

## **Refusal of Orders: the case of William Douglas Home**

It has been widely accepted, at least since Nuremberg, that persons who participate in wars are morally autonomous agents. They are ultimately responsible (and they may be held responsible) for what they do. They may not avoid such responsibility by a claim that they merely acted upon the orders of a superior. It follows from this that where a superior order is manifestly contrary to morality (and ought to be seen as such by any person of ordinary sensitivity) the individual has a moral duty to refuse to carry it out. In practise, there are very few examples of military persons actually doing this but (in common opinion) plenty of war crimes. William Douglas Home is one of a very small band who have actually made such a stand on principle and accepted the consequences.

Lt The Honorable William Douglas Home was charged at a Field General Court Martial held in France on 4 October 1944 that, when on active service, he disobeyed a lawful command given by his superior officer (contrary to Section 9(2) of the Army Act, 1881). He was convicted and sentenced to be cashiered and to serve one year's imprisonment with hard labour. The whole proceedings lasted two hours. Lt Douglas Home claimed at the time (and subsequently) to have been acting on principle and this is consistent with both the circumstances of his refusal of orders and his public statements both before and after the event.

In fact in his pre-trial statement and his address to the court, as well as his later writings on the subject, Douglas Home raised three quite separate questions of moral principle (if reference to the circumstances of his conscription is included). He asks first whether a citizen may refuse conscription on 'political' grounds (i.e. refuse to fight in a particular war which he thinks to be wrong, whilst not objecting to all wars, that is, not being a thorough-going pacifist)? Next, and more directly relevant to his court martial, he asks (by implication) whether a serving soldier may refuse orders because of his (moral) objection to his government's war policy? Finally, Douglas Home raises the issue which was to become central to the subsequent Nuremberg War Crimes Trials, that of the responsibility of the individual who is given specific orders that are perceived by him to be morally wrong.

Lt The Hon William Douglas Home was the only one of three million persons in the British armed forces during World War Two to be convicted of the wilful refusal of orders, where the defence was based on a claim of moral justification. He also wrote three autobiographies, so we know what he thought that justification was.

### **Some Biographical Background**

William Douglas Home was born in 1912, the third son of the Earl of Home. His brother, Alec (first son and subsequently thirteenth earl), was briefly Prime Minister of the United Kingdom in the early sixties. During World War II he was junior member of the Government. Unsurprisingly in view of the family background, William Douglas Home was educated at Eton and then at Oxford where he obtained a fourth class degree in history. After the war, he had a distinguished career as a writer (particularly of plays and film scripts). During the war he achieved some public prominence as an anti-war activist. This activity cumulated in the refusal of orders episode at the siege of Le Havre. He died in 1992.

In his various autobiographies, Douglas Home describes himself as having pacifist and generally anti-war leanings from an early age: "I began, although perhaps subconsciously, to think of war as being an activity as foolish as it was illogical."

At Eton he was asked to leave the 'school Corps' on the grounds that he was 'not the stuff that made a good soldier'. It was a judgement with which he concurred. Because of this he did not volunteer for military service when the war came. However, he did serve briefly as an auxiliary fireman.

Douglas Home was a strong supporter of Chamberlain and the Munich settlement. He thought that the British Prime Minister was 'doing all that was humanly possible for peace'. On the other hand, he was very critical of church leaders in the late 30s, whom he considered to have deserted their (pacifist) post. He was also a strong opponent of Churchill. Overall, he considered that the outbreak of World War Two was a consequence of Allied intransigence in the matter of the unjust settlement of Versailles.

Despite this, Douglas Home accepted conscription and, subsequently, officer training. This latter tells us more about the English class system than it does about his potential for military leadership. Douglas Home's acceptance of conscription seems to have been very much an 'on-balance' decision. He had strong political objections to fighting but his moral position was more ambivalent. He explained his position in a letter home:

Although I am 99% a conscientious objector as far as killing goes, I cannot swear that I wouldn't kill an individual in self-defence. It is therefore impossible to call myself entirely genuine. My own opinion is that it's perfectly possible to be a C.O. as far as wars go, refusing to kill innocent people on the other side ...

Douglas Home deeply regretted the lack of a provision for conscientious objection on political grounds:

Those who boast of allowing freedom of thought and speech and action, have no right to criticise individuals who assert their right - even in war - to freedom of thought and speech and action. I found myself - not because I wanted to be, but because I couldn't help being - one of those individuals. I was being asked to fight in a war to which I objected politically with all the force of instinct and logic. For the reasons given above, I could not gain exemption on the grounds that I was a conscientious objector .... All I could honestly do was to accept my call-up, when it came, and, in order to preserve my integrity, leave the authorities in no doubt as to what my opinion was.

In fact Douglas Home had, for a serving soldier, considerable freedom of speech and action. He stood as a candidate in three parliamentary by-elections between 1940 and 1944. During these campaigns he expressed himself in a very forthright manner in opposition to the Churchill Government and war policy generally.

