

Just Warriors, Unjust Wars?

Deciding When It's All Right to Fight

Bernard G. Prusak

The philosopher Jeff McMahan opens his extraordinary 2009 book, *Killing in War*, with a reflection on Ludwig Wittgenstein, “generally regarded as the greatest philosopher, and certainly the greatest philosophical iconoclast, of the twentieth century.” This great philosophical iconoclast did not question whether it was right to enlist as a soldier in World War I. Wittgenstein’s country, Austria, had declared war, and the philosopher believed himself morally obligated to fight. Remarkably, he believed the same for Englishmen: he had studied at Cambridge, and disagreed with the decision of his friend and former teacher, Bertrand Russell, to oppose the war.

Note that Wittgenstein believed it morally permissible and even obligatory for both Austrians and Englishmen to fight, without regard to the question of which side, if either, had just cause to go to war. For Wittgenstein, considerations of *jus ad bellum*—the principles governing the resort to war—were apparently independent of considerations of *jus in bello*—the principles governing the conduct of war. Though one’s country could be in the wrong in resorting to war (for example, by lacking just cause or right intention), one would not *do* wrong in fighting on its behalf, so long as one discriminated between civilians and combatants and did not use violence excessive to one’s ends (that is, so long as one observed the principles of *jus in bello*). Recall the soldier in Shakespeare’s *Henry V* who asserts that “if [the King’s] cause be wrong, our obedience to the King wipes the crime of it out of us,” since “we are the King’s subjects.”

McMahan, a professor of philosophy at Rutgers University, is a former student of the influential Oxford philosopher Derek Parfit. According to Larissa MacFarquhar’s fascinating profile in the *New Yorker* (September 5, 2011), Parfit is singularly devoted to progress in philosophy. McMahan shares his mentor’s belief, especially with respect to moral philosophy, and thinks that philosophers, including great ones like Wittgenstein, have done a bad job in securing and

transmitting what he calls “moral knowledge about war.” Bringing together three decades of McMahan’s thinking on war, *Killing in War* puts forth the claim that “the theory of just war in its received form...is not a reliable source of guidance,” and has stimulated a lively debate in philosophical and legal circles. McMahan’s thesis, in short, is that orthodox just-war theory is too permissive.

Catholics have special reason to care about McMahan’s work and the debate it has sparked. The just-war tradition was classically formulated by Aquinas in his *Summa Theologiae* and systematically developed by later scholastic thinkers like Francisco Suárez, Cardinal Cajetan, and Francisco de Vitoria. To be sure, the tradition cannot be considered simply Catholic: it has also seen development in the hands of Protestants from Hugo Grotius to Paul Ramsey and of secular thinkers like the political philosopher Michael Walzer, whose excellent 1977 book *Just and Unjust Wars* has for decades been the text of reference on this topic. (See my article “On Earth, Not in Heaven,” *Commonweal*, November 9, 2012.) Yet as the scholar James Turner Johnson has emphasized, the concept of a just war owes its framework to Augustine’s



German troops march through Warsaw in September 1939.

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political theory, according to which the sovereign authority has the responsibility to secure what Augustine called the *tranquillitas ordinis*—order, justice, and peace. A “pacifist” in this Augustinian tradition is not one who abjures war, but one who works for the tranquility of just order, which sometimes calls for the use of force by duly authorized persons. From this point of view, as the *New Republic’s* Leon Wieseltier has written with regard to the chaos in Syria, “war is not the only, or the worst, evil.” Worse evils can justify, and even morally require, the sovereign authority’s decision to open the iron gates of war, despite what fury and bloodlust (in Virgil’s searing image from the *Aeneid*) lie howling behind.

Another reason Catholics should care about the new debate over the morality of war is that, arguably, the just-war tradition they helped shape over the centuries has facilitated the recourse to war by disguising its reality—that fury and bloodlust—with a veneer of theological and philosophical respectability. Whether this charge is finally fair or not, it is certainly remarkable that it can be plausibly leveled at followers of Jesus, with his radical rejection of violence. In contrast to this rejection, the principles of *jus ad bellum* and *jus in bello* suggest that war can be governed by clear heads and minds, tamed and defanged by the stipulation of limits. This notion has many critics. Writing after the invasion of Iraq under the George W. Bush administration, and in view of the carnage and havoc the Iraq war wreaked, the Marquette University theologian Daniel Maguire mordantly suggested renaming just-war theory, in the interests of honesty, the “justifiable slaughter theory” or “justifiable violence theory,” and charged that all too often, justifications for war are but “shady rationalizations for the failure to build peace.”

