

PACIFISM AND JUST WAR THEORY:  
WITH REFERENCE TO THE WORK OF JEFF MCMAHAN

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It is in the nature of crime to create situations of moral conflict, dead ends of which bargaining or compromise are the only conditions of exit; conditions which inflict yet another wound on justice and on oneself.

- Primo Levi

The 20th-century was an era of unprecedented war-induced death. As historian Niall Ferguson has noted, the hundred years after 1900 were without question the bloodiest century in our history, far more deadly in relative as well as absolute terms than any previous era.<sup>1</sup> To give some figures: the 20<sup>th</sup> century as a whole witnessed approximately 275 wars and 115 million deaths in battle. While averages can be misleading, since most of the deaths occurred in the two world wars, this equaled about 3150 deaths per day or about 130 deaths per hour, 24 hours a day throughout the entire century.<sup>2</sup> If you

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<sup>1</sup> Niall Ferguson, War of the World (New York: Penguin, 2006) p. xxxiv.

<sup>2</sup> Charles Tilly, Coercion, Capital, and European States (Cambridge, Mass: Blackwell, 1990), p. 67. See also Jonathon Glover, Humanity (New Haven, CT: Yale University Press, 2000), p. 47, citing William Eckhardt, in Ruth Leger Sivard, World Military Expenditures (Washington DC: World Priorities, 1988 and 1989 edns.); Melvin Small and J. David Singer, Resort to Arms 1826-1980 (Beverly Hills: Sage, 1982). **Problem: deaths due to war = genocides, other forms of mass killing.** See Benjamin A. Valentino, Final Solutions: Mass Killing and Genocide in the 20th Century (Ithaca, New York: Cornell University Press, 2005) and Rudolph Rummel, Statistics of Democide:

include civilian deaths, which are harder to estimate, total deaths due to war in the century may have approached 250 million, or almost 7,000 people a day, 300 people per hour. No other century in history approaches these numbers. The comparative figures are equally striking. If one looks at the proportion of people killed by war relative to total population, the 18th-century saw five deaths per thousand, the 19th century six deaths per thousand, the 20th century 46 deaths per thousand--i.e. almost eight times higher than the previous century. As Isaiah Berlin remarked, "I have lived through most of the 20th-century without, I must add, suffering personal hardship. I remember it only as the most terrible century in Western history."<sup>3</sup>

A focus of Jeff McMahan's new book, Killing in War, is one of the ideas that made such killing possible: soldiers do no wrong even if their cause is unjust; indeed, their participation in a war may be good, honorable, even heroic, even if the war is immoral.<sup>4</sup> This has been one of the more pernicious doctrines of the age of nation states, endorsed by some of its most respected figures. Consider this remark from United States Supreme Court Justice Oliver Wendell Holmes, one of American liberalism's great heroes. It is from his speech, "The Soldier's Faith":

I do not know what is true. I do not know the meaning of the universe. But in the midst of doubt, in the collapse of creeds, there is one thing I do not doubt, that no man who lives in the same world with most of us can doubt, and that is that the faith is true and adorable which leads a soldier to throw away his life in obedience to a blindly accepted duty, in a cause which he little understands, in a plan of campaign of which he has little notion, under tactics of which he does not see the use.<sup>5</sup>

The "faith" that Holmes speaks of involves the idea that McMahan is critiquing: killing—and dying—in an unjust war can be "true" and "glorious". The experiences of the 20<sup>th</sup> century have discredited the grosser forms of such sentiments, but the philosophical doctrines associated with it, like the moral

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Genocide and Mass Murder Since 1900 (Charlottesville Va: Center for National Security Law, 1997).

<sup>3</sup> The quotation is from Eric Hobsbawm, Age of Extremes (New York: Pantheon Books, 1994), p. 1.

<sup>4</sup> (New York: Oxford University Press, 2009).

<sup>5</sup> Richard Posner, The Essential Holmes: Selections From the Letters, Speeches, Judicial Opinions, and Other Writings of Oliver Wendell Holmes, Jr. (Chicago: University of Chicago Press, 1992), p. 112.

equality of soldiers, endure. Indeed, this thesis is central to the most influential contemporary statement of just war theory, Michael Walzer's Just and Unjust Wars.<sup>6</sup>

McMahan's argument against such views is driven by the worry that they make fighting an unjust war easier. By contrast, if people came to believe that participation in an unjust war was wrong, then soldiers might be more reluctant to fight in wars they believed to be unjust, and governments more reluctant to initiate unjust wars for fear of the resistance it might generate. McMahan acknowledges that it might be "absurdly utopian" to expect that people would resist war on these grounds. But the history of the 20<sup>th</sup> century revealed the potential of war resistance. These are often overlooked because they have happened at the end of wars, not the start; but they were significant nevertheless. The end of World War One was marked by mutinies of soldiers of all the major belligerents. Such acts of resistance had multiple causes, but they clearly included the belief that the war had lost all moral purpose.<sup>7</sup> An important factor in ending the Vietnam War was the unprecedented resistance of ordinary soldiers. In 1969, the New York Times wrote of President Nixon's worries about a "full scale revolt" among ordinary soldiers, if asked to continue that struggle.<sup>8</sup> Moral beliefs do matter, including those of soldiers. McMahan's book is a powerful plea for persons to take more personal responsibility for the justice of the wars in which they fight.

But I worry that McMahan's views minimizes the contradictory position in which a democratic society can place its soldiers, ethically. Hence, it risks minimizing the wrong that we, as democratic citizens, are responsible for in obliging them to fight wars that they know to be unjust. This is a wrong that we of the Vietnam War era are especially sensitive to, given the havoc it wreaked on members of our generation. I think that McMahan minimizes the contradictory position in which soldiers are placed in two ways. First, he gives insufficient weight to the institutional claims on soldiers in a democratic society. I develop this claim in the first half of this essay by developing what I term the Argument to

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<sup>6</sup> Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977).

<sup>7</sup> In Russia, the refusal of soldiers to fight was a key factor in causing the Tsar to abdicate; it eventually led to Russia's withdrawal from the war. Half the French army mutinied in 1917, refusing to undertake senseless attacks. The Wilhelmshaven mutiny in the German High Seas Fleet in October 1918 was a key factor in convincing German leaders to end the war. It eventually spread across Germany and ended in revolution. For a discussion of soldiers' resistance, see David Stevenson, Cataclysm: The First World War as Political Tragedy (New York: Basic Books, 2004) pp. 268-270 and 380-383, noting that government leaders blamed mutinies on pacifist propaganda.

<sup>8</sup> Rick Perlstein, Nixonland: The Rise of a President and the Fracturing of America (New York: Scribner, 2009), p. 551.

Democratic Duty, and considering what McMahan would say in criticism of it. McMahan acknowledges that holding soldiers to higher standards of responsibility has the potential of placing them in a contradictory position, imposing unfair moral burdens on them. But he holds that such dilemmas can be resolved through policies of selective conscientious objection. I argue this view in the second half of this essay. Democratic societies cannot wage war without placing their soldiers in a “terrible dilemma” (to use McMahan’s words); this is an injustice that even the most just wars cannot avoid.

