

Review article

A challenge to the reigning theory of the just war

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Introduction

In his concise and inventive book, *Killing in war*,¹ the philosopher Jeff McMahan provides a penetrating critique of just war theory as it has typically been understood by theorists of politics and International Relations. McMahan argues that this theory—heretofore referred to as the reigning theory—lacks a plausible moral basis and is flawed in ways that seem likely to lead even its sincere adherents to engage in morally unjustified killing.

Although much of *Killing in war* is devoted to a critique of the reigning theory, its fundamental aim is constructive: to propose an alternative account of the morality of armed conflict. In this article, I discuss this important and timely book, some of the critical attention it has received, and some of the implications of these debates for practice.²

The reigning theory of liability

The reigning theory, which was given its most comprehensive recent expression in Michael Walzer's *Just and unjust wars*,³ provides an account of two sorts of moral requirements—when resort to war is justified (usually referred to by its Latin name as the requirements of *jus ad bellum*), and what means can justifiably be used in war (usually referred to by its Latin name as the requirements of *jus in bello*). Walzer begins from the premise—shared by McMahan and most other moral theorists of war—that all people begin with immunity against being deliberately attacked—a right against others that these others not attack them.⁴ The problem of war, on

¹ All in-text page references are to this work.

² Others have also recently challenged central tenets of the reigning theory. Noteworthy contributions include David Rodin, *War and self-defense* (Oxford: Oxford University Press, 2002), and Tony Coady, *Morality and political violence* (Cambridge: Cambridge University Press, 2002).

³ Michael Walzer, *Just and unjust wars: a moral argument with historical illustrations*, 2nd edition (New York: Basic Books, 2000).

⁴ They also have a right against being attacked non-deliberately (as a side-effect) but this right can be overridden more easily.

Walzer's account, is 'not to describe how immunity is gained, but how it is lost'.⁵ Following McMahan, we can refer to someone who has lost his or her immunity against being attacked as being *liable* to deliberate attack (pp. 8–10).⁶ It does not of course follow from the fact that a person is liable to attack that attacking him or her is the morally right thing to do. Attacking a person who is liable may be the wrong thing to do, since the use of force may involve additional costs to the attacker or to third parties that make it impermissible to attack that person. Being liable to attack means only that the liable agent's rights would not be violated if they were attacked—they could not claim that they had been wronged by being attacked (p. 8). Different agents may become liable to different levels of force, depending on different morally relevant characteristics that they possess or lack. When someone has been killed or injured, it makes a difference whether or not they were liable to these outcomes. If they were not liable, then even if these harms were justified, they have nevertheless been wronged and would have a claim to some form of compensation. This would not be the case if these people were instead liable to the harms. An account of justified killing must explain how people can lose their rights against deliberate attack and become liable, and also the conditions under which these rights against deliberate attack can be overridden.⁷

According to the reigning theory, soldiers engaged in conflict and a certain class of civilians—those who work in munitions factories or are otherwise 'currently engaged in the business of war'—have lost their immunity against being attacked, and are therefore liable to attack. Because ordinary civilians have not been 'made dangerous', and are not currently posing a threat, they are, correspondingly, not liable to attack. The reigning theory thus affirms a blanket permission to attack combatants while war is in progress and a blanket prohibition against killing ordinary civilians. Further, it asserts that soldiers have lost their immunity to attack because they pose a risk of severe harm to others. In this respect, the reigning theory maintains that there is no difference between soldiers fighting for a just cause in a justified war, and those fighting for an unjust cause in an unjustified one, since each poses the risk of severe harm to others. Conflict between just and unjust combatants is therefore a case of morally symmetrical self-defence, all else being equal. This is expressed in Walzer's thesis of the moral equality of soldiers,⁸ which maintains that all soldiers are equal: they have an equal 'licence to kill', which according to Walzer is 'the first and most important of their war rights'.⁹ The reigning theory severs the issue of whether the resort to war is justified from the issue of who may permissibly kill in war. There are still constraints on what soldiers may do in war—they can become guilty of criminal offences when they use unjust means in pursuing their war aims. That soldiers may be involved in an unjust war or are fighting for an unjust cause is 'the king's business—a matter of state policy, not of individual volition',¹⁰ and thus not something for which these

⁵ Walzer, *Just and unjust wars*, p. 145n.

