

## Book Review

*Killing in War*, by Jeff McMahan. Oxford: Oxford University Press, 2009. Pp. vii + 250. H/b £21.00.

Descriptive philosophy, P. F. Strawson more modestly might have declared, is content to describe the structure of status quo thought. Still, the line between revisionist and descriptive can be blurry. In the domain of moral theorizing, philosophers often insist that highly contested claims about what is good, right, or permissible actually reflect our fundamental commitments.

Jeff McMahan's outstanding and readable book *Killing in War* is a case in point. His moral account of war is revisionist; his underlying moral views are not. Fortunately, tendencies toward war-making by one's nation can spur open-minded philosophical reflection. McMahan finds that a lot of the conventional moral wisdom about war is seriously flawed. The task he sets himself is not so much to invent a better moral framework but, rather, to render the existing framework morally credible.

Anti-revisionism about war seems to prevail in powerful nations and typically sets the boundaries for respectable debate. Even philosophy journals whose aim is to explore questions bearing on public life have hardly welcomed challenges to Walzerian orthodoxy—which in our time most prominently represents 'the traditional theory of the just war'. With McMahan's *Killing in War*, Virginia Held's *How Terrorism Is Wrong* (2008), and David Rodin's *War and Self-Defense* (2005), Oxford University Press has been ahead of the curve in giving revisionists a prominent hearing.

*Killing in War*, like the Held and Rodin books and Brian Orend's more traditionalist *The Morality of War* (2006), provides extended proof that the contemporary subject matter can be steered from casuistic and philosophically shallow waters. McMahan does not editorialize for politically tendentious claims, let alone under cover of colourful historical examples. He gives comprehensive arguments; he charitably formulates and conscientiously responds to objections. His conclusions might make many readers uncomfortable, but he arrives at them on the basis of moral considerations that otherwise are not particularly controversial.

The starting point for McMahan's revisionist account of the just war is this: the two sets of principles comprising the traditional theory—principles that govern the resort to war (*jus ad bellum*) and the conduct of war (*jus in*

*bello*) — cannot, contrary to the traditional theory, be radically separated in a way that is morally sustainable.

Traditionalists are eager to observe that a war of just cause (e.g. national defence against expansionist aggression) can be fought using unjust means (e.g. chemical, biological, or nuclear weapons), and that a war of unjust cause (e.g. geopolitical domination) can be fought using means within established rules of war (e.g. non-combatant immunity from deliberate attack). The problem is these observations cannot be easily parlayed to support the claim that combatants on the side of an unjust war can justly engage in fighting. McMahan knocks down the popular notion that combatants who in effect fight for an unjust cause (i.e. ‘unjust combatants’) do nothing morally wrong as long as they fight within the established rules. The strict separation of *jus ad bellum* and *jus in bello* collapses — at least if justice ultimately resides in morality as compared to the law, as presumably it must for any moral account of war.

What a people’s combatants may rightfully do at the command of their political leaders is limited by what their political leaders could rightfully do themselves. This is a variation on Charles Beitz’s maxim rejecting ‘the national interest’ as the ultimate standard of the right or reasonable in international relations (Charles Beitz, *Political Theory and International Relations*, Princeton, Princeton University Press, 1979, p. 24). In fact, fixation on the national interest is anathema to traditional theorists. Walzer, for example, substitutes ‘a legal obligation and a patriotic duty’ in trying to explain why combatants should be morally permitted to fight for an unjust cause (Michael Walzer, *Just and Unjust Wars*, 3rd ed., New York, Basic Books, 1977, p. 28). Yet legal obligation and patriotic duty have no more power of moral transubstantiation or nullification than does the national interest — which is to say not much with regard to killing or maiming persons who have done nothing relevantly objectionable to morally warrant harming them. These persons usually include, among others, ‘just combatants’ and the non-combatants on their side.

McMahan argues along these lines that ‘people neither waive nor forfeit their right not to be wrongfully attacked simply by defending themselves and other innocent people against a wrongful attack’ (p. 107). This argument, which is at the core of his revisionist account, resists the conflation of morality and law. As he points out, the laws of war recognize the legal equality, not the moral equality, of combatants. The distinction is obscured by the traditional theory’s doctrine of the ‘moral equality of combatants’. To enable this doctrine, a special, non-moral meaning of ‘innocent’ — namely, not doing, threatening, or directly contributing to harm (see e.g. Walzer, p. 146) — must be invoked: combatants as such become non-innocent and thereby equally liable to deliberate attack.

How the traditionalist’s semantic invention could be the linchpin of a purportedly moral doctrine remains a mystery. This prompts McMahan

to emphasize the distinction between moral permission and excuse. He dedicates a chapter to debunking the familiar reasons of duress and (lack of) knowledge that the traditional theory supports not merely to explain away the moral culpability of ordinary unjust combatants but, moreover, to explain why their killing or maiming morally innocent combatants and non-combatants is morally permissible. On his view, unjust combatants can at most have an excuse, which typically will only be partial. The laws of war do not exhaust the demands of the morality of war.