The view that war wrongs all soldiers, in part by placing them in impossible moral situations, has been a central claim of the pacifist tradition since the 19<sup>th</sup> century. Pacifists have always believed in holding people, citizens and soldiers alike, to higher standards of personal responsibility. But they have also believed that attempts to reconcile personal responsibility and war making will ultimately fall short. The discussion that follows aims to render this pacifist view more plausible; but it does not pretend to establish it, given the complexity of the issues involved. Over several decades, Jeff McMahan has developed a powerful conception of just war theory that insists it take personal responsibility more seriously. The issues I raise about that conception do not mean to question its central impulse; they do mention to question where that impulse eventually leads. For the pacifist, taking personal responsibility seriously means abolishing the institution of war, not fixing it. This heightens the urgency for all of us to develop more effective alternatives to war.

[I] /

Let me begin with some remarks on the history of thinking about soldiers’ responsibility, and how that responsibility is viewed in the United States today. This will provide some background for the Argument to Democratic Duty I develop in the next section.

[1] /

McMahan identifies the view that soldiers do no wrong even if their cause is unjust (assuming they abide by the rules of jus in bello) with the moral equality of soldiers. The moral equality thesis, as I shall call it, holds that opposing soldiers have an equal right to kill, regardless of whose cause is just. The soldiers of an aggressor state have no special culpability for their acts of killing, the soldiers of a defender state have no special protection from being killed.<sup>9</sup> What soldiers may or may not do in combat

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<sup>9</sup> Rodin 128-129. The other involves the relation of soldiers to civilians:

Soldiers have an obligation not to kill the other side’s noncombatants regardless of which side is in the right.

is independent of whether or not their cause is just.<sup>10</sup> Walzer has claimed that the moral equality thesis stands at the heart of just war theory. He goes so far as to claim, “Without the equal right to kill, war as a rule governed activity would disappear.”<sup>11</sup> Yet many philosophers, including McMahan, have recently found fault with the moral equality thesis. It has come to be regarded as the most problematic part of just war theory.<sup>12</sup>

One reason for all the attention to the moral equality thesis is the widely held view that it has always been central to just war thinking. Walzer’s remark suggests this strongly. Some of McMahan’s statements suggest it too, as when he writes that the moral equality of combatants “is almost universally accepted among those who are not pacifists, and has been for many centuries”; or when he claims that the view that soldiers do no wrong merely by fighting in a war that is unjust has been “the dominant view in all cultures at all times”, one that has been held by “most people in most cultures at all times in history”, and one that “we share with the Nazis”.<sup>13</sup> Mutual respect among warriors has always been an aspect of war as actually practiced. But as characterizations of how people have thought about war, and reasoned about its ethical dimensions, statements like these overstate the importance of the moral equality thesis--in ways that bear on the status of that thesis today.

Medieval natural law theory, for example, did not regard war as a conflict between moral equals. Its view of just war was more of a crime-and-punishment model: soldiers fighting an unjust war were akin to criminals, who had no more right to commit violent acts than an ordinary criminal. By contrast, soldiers on the just side were like magistrates bringing the criminal to justice. Hence the relation of just and unjust soldiers was fundamentally a-symmetrical. Stephen Neff writes in War and the Law of Nations, “Any killing done by [soldiers in an unjust cause] was mere homicide, with each soldier being individually responsible for his own guilty acts.”<sup>14</sup> This bears on the place of self-defense in natural law theory. The soldiers fighting for a just cause were not regarded as acting in self-defense any more than

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<sup>10</sup> [4]

<sup>11</sup> [Walzer 41]

<sup>12</sup> [Rodin; L May; Arneson; Shue and Rodin.]

<sup>13</sup> [38] [6], [3]. Most people in virtually all cultures at all times [have] believed the a person does not act wrongly by fighting in an unjust war, provided that he obeys the principles governing the conduct of war.” [104]

<sup>14</sup> Stephen Neff War and the Law of Nations (Cambridge: Cambridge University Press, 2005), p. 63 [ he cites Saurez; Nef’s clearest statement of the difference—111-112; see also 57, 62; Exception for self defense, but not much of one—64: Nef remarks on how limited this principle was; it did not warrant offensive actions against the just side.] CITE THE ARTICLE BY GREG REICHBERG.

the actions of police are ones of self-defense, or initiated for that purpose. Writes Neff, “It would be a great error to equate just war, in its medieval incarnation, with a defensive war.”<sup>15</sup> Just wars were offensive in the way that the enforcement actions of a magistrate are offensive; a just war was licensed aggression.<sup>16</sup> Finally, natural law theory did not distinguish between the actions of states and those of individuals; its rules applied to the rulers of states and ordinary persons equally.<sup>17</sup>

This is not just historical quibbling. The tendency to regard the laws of war as timeless and universal can lead to reifying war as a social practice; it can lead us to ignore the extent to which war as an institution is not just constrained but constituted by its laws. In this case, a consideration of natural law theory reveals the extent to which the contemporary criticisms of just war thinking constitute a return to that orientation in key respects--like holding soldiers personally responsible for fighting on an unjust side. McMahan himself notes; he goes so far as to characterize his own position as “reactionary” in returning to the views of earlier centuries.<sup>18</sup> But we cannot be simple reactionaries here. The natural law view of war as crime-and-punishment presumed an international institution, the church, to serve as ultimate arbiter. Today’s efforts to revive aspects of the natural law approach lack that institutional context, though the United Nations aspired to this role (and the conception of war in the U.N. Charter echoed the crime-and-punishment model).

The moral equality thesis is not an enduring feature of thinking about war. It is more accurately seen as arising with the emergence of the European state system in the 17th and 18th centuries, and the conception of international law associated with that system. The key figure here was Grotius who contrasted the older law of nature with the “law of nations”, which he saw as grounded in the mutual consent of states, as expressed in customary practices and international instruments like treaties. Neff speaks of this as the greatest conceptual leap in the history of international law, engendering two changes essential to the topic at hand.<sup>19</sup> The laws pertaining to states were distinguished from those pertaining to interpersonal morality, with the relations between states coming to be seen as possessing their own unique character. From this it followed that the laws pertaining to agents of the state, like soldiers, were distinguished from those of interpersonal morality. The relations between soldiers or seen

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<sup>15</sup> Neff 59:

<sup>16</sup> [60.] Neff 64: one important caveat = soldiers on unjust side maintained right of self defense, but this did not entitle them to take offensive actions against just side; indeed, self-defense separate from just war doctrine.

<sup>17</sup> [56]

<sup>18</sup> McMahan 237-238 fn. 26.

