

The soldier's right to kill

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'Argue as much as you like and about whatever you like, but obey.' Immanuel Kant approvingly puts these words into the mouth of the 'enlightened' monarch, Frederick the Great of Prussia. In the view he characterises, soldiers should certainly debate the merits of a particular war in conversation or print if they are doubtful of its justice, but they still must fight in it if ordered to do so. Kant's declaration reflects a commonplace in modern thinking about political obedience and participation in war: soldiers aren't responsible for the wars their leaders initiate—however wrongly—and that if they fight in an unjust war, they are free from blame so long as they do so humanely, respecting the rules of discrimination and proportionality. Jeff McMahan's eloquent and rigorously argued book launches a devastating attack on this belief, showing why it cannot be sustained in international law or in the theory of the just war that supports it.

McMahan's central target is the Doctrine of Moral Equality, according to which all soldiers have the same rights and obligations irrespective of the cause for which they fight.

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The 'discrimination' rule embodies the two most important of these, given equally to both just and unjust warriors: first, they are prohibited from deliberately targeting civilians or recklessly or disproportionately endangering their lives; and second, as 'combatants,' all have the same right to attack combatants on the opposing side. So, on this account, for instance, when the army of the Third Reich entered France during the Second World War for unjust purposes, individual French soldiers were entitled to try to kill and injure the German invaders, defending the sovereignty of their state and attempting to repel the threat of Nazi rule. Yet even though the aims of the German army as a whole were unjust, its individual soldiers had exactly the same rights as the French. They could try to kill the French soldiers, too, despite the fact that doing so promoted the unjust purposes of German expansion.

To see where McMahan makes his attack, it's necessary to look at the way just war theory tries to support this image of the morality of war. First, it commonly argues that soldiers on both sides of any war, whether just or unjust, pose a mutual threat and that all are therefore entitled to defend themselves. Second, it upholds a strict division of moral labour between two discrete domains of responsibility in war, between the *jus ad bellum* (the set of rules governing resort to war) and the *jus in bello* (the set of rules governing the conduct of war), respectively. The first is regarded solely as the responsibility of the state and its political leaders. It is they who must ensure that the decision to wage war is justified. Soldiers, by contrast, have no responsibilities under the *jus ad bellum*. Their rights and duties are defined solely by the *jus in bello* and they are innocent of any crime individually provided they respect its restrictions.

An important consequence of this reasoning is that the modern theory of the just war—and the international law of armed conflict it mirrors—gives no moral responsibilities to soldiers that can outweigh their duty to obey the orders of government (provided the orders themselves don't violate the *jus in bello*). They might argue as much as they like as citizens and in principle, but their decision to fight, as Kant suggested, is based on their duty to obey superior orders

and not on any capacity for autonomous moral judgement.

McMahan's argument builds on the intuitive sense that there's something fundamentally wrong in this picture of the ethics of war. In common with all thinking in this area, he assumes that physical violence is justified only when it is necessary, as the only effective means available to prevent or correct a serious wrong, or to avert a greater harm. He diverges from modern theory in arguing that only those people morally responsible for the harms that made the violence necessary in the first place are morally liable to have violence used against them as a remedy.

This thesis about moral liability grounds McMahan's rejection of the central tenets of modern just war theory. First, he argues that, from a purely moral point of view, just warriors are not usually (let alone universally) liable to attack by unjust warriors. He rejects the idea that combatants on opposing sides have symmetrical rights of self-defence, arguing that it is contradicted by our most basic moral intuitions. Let us take an illustration from ordinary life: Say someone tried to kill you in order to hijack your car. You would usually be regarded as having the right to defend yourself—if necessary using force even up to the point of killing your assailant. And we'd normally think that if the attacker wished to preserve himself from your defensive actions, then the only rightful option available to him would be to withdraw. Yet if we followed the logic of the standard just war account—of just and unjust warriors with equal, mutual rights of self-defence—we'd get a very different result. Your attempts to defend yourself from the robber would give him an equal right to defend himself against you. So if you were killed, you'd suffer no injustice since it would be result of your assailant's rightful self-defence.

This is not how we usually think about rights of self-defence in ordinary life: they are not symmetric, but asymmetric; only the innocent victim of an attack has the right to act in self-defence. Why, then, should it be any different in wars? If French soldiers fought only to defend their state from the injustices of international aggression and the threat of Nazi rule, then why would their actions have activated defensive rights on the parts of their German attackers? Or to look at the

question in reverse, if the German soldiers fought aggressively, posing an unjustified threat to the French, then how could they claim rights of self-defence against the victims of their own aggression?

McMahan argues that there are no good reasons why the demands that morality would make on unjust attackers and their victims in war would be any different from those it would make in ordinary life. If there's no difference, then the central doctrines of traditional just war theory collapse: in a war between just and unjust armies, just warriors would have the permissions usually given in the *jus in bello* (to target enemy soldiers defensively) but without the moral liabilities (to be targeted defensively); by contrast, unjust warriors would seem to have the liabilities but without the permissions. Morally speaking, then, when unjust warriors kill enemy soldiers their actions amount to the killing of innocent persons (just as if they had killed civilians).

