a layman to lie to rulers of that kind [i.e., the political leadership] we shall affirm to be as

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[13] Plato, *Republic* III (389.b), in *Plato, The Collected Dialogues,* ed. Edith Hamilton and Huntington Cairns (Princeton: Princeton University Press, 1961), p. 634.

great a sin, nay a greater, than it is for a patient not to tell his physician or an athlete his trainer the truth about his bodily condition, or for a man to deceive the pilot about the ship and the sailors as to the real condition of himself or a fellow sailor, and how they fare."[14] Plato is adamant on this point because lies told to advance the cause of individuals, and not the cause of the collective good of the state, are by their very nature destructive to the state (bear in mind that Plato regards the state to be the highest form of human society). Hence, he concludes, "If then the ruler catches anybody else in the city lying, any of the craftsmen, 'whether a prophet or healer of sickness or joiner of timbers,'[15] he will chastise him for introducing a practice as subversive and destructive of a state as it is of a ship."[16]

The principle of shared expectations may now, with profit, be evaluated in the light of various standard frameworks of moral philosophy.

Aristotelian Ethics

Aristotle's tripartite ethics understands moral virtue to represent a 'golden mean' between two vicious extremes of moral excess and moral deficiency. This paradigm provides an interesting basis for evaluating the principle of shared expectations and hence, for understanding the moral status of military deception. In the *Nicomachean*

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[14] Ibid., III (389.c), p. 634.

[15] Here, Plato quotes Homer's *Odyssey* 17.383.

[16] Plato, *Republic* III (389.d), p. 634.

Ethics, Aristotle addresses the attributes of "the truthful man."[17] Of particular note, however, is the fact that he specifically distinguishes "the truthful man"[18] that is the object of his discussion from "the man who keeps faith in his agreements."[19] Part of Aristotle's point seems to be that a man who can be called truthful in a general sense is also a man who can be counted upon to honor his promises. "For the man who loves truth, and is truthful where nothing is at stake, will still more be truthful where something is at stake."[20] It may be possible to interpret Aristotle to mean that a genuinely truthful person will be truthful whether or not bound by any kind of external agreement, to include the obligation to deal in good faith with all parties to the agreement. If so, it may be that Aristotle would hold lawful deceptions (i.e., of the kind recognized as lawful in the Hague and Geneva Conventions) to lie in the 'golden mean' of virtue. Conversely, deceptions which exceed the constraints established by law and tradition would be vicious extremes. Similarly, the failure to take adequate deceptive measures might, by an Aristotelian account, indicate a vicious degree of naivete. Recall that lawful deception is a *shared expectation* in the context of war; so, the failure to take deceptive measures when deceptive measures are warranted or expected is an omission that warriors are more likely to scorn as amateurish and not regard as praiseworthy at all.

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[17] Aristotle, *Nichomachean Ethics* IV.7, trans. W. D. Ross [book on-line]; available from gopher://english.hss.cmu.edu//00ftp:English server:Philosophy:Aristotle:Aristotle-Nichomachean Ethics.

[18] Ibid.

[19] Ibid.

[20] Ibid.

However, as tidy an account as Aristotelianism may seem to afford, it is not without its own difficulties. For example, Aristotle states that the man who loves truth "will avoid falsehood as something base, seeing that he avoided it even for its own sake; and such a man is worthy of praise."[21] In light of the fact that Aristotle regards truth to be an intrinsic good (as opposed to merely an instrumental good) and falsehood to be an intrinsic evil, the dilemma which perennially has plagued attempts to provide a moral justification for military deception reasserts itself. For, if falsehood is an intrinsic evil, it would seem that not even the special circumstances of war could justify its use. The only way to resolve the dilemma appears to be to hold that falsehood in the relevant sense is only possible in those circumstances in which there exists an obligation, arising out of a shared expectation, to tell the truth; and since ruses and stratagems involve no such expectations, they are not, properly speaking, cases in which either truth or falsity is an issue.