<sup>19</sup> 85

as possessing their own unique character—specifically, they came to be seen as moral equals regardless of the cause for which they fought.<sup>20</sup> Soldiers fighting for an unjust cause could be seen as dutiful patriots, not evildoers. “Obstinate devotion to one's party is not itself a cause for punishment,” wrote Grotius. By the 18th century, Vattel would claim that the moral equality of soldiers was one of the most fundamental principles of the laws of war.<sup>21</sup>

Its link with the European state system explains why some have perceived an ethnocentric dimension in international law from the start.<sup>22</sup> Soldiers on opposing sides possessed the same moral rights as long as they were Europeans, or Euro-Americans. But if the enemy was outside the European sphere, ideas of moral equality were qualified or displaced entirely. The adversaries in the American Civil War regarded each other as fighting honorably, even heroically despite their different views of who was right. Once the Civil War concluded, the American military turned its attention to exterminating the Native American peoples—with no presumption that the opposing soldiers were moral equals. McMahan ascribes the moral equality view to the Nazis.<sup>23</sup> But this gives too much credit to the Nazis: the Germans regarded French soldiers as their moral equals, but postulated no such symmetry in their dealings with Russians or Eastern European peoples generally. Distinctions between who is a moral equal and who is not have emerged in the United States’ “War on Terror” and its treatment of Arab peoples.

This puts things quite simplistically, obviously. The natural law orientation never entirely went away, which is why its reemergence speaks to a tension between the claims of states and the claims of interpersonal morality that has been present throughout. It should help explain, though, why the challenge to traditional just war thinking emerged at the end of the 20<sup>th</sup> century. The Grotian conception of the law of nations emerged with modern notions of state sovereignty, but the experiences of the 20<sup>th</sup> century have called this statist conception of politics into question, along with its notions of soldiering. The crimes of the 20<sup>th</sup> century were such that not every soldier could be seen as just doing his patriotic duty. This is why I think McMahan overstates the hegemony of the moral equality view in popular consciousness. People may generally regard soldiers as doing no wrong simply by fighting in an unjust war, but there are limits. Ronald Reagan caused an uproar by his plans to honor the dead German

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<sup>20</sup> 111

<sup>21</sup> [112: Vattel, law of nations, 305-306.]

<sup>22</sup> **[Imperialism, Sovereignty and the Making of International Law, Antony Anghie: Publisher: Cambridge University Press (March 7, 2005)]**

<sup>23</sup> [3],

soldiers (along with dead Allied soldiers) at Kolmeshohe Cemetery near Bittburg, Germany, on the 40th anniversary of V-E Day. Some critics fastened on the fact that the German dead included 49 members of the Waffen-SS. But others charged that the very idea of placing soldiers fighting for Nazi Germany in the same moral category as Allied soldiers disgraced the latter's memory.

[2]/

But if the idea that one does no wrong simply by fighting in an unjust war is less secure than it once was, it remains central to the political consciousness of today's dominant military power, the United States of America. For it stands at the heart of one of the fixed points of American politics: the idea that Americans must "support the troops". This is reason enough for exploring the idea further, for reasons McMahan stresses. The insistence that Americans must "support the troops" seems to rid soldiers of personal responsibility for the justice of the wars they fight, in ways that seem to enable America's fighting unjust wars.

It is hard to exaggerate the devotion to the "support the troops" view in the United States today. Every politician must proclaim that he "supports the troops" or risk political suicide. Even the strongest opponents of the Iraq War insist that, though the war is unjust to the point of criminal, we must still "honor" the troops fighting it and "thank" them for doing so. Before he was elected senator from Minnesota, Al Franken had a daily talk show. Most of it was devoted to critiquing the Iraq War as completely unjustified, a massive waste of resources, and the product of political deceit. Then he'd spend the last five minutes of the show talking by telephone to American soldiers in Iraq, thanking them profusely for what they were doing. Similar sentiments are found in other countries, though not every country. Germans, for example, reportedly evidence a general mistrust of their soldiers in uniform.<sup>24</sup> The United States seems exceptional in the vehemence with which it holds this view.

The claim that we must "support the troops" holds that we must do so whether or not we believe the war they is unjust. Indeed, it holds that we must support the troops even if the war they fight is unjust--as the Vietnam War clearly was. What does such "support" mean? In the Iraq War, it apparently means three things: Americans must honor their troops (celebrate their activities, for example, through parades, celebrations, etc.); Americans must thank their troops--specifically, for "defending their freedom"; finally, Americans must provide their troops with the resources to "do their job". On its face, this seems absurd. If one believes a war to be unjust, hence its killing to be unjustified, how can one

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<sup>24</sup> **No Parade for Hans - NYT** - NICHOLAS KULISH - Published: November 14, 2009.

possibly honor those who carry out that killing? How can one thank them for “defending our freedom” if a war has nothing to do with defending freedom? How can one be obliged to give them the resources to “do their job”—when that job is waging an unjust war?

The “support the troops” view is an artifact of post-Vietnam War culture. During that war, anti-war protestors were stigmatized for not supporting the troops; since then, urban myths have developed around the mistreatment of soldiers by anti-war protestors. All of this has contributed to a pro-military ideology that distinguishes the United States from most other countries.<sup>25</sup> This may explain the view, it does nothing to dispel its absurdity. But we can make more sense of it if we recognize that the central thought at work in the “support the troops” view is the one McMahan criticizes--that soldiers may act permissibly, even honorably, though the war they fight is unjust. I do not think that this view presumes or implies the moral equality thesis in its strongest form. The fact that American troops should be honored for fighting in a war that is unjust neither presumes nor implies that every other country’s troops should be honored by their own countries. Rather, it points to a special fact about America and democracies like it.

According to this view, American soldiers are obliged to kill in wars, even if a particular war is unjust, because by so doing they sustain the institutions necessary to protecting American democracy—institutions whose wars are generally just. I call this line of thinking the Argument to Democratic Duty. Like earlier views, it links the responsibilities of soldiers to the claims of state sovereignty; but it differs in emphasizing the claims of popular sovereignty, as embodied in democratic institutions. It is an “institutional” justification for the permissibility of killing in an unjust war of the kind that McMahan considers in the second chapter of his book, and so I shall consider McMahan’s criticisms of such justifications after developing the argument further.

[II]/

I begin by sketching the Argument to Democratic Duty, and then I turn to the considerations for and against it.

[1]/

The Argument to Democratic Duty holds that once our democracy (or any democracy like ours, presumably) has made the decision for war by appropriate means:

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<sup>25</sup> WHERE HAVE ALL THE SOLDIERS GONE – James J. Sheehan, Houghton Mifflin Boston NYC 2008: on the contrast between Europe and USA, see prologue xiii-xx.

(1) Soldiers are obliged to fight it, whether or not they agree that the war is just; indeed, whether or not the war is just.

(2) Citizens are obliged to pay taxes to support the war, and to provide other means of relevant support, whether or not they agree that the war is just; indeed, whether or not the war is just.

(3) Both obligations can be enforced by punitive sanctions. The obligation of soldiers to fight can be enforced by military discipline, including military prison and, in extreme cases, execution. The obligation of citizens to pay taxes can be enforced by fines, involving the attachment of income, and, in extreme cases, federal prison. These are the sanctions that the United States government currently has in place.

