

achievement of a just cause are morally impermissible and it is wrong to fight in a war that lacks a just cause.

There are nevertheless many mitigating conditions that apply to the conduct of unjust combatants so that it is often inappropriate to blame them merely for participating in an unjust war. I also argue that there are various reasons why it would be wrong to hold them legally liable to punishment except for specific offenses identified as war crimes. I argue, in other words, that while the morality of war is asymmetrical between just and unjust combatants, the law of *jus in bello* should remain, at least for the present, neutral between them. But in general unjust combatants are not exempt from moral responsibility for their participation in an unjust war and are thus, unlike just combatants, morally liable to intentional attack.

If the view for which I argue in the book were to become widely accepted, that could have a good effect of considerable practical significance. If people were to believe that it is seriously morally wrong to fight in an unjust war, many soldiers would become more reluctant to fight in wars they had good reason to believe were unjust. They would be more likely to refuse, on conscientious grounds, to fight in such wars, and this could make it more difficult for the rulers of states to initiate unjust wars.

The fifth of the book's five chapters discusses the issue of civilian liability. The account of the morality of war that I defend implies that certain civilians can in principle be liable to attack. But I devote that last chapter to explaining why it very rarely licenses deliberate attacks on civilians. I will elaborate on those arguments in my responses to the following commentaries.

Department of Philosophy
Rutgers University
New Brunswick, NJ 08901, USA
McMahan@Philosophy.Rutgers.edu

Excuses for the Moral Equality of Combatants

GERALD LANG

Traditional Just War Theory, whose structure is in large measure replicated in international law, consists of two components: *jus ad bellum*, which is concerned with the permissibility of declaring war, and *jus in bello*, which is concerned with permissible and impermissible conduct within war.

In the interpretation of one of Just War Theory's most influential contemporary advocates, Michael Walzer, these two components are entirely

independent, in the sense that each component can be assessed in full independence of any consultation with the other component. As Walzer remarks:

These two sorts of judgement [about *jus ad bellum* and *jus in bello*] are logically independent. It is perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules.¹

I shall refer to the claim that *jus ad bellum* and *jus in bello* enjoy this sort of mutual conceptual independence as the *Independence Thesis*.

An interesting implication of the Independence Thesis, and the central subject of this article, is the ‘moral equality of combatants’ doctrine, or, as I shall henceforth refer to it, the *Equality Doctrine*. According to the Equality Doctrine, combatants on both sides of a war, regardless of whether their cause has been deemed just by *jus ad bellum*, have the right to kill enemy combatants, just so long as their conduct conforms to the rules of *jus in bello*. Of course, Just War Theory is not committed to the view that at least one side in any given war has a just cause. But Just War Theory does tend to be committed to holding that, in most circumstances, *at most one side* to any particular war will have a just cause. If that is so, then the other side in such a war will lack a just cause. As far as the Equality Doctrine is concerned, however, it does not matter whether combatants are fighting for a just or an unjust cause: all combatants, merely as such, possess equally the right to kill opposing combatants, as long as their military actions conform to the rules of *jus in bello*.

A word on terminology before the argument continues. Following customary practice, I shall refer to the combatants fighting for the just cause as ‘just combatants’, and the combatants fighting for an unjust cause as ‘unjust combatants’. The predicates ‘just’ and ‘unjust’ in these phrases refer to the moral quality of the cause for which the combatants are fighting, rather than to the character of the conduct they embody in their military actions. To refer to the moral character of the conduct they exemplify on the battlefield, I will tend to use, where confusion can be safely avoided, the adverbs ‘justly’ and ‘unjustly’.

Now the character of combatants’ military conduct – their adherence to non-combatant immunity, their respect for the rules of proportional conflict, their treatment of prisoners of war and so on – plausibly enjoys an independent moral significance, and is not fully settled by the justice of the cause for which the combatants are fighting. The justice of the cause for which combatants fight does not give them a blank cheque to engage in whatever military acts are reasonably judged necessary to bring about victory. Walzer seems right about that. But recent critics of the Equality Doctrine need not

1 Walzer 2000: 21. Walzer’s fidelity to the Just War Theory tradition will not be questioned here. For some doubts on that score, see McMahan 2009: 32–35.

be in dispute with him over this particular point. These critics need not deny that it is important to fight according to the rules of *jus in bello* – or, at least, and to put the point more weakly, they need not be hostile *as such* to the proposal that combatants' military conduct should be governed by the rules of *jus in bello*, or by some other set of rules.