Finally, it is only right to recall that both in the aftermath of the 9/11 attacks and throughout the Iraq war, there occurred what the Duke University philosopher and theologian Paul Griffiths called an “intense debate” in Catholic circles “about the meaning, history, and contemporary applicability of just-war theory.” As Griffiths notes, much of that debate was conducted in the journal *First Things*, and a central figure in it was the Catholic public intellectual (and frequent *First Things* contributor) George Weigel. In a series of articles and exchanges from 2002 through 2007, Weigel sought to rescue what he termed “the classic Catholic just-war tradition” from the distortions he believed it had suffered at the hands of “religious leaders” like the National Council of Churches and the U.S. Conference of Catholic Bishops. Weigel, who supported the Bush administration’s decision to invade Iraq, accused his opponents of “forgetting” the framework of just-war theory, which “starts with a ‘presumption for justice,’ not a ‘presumption against violence.’” Drawing on the work of James Turner Johnson, Weigel inveighed against the view that “the use of even proportionate and discriminate armed force is, at the outset of the moral analysis, presumptively deplorable.” This view, he claimed, wrongly “uncouples just-war thinking from statecraft” and

smuggles into the tradition a “pacifist premise” foreign to the Augustinian understanding of the responsibility of the sovereign to secure the tranquility of just order.

One other plank of Weigel’s argument is worth noting. After disputing that the just-war tradition includes a presumption against war and underlining that it is intended to serve statesmen, Weigel claimed, in a January 2003 article titled “Moral Clarity in a Time of War,” that “what we might call the ‘charism of responsibility’” to judge whether a war is justified lies not with religious leaders and public intellectuals, but with “duly constituted public authorities.” Such authorities, he went on, enjoy “a charism of political discernment that is unique to the vocation of public service.” Religious leaders and public intellectuals, lacking this charism, must exercise “a measure of political modesty” in presuming to judge whether the principles of *jus ad bellum* have been satisfied in a given case.

It is interesting to note that no Catholic bishops joined the debate in *First Things*. But the then-Archbishop of Canterbury, Rowan Williams, replied at length to Weigel’s argument, questioning whether his defense of preemptive action could be accommodated within the just-war tradition and retorting, against what he called Weigel’s “really startling theological novelty,” that “there is no charism [that is, gift of the Holy Spirit for the building up of the Kingdom of God] that goes automatically with political leadership.” Jeff McMahan likewise challenges the claim that only political leaders have the competence and authority to make judgments about *jus ad bellum*. But he would have us go further and question Shakespeare’s soldier’s claim that, “if [the King’s] cause be wrong, our obedience to the King wipes the crime of it out of us.” In other words, McMahan challenges the very separation of the principles of *jus ad bellum* from the principles of *jus in bello*—an orthodoxy that Weigel does not even think to defend.

Toward the beginning of *Just and Unjust Wars*, Michael Walzer writes that “the moral reality of war is divided into two parts”: *jus ad bellum* (the justice of war) and *jus in bello* (justice in war). But this “dualism,” he allows, is “puzzling,” for how can a soldier fight rightly when the war that he is fighting is not itself right? Walzer’s principal answer is to ground what he calls the moral equality of soldiers in “shared servitude.” “The enemy soldier, though his war may well be criminal, is nevertheless as blameless as oneself,” he writes. For “war isn’t a relation between persons but between political entities” which have turned human beings into mere instruments—“food for powder, food for powder,” Shakespeare’s Falstaff says in *Henry IV, Part 1*. Soldiers are not responsible for the war they now have to fight, but they are also not innocent in the technical sense of “not harming.” It is civilians who are not *nocentes* in this sense: they do not pose a threat of harm. Instead, as soldiers in arms do threaten one another, Walzer claims that they may rightly attack one another, like

the gladiators of old. But they are innocent of the evil of the war. It is the political leaders of the state in the wrong who bear the guilt for this.

