



Forum

The Moral Responsibility of Volunteer Soldiers

Opening the Debate

Jeff McMahan: Traditional just war theory has it wrong. Soldiers are morally culpable for fighting in unjust wars, and thus deserve the option of selective conscientious objection.

Responding

Assaf Sharon

Brian Imiola

Shannon E. French

Seth Lazar

Adil Ahmad Haque

Lawrence J. Korb

Lionel K. McPherson

Charles J. Dunlap Jr.

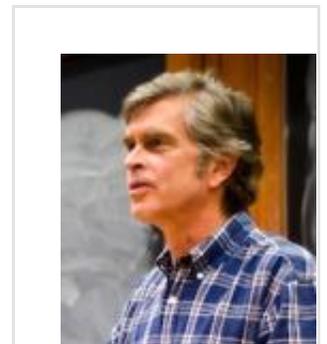
Kimberley Brownlee

Matt Gallagher

Reply: *Jeff McMahan*

Wednesday, November 6, 2013

I am grateful for the respondents' careful attention to my essay. Their comments focus largely on my proposal for selective conscientious objection as a partial solution to the challenge to enlistment and service that I articulated. If those who reject this proposal are right, the challenge remains unresolved. This is significant, as no commentator shows, or even tries to show, that the problem is illusory or insignificant. While a few commentators imply that a soldier ought to obey a command to fight in a war he knows to be unjust, none offers a convincing argument that it is permissible for a soldier to kill



people in the service of unjust aims or, therefore, that it is permissible for a person to pre-commit himself through enlistment to kill people in any war in which he might be commanded to fight.

Jeff McMahan

Professor of
Philosophy at
Rutgers University

The only arguments I find for the permissibility of participation in an unjust war are those of Dunlap and French, who both claim that killing is permissible when it is democratically mandated. (They do not say whether they think it permissible for soldiers in non-democratic societies to fight in unjust wars.) But suppose that there are a number of stateless individuals, none of whom has a right to kill any citizen of a certain state. Next imagine that these individuals are able to establish their own democratic state. They elect representatives from among themselves who then, with proper authorization, initiate an unjust war against the other state. According to Dunlap and French, it has now become permissible for these individuals to kill citizens of that state. Where did this permission come from? It would be a bizarre instance of moral alchemy if one group of people could conjure up a permission to kill members of another group merely by voting among themselves.

Dunlap is right to suggest that my argument has application beyond the issue of fighting in unjust wars. Democratic decision-making procedures are a source of moral reasons, but not of reasons that are decisive merely because of their provenance. This means that I accept that it can be permissible in certain conditions to violate laws that demand objectively immoral action.

Lazar argues, plausibly, that if a military institution's morally justified functions can reasonably be expected to outweigh its wrongful operations, and in particular if there is no alternative institution that can fulfill the justified functions, it can be permissible for an individual to participate in the institution. He describes such an institution as one "from which we all benefit," though without specifying the scope of the term "we." Arguments of this type usually refer only to the benefits that an institution provides for those whose aims it serves. The U.S. military, for example, is thought to be justified because of the benefits it provides for the United States. If this is Lazar's assumption, his argument has little force, since the wrongful harms that an unjust war inflicts on its victims cannot normally be justified by the benefits (or even just the legitimate benefits) that the aggressors derive from having a maximally effective military.

Lazar's final paragraph suggests, however, that "we" might include all of humanity. If so, his argument is of limited application, as there are many military institutions that are not a net benefit to humanity. But suppose that the U.S. military does provide such a net benefit, even without the option of selective conscientious objection, and that Lazar's argument supports the permissibility of enlistment in it. The argument still does not entail the permissibility of fighting in an unjust war; nor does it justify state punishment of those who refuse to do so. To defend these claims, one would have to show more: first, that the recognition of participation in an unjust war as generally wrong would damage the U.S. military; second, that accepting a right of conscientious objection would do the same; and, finally, that the combined damage would be so severe that the nation's weakened ability to fight just wars would outweigh its weakened ability to fight unjust wars. I argue in the lead article that it would not.

The value of civilian control does not outweigh a soldier's reason to avoid killing in the service of unjust aims.