In September 1944, Lt (Acting Captain) Douglas Home was serving with 141 Regiment of the Royal Armoured Corps. By this time the main battle for Normandy was over. The force of which he was a member was engaged in mopping up. Specifically, it was tasked to deal with the fortified port cities of northern France which had been by-passed by the main advance. Not for the first time, a British army was at the gates of Le Havre.

Douglas Home was now becoming concerned with *jus in bello* issues, as well as the *jus ad bellum* (justice of the cause) matters which had preoccupied him to this point. Specifically, he had serious misgivings about the morality of flame-throwing devices (The tanks in his unit had recently been converted to this.) There was also the

matter of the tactic of area bombardment, as he had seen recently exemplified in the assault on Caen.

On the eve of the Battle of Le Havre (September 8), Acting Captain Douglas Home was ordered to proceed to 'C' Squadron to act as Liaison Officer. He refused to do this, confirming his refusal in a letter to his commanding officer (Colonel Waddell). He was placed under open arrest. In a statement, later prepared for his court martial, he says that his position was "dictated by conscience." Certainly, there was nothing about the nature of his assigned duties which suggests that self-preservation would have been a significant factor.

In his letter to Col Waddell he speaks of being "at a cross roads" and of needing to "decide which way to go". At the subsequent court martial he insisted that he was prompted to take the action, on which the charge against him was based, by "solidly political opinions". However the court, and the Deputy Judge Advocate General who reviewed the case, concluded that these matters were quite irrelevant. On the other hand Lt Douglas Home, who conducted his own defence at his court martial, did not deny that he had received a specific order from a superior officer and that he had, wilfully, refused to obey it. In these circumstances there could be little room for doubt about the outcome.

By contrast, there is considerable room for debate about what, exactly, *were* the grounds on which Douglas Home attempted to defend his denial of military authority and whether any of them was adequately supported. Even if we suppose that a war crime was committed at Le Havre, through the indiscriminate application of firepower, and that this ought to have been evident to those about to take part, it is clear that Douglas Home, himself, would have played only a minor and peripheral part.

What he had been ordered to do would not have been, directly, the cause of harm to any of the large number of French citizens in Le Havre. His refusal of orders was clearly symbolic and intended to draw attention to a situation, rather than ensure that he committed no wrong himself. On the other hand, it may be thought that there were others at Le Havre, with more direct responsibility and perhaps in a more senior position, who ought to have considered the ethical/legal issues more seriously.

As indicated above, Douglas Home raised several quite different moral issues in attempting to justify his formal and highly symbolic refusal of orders. He is not a pacifist but he does claim that an individual may refuse service on the grounds that he does consider the war for which he is to be conscripted to be a just war. By the time of his court martial this is not longer relevant, since he has accepted conscription.

But his objections to the war persist and develop so that they form a significant part of his argument in mitigation at the court martial. This is the *jus ad bellum* argument. In relation to this, the actual content of his order and the part he is to play in the forthcoming operation are completely beside the point. He is objecting to the war and, particularly its prolongation. On the other hand, the details of the action to come and its likely consequences are of the essence when considering whether he was or was not justified in refusing to take any part in the assault on Le Havre. This is the *jus in bello* issue.

### **The Refusal of Orders on 'Political' Grounds**

At his court martial on 4 October 1944, Douglas Home based his defence (which he conducted himself) on a matter of conscience. He could not obey the order given to him on 8 September, he claimed, because he was "fundamentally opposed to the government's foreign policy" (This is in a written statement prepared two days

before his court martial on 2 October and included amongst the court martial documents).

Under cross-examination, he referred to his "aversion to having to fight in this particular war". Specifically, he objected to the continued failure (as he saw it) of the Churchill government to produce realistic terms to conclude a peace with Germany. Douglas Home had fought two parliamentary by-elections on this issue earlier in the war. This was also the ground on which he had attempted to refuse conscription in July 1940. Even at this stage he had envisaged trouble ahead. In a letter to his conscription board he wrote that "it would be folly to rely on me in every circumstance".

More recently he had been dismayed by the declaration from Casablanca of a policy of unconditional surrender. He had fought a by-election on this issue, too. The consequence of these policies was, as he put it, "that the younger generation is being condemned to death" (2 October statement). After the third of these by-election campaigns (and just before he was, as expected, posted to Normandy) Lt Douglas Home contemplated resigning his commission. He did not do so (he said) because he did not wish his motives to be confused with cowardice: "I shall go back, if the army council so desire it, to fight in a war which is no longer just."

In his pre-trial statement Douglas Home puts very succinctly the central issue as far as he is concerned. It is: "

....whether the conscience of the individual comes before the orders of the state when the individual believes those orders to be wrong.

However the Army Act of 1881 and the associated regulations provided for no such defence, and the issues which Douglas Home raised at his court martial were not discussed at all. And this (as Douglas Home pointed out) was despite contemporary efforts to persuade German officers to disobey the orders of their commanders on similar grounds (i.e. that they were participating in an unjust war). Subsequently, German officers were condemned at Nuremberg for not refusing orders they ought to have seen as wrong.

