

A Study of The Evolution and Challenges of The Ethics of Killing in War

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ABSTRACT

Even today, warfare reoccurs in most regions of the globe. However, even when international law is formally recognized, it is often flouted. This means that there is no universally accepted moral template for warfare in the present century. In terms of the moral dilemma in killing people in the battlefield, the “Just War Theory,” first developed by St. Augustine, attempts to temper the horrors of human conflict by applying a moral framework and delineating the circumstances in which warfare might legitimately be undertaken. However, this model has long proven unsatisfactory to many commentators, and it seems unlikely that any ethical paradigm for this emotive issue will achieve general consensus. Recent additions to the debate, such as those from the American philosopher Jeff McMahan, have attracted criticism despite their obvious attempts to accommodate a range of “modern” ethical sensibilities. Thus, I formulated the research question “How far have the ethics of killing in war evolved?” To answer the question, this paper attempts to offer an analysis of the evolution of Just War Theory, contrasting traditionalist and revisionist perspectives while highlighting the complexities and moral dilemmas inherent in modern warfare. This paper concludes that while such theories, no doubt, have their place, it is more important to exploit national and international powers to minimize the risk of war occurring in the first place.

Introduction

With the exceptions of North America and Australasia, warfare reoccurs in most regions of the globe. Since the end of the last truly global conflict in 1945, formidable advances have been made in military technology, encompassing areas as diverse as aircraft and artillery, satellite surveillance, and encryption. Nevertheless, in almost all types of warfare, the deployment of soldiers on the battlefield remains unavoidable. This leads to situations where one person takes the life of another, and it is here where philosophers encounter most of the ethical challenges pertaining to war. The “Just War Theory,” first developed by St. Augustine, attempts to temper the horrors of human conflict by applying a moral framework and delineating the circumstances in which warfare might legitimately be undertaken. However, this model has long proven unsatisfactory to many commentators, and it seems unlikely that any ethical paradigm for this emotive issue will achieve general consensus. Recent additions to the debate, such as those from the American philosopher Jeff McMahan, have attracted criticism despite their obvious attempts to accommodate a range of “modern” ethical sensibilities. This paper examines the evolution of the ethics of killing from antiquity to the present day, seeking to clarify the ways in which ethical perceptions of this subject have changed. It explores how the individual soldier may approach the act of killing and how a moral basis for such actions may be rooted in the moral framework of the individual and/or wider society.

Traditional Just War Theory

Concepts within Traditional Models

Within conventional narratives of the putative “just war,” two sets of principles may be detected. One pertains to the origins of conflict (*jus ad bellum*), while the other concerns its conduct (*jus in bello*). For scholars such as Michael Walzer (1977), the two fields are functionally independent. In other words, it is plausible that an unjust war may be conducted in a “just” manner, while a nominally just war may be carried out in barbaric or uncivilized ways. One may deem soldiers in a just war to be “just combatants” and their counterparts “unjust combatants.” However, for the individual fighter, the ethics of his personal conduct are not affected by the justice or injustice of the original *casus belli*, an act or situation provoking or justifying war, over which he likely had no control. From the soldier’s personal perspective, the question of whether he does wrong is largely confined to *jus in bello*—his personal conduct on the battlefield—irrespective of what the politicians and generals above him may decide. This is what Walzer (1977) calls the “moral equality of soldiers.”

Traditionally, just war models held that combatants may legitimately kill only the combatants of the opposing side. The soldier must discriminate, for example, between enemy fighters and enemy civilians. More broadly, the concept of justice within warfare encompasses three main components. First, the principles pertaining to *jus ad bellum* are distinct from those concerning *jus in bello* (regulating wartime conduct); second, even “unjust combatants” do no personal wrong if they adhere to the principles of *jus in bello*; and third, enemy combatants are legitimate targets for soldiers but non-combatants are not. This template remains the principal ethical model for states that engage in conflict (not merely Christian or Western polities). The bias of this model is inherently anti-war, with conflict seen as an evil phenomenon that may be unavoidable in certain circumstances. For St. Augustine and later exponents of just war ideologies, there was an ‘at first view’ moral obligation not to harm or kill others. This could only be superseded if a declaration of war was based on moral principles (e.g., self-defense) and if due care was taken not to harm the innocent. The Just War Theory, in its entirety, revolves around these central tenets. The moral culpability in warfare belongs to those who initiate it without just cause, while “just war” is a means of restoring justice, order, and/or violated rights.

