War

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Introduction

Since at least the first recorded instance of human-on-human conflict, in Wadi Halfa, Sudan, between 14,000 and 12,000 years ago (Reader 1998: 142–3), human beings have fought with, and killed one another. Also, probably since that first conflict over diminishing resources, we have sought to explain and justify some of this killing. Each culture, each historical and religious tradition, has its own history of debate about war's morality (*see* JUST WAR THEORY, HISTORY OF). Christian just war theory traces its roots to the early Church fathers, medieval scholastics, and the eighteenth- and nineteenth-century jurists. The Qur'ān offers Muslims guidance on when and how to fight; while Hindus derive insights from the Mahabharata and the Laws of Manu, among other places. Other traditions have their own key texts and insights. In recent years, thinking about war's morality has slipped its religious moorings, and drifted towards more secular, universalist foundations. Foremost among these is the conviction that profound moral reasons protect all human beings equally against lethal attacks, no matter how they otherwise differ (*see* KILLING). To justify killing, we must explain how these weighty reasons can either be overridden, or defeated by some other consideration. Although other terms might be used, this is most commonly expressed in the conviction that all people have fundamental human rights against being killed, such that we can only justify killing them if they have somehow lost that right, or it has been overridden by some even weightier set of moral reasons (*see* RIGHTS). Since killing is the business of war, if warfare is to be justified, we must explain how our enemies lose their rights against attack, or how those rights are overridden by our positive reasons for fighting. On this justificatory project hangs the viability of an ethics of war: if it fails, we must reject warfare, and endorse pacifism (*see* PACIFISM).

This essay focuses on contemporary philosophers' attempts to render warfare consistent with an adequate understanding of the human right to life. It does not explore the historical roots of contemporary just war theory, interesting though they are, for two reasons (besides, of course, brevity). The first is skepticism about the religious substructure of most historical just war thinking. Not only does this undermine some of the key arguments in the tradition, it also invalidates it as the basis of consensus between adherents to different cultural traditions. Principles of just war theory must aim at universal application, so should not presuppose unreasonable, culturally specific premises. The second is the historical tradition's understandable ignorance of the idea of human rights. For example, Francisco de Vitoria (1492–1546) is often considered one of the most sophisticated Catholic just

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war theorists, and yet he nonetheless inherited his tradition's animosity toward Muslims, proposing one set of rules for Christian adversaries, and another for Saracens. In "war against the infidel," he wrote, "peace can never be hoped for on any terms; therefore the only remedy is to eliminate all of them who are capable of bearing arms against us, given that they are already guilty" (Vitoria 2006: 329; see also de Pizan 2006: 222). Vitoria was also typically uninterested in the rights of our own combatants. Few now would agree that "men of lower condition and class cannot prevent war even if they consider it to be unjust, since their opinion would not be heard; it would therefore be a waste of time for them to examine the causes of war" (2006: 319). Of course, this indifference to individual rights is hardly surprising. Vitoria had no conception of universal fundamental human rights, and it would be anachronistic to expect him to do so. He wrote for his world, just as the seventeenth-, eighteenth-, and nineteenth-century jurists such as Wolff (1679–1754), Vattel (1714–67), and Clausewitz (1780–1831), respectively, wrote for theirs, expounding doctrines of practically unlimited sovereignty, with no judge higher than the nation-state, and therefore no one to answer to – least of all the ordinary people whose lives are at stake. We too must write for our world, with our own fundamental moral commitments at the forefront of our thinking (Skinner 2002: 88). Though the historical just war tradition can inform our arguments, if we want to know how – and if – war can be squared with universal human rights, we need more modern tools.

The most influential figure in the contemporary just war debate is Michael Walzer, whose *Just and Unjust Wars* (2006) set a pattern that even his fiercest critics have endorsed. Put simply, Walzer argued that wars can be justified only if two conditions are met. First, we may only resort to war to protect fundamental human rights. Second, we may only fight if we can do so without violating our adversaries' rights. Walzer's critics have questioned his specific accounts of what rights are worth fighting (and killing) for, and how the right to life can be lost, but they have not questioned this basic justificatory model. In this essay, I first summarize Walzer's views, and then those of his critics, before indicating some more fundamental departures from his approach.

