

1

CAN SOLDIERS BE EXPECTED TO KNOW WHETHER THEIR WAR IS JUST?¹

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One school of thought about the morality of war holds that it is impermissible to fight in a war that lacks a just cause and that soldiers who fight in such a war cannot evade responsibility for their participation by claiming that the government alone is responsible for determining whether the wars it fights are just. It is, however, commonly argued against this view that it is unreasonable to expect soldiers to be competent to judge whether a war is just or unjust. They typically have limited factual information, believe that theirs is a just society incapable of unjust aggression, trust the claims of their government and superior officers, and so on. Soldiers who fight in wars that are objectively unjust because they lack a just cause (“unjust combatants”) therefore tend to have one or the other of two mistaken moral beliefs: either that their war is just or that, although their war may be unjust, their participation in it is nevertheless morally permissible. When this is so, does that mean that these soldiers are morally justified in fighting? If not, does it mean that they are at least morally excused – that is, that even though they act wrongly, they are not blameworthy for doing so?

Suppose that certain unjust combatants fight without knowing that their war is unjust. Their ignorance may take several forms. They may be mistaken about matters of empirical fact that are relevant to the moral evaluation of the war. The moral conclusion they draw from the mistaken empirical beliefs might or might not be the correct conclusion to draw from those beliefs. Either way, given that the factual beliefs are false, the probability that the moral belief based on them is true is bound to be low. Alternatively, their belief that their war is just may be false even though all their nonmoral beliefs that are relevant to the moral evaluation of the war are true. That is, although they know all the relevant nonmoral facts, they draw the wrong moral conclusion. In general, mistakes of this sort – those that are purely moral – are significantly less exculpating than mistakes of nonmoral fact, assuming that in both cases the degree of the person’s diligence, or lack of diligence, in the formation of the beliefs is the same. If someone knows all the nonmoral facts relevant to the evaluation of a war and there are no special circumstances that might excuse him for drawing the wrong moral conclusion, we regard him as culpable if he fails to draw the right conclusion. If, for example, a Nazi soldier knows that Poland poses no threat to Germany but believes that it is morally justified to seize Polish land by force for the expansion of the superior German nation, he has little or no excuse for his participation in aggression against Poland. Because such purely moral mistakes seldom

constitute a significant excusing condition, the following discussion of erroneous beliefs in war will concentrate on mistakes of nonmoral fact.

It is a commonplace in epistemology that it can sometimes be reasonable for a person to have a belief that is in fact false – that is, that he or she may be epistemically justified in having a belief that is false. This may be true when the relevant evidence available to the person is systematically misleading. If an unjust combatant has beliefs about nonmoral facts that are false but epistemically justified and he draws the moral conclusion that would be appropriate if those beliefs were true, we can say either that what he does on the basis of that that conclusion is *subjectively* right or justified, or that it is objectively wrong but nevertheless *excused*, either fully or at least to some degree. I will assume that our concern here is with objective justification, so that action that is objectively unjustified is at best excused.

One reason that action based on epistemically justified nonmoral beliefs might be less than fully excused is that there are *degrees* of epistemic justification. A person may be justified in having a certain belief, but only barely so. What this means is that while he is justified rather than unjustified in having the belief, the degree to which he can be justifiably confident in the truth of the belief is low. Alternatively, one might say that the degree of credence that the belief warrants is low. There are thus various possibilities in the case of the unjust combatant whose relevant nonmoral beliefs are epistemically justified: they may be weakly justified, strongly justified, or justified to some intermediate degree. These possibilities are relevant to the question whether he is morally excused for fighting. For whether and to what extent he has an epistemically-based excuse for fighting depends on whether and to what extent the nonmoral beliefs that underlie his belief that he is acting permissibly are epistemically justified.

Suppose, for example, that his relevant nonmoral beliefs are epistemically unjustified but that he accepts them uncritically because they cohere well with the distorted conception of the world supplied by an ideology he accepts. In that case, he has little or no epistemically-based excuse for participating in his side's unjust war.