Talk of the decision for war being made by “appropriate means” assumes that the democracy is in good working order. For now, I shall take this to be true of the United States. I shall assume that the procedures for taking the country to war specified by the Constitution are reasonable ones for expressing the popular will, and that these procedures are followed in the decision to wage war. Both assumptions are dubious, to say the least. But I shall take them to be true for now because my first interest is whether the Argument to Democratic Duty could provide a justification for fighting in an unjust war, in some cases. I return to the problems raised by the flawed nature of reality later on. They are generally ones that McMahan identifies; but where we agree, I will suggest that they argue for a more skeptical view towards warmaking generally.<sup>26</sup>

The argument for claims (1)-(3) goes roughly as follows:

Our military institutions, and the political institutions in which they are imbedded (call these together our protective institutions) are necessary for defending what we cherish most--ourselves, our loved ones, and our deepest values. These institutions will sometimes go wrong, but they will not generally go wrong: democratic governments generally wage wars for just cause (for reasons addressed shortly). In those cases where the institutions do go wrong, citizens are still obliged to abide by them as

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<sup>26</sup> [If the democracy is GENERALLY in good working order.] That said, it must be noted that supporters of the “Support the Troops” view seem to believe that we must support the troops whether or not the democracy is in good working order. Many of those who believe that we should support the troops that served in Vietnam also believe that the Vietnam War was begun and prosecuted by totally undemocratic means—indeed, through means that verged on the illegal. I won’t worry about this now. I suspect that many who “support” the soldiers that served in Vietnam do so because they feel sorry for them, which is not the same thing as honoring them. [**Look at this footnote: how perfect must the democracy be, to be obliged to defend it.**]

a way of “protecting their protection” (in Hobbes’s words), as a way of supporting and sustaining those institutions that generally serve the just end of defending themselves, their loved ones, and their deepest values.<sup>27</sup> Soldiers are obliged to fight, even though the particular war is unjust; citizens are obliged to support them with their taxes, even though the particular war is unjust; the importance of protecting our protection generally means that these obligations can be enforced by strong sanctions.

Or so the reasoning goes.

Now this argument makes a lot of assumptions, both empirical and normative. Not all of them can be addressed here, but let me address the major ones.

[a]/

The key empirical assumption is that a democratic government will generally go to war for legitimate reasons; more specifically, it will generally go to war for reasons of self-defense. This has been a persistent claim of pro-democratic (or pro-republican) theorists since the 18th century. Thomas Paine argued for it as a reason for overthrowing monarchies and replacing them with democracies. Kant held that the peaceful nature of republics meant that our duty to promote peace implied the duty to promote republican arrangements. Elements of this view are found in the “democratic peace thesis”, the most widely held thesis in international relations today. A key element in all these views is the link between those who decide about war, and those who must bear the bodily and financial costs of it: if the citizenry generally must bear the costs of war, then the citizenry generally will make the decision prudently, and generally opt for war only in cases of self defense. In theory, this conception of why democracies should be peace oriented is compelling; in practice, I think it is quite a different matter. For example, the government of the United States has increasingly alienated the full costs of war from its citizens, undermining a key argument for why the citizenry will be prudent in these matters. But proponents of the Argument to Democratic Duty could say that any argument in matters such as makes some controversial assumptions about our political arrangements. Their assumption—that democracies are generally peaceful—is as uncontroversial as one is likely to get, they could claim.

A second empirical claim is that the refusal of soldiers to fight in a particular unjust war can impair a democracy’s capacity for war making generally. There is no question that the military takes this to be true in some cases. The U.S military’s response to the Vietnam experience of introducing an “all volunteer” force was driven by the conviction that soldiers’ resistance to the Vietnam War had damaged the military generally. The strategies of both the Allied and Axis powers in World War Two were

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<sup>27</sup> Hobbes [Leviathan, pt II chapt 29

dictated by the desire to avoid the kind of soldiers' resistance that characterized the end of World War One. How much one can generalize from such experiences is unclear, though. The impact of refusals to fight depends on lots of specific conditions, hard to anticipate, which is probably why astute thinkers on this matter are often of two minds. McMahan notes that the specter of soldiers' resistance may actually improve the functioning of the military, insofar as it compels the protective institutions to take their responsibilities more seriously. At the same time, he suggests that the practice of such resistance might actually impair a country's ability to fight a war that is unjust. Surely there are situations in which this means impairing the military's functioning generally. I'll say more about these issues in discussing selective conscientious objection.

[b]/

I suspect that the most controversial claim implicit in the Argument to Democratic Duty is a normative one. That argument holds that a soldier's abiding by his democratic duty, and killing in a war, may be the right thing to do, even though the particular war may be unjust (hence the killing in it is unjust). This seems wildly implausible: how can engaging in unjust killing ever be the right thing to do? Doesn't the duty not to kill unjustly trump all other duties?

One response to this problem might be to point out that even the most just wars involve unjust killing, even if soldiers are doing their best to abide by the rules of war. The specter of this has led some to argue for a form of contingent pacifism. Such pacifism holds that since even the most just war can implicate in unjust killing, we should refuse to participate in all war. The more common assumption is that a certain amount of unjust killing is permissible if the war as a whole is just, and the unjust killing it involves is inadvertent and incidental to the enterprise. For many people, then, waging a just means accepting a certain amount of unjust killing.

But this does not diffuse the problem faced by the Argument to Democratic Duty. For that argument asks us to believe that all the acts of killing in a war could be unjust, since the war as a whole is unjust—yet performing those acts is still the right thing to do.

The Argument to Democratic Duty has another approach available to diffuse this problem, one that is implicit in how I have characterized that argument thus far. It could respond that fixating on individual unjust wars is too narrow. Consider this parallel: just war theory does not focus on individual battles, it focuses on the particular war as a whole. A war involves many battles, some of which may be unnecessary, even counterproductive. (One of the most famous battles in American history, the "Battle of New Orleans", took place three weeks after the United States and Great Britain signed the peace

treaty ending the war of which it was a part.) Individual battles may involve the needless killing of the enemy; indeed, they may involve the killing of soldiers who are not the “enemy” in any sense of the word. Any major war involves battles with people who just happened to be dragged into the conflict, through no particular fault of their own. This was certainly true of the American Revolution. But for just war theory, a few “unjust” battles do not render a war as a whole unjust, if the war has a just cause. Soldiers may permissibly engage in such battles; indeed they are obliged to engage in them if it is necessary to the cohesion of the war effort generally, for such theory. If soldiers took it upon themselves to assess the legitimacy of each individual battle, no wars could be fought at all—no matter how just.

The Argument to Democratic Duty raises things one level further. Its focus is not the individual war but the country’s war making generally. If its war making generally is just, then the importance of maintaining the ability to engage in it obliges the soldier to engage in the occasional unjust war. If this downplaying of individual wars seems *ad hoc*, it might be remembered that most major wars are themselves collections of individual wars, jumbled together. McMahan makes this point, citing World War Two.<sup>28</sup> This naturally raises the question of what if an individual war is unjust, but the larger enterprise of war of which it is a part is just. Most Americans are opposed to the war in Iraq; they regard it as unnecessary if not unjust. But they also regard that war as one “front” in the larger “War on Terror”, whose other “front” is the war in Afghanistan, which they generally regard as just. Soldiers are generally shuttled back and forth between these wars, meaning that disruptive actions towards one war could easily impair the ability to fight the other. Finally, most Americans believe that their country faces an ongoing threat from non-democratic forces throughout the world.<sup>29</sup> The upshot is that, while citizens may do whatever they can to end the Iraq War, soldiers are still obliged to fight in it as part of their larger duty to maintain the country’s protective institutions.