In effect, these critics wish to construe the Independence Thesis in a quite different way, where it takes the form of a *staggered independent check-list* for the permissibility of fighting in a war. On this view, the Independence Thesis claims that a warring side needs to meet two separate criteria, represented by *jus ad bellum* and *jus in bello*, respectively, in order to collect morality's approval for engaging in warfare. A warring side can fail at the first hurdle – at *jus ad bellum* – if it lacks a just cause. And a warring side can fail at the second hurdle – at *jus in bello* – if it fights unjustly for that cause. But it cannot even be judged by *jus in bello* unless the side's cause is first certified by *jus ad bellum*; there is no way of arriving at *jus in bello* unless *jus ad bellum* has already been satisfied.

What puzzles these critics of the Walzerian interpretation of the Independence Thesis is how *unjust* combatants have earned any permission to fight in the first place, however scrupulously they do so. In particular, if combatants' cause is unjust, then what business do they have in turning up to the battlefield and killing combatants whose cause is just? How can there *fail* to be a moral asymmetry between just and unjust combatants, given the moral asymmetry between the causes for which they are, respectively, fighting?

1. As things stand, these questions are little more than suggestive. But much more detailed accusations against the Equality Doctrine have been prosecuted by Jeff McMahan in his *Killing in War*.² McMahan's book is the most significant extended commentary on Just War Theory that has appeared for many years. Everyone with any interest in these issues should read it, and everyone will learn from it.

The two most prominent of McMahan's complaints focus, naturally enough, on the implications for unjust combatants' ability to meet the standards of *jus in bello*, given the failure of the cause for which they fight to have met the standards of *jus ad bellum*.

The first complaint concerns the 'proportionality requirement', or that part of *jus in bello* which instructs combatants not to engage in conduct whose value is less than proportionate to the disvalue effected by that conduct. The fundamental allegation against unjust combatants is that they have nothing to place on the positive side of the moral ledger. As agents of an unjust cause, the consequences they seek to achieve, albeit by superficially conforming to

2 McMahan 2009.

the rules of *jus in bello*, have already been condemned by *jus ad bellum*, and so should also be placed on the negative side of the moral ledger.

It has been suggested, in response to McMahan's argument, that unjust combatants may be justified in fighting just combatants in order to protect non-combatants who may be inadvertently killed as a side effect of military activity which has nonetheless been deemed justifiable all things considered.³ McMahan replies that, even if unjust combatants had the moral right to defend non-combatants who are endangered by just combatants' permissible military operations, those considerations could not furnish unjust combatants with the sort of rationale demanded by the Equality Doctrine for their military participation in the war. Plainly, the just combatants would not be engaging in risky military operations at all were it not for the presence, and the non-defensive ambitions, of the unjust combatants, and so the unjust combatants need to have something more to say on behalf of their military activity than that they are concerned for the safety of non-combatants. Quibbles aside, I think McMahan is basically correct about this matter.

The second of these complaints concerns the 'discrimination requirement', or the part of *jus in bello* which instructs combatants whom they may attack. Traditionally, non-combatants are considered immune from attack, whilst combatants on the opposing side may be killed. But McMahan questions whether unjust combatants are permitted to attack just combatants. Just combatants are justified in what they do – they have, by assumption, been given a morally sufficient reason to repel unjust combatants. This much is established by their success in meeting the standards of *jus ad bellum*. But then it is unclear how unjust combatants can acquire any justification for attacking just combatants. For they lack the prior morally sufficient reasons for attacking just combatants which just combatants have for attacking them.

2. McMahan's arguments are forceful, and it seems to me that they successfully discredit the version of the Equality Doctrine which seeks to produce a *justification* for the military participation of unjust combatants. But I am less convinced that McMahan manages to blight the prospects for the *excusability* of unjust combatants' military participation. In what follows, I shall attempt to make good on this suspicion.

To set the ball rolling, let us briefly return to Walzer. What are his grounds for holding the Equality Doctrine? He offers us two main arguments.⁴

First, he wishes to uphold the conviction that war is a 'rule-governed activity', where only enemy combatants, but not non-combatants, are legitimate targets. If an unjust combatant's killing of a just combatant was simply an act of murder, Walzer argues, it would be morally on a par with the intentional killing of a non-combatant. Both killings would be as bad as each

3 See Steinhoff 2008; for McMahan's reply, see McMahan 2008, and McMahan 2009: 39ff.

4 See, especially, Walzer 2000: 33–41.

other; there would be no means of morally distinguishing between them. Moreover, and as a result, there would be no obvious materials from which we could construct the rules of *jus in bello*. But, since most of us *do* think that *jus in bello* constitutes an important independent dimension of assessment of combatants' participation in a war, Walzer's argument suggests that we are forced to accord all combatants, whether just or unjust, a right to kill enemy combatants.