Suppose, next, that the false nonmoral beliefs that support his decision to fight are epistemically justified, though only barely. That his beliefs are justified is certainly an excusing condition. Yet given that these beliefs warrant only a low level credence, the excuse is weaker than it would be if they instead warranted a high degree of credence – that is, if he could justifiably have a high degree of confidence that his relevant nonmoral beliefs are true.

There is another factor here that is perhaps even more important than the degree of credence he is warranted in according to his beliefs. This is that the degree to which his justified beliefs excuse his objectively wrongful action depends on how much is at stake, morally, in the choice he must make between fighting and not fighting. Suppose that, if he did not have the false nonmoral beliefs that support the permissibility of fighting, he would refuse to fight. The more that is at stake morally in the decision he makes based on these beliefs, the more important it is that his beliefs be true; and the more important it is that the beliefs be true, the less excuse he has if he is in error and acts on the basis of false beliefs. More specifically, the more that is at stake morally in the choice an agent makes on the basis of some belief, the higher the level of *justified* confidence the agent must have in the truth of the belief in order for the belief to ground an excuse of a fixed degree of strength, if the belief is in fact false.

It may help to clarify that last claim to give a schematic example. Suppose a soldier is commanded to fight in an unjust war. He believes, however, and with a moderately high level of credence, that the war is just and that his participation in it is permissible. Suppose that he is in fact epistemically justified in having that belief and in according it that degree of credence. Next imagine two possible variants of the example. In one, the war is small, victory by his side would not be tragic, and in any case he will be deployed in an area in which there is very unlikely

Can soldiers be expected to know whether their war is just?

to be any fighting, so that his participation is unlikely to make any significant difference. In these conditions, his belief may provide a strong excuse for his participation. In the other possible variant, victory by his side would be a catastrophe from an impartial point of view and his participation would be likely not only to involve the killing of numerous enemy combatants but also to make a significant contribution to his side's war effort. In these conditions, his belief, although justified, would provide only a much weaker excuse for his participation. This is intuitively plausible. The same false belief, with the same degree of epistemic justification, provides a stronger excuse when what is at stake is of lesser moral significance. When what is at stake is of greater moral significance, his belief must be better grounded to provide an excuse of equal strength if the belief turns out to be false.

"What is at stake morally" is not just a matter of the moral gravity of what a person will do if he acts on the basis of an epistemically justified belief – for example, the moral gravity of killing innocent people, which is what a combatant will do if he fights in a war that he justifiably but falsely believes is just. What is at stake is instead comparative: it is the difference between what may happen if an agent acts one way and what may happen if he acts in another way. In the case of a soldier, what is at stake in whether or not he fights is the *moral* difference between the probable outcomes of both options. In this context, the notion of "what is at stake" <AQ> presupposes uncertainty. Thus there are possible moral costs either way. When a soldier is deliberating about whether to fight in a war, and trying to determine whether participation is permissible, what is at stake morally is the moral difference between the two ways in which he might get it wrong: by fighting in a war that is unjust and by refusing to fight in a war that is just.

What makes the soldier's predicament so difficult morally is that, in a choice between going to war and not going to war, there is usually a very great deal at stake, and the conditions in which he must choose are typically conditions of substantial factual and moral uncertainty, in which the justified level of credence in *any* set of relevant factual beliefs is quite low. What should soldiers do in these circumstances? Should they, for example, act on the basis of the factual and moral beliefs that have the highest justified level of credence?

Here are a few simple observations that seem plausible, and that are specifically focused on the case of unjust combatants. Suppose a soldier who voluntarily enlisted earlier is suddenly commanded to fight in a war that has begun unexpectedly. He has little leisure for reflection and the relevant facts are obscure. His government has asserted various factual claims that, if true, would support its further claim that the war is just. But these factual claims have been disputed or denied by others, including experts among the soldier's own fellow citizens. The level of credence he is justified in having in either of the opposing sets of factual claims is low. It is clear, however, that his own country is not in danger. The war is thousands of miles away in a remote country that he knows almost nothing about. He does know, however, that most of the people he would be fighting against are citizens of the country in which the war is being fought. What ought he to do?

