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Why Discrepancies in Different Accounts of Just War Theory Matter

Jonathan Rohald
University of Colorado Boulder

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Jonathan Rohald

**Why Discrepancies in Different Accounts of Just War Theory
Matter**

Philosophy

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Defense Committee: Daniel Sturgis (Advisor, Philosophy), Wesley Morriston (Philosophy),
and Vicki Grove (Germanic and Slavic Languages and Literatures)

Abstract:

This thesis addresses discrepancies in different interpretations of Just War Theory. As war is a monumental force that irreversibly alters the lives of millions of people every year, understanding the morality of war is crucial for understanding the world as it is and for determining how it should be. In this paper, I compared two of the most prominent philosopher's interpretations of Just War Theory. I found that while neither view was completely satisfactory in explaining and justifying people's intuitions about war, Michael Walzer's view was superior to Jeff McMahan's view in that it accommodates for practical issues such as explaining and allowing for the culture of "supporting our troops," and that it is in line with international law in terms of who is and who is not a just target of war, and who is and who is not committing war crimes. This view has serious consequences concerning how soldiers and political leaders should conduct themselves and how they are allowed to act legally in times of war.

The topic of war is one of the most heated issues that pertains to the human race, as it effects millions of people worldwide every year, and has done so since the beginning of recorded human history. War is a monumental force that forever alters the lives of those who participate in them. It is no surprise that the morality of war is a highly charged issue. The most common and indeed the most important questions concerning the morality of war are whether or not the war is just and who, if anyone, is responsible for unjust wars. Other important questions include how is it permissible to fight a war, and how is it permissible to end a war. The most common theory used to determine the justness of any particular war is Just War Theory. Just War Theory however, can be interpreted in a number of different ways. Two of the most famous interpretations come from Michael Walzer and from Jeff McMahan. These interpretations are not compatible with one another. The theory I tend to side with is Walzer's. Although it is controversial in that it holds that soldiers are never guilty of the crime of aggression, and there is a moral equality between combatants on both sides of a conflict, I think that this theory does a better job of taking real-world situations into account. The discrepancies in the theories of McMahan and Walzer have serious real world implications. Depending on whose account of Just War Theory one sides with, one could hold radically different views as to who is allowed to fight in a war, what the moral responsibilities of soldiers are, whether or not it is permissible to directly target civilians, etc.. These are no trivial matters. Depending on which view one endorses, a soldier could be seen as simply just that, a soldier trying to do his job, who deserves the support of their nation, or as a person who is committing a serious crime, akin to murder, and should be treated as a criminal for doing the exact same thing. Clearly then,

it is an important issue to understand the discrepancies in these two accounts of Just War Theory, as they could implicate radical changes to the way our society is currently set up.

Among philosophers, the most pervasive theory for determining the justness of a war is Just War Theory. Just War Theory is often also cited by political leaders, who are trying to explain why their country is just in fighting a war. For example, when George W. Bush announced the start of the Iraq war on March 19, 2003, he directly addressed two of the main tenets of Just War Theory, the principle of right intention and the principle of just cause, as justification of the war. Indeed many of the rules of Just War Theory have been codified into international law. The United Nations Charter, the Hague Conventions, and the Geneva Conventions, which are all considered to be pieces of international law, all have their foundations in Just War Theory. Just War Theory is generally divided into three parts: *jus ad bellum*, *jus in bello*, and *jus post bellum*, which concern justice in going to war, justice in fighting the war, and justice in concluding the war respectively.

Jus ad bellum concerns the morality of resorting to armed conflict in the first place. Since it is the heads of state that are responsible for starting wars, they are typically the ones who are responsible for abiding by the principles of *jus ad bellum*. If they fail to abide by these principles, then these heads of state are guilty of committing war crimes. Although the tenets of Just War Theory can be divided up in different ways, I will discuss one of the most widely accepted ways to divide it, which is also the way it is presented in the Stanford Encyclopedia of Philosophy. According to this system, there are six principles of *jus ad bellum*, all of which must be fulfilled in order for a head of state to rightly resort to war. The principles are: just cause, right intention, proper authority and public declaration, last resort, probability of success, and proportionality. The principle of just cause is perhaps the

most important principle to fulfill in terms of having *jus ad bellum*, meaning that if a war is not started with just cause then it is not a just war. The most common and perhaps the only appropriate cases of just cause include defending one's state against attack from another state, and the protection of innocent people from brutal regimes. Cases of defending one's state are usually uncontroversial, as it is pretty much universally accepted that states have a right to their own self-defense, and it is fairly easy to determine when a country is acting in self-defense. For example, the Soviet Union's entrance into World War Two in response to being attacked by Nazi Germany is a case where a country was invaded by another country committing an act of aggression, and justly responded by attacking the invading soldiers. Also, cases where a country takes to arms to defend a helpless peoples from a brutal regime are usually considered to be just (if that is the true and only reason that the country takes to arms). A good example of this is the humanitarian intervention that happened during the Libyan Civil War in 2011, where a coalition of many nations intervened militarily in response to reports by Amnesty International that the Libyan government was committing atrocities such as targeting paramedics who were trying to aid protestors who had been fired upon by the government, and other reports that the government was using ambulances in their attacks (so that people would think that they were paramedics, not soldiers) and raiding hospitals to kill wounded rebels . If a war is started for other reasons, such as to expand a nation's territory, or to exert influence over neighboring states, then that state does not have just cause and instead is guilty of the crime of aggression. An act of aggression is an international crime. In fact, article one of the Charter of the United Nations states that one of the purposes of the United Nations is "for the suppression of acts of aggression or other breaches of the peace." The right intention