The second argument Walzer offers in support of the Equality Doctrine is that, if we accept it, we can avoid criminalizing unjust combatants, given the likely facts about their plight and ethical formation. The relevant data include, *inter alia*, combatants' typical ignorance and youthfulness, the duress they are under, both in training and in combat, and the military habits of obedience and deference which, as effective combatants, must have been instilled in them.

As attempts to provide unjust combatants with justifications for fighting, these arguments fail. The first argument is a *non sequitur*. It would not follow from the fact that it is *worse* to kill unarmed non-combatants than opposing combatants that it is *permissible* to kill opposing combatants. The second argument also fails to supply unjust combatants with a justification for what they do. Even if combatants need the habits of obedience and deference, and are typically ignorant, it does not follow that they are justified in killing others if they lack a just cause.

Still, there seems to me to be something to Walzer's arguments, and particularly his first argument, which McMahan's criticisms do not fully impugn. I share Walzer's belief that it is worse for unjust combatants to kill non-combatants than to kill just combatants, and that the moral difference between the two types of killing should matter to the construction of *jus in bello*. But how is that belief to be defended? Presumably, his second argument is supposed to help. But it seems to me that his second argument is in fact a poisoned chalice. McMahan repeatedly points out that the good-making features of combatants' obedience and deference are arguably outweighed by the fact that, as unjust combatants, they are participating in murderous activity. He reasonably argues that, given such high moral stakes, combatants have no business in shying away from moral reflection about the wars they are engaged in, or in maintaining allegiance to military service should it turn out that they are in a position to reasonably believe that they are, or would be, fighting for an unjust cause.⁵ The appeal to their habits of obedience and deference may also prove too much, since the conduct prescribed by *jus in bello* is not secured by simply following whatever orders combatants (whether just or unjust) have been given.⁶ If, for example, combatants are given orders to execute non-threatening civilians, *jus in bello*

5 See McMahan 2009, ch. 3.

6 McMahan 2009: 126.

instructs them to refuse, regardless of how unnatural it may seem to them not to follow orders, or of whether there are sanctions for their refusal to follow orders.

3. Though Walzer's defence of the Equality Doctrine tends to focus on combatants' shaky moral development, or the pressures operating on them which militate against their ability to make mature moral judgements, the resulting observations are guilty of one-sidedness. Specifically, these worries are guilty of overlooking other important data about the proper moral characterization of combatants, data emphasizing their moral *conscientiousness*, rather than their moral *callowness*.

I start with a piece of evidence which, at first blush, simply heaps further indignity upon the Equality Doctrine. It is taken from a blogosphere entry of Pete Kilner, an American soldier who was deployed twice in Iraq on active military duty. Kilner writes:

To subscribe to the moral equality of soldiers is to equate soldiers to mafia thugs or gang members, no better or worse than their enemies.⁷

Kilner refuses to accept that all combatants, just and unjust alike, belong to a single moral combatant community, with significant association among all the members of that community. Rather, because combatants identify strongly with what they perceive to be the justice of the cause for which they are fighting, they are precluded from identifying strongly with combatants who fight for the opposing cause. However, what Kilner's denunciation of the Equality Doctrine also testifies to is the *moral conscientiousness* of the average combatant, or a moderately idealized version of the average combatant, and that is a commitment I want to embrace, rather than dispute. Combatants ought to, and many of them do, take the justice of the cause they are fighting for extremely seriously. That explains their hostility to enemy soldiers who are fighting for causes which, by their lights, are unjust.

These facts about the conscientiousness of the average combatants can, I believe, serve as a corrective to the following sort of case which is sometimes used to illustrate the moral situation of the unjust combatant.⁸ In the *Robbery Case*, an agent – call him *Yellow* – robs a bank but encounters a security guard (call him *Red*) who is about to kill him. Even if, at that very moment, *Yellow* is under duress – he is about to be killed, after all – most of us will deny that he would have any justification in killing the security guard. As Walzer himself points out, *Yellow* had no business in being in the bank as part of an armed robbery in the first place, so he has forfeited the right to defend himself against legitimate violent resistance. McMahan's reply to

7 See <http://soldier-ethicist.blogspot.com/2005/10/rejecting-moral-equality-of-soldiers.html>.

8 See Walzer 2000: 128. Walzer, of course, rejects the appropriateness of the analogy, which is discussed more sympathetically by McMahan 2004: 699–700.