He might reflect on his options in the following way. The war is either just or unjust, but he does not know which. Indeed, the one thing he does know is that he lacks relevant knowledge, both factual and moral. Suppose that as a morally scrupulous person, his primary concern is with the impact of his action on the people in the country in which the war is occurring: that is, the people he would be fighting for and those he would be fighting against. If, on the one hand, he refuses to fight and the war is just, he will fail in his duty as a soldier to protect innocent people. He may even allow innocent people to be killed whom he could have saved. Yet if he refuses to fight, he is likely to be replaced by someone else who will be as effective as he would have been. Perhaps the real victim of his refusal to fight would be the person who would replace him and be exposed to the risks of war in his stead.

If, on the other hand, he decides to fight and the war is unjust, he will fail in his duty not to be an instrument in the service of unjust ends. He may also intentionally kill people who are innocent in the relevant sense as a means to those ends. Yet, he may reflect, if he were not to do these things, someone else would replace him and perhaps be even more efficient in killing innocent people and contributing to the achievement of the war's unjust aims.

In short, if he participates and the war is just, he may save innocent lives and make a small contribution to the achievement of a just cause. If he refuses to participate and the war is just, he will fail to save innocent lives and fail to contribute to the achievement of a just cause. If he participates and the war is unjust, he may kill innocent people and make a small contribution to the achievement of an unjust cause. If he refuses to participate and the war is unjust, he will have avoided killing innocent people and contributing to the achievement of an unjust cause. If he participates, whatever he does would probably have been done by someone else had he not participated, and if he does not participate, what he fails to do will probably be done by someone else instead. So it seems that where consequences are concerned, it makes little difference whether he participates or not.

But consequences are not all that matters morally. The soldier's options involve not just risks of harm to others but risks of his own *wrongdoing*. He faces *moral risks*, such as the risk of intentionally killing people who are in fact innocent, of wronging people and violating their rights.

There are three broad reasons why consideration of the moral risks the soldier faces may favor the refusal to fight. One derives from moral asymmetries between doing and allowing and between intending and merely foreseeing. If the soldier refuses to fight and the war turns out to be just, he may *allow* some innocent people to be killed whom he could have saved – though this would not be intended and these people might be saved by someone who replaces him. If he fights and the war turns out to be unjust, he may *intentionally kill* some people who are innocent – though they might also have been killed by his replacement, or someone else, had he not fought. Most of us believe that in most contexts it is more seriously wrong to kill innocent people intentionally than it is to allow innocent people to be killed as an unintended effect of one's failure to act. Our negative duty not to kill is in general stronger than our positive duty to prevent people from being killed. If, as in this soldier's case, the factual claims that support the view that the war is just seem no more likely to be true than those that support the contrary view, it seems that the moral presumption is against fighting, for fighting risks intentionally killing people who are innocent, while not fighting risks unintentionally allowing people who are innocent to be killed.

The force of this point should not, however, be overstated. The claim that he risks intentionally killing innocent people is ambiguous. It could mean that he risks intentionally killing people he will know to be innocent. This is indeed specially objectionable but it is not what this soldier risks. Rather, he risks intentionally killing people who he will believe are not innocent but who are in fact innocent. This may still be more objectionable than killing such people foreseeably but unintentionally, but it is not so objectionable as intentionally killing people he knows to be innocent.

The second broad reason why the moral risks soldiers face may sometimes favor refusal to fight appeals to considerations that are available to soldiers independently of the facts about the particular war in which they have been commanded to fight. The first such consideration is that the purely statistical probability that a war is unjust is higher than the probability that it is just. This is true if either of two quite plausible assumptions is correct. The first of these assumptions is that while there can be wars in which each side fights unjustly – as Anscombe famously says, “human pride, malice and cruelty are so usual that it is true to say that wars have mostly been mere wickedness on both sides” – there cannot be wars in which both sides are fighting

Can soldiers be expected to know whether their war is just?

a just war.² It might, of course, be true that if each side fights unjustly, each also fights justly in resisting the other's unjust aims; hence each would be fighting a just war. But in such a case, each should simply abandon its unjust aim rather than fighting. If only one were to abandon its unjust aim, the other would then be fighting an unjust war and could be justly resisted. Suppose, then, that there cannot be wars that are just on both sides. This assumption, together with the claim that some wars are just on one side and unjust on the other, while others are unjust on both sides, implies that collectives fighting in war have more often fought unjustly than justly, and that this must continue to be true.

