

**Review of Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009)**

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Jeff McMahan's main contention in this book is that common sense beliefs about the morality of killing in war are deeply mistaken. In particular, he argues against the so-called 'moral equality of combatants', the claim that the combatants on the just side in a war and those on the unjust side have the same moral status and an equal liberty-right to kill each other. His most serious argument against the equality thesis is that the idea that one makes oneself liable to defensive attack merely by posing a threat to another has no intuitive plausibility at all outside the context of war. After all, police officers engaged in a gunfight with mobsters pose a threat to the mobsters, but that does not give the mobsters the liberty-right to kill the policeman – instead they are supposed to surrender.

McMahan then discusses several important arguments intended to show that it is permissible to fight in an unjust war provided that one abides by the *ius in bello* constraints; and he tries to show that all these arguments are mistaken. The first such argument is that in most wars 'just' soldiers are also liable to attack because they pose a threat not only to the unjust soldiers on the other side, but also to innocent bystanders. If this argument holds up, it would significantly lessen the practical relevance of McMahan's main contention. He tries to counter this objection by claiming that justification (which just soldiers have) defeats liability, and that this is a familiar principle in law. However, his interpretation of the law does not comprise more than half a page and is somewhat dubious. Contrary to what he suggests, justification does not always defeat tort liability outside of the context of strict liability. It is also worth mentioning that most philosophers who have thought about the question whether the necessity defence for inflicting damages on a third party defeats liability are of the opinion that it does not.

He also discusses, among other things, the arguments that just combatants somehow voluntarily waive their right not to be killed by unjust combatants, that the epistemic situation of unjust combatants is such that they can have at least subjective justification for participation in an unjust war, that there is a duty to defer to the epistemic authority of the government, and that the alleged duty to support the efficient functioning of just institutions somehow justifies the participation in an unjust war. He presents these arguments in a clear form and tries to make them as strong as possible before dissecting and refuting them very convincingly. In a following chapter he does the same with several arguments claiming that unjust combatants are for the most part fully excused for their participation in an unjust war. In his view, most unjust combatants are only partially excused.

In the fourth chapter McMahan further clarifies the concept of liability to attack which is so important for his philosophy. He usefully distinguishes between different kinds of threats posed by persons, such as culpable threats, partially excused threats, excused threats, etc., and tries to determine the moral status of each of these kinds of threatening persons and how they fare with regard to liability to defensive attack. McMahan is well aware that some of the things he is saying here are counter-intuitive (for example, he thinks that innocent threats are not liable to defensive attack) but he is undeterred by this

and tries to provide arguments for why we should jettison those intuitions. However, these arguments are not always convincing and might have further rather counter-intuitive implications.

In the last chapter McMahan confronts the fact that on his account of liability to military attack civilians can, in principle, be liable to military attack. Yet he argues that the circumstances where civilians will thus be liable will hardly ever arise in practice. However, his argument relies, among other things, on the doctrine of double effect, whose correctness McMahan simply assumes without argument. It also relies on the assumption that civilians can only be liable to attack if attacking them is in all likelihood a reasonably effective means to achieve a just goal. But whether this really is so depends, contrary to McMahan, heavily on context. Thus, McMahan's philosophy might be much better suited to justify 'terrorism' than he is prepared to admit.

McMahan's book is a great achievement. It is absolutely lucid and is the most comprehensive and sophisticated criticism to date of the 'moral equality of combatants' and of the idea that civilians and soldiers can delegate their moral responsibility for the waging of an unjust war to the government. For anyone interested in just war theory – and for soldiers and citizens who take their responsibility seriously – this book is a must-read.

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