[c]/

Thus construed, the Argument to Democratic Duty allows us to reformulate the “support the troops” view to render it a more coherent, if not completely so.

That view holds that when we support the troops, even though their war is unjust, we do not honor the fact that they fight the war they fight; supporting the troops in Iraq does not mean honoring the fact that they fight the war in Iraq. Rather, we honor the fact that they abide by their democratic duty in ways that support and sustain the protective institutions generally necessary to defending ourselves,

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<sup>28</sup> McM – Ferguson.

<sup>29</sup> **[We are in a state of permanent war, a la civilized vs. barbarian.]**

our loved ones, and the values we cherish most. We thank them for defending our freedom, not because the particular war they fight defends our freedom (Iraq, say), but because by abiding by their democratic duty this support and sustain the protective institutions generally necessary for supporting our freedom. Finally, this is why ordinary citizens should do their part in sustaining and supporting our protective institutions (by paying taxes first and foremost) even though they may oppose a particular war that those taxes sustain.

Essential here is the idea that the troops are honored for their service, for their performing their democratic duty. McMahan alludes to the support the troops issue in reference to the Vietnam experience. “During that war soldiers, were often greeted with insults when they returned to the United States.” McMahan agrees that this was wrong—on the grounds that we should distinguish our evaluation of persons, the troops in this case, from the evaluation of their actions.<sup>30</sup> But the claim that we must support the troops is the claim that we must support not just them but also their service, to the point of providing them the resources to perform that service.<sup>31</sup> The emphasis on “service” differs from previous wars. In the past, the most celebrated soldiers were celebrated for their skill at killing. The most honored American soldier of World War One, Sergeant Alvin C. York, was celebrated for the number of Germans he killed despite his pacifist upbringing. The most celebrated soldier of World War Two, Audie Murphy, was celebrated for his Mozartian abilities for gunning down the enemy. Supporting the troops downplays this dimension. The Vietnam War and subsequent conflicts produced no Sargeant York’s or Audie Murphy’s. Every Congressional Medal of Honor awarded in the Afghanistan and Iraq conflicts has been awarded to soldiers who have been killed, usually in assisting their fellow soldiers.<sup>32</sup> Such acts are seen as tokens of protecting America’s protection, generally.

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<sup>30</sup> [96] **[DOES MCM MAINTAIN THIS DISTINCTION, IN HIS OTHER REMARKS ON SOLDIERS?] The Spitting Image: Myth, Memory, and the Legacy of Vietnam by [Jerry Lembcke](#), NYU Press (May 1, 2000)**

<sup>31</sup>

<sup>32</sup> The element of duty is crucial to the kind of compulsion involved here. During the Vietnam War, many young American males felt a great compulsion to serve in the military despite their disagreements with that war, and shame at the thought of not doing so. Many young American men and women in the National Guard and Reserves have felt the same way about Iraq. How should we understand this compulsion/shame? The issue bears on whether such soldiers act under “duress”, if they do serve. McMahan and I have cited the same source on this matter, Tim O’Brien’s The Things They Carried, but we seem to read it in different ways. McMahan understands O’Brien’s talk of the “embarrassment”, “ridicule”, and “shame” at not serving as a matter of “social pressure”, pure and simple—the pressure to conform, especially when the alternative is being

[2]/

McMahan touches on issues raised by the Argument to Democratic Duty in his second chapter, on institutions as sources of justification. He considers several grounds for claiming that institutional considerations may render it “rational or morally required for a soldier to subordinate his private moral judgment about the justifiability of going to war to that of his government.” [70]. Some of those grounds, I shall suggest, imply a stronger skepticism towards war generally that just war theory usually endorses; others threaten to impose an unfair moral burden on soldiers for the wars that their society fights.

[a]/

The first holds that we have a “duty” to defer to the “epistemic authority of the government” on judgments about the justice or injustice of war. A parallel, he suggests, might be the duty to defer to the judgments of the court system in matters of criminal punishment. Why should there be such a duty in matters of war and peace? The principal argument he considers is that the judgments of the government are more “reliable” in determining the justice or injustice of war. This might be true, he says, if “the political institutions charged with making decisions about the resort to war [are] structured to yield judgments that are presumptively more reliable morally than the private judgments of virtually all normally situated individuals.” [70] But McMahan denies that this is the case in the United States today, or any other country. “What procedural guarantees are there that the wars [the United States] fights will be just?” he asks. “The answer is: none.” In contrast to the court system, with its mechanisms for generating just decisions, there are “no institutional or procedural mechanisms” to ensure that the United States government gives primary concern to moral considerations in deciding for war—or any concern to moral considerations at all. [69] “When was the last time an administration contemplating going to war asked philosophers or even theologians schooled in just war theory to get expert counsel on matters of morality?” he asks. [69] Given the indifference of governments to moral concerns, there is no

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branded a “coward” (or “pussy”). He seems to fault O’Brien’s narrator for giving into such pressure, for lacking the “courage to be a coward”, in contrast to Lytton Strachy, who claims to have resisted such pressure in World War One. [118] (As it turned out, Strachy was exempted on health grounds.) I think this simplifies the “social pressure” involved. O’Brien feared of being called a “traitor”, a “turncoat”, of being subjected to “patriotic ridicule”: I think the shame that this elicits is not the same of being branded a “pussy”. For it rests on acknowledging that the claims of country have a legitimacy that one cannot simply ignore out of convenience—or private conviction. It is not like being called a “faggot”; it is more like being called “ungrateful”. The compulsion, that is, involves one’s democratic duty.

reason to assume that their judgments will be more reliable in these matters than the average moral person's.

I think that this is a bit too dismissive of American institutions, at least with respect to how they are supposed to function. The U.S. Constitution does not contain any provisions for insuring that the wars we fight are moral ones per se. But it does seek to insure that the wars we fight are primarily defensive ones, on the assumption that defensive wars are moral ones. Its approach embodies the thinking sketched above on why democracies are peace like: the Constitution stipulates that the decision to go to war will be made by the legislative branch, the branch most expressive of popular will; and its provisions for a popular militia, and for the regular review of the military budget, seek to ensure that if the country goes to war the people as a whole will bear the cost. The upshot, presumably, is that the country will be inclined to fight only defensive wars. Vesting the decision to go to war in the legislative branch is also meant to ensure that the decision is made slowly and deliberately, with ample time for popular input. It is important to appreciate these aspects of the Constitution, if only to appreciate how thoroughly they are ignored today. As recently as World War One, major political figures questioned whether the Constitution even permitted war making that had nothing to do with self-defense. Woodrow Wilson's secretary of state, William Jennings Bryan, resigned over this issue; the Speaker of the House of Representatives, a member of Wilson's own party, said that the United States could only go to war if there was a national plebiscite approving it.