Just and unjust wars

Walzer is often presented as the archetype of orthodox, traditional just war theory. Though his views have formed a contemporary orthodoxy, there is little that is archetypal or traditional about them. When discussing the resort to war – often called *jus ad bellum* – he does not deploy the traditional just war theory criteria of just cause (*see* JUST CAUSE [IN WAR]), proper authority, right intention, last resort, reasonable prospects of success, and proportionality (for detailed discussion, see Coates 1997). Instead, he adopts the "legalist paradigm," derived from international law. The paradigm affirms that the dominant value of international society is the "survival and independence of separate political communities." This grounds states' rights of territorial integrity and political sovereignty (*see* INTERNATIONAL

RELATIONS). Forcibly undermining these rights constitutes criminal aggression, which justifies either individual or collective defense, which may also extend to punishment, to deter future attacks. Nothing besides aggression can justify war (Walzer 2006: 61).

Why should the survival and independence of political communities matter so much? Walzer looked to individual human rights to do the key justificatory work. States' sovereignty and territorial integrity are grounded in the human rights of their citizens, in three ways. First, states make a key contribution to individual security. Rights have value "only if they also have dimension" (Walzer 2006: 58), which they get from states' borders – "within that world, men and women … are safe from attack; once the lines are crossed, safety is gone" (2006: 57). Second, states protect a common life, made by their citizens over centuries of interaction. If the common life of a political community is valued by its citizens, then it is worth fighting for. Third, they have also formed a political association, an organic social contract, whereby individuals have, over time and in informal ways, conceded aspects of their liberty to the community, to secure greater freedom for all. Walzer sees this too as the object of a basic human right. The survival and independence of these communities matter because they protect their citizens' rights to security, the common cultural life that they have formed, and their collective freedom.

Walzer makes five revisions of the legalist paradigm. First, he adds the permission to defend our rights preemptively. Political communities may preemptively defend themselves if they face a threat of war, and inaction would "seriously risk their territorial integrity or political independence" (2006: 85; *see* PREVENTIVE AND PREEMPTIVE WAR). Second, he advocates interventions to support secession when a sub-community in a state has demonstrated its representativeness and its claims to independence. His third revision defends counterbalancing interventions into civil wars in response to interference by another state. Fourth, he argues that states' rights against aggression can be lost "when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination … seem cynical and irrelevant" (2006: 90). Confronted with crimes that "shock the moral conscience of mankind" (2006: 107), such as massacre and mass enslavement, whoever is able to intervene may permissibly do so (*see* CRIMES AGAINST HUMANITY; HUMANITARIAN INTERVENTION). Finally, Walzer explicitly rules out any form of collective punishment, arguing that defeat is deterrent enough.

Where *jus ad bellum* is a matter for political leaders – and to a lesser extent, for the civilians who hold them to account – how wars are fought (*jus in bello*) should, in Walzer's view, be the concern of combatants. This division of moral labor is tied to his view that *jus ad bellum* should be independent from *jus in bello*. Exempted from the requirement to evaluate the resort to force, combatants on either side of a conflict are in morally identical positions – both those whose side was justified in resorting to war (hereafter combatants-J), and those whose side was not (hereafter combatants-U). Walzer calls this the "moral equality of combatants" (*see* MORAL EQUALITY OF COMBATANTS).