Walzer's point will be unsurprising: the unjust combatant is, to a much greater extent than Walzer recognizes, analogous to Yellow in the Robbery Case.

The Robbery Case appears to presuppose that Yellow is aware of the criminal character of his activity. As far as the unjust combatant is concerned, however, a more revealing case might be what I shall call the *Amended Robbery Case*, in which Yellow belongs to an organization, *Retrieval Limited*, which retrieves stolen goods of high social value. Yellow is also aware of the regrettable fact that Retrieval Limited is a highly imperfect organization: on some occasions, when the organization is operating as it should be, he will be retrieving vital stolen goods, but, on other occasions, whether due to misinformation or higher order corruption, he may be merely participating in an armed robbery. If Yellow is aware that he has been assigned to a robbery, he will refuse to participate. So, if Yellow does go ahead, we may surmise that he has, on the limited evidence available to him, judged the mission to be an exercise in retrieval, rather than an exercise in robbery.

Now imagine that the security guard, Red, is either defending goods which are in the proper possession of the organization he is working for – call it *Goods Limited* – or are in fact stolen. Like Yellow, Red works for an organization which he knows to be imperfect: on some occasions, Red will be defending goods which Goods Limited has every right to protect, but on other occasions Red will be merely protecting Goods Limited from justified attempts to retrieve the goods it has illegitimately stolen.

Though Retrieval Limited and Goods Limited are, by admission, imperfect organizations, assume further that the goods in question can only be owned, defended and retrieved, by those two organizations – in the relevant sense, there are no rival organizations which deal with the retention and retrieval of these goods.

Yellow may lack a justification for what he does, but is it so obvious now that he is without any excuse for what he does? I think not. The argument I offer in the next section will build on the structure of the Amended Robbery Case.

4. Walzer tries to uphold the Equality Doctrine by, roughly speaking, distancing combatants from the war in which they fight: though these combatants may be fighting *in* the war, it is not, in a significant sense, *their* war. As he puts it:

We draw a line between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible, at least within their own sphere of activity.⁹

9 Walzer 2000: 38–39.

I think, in contrast, that we need to give combatants, whether just or unjust, a way of *owning* the war they participate in, but without alienating them from the moral situation of combatants who fight for the opposing side.

How can this be achieved? The way forward is to exploit a normatively significant combination of properties jointly exemplified by just combatants and unjust combatants. If just combatants are morally conscientious individuals, then it should matter to them that their engagement in combat is fully justified, not simply excused. As agents fighting on behalf of a just cause, they are well on their way to securing a justification for the military activity. But they need more than a just cause, which will secure for them a necessary but not sufficient condition for fully justified fighting. What they need in addition to a just cause, in particular, is the existence of potentially lethal opposing combatants with whom to fight. Unjust combatants, precisely by posing a threat to just combatants, supply just combatants with the material for bridging the gap between *having a just cause* and *being fully justified* in fighting for that just cause.

Here is a more detailed sketch of this argument, which I call the *Combination Argument*.

Imagine that *Orange* is a combatant for *East*, and *Purple* is a combatant for *West*. There are two wars between East and West, *War 1* and *War 2*, which follow in quick succession. Orange and Purple survive both wars. Assume further that, in War 1, East has a just cause and West an unjust cause, which makes Orange a just combatant and Purple an unjust combatant. In War 2, the positions are reversed: East has an unjust cause, while West has a just cause, so Purple is the just combatant, whilst Orange is the unjust combatant. We assume that Orange and Purple are both morally conscientious individuals, which entails, *inter alia*, that they would elect not to fight at all rather than to fight for a cause which they believe to be unjust. (They are not interested in military adventure or glory for its own sake, and they do not espouse the attitude of ‘My country, right or wrong’.)

McMahan may want to say that there is, when all is said and done, little more to the basic moral facts than these: in War 1, Orange has a just cause and Purple has an unjust cause, and in War 2 Purple has a just cause and Orange has an unjust cause. But there is plausibly more to the basic moral story than McMahan’s account would suggest. In particular, three points are worthy of our attention.