To reiterate, the Just War Theory holds that warfare is unacceptable unless important criteria are satisfied. The burden of proof lies with those who engage in armed conflict. While Just War exponents accept the right of the state to engage in armed conflict, this right is closely circumscribed by conditions that must be satisfied if the original *prima facie* position (the natural immorality of war) is to be overridden. For these thinkers, war may become a moral undertaking, but only if certain moral principles are followed. Critics of such models argue that its advocates are naïve – or worse. In their view, the theory fails to recognize the myriad social, economic, and political factors that impel states toward conflict, and it also assumes a level of moral concern on both sides that, as history teaches us, is rarely reflected in the real world.

Traditionalist vs. Revisionist

Within contemporary debates around the Just War Theory, two broad camps may be discerned: traditionalists and revisionists. Traditionalists seek to construct moral guidelines in accordance with prevailing international law, and are frequently concerned with the practical conduct of armed conflict. Any amendments to the status quo that they propose are usually cautious and incremental. Revisionists, conversely, are often dismissive of international law as it is currently applied. They see it as a fiction, albeit a pragmatic one, devoid of moral legitimacy. Traditionalists maintain that the right to engage in warfare belongs exclusively to states, which might respond, for example, to “crimes that shock the moral conscience of mankind” (Walzer, 2006b, p.107) or to existential threats to themselves or allies. Thus, if warfare is more than Clausewitz’s “continuation of diplomacy by other means,” it remains a kind of contract between states. Traditional Just War theorists are thus institutionalists. Moreover, while traditionalists regard only combatants as legitimate targets in war, they accept forms of combat that will predictably harm civilians, provided it is not “excessive.” Their focus tends to be on the consequences of the laws of warfare as they play out in the longer term.

The positions of revisionists are strikingly different. First, many challenge the legitimacy of states as a moral construct per se, and thus the moral value of “national defense.” Second, they challenge the idea of civilian immunity. In the real world, they argue, a strict distinction between soldier and civilian is impossible to maintain. Third, some

have argued that military intervention requires forms of “expanded permission” beyond the mere edicts of senior politicians. Fourth, certain revisionists claim that “unjust combatants” are not excused from personal culpability, even if they abide by the rules of combat. The only moral option such individuals possess, they argue, is to lay down their arms. At the heart of the debate between traditionalists and revisionists, then, lie questions regarding the nature of life and liberty, or more precisely, what means may legitimately be adopted to protect these phenomena. Obviously, not all wars are conducted for the sake of “freedom” or national defense. What role should the state play, if any, in initiating conflict, and how far should it secure the wider approbation of its citizens before doing so?

Just War theories have often invoked quasi-transcendental arguments to justify the defense of political communities, such as nations. They are therefore “evaluatively collectivist” (Walzer, 2006b). This collectivism becomes explicit in the later works of Walzer, as seen in his book *Just and Unjust Wars* (1977). He argues that even civilians may be attacked in “supreme emergencies,” when the survival of the state is at stake. In the face of such collectivism, the application of an evaluative and descriptive individualism will inevitably require major revisions to traditional discourse (Rodin, 2002). Faced with this problem, defenders of the traditionalist position have sought to elide either evaluative individualism (Zohar, 1993) or descriptive individualism (Kutz, 2005). Even here, however, the distinction is not straightforward, since some revisionists adopt a collectivist perspective (Bazargan, 2013) and some traditionalists evince an individualist one (Emerton & Handfield, 2009).

A Critique of the Just War Theory: McMahan

Walzer and the Traditionalist Perspective

According to the traditionalist Just War Theory, individuals are morally immune to attack, provided they do nothing to forfeit that immunity. In the context of war, such individuals may be termed “innocent.” This category includes those who are not involved in the prosecution of the conflict, i.e., civilians (Nagel, 1985). Combatants, on the other hand, are considered non-innocent because they pose a tangible threat to others. As a result, such individuals (i.e., soldiers) forfeit their normal immunity, and may legitimately be harmed. The traditionalist vindication of defensive force thus gives rise to some interesting conclusions. Some “Just” combatants, for instance, lose their innocent status when they attack their “unjust” adversaries, and the latter do no wrong when they fight against the former. In this model, the right not to be attacked is surrendered by anyone who takes up arms, irrespective of the cause for which they (or their respective states) are fighting (Walzer, 1977). On a strictly personal level, there is no moral distinction between, say, the soldiers of Nazi Germany and those of the United States in World War II, provided both adhere to the rules of combat. For traditionalists at least, *jus in bello* is held to be wholly distinct from *jus ad bellum* (the right to war).