The dismal fate of these Constitutional constraints certainly suggests that McMahan is right in his larger point that governments are ill suited to take moral considerations seriously in matters of war. McMahan concludes from this that soldiers should rely on their own moral judgments in deciding whether to participate in their country's wars. I wonder if this does not support a deeper skepticism towards government war making generally. Consider the analogy with criminal punishment: if I were part of the criminal justice apparatus—as executioner, say—and if I knew that our criminal justice was incapable of weighing moral factors in cases of capital punishment, I would not conclude that I should rely more on my own moral judgment in deciding whether to participate in executions or not; I would oppose the whole idea of government killing, and refuse to be part of it. The problem with both war and capital punishment is that they take something that can only be deeply personal, given the profound moral issues it raises—the taking of another life—and turn it into a social (if not political) project. Arguing for more personal responsibility in these matters is the right thing to do; its upshot, in my view, will be to undermine the legitimacy of the whole war making system.

[b]/

McMahan speaks most directly to the issues raised by the Argument to Democratic Duty in speaking of a “more compelling” reason for soldier’s subsuming his private judgment to that of the government. This reason involves “the necessity of sustaining the efficient functioning of institutions that enable people to act together in coordinated ways in the service of morally important ends”—the most important end, in this case, being self-defense.<sup>33</sup>

McMahan has several responses to this argument, not all of which bear on the Argument to Democratic Duty. He points out that there can be such a role based duty only when the protective institutions are just; the appeal to sustaining efficient institutions shows nothing if the institutions are those of Nazi Germany. True enough; this is why the Argument to Democratic Duty does not seek to establish a general duty to fight in wars regardless of their justice. The duty applies to soldiers of a well-working democracy. McMahan further notes that even when the institutions are just, “there can be no a priori guarantee that the institutional duties will be overriding.”<sup>34</sup> I think this is true as well. The Argument to Democratic Duty seeks to establish a prime facie case for subsuming personal moral judgments to larger institutional demands, but there can be exceptions to this as there are exceptions to any moral principle.

Then McMahan makes a stronger claim--that our institutional obligations can never override our personal obligation not to participate in an unjust war, since participation in such a war violates our strong negative duty not to kill the innocent.<sup>35</sup> McMahan offers a parallel: suppose an executioner “knows, with certainty, that a particular prisoner is innocent”; suppose he can help the prisoner escape, and he knows that, once free, “the prisoner would soon be able to prove his innocence”. While there may be a duty to uphold the institution of capital punishment, the executioner must abide by personal duties not to execute, or enable the execution of, an innocent person.<sup>36</sup> Accordingly, if a soldier knows that a war is unjust, no role-based duty can justify participating in its unjust killing.

Proponents of the Argument to Democratic Duty might respond that this parallel case is incomplete. They would offer the following: suppose that the institution of capital punishment, like a democracy’s protective institutions, is necessary to protecting oneself and one’s loves ones. Suppose that one’s refusal (as executioner) to execute an innocent person would jeopardize the entire institution

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<sup>33</sup> [70-71]—the

<sup>34</sup> [72]

<sup>35</sup> [72]

<sup>36</sup> [73]

in ways that render oneself and one's loved ones vulnerable to unjust attack. Suppose for example that you know that if you fail to execute the innocent person, you and your loved ones will be set upon by a band of criminal marauders, who are no longer deterred by the threat of capital punishment. At the very least, there is a real dilemma here. The duty not to kill unjustly comes into conflict with the duty to protect one's loved ones, in ways that Seth Lazar has perceptively explored in his important work on war and the claims of associative duties.<sup>37</sup> McMahan could still insist that the duty not to kill unjustly trumps the duties towards one's loved ones, in such cases. But my account of the Argument to Democratic Duty suggests another response to his executioner case.

A proponent of that argument could hold that, if McMahan's point holds, then a soldier's role based duty towards a larger just war effort can never justify participating in a pointless battle, since that too involves needless killing. If role based can never trump the imperative to refrain from needless killing, this must pertain to fighting in battles as well as wars. But this would render fighting even the most just war all but impossible—hence, if we believe in war at all, we must allow for role-based duties. A defender of just war theory will try to respond to this argument. But, as before, another response would be to stick with McMahan's reasoning and hold that it supports a deeper skepticism towards war generally. If role based duties can never trump the duty not to kill unjustly, then the reality is that fighting in a war is simply incompatible with abiding by one's moral duties.

[c]/

McMahan's third response to the institutional argument speaks most directly to the Argument for Democratic Duty. Suppose that the unjust war the soldier is ordered to fight is an aberration, he writes. Suppose that the military has served worthy goals in the past, "and is likely to be necessary for other morally important purposes in the future". "Might the importance of preserving the integrity of the institution objectively justify the soldiers who are part of it fighting in this one unjust war?"<sup>38</sup>

McMahan's response to this is a compelling one. If society's protective institutions malfunction, resulting in an unjust war, who should bear the costs of that malfunctioning, he asks. "Those who are unjustly being warred against, or those whose institutions have gone off the rails?"<sup>39</sup> He suggests that it is clearly unfair for those who are warred against to bear that cost, especially since those whose institutions have "gone off the rails" have benefited from those institutions and will presumably benefit

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<sup>37</sup> (See his War and Associative Duties, D Phil Oxford 2009. especially Part Two.)

<sup>38</sup> [74]

<sup>39</sup> [74]

from them in the future. By participating in an unjust war, for reasons like those of the Argument to Democratic Duty, a soldier unjustly imposes the cost of his protective institutions' malfunctioning on others. Hence, soldiers should refuse to do this.

The soldier's choice is a bit less clear, I think, if the decision not to fight in the unjust war clearly places his or her loved ones in immediate danger, as a proponent of the institutional justification might claim. But the bigger problem involves the burden this places on the soldier. If, as is the case, a soldier faces harsh sanctions for refusing to fight an unjust war, like a long prison sentence and even execution, doesn't the obligation to resist impose an unfair burden on them? As McMahan notes, it would place soldiers in a "terrible dilemma" if they are encouraged to use their personal moral judgment in deciding whether a war is just, then condemned—and punished—if that judgment leads them to refuse.<sup>40</sup> Obviously the unfair burden this imposes on a soldier is not equivalent to that imposed on those who are being unjustly warred against, and killed. (At least, they are not equivalent if the soldier's punishment is not execution.) Absent another solution to this "terrible dilemma", we might tell the soldier to do the right thing and accept his or her fate. But what does it say about a society that places those it claims to honor most, soldiers, in this contradictory position?

"As members of the society the soldiers serve and protect, the civilians owe it to them to reduce their burden in complying with the demands of morality."<sup>41</sup> Indeed, I would think that the failure to find some way to reduce this burden would raise a fundamental problem for democratic society generally. Democracy claims to honor the moral integrity of the person; Rawls claim that a fundamental aim of a just society is nurturing the person's sense of fairness. But this is flatly incompatible with protective institutions that punish citizens harshly for abiding by the principles of fairness. Some in the pacifist tradition have claimed that democratic society is incapable of resolving this problem. Thoreau makes this point in his essay on civil disobedience. War making and its institutions are simply incompatible with the claims of individual conscience that democracy claims to respect. You can endorse war, or the claims of individual conscience, but not both. Trying to merge the two creates one of those unresolvable moral conflicts that constitute a "wound on justice", in the words of Primo Levi cited at the start.