⁶ Unless otherwise noted, I will refer to liability to deliberate attack simply as liability to attack.

⁷ Walzer, *Just and unjust wars*, p. 43.

⁸ I will follow McMahan in referring to this doctrine as the moral equality of combatants.

⁹ Walzer, *Just and unjust wars*, p. 36.

¹⁰ Walzer, *Just and unjust wars*, p. 39.

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soldiers can be held to account. One of the distinctive aspects of the reigning theory, then, is the manner in which it relates the requirements of *jus ad bellum* and *jus in bello*. In particular, it is possible to fulfil perfectly the requirements of *jus in bello* even if one is fighting an unjust war with an unjust cause.

McMahan raises two types of objections to the reigning theory's account of liability. First, he thinks that the doctrine of the moral equality of combatants cannot be given a plausible moral basis. One element of this critique is internal: McMahan argues that the account of liability affirmed by the reigning theory will not entail (as its proponents suppose) the blanket permission to kill combatants or the blanket prohibition against killing non-combatants. On any ordinary understanding, some civilians—the cadet in a military academy who will soon be deployed for combat, the scientist whose work can be applied to further significantly the war effort—pose threats of severe harm to others. Soldiers who will be deployed for the foreseeable future in ways unrelated to the fighting of war, on the other hand, do not pose such threats. The reigning theory, however, considers the soldier but not the cadet or the scientist to be liable to lethal force (p. 205). For this reason, McMahan argues that Walzer's theory effectively treats liability to attack as a function of membership in a group, rather than on morally relevant traits that individual members of different groups (combatants and non-combatants) have as individuals (p. 208). A second, more philosophically ambitious element of McMahan's critique challenges the very idea that posing a threat of severe harm is sufficient to establish liability to attack. In particular, he argues that it cannot reasonably be maintained that a combatant who fights fairly in a just war of self-defence against an aggressing army has made himself liable to deliberate attack. For this reason, he thinks that it is impossible in principle for unjust combatants fighting for an unjust cause to meet the requirements of *jus in bello*. After all, in all other interpersonal contexts a person does not become liable to lethal attack unless they have done something wrong. The just combatant has done nothing that is morally wrong so long as he fights by rightful means to secure the just cause of defending himself and others from wrongful aggression. McMahan invites his readers to consider the following analogy: if a murderer is in the process of killing a number of innocent people and the only way to stop him is to kill him, then the police officer who starts to shoot at him does not thereby make himself morally liable to defensive action, and if the murderer kills the policeman in self-defence, he will become responsible for one more wrongful death (p. 14). In both war and ordinary interpersonal contexts, it is morally wrong to kill unless the cause for which one kills is just (p. 6). For this reason, while the just combatant certainly poses a threat of severe harm to the unjust combatant, he does not thereby make himself liable to attack. The unjust combatant who kills the just combatant does so in the service of an unjust cause. 'Not all combatants are legitimate targets of attack and war. Unless they fight by wrongful means, just combatants do nothing to make themselves morally liable to attack. They neither waive nor forfeit their right not to be attacked. They are not, therefore, legitimate targets' (p. 205).

McMahan also rejects the view that posing a threat of harm (being the agent of the threat) is necessary for creating liability to attack, and thus does not endorse the blanket moral immunity (with the exceptions just noted) that the reigning theory grants to civilians.¹¹ Civilians can make themselves liable to attack by being ‘culpable causes’ of unjustified aggression (pp. 206–8). Civilians can have high degrees of responsibility (through both their acts and their omissions, pp. 214–16) for unjust wars or ongoing conflicts—McMahan provides the example of the role that executives from the United Fruit Company played in the forcible overthrow of the democratically elected Guatemalan government in 1954, and the role of Israeli settlers in the Occupied Territories (pp. 222–3) in the conflict with the Palestinians—and it seems implausible that those who are prospective victims of this unjust war cannot take defensive action to prevent these ‘culpable causes’ from knowingly enabling severe and objectively unjustified harm to them. This is not to say that under ordinary circumstances it will be permissible to target civilians. Indeed, McMahan argues that such attacks will almost never be justified in practice because they will very rarely be effective, and it will be nearly impossible to discriminate between the very few civilians who have a great deal of responsibility for the threats of war, and the vast majority of civilians who bear little or no responsibility (pp. 225, 231).¹²

McMahan further argues that the widely held supposition that when they fight in an unjust war unjust combatants do no wrong facilitates the recruitment of combatants to fight in unjust wars. If combatants were to reject the moral equality doctrine, and instead to hold the view that they can only fight justly when they fight for a just cause, they would be less likely to fight in wars whose causes were either obviously unjust, or when the moral status of the cause is questionable. As a result, the incidence of unjust wars would be lower (p. 3).

