

## Book Review

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### **Killing in War**

JEFF McMAHAN

Oxford, Clarendon Press, 2009

250 pp., (hb) \$35.00

On 22 June 1941, the first of 4.5 million Axis troops crossed the eastern Polish border and advanced rapidly into Russian territory. The intent of Operation Barbarossa was the destruction of the Soviet State, the enslavement of its Slavic peoples, the physical extermination of several million Jews, and the seizure of natural resources sufficient to make Nazi Germany a permanent and unassailable military power in the world. Soviet forces crumbled and were driven back thousands of kilometres, while behind the advancing German lines special SS squads rounded up Jews and machine-gunned them by the hundreds and by the thousands. By December of 1941, German forces were at the gates of Moscow and Leningrad, and had passed through Kiev *en route* to the oil fields at Baku.

The Soviets bent but did not break. The Wehrmacht surrounded Leningrad, but failed to take it, reached Moscow but failed to pass by it. German forces at Stalingrad never crossed the Don. In November 1943, counterattacking Soviet forces reached Kiev. Russian soldiers threw logs in the Dnieper River and rode them across, using their rifles as paddles, advancing under withering German machine gun fire from the cliffs above.

Focus now on one German machine gunner, firing down on Russian soldiers straddling logs in the freezing Dnieper. He is a uniformed soldier, firing on uniformed soldiers advancing towards him. There is no rule of just war theory that declares that his actions are wrongful. And if just war theory is a part of morality, the theory declares that the German machine gunner's acts are not morally wrongful. What my example shows us, Jefferson McMahan argues, is that there is something terribly wrong with just war theory. For the German soldier, one kilometre from Babi Yar, is an agent of evil, bringing immense suffering into the world. How can his action be moral? *Killing in War* provides a simple answer: it isn't. By the end of the book, many readers will wonder how anyone could feel otherwise.

McMahan's argument is directed at two main props of the War Convention: the doctrine that separates judgments of *jus ad bellum* (why we fight) from judgments of *jus in bello* (how we fight), and the doctrine of the moral equality of soldiers.

The usual texts of just war theory do not stipulate a disconnect between judgments *ad bellum* and judgments *in bello*. But they provide two sets of rules, one directed at states indicating when a war is 'just' (i.e. permissible) and a separate second set of rules, directed at soldiers, indicating which acts within war are legitimate and which are not. In McMahan's view, the rules are in fact entangled. It follows that the injustice of an unjust war percolates down to the actions of soldiers who fight the unjust war and the civilians who support it, rendering their individual actions as illegitimate as the war itself. By a parallel reasoning, when one is fighting a just war, the justice of the

cause percolates down to the actions of individual soldiers, who are entitled to do whatever is necessary and useful in service to the just cause. McMahan develops this view with uncommon thoroughness, setting out numerous objections and presents replies with the comprehensive efficiency of a medieval *summa*.

The *prima facie* objection to McMahan is ‘who’s to say’ whether a given war is just or unjust? Certainly the soldiers fighting it or the civilians supporting it almost always believe that their cause is just, and if the evil of their cause percolates down to them they are not going to notice this or take this into account. But let us assume that McMahan is right that wars can have objective qualities of rightness and wrongness regardless of what people come to believe about them. What rules define war-rightness and war-wrongness? What is their source?

Here and there in the book McMahan uses the standard apparatus of *jus ad bellum* as a rough guide to which conflicts are just and which are unjust. The book seems to have little quarrel with the *jus ad bellum* branch of just war theory; the lightning bolts all fall on *jus in bello*. But the rules of *jus ad bellum* are like the rules of *jus in bello* — a set of canons produced in ramshackle fashion over the centuries, often in response to a leader’s need to justify the recourse to war, a set of canons hopefully developing over time in the direction of increasing rationality and justifiability. Do these changing canons of *jus ad bellum* derive their moral legitimacy from a higher set of moral principles? Or do they derive their legitimacy from being developed by reflection over centuries on the effects of war?

If the principles of *jus ad bellum* derive their legitimacy from higher-level moral principles, McMahan has not attempted to show what those principles are or how they connect to *jus ad bellum* rules. But if Hegel trumps Plato and the rules *ad bellum* derive their legitimacy from reflection on the experience of war, then the rules of *jus in bello* can also derive from reflection on war. If the rules of *jus ad bellum* are logically independent of basic moral principles, then one should not expect the approvals and disapprovals of the *jus ad bellum* to line up with approvals and disapprovals of general moral theories. Likewise, if the rules of *jus in bello* are logically independent of basic moral principles, one should not expect the approvals and approval of the *jus in bello* to line up with the verdicts of a basic moral theories. (This is why morality will condemn the German soldier but a court marshal will not.) It appears then, that McMahan uses one half of just war theory to destroy the other half, when epistemically and morally the two seem on a par.

