

What Moral Justifications Can There Be For Ever Allowing Killing In Wartime?

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MICHAEL BURTT, AUG 20 2016

Combatants in war cause immense damage. Not only do they destroy the environment, property, and resources; but they also wound, maim and kill (Lazar 2009: 699). Most importantly they kill – a deed that would normally be considered a moral atrocity (Lazar 2009:699). Individuals possess a right to life as a matter of justice, and as a consequence we all possess a corresponding duty to respect others claim to this right (Lazar 2009: 699). To kill is therefore a breach of that moral duty. Yet few would call into question the morality of an Allied combatant who killed a German soldier, during the course of battle, in World War II. As Lazar asserts, to kill in any context other than in war, or in self-defence[1] during ordinary circumstances, is a violation of our duty to uphold the right of others to life (Lazar 2009: 699-700). This implies that killing during war can be morally justified, at a minimum through appeals to self-defence.

According to Lazar there are two approaches one can adopt to justify a breach of the moral duties we possess ordinarily – in this case killing (Lazar 2009: 699). The first approach is to maintain that in the '*relevant situation*' the duty does not in fact obtain and hence there is no corresponding breach (Lazar 2009: 699). The second is to make the claim that whilst our actions are indeed unjust, a more compelling moral consideration is at stake that requires us to breach our ethical duties (Lazar 2009: 699). The later situation could be considered a moral tragedy because "each viable option you face involves a severe moral violation" (Orend 2005, cited in Bellamy 2004: 830). Because the current paper aims to deal with whether killing in wartime can be just, and if so under what circumstances, it will focus predominantly on Lazar's first approach.

In order to investigate Lazar's claim that killing in wartime can be justified I will deconstruct his first approach by analysing two ethical propositions: (a) wartime qualifies as a '*relevant situation*' in which our ordinary moral duty to not kill no longer holds and; (b) the only moral reason that justifies killing in war (as in ordinary circumstances) is self-defence. I will take into account the self-defence exception (referred to by Lazar above) because traditional justifications surrounding the use of force, and the right to kill, rely upon such principles (Linklater 1995: 337). This method of enquiry will allow me to unpack the moral issues that surround the act of killing, under ordinary circumstances and during wartime in order to investigate whether parallels or tensions exist between each context. This paper will proceed with a brief discussion of the traditional theory of the just war before analysing proposition (a). It will then evaluate proposition (b) through an engagement with the competing narratives that exist in relation to wartime killing and its relationship to principles of self-defence. I will argue that both proposition (a) and (b) are false because combatants in war do not lose their claim to a right to life. Thus killing in wartime can never be *morally* justified; hence war exists as a moral tragedy (Bellamy 2004: 830).

In order to deconstruct propositions (a) and (b) one first needs an understanding of the traditional theory of the just war. According to McMahan the traditional theory of the just war consists of two sets of principles viz. *jus ad bellum* and *jus in bello* (McMahan 2004: 693). *Jus ad bellum* governs the justness of the resort to war, that is, 'when is it right to fight' (Bellamy 2012: 219; McMahan 2004: 693). *Jus in bello*, on the other hand, governs the moral conduct of war – 'how should war be waged' (Bellamy 2012: 222; McMahan 2004: 693).

To turn firstly to proposition (a) – 'wartime qualifies as a '*relevant situation*' in which our ordinary moral duty to not kill

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no longer holds.' Several aspects of this claim require closer inspection in order to assess its robustness. Firstly, according to rules of *jus in bello* the component of proposition (a) that states, 'our ordinary moral duty to not kill no longer holds,' is clearly problematic. Proposition (a) makes no distinction with regard to whom we have a moral duty not to kill. As McMahan notes combatants in war do not have a right to kill anyone, in fact a central requirement of *jus in bello* is that of discrimination, that is, soldiers must not target non-combatants (McMahan 2004: 694).

Secondly, does war qualify as a '*relevant situation*,' that is, a situation that allows us to abandon our moral duty not to kill? Thucydides perhaps most famously articulated such a view by proclaiming "right [justice], as the word goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must" (cited in Bellamy 2004: 829). This has been interpreted, time and time again as the most explicit verbalisation that ethics and morality have no practical significance in war (Howse 2013: 18). Walzer dismisses this 'realist' position – that characteristics of wartime, such as necessity and duress, allow for war to take place in an ethical vacuum (Gertz 2008: 247; Howse 2013: 20). Rather, concepts of morality play a role, either explicitly or implicitly, in "determining the responsibility or blame of those engaged in its conduct," (Howse 2013: 20) thus shaping the moral parameters of how war should be waged. Consequently one cannot disband their duty to not kill simply because they reside in the context of war. Therefore at this point in my argument I will reject proposition (a).