Can the reigning theory be defended against McMahan’s critique? One might argue, as Walzer himself has, that just combatants consent to being attacked by taking up arms. But it is far from clear that just combatants do any such thing. As McMahan points out, the fact that they consent to assuming risk does not mean that they agreed to be attacked, any more than anyone choosing to walk through a dangerous neighbourhood agrees to be attacked (p. 52). Or, one might appeal to the role-based duties of unjust combatants, which require them to follow orders and attack on command. But again, it is hard to see how any such obligation could override their stringent negative obligation not to kill people who have done nothing wrong (p. 74). Alternatively, one might follow David Estlund and claim that when ‘institutional process producing the commands is duly looking after the question whether the war is just, the soldier would be wrong to substitute his own private verdict and thwart the state’s will ... when the state and its procedures are of the right kind the soldier’s participation in an unjust war is sanitized precisely because he was following orders’.¹³ However, as McMahan points out

¹¹ See also Jeff McMahan, ‘The ethics of killing in war’, *Ethics* 114: 4 (2004), pp. 693–733, at p. 719.

¹² I discuss McMahan’s treatment of this issue in more detail below.

¹³ David Estlund, ‘On following orders in an unjust war’, *Journal of Political Philosophy* 15 (2007), pp. 213–234, at p. 213.

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it is hard to see that the institutional processes leading to decisions to go to war have the epistemic value that this account would require. And Estlund's intuition seems in any case off the mark—if an agent knows that following an order will involve committing a grave wrong, nothing in the institutional process producing the command will sanitize his conduct, even if the costs of disobeying it will at least partially excuse it.¹⁴ Nor does the fact that unjust combatants may be coerced into fighting sanitize their conduct—as the reigning theory itself recognizes with respect to obeying the requirements of *jus in bello*, where the coercion imposed on soldiers to carry out commands that violate them is likely to be particularly acute.

McMahan argues that writers who have supported the moral equality doctrine are often guilty of conflating permission and excuse (p. 110). He is quite sympathetic to the claim that unjust combatants are ordinarily partially excused for the objectively unjust threat of harm that they pose. Such people often act under more or less extreme forms of duress (pp. 115–18, 162), or act on false factual beliefs that make their conduct subjectively justified (pp. 119–22, 163–6). But this does not mean that they are justified for acting as they do. John's subjective justification for shooting Sue, who he falsely believes to be morally responsible for a severe threat to a large group of innocent people at a local shopping centre, does nothing to make Sue lose her right against being attacked by John. It is important to distinguish (in war and elsewhere) questions concerning an agent's conduct—which can be right or wrong, and better or worse in varying degrees—and an agent's character—which can exhibit virtues and vices in varying degrees. People of generally good character often act wrongly, just as those of generally weak character often act rightly. As we shall see, in McMahan's view the *extent* of an agent's liability to attack depends on the moral quality both of their conduct and of their character. That unjust combatants are partially excused, for example, can make a real difference to the level of force and the tactics that can be used against them, and also to the means that can be used to hold them accountable for their unjustified killing.

An alternative approach to liability to killing in war

On McMahan's own responsibility-based account, a person can become liable to attack only if they are morally responsible for a threat of objectively unjustified (wrongful) harm. To be a threat of wrongful harm means that the harm that one threatens to impose on another cannot be justified (because this person is not liable to it and because there are no strong countervailing considerations that justify overriding their right in this instance, p. 42). McMahan's account is complex, and his discussion of it is likely to be the most difficult part of *Killing in war* for those unfamiliar with the literature on self-defence, though well worth the effort. The basic meaning of his position can be understood by contrasting it with rival accounts of liability. The requirement that liability must be tied to posing an objectively unjust threat of harm distinguishes this account from the reigning

¹⁴ For a critique of Estlund's argument, see Gerhard Øverland and Christian Barry, 'Do democratic societies have a right to do wrong?', *Journal of Social Philosophy*, forthcoming.