Even if we accept that the actions of soldiers fighting an unjust war are objectively wrong we might still be able to argue that the responsibility for their actions rests on their leaders if we can show that unjust warriors were in some way excused from responsibility. There are two possibilities: either we could argue that soldiers don't have sufficient information or insight, generally, to be able to judge correctly on the merits of each particular war; or they might be subject to duress. In either case, where they end up fighting for an objectively unjust cause, moral responsibility for the harms they cause would rest with those who duped or coerced them.

McMahan believes it is wrong to imagine that responsibilities under the *jus ad bellum* can be handed entirely over to political leaders. Duress can exert itself at gunpoint, on pain of imprisonment or in the form of economic pressures on those with few other options. Yet to kill an innocent person in order to save your own life (let alone to avoid jail or economic hardship) is unjustifiable. So even when coerced, soldiers still bear some responsibility for their choices. And even if soldiers cannot generally be expected to achieve a valid, objective critical view on the wars in which they may be ordered to fight, they'd have good reason to be distrustful. After all, more wars lack a just cause than not, and the

information governments give to citizens and especially soldiers is always likely to be tainted by propaganda. So they should be sceptical about what they're told. If they decide to go ahead and fight anyway, despite misgivings, they undertake the moral risk that they might turn out to be on the wrong side. To undertake such a risk is to take at least partial responsibility for the unjust killings that occur as a result.

In any case, even if soldiers are sometimes excused fully by epistemic barriers or coercion, that still couldn't uphold the doctrine of moral equality. The doctrine claims universality (and requires universality to function effectively) whereas excuses are contingent matters, applying to some but not others. The *jus ad bellum* is not, therefore, a burden only for political leaders or, indeed, the civilian population on whose behalf they may act; it is a matter of moral concern to any soldier ordered to undertake the moral hazard of participating in what may be an unjust—and therefore deeply immoral—adventure.

As a challenge to the received wisdom, the significance of McMahan's central claim cannot be overstressed. It means that politicians who lead their soldiers into battle without justification expose them not only to enormous physical risks, but also to grave moral risks, since to kill even combatants in an unjust war is to kill people who are innocent in the relevant sense. Yet he also challenges some less obvious implications of the traditional view and, in doing so, outlines a highly nuanced map of the moral complexities underlying war. Thus, for instance, McMahan argues that even if the pressures of ignorance, manipulation and duress don't usually provide full exculpation for unjust warriors, they do commonly excuse soldiers partially, diminishing their moral responsibility and, hence, their liability to attack. Sometimes this means that when just warriors know that their fire is directed towards reluctant and ignorant conscripts, they may be obliged to accept greater risks to themselves in order to minimise the amount of killing necessary to achieve victory.

So, all else being equal, the killing of just warriors isn't justified because they've done nothing to make themselves morally liable to attack, and justification for the killing of unjust warriors may sometimes be weakened

by the coercive threats and manipulation that forced them onto the battlefield. To this extent, McMahan's argument moves us closer to pacifism as it takes us away from the traditional view; but in one other respect, it seems to have an alarmingly anti-pacifist implication, which derives from recognition that, even if they don't fight in unjust wars, some civilians sometimes bear a high degree of responsibility for initiating them. Now, if liability to justified violence is a function primarily of one's moral responsibility for the harms it is intended to prevent; and if civilians sometimes bear greater responsibility for moral harms than the soldiers they may have forced into the wars they've caused, then civilians may sometimes suffer greater moral liabilities than combatants as such.

In the vast majority of cases, the responsibility each individual civilian bears for the harms leading to war is too slight to justify killing them or even harming them to a significant degree. Intentional attack would be disproportionate, say, to the responsibility that a particular voter bears for electing a Labour government that unexpectedly waged an unjustified war later on. Yet where the degree of responsibility is significantly higher, then particular individuals could find themselves liable to the use of force if it is the only proportionate means available to eliminate a threat they've helped initiate. For example, armed, adult, Israeli settlers who knowingly seize land and, bearing arms, try to defend it from its owners risk putting themselves in this kind of position, McMahan suggests.

At present, there are pragmatic reasons why the international law of war—embodying the Doctrine of Moral Equality and other key tenets of just war theory—must be upheld and McMahan rejects the idea of trying, at least at present, to shape the practice of war around the moral liabilities of individuals that he's mapped out. There is no authoritative body, internationally, competent to determine in a timely way which wars are justified and which are not. In these circumstances, to adapt the law to the contours of the true morality of war would therefore be dangerous and could give rise to a range of morally undesirable consequences.

More radical change would have to await the reform of international institutions, there-

fore, and in particular the establishment of an authoritative international adjudicator. However, challenging the false belief that international law already directly mirrors the morality of war suggests ways to think about more moderate and practical steps towards reform. McMahan states early in the book his belief that starting unjust wars is made much easier for governments by the prevalence of a false belief that the individuals who fight in them carry no moral responsibility for their actions against enemy soldiers. If more people can be persuaded that this isn't the case—and if the option of conscientious objection is made more widely available to individuals with serious moral doubts—then it's possible that the insights McMahan provides could help reduce the incidence of war in the interim.

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