principle means that a state that goes to war must be doing so only with the intentions of the just cause in mind; a state can't use a just cause to merely cover up true intentions of land-grabbing, ethnic cleansing, or anything else of the sort. George W. Bush directly addressed this principle in his March 19, 2003 speech in which he announced the start of the Iraq War when he said, "America faces an enemy who has no regard for conventions of war or rules of morality. Saddam Hussein has placed Iraqi troops and equipment in civilian areas, attempting to use innocent men, women and children as shields for his own military. A final atrocity against his people... we have no ambition in Iraq, except to remove a threat, and restore control of that country to its own people." The right intention principle ties in with the just cause principle, as if a country goes to war without the right intention, then they do not have just cause. Proper authority and public declaration mean that the war has to be started through legitimate means, namely that the heads of state publicly declare the war through the means that are outlined in that country's laws or constitution. Last resort means that the country going to war has exhausted all other plausible means of peaceful arbitration. The probability of success principle states that a state cannot justly resort to war unless it can foresee some measurable impact on the situation. The goal of this principle is to avoid mass violence in cases where it will be futile. The last principle that must be satisfied to have *jus ad bellum* is proportionality. Proportionality means that a state must weigh the universal risks against the universal benefits that are expected to come of the war. This means that a state must tally the expected harms and benefits of both countries, not just their own. Only if there is an expected universal net benefit can the war be just. Only if all the aforementioned criteria are satisfied can a state have *jus ad bellum*.

Even if a war was started with all the right reasons, and is said to be just in its start, the states involved still must have proper conduct in the fighting of the war in order for the war to be seen as just. Like *jus ad bellum*, there are six criteria that must be met in order to have *jus in bello*. The six criteria for *jus in bello* are to obey all international laws on weapons prohibitions, to have discrimination and non-combatant immunity, proportionality, benevolent quarantine for prisoners of war, no means which are *mala en se*, and no reprisals. The obeying of international prohibitions on certain weapons is pretty straightforward. If the international community has banned the use of mustard gas, then clearly it is not just to go ahead and use it anyways. Indeed, the use of mustard gas and many other types of weapons have been banned in international law. Mustard gas is specifically banned in the First Hague Convention, declaration IV,2, and in the rest of the Hague conventions, other weapons are banned as well. Clearly, violating these prohibitions means violating the tenets of *jus in bello*. To discriminate and have non-combatant immunity means that you are only going to war with the people engaged in the war. A soldier is not allowed to just shoot any citizen of the country with which they are at war, they are only allowed to directly target legitimate military, political, or industrial targets, which are involved with the war effort. This is specifically codified in international law in article three of the Geneva Convention, which states that "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." This article further goes on to specifically prohibit violence against these people. Sometimes in war,

there are civilian casualties, which can be excusable, but only if they are collateral damage to a legitimate target, and there is no reasonable way of attacking that legitimate target without harming them. For example, it can be excusable for a country to bomb a munitions factory that is working for the opposing country's war effort, which may result in the death of some civilians working there, but the civilians cannot be the direct target of the bombing, and care must be taken to avoid these civilian casualties if possible. Proportionality in this case means that soldiers can only use force appropriate to the end they seek. For example, it would be unjust to drop a nuclear bomb to destroy one small munitions factory.

Benevolent quarantine for prisoners of war is another straightforward criteria. The motivation behind this is that once an enemy soldier gets taken prisoner, they cease to be lethal threats and thus they should be treated without malevolence, and should be exchanged with your own countries' POWs when the fighting ceases. This benevolent quarantine clause is also codified in international law, specifically in articles 4 through 7 of the Geneva Convention. No means mala en se means that no means that are evil in and of themselves should be used to help end a conflict. Examples of things considered evil in and of themselves are mass rape campaigns, genocide, disguising soldiers as Red Cross workers, or other such treacheries. No reprisals means that even if country A violates *jus in bello* against country B, country B still does not have the right to violate *jus in bello* against country A so that they would be on equal standing, in other words, the tenets of *jus in bello* must be followed at all times.

The third and final set of criteria that must be met in order to fight a just war are the criteria of *jus post bellum*, which include proportionality and publicity, rights vindication, discrimination, punishment #1, punishment #2, compensation, and rehabilitation.