In contrast to traditionalists, Walzer discerns no right to self-defense in the context of crime. He concedes that aggression per se may be inherently criminal, but holds that war is qualitatively and morally different from the commission of normal, everyday crimes (Walzer, 1977). The criminal may not call upon the principle of necessity that might, conversely, be invoked by states engaged in warfare. The murderer makes a personal choice to commit murder, but the enlisted soldier fulfills a legal obligation imposed on him by the state. Combatants, moreover, are subject to a variety of factors that offset normal, personal responsibility. These include orders, discipline, manipulation, possible ignorance of the political circumstances of the war, and even the soldier’s own sense of moral obligation toward his government. Thus, while war as such may be a crime, it is not a personal crime on the part of the individual combatant (Walzer, 1977).

McMahan's critique of the Just War Theory

Three central pillars of the law underpin armed conflict, as generally understood in the present century. First, discrimination requires that non-combatants should not be deliberately targeted. Second, proportionality holds that unintentional harm to civilians is only acceptable if such harm is proportional to the objectives of an attack. Third, necessity means that, if civilian casualties are unavoidable, the least harmful method of attack must be chosen. These principles align with the idea, referenced above, that all individuals may be categorized as either combatants or non-combatants. Combatants who adhere to these principles are thus deemed to fight permissibly, both in terms of traditional Just War Theory and the prevailing norms of international law. The nominal causes of the states in question do not affect the status of the individual soldier. Hence, to reiterate, we have the so-called "moral equality of combatants," which is also termed "combatant equality" and the "symmetry thesis." Within the matrix of the Just War Theory, however, combatant equality and discrimination remain controversial propositions. For revisionist theorists of Just War, such tenets (as propounded by Walzer and others) are morally and logically unsustainable. Some revisionists hold that non-combatant deaths, even if unintentional, are justifiable only if the objective in question is "worth the cost." Moreover, if intentional killing in warfare is only justified if the targets have forfeited their rights to liberty and life, who can determine how, or if, such rights are given up? (McMahan, 1994.) Does the teenage conscript, for instance, who is forced into uniform by a repressive regime become a legitimate target?

Philosophers have generated a range of responses to these problems.

Comprehensive revisionists, for example, strive to explain why it is acceptable to kill unjust combatants, even when the latter have committed no personal transgression. They must do so, moreover, without weakening the principle of non-combatant immunity or invoking the concept of combatant equality that revisionists tend to reject. Their solution is to maintain that all, and only, unjust combatants may acceptably be killed. This leads to double standards. Most obviously, the question of which state actor is "just" or otherwise is highly controversial, and such revisionists also find themselves obliged to downplay the responsibilities of non-combatants while exaggerating those of soldiers (see, for instance, McMahan 2011). Some theorists, moreover, maintain that killing non-labile non-combatants is especially egregious, whereas killing non-labile unjust combatants is somehow less serious. In other words, they apply a form of moral distinction. Nonetheless, this model is replete with problems. Most soldiers, for instance, simply follow orders while believing in the justice of their cause as presented via state propaganda. Whether their respective states behave "justly" is a variable that the average soldier cannot control. Finally, while the typical combatant does not give his opponent permission to kill him, it is generally understood by such soldiers that their personal rights are waived in wartime.

Critique of McMahan's Theory

Coherence of McMahan: Difficulty of Determining Blame and Moral Risk

For McMahan and certain other revisionists, individual soldiers must decide for themselves whether a particular war is just. If they decide it is not, they have a moral obligation not to fight. The terms "just combatant" and "unjust combatant" thus assume particular significance for McMahan since they evoke a sense of individual responsibility that differs from traditionalist perspectives. By employing these terms in his argument, McMahan introduces a degree of incoherence that characterizes the wider revisionist discourse. This incoherence stems from attributing *jus ad bellum* responsibility to combatants in general rather than solely to political leaders. In contrast, the traditionalist model avoids confusion in the allocation of moral responsibility by maintaining a clear distinction between *jus ad bellum* and *jus in bello*. It seems that McMahan expects more from the Just War Theory than the theory can deliver. Within his revisionist paradigm, combatants must assume that their adversaries have chosen to fight. (In the case of an unjust war, after all, McMahan expects conscientious soldiers to lay down their arms.) This has the unfortunate consequence

of rendering soldiers not merely enemies in the eyes of their opponents, but as criminals. Not merely petty criminals, moreover, but those who share in the heinous guilt of waging an unjust war. The principle of the moral equality of combatants, instinctively distasteful to revisionists, is thus lost. One suspects that revisionist scholars have not fully considered the implications of this position. For instance, once soldiers see themselves as fighting criminals, rather than as honorable but misguided soldiers, the likelihood of atrocities increases significantly.