theory: just combatants who fight by just means are not morally responsible for objectively unjust threats (and so are not liable to attack), while some civilians on the unjust side are morally responsible for such threats (and thus may be liable to attack). The requirement that those liable to attack be morally responsible for the threat of wrongful harm also means that non-responsible threats—a person who is thrown against others against his will, or is controlled like an automaton, or is invincibly ignorant (pp. 162–3, 165)—are not liable to attack. Responsible agency is a necessary condition for liability to attack, and it comes in degrees even among innocent people. An innocent driver who takes all reasonable precaution but who for no fault of his own is about to run over an innocent person is liable to defensive action by that person to a greater degree than someone who voluntarily engages in a permissible activity that poses a risk of harm to an innocent person through a highly unlikely causal process that could not plausibly have been foreseen by the person imposing the risk, or when the risk-imposing activity was not only permissible but the agent had a positive moral reason for engaging in it (pp. 166–7). The risk that in the driving case would result in injury was the type of risk that quite foreseeably attaches to the activity of driving.¹⁵ This is important for McMahan: taking up arms is obviously the sort of thing that poses foreseeable risks of severe harm, and this means that even unjust combatants who are excused threats can be liable to attack. McMahan rejects the view (which he once held and which some earlier just war thinkers and contemporary theorists have also maintained) that to be liable the agent who is morally responsible for the threat must also be culpable for that threat. Agents are culpable threats to the extent that they lack both a justification and an excuse for the threats of wrongful harm that they are responsible for (p. 159).

In the case imagined in the previous section, John is not culpable for the threat he poses to Sue, but he is morally responsible for it and it is wrongful. A soldier may be liable to attack on McMahan's view if he is morally responsible for an objectively unjustified threat even if he is 'innocent' in the sense that he could not reasonably be expected to know—perhaps he has been given information by a reliable source that attacking some person is required to avert an unjust threat posed by that person—that he is the agent of an objectively unjustified threat. Although culpability is not necessary for liability to attack, it is an important factor in determining what counts as a proportionate response to the wrongful threats for which combatants are responsible (pp. 18–23). This is particularly relevant when just combatants can in some way distribute the harm or the risks of harm between themselves and unjust combatants. They may, for example, be justified in assuming much less risk of suffering harm themselves while imposing much greater risk of harm on the unjust combatants when the unjust combatants can plausibly be thought to be culpable for the wrongful threat of harm for which they are responsible (pp. 160–1).

¹⁵ There is an interesting partial analogue to this notion of liability in law, the so-called 'risk rule', which limits the liability of an agent for harms resulting from his conduct to those harms the risk of which made his conduct 'tortious' (e.g. in transgression of a tort). See Robert E. Keeton, *Legal cause in the law of torts* (Columbus, OH: Ohio State University Press, 1963), pp. 9–13.

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I am unsure that McMahan's account can simultaneously be defended against those who argue that culpability for wrongful threats should be a necessary condition for liability and those who argue that merely contributing to a threat can be sufficient to make a person liable to defensive action. McMahan's position may appear to be an unstable compromise between two positions, and therefore vulnerable to attack on two fronts. For example, it might be thought that mere moral responsibility for an objectively unjustified threat is too narrow a basis for a moral asymmetry between an innocent aggressor who poses a wrongful threat, and innocent people that they risk harming. At least some amount of culpability, as opposed to mere responsibility, might be thought necessary to make the agent who is responsible for the threat liable to lethal or even very significant force.¹⁶ As McMahan himself notes (p. 157), in the law excuses typically negate liability, and insofar as an agent lacks culpability altogether it is not obvious why they should nevertheless remain liable. Arguably, those so-called innocent threats that seem most liable to defensive force, such as the driver who takes all reasonable precautions, are at least partially culpable—in deciding to drive rather than take other forms of transport they decided to willingly impose additional risk of harm on others to avoid some inconvenience to themselves. This distinguishes these drivers from those who impose risks but who have positive moral reasons for acting as they do (p. 167). One good feature of accounts of liability to attack that require culpability is that they emphasize something that obviously has moral significance: culpable agents intend, foresee or at least should foresee that their conduct will make them responsible for wrongful threats of harm.