A simple way to explain McMahan's challenge to the current orthodoxy of just-war theory is to say that he condemns the dualism that Walzer seeks to understand. Indeed, scarcely a claim in support of this dualism escapes McMahan's withering criticism. To begin with, he argues that, while we can agree that a given enemy soldier is blameless and not criminal for fighting an unjust war, such blamelessness implies "nothing more than that an unjust combatant is excused," and not that he or she is *justified* in fighting. The unjust combatant may act impermissibly, yet not culpably and so not criminally. Duress, limitations in knowledge, and diminished responsibility (think here of child soldiers) very often exculpate soldiers in present-day wars, so that even though one's cause be wrong, "the crime of it" falls on one's leaders. Yet this may not always prove true, and McMahan argues in favor of an authoritative, international court that could limit or even eliminate the excuses available to soldiers by publicly judging—in advance—a state's cause for war. (He fleshes out this proposal in a 2012 paper entitled "The Prevention of Unjust Wars," pushing back against the "councils of despair" that "take the frequent inability of soldiers now and in the past to reach reliable judgments about matters of *jus ad bellum* as an unalterable feature of the moral landscape," and calling for "moral vision as well as creativity in the design of new institutions.")

Walzer's analogy of war to gladiatorial combat fares no better. McMahan points out that "gladiators fought only for self-preservation" and not in service of an unjust cause threatening ill to many; that gladiators who refused to fight would be killed, unlike soldiers in states like ours today; and that while all gladiators were expendable, rendering bootless any mass refusal to fight, no state can kill all its soldiers. And even if we assume that a state might well execute soldiers who refuse to fight—as the Nazis executed Franz Jägerstätter—do we want to say that Jägerstätter would have been *justified* in fighting for the Nazi cause? McMahan notes that Jägerstätter's fellow Catholics, including the bishop of Linz, "offered him the familiar forms of advice that still constitute the received wisdom on these issues: that he lacked the competence to judge the war unjust, that as a citizen he had no responsibility for the acts of the government and could therefore participate in the war with a clear conscience." Perhaps Jägerstätter would have been excused for joining the fight; how many of us would have the courage to refuse and suffer beheading as a consequence? But he surely would have been cooperating with evil had he fought, and it is hard to see how we could hold that he would have acted *rightly*.

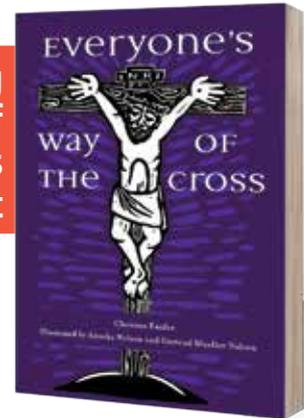
Finally, Walzer's account of when and why soldiers may rightly attack one another also does not escape scrutiny. In McMahan's view, threatening harm, as soldiers do to one another, does not make one liable to attack *without regard to which side, if either, has justice in its cause*. (As McMahan

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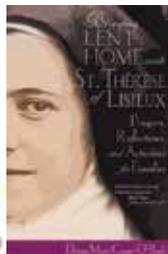
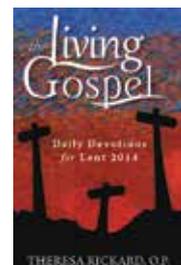
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explains, a person is “liable” to attack when “he would not be wronged by being attacked, and would have no justifiable complaint about being attacked.”) For example, a person acting in self-defense clearly threatens harm to his or her assailant. But it is *not* the case that, because the person acting in self-defense threatens harm, he or she may be rightly attacked. There is no right of self-defense against a person acting in self-defense. McMahan puts the point succinctly: “One does not make oneself morally liable to attack by posing a threat if one is morally justified in posing that threat.” Instead, one is liable to attack by virtue of one’s moral responsibility for an *unjustified* threat. So, should attack be necessary to the end of preventing harm, terrorists and assailants are liable to attack, as are soldiers bearing some measure of responsibility for an unjustified threat. But here is the rub: soldiers serving a just cause, through just means, are *not* liable to attack—they are like the person acting in self-defense. And so a soldier like Jägerstätter would have acted wrongly, though perhaps not culpably, had he fought and killed for the Nazi cause.