Traditional models of *jus in bello* prevent the indiscriminate targeting of civilians. It would be unrealistic to apply the same standards to opposing “innocent” combatants. Among other things, this would frustrate the decisive action needed to win wars, causing them to drag on interminably. More broadly, McMahan is correct in suggesting that the Just War Theory reveals several problems in the context of twenty-first-century conflict, but these do not stem from the changing nature of warfare itself. In fact, the traditional Just War model, however imperfect, preserves the distinction between combatant and non-combatant. Despite its flaws, it also offers a valuable template for evaluating the actions, just or unjust, that occur during warfare, and for assessing the validity or invalidity of the reasons why states initiate warfare. Thus, McMahan’s revisionist model generates more problems than it resolves. It presents a kind of axis of blameworthiness on which each combatant’s culpability seems to slide according to circumstances. McMahan states that culpability may “nullify” other significant variables, but he also provides a kind of epistemic excuse for certain categories of fighters. If combatants are involuntarily (not willfully) ignorant of the fact that they are fighting an unjust war, McMahan does not deem them blameworthy. In other words, soldiers who genuinely believe in the justice of an unjust cause may be excused.

However, this is not an easy pass, since McMahan sets a high bar for its attainment. The moral dangers inherent in warfare are so great that the mistaken loyalties of soldiers can only be excused if they demonstrate a high level of credibility (McMahan, 2011, p.184). This seems to place an unreasonable epistemic burden on average soldiers. Not only must they have reasonable grounds for believing in the justice of their cause (whatever “reasonable” means), but they must also have an informed opinion about the degree of threat posed by their adversaries. On the other hand, if McMahan sets high standards for questions of culpability or innocence, he also makes wars more difficult to fight. Once one makes distinctions between liable and non-liable combatants, how does one avoid harming the latter, of whom there may be many? The more complex the thresholds of culpability become, the more difficult it becomes to identify culpability. How can one possibly investigate the epistemic responsibility of thousands, or even millions, of fighters? McMahan’s concepts highlight the difficulties involved in fighting any war justly, which should make us eager to avoid them. This, indeed, is a pillar of contingent pacifism. The work of McMahan and others thus presents a philosophical paradox. First, the lack of sufficient information makes it functionally impossible to distinguish between liable and non-liable combatants in warfare. Second, if many combatants are not morally liable for the threats they pose, they cannot “morally” be harmed. Third, those who ignore these first two factors become *de facto* indiscriminate killers. Fourth, those who thus kill indiscriminately may be killed legitimately themselves, since they are fully responsible, morally, for the threat they present. Fifth, the distinction becomes “clear” between liable and non-liable combatants. The problem, of course, is that the fifth principle stands in stark contradiction to the first, while the fourth contradicts the second. The present essay does not have sufficient scope to address the ramifications of this paradox, but it remains clear that, if these additional layers of complexity do not demonstrate innocence on the part of some combatants, they at least form a basis for compassion.

Meanwhile, the idea that ordinary, enlisted soldiers will routinely engage in such reflections, especially in the heat of battle, is naïve. In terms of epistemic liability, McMahan’s greatest contribution is his assertion that fighting entails greater moral risk than not doing so. Thus, he argues, one should not agree to fight unless one is sure of one’s cause (McMahan, 2011, p. 184). Fighters in an unjust war may further an unjust cause, and/or they may intentionally kill non-liable individuals. While unintentionally failing to contribute to a just cause may be blameworthy, there is more moral risk attached to intentionally supporting an unjust one. A more difficult distinction is that between those who unknowingly support an unjust cause and those who knowingly fail to support a just conflict. While the relative culpabilities are not obvious, the most credible response is that the negative duty not to kill non-liable individuals cannot be superseded by any positive duty.

The Reigning Theory of Liability and Challenges to Current Conceptions of the “Just War”