First, both Orange and Purple are in the position to reflect on the fact that, even though in any given war only one of them can have just cause, each of them is well-intentioned, and would not be fighting at all were it not for the belief that he has just cause. Both Orange and Purple, then, are in a position to realize that it is a contingent matter whether, due to misinformation and the manipulated channelling of duty and patriotic loyalty, their energies are put to the service of a just cause in any given war.

Second, it matters to both Orange and Purple that, when they fight, they fight justly – that is, it matters to both of them that they receive the highest degree of justification for what they do.

Third, to earn a high degree of justification for fighting in the war, assuming that they fight at all, just combatants need other potentially lethal combatants to fight. If their opposing combatants were not potentially lethal, just combatants would not be justified in killing them.

This point is worth labouring. To illustrate it, imagine that the unjust combatants merely pretend to fight: they deliberately fire wide, or use blank ammunition. Feigned or apparent combat is one of the theoretical options unjust combatants have for avoiding impermissible action which is discussed by McMahan. McMahan writes:

The person who is posing the threat is a just combatant who has done nothing to lose his right not to be killed. The apparent unjust combatant did not, we are supposing, actually pose a threat to the just combatant, but the just combatant could not know that and the unjust combatant is responsible to a greater degree for the predicament in which they both find themselves than the just combatant is. Thus, if anyone is liable, it is the apparent unjust combatant...¹⁰

But there is a gap in this argument. If unjust combatants are merely pretending to fight, it is far from obvious that they are liable to be killed, and therefore it is far from obvious that just combatants could have any justification for deploying lethal force against them. It is also unclear on what basis McMahan says that ‘the unjust combatant is responsible to a greater degree for the predicament in which they both find themselves than the just combatant is’. This claim does not immediately follow from the fact that the apparent unjust combatant is representing an unjust cause, whereas the just combatant is fighting for a just cause, particularly given the fact that the unjust combatant is attempting to take steps to withdraw from the fighting.

These considerations, it seems to me, jointly yield the materials for according an excuse to unjust combatants for fighting for an unjust cause. Unjust combatants are playing their role in a potentially iterated series of activities where they would rather be fighting for a just cause, but where – since they are not doing that, and are inadvertently fighting for an unjust cause instead – they permit just combatants a full justification for what they do *precisely by posing a lethal danger to them*.

5. Certain objections need to be pre-empted in order to sustain confidence in the Combination Argument. In this final section, I shall consider two of them.

I start with what I think may be the more serious complaint, concerning what the Combination Argument is *not*. In what follows I shall outline a

¹⁰ McMahan 2009: 135.

treacherously similar argument – I call it the *Failed Combination Argument* – with an unpardonable conclusion.

- (a) If a Victim (*Victoria*) is attacked in a potentially lethal way by a fully responsible, malicious attacker – a so-called Culpable Attacker (*Victor*) – then Victoria will be fully justified in counter-attacking Victor.
- (b) For Victoria's counter-attack against Victor to be fully justified, it must be the case that Victor *is* culpably engaged in launching a murderous attack on Victoria.
- (c) It matters to Victoria whether her counter-attack against Victor is fully justified, as opposed to being unjustified or merely excused.
- (d) If Victor were not culpably attacking Victoria, then Victoria's counter-attack would not be fully justified.

Plausibly, given (c) and (d):

- (e) Victor is excused, to some degree, for attacking Victoria.

Obviously, the Failed Combination Argument is risible. Though (a) to (d) are all true, the inference to (e) is rash. Victor cannot earn any moral credit in the way sketched by the argument. But why? Why doesn't the combination of Victor's culpability and Victoria's innocence generate an excuse for Victor? Why does the Combination Argument succeed when the Failed Combination Argument fails?

In reply, there are two major disanalogies between the Combination Argument and the Failed Combination Argument which need to be taken into account.

First, in no sense are Victoria and Victor related to each other in such a way as to mimic Orange's and Purple's relationship in War 1 and War 2. Victor and Victoria are not significantly characterized as occupants of roles whose justice varies according to the particular conflict in question, across a series of separate conflicts.