The third consideration that supports the view that, in conditions of uncertainty, the moral presumption is against fighting is that most people are strongly disposed to believe that their side in any dispute is in the right. Not only is it true that a war in which a soldier has been commanded to fight is statistically more likely to be unjust than just, but it is also true that he is highly likely to believe that it is just even when it is unjust.

These two considerations combine to suggest that soldiers should be skeptical of their own sense that their war is just, especially in cases in which the justification for the war is controversial. They should, however, be disposed to *trust* their judgment when they are inclined to believe that their war is unjust. Independently of the facts of the particular case, their judgment is supported not only by statistical probability but also by its being contrary to the natural bias in favor of believing that one is right. In the case of most soldiers, the evidence for their war's being unjust has to be unusually compelling to overcome this bias, and in general the best explanation of why it is compelling is that the war actually *is* unjust.

That the risk of being wrong is greater when a soldier believes his war is just than when he believes it is unjust is one reason why the moral risks are greater in a decision to fight than in a decision not to fight. When a soldier is uncertain about the morality of a war, the presumption should be that the *morally* safer course is not to fight.

The worry, of course, is that the morally safer course for individual combatants may be disastrous for their society. As the traditional just war theorist Francisco de Vitoria argued, "if subjects fail to obey their prince in war from scruples of doubt, they run the risk of betraying the commonwealth into the hands of the enemy, which is much worse than fighting the enemy, doubts notwithstanding; therefore they had better fight."³ Yet this risk is not as great as Vitoria supposed, at least in our time, if not in his. For when a contemporary state is being unjustly attacked or invaded, it is extremely unlikely that its soldiers will have significant doubts about whether it is permissible to fight in self-defense, either individual or national. One will therefore be hard pressed to find recorded instances in which a significant proportion of soldiers refused to fight on conscientious but not pacifist grounds in a war that was both wholly defensive and objectively just – and even harder pressed to find an instance of such a war that was lost because too many soldiers refused on conscientious grounds to fight in it. And even if a soldier does believe that the war is unjust and refuses to fight, the chance that he will be setting an example that others will be tempted to follow is remote, principally because just wars of national defense are almost always *obviously* just. It therefore seems that Vitoria's concern is misplaced. It is simply not true that if soldiers believe that there is a presumption against fighting when they have significant doubts about the justice of a war in which they have been commanded to fight, that will imperil the security of their society against unjust foreign attack.

One might argue that Vitoria's concern can be more easily allayed. The reason, it might be claimed, why the insistence that soldiers be mindful of the moral risks of fighting need not put their own society at risk is that skepticism about the justice of purely defensive wars is simply never warranted. Just as wars of defense against an armed attack are always permitted under

international law, so they are always morally permissible. A soldier is thus entitled to presume, with a high degree of credence, that a war fought against foreign forces, and fought at least initially and perhaps entirely within the borders of his own country, is a just war, so that fighting in it is morally the safer course.

This is, however, a simplistic understanding of defensive war. It is, for one thing, not always clear what counts as a war of defense. When what is at issue is the right to the possession or habitation of disputed territory, what seems like defensive war to one side will look like aggression to the other, and vice versa. In general, moreover, if it is possible for a genuinely defensive war to be unjust, then at least in cases in which it is possible to know the facts that make the war unjust, it must be possible to fight in it without having an epistemically-based excuse, either full or partial. And it is indeed possible for defensive war to be unjust. A defensive war is unjust when the offensive war to which it is a response is a just war. As Emmerich de Vattel wrote in the eighteenth century, "if the enemy who wages offensive war has justice on his side, we have no right to make forcible opposition; and the defensive war then becomes unjust."⁴ Most subsequent moral and legal theorists have agreed.

There are at least two types of offensive or aggressive war that are potentially just: preventive war and humanitarian intervention. These are forms of war that are not in the strict sense defensive: they are not responsive to an actual or imminent attack by another state. They are instead responsive, respectively, to a threat of attack that is not imminent, and to violations of human rights within the state that is attacked.