Alternatively, one might argue against McMahan's view that contributing to wrongful threats of harm can be sufficient to create liability to attack even in the absence of moral responsibility for the threat. Intuitively, even non-responsible contributors to harm may be liable to defensive actions that could be not taken against innocent bystanders. And there is something a bit puzzling about the idea that there is a morally quite significant distinction between harms to which agents contribute and harms that they allow to occur or fail to prevent (an idea on which McMahan himself relies at certain points throughout his book) but that contribution to harm is not in itself morally significant.

Implications

While McMahan's book succeeds admirably in its aims, and while it would be unreasonable for it to cover all aspects of the problem of killing in war, it might have been stronger still had it engaged in greater detail with the issue of liability to non-deliberate attack—persons who are killed without being directly targeted, such as people who live near some military target. McMahan makes clear that he believes rights not to be attacked as a foreseeable side-effect of deliberately attacking other

¹⁶ This has been argued by several writers on self-defence, including Kimberley Kessler Ferzan, 'Justifying self-defence', *Law and Philosophy* 24 (2005), pp. 711–749; Noam Zohar, 'Collective war and individualistic ethics: against the conscription of "self-defence"', *Political Theory* 21 (1993), pp. 606–22; and Rodin, *War and self-defence*, at pp. 70–99.

targets as weaker and more easily overridden than rights against being deliberately attacked. Without a better sense of the specific meaning and moral importance of such rights, however, his overall account of the morality of war will remain incomplete and its practical implications somewhat opaque. The more stringent the right not to be killed as a side-effect, the more likely his view will lead to the conclusion that few if any wars are justified under current circumstances.

In an interesting recent paper, Seth Lazar argues that McMahan's philosophic account of liability does not support his substantive conclusions about the agents who are actually liable in wars that are likely to occur.¹⁷ McMahan is, according to him, too sanguine about killing unjust combatants, and too quick to rule out the possibility of killing non-combatants on the unjust side (pp. 225, 231). Lazar reasons that it is likely that some non-combatants on the unjust side will be morally responsible for the wrongful threats of harm, and some will not be morally responsible for these threats, and that this will also be true of unjust combatants—members of each group (combatants and non-combatants) are likely to be morally responsible for this threat of harm in varying degrees. He argues that there is no way to distinguish the contributions made by combatants to the objectively unjustified threat of harm from those made by non-combatants. Very few in either group are likely to make any more than small, non-necessary contributions to these threats.¹⁸ Most importantly, it will be difficult and indeed impossible under ordinary circumstances to determine the extents to which different members of these groups are liable to the imposition of certain harms. To attack members of either group, therefore, requires a willingness to run the moral risk of exposing individuals to types of harm to which they are not liable. For this reason, it is alleged that McMahan must adopt one or another horn of a dilemma: either he must affirm a willingness to run the significant moral risk of killing people who are not liable to attack—in which case it will be permissible to target unjust combatants but also non-combatants—or he will instead refuse to run such risks—in which case it will not be permissible to attack unjust non-combatants, but neither will it be justified to attack unjust combatants.¹⁹ Grasping the first horn—which Lazar claims is what McMahan does implicitly when he discusses how combatants should reason about moral risk when considering the targeting of civilians, adopting a strong presumption against killing unless they have high and warranted credence that those they target are liable—will effectively entail 'contingent pacifism', while grasping the second one—which Lazar claims is what McMahan does implicitly when he discusses how combatants should reason when considering the killing of unjust combatants, adopting a much weaker presumption against killing in the absence of high warranted credence that those they target are liable—will effectively entail 'total war'.²⁰

¹⁷ Seth Lazar, 'The responsibility dilemma for killing in war: a review essay', *Philosophy & Public Affairs* 38, (2010), pp. 180–213.

¹⁸ Lazar, 'The responsibility dilemma for killing in war', pp. 190, 192–3.

¹⁹ Lazar, 'The responsibility dilemma for killing in war', pp. 187, 205.

²⁰ Similar criticisms are made in Larry May, 'Contingent pacifism and the moral risks of participation in war' (unpublished ms cited by permission of author).

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In addition, Lazar argues that if McMahan's account of liability were to become widely adopted and endorsed, it would minimize certain moral risks—by hypothesis it would reduce the risk of fighting unjustified wars—but it would do so at the cost of increasing other moral risks, such as the likelihood that some just wars would not be fought.²¹ If this charge were true, it might be argued that McMahan's view would not be a good public moral criterion for just war.