Deontological Moral Theory

Deontic moral theory, the focus of which is upon rules or maxims calculated to be universal in their application, is (at least in its Kantian formulation) somewhat more difficult to apply as a means of seeking moral justification for military deception. As shown in chapter one, Immanuel Kant--Western philosophy's greatest exponent of deontic moral theory--argues that lying is *never* morally justifiable: to lie is unjust and the

[21] Ibid.

object of morality is to ensure that "justice reign[s] even though the heavens fall."[22] Moreover, because "Everyone must admit that if a law is to be morally valid, i.e., is to be valid as a ground of obligation, then it must carry with it absolute necessity."[23] Thus, the making of exceptions to allow for lying in war is not really possible under the Kantian scheme. Again, the only apparent way around the logical impasse is to hold that military deception be understood as something other than lying because of the fact that it is an expected act in the context of war. In virtually every other social situation, the expectation is that parties will not deceive, but will be altogether truthful. Kant's test for the immorality of lying is that to permit it would produce a logical contradiction (i.e., that there never would be any basis for believing the words of contracting parties). However, as the long tradition of Western warfare attests, it is not clear that assenting to the practice of military deception, within the bounds of the traditionally allowed constraints, necessarily produces a contradiction. The only kinds of deception which are necessarily contradictory are those which involve a breach of faith. Given Kant's dictum that one should "Act only according to that maxim whereby you can at the same time will that it should become a universal law,"[24] one might argue that a maxim of the character, "I will deceive my enemy in time of war when such deception will hasten the restoration of a just peace," is too specific to permit universalization. However, two possible solutions seem

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[22] See Department of the Army, Field Manual 22-100, *Army Leadership*-INITIAL DRAFT (4/10/97), 9-9.

[23] Immanuel Kant, *Grounding for the Metaphysics of Morals* [*Grundlegung zur Metaphysik der Sitten*], trans. James W. Ellington (Indianapolis: Hacket Publishing Company, 1992), 2.

[24] Ibid., 30.

to present themselves. First, if we allow that anyone conceivably might fall victim to the ravages of war, then it may be possible to universalize the maxim. Second, if we allow that war is, and must be, a special case of human interaction with a special set of moral demands, we might allow that military deception is morally acceptable within the set of limitations that traditionally have defined just wars. Admittedly, however, one might criticize this application of the Categorical Imperative as a case of bending Kant to the point of breaking. As for Kant's ends-means test that one should "treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means,"[25] it is difficult to view persons who fall victim to military deception in war as having been treated as ends, even with the understanding that deception constitutes the means by which the restoration of peace can be hastened.

The deontic theory of W. D. Ross is probably somewhat easier to apply to the exceptional case of war. Given Ross' notion of *prima facie* moral duties, one might take as point of departure the claim that one has a *prima facie* duty to be truthful at all times (including war time). Next, one could argue that the duty to minimize human suffering by bringing the war to as speedy a conclusion as possible overrides the *prima facie* duty to be perfectly truthful. To that end, one could invoke the claim of moral right (if not moral obligation) to employ such means as might facilitate the speedy termination of hostilities, to include those deceptions traditionally recognized as licit in warfare.

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[25] Ibid., 36.

Consequentialism

Although I alluded in chapter 4 to certain difficulties arising from de Vattel's consequentialist account of military deception, I admit that consequentialism--specifically rule utilitarianism--probably provides the readiest possible access to the moral permission required to justify military deception. By its very nature, utilitarianism allows any means that will achieve the end of providing the best possible outcome (in terms of the greatest total balance of happiness and the least total balance of pain) for the greatest number of people affected by a particular action. Therefore, it seems to be an easy matter to point out the reality, attested by long observed and hard-obtained human experience, that the traditionally accepted military deceptions can serve to bring wars to a speedier and less bloody conclusion than would have been possible if the use of these deceptions were proscribed. The theoretical tradeoff is that one must sacrifice the proposition that there exists no condition in which it is appropriate to lie or deceive even though, as pointed out at the outset of this study, the two appear, by most reasonable estimates, to be one and the same thing.

CHAPTER 6

CONCLUDING OBSERVATIONS: PROBLEMS AND IMPLICATIONS

Possible Criticisms and Responses

For one who holds that military deception is merely an example of a specific kind of lie, the original tension between the position taken by those such as Augustine and Kant that one is never justified in lying--intentionally deceiving another--and the position that identifies war time as a permissible exception to the otherwise absolute prohibition remains unresolved. The tradition that allows for military deception includes numerous safeguards designed to prevent abuse of the permission, granted by the tradition, to deceive an enemy. Nevertheless, if lying is an activity that rightly belongs to the set of those things that humankind should recognize as categorically morally forbidden, then no number of safeguards on the permission to lie or deceive in war will serve to eliminate the logical contradiction. Conversely, if military deception as sanctioned in the West is, in fact, something that should be regarded as morally permissible, then one of two conclusions must obtain: either the prohibition against lying is not absolute, or military deception is not lying per se.