There are two main justifications for the moral equality of combatants. First, there is an experiential similarity between combatants on either side of a conflict. They tend to believe that they are justified in fighting, and indeed fight for good reasons – for example, loyalty, a belief that their country is under threat, and trust in their leaders (Walzer 2006: 127). Where these reasons are absent, they often fight under duress. In either case, they fight because they think they have to. Second, Walzer thinks both combatants-U and combatants-J lose their rights against attack, under principles of self-defense. This follows from his view that legitimate acts of war must respect individual rights (2006: 135). Since all persons have fundamental rights against being attacked, combatants can only be morally equal if those they fight against have no right against them doing so. One loses the right to life in war when one takes up arms against an enemy (2006: 136). By attacking me, a person alienates himself from me, and from our common humanity, and so becomes a legitimate target of lethal force (2006: 142). By becoming a soldier, an individual has "allowed himself to be made into a dangerous man" (2006: 145), with the attendant liabilities, and immunities. Combatants who target only enemy combatants are morally equal, because neither group violates rights by targeting the other. By contrast, noncombatants on neither side of a war pose threats, so they have not surrendered their rights against attack. This founds the other linchpin of Walzer's *jus in bello*, noncombatant immunity (2006: 137; *see* CIVILIAN IMMUNITY). Of course, there are fuzzy boundaries between combatants and noncombatants – some become dangerous through other indirect contributions to the war effort. Walzer distinguishes, for example, between munitions-workers who make what combatants need to fight, and farmers who make what they need to live, and suggests that only the former lose the protections of noncombatant status.

Even if noncombatants are not deliberately attacked, they will be predictably killed, often in greater numbers than combatants (*see* COLLATERAL DAMAGE). These killings too must be justified. Walzer develops a modified version of the doctrine of double effect – the deontological principle which distinguishes between the intentional, and the foreseen but unintended infliction of harm in the course of achieving some distinct good (*see* DOCTRINE OF DOUBLE EFFECT). An act that kills noncombatants may be permitted if, in itself, it is a legitimate act of war, with a morally acceptable effect that the actor intends to achieve (as against the evil effect, which is neither one of his ends, nor a means to his ends), and which is sufficiently valuable to compensate for allowing the evil effect (Walzer 2006: 153; *see* PROPORTIONALITY [IN WAR]). Skeptical about the independent significance of intentions to permissibility, Walzer adds that combatants must accept risks to themselves, if that preserves noncombatant lives (2006: 155). Consistent with his doctrine of combatant moral equality, both combatants-U and combatants-J can permissibly inflict collateral damage.

Combatants who target only combatants, and incidentally harm noncombatants no more than is justified by the doctrine of double effect, "are not acting kindly or gently or magnanimously; they are acting justly" (Walzer 2006: 135). They are not violating rights. Walzer does argue, however, that in some rare cases rights may be

overridden, if the stakes are high enough, and here the independence of *jus ad bellum* from *jus in bello* breaks down. Commanders, faced with defeat in a war that must be won – where the enemy attacks something more fundamental, and more global, than their territorial rights and political independence – may authorize intentional attacks on noncombatants (2006: 254). This permission is confined to cases of "supreme emergency," outside of which conduct is independent from resort, and the rules of war are strict.

In addition to these defining contributions to *jus ad bellum* and *jus in bello*, Walzer offers some valuable insights on how wars should be brought to an end, and how remedial and moral responsibility should be distributed. He seeks to balance two imperatives: first, eliminating the threat that necessitated conflict; second, laying the foundations for peace. There is no mandate for ambitious reconstruction or regime change, unless the defeated regime cannot be reformed. Although reasonable prevention is a valid goal, he warns that collective punishment will inflame resistance. In accordance with his division of moral labor, only political leaders should be punished for their unjustified wars, while combatants are accountable only for breaches of *jus in bello* (*see* WAR CRIMES). Civilians who can influence their leadership, but who failed to prevent the leadership from initiating an unjustified war, do share some of the responsibility, however (Walzer 2006: 301). Reparations may be levied, to make good what the justified side lost in the war, and these will fall evenly on all members of a society – not because they are all responsible, but because there is no more targeted way to administer reparations, and because "citizenship is a common destiny" (Walzer 2006: 297; *see* REPARATIONS; COLLECTIVE RESPONSIBILITY).