Other implications of this argument may be more unsettling. As McMahan notes, the doctrine of absolute civilian immunity from attack holds that “if posing a threat is the criterion of liability to attack in war, then [all] combatants are liable but [all] noncombatants are not.” But, as we have seen, McMahan rejects the notion that merely threatening harm suffices to make one liable to attack. If, instead, what matters is “moral responsibility for an objectively unjustified threat,” then not only are just combatants not liable to attack, but—conversely—civilians responsible for unjust wars and unjust acts of war *could be* liable. In other words, attacks on civilians could be justifiable, if these attacks would contribute to the achievement of a just cause.

This argument opens the way to attacks not only on munitions workers (which orthodox just-war theory has been tinkered with to allow), but on (among others) professors of physics, chemistry, computer science, and anyone else doing research that will lead to more destructive bombs, more deadly chemical weapons, viruses, and so on. Whereas for orthodox just-war theory, “innocent” has the technical sense of not posing an immediate threat of harm, for McMahan—following here, it should be noted, medieval theorists like Suárez and de Vitoria—the innocent are those *not morally responsible* for a wrong and as such immune to direct attack. By contrast, with responsibility comes liability.

A clear difference between McMahan’s revisionist theory of the morality of war and Weigel’s account of “the classic Catholic just-war tradition” is that where Weigel reserves considerations of *jus ad bellum* to statesmen (“duly constituted public authorities”), McMahan addresses his theory to soldiers and conscripts. His practical aim in undermining “the idea that no one does wrong, or acts impermissibly, merely by fighting in a war that turns out to be unjust” is

to make it more difficult for states to fight unjust wars, and to do so by articulating for soldiers in such circumstances moral reasons to resist going along. He believes “we must stop reassuring soldiers that they act permissibly when they fight in an unjust war, provided that they conduct themselves honorably on the battlefield by fighting in accordance with the rules of engagement.” His hope is that, once what he calls the doctrine of “the Permissibility of Participation” has been discredited, “an important resource for the prevention of unjust wars” will become available, one which to date has been eliminated by the separation of *jus ad bellum* from *jus in bello*: “namely, the moral conscience of individuals.” Readers of literature might consider in this regard Tim O’Brien’s novel *The Things They Carried*, whose narrator struggles with whether “to fight a war I hated,” the American war in Vietnam. What difference would it make for such a man if it were *not* a prevalent belief in our political culture that a soldier does no wrong in fighting honorably for his country, right or wrong? And how much more responsible and transparent would our political leaders have to be in making the case for war?

It could be objected—as McMahan anticipates—that “if the Permissibility of Participation were widely repudiated, soldiers would be more likely to disobey when ordered to fight in a war that was just.” But this seems unlikely to occur in wars of national defense or humanitarian intervention, when political leaders could clearly make the case that intervention was the lesser of two evils. (See, on complications with respect to Syria, David Rieff, “Reckless Ardor,” *Commonweal*, June 14, 2013.) McMahan concedes that extending provisions for selective conscientious objection to active-duty soldiers could well impair the ability of a state to fight an unjust war, or a war of doubtful justice, but this does not concern him. His worry is rather that the recent and accelerating development of robots for military uses will allow a state to “reduce its reliance on soldiers with consciences.” Drones, after all, at least require operators. Robots threaten to enable political leaders to make war without stopping to persuade—or anesthetize—anyone’s conscience.

While I doubt that McMahan would go so far as pacifists like the moral theologian Stanley Hauerwas and claim that the history of the nation-state “is the history of godlessness,” his view of the state is clearly more skeptical than Weigel’s and more in line with Daniel Maguire’s. His revisionist theory means to redress precisely what Maguire finds problematic about just-war theory: that it has facilitated recourse to war. Without calling for the abolition of war—he allows that, tragically, war may sometimes be the lesser evil—McMahan wants to make it harder for soldiers to fight in wars without qualms, and so harder for states to initiate wars like the ones the United States fought in Vietnam and Iraq. While his argument faces many challenges—including clarifying just causes for going to war and the proper relationship of the morality of war with the laws of war—it certainly looks like progress in philosophy to me. ■