But proponents of just war theory believe that war and individual conscience can be reconciled through mechanisms like selective conscientious objection.<sup>42</sup> Let's consider this claim.

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<sup>40</sup> [97]

<sup>41</sup> [96]

<sup>42</sup> [97]

[III]/

McMahan acknowledges that allowing selective conscientious objection for soldiers, even those on active duty, strikes people as “plainly crazy”, so he tries to rebut this view.<sup>43</sup> I don’t think his defense of selective conscientious objection succeeds, but let me clear on my purpose in so arguing. I am in favor of policies of selective conscientious objection, because I support any mechanisms for people to escape from being soldiers. I also think that selective conscientious objection partially diffuses the “terrible dilemma” just discussed, but only partially, and certainly not enough to dispel the basic conflict between the claims of personal conscience and the institutional demands of war. Again, we can respect individual conscience or we can engage in war, but we cannot do both.

Here are some of the problems with selective conscientious objection:

1. Most soldiers that I knew from the Vietnam War only decided that the war was unjust when they got there. Many came to this conclusion in the midst of combat, when the significance of what they were doing was brought home. A policy of selective conscientious refusal must extend to the circumstances in which soldiers are best equipped to make such judgments. Hence soldiers must have the right to refuse participation in an unjust war even in the midst of combat; they must have the right to put down their guns and walk away. Soldiers have done just this in wars throughout history. But the question is whether a society’s protective institutions can have a policy of allowing soldiers to do this in the midst of combat. The issue is not just the impact on the war effort of a certain number of individual soldiers defecting, but also the impact on all soldiers of knowing that their fellow soldiers might defect at any moment.

2. McMahan is confident that a policy of selective conscience objection would be compatible with generating enough soldiers, and keeping enough soldiers—as long as the war is just. He suggests that worries about soldiers defecting, or never showing up, only pertain if the war is unjust. Indeed, “when a government threatens draconian penalties for refusal to fight in the wars it wages, this itself suggests that there are good reasons not to comply with its demands.” By contrast, “there are usually no shortages of volunteers for wars that are clearly just.”<sup>44</sup> Letting people opt out on conscientious grounds will cause no problems if the war is worth fighting.

I do not think that the historical record supports these judgments. The American Revolution was presumably worth fighting, as was the Civil War. But Washington’s army was plagued from the start by

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<sup>43</sup> [97]

<sup>44</sup> [134]

a chronic shortage of soldiers; so too was the Northern army in the Civil War, once the fighting got going. Both Washington and Lincoln faced the problem of their soldiers quitting at the first possible moment; both responded with rather draconian proposals for federal conscription—which were adopted in Lincoln’s case, though not Washington’s. (This led to the Civil War Draft Riots, the largest civil disturbance in American history.) More recently, France was clearly a legitimate government that was attacked in World War One. Yet it was compelled to institute conscription, with draconian policies for non-compliance. President Roosevelt and General Marshal both believed that the United States needed conscription to fight World War Two, with harsh penalties for failure to comply. It is generally believed that the war could have been fought with volunteers. Conscription was just a more efficient way of processing young men. But the war effort was plagued in its final year by the unwillingness of the American people to pay for it. In the United States, voluntary enlistment declined almost immediately after 9/11, despite the widespread view of the Afghanistan conflict as a just one.<sup>45</sup>

I agree with McMahan’s larger point that the necessity to compel people to fight casts doubt on the legitimacy of the war. But I think that this supports a stronger skepticism towards war generally. The fact that people must be compelled to fight wars whether they are just or unjust should raise questions about the whole enterprise.

3. McMahan claims that the arguments against selective conscientious objection have also been raised against soldier’s discretion in matters of jus in bello, and have proved bogus. Armies continue to function fine, though soldiers may permissibly refuse an unlawful order; indeed, they are required to do so.<sup>46</sup> Why not let them refuse to fight unjust wars? These do not strike me as parallel. Whether or not an order is unlawful is a much clearer question than whether or not a war is unjust. The problem of discretion is much less in the first case. Soldiers can point to official policies to show that they rightfully ignored an order. What can they point to show that a war is an unjust?

This raises the question of what a policy of selective conscientious objection would look like. A policy that allows soldiers to defect simply by saying “I regard this war as unjust” would obviously be unworkable. Thus McMahan endorses “legal provisions for soldiers to refuse to fight in a war that they could plausibly argue was unjust.”<sup>47</sup> I am unclear what such a policy of exempting people with

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<sup>45</sup> In my recent polemic, The Chickenhawk Argument: War, Sacrifice, and Personal Responsibility, I have described the great lengths to which the American government has gone to compel soldiers to fight its “War on Terror”.

<sup>46</sup> [98]

<sup>47</sup> [99—emphasis mine]

“plausible arguments” would look like; who would make such judgments, and on what basis? The traditional policies of conscientious objection, as practiced in the United States, did not face this problem because exemption was granted on the grounds of documented membership in a pacifist church. Since exemption required opposition to war per se, it does not raise questions about good or bad grounds for objecting to a particular war. Since the objection was to serving at all, there was no question of soldiers changing their minds in the midst of battle.<sup>48</sup>

[2]/

These problems with the workability of selective conscientious objection harken back to the intrinsic problems of making killing a social project, noted above. Let me consider a final problem that McMahan addresses under the heading “symmetrical disobedience”. “It seems that there ought to be a certain symmetry here. The permissibility of disobeying a command to fight in an unjust war suggests the permissibility of disobeying a command not to fight in a just war.”<sup>49</sup> McMahan allows, “in general it is morally impermissible for soldiers to fight a just war in opposition to lawful orders or even just in the absence of proper authorization.” The challenge is to explain the asymmetry here. If we allow for selective conscientious objection, must we allow for selective conscientious initiation?

This is not just a theoretical puzzle. The question of private citizens initiating warlike actions was much debated at the start of the American republic. Writing as Secretary of State, Jefferson strongly condemned the practice. “If one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of its citizens) has a right to go to war, by the authority of its individual citizens. But this is not true either on the general principles of society, or by our Constitution, which gives that power to congress alone and not to the citizens individually.”<sup>50</sup> Such thinking led to the Neutrality Act, which prohibited citizens from initiating

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<sup>48</sup> ----- Finally, let me raise a rather perverse issue raised by the whole line of thinking. What if soldiers could avoid killing innocents by shooting their officers? This is approach people took in Vietnam War. Does McM have good argument against this? If you allow SCC, why not allow soldiers to shoot their officers? The choice: killing innocent enemy, killing person who is making you kill innocent enemy. I can understand shooting your officer, but I don’t think it solves the problem of placing soldiers in this dilemma.

<sup>49</sup> [92]

<sup>50</sup> Letters from Thomas Jefferson, Secretary of State Aug 16, 1793, cited 24. The USA ban on private expeditions = general conviction that USA should not entangle itself in European wars, as expression of

warlike actions on their own. But this act has never been fully honored. In the 19<sup>th</sup> century, private initiation of wars was associating with so-called “filibustering”, in which bands of American citizens, often for acquisitive reasons, invaded and seized foreign territory. Andrew Jackson initiated this practice with his unauthorized invasion of Spanish-owned Florida. The Iran-Contra affair of the 1980’s technically revolved around private participation in military actions against a foreign state, Nicaragua. As the number of “private security firms” increases, equipping private soldiers with the skills and weapons for non-state military actions, the problem of privately initiated conflicts may only increase.