While Walzer begins with the same premises as most philosophers of warfare, he maintains that the central issue relates not to the acquisition of moral immunity, but rather to the ways in which it is lost. Like McMahan, Walzer (2006b) argues that those who lose this immunity become “liable,” and only liable persons may legitimately be attacked. Current theories of warfare gaining popularity maintain that those who forfeit their “immunity to attack” include combatants and civilians engaged in war-related work, such as the manufacture of munitions. This dominant narrative entails a categorical license to attack soldiers and select classes of civilians while prohibiting attacks on most other civilians. The principle of combatant equality, meanwhile, provides little moral distinction between ordinary soldiers fighting a just war and those engaged in an unjust one. In this model, the battle between soldiers of just and unjust causes is reduced to a morally symmetrical matter of self-defense. McMahan, as we have seen, regards this moral equivalence of combatants as unsustainable. Any easy distinction between soldier and civilian ignores the fact that some civilians present a serious threat of harm. McMahan also disagrees with Walzer’s treatment of liability to attack as a function of group membership, since this elides questions of personal responsibility. Furthermore, he rejects the notion that liability to attack is contingent merely on presenting a threat of harm, contending that civilians who “culpably contribute” to unjustified aggression are also legitimate targets. Finally, McMahan claims that the common idea that ordinary soldiers do no wrong when engaging in unjust wars makes it easier to recruit fighters for such wars.

McMahan’s work raises the question of whether moral liability requires clear culpability for wrongful threats, or whether it may be attached to those who merely contribute to the latter, such as ordinary soldiers in the field. He seems to adopt a kind of unstable compromise between the two extremes of this spectrum. His model would have been strengthened had he provided greater detail on the matter of liability to non-intentional attack. This encompasses, for example, individuals who are killed without having been designated as targets, such as civilians living near military bases. McMahan sees the right not to be deliberately attacked (for non-liable persons) as stronger than the right not to become victims of unintended collateral damage, even when such damage is foreseeable. (If this were not the case, it would be virtually impossible to attack any military installation for fear of harming non-combatants residing nearby.) In any case, McMahan’s thesis lacks depth and detail. His failure to address this topic comprehensively weakens his overall account of the morality of war, and the practical implications of his position become less clear.

For commentators such as Seth Lazar, McMahan’s conclusions regarding the liability of specific agents are not supported by his wider philosophical account. Lazar claims that McMahan is too ready to sanction the deaths of active participants in unjust wars, while his aversion to killing non-combatants on the unjust side is unrealistic. Most obviously, it is impossible to distinguish the personal liability of vast numbers of enemy individuals irrespective of combat status. McMahan’s reasoning obliges him to adopt one of two unpalatable positions. Either he must reject the risk of killing any non-liable individual, in which case the prosecution of war becomes impossible, or he must accept that moral risk, in which case both combatants and non-combatants on the unjust side become liable to attack. Lazar’s critique, it is true, ignores the fact that McMahan detects degrees of responsibility for wrongful threat on the part of agents, even when the latter are broadly non-culpable. Nevertheless, if McMahan’s paradigm was to be used as a template by modern states, the moral consequences would be difficult to quantify. Some potential wars, indeed, might not be fought, and the costs of refraining from just warfare might be offset by the benefits of not pursuing unjust wars. Conversely, the wrongful killing of innocent people in an unjust cause might be avoided, but the failure to pursue just wars (e.g., against genocidal dictatorships) might also result in large numbers of innocent deaths. There is no obvious or easy solution to this dilemma. Nonetheless, Lazar is correct to highlight the dangers of engaging in warfare to “save” one group of innocent people, thereby causing the deaths of another innocent group (the non-liable individuals on the enemy side).

Conclusion

There is no universally accepted moral template for warfare in the present century. Even when international law is formally recognized, it is often flouted. In many cases, the fate of those caught in the midst of conflict is decided not by ethical rules, but by the psychology of individual soldiers in the field. Thus, individual survival often depends on luck, rather than ethics. In this sense, the creation of philosophical theories of warfare can seem like a pastime for intellectuals who often have no experience of armed conflict. Meanwhile, the most significant moral risks are those connected to leaders, who either mistakenly engage in unjust wars (believing their cause to be just), or who deliberately pursue unjust conflict to attain certain goals. In this context, any strong moral paradigm that gives pause to such individuals, or to those who carry out their orders, would be seen as progress.

Nonetheless, basing theories of ethics in warfare around narratives of small-scale self-defense is like basing accounts of distributive justice on the case of castaways, with a few meager provisions, washed up on a desert island. Personal narratives and experiences can teach us something about the nature of war, but it remains essential to cultivate a coherent, ontological understanding of war as a concept. Issues that lie at the center of the “laws” of warfare (legitimate authority, the state’s right to self-defense, the necessity and proportionality in starting and waging wars) extend beyond the typical moral concerns of the individual, but they are certainly not devoid of moral content. The constant evolution of the moral philosophy of warfare is, meanwhile, a tacit admission that it will always be with us. Such theories, no doubt, have their place. However, it is more important to exploit national and international powers to minimize the risk of war occurring in the first place. Prevention is better than treatment or regulation, and the tremendous difficulty of such a task does not reduce the moral obligation to attempt it.

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