At first blush, one might be tempted to dismiss the argument that lying and military deception are fundamentally different as a sleight-of-hand trick--an attempt to have one's philosophical cake and eat it too. Nevertheless, the argument that lying, by its very nature, always involves a breach of faith, whereas morally permissible military deception, by its very nature, *never* involves a breach of faith appears to offer a reasonable basis for distinguishing the two phenomena. Indeed, those who have

addressed the topic throughout the history of Western warfare--particularly within the context of the just war tradition--have almost universally agreed that military deception, if practiced in good faith (i.e., in such a way that no explicitly made promises are broken and that no implicitly understood obligations to one's enemy are disregarded), is morally acceptable by reason of its being mutually understood, at least tacitly sanctioned, and institutionalized as a regular practice among participants in warfare.

The problems that attend any conferral of moral approbation upon military deception attend the whole of just war theory. All theories of war permit, in the context of war, practices which would be categorically proscribed in virtually any other social setting. In this respect, just war theory is no exception; it likewise permits the taking of human life, confinement, confiscation and destruction of property, and other kindred activities--all without due process. However, it differs from other theories of war in that it limits the permission it confers to act in ways otherwise morally forbidden by including the proviso that no military action should be more extreme than what absolute necessity dictates;[1] 'necessity' thus construed cannot demand more than what is essential to achieve, as quickly as possible, a just and lasting peace. The same constraint applies to military deception by means of the injunction against breaking faith with the enemy.

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[1] With respect to the idea of 'military necessity,' the following is instructive: "The prohibitory effect of the law of war is not minimized by 'military necessity' which has been defined as that principle which justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible. Military necessity has been generally rejected as a defense for acts forbidden by the customary and conventional laws of war inasmuch as the latter have been developed and framed with consideration for the concept of military necessity." FM 27-10, July 1956, 4.

Hence, whatever shortcomings might be identified with the claim that military deception is morally permissible apply to the whole of just war theory. If this fact is to be regarded as a defect in just war theory, then the most adequate defense that a just war theorist can offer is nothing more than the claim that just war theory, for all of its inadequacies, is still the moral theory of choice for the conduct of warfare in the West by reason of its being the least inadequate theory.

The idea of institutionalization as it has been invoked in this argument is one that merits specific comment. Institutionalized practices are practices that the members share and that they *expect* others within the institution to observe. For example, Western society expects, as evidenced by the Hague and Geneva Conventions, that parties to international agreements (such as cease-fire agreements, peace treaties, non-aggression pacts, etc.) will regard those agreements as inviolable. By the same token, Western society also *expects* that participants in war will aggressively seek occasions in which to deceive opponents in war in recognized ways (e.g., sending false communications, feigning movements of combat forces, attacking at unexpected times and places, etc.). Indeed the expectation is so thoroughly entrenched that any party to an armed conflict that refuses to deceive in these and similar ways would be regarded by onlookers from the community of nations as naive in the extreme.

I do not intend to present the idea of 'institutionalization' as an argument for moral relativism--the idea that something is morally right or wrong simply because a segment of society--or even society as a whole--wills it so. It is, in fact, possible for a society to institutionalize morally repugnant practices (such as genocide in Nazi

Germany). Nor do I wish to claim that such moral acceptability as military deception enjoys derives from a hypothetical social contract. Rather, I claim that it derives from the premise, which as best I can ascertain stands as an absolute moral principle, that human beings are obligated to deal with one another in good faith. Imagine, for example, a society in which everyone lied. If everyone lied, then no one would expect anyone else to tell the truth. Hence, there would be no breach of good faith via the act of lying. From this standpoint (although there certainly are other standpoints from which to view the matter), the moral repugnance that attaches to lying results from the fact that there exists among humans the expectation (in principle) that all people ought to tell the truth. Thus, any departure from that norm--any breach of that shared expectation--may be regarded as blameworthy. A similar point can be made with regard to military deception. As long as it is performed in a way that corresponds to society's shared expectation (which means that its performance does not lead to any breach of faith), it simply will not--and indeed should not--be regarded as morally blameworthy.

