

## Postscript

Jeff McMahan

As the splendid essays in this book attest, just war theory, as a moral rather than a legal theory, has largely abandoned the view that whether a person is a morally legitimate target of attack in war depends on whether he or she has the status of being in a certain category, such as the category of soldiers or the category of civilians. Most contemporary just war theorists have come to believe that the idea that people can be liable to attack simply by virtue of being a member of a group, such as a military organization, is too much like the idea, common among terrorists, that people can be liable to attack simply by virtue of being citizens of a certain state, or members of a certain national group, independently of what they actually *do*. Accordingly, many just war theorists now accept that whether people are morally liable to attack is matter of what they, as individuals, have *done* or are *doing*. On this view, merely being a member of a military organization is not sufficient to make a person liable to attack in war; nor is having civilian status sufficient to exempt a person from liability to harm in war.

I interpret this shift in understanding as a belated recognition of the principle to which Thomas Nagel appealed forty-five years ago in his seminal essay, "War and Massacre," that "hostile treatment of any person must be justified in terms of something *about that person* which makes the treatment appropriate." A person's mere membership in a group does not necessarily make hostile treatment of that person appropriate even if such treatment is appropriate for members who act in ways that are characteristic of the group and its purposes. Thus, while members of a military organization characteristically strive during a state of war to kill or injure members of the opposing military organization, some, such as military lawyers, may instead devote all their efforts to constraining the violent and destructive action of their fellow members. It is simply a mistake to suppose that their membership in the organization alone makes hostile treatment of them by enemy soldiers morally appropriate. Similarly, hostile treatment of a civilian physicist in Nazi Germany who is working to provide Hitler with an atom bomb is entirely appropriate, even though hostile treatment of other civilians who are uninvolved in the war would not be. What matters to liability in these and other cases is what people do – for example, whether they are morally responsible for threats of unjustified harm – not whether they are properly classifiable as members of some group.

In some moods, traditional just war theorists seemed to endorse a doctrine of liability and to want their criterion of liability to attack in war to be action-based rather than status-based. Walzer, for example, wrote that the "problem is not to describe how immunity is gained, but how it is lost. We are all immune to start with; our right not to be attacked ... is lost by those who bear arms ... because they pose a danger to other people." (*Just and Unjust Wars*, 145) According to this view, the criterion of liability to attack in war is, in effect, posing a threat to others. Those who pose a threat are combatants; those who do not are noncombatants. The former are liable to attack; the latter are not, but retain their immunity.

Yet this view does not coincide with the received view that all members of the military on both sides in a war are legitimate targets of attack while no

civilians are (with the exception, perhaps, of members of the government at the head of the military chain of command). As revisionist just war theorists have pointed out and as I noted earlier, not all members of the military pose a threat, or contribute to threats posed by others; and many civilians make vital contributions to threats directly posed by others. Suppose, moreover, that a group of civilians are intentionally and wrongly attacked by soldiers in a time of war and that they resort to self-defensive violence in an effort to save themselves. No one, not even traditional just war theorists, suppose that they thereby make themselves liable to attack. Yet “because they pose a danger to other people,” they satisfy Walzer’s suggested criterion of liability in just the way that combatants fighting for a just cause do. So it turns out that, to the extent that traditional just war theory has a criterion of liability to attack, it is status-based rather than action-based. It is, rather like the means of discrimination favored by terrorists, a doctrine of liability by association, combined with a doctrine of immunity by association.

The failure of traditional just war theory to offer a plausible account of what makes a person a morally legitimate target of attack in war has left contemporary just war theorists the formidable task of trying to develop one. Many of these theorists have sought to build from the ground up, starting with the general question of what can make a person liable to attack in contexts other than war – for example, in self-defense or third-party defense of another (“other-defense”). The literature on the ethics of self- and other-defense has therefore burgeoned, with the discussions becoming ever more probing, sophisticated, subtle, and rigorous in argumentation.

The questions are legion. Is culpability necessary for liability? Is moral responsibility necessary for liability? Is it even necessary for liability that one make a causal contribution to a threat? Is threatening to violate a right necessary for liability? Or might a person be liable to be harmed as a means of preventing her from acting in a way that would be impersonally bad though not worse for anyone? Can a person become liable to defensive harming by acting in a way that will *justifiably* infringe or override a right? Can someone who only *appears* to pose a threat, or bluffs about posing a threat, be liable to be harmed? Is someone who reasonably but mistakenly believes he is threatened and takes what he believes to be necessary defensive action then liable to defensive harm? Does a defender who threatens to harm an aggressor in a way that is unnecessary or disproportionate thereby make himself liable to defensive harming by the aggressor or a third party? Do the constraints of proportionality and necessity have to be satisfied for a person to be liable to be harmed or can a person be liable to be harmed even when harming him would be unnecessary or disproportionate?

These are only a few of the questions that are being debated in discussions of the morality of self- and other-defense. All are difficult and all are relevant in one way or another to issues of liability in war. None has been decisively answered. So the debates continue. The essays gathered in this book address some of these questions and make important advances (on occasion by correcting mistakes that I have made!). And of course they address other important questions as well. Although much remains to be done, the progress these essays make provides renewed grounds for optimism that we will continue to enhance our understanding of the morality both of defensive harming generally and of

war in particular. And it is reasonable to hope that a deeper and clearer understanding of the morality of war will eventually inform the practice of war, both by reducing the incidence of war and by diminishing the wrongful harms inflicted the participants.