

Theoretical
&
Appplied **E**thics

Warfare and Violence

Ethics, Atheism, and Religion

Volume 1, Issue 4: Thematic Double Issue
Spring 2012

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Contents

Why I am an Atheist	5
Why McGinn is a Pre-Theist	11
Defending Theism as if Science Mattered: Against Both McGinn and Feser	15
What is Wrong with Atheism and Classical Theism?	19
McGinn, Atheism, and Religious Commitment	21
Co-existence as an Ethics of War	27
The Moral Equality of Modern Combatants and the Myth of Justified War	35
The Fragility of Justified Warfare: A Comment on Steinhoff	45
Just Cause, Liability, and the Moral Inequality of Combatants	54

The Editor's Page

This issue of *Theoretical & Applied Ethics* showcases work on war and religion. We combine these topics because both are well-known for being able to test our traditional beliefs about value, culture, and the role that ethical inquiry can play. The point is not that scholars must remind us that old ideas about war and religion might be wrong. Current work in this area is revealing the possibility that we sometimes have been on the right track; what is needed is to explore the connections between those beliefs.

Authors have often written about war, for instance, as though it falls at the end of the scale, far from where ethics begins. Questions about what I owe you, or the demands I can make on you, are presented as though they initiate ethical thought; questions about justifiably killing you or your fellow citizens show that ethical thought is nearing its limit. We read accounts of "proportional" attacks, legitimate combatants, and of course, just wars. Naturally, some attempt must be made to get clear on such things. In the past this was often attempted, however, in a way that left readers to ask how ordinary ethical thinking is being applied, an issue that is important in its own right. It left readers wondering if we must simply relax the usual terminology and intuitions so that the focus is on the ethical significance of millions of deaths without getting bogged down in claims about individual lives threatened.

Writers on religious ethical beliefs have occasionally adopted a similar interpretative scale. There have always been differences in the initial steps: authors sometimes get to ethics only once they deal with, or avoid, disagreements about metaphysics. But once the preliminaries were taken care of, authors used to argue that, to take another example, liberal democracies must give legal and political protection to religious views. That was presented as a baseline assumption. Yet in that same piece we might have read that religion itself is the ultimate protector (if not the origin) of values, and political, legal, or ethical. Likewise, it was once conventional to write as if religious values center on some of the most important choices that a person might make. Interestingly, readers were then asked to think of a person's religion as though it does not in fact result from a decision, or at least not just *any* decision. In a typical argument, a writer might have portrayed ethical choices related to religious practice as though one might skin color or gender, two things that we all have much less control over.

There are responses to these concerns, and they deserve a hearing, but it is refreshing to read new approaches. To be sure, serious work in ethics will always reflect rhetorical conventions, and it can be constrained by the nature of the topic. In that sense, why be surprised if writers make a number of concessions when discussing topics as pervasive (and ancient) as war or religion? Better still, why expect that anything can be "ordinary" about the ethics related to war or religion? Nevertheless, readers who have little familiarity with academic arguments have for some time smirked as politicians tied themselves into knots when discussing these topics. Philosophy can do better, as the authors in this Issue reveal. In the end, it could be that what counts is only how well writers confront the effects that new ways of discussing about these old ideas might have on our world, or if that sounds too pretentious, on the way that we do Ethics.

Why I am an Atheist

Colin McGinn
University of Miami

What is the state of belief of an atheist? An atheist is often defined as someone who does not believe in God. It is quite true that an atheist does not believe in God, but that is insufficient to define the state of belief of an atheist. A tree or a rock or a lizard does not believe in God either, but it would be bizarre to describe such beings as atheists. This is because they are not believers at all, in anything. And even a dog or a chimpanzee, which plausibly does have beliefs, is hardly to be characterized as an atheist. Furthermore, an agnostic does not believe in God either, since he suspends belief on the question.

What is missing, obviously, is the fact that an atheist disbelieves in the existence of God: he believes that there is no God. He doesn't merely lack belief in a divinity; he positively believes in the absence of a divinity. Moreover, he takes his negative belief to be rational, to be backed by reasons. He doesn't just find himself with a belief that there is no God; he comes to that belief by what he takes to be rational means. That is, he takes his belief to be justified. He may not regard his atheistic belief as certain, but he certainly takes it to be reasonable, or as reasonable as any belief he holds. Just by holding the belief he regards himself as rationally entitled to it (or else he wouldn't, as a responsible believer, believe it, that being the nature of belief).

Also, given the nature of belief, he takes himself to know that there is no God: for to believe that p is to take oneself to know that p . The atheist, like any believer in a proposition, regards his belief as an instance of knowledge (of course, it may not be, but he necessarily takes it to be so). So an atheist is someone who thinks that he knows there is no God. Thus he is prepared responsibly to assert that there is no God. The atheist

regards himself as knowing that there is no God in just the sense that he regards himself as knowing, say, that the earth is round. He claims to know the objective truth about the universe in respect of a divinity, that the universe contains no such entity. Of course, this entails that he claims to know that other people's beliefs on this question are false, i.e. the theists who believe that there is a God. He also claims to know that the agnostics are mistaken too: they suspend belief when it is rational to commit oneself on the question.