To turn now to proposition (b) – 'the only moral reason that justifies killing in war (as in ordinary circumstances) is self-defence.' Principles of self-defence state that when person 'A' attacks person 'B', under certain conditions person 'A' can be liable to defensive harm such that no wrong is committed in harming them (Lazar 2009: 700). This is because under such circumstances person 'A' loses their claim to a right to life (because of their unjust actions) and therefore person 'B' no longer possesses a duty to not kill them (Lazar 2009: 700). Individual attacks would clearly arise commonly within wartime, thus if combatants in war are to kill justly, according to principles of self-defence, one must explain how victims surrender their right to life (Lazar 2009: 700).

The issue of how victims lose their right to life in war with regard to self-defence is one of great contention (Lazar 2009: 700). Under ordinary circumstances, if person 'A' physically attacks person 'B' there are few moral justifications[2] person 'A' can appeal to, to excuse their aggression (Lazar 2009: 706). Hence person 'A's unjust behaviour causes them to lose their claim to a right to life (Lazar 2009: 700). In wartime however, is a combatant who fires at an enemy soldier during battle, and hence *attacking* them, acting unjustly? This question is important because if the combatant ('X') is indeed acting unjustly, according to Lazar's principles of self-defence, they lose their claim to a right to life (Lazar 2009: 700). Hence the enemy soldier ('Y') no longer possesses a duty to not kill 'X' and can justly retaliate with lethal aggression (Lazar 2009: 700). If however 'X' is acting within moral parameters in their attempt to kill 'Y', according to the aforementioned principles of self-defence, 'X' does not lose their right to life claim. Therefore what options are available to 'Y' in such a moral dilemma?

There are in fact several contending positions on the answer to this question. Philosophers such as Anscombe for example, make the argument that one's right to life cannot be abolished if they are acting in a morally justifiable way (Lazar 2009: 700). Such scholars suggest that we should therefore make a distinction between combatants on the just side and those on the unjust side of war; the just side being the one who met the requirements to wage war according to the traditional principles of *jus ad bellum* (Lazar 2009: 700). According to this stance soldiers fighting on the side who did not meet the requirements of *jus ad bellum* are unjust warriors, who do not possess a claim to a right to life. Hence should they attack opposing combatants they are liable to defensive harm and can therefore be killed justly (Lazar 2009: 701).

Walzer and Finlay reject the position espoused by scholars such as Anscombe through appeals to notions of moral responsibility (Lazar 2009: 701). As Finlay asserts combatants/soldiers in war generally do not have a say in the justness of the wars their leaders decide to wage (Finlay 2010: 147; Parsons 2012: 669). They are excluded from the decision-making process with respect to whether the resort to war, made by the leaders of the political community they are a part of, meets *jus ad bellum* requirements (Finlay 2010: 147). Consequently if they are to participate in a war that is unjust (according to *jus ad bellum*) they are free from moral responsibility, provided they respect the rules of *jus in bello* (Finlay 2010: 147) – for Walzer, "their war is not their crime"; "for the war itself ... soldiers are not responsible" (1977, cited in McMahan 2004: 700). Because, as Walzer argues, a soldier fighting an unjust war lacks

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moral responsibility they retain their claim to a right to life, according to the principles of self-defence. (McMahan 2004: 700).

The concept of moral responsibility as embraced by Walzer and Finlay exposes flaws in the stance adopted by philosophers such as Anscombe (see above). As McMahan notes however, Walzer's account of moral responsibility rests upon an important assumption, that is, those who fight unjust wars (according to principles of *jus ad bellum*) do so in the absence of full freedom of choice (2004: 700). In 'Just and Unjust Wars' Walzer asserts that the 'necessity' of war, and the morality of participation created by notions of patriotism, causes "personal choice" to "effectively disappear" (1977, cited in McMahan 2004: 699). This implies that all combatants on the unjust side of war participate on the grounds of 'nonculpable ignorance' or out of compulsion (Lazar 2009: 707), which McMahan argues is not fully representative of reality (McMahan 2004: 700).

Perhaps more problematically however; Walzer's assumption fails to account for those who knowingly participate in an unjust war voluntarily (McMahan 2004: 700). For combatants who fall into this category, I argue that they lose their claim to moral irresponsibility, and in accordance with the logic of Anscombe, lose their claim to a right to life, and can justifiably be killed by opposing soldiers should they attack them (Lazar 2009: 701). Whilst this a reasonable claim in theory, as Lazar points out, differentiating between those combatants who are morally responsible and those who are not is an impossible task (Lazar 2009: 707-708).