According to McMahan, the laws of war should be brought into closer conformity with morality. He believes that 'to exempt an entire class of people—combatants—from criminal liability for the intentional killing of innocent people' is, morally speaking, 'a defect in the law' (p. 108). However, he is in no hurry to move toward conformity with morality via an 'asymmetric, nonneutral law of *jus in bello*': the current law of *jus ad bellum* law, he claims, is too 'crude and simplistic' to provide useful guidance to combatants who would weigh whether their nation's war is just (p. 108). His discussion here seems misleading. Surely, for instance, *ad bellum* law was up to the task of ruling out the Vietnam War and the Iraq War. Some major cases are not too hard. Though McMahan suggests otherwise, the limiting factor for sound guidance about the moral permissibility of fighting a particular war is neither the content of current *ad bellum* law nor the lack of an objective, impartial judicial body that could render judgements about the *ad bellum* status of prospective or in-progress wars. Combatants would still be strongly inclined to insist, under the influence of nationalist particularism, that their own nation's war is just; and consistent, effective enforcement of *ad bellum* law would still be lacking.

An apparent shift in McMahan's thinking about non-combatant immunity seems to fuel his anxiety about proposing congruence between the laws of war and the morality of war. In earlier work, he argued that non-combatants very rarely could be liable to deliberate attack. He again gives the example of the United Fruit Company executives, who in 1954 pressured the U.S. government to sponsor a coup against the democratically elected government of Guatemala. But he now also gives the example of Israeli settlers in the Occupied Territories: the settlers, he claims, are 'active participants in the theft of the Palestinian lands ... instigators and perpetrators of the strategy [of annexation through the acquisition of moral rights deriving from continuous habitation and development] by which the theft is being accomplished' (p. 223). Of course, the Israeli settlers could not be successfully engaged in this project without military and economic support, which is sustained by a consensus among the (non-Arab) citizenry in Israel that the state must not abandon the settlers.

Since McMahan now argues that relatively unexceptional civilians, through commission or omission, can bear varying degrees of responsibility for an unjust war, and that 'responsibility and liability' may be substantial among

the citizens in a democracy, the stakes have gotten higher (pp. 214–215). He asks, ‘If a nation may justly go to war against those who forcibly seek to expel it from its national territory, why may not the Palestinians use military means, if necessary, against those who seek to expel them from their national territory ...?’ (p. 223). Grant that the settlers do not properly count as non-combatants. None the less, a looming worry is that their responsibility for the injustice might not be so much greater than the sponsoring citizenry’s. A similar enough worry arises about the relation between U.S. combatants and the non-combatant United States citizenry — a citizenry that on the whole reliably acquiesces to United States military expeditions abroad, at least until becoming convinced of an expedition’s excessive costliness to the United States. I take McMahan to be worried about a short step to the moral permissibility of attacking unexceptional civilians who abet injustice of a kind that could justify the resort to war.

In short, if the laws of war were to reflect the moral circumstances underlying particular conflicts, the legal prohibition of deliberate attacks on non-combatants could well be eroded. Yet his anxiety on this front is largely of his own device. Congruence between the laws of war and the morality of war can reasonably be given up as a desideratum. McMahan himself concludes, ‘[w]hile absolute civilian immunity is false as a moral doctrine, it remains a legal necessity’ (p. 235). Traditional and revisionist just war theorists — including revisionists who are sceptical that terrorism is deeply, distinctively wrong as compared to the practice of conventional war — might agree that more likely than not, there will be less injustice in the world with a firmly established legal norm of non-combatant immunity. To the extent that deliberate attacks on relatively unexceptional civilians may ever be morally permissible, such attackers should be prepared to risk great legal peril.

This practical sensibility raises an obvious question: What is the point of a revisionist morality of war? If normative moral endeavor is not merely a philosophical exercise, we have to assume that a significant number of persons are morally conscientious, misguided though they presently might be. The traditional theory of the just war perversely gives moral licence to moral hazard for militarily powerful nations. Their combatants are morally permitted simply to disregard the justice of the cause they fight for; which promotes a feedback loop of acquiescence (e.g. ‘support our troops’) that enables these nations to fight unjust wars; which emboldens their political and military leaders to embark on or sustain such wars; which increases the likelihood that they will win or not devastatingly lose wars against weak peoples; which usually means that justice in this world will be denied to peoples unjustly set upon by militarily powerful nations.

Thus, the traditional theory is something of an embarrassment both to justice and to philosophy in the twenty-first century. As McMahan observes, ‘[w]ars are now and have always been initiated in the context of the general and largely unquestioned belief that the moral equality of

combatants is true. If that background assumption were to change—if people generally believed that participation in an unjust or morally unjustified war is wrong—that could make a significant practical difference to the practice of war' (pp. 6–7). The Courage to Refuse movement among Israeli reservists who refuse to fight in the Occupied Territories is evidence that this hope might not be wildly optimistic.

*Killing in War* should help to quiet non-philosophers who dismiss Anglo-American philosophy for being esoteric and aloof, and philosophers who complain that little is happening in moral and political philosophy. The book's imperfections are minor; its rigor, depth, and humanity are estimable.

*Department of Philosophy*  
*Tufts University*  
*Medford*  
*Massachusetts, MA 02155*  
*USA*  
doi:10.1093/mind/fzq025

LIONEL K. MCPHERSON