If an agnostic asserts that only a state of non-belief about the existence of God is rational, the atheist takes the view that this is false: it is rational to hold positively that there is no God, not merely to be neutral on the question. The atheist thus claims to know that theists and agnostics are epistemically defective: they have false and unwarranted beliefs about the question of God's existence. He then has reason to wish to alter their beliefs so as to bring them into line with the truth. True beliefs are better than false ones, and he has the true beliefs while theirs are false.

It would be quite wrong, then, to describe an atheist as a "non-believer." He does not merely lack beliefs; he has many beliefs, among them that there is no God. It is not that the atheist is somehow shy of belief or afflicted with pathologically high standards for belief formation; he is not a skeptic, one who shuns belief. He is as much a believer as the theist; he just believes different things. It is not that there is a big hole in his belief system while the theist is bursting with robust beliefs; his beliefs are as numerous and sturdy as anyone's, just different, that's all. Indeed, the theist is as much a "non-believer" as the atheist is, since the theist does not believe that there is no God, thus failing to

possess a belief possessed by the atheist. And, of course, the atheist has many substantive beliefs that go along with his atheism, concerning the origin of the universe, life, the nature of morality, mortality, etc. Only from the point of view of the theist is he describable as a "non-believer"; from his own point of view, he believes in a great many things. From the atheist's perspective, the theist is as much a non-believer as the atheist is commonly taken to be, since the theist fails to hold many of his atheistic beliefs. The atheist is a red-blooded believer, indeed a confident (purported) knower.

To many observers, the atheist as thus described is an arrogant and unreasonable figure. He takes himself to be entitled to various beliefs and attitudes to which he is simply not entitled. He does not know what he so confidently takes himself to know. He has overstepped the epistemic mark. He is a dogmatist, an atheistic fundamentalist, as unreasonable as the most unflinching religionist. He claims knowledge where none can be had. Agnosticism is the only reasonable position, if theism is to be rejected; atheism is intellectually irresponsible. How can anyone know that there is no God, any more than we can know that there is a God? These matters are simply beyond human knowledge, it will be said, areas of deep and irremediable ignorance.

I count myself an atheist in the strong sense outlined, so am I guilty of going out on an epistemic limb, of claiming to know what cannot be known? Am I being unreasonable? I don't think I am, because there are many propositions affirming the nonexistence of things that most sensible people unhesitatingly accept. Take Santa Claus: what is your state of belief about him? Presumably, you do not believe that he exists; but are you an agnostic about his existence? Do you think it is unreasonable, scandalous even, to believe that Santa Claus does not exist? I doubt it. You actively disbelieve in the existence of a tubby, ageless, pink-faced man with a white beard and red clothes who lives in the north pole making toys for children, and who periodically mounts a sleigh to fly through the air powered by superfast reindeer in order to distribute these toys to the children who have been good. If some epistemic stickler were to insist that

only agnosticism is rational here, you would think him a bit nutty ("How can you be so certain there is no Santa Claus? Such certainty is beyond human epistemic powers!"). The reason is that you take yourself to have many good reasons to doubt that Santa exists: the story is made up to please gullible little children; searches of the north pole have not revealed the tubby philanthropist in question; it is preposterous to suppose that he could fly through the air with gravity-defying reindeer; he leaves no trace of his alleged journeys; parents have been known to purchase the gifts attributed to Santa's generosity. These are all solid reasons to believe the negative existential: "Santa Claus does not exist." Do they amount to cast-iron Cartesian certainty? No, but then nor do the vast majority of our beliefs; and this one seems no worse than, say, the belief that the earth orbits the sun or that Barack Obama exists.

We are not certain in a skepticism-proof way of many things, but that doesn't imply that we don't have good reasons for our beliefs, including beliefs that certain things that some people think exist (in this case, little kids) do not. Quite simply, we know there is no such person as Santa Claus. Here is another example: I tell you that there is a dragon in the room next to you, eight feet tall and breathing fire, called "Draggy." You express doubt, because you can't see anything dragon-like in the vicinity. I tell you that it isn't visible, audible, touchable, or smellable. Draggy is a very special kind of dragon, completely undetectable by the human senses or any other device; yet he exists. I then challenge you to disprove my claim. I insist that if you won't take my word for it then at least admit that you are agnostic on the question of Draggy's existence, since you can't prove he doesn't exist.