War and Human Rights

Walzer tried to blend conventional beliefs about the permissible use of force with modern ideas about fundamental human rights: resorting to war is justified in defense of human rights, but only if you can fight without violating rights. His critics have mostly accepted these premises (although sometimes favoring different terms), but questioned how he proceeds from them.

They first targeted Walzer's move from human rights to states' rights to sovereignty and territorial integrity (Beitz 1979; Doppelt 1978; Luban 1980; Wasserstrom 1978; for Walzer's response, see Walzer 1980; for further development, see Beitz 2010; Rodin 2002). They questioned the normative purchase of his metaphor of the organic social contract, and tested his hypothesis that states guarantee individual security, finding it doubly false: states are often the greatest threat to their members, in particular to minorities; moreover, only murderous aggressors would take life for the sake of it. In many cases, an aggressing army would be happy to secure its objectives without taking life – provided the defending state puts up no resistance (e.g., Rodin 2002: 131–3). If our concern were solely to protect life, we should often appease and submit, not put ourselves and others at risk by fighting. Indeed, sometimes border-crossers come to enforce security, not to threaten it. Walzer's

appeal to the value of collective freedom is also suspect, since in diverse political communities freedom for the majority can mean oppression for the minority. Likewise, his invocation of the "common life": in modern societies, can we even speak of a single common life? Even if we can, is it really threatened in wartime? And even if our culture were threatened, would it really be worth killing for? The conclusion, these critics suggest, is that instead of deriving sovereignty and territorial integrity from individual rights, we should concentrate on protecting the individual rights themselves. Sovereignty is not a significant barrier to the use of military force, therefore, because states are only entitled to sovereignty if they genuinely protect the rights of individuals within them (Shue 1997). Interestingly, this means all justified wars conform to the same pattern – there is no sharp difference between humanitarian interventions and other forms of self- or other-defense (Tesón 2003).

These objections to Walzer probably hit their mark, but we might wonder whether the position they lead to is really satisfactory. Most people regard wars of national defense as paradigmatically justified, but on this account there is nothing special about them. Moreover, how do these critics themselves justify fighting a nonmurderous enemy who wants to take only our sovereignty, not our lives? Unless there is something worth protecting beyond our lives, we are not justified in resisting, and so putting our lives (and those of our adversaries) at risk. And while there are undoubtedly problems with Walzer's under-theorized collectivism, we should also question the radical individualism of his critics' proposals. Ordinary thinking suggests that there are distinctively collective dimensions to war that should not be ignored. Walzer's simplistic argument to derive states' rights from basic human rights is undoubtedly flawed. However, his critics' indifference to values besides those basic rights might be an equal failing.

Walzer's key innovations in *jus in bello* have also been much scrutinized (e.g., Coady 2004, 2008a, 2008b; Fabre 2010; Frowe forthcoming; Hurka 2005; Øverland 2006; McMahan 1994, 2004, 2005, 2006, 2009; McPherson 2004; Rodin 2002, 2008). The critique first targets the moral equality of combatants, and starts by asking whether combatants-J really lose their rights against attack, so that combatants-U can fight justly. Walzer insists that they share liability because each poses a threat to the other. However, in ordinary self-defense (*see* SELF-DEFENSE), justified defenders do not lose their rights against attack by defending themselves. A rape victim who defends herself against an assailant now poses a threat to him, but he is not now entitled to kill her in self-defense. Walzer notes that combatants-U and combatants-J often fight for similar reasons – duress, ignorance, loyalty, and so on. However, he nonetheless thinks – how could he not? – that one side can be justified, the other unjustified. And there is no good explanation of why justified defenders should lose their rights to life (e.g., Coady 2008a: 127). At some points, Walzer implies that combatants-J are liable because they consent to be attacked, but this is *prima facie* implausible: why should someone who volunteers to fight in a justified war waive his or her right not to be killed by the unjustifiably attacking enemy (McMahan 2009: 51ff)?