Another criticism which one might be tempted to levy against this argument is that it conflates the issue of deceptions perpetrated by individuals with the issue of deceptions perpetrated by the state. As already noted, the state has long been recognized as competent to act in certain ways that individuals are not. For example, the state can proscribe or mandate certain behaviors, and it can take measures to enforce compliance with its edicts. It can try a person for life or limb, and it can imprison or execute those found to have defied its authority. More relevant to the present study, it can both declare war and prosecute the war by a variety of means, to include the practice of military

deception. A private citizen--or more properly, one acting in the capacity of a private citizen--can do none of these things. Even one who acts as an instrumentality of the state can only act in ways that the state directs. Hence (the criticism goes), there is a fundamental moral difference between states and individuals. Moreover, it is not even clear what might be meant by the claim that the state can act in a moral or immoral way (for it is not clear that the state *as such* can be said to possess moral agency).

This is, of course, an important criticism that should not be thoughtlessly dismissed. Suffice it to say, however, that whatever problems this criticism might raise for military deception, it also raises for any and all other activities that are morally forbidden to individuals but traditionally permitted to states. The crucial point for present purposes is that the military deception as codified in the extant international treaties poses no additional theoretical problems that would lead one to conclude that the practice should be evaluated separately from, say, the practice of lying to suspects of crimes in police interviews as a part of the criminal investigative process. Both activities, right or wrong, are done at the behest of the state, and both activities claim moral justification at least on the consequentialist grounds that the overall good of humankind is better served by these activities than not.

In company with these concerns, it should likewise be noted that what I have called the principle of shared expectations is not totally without difficulties. As alluded to in chapter three, it may be (and probably is) the case that not all cultures share precisely the same set of expectations concerning what is morally acceptable as wartime conduct. By way of analogy, consider the case in which a soccer team (that plays strictly by the

rules of soccer) engages in a contest with a rugby team (that plays strictly by the rules of rugby). From the perspective of the soccer team, its opponent may appear to play with no rules at all. From the perspective of the rugby team, its opponent may appear to be unnecessarily particular in its insistence that the game be played in a 'restrictive' way. Both teams are playing by the rules--*their* rules--but neither team can have realistic expectations concerning the other team's conduct on the playing field. Some will agree that this analogy illustrates important aspects of the British experience in the Boer Wars or of the American experience in Viet Nam: a rule-bound (if not rule abiding) army engaged in combat against a guerilla force that, from the perspective of the former, did not conceive of war as an activity bound by moral rules.

Indeed, a guerilla force might raise a white flag of truce for the express purpose of luring a just opponent into an ambush. Some armies might conceal military headquarters in hospitals or send civilian children or other noncombatants into enemy camps to gain intelligence or to commit hostile acts against unsuspecting combatants. Deceptions such as these, which involve breaches of good faith, have always been present in combat and probably always will be. However, the fact that they exist does not justify the position that war should be fought, and deceptions perpetrated, without the restraint of rules. If both parties to a conflict practice illicit deceptions, then any hope for a speedy restoration of peace is greatly diminished. Combatant parties that do nothing more than illicitly deceive one another can expect nothing more than to fight a war of annihilation. Failure to appreciate this point has led some to justify unlimited acts of violence, such as occurred in the My Lai massacre in 1968, that cannot meaningfully be described as moral

by means of any rational account. However, it does not follow that incidents involving misalignments in bilateral expectations or incidents in which one party takes advantage of the good faith of the other justify the suspension of all moral constraints. Indeed, a nation might well be justified in suspending recognition of an unfaithful enemy's flag of truce, in revoking the protected status of an enemy's hospitals when its hospitals have been used as military command posts, or in treating as combatants any civilian who acts it with hostile intent; but it is almost impossible to imagine a circumstance involving breaches of faith that would justify rapes, summary executions, and mutilations as occurred in the My Lai massacre.

All of these difficulties merit careful reflection, and I do not wish to suggest that this study has laid them entirely to rest. I do, however, submit that the account offered herein of the moral status of military deception accurately describes the logic that the Western world has used for over two millennia to determine which wartime deceptions can be tolerated on moral grounds and which cannot. Whether that logic is altogether satisfactory, or whether humankind should take a different collective approach to its moral assessment of military deception is perhaps an interesting question, but one that goes beyond the scope of this study.