Dunlap and Gallagher claim that my arguments imply the rejection of civilian control of the military and the permissibility of fighting wars without civilian authorization. But I argue only that soldiers may sometimes disobey an order to fight, not that they may sometimes fight without authorization. There are various reasons for this asymmetry, some theoretical, some practical. The main theoretical reason is that it is in general more seriously wrong to cause wrongful harm than to allow wrongful harm to occur. To fight an unjust war is to do harm, whereas to fail to fight a just war is to allow harm to occur. Because of this, states rightly incur greater odium for fighting an unjust war than for failing to fight a just war, such as a war of humanitarian intervention. Similarly the importance of civilian control may outweigh a soldier's reason to fight a just but unauthorized war but be insufficient to outweigh his reason not to kill people in the service of unjust aims.

French and Gallagher contend that by holding soldiers responsible for matters of *jus ad bellum* and defending conscientious objection, I place additional moral burdens on soldiers already overburdened by physical and emotional risks. My arguments actually have the opposite tendency. I have never claimed that soldiers should be held *legally* responsible merely for fighting in an unjust war. Nor can I make soldiers *morally* responsible for the decision to fight in an unjust war. If they are responsible for that decision, as I believe, that is a moral fact that is independent of my beliefs. And, as I argue, offering soldiers a legal provision for selective conscientious objection mitigates rather than exacerbates their moral burden because it enables them to serve in just wars without fearing that their only choice if ordered to fight in an unjust war will be between serious wrongdoing and severe punishment.

Korb believes that my argument might be more successful if it took account of the distinction between wars of necessity and wars of choice. This is generally understood as separating just wars of national self-defense from wars that are just but beyond the call of duty. His proposed new category of the dumb war is said to be unnecessary and thus a matter of choice. But wars that are unnecessary in the sense that there is no morally compelling reason to fight them, or because the just cause can be achieved without war, are not matters of choice. They are unjust. I have conceded, moreover, that the distinction is relevant to my argument, insofar as the risk of malingering is greater in humanitarian interventions, which are usually wars of choice, than in wars of national self-defense.

Brownlee, Haque, McPherson, and Sharon suggest that conscientious objection might be better supported by the claim that the state may not coerce its citizens to act against their conscience. But I cannot accept this principle. I believe, for example, that a state would be justified in imposing penalties on doctors who object to providing blood transfusions and as a result allow patients to die. Sincerity of conviction may be necessary for a right of conscientious objection, but it is not sufficient. A soldier may sincerely object to fighting in a

war because he has promised his mother he will not, but that is too trivial a basis for exemption. An objector's reasons must satisfy certain standards of seriousness and plausibility. This makes my position more restrictive than one that requires sincerity only.

Testing for the substance of a person's moral reasons is of course more controversial than testing for sincerity only. But it is not the same as testing for moral truth. In grading a student's work, a professor can distinguish between a good argument and a poor argument even when she disagrees with the conclusion of the good argument and agrees with that of the poor argument. Judgments of the reasons given by conscientious objectors could be made in much the same way.

It is inevitable that some conscientious objectors whose reasons were objectively correct would be denied exemption from combat. They should, as Imiola rightly suggests, be willing to endure the harsher penalties for unexcused disobedience. But the state should strive to avoid this injustice. Such people are not culpable and are as far from being criminals as it is possible to be.

To avoid further misunderstanding, I should mention in closing that some of the commentaries attribute to me an assortment of assertions that I did not make and do not accept. They include, but are not limited to, the following four misrepresentations.

(1) *It is wrong to take moral risks and therefore impermissible to volunteer for military service.* All I argue is that the moral risks make enlistment and service morally problematic. I also state, "When [moral] risks are reduced, they are more likely to be outweighed by the moral reasons people have to serve in the military."

(2) *Selective conscientious objectors should be punished.* Not all penalties are punishments, which imply moral condemnation. A penalty imposed for deterrent purposes, such as a parking fine, need not be a punishment. Indeed, as McPherson suggests, what I call penalties could in some instances be regarded merely as compensation to taxpayers.

(3) *Soldiers should be blamed for fighting in an unjust war.* I claim that it is wrong to kill as a means of achieving unjust aims. If one's action is excused, as the action of unjust combatants sometimes is, one can act wrongly without being blameworthy.

(4) *The reason for condemning participation in an unjust war and permitting conscientious objection derives from a concern for the moral purity of soldiers.* Just as those who advocate gun control are concerned more with the prevention of wrongful killing than with the moral purity of gun owners, so, to the extent that my argument about participation in unjust wars has a goal, it is not to save souls but to help prevent unjust wars.