Moreover, even if combatants-J were liable, combatants-U will also kill noncombatants in the course of combat. These deaths must be justified by the good effects intentionally achieved thereby. However, a successful military attack by a combatant-U advances his unjustified war, bringing its unjustified goal closer to realization. Instead of a good being balanced against an evil, the unjust combatant unintentionally inflicts one evil, in the course of intentionally achieving another (Hurka 2005). It seems this cannot possibly be justified, so the claim that combatants-U and combatants-J are morally equal must be false.

We should reject the moral equality of combatants, and with it the division of labor that permits combatants to focus exclusively on conduct, leaving questions of resort to their political leaders. Combatants too need to be justified in order to fight permissibly. However, Walzer's critics do not stop here. They think that merely posing an unjustified threat is neither sufficient nor necessary for one to be liable to be killed. What really matters is responsibility for that threat (Coady 2008a: 112; Fabre 2009: 37; McMahan 2009; McPherson 2004; and Rodin 2002: 80–3). The responsibility view states that individual combatants are liable to be killed if and insofar as they are morally responsible (*see* RESPONSIBILITY) for an unjustified threat of harm, and it is both necessary and proportionate to kill them to avert that threat (e.g., McMahan 2009: 35).

This is a demanding standard. One might think that combatants-U are only rarely morally responsible for the threats they pose. They usually do not know they're acting unjustifiably, and are subject to duress from their superiors. In many cases, they are morally innocent, so on this account are not liable to attack. Moreover, it is impossible to distinguish between innocent and guilty combatants-U (Lazar 2010; Shue 2010). Combatants-J neither have the relevant information about their adversaries, nor are able to administer force with such precisely discriminating lethality. Gunners target coordinates, not individuals. If we are only permitted to attack liable targets, then we ought not to attack at all. Under these conditions, a just war is impossible, and we should embrace pacifism. For Walzerians, this would be a *reductio ad absurdum*.

The responsibility view counters the pacifist challenge by first questioning whether combatants-U are really innocent (McMahan 2009: Ch. 3; Rodin 2008: 51–3), noting that modern democracies do not aggressively coerce participation, and that most combatants negligently fail to examine the justification for fighting. The second response is to propose a lower standard of moral responsibility for liability (Coady 2008a: 114; Frowe forthcoming; McMahan 2009: 197; Rodin 2008). On this account, liability is grounded in one's voluntary actions foreseeably bringing about the unjustified threat, so even wholly innocent combatants-U can be liable.

This new criterion of liability would perhaps save the responsibility view from the threat of pacifism, but it invites a further objection. If the bar for liability is set so low, then how can we avoid rendering many more noncombatants liable than is morally plausible? The responsibility view faces this dilemma (Lazar 2010) as long as a significant number of noncombatants are responsible to at least the same degree as a significant number of combatants. As we shred the combatants' excuses, so must

we shred those of the noncombatants; as we lower the standard of liability for combatants, the same must go for noncombatants. Our efforts to avoid the threat of pacifism lead us to reject noncombatant immunity.

One could simply accept this conclusion (e.g., Frowe forthcoming). However, even most of Walzer's critics think noncombatant immunity is fundamental to a plausible account of *jus in bello*, so a resolution to this horn of the responsibility dilemma is imperative. Rodin has argued that minimal responsibility for an unjustified threat is necessary, but not sufficient for liability: posing the threat is a further necessary condition (Rodin 2008: 47–8). This would seemingly protect noncombatants, who do not pose threats, but unfortunately it would also protect the many combatants, at all levels in the military, who do not directly pose threats either. Rodin responds that those who are responsible for a threat that they do not pose can be liable if they nonetheless share the intention of the threatener. Thus, a commander who orders a subordinate to fire is liable, though he does not pose the threat himself, because he is partly responsible for the threat, and shares the intention that it be posed. However, still, many low-ranking combatants who do not pose threats also do not share the intentions of those who do. At least, they do not share those intentions any more than do the many noncombatants who positively support the war (Frowe forthcoming). Hence, Rodin's response does not resolve the problem – either it fails to include all combatants in liability, or it includes too many noncombatants. It also lacks theoretical motivation: one can easily imagine hypothetical cases where responsibility seems sufficient for liability; moreover, he has no argument to justify this hybrid conception, besides its convenient consonance with the conventional rules of war (he does not, for example, explain how it fits with the reciprocity-based model of self-defense in Rodin 2002).