Proportionality and publicity mean that the resulting peace should be reasonable and publicly proclaimed. This means that the losing country should not be subjected to any unreasonable post-war punishments and that the terms of that country's surrender should be publically known. A historical example of why this is important is post WWI Germany. After Germany lost the war, they had many post-war military and economic punishments. This caused the German economy to collapse and set the stage so to speak for Hitler's rise to power. One of the main reasons that enabled Hitler's rise to power is that he successfully stirred up German nationalism by criticizing the unfair terms of the Treaty of Versailles (which ended World War One). His harsh criticism for the Treaty of Versailles also successfully garnered him national support for his unjust invasions of Poland and Russia. In other words, placing unreasonable post-war punishments on Germany after World War One, was a significant contributing factor to the outbreak of World War Two. Rights vindication means that the settlement of the war should secure the rights violations which triggered the war in the first place and that this should be the main substantive goal of the postwar agreements. Discrimination means that discrimination should be made between the leaders, the soldiers, and the civilians of the losing party. Civilians should be relatively immune to postwar sanctions, which means that it is unjust to make sweeping socioeconomic changes as a form of post war punishment. Punishment #1 is for when the defeated country has been a blatant aggressor. In this case, (proportional) punishment is necessary which means that the leaders of the losing country are to stand fair trial for war crimes. Punishment #2 is for when soldiers commit atrocities, in which case any guilty party (from either side) should be tried for their crimes. Compensation means that discriminate and proportional economic sanctions may be mandated on the losing country,

but these cannot be so severe as to tamper with the defeated country's reconstruction efforts (which we know to be important from the aforementioned example of post WWI Germany). Rehabilitation means that the institutions of the aggressive regime may be reformed. This can include demilitarization, judicial retraining, human rights training, and even deep structural changes to the government.

While a lot of the material covered by Just War Theory is controversial, Just War Theory itself is still the standard by which we measure the ethics of an armed conflict. Most of what is contained in Just War Theory has also been codified into international law, which means that it is mandatory for knowing before one heads into an armed conflict. The aim of Just War Theory is to make sure that momentous occasion of war only occurs in the very few cases in which it is justified and to make sure that the rules concerning just conduct and just ends to the war are followed.

Just War Theory can be interpreted in many different ways. One of the most prominent interpretations is that of Michael Walzer, as laid out in his book Just and Unjust Wars. According to Walzer, a war can be unjust in a number of different ways, which include: aggressive wars, and non-aggressive wars in which one or both sides are committing atrocities. Something that is unique and controversial about Walzer's interpretation is that according to Walzer, the concepts of *jus ad bellum* and *jus in bello* are completely distinct. This basically means that even if a country is fighting a war without *jus ad bellum* on their side, they can still achieve *jus in bello*. He thinks that *jus ad bellum* only allows us to make judgments about aggression and self-defense while *jus in bello* is only about the observance or violation of the "customary and positive rules of engagement." (Walzer, 21). Walzer readily acknowledges that this view is controversial and that some

controversial claims follow from it when he says “The dualism of *jus ad bellum* and *jus in bello* is at the heart of all that is most problematic in the moral reality of war.” (Walzer, 21). One of the most controversial claims that follows from this way of thinking is that soldiers are never responsible for starting any specific war and thus can never be guilty of the crime of aggression. In other words, soldiers cannot be held accountable for violating the principles of *jus ad bellum*. Walzer still of course believes that soldiers are responsible for their own conduct in war and therefore are responsible for any crimes that were committed in the actual fighting of the war. In other words, while soldiers cannot be held responsible for violating the principles of *jus ad bellum*, they are still responsible for their actions in war and can be held responsible for violating the principles of *jus in bello*.

According to Walzer, the main crime that is committed in the actual starting of the war is the crime of aggression. Walzer defines aggression as the use of armed force by one state against another state without the justification of self-defense. What Walzer finds so morally reprehensible about the crime of aggression is that it forces people to fight for their lives against their own will. As Walzer sees it, this forcing people to fight for their lives is morally equivalent to people being forced to give up their fundamental rights. This is because Walzer thinks that individuals have a fundamental right to life and to political association. He thinks that a state is the means by which this political association is protected. He also thinks that aggression violates the rights of life and political association (because when an aggressor state commits the act of aggression, they are directly threatening the lives and the political associations of the victim country’s citizens) and therefore, aggression violates the rights of each citizen of the victim country. Basically, he thinks that an act of aggression amounts to forcing the citizens of the victim nation to

