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Are Soldiers Morally Culpable?

By Shalom Carmy

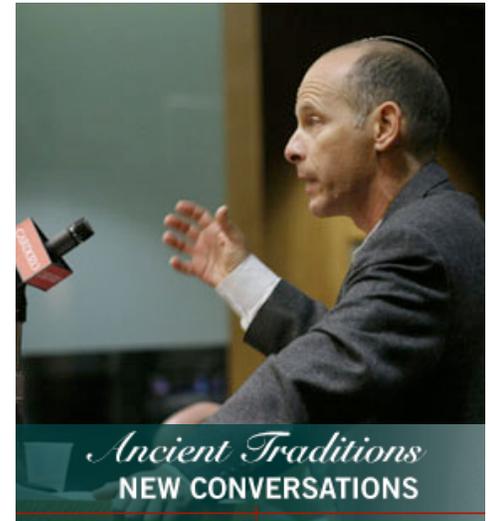
Review of [Killing in War](#) by Jeff McMahan, (Oxford University Press, 2009) 250 pages.

The traditional doctrine of just war rests on distinction between jus ad bellum, the justification of war, and jus in bello, what is permissible in war. Individual soldiers are responsible only for violations of jus in bello, how they behave in war; responsibility for the decision to enter war is the government's. The corollary is the doctrine of moral equality of combatants: soldiers serving a government engaged in unjust war are no more liable for killing enemy soldiers than the enemy is in killing them. Here war differs from other forms of violence: when police are justified in shooting at criminals, criminals have no reciprocal right to kill the police.

McMahan challenges the assumption that killing in an unjust war is morally different from other unjustified homicide. He rejects justifications based on consent—examining inter alia, analogies to boxers or gladiators who choose or are compelled to kill or be killed. He argues that there are no good epistemic grounds to believe, as a matter of course, that the individual can rely on contemporary governments to decide the moral issues of going to war correctly. In every war, at least one and often both sides are wrong. Hence, McMahan argues, the soldier fighting an unjust war is responsible for doing so, and the liability of a soldier to be killed in war is connected to his putatively immoral engagement.

In the second half of the book McMahan recognizes the practical difficulties in holding soldiers legally responsible for acts done as part of an unjust war. While the primary argument of the opening chapters makes it difficult for a soldier to fight in good conscience, the later discussion explores a variety of excuses and limitations on liability of those who fight without adequate justification.

This book has been justly praised by many philosophers for the acuity and thoroughness of its reasoning. How much his reasoning provides guidance at a practical level is another matter. Though McMahan places some hope in the United Nations as a potential authority capable of offering guidance to the soldier in doubt, this seems a bit utopian. At best, McMahan's arguments may help in cases where the government is clearly untrustworthy or evil. McMahan also focuses the justification of war on physical self-defense. If there are things worth fighting for other than physical survival itself – such as political freedom for a nation, or the ability to practice religious commitment – then the state, or some analogous entity, may in fact be the most representative and responsible custodian of communal judgment and the individual would then ordinarily be justified in joining its decision. In such struggles, it may also be the case that, contrary to McMahan's view, both sides to the conflict may be able to justify their resort to war,



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and the traditional judgment that honors soldiers of both sides may be less paradoxical than McMahan and other liberals of his stripe take it to be.

Shalom Carmy is the co-chair of the Jewish Studies Department at Yeshiva College, where he teaches Jewish Studies and Philosophy. He is also the editor of Tradition, as well as an affiliated scholar at the Cardozo School of Law.



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