Killing in war

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Jeff McMahan's main contention in this book is that commonsense 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 both the just and unjust sides in a war have the same moral status and an equal liberty right to kill each other. His most serious argument against the equality thesis points out that the notion of making oneself liable to justified defensive attack merely by posing a threat to another has no intuitive plausibility 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 aims his criticism at several arguments intended to show that it is permissible to fight in an unjust war provided that one abides by the *ius in bello* constraints. The first such argument is that in most wars 'just' soldiers are also liable to be attacked because they pose a threat not only to the unjust soldiers on the other side, but also to innocent bystanders. If this argument holds true, 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—which does not comprise much more than half a page—is not comprehensive. 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 this issue are of the opinion that the necessity defence for inflicting damages on a third party does not defeat liability.

He also takes on 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 format and tries to make them as strong as possible before dissecting and refuting them convincingly. In a following chapter he does the same with several arguments that claim that unjust combatants are largely 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—a concept that is very important for his philosophy. He usefully distinguishes between different kinds of threats posed by persons, such as culpable threats, partially excused threats and excused threats, 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 his positions are counter-intuitive (for example, he argues 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 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 on the doctrine of double effect: the correctness of which 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. Whether this is indeed the case 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. His writing is lucid and the book stands as the most comprehensive and sophisticated criticism to date of both the idea of 'moral equality of combatants' and that civilians and soldiers can delegate their moral responsibility for the waging of an unjust war to their government. As a result, it will prove a most valuable read for anyone interested in just war theory.

Uwe Steinhoff

University of Hong Kong