What then are the ramifications of the preceding discussion on proposition (b)? – 'The only moral reason that justifies killing in war (as in ordinary circumstances) is self-defence.' Based on the principles of self-defence provided by Lazar (Lazar 2009: 700), in order to kill, one can only do so defensively, against an unjust attacker – who because of their unjust actions has lost their right to life (Lazar 2009: 700). As I have argued above however, in war, combatants are acting justly if they meet the following criterion: they act in accordance with the requirements of *jus in bello*; fight a just war, that is, a war that meets *jus ad bellum* criteria; or are morally irresponsible (Finlay 2010: 147; Lazar 2009: 700; McMahan 2004: 700). The only unjust combatants, as discussed above, are those who partake in an unjust war, knowingly and voluntarily (Lazar 2009: 701). Combatants in the latter category could be significant in some wars, but in any case, identifying them in practice is a futile endeavour (Lazar 2009: 707-708). To take the contemporary case of the Islamic State (IS) for example, it would be reasonable to assume that many of the IS soldiers are voluntary participants, fighting a war that most would deem as unjust according to *jus ad bellum*, and in a way that contradicts the laws of *jus in bello*. Yet it would be wrong to assume that none of these soldiers are participating under duress, and some aren't abiding by the conventions of *jus in bello*. Thus even in the case of IS some participants may in fact be acting justly. Thus according to self-defence principles these combatants possess a right to life and cannot be killed justly. Therefore combatants in war must err on the side of caution and assume that all combatants are just[3].

As a result of the preceding argument, principles of self-defence simply do not hold when applied to killing in wartime. Because I have argued that all combatants should be assumed just, they consequently possess a claim to a right to life, and hence cannot be killed justly according to principles of self-defence. Resultantly proposition (b) – 'the only moral reason that justifies killing in war (as in ordinary circumstances) is self-defence' – can be rejected.

Thus if both propositions (a) and (b) are false then logically there are only two possible results. Firstly, there is something 'special' about war itself that allows for morally just killing that would ordinarily be considered unjust; or secondly, war is indeed a moral tragedy where killing can never be just but is required out of necessity (Bellamy 2004: 830). To deal with the first result; the conventional view of the ethics of war, advocated most famously by Walzer, argues that in war, by posing a threat to others' lives, combatants forfeit (or at least weaken) their claim to a right to life, and hence can be liable to be killed and can kill with equal right (Lazar 2009: 700). Such a view is therefore consistent with proposition (a) – 'wartime qualifies as a *'relevant situation'* in which our ordinary moral duty to not kill no longer holds.' By implying that in wartime our ordinary moral duties to not kill are lessened/weakened due to the *'relevant situation'* that is war, Walzer suggests that ethics in war are different to those we face ordinarily, and hence proposition (a) could be considered true; but not in the ethical vacuum Thucydides imagined (see above) (Howse 2013: 20).

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Lazar and Parsons reject the position of Walzer – that a warring combatant's claim to a right to life is lost or diminished (Lazar 2009: 701; Parsons 2012: 687). According to Lazar an individual's right to life is of supreme importance, hence any claims that promote its loss or diminishment "should meet a heavy burden of proof" (Lazar 2009: 701). Furthermore, an individual's loss or diminishment of their *individual* right to life, should be tied to something distinctive about that *individual* beyond notions of "bad luck," or the fact that they currently exist in a '*relevant situation*' called war, and may pose a threat to someone (Lazar 2009: 701). This leads me to conclude that instead of killing with equal right, the majority of the killing soldiers commit is a breach of fundamental duties, because most (assumably all if one were to be prudent) combatants are acting justly and therefore retain their right to life (Lazar 2009: 703). Thus Lazar's second approach – whilst our actions are indeed unjust, a more compelling moral consideration is at stake that requires us to breach our ethical duties – is a more compelling assessment of war; a situation in which "killing unjustly is the lesser of two evils" (Bellamy 2004: 830).

This paper has investigated the morality of killing in wartime by looking at the ethical justifications that allow for and prohibit killing in ordinary times. I have argued that the principle of self-defence that can allow for just killing does not hold in the context of war, based on the notion that we should assume that all combatants are just. Principles of self-defence require an unjust agent, who loses their claim to a right to life, and can thus be killed justly. Based on my argument that all warring combatants are just, principles of self-defence cannot be applied to morally justify killing between soldiers. Hence we need something more than traditional justifications for the use of force, including theories of the just war. Walzer's conventional view of the ethics of war fails to adequately address why combatants in war face a loss or diminishment of their supreme individual right to life. As Lazar correctly asserts if an individual is to lose their individual human right to life, it should be tied to something intrinsic, unique or special about that individual (2009: 701). Therefore while I concede that killing in wartime can at times be necessary^[4], it can never be *morally* justified.

[1] And the contentious ethical principles that allow for capital punishment.

[2] The only moral justifications according to Lazar are if person 'A' is not a "minimally competent rational agent," or if another agent has used person 'A' as a projectile (2009: 706).

[3] Unless one has evidence to the contrary, but as per my argument above identifying and then targeting unjust combatants is generally not possible or practical in the course of war.

[4] For reasons of politics, security and strategy as examples.

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