

A Reply to McMahan

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Jeff McMahan raises some valid concerns about the paper, and I am grateful both for his taking the time to do so, and for the opportunity to clarify my central argument. Rather than attempt a blow-by-blow defence, I'll just concentrate on three major points, before summing up.

I elliptically misattributed to McMahan the Walzerian view that intentional killing in war is justified only when the target is liable to be killed. However, throughout McMahan's work (until recently) the role of lesser evil justification has been radically circumscribed, confined to situations where intentionally killing the nonliable is necessary to avert an unusual catastrophe, of the sort that justified war does not typically aim to avert (of course Walzer too thought intentionally killing the nonliable permissible in supreme emergencies). Throughout his oeuvre, McMahan has argued that most combatants on the unjust side are sufficiently responsible for unjustified threats to be liable to be killed. I intended to target this thesis. In ordinary wars (which are not fought to avert supreme emergencies) many combatants who are intentionally killed are not liable to be killed, so if killing is justified, it is as a lesser evil. Since we do think that wars can sometimes be justified, even if not to avert an unusual catastrophe, this suggests that lesser evil justification must play a greater role in just war theory than Walzer, and until recently McMahan have thought. McMahan's recent move towards a similar view is a welcome evolution, but an evolution nonetheless.

McMahan's central objection is that my discussion lacks an explanation of just how associative duties can override the duty not to intentionally kill a nonliable person—since my central case, used to show that associative duties can override serious general negative duties, does not involve intentional killing. Again the shortcoming is one of clarity of exposition on my part. To clarify, the argument is this: not all killings of nonliable people are equally wrongful. These killings differ in

their qualitative, agential component. My examples show (so I claim) that associative duties can justify at least some kinds of killing—this is in stark contrast to the standard philosophical view, that associative duties cannot justify overriding any serious general negative duties. I then argue that some of the killing that warfare involves is no more wrongful than this. I focus, in particular, on showing that killing combatants is less wrongful than killing noncombatants, because of considerations such as vulnerability, recklessness, consent and so on. I concede that my focus was too much on showing that killing noncombatants is especially wrongful—but just the same arguments work to show that intentionally killing nonliable combatants is relatively less wrongful. McMahan's own view is that there is a step-change between intentional killing, of any description, and any sort of unintended but merely foreseen killing. I find this implausible. There is simply a range of different agential factors, which render killing more or less wrongful. Intention is one of them, but it is not fundamentally distinct from the others that I describe—in particular whether one's agency is eliminative or opportunistic, whether one's actions are reckless, whether the victim is vulnerable etc. On the specific definition of eliminative agency that I use, it does indeed depart from Quinn's notion that eliminative harmful agency must be intentional, but I think my interpretation is an improvement on Quinn's—I defend it at length elsewhere.

Some of McMahan's other worries I think are adequately foreshadowed and addressed in the text—the worry that soldiers only rarely defend those with whom they themselves share valuable relationships is discussed at length on pp.30-33; the worry that their relationships with their fellow combatants might be tainted by their contributing to an unjust war is addressed on pp.40-41; and I stress on p.41 that on the high threshold view of liability that I affirm, even those on the overall unjust side will often not be liable, so their associates will often have duties to defend them.

Ultimately the argument of the paper is simple—perhaps simpler than I made out! At least some combatants on the unjust side are fighting to protect nonliable combatants and noncombatants on their side, both performing associative duties that they owe directly to those whom they protect, and acting on behalf of the community at large to perform the duties that its members owe to protect those with whom they have valuable relationship. Associative duties to protect those with whom we share valuable relationships can justify some of the less wrongful forms of killing of a nonliable person. Killing nonliable combatants in war (including those on the just side, note) is one of the less wrongful forms of killing a nonliable person. Killing nonliable

noncombatants is one of the more wrongful such forms. So these associative duties can justify killing combatants in war (even on the just side), without also justifying killing noncombatants.