choose between “your rights, or (some of) your lives” (Walzer, 51). He does not think that when the victim country’s soldiers open fire, against the aggressive country’s soldiers, they are committing an act of aggression. Rather, the initial act of aggression gives them the choice to either put their lives in jeopardy or give up their rights. If and when these people choose to fight, Walzer thinks “they are always just in fighting; and in most cases, given that harsh choice, fighting is the morally preferred response.” (Walzer, 51). These soldiers are not committing acts of aggression, it is the actions of the initially aggressive country which forced the victim country’s citizens to fight. Walzer also notes that aggression is unique in that it is the only crime one state can commit against another state. This is because the crime of aggression violates the rights of the entirety of the victim country’s statehood, while other war crimes, such as using banned weapons, only violate the rights of some particular individuals, not the state as a whole. As Walzer puts it, “all aggressive acts have one thing in common: they justify forceful resistance, and force cannot be used between nations, as it often can between persons, without putting life itself at risk.” (Walzer, 52). This is important because it solidifies the right for the states that have been wronged to have the means to protect themselves. Once a state has been attacked (or an act of aggression has been committed against that state), then that state has the right to use arms to defend itself. The retaliation against the initial aggressor state is not considered an act of aggression, but rather an appropriate response to an act of aggression. It is still the aggressive state that has the moral burden of laying down their arms and seeking a peaceful resolution to the situation. Still though, Walzer thinks that the crime of aggression is a distinct phenomena from the principles of *jus in bello* (Walzer, 21).

One of the most controversial of Walzer's claims is the claim that soldiers are never responsible for the crime of aggression. Rather, Walzer maintains that heads of state are the sole people who are to be held responsible for the crime of aggression. Walzer makes the claim that all wars boil down to a dispute about governance. He also states that soldiers are not the ones who start the war, but rather that they are the means by which political entities choose to fight. The main reason that Walzer thinks that soldiers are not morally responsible for violating *jus ad bellum* is that Walzer believes that soldiers (other than mercenaries) never truly consent to go to war. This is highly controversial because many people think that if somebody volunteers to serve as a soldier, then they obviously (even if it is only hypothetically) consent to go to war. Therefore, it logically follows that volunteer armies consent to go to war and therefore can be held responsible for violating the principles of *jus ad bellum*. Walzer however maintains that, where there is a common cause, there is no consent. To help support this point, Walzer quotes the philosopher T.H. Green, who said, "the power of the state compel. This is equally true whether the army is raised by voluntary enlistment or by conscription." (Walzer, 28). Walzer then goes on to say "For the state decrees that an army of a certain size be raised, and it sets out to find the necessary men, using all the techniques of coercion and persuasion at its disposal." (Walzer, 28). What Walzer is suggesting is that even if an army is made up of "volunteers," these are not volunteers in the true sense as they are subjected to a tremendous amount of political and social pressure to enlist and therefore they can never truly consent to going to war. Walzer maintains that even the people who volunteer their service are subject to a sense of duty, patriotism, and even possibly a fear of ostracism if they do not enlist. Walzer argues in support of this view by comparing standard soldiers to aristocratic mercenaries. Walzer

argues that these mercenaries enlisted either to try to gain personal or political clout, or simply because they loved the thrill of the fight. He argues that these men were not forced to fight in any sense of the word and also thinks that they are unique in that they can choose to stop fighting at any time with no serious consequences. Walzer makes the case that a war where mercenaries are the only participants, would not be so hellish, due to the fact that they were not coerced to fight and that they can stop fighting at any time. Walzer then makes the case that “Our judgments are very different, however, if the mercenary armies are recruited (as they most often are) from among desperately impoverished men, who can find no other way of feeding themselves and their families except by signing up.” (Walzer, 27). In this example, the army made of impoverished men is supposed to represent the traditional soldiers, as it illustrates the extreme pressures that are on these soldiers that compel them to “volunteer” their service. This example is supposed to illustrate that the consent to go to war is not given freely and therefore cannot be considered true consent. Walzer points out that in the modern era, people virtually never volunteer to be a soldier out of pure choice. Instead, Walzer thinks that virtually all of the soldiers in today’s age enlist because of some sense of duty, or in alignment with some common cause, which means that they do not truly consent to fight and therefore cannot be guilty of the crime of aggression. Walzer states “What is important here is the extent to which war (as a profession) or combat (at this or that moment in time) is a personal choice that the soldier makes on his own and for essentially private reasons. That kind of choosing effectively disappears as soon as the fighting becomes a legal obligation and a patriotic duty.” (Walzer, 28). Walzer also thinks that it is reasonable to have this sense of duty, as we are raised in a culture in which fighting for your rights are thought of as a duty. Fighting for

your country's cause is taught to us as a virtue and it is popularly reinforced all the time in our culture: where we are always encouraged to "support our troops."

Our culture does reinforce a patriotic sense of duty, and I think that it is a reason that many people choose to enlist. Perhaps most important to this sense of duty are slogans like "freedom isn't free," which serve to constantly remind us that our rights and liberties are things that have to be fought for. These constant reminders are meant to keep people from becoming complacent, and imply that if there are not enough active soldiers to protect our rights, then we will all lose them. This gives some citizens a strong sense of duty that they must enlist to protect all of our society's ideals. Also, there is a valid case for people feeling ostracized if they do not commit to military service. During the Vietnam War, people who actively tried to avoid military draft were dubbed "draft dodgers" and were thought of as cowards and people who should not be accepted, as they were not working towards the common goal. Many such people moved to Canada or Europe to escape the ostracism. Even today, although there is no draft in effect, a failure to register for selective service (in cases of a possible future draft) can result in being sentenced to up to 5 years in prison, and a fine of up to \$10,000 as per the Military Selective Service Act. As for people who are already enlisted in the armed forces and actively try to escape battle, they are dubbed deserters and can be subject to dishonorable discharge which would result in them losing all of their veteran's benefits (even if they had a long career of honorable service prior to that), and being discriminated against, as a dishonorable discharge is considered shameful and can make it difficult to find employment, as it carries a social stigma similar to being convicted of a felony.

