

Individual Morality in Humanitarian Intervention

Written by Malene Mortensen

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MALENE MORTENSEN, APR 13 2013

The Individual Morality in Humanitarian Interventions

Introduction

This paper will revolve around the moral rights and responsibility of the individual soldier in the case of humanitarian interventions. Through academic literature and cases, I will argue for the necessity of guarding the individual right to choose to participate in humanitarian interventions or not in order to preserve the humanitarianism we are fighting for.

In the first section I will qualify my subsequent discussion by arguing why the choice to fight a humanitarian war isn't just a decision for the state to make, as common international law would have us believe. From a starting point in a discussion of the individual moral rights and responsibility in traditional warfare in the second section, the third section will discuss how this individual moral responsibility adjusts to the case of humanitarian intervention. In the final section of this paper, I will propose the formation of a voluntary humanitarian army, either embedded nationally or in international organizations, in order to solve a number of problems in humanitarian warfare.

1. Why the State Cannot Make the Decision

In both classic international relations theory and international law, states have been subject to anthropomorphization. This has consisted of regarding the state as a unified entity, the so-called black box, which can act, sacrifice and take responsibility; capabilities that we would normally ascribe to humans.

This anthropomorphization of the state appears in Just War Theory in ascribing all the moral responsibility and the right to decide whether a war is just or unjust to the state through what Michael Walzer calls "the domestic analogy" (Walzer 1977: 72). This analogy creates a parallel between the rights of human beings and those of the state, for example the right of self-defense. The state, like a human being, has a right to defend and a duty of care in situations of supreme emergency. However, this analogy is false, because the decision and the action of war are in fact separated with different agents in modern warfare.

In his criticism on the intervention in Kosovo, Walzer shows this separation by quoting Camus saying "You should not kill unless you are prepared to die" (Walzer 2000: 334). Whether you agree with this statement or not, it clearly shows the failure of the domestic analogy, as Walzer proceeds to explain. While the statement seems consistent and just in relations between individuals, such as assassination, it is not analogous to international warfare. The first part of the sentence "You should not kill" refers to the decision to go to war, which lies with the state, more precisely the government. The last part of the sentence "unless you are prepared to die" does not. The last "you" refers namely to the individual soldiers. This reflects the separation between the decision to wage wars and the sacrifice made. The state leaders make the decisions, while the soldiers bear the sacrifice (Baer 2011: 313).

This separation between decision and action is not uncommon in the relation between authority and dominance that constitutes the state structure, where authority is given by the people to the government and dominance is exerted over the individuals. However, the decision to risk one's life should always stay in one's own hands. This is the foundation of liberal thought as founded by Hobbes. The distinction between the state of nature and society is the

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establishment of “a basic right of nature” (Kass 2007: 27), which the right to preserve one’s own life through means that he conceives as expedient. This is expressed in Article 3 of the Universal Declaration of Human Rights clearly states that “Everyone has the right to life, liberty and security of person.” Therefore, the right to risk one’s life should not be given away.

The decision to go to war is therefore not just a decision for the state to make without considering the moral rights of its soldiers. I will now proceed to assess what the moral responsibility is to defend national interests in traditional warfare.

2. The Individual Moral Responsibility and State-Authorized Wars

This section will provide a discussion on individuals’ moral responsibility in defending their nation.

Traditionally, this has not been questioned as the individual was perceived subordinate to the state and obliged to act as an instrument for it. For Rousseau, the society creates the individual and especially the morality of the individual. This morality is socially taught through the general will and the shared experiences of the political community, of which that the individual is a part. The citizen does thus not own his own morality. Instead his morality depends on the association to and the existence of this community. Therefore, it is not for the individual to make the moral decision whether or not to protect the political community, which for Rousseau meant the state. The state obligates the individual to die for it, first of all because it is more than him and second of all because it is his obligation to act for the general will (Walzer 2004: 50).