Consider first a just preventive war. Suppose that one state is engaged in planning and preparing for an unjust war against another, that the government of the state that is the potential victim has discovered the plans and preparations, that nonviolent methods have only a very low probability of being able to avert the war, and that if defensive action is deferred until the attack begins, or is about to begin, it will be less effective and more destructive than it would be if undertaken now, preventively. Suppose that in these conditions the state that is threatened launches a preventive war and assume for the sake of argument that this war is just. Assume further that the state that is preventively attacked could, rather than fighting back, renounce its plans for unjust war and offer adequate guarantees that it will not attack. But instead its government decides to fight a war that, though defensive, is unnecessary and unjust.

What ought its soldiers to do when ordered to fight in this defensive war and how ought we to think of them if they fight? Suppose that their government had carefully concealed its plans for unjust war from both its citizens and its soldiers, and that it now indignantly denies that it has had any such plans, which were discovered by the intended victim only through espionage, so that the evidence of the plan cannot be fully disclosed without revealing and thus compromising the sources of the intelligence. This is the most likely background to such a case, since overt preparations for unjust war forfeit the advantages of surprise and invite defensive preparations or even preventive attack. In these conditions, in which ordinary soldiers have no way of knowing about their government's plans and little reason to believe the allegations made by the state that has invaded their country, and in which their immediate deployment is necessary for successful defense, they may be epistemically justified in having a high degree of credence in the belief that their war is just and may thus have a strong or even full excuse for fighting.

This case seems to confirm the view that soldiers are entitled to presume that a defensive war is just and are therefore wholly or at least partially excused if a defensive war turns out to be unjust. There is, however, a second type of unjust defensive war that challenges this view – namely, defense against justified humanitarian intervention. When external intervention is necessary to stop a government from extensively violating the human rights of some group of its citizens, and when the intervention is proportionate to the gravity of the violations and the

Can soldiers be expected to know whether their war is just?

intended beneficiaries clearly welcome it, humanitarian intervention can be just. When this is so, military resistance to the intervention is objectively wrong.

In this kind of case, it is doubtful that soldiers can be epistemically justified in believing that participation in defensive war is permissible; it is, therefore, also doubtful that they have an epistemically-based excuse if they do participate. For if the violations of human rights are sufficiently extensive to justify military intervention, and sufficiently notorious actually to provoke it, it is extremely unlikely that soldiers will have been unaware of them, or therefore of the reason for the attack that they have been called upon to repel. They should know that their action shields the government in its violations of the human rights of their fellow citizens.

Matters of this sort are, however, never simple. The justification for humanitarian intervention is seldom uncontroversial and thus it is always possible that soldiers may be aware that their government is guilty of violating the human rights of the members of some domestic group and yet reasonably, though mistakenly, believe that the violations are insufficient to justify military intervention. When that is the case, they may have an epistemically-based excuse for fighting, the strength of which would depend upon the degree to which they are justified in believing that the defensive war is just, despite their government's wrongdoing.

It seems, in short, that the claims I have made about the moral risks involved in fighting in war do not apply, at least not with equal force, in the case of defensive war. But even in the case of apparently defensive war, there can be legitimate doubts about whether the war really is defensive and about whether, even if it is clearly defensive, it is just. So even when the war in which a soldier is commanded to fight seems to be entirely defensive, he cannot take it for granted that it is just. There is scope for epistemic error and if the war turns out to be unjust, he cannot count on being automatically excused for participating in it.

Thus far I have considered the epistemically-based excuses that may be available to unjust combatants largely in the abstract. But we should ask whether there are any defensible generalizations about the excuses that unjust combatants have in practice. Are many, or most, unjust combatants excused on grounds of nonculpable ignorance, and if so to what degree?

The general points I have made about what combatants can know independently of the facts about the particular war in which they have been commanded to fight are certainly relevant. Except in cases in which the war is clearly defensive and clearly not responsive to a justified instance of humanitarian intervention, soldiers can know that on a purely statistical basis their war is more likely to be unjust than just and that they will be strongly inclined to believe that it is just even if it is unjust. Assuming that these background considerations ought to dispose them to skepticism, and given that what is at stake in their decision is of the utmost importance morally, it seems clear that it is morally incumbent upon them to deliberate carefully and to be confident of their ability to rebut the apparent presumption against fighting before they commit themselves to fight. Yet it is highly doubtful that many do take seriously their moral duty to examine the reasons for and against their participation in the war.