McMahan initially (1994) conceded that many noncombatants may be permissible targets in war, but has in recent years rowed back from this radical conclusion. He now argues that killing noncombatants is almost never militarily necessary, therefore they cannot be liable, as one is only liable to be killed in self-defense if doing so is necessary (see also Frowe forthcoming). He also suggests that, while noncombatants may be responsible to some degree for the objectively unjustified threats that their side poses, their responsibility is too minimal to make lethal attacks proportionate (McMahan 2009: Ch. 5; see also Coady 2008a: 112). Neither response is persuasive. It is easy to conceive of situations when disregarding noncombatant immunity is militarily necessary – especially in asymmetric wars, where weaker parties make deliberate use of their adversaries' compunction about attacking noncombatants, and lack the resources for a counterforce challenge (Gross 2010). Moreover, if noncombatants are not sufficiently responsible to be liable, then neither are many combatants. And anyway, in McMahan's model of self-defense, liability only requires a small asymmetry between the defender and the responsible agent – there is no need for proportionality between the fate suffered, and the degree of responsibility, when it's a matter of life against life. If this is an implausible view of self-defense, then we should change our criterion of liability, and adopt a genuinely higher standard of responsibility, requiring some degree of fault (Lazar 2009).

The responsibility view is torn between pacifism on one hand, and a radical rejection of noncombatant immunity on the other. Neither outcome is attractive. One solution, proposed by McMahan (2004, 2010) and endorsed by Fabre (2009: 39) and Frowe among others, is to distinguish between the morality of war and the law of war. The responsibility view, they claim, is the correct account of war's morality, but the laws that govern conduct should be quite different. Thus, there should be a legal equality of combatants, because anyway both sides will invariably believe themselves justified, and do whatever combatants-J are entitled to do. Moreover, implementing the responsibility view would be too difficult, given the lack of information available to combatants, and their inability to administer harm in proportion to responsibility. And the laws of war should endorse noncombatant immunity, because extending permissions to kill noncombatants to combatants-J would lead to their abuse by combatants-U as well. A legal principle of discrimination between combatants and noncombatants is the best way to reduce innocent suffering in war in the long term.

This argument has met with some skepticism (e.g., Shue 2008, 2010). If the responsibility view is the correct account of the moral justification of war, and if it is impossible to apply it, then it is impossible to fight a morally justified war, and we should endorse pacifism. Stronger still, if the responsibility view simply cannot be applied to war, then how can it be called a morality of war? There is a parallel here with a debate in distributive justice (*see* JUSTICE; RAWLS, JOHN). A theory of distributive justice that presupposes deep altruism among members of society will look different from a theory that takes people as they are, just as a theory that presupposes a superabundance of resources will be different from one that recognizes some degree of scarcity. In general, a morality of Φing that cannot be applied to any actually feasible instances of Φing is not a morality of Φing. In Shue's view, the arguments in favor of rejecting the responsibility view at the level of law work with equal force against it as a theory of war's morality. Ultimately, the morality of war is just the morally best set of rules for actual armed conflicts.