Michael Walzer repeats this argument in the classic “Just and Unjust Wars”, arguing that the value of the community of the state itself is a justification for state wars. The individuals have a duty to defend the state, because the value of it is held by “the shared life and liberty, the independent community which they have made” (Walzer 1977: 54). This suggests that both the freedom and life of the individuals are closely tied to the community of the state, which is an argument very similar to that of Rousseau.

However, David Rodin shows that these arguments rests on assumptions and myths about what the state is, and he thereby questions the justification for conscription and national self-defense in general. The state does not constitute the only community in the life of an individual, nor is it necessarily the most important one, according to Rodin (2006: 67). The morality of the individual is formed by a plurality of communities that he or she is a part of throughout life. In this light, it seems illogical, that the state is the only community, over which wars can be legitimately fought. Furthermore, in the paradigm of international law and political theory, the interests of the state are more or less equated with the interests of the individuals; but this is a myth, too, especially in a time of war. The emergence of human rights brings the realization that the interest of the state to defend its formal rights and status as a political entity should not, as has been the practice, set aside the interests of the individual, such as freedom and equality. The individuals should not be denied of their moral right to decide to risk their lives or not.

But can we afford to let individuals have such a moral right? Could it be done without causing a risk to the quality of national defense? From an economic point of view, probably not. National defense can be viewed as a public good and the problem with public goods is that they are prone to free-riding. If people have the choice whether or not to contribute to a public good, they won’t, as it is possible for the individual to benefit from the public good without contributing; ie. free-riding (Téson 2003: 126). National defense thereby runs the risk of becoming an under-produced good. However, experience show that most states have de facto abolished conscription in order to establish a voluntary professional army instead. The fact is, that individuals actually sign up voluntarily for the military to such an extent, that it renders conscription unnecessary in many countries (http://www.nationmaster.com/graph/mil_con-military-conscription, last visited April 12, 2012). Thereby, the risk of the national defense becoming an under-produced good is overrated, especially in an age when technological advances and competence are far more relevant than the number of soldiers.

However, the problem of free-riding does point to the responsibility that comes with the moral right to choose. David Mapel provides a discussion of the moral choice of whether or not to join an army or let oneself be conscripted.

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Mapel challenges Walzer's argument that soldiers are made into instruments of the state and therefore "bear no moral responsibility for serving in a military" (Mapel 1998: 171). The moral responsibility rests upon the fact that once inscribed in the military the soldier is rendered irresponsible for his actions and almost incapable of refusing orders. Therefore, the decision to join the military or refuse conscription must be well thought through. The individual has the moral duty to look at the country's track record and assess whether it has historically fought unjust wars (Mapel 1998: 183), because that could increase the probability of that happening again. Furthermore, individuals have the obligation not to let themselves be conscripted to fight a war that is obviously unjust. However, an exception of ignorance does exist. Soldiers cannot be morally judged if they let themselves be conscripted to fight a war that isn't clearly unjust.

The conclusion from this discussion is that soldiers do have a moral right to choose to serve or not to serve. And with this right comes the moral responsibility to make the morally sound decision upon considering the available information. Mapel assumes that soldiers have a moral obligation to volunteer for a just war defending their country. The proceeding discussion will take this as its point of departure and discuss whether the same duty applies to humanitarian wars and whether the soldier should have the right to make a separate decision to fight in a humanitarian intervention or if this should be left in the authority of the state.

3. The Individual Moral Duty and Humanitarian Interventions

The case of humanitarian interventions is interesting because it shows the gap between the boundaries of solidarity between humans and the boundaries of political structure. State leaders and citizens have in the recent decades acted militarily upon a notion of care towards people outside their state community in, for example, the cases of Kosovo and Libya. Here it would seem that a solidarity existed transnationally in a world where states as political communities are elevated to such an extent that they are the *only* communities enjoying the right the legitimately defend themselves violently.

