

McMahan, Jeff. *Killing in War*.  
New York: Oxford University Press, 2009. Pp. 250. \$35.00 (cloth).

Jeff McMahan has long been a forceful critic of the principle known as the “moral equality of soldiers,” according to which there is a perfect moral symmetry between soldiers on both sides of a war regardless of which side is in the right and which is in the wrong. As McMahan has argued, the principle is deeply counterintuitive as is evident when compared with a domestic analogy: if an armed gang of bank robbers have a shoot-out with the police, we would never accept symmetrical treatment for moral or legal purposes. The police have the right to shoot and kill; the robbers do not. But the same should hold for an armed gang of criminals on a larger scale: soldiers in an unjust war. Indeed, given that the harm in war is far greater, the moral asymmetry should be all the more obvious. McMahan, in *Killing in War*, argues for rejecting outright the doctrine of moral equality. As an alternative, he develops an account of the legitimacy of killing in war based on what he calls “moral responsibility,” a responsibility for harm that is short of the sort of culpability required for punishment but stronger than mere causal responsibility. This revision has radical implications for reshaping the current law of war, he argues. It would mean that only soldiers on the unjust side are liable to be killed, and unjust soldiers have no right to kill those on the other side. Even more striking, McMahan argues that we should reject the long-standing principle of civilian immunity. Terrorism, the intentional targeting of civilians, should be morally permissible, according to McMahan, when the civilians bear moral responsibility for the waging of an unjust war. In the end, these conclusions are far less radical than they at first appear, given McMahan’s practice of regularly qualifying his arguments by holding that under present conditions they will have little or no bearing on current practice (see, e.g., 108, 190, 224, 234). Nonetheless, even as a matter of pure theory, McMahan’s challenge to Just War theory in this gracefully written and challenging presentation is extremely important and deserves close attention by anyone working in this area and will no doubt inspire much debate and discussion.

One problem with the argument is McMahan’s tendency to take Michael Walzer’s views as representative of the Just War tradition in general. Walzer, however influential, is only one contributor to a vast tradition, and his views depart substantially from orthodox Just War doctrine. This is particularly true in respect to the two principles that McMahan targets in this book: Walzer’s doctrine of the “logical” independence of *jus ad bellum* and *jus in bello* and his doctrine of the “moral equality” of soldiers. As to the first principle, it has never been clear what Walzer means in declaring the distinction to be “logical,” nor have I ever seen this word so used in the Just War tradition before Walzer. Quite the contrary: the dominant strand in the tradition has always held that *ad bellum* and *in bello* are essentially connected. As Gregory Reichberg has demonstrated, the current distinction between *ad bellum* and *in bello* is largely a product of the modern era of the nation-state and was grounded in pragmatic considerations, including the concern about intruding on national sovereignty and especially the lack of an impartial neutral judge as to who had the just cause.

But that is to say the doctrine is not “logical” but pragmatic and political. If so, the doctrine’s apparent moral absurdity and its purported conflict with common sense would seem to disappear. Nor do we need to hold that war involves a different sort of morality. Rather, the difference is that in the domestic bank robber case there is an authority capable of making determinations of right and wrong, unlike in the international case. Indeed, in Just War doctrine the distinction is not only merely pragmatic but (ideally) temporary, pending the establishment of an effective international authority capable of making such determinations, a development that McMahan supports in this book (e.g., 192).