### **The Refusal of Orders on Specific Moral Grounds**

Acting Captain, The Hon William Douglas Home had a second set of quite distinguishable grounds for refusing orders on 8 September 1944, although he did not clearly make the separation himself. Apart from his general reservations about war policy, he was concerned that, in participating in the planned attack on Le Havre, he would be party to what he considered to be a war crime (although, again, he did not use this expression). He had seen the consequences of the area bombardment of Caen, with its heavy civilian casualties, and now he feared that this was about to occur again. His fears had been heightened by the news that the German commander of the strongly-defended Le Havre garrison had offered to evacuate civilians from Le Havre but that this offer had been refused on the grounds that there was insufficient time to do so.

In one of his autobiographies he relates how he came to know of this. The episode also tells us something about his reputation (a fellow officer has come to see him):

"Old boy", he said, "There's something happened up your street today." "What's that", I asked. "The German general in Le Havre has asked to evacuate all the civilians." "Good", I said. "But we've refused to let him." "Why?", I asked. He shrugged. "Not time", he said. "Not

time!", I cried. "The battle isn't for three days, is it?" "No", said he. "That's why I said it was up your street."

The attack proceeded and several thousand French civilians were killed. At the subsequent sieges of Calais and Dunkerque, the German defenders were given time to allow non-combatants to leave before the main attack began.

On the 8th of September 1944 Douglas Home also wrote to his parents (The Earl and Countess):

Dear Ma and Pa,

I am afraid I have got myself into trouble. I have refused an order to attack Le Havre. I spent the whole of last night thinking about it and decided to do so.

I do hope you won't be upset. Probably there will be no trouble about it - on the other hand I might be court martialled and dismissed from the Service ...

In fact Douglas Home made quite sure that there was trouble by writing a letter to the British newspapers announcing what he had done. Without this he might have avoided serious disciplinary action of any sort.

But there is something else on his mind as well. It is clear that his concern is not simply for the citizens of Le Havre. He is also thinking of the German defenders. He finds himself now quite unable to "assist directly in the destruction of men whose actions I could understand because no alternative was offered to them, except unconditional surrender". The impression that his views are coloured by a degree of pro-German sympathy is reinforced by an earlier passage of his defence statement:

In August 1939, I went to Germany for a month. The last evening I was there, I dined with a German colonel who had fought in the last war and he made a remark which has thrown an illuminating light (sic) upon the present situation. He said, "There will be war - I hate Hitler but I will fight again. I can do nothing else. I am a soldier".

Douglas Home also complained in his speech to the court martial about Churchill's having described German military persons as "Nazi rats". But, again, his views are placed in an indisputably moral context:

... to prolong a war beyond its necessary limit is, in my opinion, a greater crime than starting one, because it is unnecessary.

Although he does not identify it as such, the principle here is the principle of proportion. Humanitarian law and Nuremberg might talk of destruction not justified by military necessity.

In response to all this, Major McDonald, the prosecuting officer, put the court's position plainly:

....this court is not concerned with the motives the accused says prompted him to take this action .... they ... are irrelevant.

The Judge Advocate, advising the court, agreed:

(the court) ... cannot be concerned to come to a conclusion as to the righteousness or otherwise of political or ethical views advanced by the accused officer.

Douglas Home was convicted and dishonourably discharged. He served his full sentence: one year's imprisonment, with hard labour.

It may be that the real significance of the William Douglas Home case is the insight it gives into the sort of person who might be expected to make a moral stand of this kind and bear the consequences. He was clearly outside the prevailing military culture and had the confidence to act on his own judgement. He was very highly

educated (notwithstanding the class of his degree) and, for a person of his military rank, very experienced in publically defending his views. Without this sort of background and preparation, and except in the most extreme of cases, it seems most unreasonable to expect that anyone else would follow his example in those very many cases where the issues of right and wrong are much less evident, and especially to those in the thick of the action.

Ron Smith, 1998

### Notes

1. William Douglas Home, *Mr Home pronounced Hume*, London, Collins, 1979, p 41.
2. William Douglas Home, *Sins of Commission*, Salisbury, Michael Russell, 1985, p 11.
3. This, of course, is precisely the claim made by Vietnam objectors in the United States and Australia. It wasn't allowed in those cases, either.
4. William Douglas Home, *Half Term Report*, London, Longmans, 1954, p 131.
5. All quotations not otherwise attributed are from the court martial documents for Lt Douglas Home, held in the Public Record Office at Kew (London). Ref WO71/917.
6. At the time of his death, he was reported as having once said:  
I felt if I'd obeyed orders at Le Havre, I would have been party to what we now call war crimes.
7. Military authorities were obliged to grant leave to serving personnel who wished to contest parliamentary by-elections. To the considerable irritation of his superiors, Douglas Home did this three times during his relatively brief service. These were at Cathcart, Glasgow (April 1942); Windsor (June 1942); Claycross (April 1944). In his evidence to the court martial, Colonel Waddell stated that a compromise arrangement whereby the civilians of Le Havre were to be placed in a particular quarter of the town, which would be notified to the British, was rejected by the German commander.
8. *Half Term Report*, p 181.
9. *Sins of Commission*, p 60.

### Bibliography

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