The notion of humanitarian intervention obviously has its source in humanitarianism, which is based on worth of every individual and the value of equality between human beings as holders of certain rights: right to negative freedom, self-preservation and so on. The worth of the individual and the rights are considered to be defended in and by most developed Western liberal democracies. This shift of focus from the community to the individual allows for the principle of non-intervention to be set aside by the responsibility to protect in cases of genocide, war crimes, ethnic cleansing and crimes against humanity. This means that the intervening state goes to war to protect and save the lives of individuals in state being intervened in. Therefore, it would be inconsistent and paradoxical to force soldiers of the intervening state to give up a part of their right of self-preservation in the process of securing other populations right of self-preservation (Baer 2011: 307).

This also applies to wars of national self-defense. Rodin points to the paradox in the state compromising the right of freedom and self-preservation of the soldier in order to protect the individual rights of freedom and self-preservation of the citizens that do not fight.

Daniel Baer (2011) argues that this argument is even stronger for humanitarian intervention, as humanitarianism provides the grounds for even considering a humanitarian intervention. Baer insists on the right of the soldier of the intervening state to choose whether or not to risk sacrificing his life for humanitarian purposes. If this principle is not defended, the humanitarian values are flouted in their very protection. Baer insists that a soldier volunteering in the national army has made a sacrifice on the behalf of defending his country. Therefore, soldiers should decide separately to make the ultimate sacrifice, as Baer names it, for the rights and lives of others.

However, states should stay a principal actor in deciding where, why, when and how to intervene and be a coordinating actor, because it would be dangerous and chaotic to allow any agent to exercise a humanitarian intervention. But intervention itself should be regarded as a "war of international society, including both states and individuals, against international villains" (Baer 2011: 310), which underlies the need for an individual moral right to choose.

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But sticking to a principle or a value often comes with costs and risks and this is no exception. In fact, the economic argument that national defense would suffer from being an under-produced public good presented in the former section, applies to humanitarian interventions as well (Téson 2003: 126). Fernando Téson argues in "The Liberal case for Humanitarian Intervention," that individuals might think it is morally right to intervene in a state to stop atrocities and genocide, but still want others to do the job. On a collective level, the public good thereby becomes under-produced. Walzer makes a similar argument in pointing out that humanitarianism today is ruled by a logic of "necessary charity" (Walzer 2011: 1). The debate on humanitarian intervention is rarely about whether the actions in the countries, which will potentially be intervened against, are horrendous or not. Neither is the debate about the benefits of these horrendous acts stopping. The debate is mostly revolving around the issue of action, agents and responsibility. Even though we might agree that humanitarian intervention is the only possible way of stopping the atrocities, it is still not a duty. The paradox is that even when countries agree on the moral obligation of rescuing people from tyranny, it is still not considered morally wrong *not* to do so. The duty only lies on the shoulders of those who can and will and thereby the duty is more of a charity. Thus, Walzer's point offers another argument that without any coercion, humanitarian intervention could become an under-produced good with very serious consequences.

Although this is a strong point to make, it does not seem quite strong enough to argue against the moral right of not risking your life for foreigners. It is still inconsistent with humanitarian values to coerce individuals into risking their lives, even if it is to prevent a public good to be under-produced, because while producing enough of the public good "humanitarian intervention", you would be reducing the amount of "humanitarianism", or rather individual freedom. In economics, liberalism and humanitarianism the agency has shifted from the community or the state to the individual. In economics, the individual acts as a rational atomic being. In liberalism, the power of the authority has its offspring in the individual. In humanitarian intervention, the principle of non-intervention is trumped by the Responsibility to Protect, because the individual is now the main aim of protection instead of the state. Therefore it is inconsistent and paradoxical to let the state trump the individual's right to decide over his own life in the name of humanitarianism.