Part of the evidence for this claim is empirical. It is found in the memoirs that soldiers write, the anecdotal accounts they give to journalists of why they joined, what their thoughts were when they were sent to fight, and so on. It is hard to find descriptions of prolonged and serious moral deliberation in these accounts. There are some but, to the best of my knowledge, not many.

The other, and better, part of the evidence is the extreme rarity of instances in which a soldier or a group of soldiers refuses on conscientious grounds to participate in a war. There has certainly been no shortage of unjust wars, but cases of active-duty soldiers who have refused to participate in them are not common. There are three possibilities. One is that soldiers think carefully about the morality of the war but in the end conscientiously conclude that the war is just. While this is bound to happen in some cases, it cannot be the correct explanation in most

Jeff McMahan

cases. It is simply not credible to suppose that most soldiers who fight in unjust wars do deliberate carefully about the morality of the war but invariably get it wrong. It is hard to believe that virtually everyone is that unconquerably obtuse.

The second possibility is that soldiers do deliberate carefully and succeed in many cases in recognizing that their war is unjust but are then consistently overwhelmed by duress or are too weak-willed or cowardly to refuse to fight. This too is implausible, if only because it makes little sense to suppose that people would bother to engage in the hard work of moral reflection unless they expected to be able to act on their conclusions. If they were motivated to deliberate by the desire to avoid wrongdoing, it could hardly be that this desire would then be wholly ineffectual in guiding their action in virtually all cases.

It seems, therefore, that the third possibility is what actually happens in most cases: soldiers simply do not often engage in scrupulous moral deliberation about whether their country's war is just or about whether they ought to fight in it. Yet after the fact they tend to claim a great variety of epistemically-based excuses. In discussing two notorious and egregious Nazi war criminals, Eichmann and Höss, Primo Levi rehearses the litany of excuses that he notes are claimed by all who are accused of wrongdoing in war.

In substance, these two defended themselves in the classical manner of the Nazi militia, or, better yet, of all militiamen: we have been educated in absolute obedience, hierarchy, nationalism; we have been imbued with slogans, intoxicated with ceremonies and demonstrations; we have been taught that the only justice was that which was to the advantage of our people and that the only truth was the words of the Leader. What do you want from us? How can you even think to expect from us, after the fact, a behavior different from ours and that of all those who were like us? We were the diligent executors, and for our diligence we were praised and promoted. The decisions were not ours because the regime in which we grew up did not permit autonomous decisions: others have decided for us, and that was the only way it could have happened because our ability to decide had been amputated. Therefore we are not responsible.⁵

Levi recounts these familiar excuses with scorn. Why? Not because they simply cannot apply to officials as highly placed as Eichmann and Höss, for Levi explicitly says that they are claimed by "all militiamen." (It is, however, worth noting that the epistemically-based excuses tend to have lesser application the higher a person is in the chain of command.) Perhaps Levi's sense that there is an element of bad faith in the assertion of these excuses derives from the fact that they can all to some extent be anticipated, predicted in advance. We have all heard these claims before – and so had all those who asserted them, long before they found it necessary to proclaim them on their own behalf. But the more these epistemic excuses are publicly asserted, the less available they become. The more often it is claimed that unjust combatants are excused by their ignorance, the less plausible it becomes for subsequent unjust combatants to plead ignorance as an excuse. If they know that their predecessors have pleaded ignorance as an excuse, they know that there are important issues of knowledge and responsibility in war. This makes it less plausible for them to plead ignorance as an excuse. If they were aware that there were important matters about which they were ignorant, why did they not seek to overcome their epistemic deficiencies before committing themselves to fight?

They say, for example, they believed their war was just; but they knew that the same was true of their enemy, and that it was unlikely that they could both be right. Why did this not give them pause? They say they were indoctrinated and conditioned to obey; but they knew when they joined that they would be, and knew when they set off to fight that they had been.