Perhaps the best historical example of a person who shows that *jus ad bellum* and *jus in bello* are truly distinct concepts is Nazi Field Marshal Erwin Rommel. Rommel is renowned by historians and biographers for fighting a bad war well. There is virtually no debate as to whether or not the war that Rommel was fighting was just. It is pretty much universally agreed that World War Two was an unjust war (on the side of the Axis), started by an act of aggression by Germany. Despite that however, Rommel is praised by most historians for fighting this evil war with just means. In his discussion of Rommel, Walzer states that "While many of his colleagues and peers in the German army surrendered their honor by collusion with the iniquities of Nazism, Rommel was never defiled. He concentrated, like the professional he was, on 'the soldier's task of fighting' and when he fought, he maintained the rules of war." (Walzer, 38). It is undeniable that Rommel fought the war adhering to all of the principles of *jus in bello*. The soldiers that were under Rommel's command were never accused of committing any war crimes. In fact, the prisoners of war that Rommel took all reported as having been treated humanely. This also was at a time where there was a culture and expectation in Germany of subjecting POWs to horrible conditions. One of the things that Rommel is praised for the most is his burning of Hitler's Commando Order of October, 28, 1942. That order stated explicitly that all soldiers that were found behind German lines were to be killed on sight. Rommel also famously ignored commands to capture and kill Jewish soldiers and civilians in the territories in which he was fighting. Rommel knew that ignoring these orders put himself at great personal risk, as Hitler had a track record of eliminating people who would not follow his every order. Still though, Rommel refused to commit these atrocities. There is no doubt in my mind, and Rommel's biographers tend to agree, that Rommel should be praised for his

conduct in the actual fighting of the war. Walzer makes a strong point when he says “it would be very odd to praise Rommel for not killing prisoners unless we simultaneously refused to blame him for Hitler’s aggressive wars. For otherwise he is a criminal, and all the fighting he does is murder or attempted murder.” (Walzer, 38). Indeed it seems that odd that we would praise a person for their conduct in a war if we already had judged them to be criminals. Even though he was a high-ranking general in an army that is universally agreed as fighting for an unjust cause, Rommel is usually praised for his conduct in the fighting of the war. As a matter of fact, Rommel’s high rank strengthens the notion that violations of *jus ad bellum* and violations of *just in bello* are two separate and distinct phenomenon, as it would not make sense to hold low ranking soldiers fighting in morally ambiguous wars responsible for their war, when we don’t hold a high-ranking general accountable for what is clearly an unjust war.

In his book Killing in War, Jeff McMahan lays out what is one of the most widely accepted criticisms to Michael Walzer’s view. McMahan argues that the principles of *jus ad bellum* and *jus in bello* should not be considered separate and distinct. The implication of this view is that there is no moral equality of combatants, in other words, soldiers on either sides of a war do not have equal rights to shoot at one another. Rather the soldiers of the side with *jus ad bellum* are morally superior to the soldiers fighting on the side without *jus ad bellum*. According to McMahan, this means that the soldiers fighting on the side without *jus ad bellum* are doing something seriously wrong, akin to a murderer murdering an innocent civilian.

What is radical about McMahan’s views on Just War Theory is that he denies the logical separation of *jus ad bellum* and *jus in bello*. In the traditional view (and Walzer’s

view) of Just War Theory, the soldier fighting for the side that does not have *jus ad bellum* does not do anything wrong by killing enemy combatants, so long as he does so according to the principles of *jus in bello*. In other words, by simply fighting for the unjust side of the war, the soldier has done nothing wrong. McMahan rejects this principle outright. McMahan thinks that simply by fighting for the unjust side, the soldier has done something seriously wrong. To McMahan, a soldier fighting on the side without *jus ad bellum* cannot possibly satisfy the constraints of *jus in bello*. According to McMahan, there are almost no cases in which the soldiers fighting for the side without *jus ad bellum* can meet the discrimination principle of *jus in bello*. The discrimination principle basically says that you are only allowed to attack and kill legitimate targets. According to Walzer, only combatants are legitimate targets. However, according to Walzer, combatants on both sides of the conflict are legitimate targets because they have allowed themselves to be made into dangerous men. In the traditional view of Just War Theory, combatants are legitimate targets while civilians are illegitimate targets. In traditional Just War Theory, the combatants of the side fighting with *jus ad bellum* are still legitimate targets because they pose a danger to the combatants of the side without *jus ad bellum*. By being a mortal threat to the combatants who are fighting without *jus ad bellum*, the soldiers on the just side make themselves legitimate targets, as are the unjust combatants. In other words, the soldiers on the unjust side can claim self-defense as a legitimate reason to shoot at and kill their enemy combatants.