However, the concerns of Walzer and Téson raise a valid point, that we must consider a bit further. The moral right to choose also comes with a responsibility analogous to the one described by Mapel in regards to national warfare. It is morally right for the soldiers to consider thoroughly whether his self-preservation is justifiably more important than the prevention of genocide. The individual might have the duty of care towards other individuals, even in other states. However, there are limits to the costs that an individual can be expected to risk for the sake of others and his own existence is not one of them (Baer 2011: 306). So, however hard a choice it is for the individual to make, and however high the probability of free-riding is, the right to one's own life is a principle that cannot be sacrificed for efficiency.

The conclusion to this discussion is that humanitarianism demands the right of self-preservation and individualism, and therefore every soldier should have the negative freedom from being coerced into humanitarian intervention.

However, there is a strong counterpoint to this freedom of the individual soldier. Modern militaries operate on a basis of values, such as respect for hierarchy and lawful orders. Without this basis, the military would be inefficient and responsibilities dispersed. But as the discussion has shown, humanitarian interventions call for a higher standard of respect for the individual rights, rendering it illegitimate and inconsistent with the very purpose of humanitarian intervention to force a duty on to the soldiers. This shows a trade-off between, on one side, the military efficiency based on top-down orders and, on the other side, the freedom and equality of individuals, both of which the military in humanitarian interventions are fighting for.

One solution to the trade-off between military efficiency and legitimacy is to let the soldier consent or dissent to the principle of humanitarian intervention, much analogous to the dissent or consent to warfare when deciding to join a national army. This could be done through the establishment of a separate voluntary humanitarian army. The next and last section of the paper will be devoted to a discussion of this possibility.

4. A Separate Humanitarian Army

The American soldier Michael New was court martialed because he refused to serve under a foreign

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commander in a UN uniform. Having enrolled in the American army in 1993 under the understanding that he only took an oath to defend American interests, Michael New refused the lawful order to serve in a UN peacekeeping mission in Macedonia (Accounting for the case on the website United States v. Michael G. New, <http://www.mikenew.com/thecase.html>, last visited April 18, 2012). He expressed the view that he had only pledged allegiance to the US, not the UN, and therefore would not serve in a UN uniform. The following quote summarizes his position:

"I have a problem with that, because I am not UN. I explained this to my lieutenant, and told him, 'Sir, I don't think I should have to wear a UN arm band or a UN beret. I'm enlisted in the U.S. Army; I am not a U.N. soldier. I have taken no vow to the UN; I have taken an oath to defend the Constitution of the United States of America from enemies foreign and domestic. I regard the UN as a separate power.... Where does my oath say that I have to wear UN insignia?'"

(Lindsay 1995: 5)

Following the previous discussion on the individual moral choice, it does seem immoral that Michael New was court-martialed for refusing to fight for an institution, to which he had pledged no allegiance. Wars of national self-defense are very different from humanitarian interventions and missions, and are treated as different concepts by international law. This supports New's point of view that soldiers joining the national army should not automatically join a humanitarian army, too, which cannot be prevented if they are not separate from each other. This separation could practically be done in many different ways. Either by simply including the choice of agreeing or refusing to serve in humanitarian missions when signing up for the army or by establishing a separate humanitarian army, either embedded nationally or internationally. I will use the model of a nationally embedded voluntary humanitarian army as my case.

Before discussing the advantages and disadvantages of a voluntary humanitarian army, it would be expedient to specify a bit further on the voluntariness. It is most appropriate for the voluntariness to lie in the phase of signing up, and not on an operative level. These soldiers thereby voluntarily sign up to fight where a legitimate authority decides that there are sufficient grounds for the use of force. This is consistent with a libertarian view, according to Téson (2003: 127). One might counter-argue that only the poorest will sign up, and thereby the freedom will not be true. However, this final paper focuses primarily on the negative freedom and the individual moral *right* not to serve.

Also, it should be pointed out that I will primarily look at the advantages and disadvantages from a moral perspective, but I will naturally include practical concerns when these carry a moral importance. I will divide the advantages and disadvantages into different levels; political and operational.