McMahan can offer some effective replies to these criticisms. In particular, it appears that Lazar overlooks the fact that on McMahan's view moral responsibility for wrongful threats comes in degrees even among non-culpable agents, and that agents can contribute to threats in different ways of varying moral significance. The non-culpable citizen who 'contributes' to their country's war effort by paying taxes does so in quite a different way from the non-culpable combatant who takes up arms. There are many risks that the combatant willingly poses merely by taking up arms that the taxpayer does not willingly pose. An ordinary combatant knows (or at least should know) that however justified he thinks his conduct may be there is some risk that he may wrongfully and intentionally kill another person by initiating continuous causal processes—firing a gun, planting a landmine—that lead to that person's death. The taxpayer, on the other hand, knows (or at least should know) that however justified he thinks his conduct is, there is some risk that he may wrongfully enable another person to be killed by contributing to the tax base of his country. To be sure, both the combatant and the non-combatant make small and non-necessary contributions to the war effort, but only the combatant risks making a quite significant and necessary contribution to the wrongful death of particular people—he risks killing these people intentionally. This is true even of those combatants who are at present detailed to tasks that do not involve their direct taking up of arms. Because the types of contribution to wrongful harm associated with paying taxes and taking up arms are distinct, those who become combatants (like those who choose to drive rather than cycling or using public transport) must recognize that their willingness to risk making such contributions to wrongful harm may make them liable to defensive action that they would otherwise be immune from, should these risks materialize (p. 167). This does not mean that combatants are always more liable than non-combatants to the use of force, but that all else being equal they are liable to higher levels of defensive force, because the manner in which they risk contributing to wrongful threats—they risk being agents of the threat by intentionally sustaining a causal process that results in another person's wrongful death—is quite different.²² Intuitively, those who contribute to wrongful threats by becoming agents of threats are more liable (all else being equal) than those who contribute to wrongful threats by enabling them, and both of these types of contributors to wrongful threats are more liable than those who have failed to prevent them. Since it is plausible to treat individual

²¹ Lazar, 'The responsibility dilemma for killing in war', p. 201.

²² Lazar expresses scepticism about the possibility of measuring degrees of causal contribution. One can share this scepticism, but regard different types of causal contribution as distinct and of differing moral relevance. For discussion, see Christian Barry and Gerhard Øverland, 'The feasible alternatives thesis: kicking away the ladders of the global poor', *Philosophy, Politics & Economics*, forthcoming.

unjust combatants as more likely to act as agents of wrongful threats than it is to treat civilians (who typically enable or merely fail to prevent threats) in this manner, just combatants assume lesser moral risk in deliberately killing unjust combatants than they would assume in deliberately killing civilians on the unjust side.

Were McMahan's criterion of liability to become widely accepted it might well be that some just wars might not be fought. This must be acknowledged as a potential cost of accepting it. Under present circumstances, however, it stretches credibility to suppose that these potential costs of not fighting just wars would outweigh the benefits of refraining from fighting unjust wars. The costs and benefits of any particular public criterion of liability depend not only on the likelihood that the criterion will pick out one or another target as liable, but also on the willingness of different agents to engage in the use of force against targets they believe to be liable. Some wars that are recognizably just will not be fought regardless of the criterion of liability adopted, for the simple reason that people are insufficiently motivated to use force to pursue the just causes involved. Moreover, the moral costs of unjust wars to an agent who might fight in them include the wrongful killing of many innocent people, while the moral costs to the agent of just wars which he does not participate in include failures to prevent the wrongful deaths of innocent people. While Lazar is certainly correct that failure to prevent death of those to whom we have strong associative duties is a serious moral cost,²³ it is not plausible that we should willingly risk wrongfully killing innocent people to save innocent people to whom we have such special duties, especially when many of the innocent people we risk killing do not pose or even contribute to wrongful threats. The most significant moral risks, in our world at least, are that political leaders will fight unjust wars that they mistakenly believed to be just, or which they know to be unjust but nevertheless choose to fight. Any public moral criterion that would require soldiers and others to pause before fighting in war would under these conditions be a real moral advance—and McMahan's responsibility-based criterion would do precisely this, and that is one of the things that makes his book of such great potential practical value.

²³ Lazar, 'The responsibility dilemma for killing in war', p. 205.