You might reply that I have defined Draggy in a very convenient way, so that no sensory evidence could possibly be given for or against his existence. The existential claim is totally unverifiable and unfalsifiable. Should you then be an agnostic about Draggy? That seems unduly cautious: it is more reasonable to suppose that I am playing a game with you, perhaps in order to scare you (I might go on to assert that when it thunders outside that is Draggy being petulant). You would be well

within your rights to say to me: "Rubbish, you are making this sh** up; I totally disbelieve in the existence of your dubious Draggy or whatever you want to call it." I might then go on to remind you of Descartes, dreams, brains in vats, the difficulty of obtaining absolute certainty; but you would rightly not be impressed by such flimflam. People cannot just go around positing peculiar entities and expect you either to believe that they exist or admit that you don't know one way or the other.

Let me distinguish reasonable from excessive agnosticism. Reasonable agnosticism applies to cases where the evidence for and against a proposition is pretty evenly balanced. There are many such cases: Should we maintain a military presence in Afghanistan? Is there such a thing as dark matter? Was the moon ever part of the earth? Excessive agnosticism is the view that we should never commit ourselves as to the truth of a proposition. It is the natural response to various forms of extreme philosophical skepticism. What I am pointing out is that opponents of atheism practice selective excessive agnosticism: they insist on a skeptic's standard of evidence when it comes to the proposition that God does not exist. They accept that other negative existentials can be known to be true, as that Santa and Draggy do not exist, but they deny that the atheist's negative existential can be known to be true. My position is that both are in the same boat: that is, it is as reasonable to be an atheist as it is to be a disbeliever in Santa or Draggy. There is nothing inherently irrational in denying the existence of God, any more than it is inherently irrational to deny the existence of those other things. To suppose otherwise is to be what we might call a dogmatic agnostic: one who refuses on principle to disbelieve, no matter how good the evidence for disbelief is.

And now the question becomes what the reasons actually are to deny that God exists. Here I shall be brief, because this is well-trodden ground. In the first place, I do not think there is any evidence in favor of God's existence (by "God" I shall mean a supernatural being with some personal characteristics who created the universe and is interested in the fate of sentient beings such as ourselves). No observable fact about the universe

points towards God as its most plausible explanation, e.g. the intricate design of organisms. There is no good evidence of miracles on the part of specially endowed human beings or emanating from Beyond. The idea of a disembodied being with infinite causal powers existing imperceptibly is contrary to reason. The traditional story of such a being is better explained by certain human needs and superstitions instead of by the actual existence of such a being. It is never reasonable to believe in the existence of something simply because of human testimony, when no other evidence has ever been forthcoming. The traditional so-called proofs of God's existence, the first-cause argument, the ontological argument, the argument from design, do not hold water. In sum: there is simply nothing out there that amounts to a decent reason to assert that there is a God. As to arguments against, there is the standard problem of evil, as well as the more general problem of making sense of a being having all the qualities said to be possessed by God (e.g. how can God be truly omnipotent granted that he is a necessary being, for couldn't he act so as to extinguish himself, thereby showing his contingency?). There is really no more reason to believe in the God I have defined than in the Greek gods or other beings of myth and legend.

The theist may think I am being hasty and unfair. These are profound questions, she will say, not to be quickly decided. I agree that the considerations just adduced need to be thought through carefully (and I take myself to have done this work over the years), but the point that needs to be made here is that the theist is actually as hasty and unfair as she says I am. For every theist is also an atheist. That is, every believer in one god is a disbeliever in another. Believers in the Christian God disbelieve in the vengeful, jealous and capricious God of the Old Testament, as well as in the Hindu gods or the Greek gods or the nature gods of "primitive" tribes or any number of other "false gods." People believe in the reality of their own God, but they are not similarly credulous when it comes to other people's gods; here their disbelief is patent and powerful. They do not preach agnosticism



about those other gods; they reject them outright. I am with them on this point, but I extend it to their God too. My point is that they are as "dogmatic" as I am in their atheism; we are just atheists about different gods. I am an atheist about all gods; typical theists are atheists about the majority of gods believed in over the centuries by human beings of one tribe or another. I find their disbelief thoroughly sensible; I would merely urge them to push it one stage further. I favor total atheism; they favor selective atheism, none of that pusillanimous agnosticism for either of us. So please, theist, do not accuse me of epistemic irresponsibility in my atheism.

There used to be a big issue about monotheism and polytheism. Asserting the existence of only one god flew in the face of the beliefs of the polytheistic majority. No doubt the polytheists felt disrespected, and they wondered how the monotheists could be so sure that all those gods of old were mere fancy, poor non-existent beings, destined for the scrap heap of history. Some of the gods denied had ancient names, fervid followers, temples devoted to them, priests specializing in their doings, and the disbelieving monotheists wanted to abandon all of that in favor of their pinched unitary deity. The new monotheists were the atheists of their day, except that they retained a single divine being alone (hoping for a *reductio* the polytheists asked why, if they were ready to abandon nearly all the gods, they didn't go the whole way). Perhaps the polytheists urged a more cautious agnosticism on the monotheists with regard to the spurned deities; they rejected the offer, preferring outright disbelief. My state of belief mirrors theirs, except that I affirm zero gods instead of one. (In fact, the idea of many gods has its advantages over the one-god theory: it comports with the complexity of the world and it promotes tolerance.) Yahweh, Baal, Hadad, and Yam: which of these ancient gods do you believe in and which do you think fictitious? I believe in none of them, nor in any others that might be mentioned; if you believe in one of them and disbelieve in the others, then you are just like me with respect to those others. Atheism is not confined to atheists, and the epistemology is the same no matter which gods you disbelieve in.