At the political level, the principle of *jus ad bellum* is preserved – or violated. Throughout this paper both the arguments and the sources have been in favor of the moral value of humanitarianism, the universality of this value and the concept of fighting for this ideology. This would from a realist point of view be seen as depoliticizing a quite political subject. War and politics are according to realists always based on narrow state interests, and never motivated by universal altruistic values, such as humanitarianism. A separate humanitarian army would add to the separation of humanitarian wars and intra-state war, which is a false differentiation according to realists. It creates the false notion that humanitarian interventions are about the individuals, not states and that they are motivated by care, not interests. This false notion serves as rhetoric to cover up a power game between states, where the institutions said to value humanitarianism really just serve the interests of the strongest by keeping the status quo and creating allies by helping the weaker side in conflicts. In short, the separation of the humanitarian army and the national self-defense would only further depoliticize the essentially political issue of war, until both politicians and citizens are "unable to see the political forest for humanitarian trees" as Brian Urquhart put it (Urquhart 1997: 2).

But establishing a separate humanitarian army would also increase the accountability that so often is lacking in international politics. The individual would stand as a moral guarantee for the righteousness of humanitarianism as a concept. To return to the argument of David Mapel, the individual has the moral responsibility to choose right, if he is given the right to choose. If humanitarian wars are continuously fought illegitimately and without a humanitarian cause, then people have the duty not to sign up for a humanitarian army. And if they are continuously fought

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effectively, legitimately and when needed, then that could serve as an incentive for individuals to sign up. Thereby, the politicians and military strategists would be directly accountable to the potential soldiers, who would serve as watchdogs.

Establishing a separate humanitarian army could further have the important advantage that states would be more willing to intervene, if the public opinion would be less critical, which could be expected if the soldiers had voluntarily and expressly agreed to assume the risk of their own lives for the humanitarian cause. However, *jus ad bellum* is by no means naturally furthered by a separate army, as the decision makers would remain the states.

The operational level also has important moral bearing. A more efficient humanitarian military could decrease collateral damage and shorten humanitarian conflicts, both of which are goals, which the intervening states morally *should* aim for. Therefore, if they have a possibility to come closer to achieving these goals, through the establishment of a separate humanitarian army, it is morally right for them to do so.

At an operational level, the specialization of the military that such a separate humanitarian army represents would inevitably lead to further professionalization and efficiency, because the training would resemble the real-life situations, the soldiers would encounter when deployed. Furthermore, as Brian Urquhart has pointed out, the quick deployment of humanitarian troops in high-conflict areas would be greatly eased, if highly trained and willing forces were available (Gareth Evans et al. 24.06.1993). Some of the operational challenges existing today would of course not be solved by establishing a separate humanitarian army embedded nationally. The language barriers are for example still present between both different troops involved in the same mission, and between the soldiers and the citizens, they are deployed to protect.

But, the most important operational question is the one regarding force protection and collateral damage. Humanitarian wars are subject to extremely critical public opinion and are very vulnerable to it. In Somalia, the US withdrew after 18 American soldiers died. In comparison, 1,776 American soldiers have died in the war in Afghanistan (<http://icasualties.org/oef/>, last visited April 20, 2012). This has led to humanitarian wars often prioritizing force protection over aversion of civilian casualties, a principle expressed evidently in the NATO mission to Kosovo in 1999. Later, the strategy of this all-air assault has been criticized for being insufficiently discriminate (Baer 2011: 313) and being due to an unwillingness to deploy troops on the ground rather than being due to strategic considerations. This reluctance to risk the lives of soldiers to avoid civilian casualties has also led states to often de facto disarm their soldiers and ordering them only to use weapons in self-defense (Kaysen&Rathsjen 2003: 92). This could prolong a conflict and lead to further civilian casualties.

If the soldiers have voluntarily and expressly agreed to risk their own life for humanitarian purposes on foreign territory, the fatalities would be easier to justify to the population, which could change the strategy. Casualty aversion is of imminent importance both in inter-state wars and humanitarian wars, but one could argue, that it is even more important in humanitarian wars, because the whole point of the war is to protect the civilians in the foreign state. So, every time a civilian life is lost, the aim of the war is forfeited (Baer 2011: 316).