As for the principle of the moral equality of soldiers, again that terminology comes from Walzer, not the Just War tradition. It is admittedly strange to believe that a soldier fighting an unjust war is the moral equal of the soldier fighting for a just cause. McMahan claims that “just war theorists have said surprisingly little in its defense” (38), but that is because it is not the traditional position of Just War doctrine. The actual position is summed up by Cardinal Cajetan: “He who wages a just war acts as a judge proceeding against a criminal” (Bede Jarrett, *Social Theories of the Middle Ages* [Boston: Little, Brown, 1926], 188). Again, the modern practice of giving soldiers on both sides equal rights is a pragmatic rather than a moral doctrine, one also grounded in the fact that judgments of which side is in the right are intrinsically unreliable absent a neutral forum to determine such an issue. But then once again the apparent moral absurdity of this doctrine vanishes. Evidence of this can be found in the fact that we do not accept the “moral equality” principle with regard to UN peacekeeping soldiers; there we have a neutral authority comparable to a police officer in the domestic case, and there the analogy holds: there is no symmetric right to fire on UN soldiers (to do so is a war crime). McMahan’s book focuses on the dichotomy between just wars and unjust wars, whereas the problem the Just War tradition has been most concerned with in the modern era of nationalism is wars of unclear justice, where soldiers on each side inevitably believe their side is just. Thus, even in the late medieval period, we find St. Antoninus declaring: “If after discussion with experts there is still doubt about the justice of the war, the soldier is excused from evil when he is merely following his lord” (Jarrett, *Social Theories of the Middle Ages*, 197).

McMahan’s book is thus a devastating critique of Michael Walzer but less so of the Just War tradition. It is, however, an interesting question just where common sense morality stands on this issue. Though much of the book is aimed against what he calls the “reigning theory of the Just War,” in the preface McMahan indicates that his argument is also aimed against “common sense beliefs about the morality of killing in war” (vii). McMahan asserts that the “moral equality” doctrine is almost universally accepted (203). He presents the fascinating case of Wittgenstein, who thought that men on each side had a duty to fight for one’s country, apparently without any requirement to determine who is in the right. Still, there seems little evidence to think that either Wittgenstein or common sense accepts the rather extreme Walzerian view that as a matter of moral principle, soldiers on both sides of a war have equal legitimacy regardless of the justice of their cause. Indeed, McMahan himself acknowledges that most people

would reject the doctrine of moral equality if the issue were stated clearly (105). And it is not quite accurate to say, as McMahan does, that international law “assert[s] the legal equality of soldiers” (105); it does not “assert” any such equality but rather avoids altogether the issue of which side is justified. The most plausible view would seem to be that common sense and international law reflect not Walzer’s position but rather that of Just War doctrine, in that the “equality” of soldiers is a provisional and temporary arrangement given the lack of a central reliable authority to adjudicate which side is just in any given war. If so, McMahan’s own views are quite in harmony with the reigning account of war, at least on this question.

However, McMahan has an even more important critique of Just War doctrine. The heart of his book is an attack on the traditional Just War account of liability to harm and an attempt to develop an alternative. The traditional criterion for liability to attack in war is, as McMahan rightly recognizes, that one is posing a threat. McMahan dismisses this account outright: “posing a threat has no relevance to liability” (208). However, his dismissal seems rather too hasty, neglecting the many subtleties long recognized in the Just War tradition, including how direct and immediate the threat is, the nature of the threat, and how abstract or speculative it is. (He also unnecessarily complicates the issue by conflating two distinct questions: whether one is a “combatant” for the purposes of gaining certain privileges under the Geneva Conventions versus whether one is a combatant for purposes of being liable to attack; 12.) McMahan presents the counterexample of the research scientist working on weapons systems, who he believes would obviously not be liable to attack even if he is a far greater threat to the enemy than any soldier (12). But if such an attack seems impermissible, it is probably because virtually all research scientists are involved in projects that either are entirely experimental and speculative or will not produce any deployable weapons for another decade, long after the current war is ended. In short, he is not a legitimate target precisely because he does not pose any present threat. In contrast, when the research scientist is involved in developing a weapon that is immediately ready for use, McMahan too quickly assumes that Just War doctrine would prohibit an attack on his facilities. In fact, in World War II the Peenemünde bombing raid in 1943 was just such a case of an attack on research scientists, targeting a V2 rocket development site with the aim of destroying all of the facilities and personnel (i.e., scientists) involved in the research and development of the rocket. This attack does not seem obviously unjustified; the difference is that in this case the scientist’s work was so closely and immediately related to the war effort that he could be seen as posing a direct threat and thus treated as a legitimate military target. McMahan’s other purported counterexample to the traditional standard of ‘posing a threat’ is also doubtful. McMahan criticizes Just War theory in that the “reigning theory of the just war draws no distinction between child soldiers and other combatants” where both pose an equal threat, whereas intuitively there is an obvious moral difference (200). It is hard to know what he means by the “reigning theory” since he does not provide any sources. But

I know of no Just War advocate who has ever claimed that there is no moral difference between child and adult soldiers for purposes of liability; to the contrary, at Just War conferences where this topic has come up, the consensus has been that one should make an extra effort to spare child soldiers wherever possible even if they pose a threat, very much as McMahan argues (202). This need not contradict the ‘posing a threat’ criterion but simply reflect a distinct moral concern, for example, compassion for children, that can override the permission to kill a threat.