I say I am an atheist, and that is true. But the label is misleading in that it characterizes me from the perspective of a theist: I am a rejecter of theism (why can't I describe theists as rejecters of atheism, thus privileging my own position?). This gives the impression that I go around rejecting theism, that I am preoccupied with that activity, that I wake up each day and celebrate my denial of God's existence. According to this picture, I am an atheist in the same way that I am a philosopher or a tennis player or hold certain moral views, these being traits of mine that define my "identity." But really I am atheist in the same way typical monotheists are a-polytheist: it's not something you think about, aside from the constant buzz of people asserting the opposite. Since there are no noisy polytheists left, monotheists don't need to occupy themselves with combating polytheism; nor is this something they fret about and ponder on a daily basis. They are beyond polytheism.

To be a theist who is labeled an a-polytheist would be an odd mode of description today, true but hardly central, significant. You could be an a-polytheist and scarcely have given the topic a moment's thought; it is simply a logical implication of your assumed monotheism. For me, to be called an atheist feels similarly weird, as if I am defined by one of disbeliefs (I'm also an a-scientologist, an a-Santa-ist, an a-werewolf-ist, etc). If theists were in the minority, and quieter, I doubt that the term "atheist" would be much used; and if that minority were very small, theists might be called "a-naturalists" or some such thing. I am defined as an atheist only in a certain social context. I used to be a serious engaged atheist, when I was thinking systematically and passionately about religion, some forty years ago, when I was in the heated process of rejecting religious claims. But since then my atheism has become merely reactive; where once the lava was hot, now it is cool. I used to believe in ghosts and goblins too, as well as Santa, but once the process of rejecting these entities was over, my state of belief became one mainly of indifference. It would be odd, though literally true, to describe me as someone who disbelieves in ghosts, goblins and Santa, as if this were what my thought

processes were all about. I am beyond these things as I assume you are too. And that is my actual position with respect to God: I am post-theist, or I would be if I were not placed in a social context in which I need to defend my settled beliefs (hence this essay). I no longer debate the issue with myself or wonder whether I might be making a serious mistake (though I concede, as a good fallibilist, that it is logically possible that I am wrong, as it is about almost everything I believe). So my state of belief is not that of one continuously denying the existence of God, with an active belief that there is no such entity (though it is true that I am more often in this state than I would be the issue were not constantly debated around me). I am, dispositionally at any rate, in a state of implicit disbelief with respect to God, as I am in a state of implicit disbelief about ghosts, goblins and Santa. I simply take it for granted that there is no God, instead of constantly asserting it to myself. The state of mind I am in while composing this essay is not, then, my habitual state of mind, and even to be explicitly denying the existence of God strikes me as taking the issue a little too seriously, as it would be to write an essay making explicit my negative implicit beliefs about Santa Claus. So I am really as much post-atheist as post-theist, when it comes to my natural state of mind, just as I suppose that most people are post-a-polytheist as well as post-polytheist. Polytheism, for most people, is simply a dead issue, not a subject of active concern. Theism for me is a dead issue, which is why it is misleading to call me an atheist, though it is of course strictly true that I am. It is misleading in just the way that it is misleading to speak of a traditional Christian as an a-polytheist or a normal adult as an a-Santa-ist, since it suggests a far more active engagement with the issue than is the case. Many other difficult issues engage my mind and remain unresolved, or at least open to serious question, but not my disbelief in God.

I have also reached the point (I reached it long ago) that the issue of God's existence no longer strikes me as an interesting issue. I mean, when it comes up I tend to glaze over, because all the moves are so familiar, and the debate seems so antiquated. I find it hard to get fired up

about it. It just seems dull. No intellectual sparks fly off it. The question has important political and cultural significance, to be sure, but as an intellectual issue in its own right, it lacks vitality. By contrast, my belief in ethical objectivism, or in natural mysteries, or in conceptual analysis, seems relevant and alive, as does my rejection of the contrary positions. My rejection of theism is more like my rejection of monarchy as a good political system: a bit of a yawn. When I was young, I saw through both ideas and have found no reason over the decades to question my earlier conclusions, so the belief is like an old relative I take for granted rather than a lively new acquaintance (I am by no means in love with atheism, as I am with other intellectual ideas). The thrill of atheism has gone, along with fear of it; now it is just an uninteresting fact about me, hardly worth mentioning.