Den Danske Internationale Brigade [The Danish International Brigade, DIB], established in 1995, will serve as a practical case. This separate humanitarian army provided troops for international missions for 10 years. The DIB was established to fit new demands by the new types of conflict in the 1990s. International operations enjoyed only low level consent in the countries, which were targets for the interventions, such as Rwanda and Bosnia. This created a need for a capability to fight whoever was stopping the UN force from achieving its mission (Jakobsen 1998: 107). The requirements for the humanitarian forces were that they could be deployed with short notice, had sufficient and specific training and were backed up by intelligence. Finally rules of armament and engagement were necessary to allow troops to defend themselves properly. The DIB was created as an answer to these requirements. It consisted of 4,500 troops with a mechanized infantry brigade and logistic capabilities. The brigade should be able to be deployed within 15 days by decision of the Danish Parliament.

The brigade had considerable difficulties in recruiting the sufficient number of troops. Eighty per cent of the troops were supposed to be voluntary conscripts, meaning conscripts that had volunteered to shift from national defense to

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the DIB. But only 5 months before the planned inclusion of the brigade in the Rapid Reaction Forces in NATO, only 1,566 soldiers had volunteered out of 3,766 needed (Ritzaus Bureau 06.08.1995). The lack of voluntary soldiers continued throughout the life of the DIB (Ritzaus Bureau 20.10.2000), especially when it came to missions in high risk areas such as Kosovo. Finally, the brigade was abolished due to the costs being too high and the recruitment being insufficient.

One must include quite a few reservations before extrapolating this case. Denmark is very small country with no world leadership. It is apparent for any Danish soldier that his country's participation in coalitions is not of imminent importance. And when the necessity cannot be proven, the responsibility is rarely felt. Therefore, it might be possible that American soldiers would feel differently, because the participation of the US in humanitarian interventions is very important.

As a conclusion, I find it necessary to discuss the limits of this individual choice, because it is by no means absolute or complete. The soldiers of the DIB signed a contract of availability when joining, which allowed the Danish state to deploy them. In that way, the choice of the soldier to serve in humanitarian intervention remained on the level of joining the humanitarian army, not on an operational level. As the discussion showed, this would be the best solution to the trade-off between military efficiency and legitimacy. However, the experience of DIB shows that it stills produced challenges to the individual moral right to choose over his own life. Six soldiers refused to serve in Kosovo when deployed in 1999 (Ritzaus Bureau 21.03.2000). They were sentenced to imprisonment in reference to martial law due to breach of the contract. This clearly shows the limits of the model of a voluntary humanitarian army. The soldiers are not given the absolute right to choose to risk the ultimate sacrifice. The choice is rather only narrowed a step further; instead of choosing generally whether to serve or not, the soldier is given the choice of the kind of wars in which he is willing to serve. To fully safeguard to right to self-preservation, the individual has to keep to right to choose what particular war to fight in. But as previous discussions show, this right would be preserved on the cost of military efficiency and when military efficiency determines whether a genocide continues or not, it does not seem moral to prioritize the full choice of the soldier at the expense of the lives of citizens in countries in need of interventions. Therefore, one has to be pragmatic in preserving moral rights. An absolutist philosophy prescribes that the individual always has the right to choose over his own life. From a utilitarian point of view, one life can be lost to save multiple lives. A pragmatic approach prescribes a mixture of the two approaches. A separate humanitarian army allows the individuals the right to adhere to humanitarian principles to such an extent that they are willing to fight in it, while still preserving military hierarchy and efficiency and keeping it a political collective decision whether or not to go to a particular war.

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Written by: Malene Mortensen
Written at: L'Institut d'Etudes Politiques Paris
Written for: Ariel Colonomos and Christopher Kutz
Date written: June 2012