Can soldiers be expected to know whether their war is just?

They say their government deceived them; but they knew in advance that governments routinely deceive their citizens, especially in matters of war. People living under totalitarian or authoritarian rule know that their government censors, manipulates, and in general controls the media. If they know from this that their government does not trust them with the truth, they should expect to be lied to. Thus, when soldiers in a totalitarian or authoritarian state fight in an unjust war, their best excuse is likely to be duress. By contrast, soldiers in a democratic country with a free press may have a better excuse if they have fought in an unjust war on the basis of lies told them by their government. But even they may know that their government has fought wars for reasons that do not bear exposure and thus have lied to furnish an acceptable public justification. The *Pentagon Papers* revealed an assortment of lies told to rally support for the war in Vietnam; Reagan lied about the nature of the *Contras* and the sources of their funding in order to make war against Nicaragua; and members of the George W. Bush administration lied repeatedly about weapons of mass destruction in Iraq in order to justify the invasion and occupation of that country to the UN, the Congress, and the American public. The soldiers who will fight in the US's next war will have had access to these facts.

It matters, of course, what the recent history of a soldier's country is like, and what the character of its culture is. It is, for example, morally less risky for a soldier in Norway to obey an order to fight than it is for a soldier in the US to do so, and the Norwegian soldier will accordingly have a stronger epistemic excuse if the war in which he fights turns out to be unjust. But in general it seems that soldiers are unjustifiably complacent in their assumption that the wars in which they are commanded to fight are just. Indeed, whether they turn out to be just or unjust combatants often involves a significant element of moral luck, in that those who fight for a just cause might, if their circumstances were different, fight for an unjust cause with an equal conviction of being in the right. Given the gravity of what is at stake in a decision to go to war, there seem to be relatively few cases in which a soldier who becomes an unjust combatant can truthfully claim that he actually did all of the epistemic work that could reasonably be expected of him and thus has a full epistemically-based excuse for his participation in an unjust war. Most unjust combatants have been negligent with respect to what are, in the context, their rather stringent epistemic responsibilities and thus their ignorance, and the action based on it, are culpable to varying degrees, which is just to say that although their participation in an unjust war may be excused, the excuse is in general partial rather than full.

My argument that the moral risks involved in participation in war may exceed those of non-participation exerts pressure in the direction of a contingent form of pacifism. But this pressure can be resisted, and successfully overcome, when war is just. It can be overcome by careful attention to the facts and careful moral reasoning. There was little uncertainty, for example, that the Allied war against Nazi Germany, and the war against imperial Japan, were just wars. In principle, there can be cases in which a war is in fact just and yet most soldiers are not epistemically justified in believing that it is just, or are even epistemically justified in believing that it is unjust. The risk of this happening is greatest in countries in which the flow of information is tightly controlled and manipulated by the government. Yet in such countries there is little risk that a just war will in fact go unfought, since governments in these countries tend to supply motivation to their soldiers by duress rather than persuasion.

The prevention of unjust wars is among the most important of moral aims. One significant means to the achievement of this aim is to eliminate, to the greatest extent possible, the epistemic excuses available to unjust combatants or, in other words, to enable soldiers to have both a greatly enhanced understanding of the moral character of the war in which they are commanded to fight, and certain forms of legal support if their improved moral understanding leads them to engage in conscientious refusal to fight. I have elsewhere proposed that the best way

Jeff McMahan

to pursue this goal would be to establish an impartial international court whose function would be to interpret and administer a reformed and morally better-informed body of law devoted to matters of *jus ad bellum*.⁶ But it would take us too far afield to pursue this suggestion here. The important point for our purposes is that if we could offer soldiers a source of guidance about the morality of war that would be more impartial and more authoritative than their own government, this could provide a basis for holding them accountable for their participation in unjust wars – perhaps accountable in law but certainly accountable to their own consciences. This increased accountability could in turn give them an incentive to take their epistemic duties more seriously than they tend to do at present.

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Notes

- 1 This chapter is adapted from *Killing in War* by Jeff McMahan (2009), extract (6769w) from pp. 137–154, by permission of Oxford University Press
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