Do I then advocate abandoning all talk of God and his works? I think there is no such thing as God in reality, so do I also think that discourse about God has no useful role? It may shock some of my atheist comrades but I don't advocate the abolition of God-talk. What I think is that God is (or can be or become) a useful fiction, so his name can play a role even though it has no existent bearer. For many people Satan has already gone that way: they don't believe in his literal existence but they find it useful to retain the concept and its associated language and ideology. Satan is, or has become, a useful fiction, his name a fruitful source of ideas and emotions, especially when it comes to describing the deeply evil. Imagine a community of intelligent beings who have never believed in God or anything supernatural or even considered the question of whether such beings might exist; they are constitutionally secular. They do, however, enjoy works of fiction, so they are familiar with the notion of a fictional character; they are clear that such characters do not exist but are merely conjured up by creative writers. One day a writer publishes a novel with a radically new theme: a supernatural being who created the universe, cares about us, ensures our survival after death, rewards the virtuous and punishes the wicked, called "Gud." The book is offered as a work of pure fiction, and is taken to be so by its eager readers. It becomes a bestseller, a

publishing phenomenon. People speak constantly of Gud and his works, enjoying the fiction woven around this supernatural character. The story supplies something in their imaginative life hitherto missing (rather as some of Shakespeare's characters seem to do so). No one, however, is tempted to think the story is factually true. They start saying Gud-related things to each other, like "Gud wouldn't think much of that" or "It would take Gud to pull that off" or "By Gud, you're beautiful." They find such remarks amusing, maybe enlightening, though they are consciously interpreted as purely fictional (compare "Only Sherlock Holmes could have solved that crime").

In this way the God concept enters their thought and discourse, but never in such a way as to make a factual claim; it is all just harmless make-believe. I have no objection to any of this: our hypothetical community is a community of atheists who find talk of Gud useful and amusing. A fictional supernatural being plays a role in their imagination but is not taken to be a genuine constituent of reality. They are careful, say, to instruct their children that this is just a story not a piece of sober metaphysics or science. Well, I think God could play just such a role for us. We simply cease to take talk of God literally, consigning him to the category of useful fictions. He already plays that role for many of us, because atheists do not all abjure the word "God" ("I wish to God people didn't believe in things like...God"). In fact it is plausible to conjecture that back in man's prehistory, before the distinction between myth and fact has become clear, talk of the gods belonged to a seamless mode of speech in which people were none too fussy about which parts they thought corresponded to objective reality and which parts were projections of the imagination. Then god talk became hardened into literal assertion, and you had to

decide whether you thought that the gods were myth or reality; heretofore people were pleasantly hazy about that distinction. I don't advocate a reversion to such haziness; I just think it was a mistake to put the gods on the reality side instead of the useful fiction side. Let us, then, put them clearly on the fictional side where they belong; we can then talk about them all we want, so long as we know what we are doing. Presumably churches and other forms of worship will then disappear, at least as we know them, though worship of known-to-be-fictional characters is not unprecedented. Religion as we have it will certainly not survive the reorientation I am suggesting, though a good deal of its conceptual core might (only now interpreted fictionally). People will no longer believe in God, but they will make-believe in him. This strikes me as quite an attractive world to live in. Stories can, after all, be good, artistically, morally, without being true, that is, factual. There is no God, but the story of him has its attractions as a work of art (at least some of it does; not all of the God fiction is that useful). Living in that world, my state of belief with regard to God might include a good deal of make-believe in him, combined with adamant disbelief in his reality. My imaginative life already involves a lot of make-believe in relation to fictional characters, none of it confused with belief proper; I see no reason why I couldn't extend this attitude towards God, at least once other people stopped literally believing in him. I might then extract what is good in the concept, while discarding the metaphysical baggage. Religious language would then be more of a fun fiction than a cruel hoax, a kind of game.

Why McGinn is a Pre-Theist

Edward Feser
Pasadena City College

Colin McGinn gives expression to a perspective he describes as not only atheist, but post-theist. I argue that his position reflects a serious misunderstanding of what the debate between theism and atheism is really about. In particular, it reflects a misunderstanding of classical philosophical theism as it has been developed within the Aristotelian, Neo-Platonic, and Thomistic traditions. Since he has failed seriously to grapple with those traditions, McGinn's position is better described as pre-theist.

Why McGinn is a Pre-Theist

In his essay "Why I am an Atheist," Colin McGinn tells us that he has so moved beyond theism that his position might be described as not only atheist, but "post-theist." Yet it seems to me that he fundamentally misconceives what the debate between theism and atheism is all about, or at least what it has always been about, historically, in the thinking of the most sophisticated philosophical theists. McGinn evidently supposes that it is a question of whether there exist one or more instances of an unusual class of entities called "gods," understood as "supernatural beings" comparable to werewolves, ghosts, and Santa Claus. And he supposes that the way to answer this question is to consider whether there is "evidence" that any of these "gods" is the most "plausible explanation" of this or that observed phenomenon.