McMahan’s alternative account of liability to attack, applicable to both war and self-defense, is his most important contribution in this book and the topic that will likely generate the most debate. It grows out of his long-standing and evolving attempt to develop a general criterion of liability to defensive force. McMahan argues that the criterion for such liability should be “moral responsibility for an objectively unjustified threat” (208). It is not easy to see, however, what counts as moral responsibility. It is a far weaker condition than the culpability that would make one liable to punishment, and it is even (implausibly, I believe) triggered by such actions as faultlessly driving a car, on the grounds that one knowingly imposes a risk of death on others. To complicate things further, one is not liable if one’s purpose in driving a car is morally justified, for example, the ambulance driver (167). (One wonders how to draw this line: would going to the store to get aspirin for one’s wife, or driving the children to school, count as sufficient to negate one’s liability to defensive force? And recall that the ambulance driver is likely a paid professional, motivated by self-interest no less than the truck driver or cab driver or indeed any driver, so he would seem to have no special moral status.) Yet another complexity is that the above criterion for liability to being killed applies only to intentional killing; if a person’s death is merely foreseen but not intended, then he can be killed despite having no moral responsibility at all for any wrong, as in the case of what McMahan calls the “tactical bomber” (but which is more accurately called “strategic bomber”). McMahan does not tell us why killing innocents intentionally violates their rights, while killing them merely foreseeably is justified; other proponents of a rights-based account have insisted that killing someone foreseeably is just as morally problematic (even for McMahan, the bomber “infringes” the rights of innocents but is justified anyway; 173). As for genuinely innocent aggressors, McMahan’s view seems to be that they are not liable to being killed but that they may be killed any way on “lesser-evil” grounds (170). This is troubling on multiple grounds, for it removes a long-accepted right of self-defense but then immediately replaces it with a consequentialist justification (it is better called “consequentialist” than “lesser-evil” since the traditional lesser-evil doctrine has never been interpreted to permit homicide). Still, given that we lack a consensus theory of self-defense, McMahan’s moral responsibility account must be taken very seriously, especially as he continues to develop it.

Perhaps the most striking and controversial conclusion that McMahan draws from his theory is his assertion that terrorism—the intentional killing of civilians—is morally permissible, contrary to the overwhelming consensus. This con-