McMahan disagrees with this outright. To McMahan, the legitimate targets of war include only those who wrongly violate the rights of others. According to McMahan, this includes combatants and even some civilians on the side fighting without *jus ad bellum* (if

the citizens are directly contributing to the war effort, say working in a munitions factory or something). To McMahan, civilians and combatants of the side with *jus ad bellum* alike are not legitimate targets because they do not violate anybody's rights (specifically, they do not force others to risk their own lives against their will). To support his view, McMahan draws a parallel between the just combatants and a police officer shooting at a criminal. The argument is that if there is a criminal shooting at innocent people and a police officer shoots at the criminal to try to protect them, the police officer does not become a legitimate target simply because he is placing the criminal in danger. If the criminal shoots and kills the officer, he cannot claim that what he did was morally justified because he killed the officer in self-defense. Even though he was a mortal threat to the criminal, the officer did not give up his right not to be shot at by engaging in the conflict, it was still the moral duty of the criminal to lay down his arms. McMahan thinks that this is analogous to soldiers fighting on the side with *jus ad bellum*. He thinks that even though they are placing their enemy combatants in danger, that alone does not make them legitimate targets and thereby when they are killed by an enemy combatant, the enemy combatant has violated *jus in bello*.

Walzer would disagree that the security officer case is analogous to war because war is what Walzer calls, a rule governed activity. In other words, because there are rules governing how one should fight once they are engaged in a war (*jus in bello*), it must be permissible to participate, because there cannot be permissible ways of doing the impermissible. McMahan disagrees that just because there are rules of *jus in bello*, that there is moral equality between combatants. McMahan does sympathize with the general view that if you pose a threat, then you are a legitimate target, however he does not agree

that people who pose threats are necessarily combatants. McMahan gives the example of elderly professors of physics who were working on the Manhattan Project. He claims that even though nobody would call these physicists combatants, they “posed a far greater threat to the Japanese than any ordinary American soldier.” (McMahan, 12). McMahan then gives an example of somebody who is technically a combatant, but who does not pose a threat. His example is “A uniformed officer who serves as a legal adviser to the military during a war may devote all of her efforts during the war to arguing that certain methods of warfare that her country wishes to use are illegal. She may spent the entire war actively *restraining* her country’s military action, thereby *diminishing* the threat of her side’s combatants pose to their military enemies, yet she is almost universally recognized as having combatant status.” (McMahan, 12). These examples clearly show that those who pose a threat are not equal to combatants. This means that who is a legitimate target is not clearly and neatly divided between combatants and noncombatants. To McMahan, the issue of who is a legitimate target and who is not simply comes down to who has violated whose rights. According to McMahan, “those who fight solely to defend themselves and other innocent people from a wrongful threat of attack, and who threaten no one but the wrongful aggressors, do not make themselves morally liable to defensive attack.” (McMahan, 14). In other words, it is the duty of the aggressor to stop their aggressive war. Just because they are being fired upon does not give them the right to fire back, as they are only being fired upon because they are violating the rights of the defenders.

Part of Walzer’s argument for the moral equality of combatants, in other words, why it is permissible for combatants of either side to kill one another is that combatants on both sides are like professional boxers, who waive the right not to be hit. He argues that by

participating in the war (more specifically, wearing a soldier's uniform), one waives the right to not be attacked. McMahan disagrees that by simply wearing a uniform (or by simply participating in a war), one waives the right not to be attacked. In support of his position, McMahan gives the example of the Polish army in 1939. He argues that just because Poles took up arms to try to defend their country, they still did not give the Nazis the right or permission to attack their country and therefore, the Nazis had no right to fire on the Poles. Instead, it was the duty of the Nazi soldier to lay down their arms, stop their aggressive war, and not force the Poles to give up their right to life. It is easy to see why this is different from two boxers mutually agreeing to a competition. It is not the case that both sides, by joining in the activity, agreed to give up some of their rights. Rather, the reason that the Poles took up arms in the first place was to protect their rights from the Nazi invaders.

The practical outcome of all of this is that McMahan thinks that it is the duty of a soldier to research the facts of any war before they consent to fight in it and they should only consent to fighting for sides that have *jus ad bellum*. McMahan thinks that just as soldiers are taught to be able to recognize and refuse to participate in situations, which would violate *jus in bello*, they should also be taught to recognize and refuse to participate in situations in which they would violate *jus ad bellum*. To accomplish this, McMahan thinks that there would need to be an institutionalized protection for conscientious objectors as well as an international World Court (not like the one we have today at the Hague) to decide which side of a struggle, if either, was fighting with *jus ad bellum* on their side.