Second – and relatedly – in cases of private self-defence there is no relevant gap between having a just cause for self-defence and being fully justified in acting in self-defence.¹¹ In Victoria's case, having a just cause amounts to no more than being justified in what she does. She will be fully justified in what she does just in case she is innocent, and just in case Victor is culpable for

11 Clearly, I am operating here with an objectivist account of self-defence, which unfortunately I lack the space to defend. For some support, see Thomson 1991. (Note that, at first blush, a subjectivist approach to self-defensive action might be expected to provide stronger support for the excusability of unjust combatants. Be that as it may, the objectivist account seems more plausible to me, and does not preclude a more sympathetic approach to unjust combatants.)

his attack.¹² In the Orange and Purple case, in contrast, this gap does indeed exist: in War 1, for example, Orange has a just cause derivatively, by virtue of his allegiance to East, which possesses a just cause; and in War 2, Purple also has a just cause derivatively, by virtue of his allegiance to West, which possesses a just cause. This gives Orange in War 1 and Purple in War 2 the makings of a justification for fighting. But their respective justifications will be incomplete unless they are, in fact, facing lethal combatants.

A second likely complaint about the Combination Argument is that *some* individual combatants in any real-world conflict are surely going to fail the moderately idealized assumptions I have been making. So why make assumptions that diverge so starkly from reality? And don't those assumptions make life too easy for my attempt to provide a partial rehabilitation for unjust combatants?

I readily concede that the assumptions I am making will not be true of every unjust combatant. But they are an important corrective to the other, more familiar claims which have been made in order to uphold the Equality Doctrine, claims which emphasize blankness rather than conscientiousness. As I see it, conscientiousness is one of the factors which must feed into an overall characterization of unjust combatants, such that rules for engaging with those combatants *as a collective whole* can be devised and followed. Even with an emphasis on conscientiousness rather than callousness, I have tried to demonstrate that unjust combatants may be excused for fighting for an unjust cause. That seems to me to be a useful advance.

The conscientiousness assumption may admittedly be difficult or impossible to uphold in some cases, where, due to their particular military and political involvements, some armies, or army divisions, manifest a clear complicity with unjust regimes and practices. (Iraq's Republican Guard may have constituted such an example.) Again, I accept this limitation in the scope of the Combination Argument. My aim has been only to rehabilitate rank-and-file unjust combatants who may, unluckily, have fought for the wrong side, but do not deserve our moral contempt for doing so.

I want to conclude on a note of agreement with McMahan. McMahan suggests that an implicit widespread belief in the full-strength, justification-delivering Equality Doctrine has assisted, and continues to assist, military recruitment for unjust causes. Like him, I believe that the world would be a substantially better place if this conventional piece of wisdom was discredited. We are in McMahan's debt for demonstrating so

12 That is not to suggest that it is impossible for victims to be ever *mistaken* about the propriety of their self-defensive attacks; it is simply to indicate that, in private self-defence, there is no gap between being fully justified and having a just cause. As I see it, having a just cause for private self-defence *just is* being justified in acting in private self-defence.

clearly and trenchantly why this version of the Equality Doctrine deserves to be dismantled.¹³

*University of Leeds,
Leeds LS2 9JT, UK
g.r.lang@leeds.ac.uk*

13 Earlier versions of this article were presented at the Workshop on Self-Defence and National-Defence at the University of Sheffield, and the Applied Ethics Seminar at the University of Leeds. I thank those in attendance for their useful and helpful comments, and Helen Frowe for the invitation to speak at the workshop in Sheffield.

References

- McMahan, J. 2004. The ethics of killing in war. *Ethics* 114: 693–733.
- McMahan, J. 2008. Justification and liability in war. *Journal of Political Philosophy* 16: 227–44.
- McMahan, J. 2009. *Killing in War*. Oxford: Clarendon Press.
- Steinhoff, U. 2008. Jeff McMahan on the moral inequality of combatants. *Journal of Political Philosophy* 16: 220–6.
- Thomson, J. J. 1991. Self-defense. *Philosophy & Public Affairs* 20: 283–310.
- Walzer, M. 2000. *Just and Unjust Wars*, 3rd edn. New York: Basic Books.

Licensed to Kill

MICHAEL OTSUKA

Jeff McMahan's *Killing in War* is, among many other things, a brief against the traditional just war doctrine of the moral equality of combatants – i.e. the doctrine that all combatants 'have the same moral status, hence the same moral rights, immunities, and liabilities', including 'an equal right to kill', irrespective of whether the war they fight is just or unjust (4, 38).¹ This book is a powerfully argued, nuanced, comprehensive, relentless and impassioned brief against this doctrine. It wages total war against it, eclipsing all past skirmishes. Yet, at the same time that he rejects the moral equality of combatants, McMahan affirms the 'legal equality of combatants', according to

1 This doctrine also extends to the claim that 'a person does not act wrongly by fighting in an unjust war, provided that he obeys the principles governing the conduct of war' (105). (All such parenthetical references are to the pages of *Killing in War*.)