But this way of talking reflects a basic misunderstanding of what Aristotle, Plotinus, Anselm, Maimonides, Avicenna, Aquinas, et al. were all arguing about in the first place. By "God" such thinkers generally do not mean to refer merely to a member of some genus (not even a unique member), one being or cause alongside the others who differs from them only in the degree of his power or the range of his efficacy. Nor is he postulated as the most probable explanation of certain unusual phenomena that have yet to be explained scientifically. God, as understood in the tradition represented by such thinkers, is rather the necessary metaphysical precondition of there being any causality, any existent

things, and indeed any genera at all. And the historically central arguments for his existence are not exercises in "god of the gaps"-style probabilistic empirical hypothesis formation, but attempts at strict metaphysical demonstration. A reasonable person might reject such alleged proofs, but to characterize the debate the way McGinn implicitly does is to make a basic category mistake.

In order to see how, it will be useful first to consider a couple of analogies. Suppose someone skeptical about Euclidean geometry said:

Euclideans already agree that the particular triangles we see drawn on chalkboards, in books, in the sand at the beach, and so forth, all have sides that are less than perfectly straight. But I maintain that Euclidean plane triangles *as such* have sides that are less than perfectly straight. Euclideans will object to this as dogmatic or excessively agnostic, but all I am doing is extending the doubt they share with me to their favored triangles too. I find their disbelief in the perfect straightness of the sides of the triangles we see drawn in books, etc. thoroughly sensible; I would merely urge them to push it one stage further, to triangularity itself. I favor total disbelief in the straightness of the sides of triangles; they favor selective disbelief. I have also reached the point that the issue of the straightness of the sides of Euclidean triangles as such no longer strikes me as an interesting issue. I'm not merely anti-Euclidean, but post-Euclidean.

Or suppose a critic of Platonism said:

Platonists already agree with me that the things

we come across in everyday experience are all in various ways imperfect or less than fully good instances of their kinds. But I maintain that the Form of the Good is also imperfect or less than a fully good instance of goodness. Platonists will object to this as dogmatic or excessively agnostic, but all I am doing is extending the doubt they share with me to their own favored entity. I find their disbelief in the perfect goodness of the things of our experience thoroughly sensible; I would merely urge them to push it one stage further, to the Form of the Good itself. I favor total disbelief in the idea that things are ever perfect instances of their kinds; they favor selective disbelief. I have also reached the point that the issue of the goodness of the Form of the Good no longer strikes me as an interesting issue. I'm not merely anti-Platonist, but post-Platonist.

Now, obviously such remarks would hardly constitute devastating objections to Euclidean geometry and Platonic metaphysics. Rather, our imagined anti-Euclidean and anti-Platonist would be making serious category mistakes, and demonstrating that they have badly misunderstood the views they are dismissing.

In particular, the anti-Euclidean in question would be supposing that the concept of a triangle as defined in textbooks of Euclidean geometry is merely one triangle alongside all the others that one comes across in traffic signs, dinner bells, and the like, only invisible and better drawn. But of course, that is not what it is at all. What the textbooks describe is not *a* triangle, not even an especially well-drawn one, but rather (*Euclidean*) *triangularity itself*, and the triangles one comes across in everyday experience are defective precisely because they fail to conform to the standard it represents. Similarly, the anti-Platonist in question supposes that the Form of the Good is merely one more or less perfect or imperfect instance of some class or category alongside the other instances, albeit an especially impressive one. But of course, that is not at all what the Form of the Good is supposed to be. The Form of the Good doesn't *have* goodness in some more or less incomplete way; rather, it just *is* goodness, participation in which determines the degree of goodness had by things which *do* have goodness only in some more or less incomplete way.

Notice that the point has nothing to do with whether either Euclidean geometry or Platonism is true, or with whether there are good arguments for or against either view. Even if the material world actually conforms to some non-Euclidean geometry, on which the sides of triangles are curved rather than straight, the remarks of our hypothetical anti-Euclidean would still be confused. For the Euclidean would even in that case not be making the *kind* of mistake our hypothetical anti-Euclidean supposes. It would not be that there *are* Euclidean triangles but that they too have, after all, sides that are imperfectly straight; *that* claim doesn't even make sense. It would rather be that Euclidean triangles, which of course always have perfectly straight sides, just aren't instantiated after all. Similarly, even if objections to Platonism like the Third Man Argument are correct, the remarks of our hypothetical anti-Platonist would also still be confused. For it would not in that case be that there is a Form of the Good but that it too is, after all, less than perfectly good; that claim also makes no sense. It would rather be that there is no Form of the Good in the first place.