The divergent views of Michael Walzer and Jeff McMahan have serious real world implications. While Walzer's view seems to be the accepted one in terms of being applied in

the world today (his views are mostly in line with the UN Charter and other tenants of international law and also, his view of the moral equality of combatants is in line with our cultural norms), many people's intuitions are more in line with McMahan's point of view. While I do sympathize with the view that Walzer's view let's too many people off the hook in terms of being morally responsible for a war, I also think that McMahan's views might be too strict in terms of a potential soldier's responsibility to determine what is and participate only in just wars.

Walzer's interpretation of Just War Theory is criticized for letting too many people off the hook morally for committing the crime of aggression or for violating the tenants of *jus ad bellum*. Walzer's strict line that it is only political leaders who are guilty of the crime of aggression and his view that soldiers do not choose to fight freely, but rather are coerced by various social pressures seem to justify cases where people are doing something seriously morally wrong. According to Walzer, since he holds the moral equality of combatants as absolute, a person who becomes a soldier to fight in a war that they plainly know is unjust, just for the simple thrill of killing people has the same right to shoot at enemy soldiers for fun as they have to shoot at him to protect themselves. In other words, if a person who just really enjoyed the act of killing became a soldier just so that he could legally satisfy his bloodlust, he would not be committing any sort of crime in Walzer's account of Just War Theory.

According to McMahan however, a soldier who is socially pressured into fighting for a war which he thinks to be just because of misinformation from his government is guilty of the crime of aggression and if he kills an enemy who is firing at him, he should be considered to be guilty of a serious crime. This view would have the consequence that if a

person who joined the army because they were in dire financial straits, was shipped off to a war to try to feed their family, fired upon and killed an enemy soldier, they should be thought of essentially as a murderer, who has committed a heinous crime. This view would have the implication that most of our current society's actions towards soldiers are inappropriate, as we are not currently fighting a war of self-defense, and therefore, people who have "support our troops" t shirts or bumper stickers are supporting murders. In fact, according to this view supporting the "support our troops" logo would be about as appropriate as supporting a logo that said "support Jeffrey Dahmer." Also, according to this view, thousands of soldiers (maybe even most soldiers) would be guilty of a very serious crime and should be dealt with by some sort of new form of international court.

As neither of these consequences seems acceptable, there must be a practical way to determine when soldiers are doing something that is morally justified and when they are not. There needs to be some way to determine when a soldier is fighting justly, with a moral equality among combatants, and when a soldier is really acting more like a murderer than anything else. From a practical standpoint, I think that a reasonable solution for weeding out people who want to fight for the simple thrill of killing would be to place stricter standards for who is allowed to join the armed forces. There are already screening tests in the United States and other in other countries that try to weed out these people from joining the armed forces. While these screening tests are obviously not effective 100% of the time, I think that we could make these tests rigorous enough that the vast majority of such people would be barred from joining the armed forces.

From an intellectual standpoint, Walzer's claim that soldiers are never guilty of the crime of aggression seems to be troubling. To argue against this claim, McMahan raises the

example of Ludwig Wittgenstein. Wittgenstein was a very famous philosopher who lived in England during the outbreak of World War One, and thought of the British as one of the best races in the world. He had many friends fighting for the British Army in World War One, yet decided to enlist in the Austrian army (he was Austrian by birth). Wittgenstein's hastiness to enlist was motivated by an overriding sense of obligation he felt to fight for his mother country. According to Wittgenstein's sister, at least part of his determination to fight was the product of "an intense desire to take something difficult upon himself and to do something other than purely intellectual work." (McMahan, 2). One of Wittgenstein's biographers, Ray Monk felt that "Wittgenstein felt that the experience of facing death would, in some way or other, *improve* him." (McMahan, 2). This claim was backed up from a section of Wittgenstein's diary which he kept during the war which said: "Now I have the chance to be a decent human being, for I'm standing eye to eye with death." (McMahan, 2). McMahan goes on to make the case that World War One was a perfect example of a pointless war, which is a fairly uncontroversial claim. He then adds that the Austrians were perhaps the most culpable "of all the participants in that futile mass slaughter" (McMahan, 2) as they in effect started the war. McMahan then criticizes Wittgenstein for fighting for the aggressor in a pointless and barbaric war. He criticizes Wittgenstein for considering killing people he did not know "a small price to pay for the elevating and self-improving experience of risking death" (McMahan, 3). In short, McMahan is accusing Wittgenstein of doing something seriously morally wrong by fighting for an unjust participant in a war. I think that Walzer would respond to this claim by first by pointing to the fact that Wittgenstein felt an overwhelming sense of obligation. This sense of obligation Walzer would argue, was placed on him by overwhelming societal pressures (even though he was

living in England at the time), and meant that he could not truly consent to fight. Walzer however, would not necessarily need to stick to this claim. McMahan claims that “the moral equality of soldiers is also compatible with the idea that combatants may act wrongly even when their action is in conformity with all of the principles of *jus in bello*. It is, for example, compatible with the Augustinian view that it is wrong to fight with an attitude of hatred or enmity, or for the pleasure of killing.” (McMahan, 4). I think that this claim provides an acceptable defense of Walzer’s point of view. For it could well be the case that fighting for misguided reasons, such as thinking that risking your life will lead to self-improvement, may also enable a combatant to act wrongly even if they obey the tenants of *jus in bello*. From this standpoint, we can say that soldiers like Wittgenstein, who fight for misguided reasons, are doing something seriously morally wrong, although they are not committing the crime of aggression. While these soldiers are doing something seriously morally wrong, it is not simply due to the fact that they are fighting on behalf of an unjust participant in a war, but rather it has to do with their reasons for fighting.