clusion follows from his insistence that moral responsibility rather than posing a threat is the basis of liability to lethal force since some civilians will bear more moral responsibility for an unjust war than some soldiers. As before, what McMahan concludes in theory he largely retracts in practice, this time on the grounds that licensing terrorism in principle would cause more harm than good since it would inevitably be abused (235). Nonetheless this is a radical challenge to a fundamental principle of Just War. McMahan struggles to explain just what sort of actions would ground the moral responsibility of civilians, and he insists that his position is distinct from that of Osama bin Laden, for whom all Americans are liable to being killed on grounds of their voting and their financial participation in America's exploitation of the Middle East. Yet McMahan goes further than Bin Laden in some ways, even suggesting that writing books and articles in support of a war constitutes a form of moral responsibility for that war, however slight (214), though he insists that "in practice" it virtually would never be legitimate to direct military strikes against such writers. He gives as an example of where terrorism might be legitimate the case of Israeli settlers in the West Bank, though this is a complex political issue that he attempts to resolve rather too quickly (222). But even McMahan feels some unease at the idea that terrorism might ever be permissible and seeks a way to "draw back" from such a position (230). The rationale he finally settles on for largely withdrawing his support for terrorist acts amounts to a consequence-based claim that attacking civilians would be in almost all cases ineffective. The problem is that here, as elsewhere in his argument, the claim that moral responsibility is the basis for liability to harm appears to end up doing very little work. When someone posing a threat has only the most minimal moral responsibility, in practice, for McMahan, the fact of posing a threat trumps the moral responsibility, and the person posing the threat is liable to be killed (as he explains, the criterion of moral responsibility will be "highly permissive"; 227). And when the magnitude of the potential harm is great, in practice moral responsibility will have little significance (197). Even with respect to child soldiers, McMahan allows that they may be killed if necessary to achieve a legitimate war aim (201). And civilians who are more morally responsible for an unjust war than the soldiers are, for McMahan, nonetheless in general not morally liable to be killed. In practice the soldier on the just side is liable to attack by the unjust soldier, if only because, for McMahan, the unjust soldier cannot fairly be held responsible after the war, given the lack of a neutral authority to determine which side is just (192). One might thus wonder whether McMahan has in effect returned to the very Just War criterion that he rejected, that of posing a threat. Thus, in his rejection of terrorism, his claim that attacks on civilians would in practice always be too indirect to be effective could be interpreted as a recognition that civilians, no matter how morally reprehensible, cannot be killed precisely because they do not pose a direct threat. Thus, as McMahan says, "civilians do not generally *pose* a threat of wrongful harm," and unless they are a source of "immediate harm," killing them "cannot be directly effective" (225–26). The phrase "directly effective" is puzzling here; surely the question is simply whether it is effective; the insistence on "directness" seems simply to return us to the idea of liability based on posing a direct threat.

Whatever the merit of the above criticisms, there is no doubt that McMahan

performs an extremely important service in calling attention to these crucial and surprisingly neglected issues and in providing us with a sophisticated and original contribution to the debate. This book will be widely read and debated and deservedly so; anyone working on these topics will have to grapple with McMahan's subtle and important analysis of the issues.

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Segvic, Heda. *From Protagoras to Aristotle*. Edited by Myles Burnyeat; with an introduction by Charles Brittain.  
 Princeton, NJ: Princeton University Press, 2009. Pp. 216. \$45.00 (cloth).

As the introduction by Charles Brittain relates, Heda Segvic died in 2003 at the age of 45 after a long illness and a daunting series of personal and professional tribulations. This volume collects eight previously published essays that focus on ancient ethics. Six of these are substantial works: two on Plato's *Protagoras*, a long article on Socratic intellectualism, and three pieces on Aristotle's ethics. Together they represent a significant contribution to the field, especially given that Segvic received her PhD in 1995. The final two "chapters" are very short (4–5 pages): the first, a review of Roger Crisp's translation of the *Nicomachean Ethics*, and the second, an encyclopedia entry-type piece about Socrates. Both are well executed, well written and, although of a different order than the preceding chapters, display Segvic's ability to write for a more general audience.

The first essay discusses Protagoras's "art of living" as depicted in Plato's *Protagoras*. Protagoras's "Great Speech" presents a myth about the gods' creation of mortal creatures. Epimetheus ("afterthought") has nothing left to offer human beings, since he has already dispensed all of the natural endowments for survival, such as claws, speed, and so forth, to the other animals. Prometheus ("forethought") gives humans fire and the crafts (*technai*) to feed, clothe, and arm themselves. Segvic points out that Epimetheus's gifts are themselves typically useful after the fact; first, one is attacked, and then, one runs away or uses strength to fight back. The gifts of Prometheus, by contrast, themselves involve forethought: considerable advance planning is involved in farming or manufacturing weapons. Finally, and most important, however, Zeus tells Hermes to give to all human beings a sense of "shame and justice." Without the political art necessary to form cities, human beings fought one another, remained isolated, and again fell victim to animals. The contention between Socrates and Protagoras in the rest of the dialogue focuses on what this "shame and justice" is and how it has transformed human beings from the irrational creatures they were. The second essay explores various connections between the *Protagoras* and Homer. Segvic pays careful attention to philological details and highlights important similarities between the language of Plato and of Homer. In particular she develops (41–46) the idea that Plato casts Socrates as Odysseus and Protagoras as Circe.