Let us return to our German and Russian soldiers. The battle at Kiev was fierce; the German soldier was fighting for his life, and probably lost it. The important background of ‘the moral equality of soldiers’ is the idea that the soldiers of each side have a general right of self-defence against attacks by the enemy. Since McMahan is dead set against the moral equality of soldiers, he must take on this argument from self-defence. His response is that the use of violence in self-defence is legitimate only when directed against *illegitimate* threats. If the threat is legitimate, (McMahan’s example is the use of force by police to apprehend a suspect) then self-defence is not permissible. Given the ‘downward percolation’ doctrine described above, the Russian soldiers are fighting for a just cause, so their threats against Germans are legitimate threats. But the Germans are fighting for an unjust cause, so their threats against Russians are illegitimate threats. It follows that the German soldiers do not have self-defence rights against the Russians, but the Russians have self-defence rights against the Germans.

The view that the self-defence argument fails for soldiers on the unjust side is central to McMahan's key argument, so it must be looked at carefully. McMahan's view somewhat resembles the common law view that the use of force in self-defence against attack is not legitimate if one has provoked the attack. In this case, Germany certainly provoked a counterattack by Russia. But it is hard to extend the 'provocation' argument down to the particular case; the soldier in the machine gun nest may have done nothing for months, and the Russian soldiers are moving towards him, provoking his response. Must the German throw down his weapon because the Russian threats are legitimized by their just cause? Those who answer 'yes', are on McMahan's side. But there are problems with the argument.

It is commonly accepted that certain acts of self-defence are permissible against some threats that are not illegitimate. For example, if I am being strangled by a schizophrenic person who thinks that my neck is a juicy orange, I can use deadly violence to extricate myself, though my attacker is not malevolent. Furthermore, in certain cases self-defence seems justified against fully legitimate threats. Suppose that the police have surrounded my house and have reason to think that I am a terrorist with a bomb. They believe on evidence I must be killed, now, to save the neighbourhood. But I am not a terrorist and have no bomb, though with my pistol I can kill some of the police and make my escape. The police threat is legitimate, but few people would deny me the right to use my pistol.

Now what legitimates force in these two cases is not that the attacked victim is innocent (I may be a serial killer but no one knows this) but that I am *under deadly attack*. And likewise the German machine gunner is under deadly attack; the Russians don't want to arrest him, they want to kill him. If my acts are justified by self-defence, why not the German's? But McMahan, like Nozick before him, is tough on soldiers and will give them no such excuses, even suggesting that honourably discharged soldiers returning home from unjust wars should be objects of public disapprobation. Given the egregious adulation the media currently shower on 'our men and women in uniform', I have no fear that this will come to pass. Nor should it. The 200,000 German soldiers surrounded at Stalingrad wrote letters home that were never delivered; they were discovered later and published years after the war. One soldier, a German farmer, wrote in appreciative detail about the qualities of the soil in his foxhole. Of those that surrendered, 90,000 were marched through Moscow and never seen again. The fact that these soldiers had fought cleanly by the laws of war was no excuse in Stalin's eyes. But I count them among the victims of that war, and it is not helpful for moral philosophy to supply arguments for despising ordinary people. Save that for the leadership, as McMahan has done in many previous books. These requirements for soldiers seem beyond the capacity of human nature.

If we cannot excuse soldiers who do not kill civilians, how do we distinguish them from soldiers that do? From the writings of Vitoria forward, the law of war has tried to instruct fighting men to distinguish enemy civilians from enemy soldiers, and to some degree contemporary armies and military codes have gotten the message. To the extent that the laws of *jus in bello* affect conduct, the miseries of war are less than they would otherwise be. For example, soldiers who think they will be prosecuted for their country's unjust wars will be less apt to quit an unjust cause; few Germans surrendered after Stalingrad. This provides a vaguely rule-utilitarian underpinning for the *jus in bello*, mixed in with a healthy dose of trial and error. Jettisoning the *jus in bello* would make probably the world

worse. Defenders of just war theory may perhaps find a better defence than rule utilitarianism. If so, they should come forward, as McMahan's vigorous attack has put the theory on the defensive.

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