Alternative Approaches

Critics of Walzer's rights-based contributions to *jus ad bellum* and *jus in bello* have identified some profound flaws in his arguments, but their positive proposals have been less compelling. Followed through consistently, they lead to unsettling conclusions, such as outlawing wars of national defense, and endorsing either pacifism, or a radical disregard for noncombatant immunity. The recurring problem seems to be the exaggerated emphasis on the weight of individual human rights. If we allow those rights to trump or exclude all other moral reasons, we are led to untenable practical conclusions. We can only reach plausible conclusions by fudging our theory of rights – for example, through the moral alchemy by which Walzer derives states' rights to sovereignty and territorial integrity from individual human rights, or his untenable account of how combatants-J lose their rights to life. We can move forward in at least three ways. First, we could positively endorse the controversial conclusions of the individualist responsibility view, and argue for the rejection

of commonsense thinking about the morality of war (e.g., Frowe forthcoming). Second, we could persist in the attempt to make our theory of rights more compatible with sensible conclusions about war (e.g., among anti-Walzerians, Rodin 2008 and Fabre 2009; among Walzerians, Emerton and Handfield 2009). Or, third, we could conclude that rights, while undoubtedly crucial to the ethics of war, are not the whole story, and seek other moral reasons that can override those grounded in rights (e.g., Lazar forthcoming; May 2007). This final section suggests alternative approaches to the just war debate, in which fundamental human rights play a less decisive role.

Yitzhak Benbaji's (2008, forthcoming) contractarian rethinking of the ethics of war is among the most ambitious attempts to develop an alternative justification for traditional views about *jus in bello* and *jus ad bellum*. Benbaji thinks that the Walzerian war convention – including the moral equality of combatants and noncombatant immunity – would be the object of a fair and mutually beneficial contract between states, as representatives of their citizens. States need an obedient military to defend their citizens' basic rights, he argues, but if we deny the moral equality of combatants, and insist that combatants-U are not permitted to fight, then potential combatants must make sure they are going to be combatants-J before they take up arms, and must refuse any order they think requires them to violate rights. The moral equality of combatants is, therefore, necessary for states to have an effective, obedient army to defend themselves. Moreover, everyone would agree to the principle of noncombatant immunity because it limits the suffering caused by war. Individual combatants waive their rights against attack by becoming members of the armed forces, because it is written into the institutional structure of soldiery that one is a permissible object of lethal attack by the enemy, in virtue of this fair and mutually beneficial convention. Becoming a soldier signifies agreement to this convention. Of course, this view has numerous weaknesses, but it is at least an attempt to rethink the underlying moral structure of just war theory, rather than simply continuing to rearrange a limited set of conceptual pieces.

Larry May (e.g., 2007) explains *jus in bello* by looking beyond the victims' rights to the responsibilities of combatants. He emphasizes the importance of warriors showing compassion, mercy, and humanity, arguing that these virtues are crucial if they are to distinguish themselves from murderers and barbarians. May also allows consequentialist elements (*see* CONSEQUENTIALISM) into his theory of *jus ad bellum*, bucking a trend of skepticism about that school of thought within the rights-based account of war (e.g., Rodin 2002). Simon Caney (2005) and James Pattison (2010) likewise argue that wars of humanitarian intervention in particular are justified when the rights protected are more numerous and weighty than the rights violated.

Besides leading to a rethink of basic problems of *jus in bello* and *jus ad bellum*, the impasse within the rights-based account of war also offers the opportunity to raise some quite different questions, not least those concerning justice after war, or *jus post bellum*, which has been surprisingly little discussed among just war theorists, but which is now receiving ever more attention (e.g., Orend 2000). However, there is

also room for looking beyond these conventional problems, and considering some different divisions in just war theory.

For example, much of the contemporary debate examines the moral reasons that apply to individual combatants in wartime as though there were no difference between a war fought between states, and a conflict fought between loose aggregates of people in a state of nature. Especially among Walzer's critics, there is little sensitivity to the institutional dimensions of morality – either the moral significance of the institutions that war places under threat, or the importance of institutions for justifying combatants' fighting. Christopher Kutz's (2005) work stands out as a rare attempt to explore the moral importance of membership of the armed forces of a state when it comes to the ethics of killing in war, with the same degree of philosophical rigor as is applied in the debate over rights (see also Estlund 2007). James Pattison (forthcoming) explores similar issues from the opposite perspective, asking what is distinctive about the use of force by private military companies, increasingly common in the military endeavors of liberal democracies. Is there a difference between the institutional relationship between mercenary and paymaster, and that between soldier and taxpayer? Cheyney Ryan (2009) has argued against the pernicious consequences of allowing the institutions of the modern military to become dissociated from people's ordinary lives, so that the true costs of war are not brought home to the majority.