Conclusion

The precise nature of the political order that will govern conduct among nations in the twenty-first century is yet unknown. This much, however, seems clear: the extent to which true and lasting peace and cooperation among nations can be established depends upon the extent to which nations trust one another. As this idea of mutual trust pertains to

the present study, it may be said that, even if the nations the twenty-first century find that they cannot resolve their differences without the resort to war, the wars they fight are likely to be shorter and, all things considered, less bloody if they avoid deceptions that involve breaches of faith. Tactics and technologies may change; government administrations and forms of government may undergo revolution; alliances may form and dissolve; but good faith has an enduring quality because it provides the logical basis for all covenants and promises. Indeed, without *good* faith, there is no basis for the exercise of *any* faith that a yet unfulfilled obligation will be fulfilled. Although it is true that circumstances sometimes suggest that the nation which sets aside good faith will gain the quickest advantage in war, that advantage is almost always short lived because, as human history attests, those who are deceived do not soon forget or forgive breaches of faith. Moreover, there is no particular reason to believe that the advent of high-tech military gadgetry will make illicit deceptions more desirable options for use on the battlefields of tomorrow. If anything, the highly sophisticated capacity for electronic surveillance that is now propagating around the globe should serve to make attempts at deceptions of all kinds, both licit and illicit, higher-risk propositions than they have been at any time in the past.

Discussion of the moral status of military deception also invites reflection by practitioners of the profession of arms upon their own moral responsibilities, both in their individual capacity as moral agents belonging to the community of humankind and in their capacity as authorized instruments of the state. A soldier is obligated to tell the truth in all private social intercourse and never to deceive an enemy except within the special

context of a just war. Even in this case, however, the soldier is authorized to deceive an enemy only in a way that will hasten the restoration of peace. The specification, 'within the special context of a just war' tangentially begs the question, "what if the soldier is fighting in an unjust war?" Although pursuit of this question would take us very far afield, at least it can be said that, however just or unjust a particular war may be (and indeed the *jus ad bellum* element of 'comparative justice' implies that there may be no such thing as an absolutely just war), the soldier, by virtue of his or her individual moral agency, always has the obligation to act only in morally acceptable ways. The challenge for the soldier is never to use in an immoral way the special authority that the status of 'soldier' confers. The soldier must never assume that, because he or she is permitted to take human lives or to deceive in certain specialized circumstances, the permission to do these things somehow extends to other circumstances of the soldier's own choosing. Making the required distinctions is not always an easy task--especially under wartime conditions. However, that realization is merely a mitigating factor and not by itself sufficient basis for exhonoration. Indeed, any soldier who exceeds the special authority of his or her office is a war criminal, and not a soldier. In short, no soldier is ever justified in labeling illicit deceptions privately contrived as state-sanctioned ones, even if the illicit deception is perpetrated in a just war.

In this connection, we can admit a certain discomfort over the analogies appealed to in the course of a study intended to provide a moral account of military deception. Notwithstanding the explanatory value of analogies that liken war to duels (following Clausewitz), waltzes, and football games, these analogies naturally have a pernicious

quality about them; their seeming innocence can, if one is not careful, anesthetize one to the genuine horrors of war. The taking of human life is a serious thing, whenever it occurs. So is deception. The claim of this study is not that deception--even the limited case of military deception--encourages the moral behavior of individuals and nations. Quite the contrary, any grant of permission to deceive under any circumstances is likely to have the insidious effect of self-propagation, of justifying its use in other morally questionable circumstances. Rather, the claim of this study is simply this: that the ends of morality would be served best by the termination of all wars and the realization of universal peace is beyond dispute. However, given the inevitability of war in the human condition, the next best way to serve the ends of morality is to conduct war in a way that ameliorates suffering and hastens the restoration of just and lasting peace. To the extent that military deception contributes to the realization of this imperfect aim, the claim--its difficulties notwithstanding--that military deception, as institutionalized in Western warfare, is a morally permissible practice appears to be one that will withstand honest philosophical scrutiny. Even here, however, one must concede that a long and distinguished philsophical tradition demands that all acts of military deception be circumscribed by the imperative to act in, and only in, good faith in all of one's dealings with an enemy. Both those who are called upon to plan operations involving military deception and those who are called upon to execute those operations have an obligation strictly to maintain good faith with the enemy; for, only therein can the soldier realize his or her true calling as a defender of the defenseless and a restorer of peace.

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