McMahan first response to the symmetry problem speaks to the moral issue. There is a “basic moral principle” that underlies the asymmetry, he writes, the distinction between “doing and allowing, and in particular between killing and letting die.” “To obey an order to fight in an unjust war is to violate the most stringent negative not to kill innocent people. By contrast, the objection to not fighting in a just war is that it involves a failure to promote a just cause, which includes a failure to prevent innocent people from being killed. To obey an order not to fight in a just war is to violate the weaker positive duty to prevent innocent people from being killed.”<sup>51</sup> I agree that our duty to initiate a just war is not as strong as the duty not to participate in an unjust war, but the question is whether the duty to initiate a just war can be strong enough to ignore the government’s order—thus obliging conscientious initiation. Posing the question abstractly—as “whether to protect innocents”—may understate the imperative involved here. Consider the following case, drawn from the history of the United States. Suppose I live on the border of country X, next to a part of country X that has been settled by large numbers of people from my own country. Suppose that these people include close members of my own family, and there is good reason to believe that they are about to be unjustifiably attacked by the military of country X. My friends and I have access to weapons and are trained in their use. We know that if we attack the soldiers of country X first, we can protect our loved ones and other innocents. Yet the government orders us to do nothing. Or suppose that “protecting innocents” means crossing into another country to prevent

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peace-like orientation of the new republic. Washington: initiation of hostile military expeditions “cannot receive too early and too close an attention, and require[s] prompt and decisive remedies.” 4 Annals of Congress (1793). Cited, “Neutrality Act”, Harvard International Law Journal, vol 24 p. 40. [GET FULL TITLE] The Neutrality Act “assured that only the community as a whole, acting through a congressional declaration, could initiate war, and that no individual would be allowed to **threaten the peace.**” [28]

<sup>51</sup> [94]

immanent or ongoing acts of genocide. Here, the sheer number of people would seem to create an obligation to intervene that would override any government order to do nothing. McMahan allows for this possibility by suggesting that individuals may act to protect their loved ones if they are careful to remove their uniforms, if they are soldiers, so that they are not regarded as acting for the country as a whole. But invasion by citizens of another country is generally regarded as an act of war, uniforms or not. Otherwise states could covertly organize private citizens to attack another country, then disclaim responsibility by saying they were not officially soldiers. (This is what the Reagan administration did in the case of Nicaragua.)

McMahan amplifies his moral argument with considerations that are more purely political in character. Let me comment on two of them.

One reason for prohibiting conscientious initiation is that allowing soldiers to initiate a war on their own would violate the principle of civilian control of the military. If civilian control means the government and not the military deciding not just when to start a war but when to stop it, I would think that soldiers stopping to fight on reasons of conscience could undermine that principle just as much as soldiers starting to fight, for the same reasons. Moreover, the problem of civilian control over the military is only raised if those initiating the war are in the military. This was true of Andrew Jackson's adventurism. But the problem of conscientious initiation still exists if the individuals are private citizens, with access to the means of war. This was generally the case with the 19<sup>th</sup> century filibusterers, as it would be the case with members of private security firms today. The more interesting question, though, is why is why civilian control should possess the importance it does in determining when to wage war. This brings us to McMahan's second political consideration.

He writes, "[W]ar has such serious consequences, both for those warred against and for those who are led into it, that it must be subject to institutional constraints designed to insure that it is not undertaken without moral justification. The military must not have the discretion to go to war on its own initiative"—presumably because military institutions lack the moral constraints that civilian institutions possess. If the military were to go to war without civilian oversight, those attacked would understand it to be acting "as the agent of the state and its citizens," exposing everyone to the dangers of war; yet "military decision-makers are neither chosen by the people nor representative of them. Hence they "have no claim to act on behalf of the nation serve without authorization from an appropriate political

source.”<sup>52</sup> There are a number of thoughts here, the first of which seems to contradict McMahan’s previous claims about why soldiers have no duty to defer the government in judgments of war’s morality. Before, McMahan held that the government has no mechanisms at all for bringing moral considerations to bear on war decisions. Now he suggests that the military, or its members, must defer to the government because it does have such mechanisms. I can imagine a proponent of conscientious initiation employing McMahan’s previous arguments to say: “Soldiers might be obliged to obey an order not to initiate a just war if the government’s decisions in these matters were more reliable, morally; if the institutions charged with making such decisions were structured to yield judgments that were presumptively more reliable morally than those of virtually all normally situated individuals. But this is not the case. So soldiers should rely on their private moral judgments on whether to start a war.”

#### [IV]/ Conclusion

I've got my questionnaire, they say they need me in the war  
I've got my questionnaire, they say they need me in the war  
Now if I want to commit murder, man--  
I don't have to break no county law.

-- Old American blues song

Just war theory arose partially in response to pacifism, and their relation to each other has always been complex. I have always believed that characterizing the difference between them is itself a philosophical challenge; a great blessing of reading the work of Jeff McMahan over the years is how it has challenged me to clarify the difference between my views and a view like his, since we agree on practical matters over 90% of the time. In general, I think the difference between a pacifist and a just war theorist is that the latter believes that war can be made morally coherent, while pacifist feels that war is essentially morally incoherent. This fits with the characterization of pacifism I advanced many years ago as a basically skeptical position.<sup>53</sup> Scholars like McMahan have done extraordinary work in identifying the apparent inconsistencies of the just war position. The difference between us is that they think these problems can be ironed out while I don’t. When I read attempts to make just war theory coherent, I feel that they only solve one problem to create another, or rely on ever more arcane distinctions that have less and less relation to the reality of war they are describing. But since pacifism is

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<sup>52</sup> [93]

<sup>53</sup> Ryan, “Pacifism, Self Defense, the Possibility of Killing”. Ethics 1982.

not a dogmatic view, or shouldn't be, the force of its position can only be established through an ongoing dialogue with just war theory.

I have claimed that the institutional argument, specifically the Argument to Democratic Duty, has more force than McMahan allows. My aim in doing so has been to support the pacifist view that the soldier's situation is a morally contradictory one, even tragic, and that placing them in this situation is an aspect of their victimization. This view of the soldier's predicament has been developed by Lene Bomann-Larsen, who likens the soldier's predicament to Sartre's famous case of a young man torn between family and country.<sup>54</sup> Insofar as the Argument to Democratic Duty, like all arguments in such matters, rests on questionable empirical assumptions, I have suggested that the reality of governments and how they make war argues for a fundamental skepticism towards the whole enterprise. Due to thinkers like McMahan, just war theory now places the question of personal responsibility at the center of its concerns, and in so doing has moved closer to the classical pacifist position. Both can agree that our first responsibility is to continue seeking alternatives to that outmoded institution, war.

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<sup>54</sup> 's Reconstructing the Moral Equality of Soldiers