Our hypothetical anti-Euclidean and anti-Platonist, then, haven't earned the right to call themselves "post-Euclidean" or "post-Platonist," because neither has correctly understood what the debate over these views is really about. Accordingly, they would more appropriately be labeled "*pre*-Euclidean" and "*pre*-Platonist."

Now McGinn seems to me open to a similar criticism. In his essay, he compares belief in the God of philosophical theism to belief in the Greek gods, ghosts, werewolves, and Santa Claus, and writes:

"People believe in the reality of their own God, but they are not similarly credulous when it comes to other people's gods; here their disbelief is patent and powerful... I am with them on this point, but I extend it to their God too. My point is that they are as 'dogmatic' as I am in their atheism; we are just atheists about different gods. I am an atheist about all gods; typical theists are atheists about the majority of gods believed in over the centuries by human beings of one tribe or another. I find their disbelief thoroughly sensible; I would merely urge them to push it one stage further. I favor total atheism;

they favor selective atheism...I am beyond [belief in ghosts, Santa, etc.] as I assume you are too. And that is my actual position with respect to God: I am post-theist... I have also reached the point (I reached it long ago) that the issue of God's existence no longer strikes me as an interesting issue..."

The trouble with all this is that it evinces a misunderstanding of theism comparable to the misunderstandings of Euclidean geometry and Platonism evinced by our hypothetical anti-Euclidean and anti-Platonist. Or at least, it misunderstands *classical* theism, viz. the theism of Roman Catholic, Eastern Orthodox, and much Protestant theology, of the Aristotelian, Neo-Platonic, and Thomistic traditions in philosophical theology, and of thinkers like the ones I cited at the beginning of this essay.

For Aristotelians, to change is to go from potential to actual, and that any change occurs in the world at all is intelligible only if there is something which actualizes everything else without the need (or indeed even the possibility) of having to be actualized itself, precisely because it is already "Pure Actuality": an Unchangeable Changer or Unmovable Mover. For Neo-Platonists, whatever is composite or made up of parts of any kind requires explanation by reference to something which combines the parts. Accordingly, the *ultimate* explanation of things must be utterly simple or non-composite, and thus without the need (or, again, even the possibility) of something's bringing it into being: what Plotinus called The One. For Thomists, whatever is composed of an essence together with a distinct "act of existence" must ultimately derive its being from something whose essence *just is* existence: that which is Subsistent Being Itself. In general, classical philosophical theology argues for the existence of a First Cause of the world which does not merely *happen* not to have a cause of its own, but which (unlike everything else that exists) *cannot even in principle* have required one. Anything less would fail to provide an *ultimate* explanation of the world.

Now, a critic might intelligibly question whether the arguments for such a divine Cause succeed. (I defend

some of them at length in Feser, 2009 and Feser, 2011.) But to suggest that belief in the God of classical theism is relevantly comparable to believing in Zeus, werewolves, ghosts, or Santa Claus is to



miss the whole point. Each of these beings would be an instance of a kind: "a being" among other beings, "a cause" among other causes, and thus (given general Thomistic metaphysics) something with an essence distinct from its act of existence. Each would be composite in some way: made up of parts, whether physical or metaphysical. Each would be a mixture of actuality and potentiality, and thus in various ways in need of being actualized. In short, each is, like the ordinary objects of our experience, the sort of thing that for the Aristotelian, Neo-Platonist, and Thomist would require an explanation outside itself.

The very point of classical theism, as developed within these traditions, is to argue for the necessity of there being something that is not at all like that. God is not an instance of a kind, not even a unique instance; he is not in any way composite; he not only has no need of being actualized or caused, but could not even intelligibly be described as having been actualized or caused. He thus differs from atoms and molecules, stones and trees, animals and human beings (and indeed, from werewolves, ghosts, and the gods of the various pantheons) in a manner analogous to the way Euclidean triangularity differs from individual concrete triangles, or the way the goodness of the Form of the Good differs from that of individual good things. He is not "a being" alongside other beings, not even an especially impressive one, but rather Being Itself or Pure Actuality, that from which all mere "beings" (including gods like Zeus, Mercury, and Quetzalcoatl, if they existed) derive the limited actuality or existence they possess. He is not "a cause" who is like other causes except for coming before the second, third, and fourth ones. Rather, he is "first" in the sense of being the metaphysical precondition of any possible causality: that which, as "Pure Actuality," can impart the power to actualize without having to receive it.

Nor is any of this a matter of formulating

empirical explanatory hypotheses, weighing probabilities, or the like. The arguments for classical theism are grounded in metaphysical premises that are more fundamental than anything empirical science has to tell us, and indeed (as classical theists argue) in premises that any possible empirical science itself has to take for granted. Whatever the laws of physics, chemistry, biology, etc. turn out to be, they will (so the Aristotelian argues) describe a world in which potentials are actualized, which (it is also argued) cannot occur even for an instant without a Purely Actual cause of change. Such laws will also describe a world of things that are composite in various ways, and which in particular are composed of an essence together with an “act of existence,” and thus things which must be maintained in being at every instant by that which is utterly One (as the Neo-Platonist would argue), or that in which essence and existence are identical (as the Thomist would argue).