The case of an excessive nationalist is also an interesting counterexample to Walzer’s claim that soldiers are never guilty of the crime of aggression. By excessive nationalist, I mean one who does not care about the justification of self-defense, and supports aggressive actions on behalf of their country, such as gaining territory, or expanding their country’s influence or something. However, as aggression is being defined as one state using armed force against another state without the justification of self-defense, and what is wrong with it is that it forces people to fight for their lives against their will, I think that Walzer can safely claim that while this excessive nationalist may be doing something seriously morally wrong, they are not committing the crime of aggression.

This is because this excessive nationalist cannot force others to fight for their own life against their will without war being declared, for otherwise, they are just simple murderers. The heads of state need to declare their aggressive war before this excessive nationalist can even join the fight. Therefore, the excessive nationalist can be viewed in a similar light as the soldier who enlists for misguided reasons: they are doing something that is seriously morally wrong. They are not however, guilty of the crime of aggression, as they are only allowed the ability to fight in the first place because of their government's decision to go to war (which itself is the crime of aggression). As Walzer puts it, "We draw a line between the war itself, for which soldiers are not responsible, and the conduct of the war, for which they are responsible, at least within their own sphere of activity" (Walzer, 38). While the excessive nationalist is surely morally culpable for doing something wrong, what they have done is not equal to the crime of aggression.

As for the case of a person wanting to go to war simply to satisfy their bloodlust, I think that we can say that they are doing something wrong, just like the misguided nationalist above. Walzer has a possible further response to the soldier who fights for bloodlust, and it may well be the case that they fall into a different category of "soldier" than either the misguided nationalist (Wittgenstein) or the excessive nationalist. What gives all soldiers equal standing according to Walzer is their lack of true consent to go to war. The argument is something along the lines of: only political leaders are to blame for whether or not there is a war. In a war, combatants kill one another. If you are not to blame for killing you have a right to defend yourself against being killed. Therefore, soldiers fighting for unjust states have a right to defend themselves by killing. But here, I think we can say that although the soldiers who enlist to satisfy their bloodlust are not to blame for

whether there is a war or not (and are therefore not guilty of aggression), we can still blame them for killing. This is because they are more like the mercenary, who enlists for some personal gain or benefit than a soldier who is coerced into the position. They joined the war not out of a sense of duty, but out of a sense of want (of not some common good like patriotism, but rather selfish reasons), which I think makes them responsible for their killings. These people truly should be considered murderers, although I still think that they are not guilty of the crime of aggression. Wittgenstein could also partially fall under this category, but he is a murkier case, as he enlisted due to a combination of a great sense of duty, as well as in hopes of personal gain.

As for the matter of punishing combatants who are fighting without *jus ad bellum* for crimes akin to murder, I simply do not think that it is practically possible. I think that if this policy were implemented, there would be a great lack of soldiers, so much so that it may even prevent an army from being able to fight a just war. First of all, if this policy were implemented, I think that there would be a drastic decrease in the number of volunteers who join the armed forces which would mean that if there were a case where a just war needed to be fought, there would have to be a draft to scramble up enough soldiers to fight. I think that it is fairly uncontroversial to claim that all involved parties are better off if people, who are inspired to do so for any number of reasons, volunteer to join the armed forces and are trained and wait ready in the reserves to fight a just war, than if a war arises, and people are drafted randomly from the population, who then have to be trained to fight before they can be shipped off to a war that they are forced into. Also, this policy may well discourage even just combatants from wanting to fight, as it might make soldiers weary of always looking over their shoulder so to speak, fearing that somebody will accuse them of

being unjust combatants so that they will be dragged into a long trial process, and might even be wrongly convicted of murder. In short, I think that the moral equality of combatants is something that must be maintained in order for just wars to be able to be fought.

Overall, I think that Walzer's account of Just War Theory is the superior one. While his ideas are more controversial, they are also more in-line with the way that our society is set up and functions. Although many people, are sympathetic with McMahan's account, I think that the moral equality of combatants is a must for wars to be fought at all. I also think that there should be immunity of noncombatants on both sides of the war, which McMahan does not hold. Also, I do truly think that soldiers, while they may act impermissibly in a number of ways, are never guilty of the crime of aggression. Overall, I think that understanding the discrepancies in the possible accounts of Just War Theory are vital for every person to know, as war is such a pervasive force in our world, that deeply alters the lives of millions of people annually and it is important to know whether or not one's actions in such an important event are just or not.

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