Equally, Walzer's critics have tended to focus exclusively on analyzing war from the perspective of potential combatants, without paying proper attention to the specific reasons that confront political leaders. There is an assumption, sometimes explicitly stated (e.g., McMahan 2005; Øverland 2006: 458), that wars are nothing more than aggregates of individual cases of self- and other defense, such that political leaders should go to war if and when their subjects would justifiably choose to fight. They need to consider nothing else besides these moral reasons grounded in individual self-defense. And yet, political leaders clearly confront other reasons besides just these. Obviously, they must consider the geostrategic implications of the use of force, in a way that individuals defending themselves need not. They must also take into account the predictable wrong-doing that their forces will engage in – we know from history that the experience of war can be bestializing, and there will always be some individuals who, crazed with bloodlust or vengeance, will run amok. Political leaders also have far more information than do combatants, as well as a wider range of options, including to choose whether or not there will be a conflict – whereas potential combatants can choose only whether they engage in it themselves. Taking these contrasting sets of reasons together with the importance of institutions, there is an opening for a much more *political* just war theory.

Diverting our attention from the microfoundations of war toward institutions and political leaders might also lead us to consider how just war theory fits into a broader theory of international justice, a topic which is surprisingly rarely discussed (although see Rawls 1999; Caney 2005). This is especially important for our account of *jus post bellum* as we debate whether there is any morally relevant difference

between suffering caused by war, and suffering caused by poverty. However, it might also impact on *jus ad bellum*. If rich countries are responsible for conditions of poverty in poor countries, which lead to many people dying avoidably, then might this count as a just cause for war? Can the rights-based account of war avoid conclusions like these (Luban 1980)?

Additionally, new research must do more to recognize the fast-evolving nature of warfare. Stuck on the path established by Walzer, too much contemporary thinking presupposes outdated, possibly obsolete strategic models. More work is needed on the shift towards "risk-transfer warfare," whereby the governments of advanced democracies, worried about the electoral impact of allowing the costs of war to fall on their citizens, transfer risks away from their combatants toward enemy combatants and noncombatants, minimizing their own casualties while causing excessive collateral damage (Shaw 2005). New technologies must also be explored, such as the increased use of remote-controlled aircraft to deliver smart bombs to their targets (e.g., Kahn 2002). Perhaps most importantly, recent years have seen the deployment of military force against nonstate agents become the standard case of military engagement, at least for the advanced democracies. The twentieth-century paradigms of military conflict – World Wars I and II, Vietnam – are undoubtedly still relevant, but contemporary theorists need to look more closely at the asymmetrical conflicts that dominate contemporary warfare – at least by the advanced democracies (Gross 2010). National defense is ordinarily conceived as the protection of one nation-state against an overweening neighbor. How should it be understood when the enemy is a paramilitary organization that recognizes no constraints on permissible conduct, and may be capable of complex large-scale assaults on civilian centers, but conversely has far more restricted objectives than national takeover (*see* TERRORISM)?

***See also*:** CIVILIAN IMMUNITY; COLLATERAL DAMAGE; COLLECTIVE RESPONSIBILITY; CONSEQUENTIALISM; CRIMES AGAINST HUMANITY; DOCTRINE OF DOUBLE EFFECT; HUMANITARIAN INTERVENTION; INTERNATIONAL RELATIONS; JUST CAUSE (IN WAR); JUST WAR THEORY, HISTORY OF; JUSTICE; KILLING; MORAL EQUALITY OF COMBATANTS; PACIFISM; PREVENTIVE AND PREEMPTIVE WAR; PROPORTIONALITY (IN WAR); RAWLS, JOHN; REPARATIONS; RESPONSIBILITY; RIGHTS; SELF-DEFENSE; TERRORISM; WAR CRIMES

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