The point has nothing to do with whether or not classical theism is true, or with whether the arguments for it are ultimately any good. Even if the atheist were correct, that would not be because it turned out that the God of classical theism really was the sort of thing that could intelligibly be said to require a cause of his own, or was composed of parts, or was merely one instance of a kind among others. That is to say, it wouldn't be because he turned out to be comparable to werewolves, Santa Claus, ghosts, and Zeus after all. *That* sort of suggestion doesn't even make sense, any more than the suggestions of our hypothetical anti-Euclidean or anti-Platonist make sense. It rests on a basic mistake, the assumption that since the God of classical theism along with Zeus, Thor, ghosts, werewolves, Santa Claus are all said to have

unusual powers (with some of them even referred to as “gods”) they must all be instances of the same kind. That is like saying that since individual good things and the Form of the Good are all called “good,” they must be just different particular instances of the same kind; or that since the triangles one sees on chalkboards and in books and Euclidean triangularity as such are all triangular, they must just be different particular instances of the same kind.

McGinn's mistake is a very common one among contemporary atheists. Nor is it entirely his fault. Ever since William Paley presented his feeble “design argument,” with its crudely anthropomorphic description of God as a kind of cosmic tinkerer, pop apologetics and pop atheism alike have tended to characterize God as if he were more or less like us, only smarter, stronger, and invisible. By the late twentieth century the tendency had even crept into academic philosophy of religion, leading to the partial displacement of the classical theistic conception of God by what Brian Davies (2004) has called a “theistic personalist” conception. This anthropomorphic conception of God is often read back into the arguments of older writers like Aquinas and the others mentioned above (who would have had no truck with it), severely distorting contemporary readers' understanding of those arguments.

Until one sees that it is a distortion, though, one has not really understood classical theism and the arguments for it, much less refuted them. One has not earned the right to be a “post-theist.” One is better described as a *pre-theist*.

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Defending Theism as if Science Mattered: Against Both McGinn and Feser

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Analytic philosophers at their best can almost make "ignorance is strength" appear to capture a virtue. Colin McGinn may not know much about theology, but he knows what he believes, and that is very helpful in the case of "atheism," a term that on its face connotes a defiance of religious authority but not much else very clearly. After all, some self-avowed "atheists" might not know whether God exists but are certain that priests do not speak for this possible entity. Enlightenment religious attitudes, including several strands of dissenting Christianity, as well as agnosticism, all fall comfortably under this category. However, McGinn is not simply declaring his independence from clerical dogma but outright denying the existence of God, as he would deny the existence of any other entity that fell below the requisite standard of reason and evidence.

It is too bad that McGinn did not articulate the epistemic standard below which belief in God falls. Instead he gave us a phenomenology common to the experience of disbelief and a set of entities (Santa Claus, Greek gods, ghosts, goblins, etc.) that equally failed to meet the grade. It is difficult to know what to make of this set because the entities differ so much in terms of how people came to believe in them and then came not to. All that these entities seem to have in common is that some ideal epistemic agent (*aka* Colin McGinn) would not believe in them.

Here one might ask three questions of whatever standard on which McGinn might be basing his belief in God's non-existence:

- (1) Is McGinn's atheism consistent with his normal epistemic standards? In particular, does he hold belief in God's existence to the same standard as, say, belief in one of the more peculiar but putatively universal

entities or forces propounded in contemporary physics, evidence for which comes from multiple indirect sources, including compatibility with other presumptively true theories?

My suspicion is that McGinn probably holds belief in God to a higher standard than that, perhaps because of what he takes to be the "unconditional" nature with which belief in God is held by believers, or perhaps what he takes to be the much greater stakes involved in holding a belief in God.

- (2) Has McGinn taken into account other beliefs that he holds that presuppose the existence of God, specifically, the monotheistic deity of the Abrahamic tradition that appears to be his main target for disbelief? Can he continue to hold those beliefs on a rational basis if he does not believe in God?

The specific belief I have in mind is in the ultimate efficacy and significance of scientific inquiry. From a strictly Darwinian standpoint, the enormous value and resources that humanity has placed in a physics-driven agenda to obtain knowledge of reality far beyond the scale and scope required for our reproductive survival is very puzzling, not to mention increasingly risky, as the fruits of that knowledge are applied to the life-world (e.g. nuclear energy).

The assumption throughout has been that the more we know about everything, the greater advantage we shall have in the cosmos. Again from a Darwinian standpoint, this assumption is far from self-evident, not least in terms of "the cosmos" as our natural frame of reference. However, it is reasonable to think humanity might be up to the task, at least as a collective project, if

each of us possesses an intelligence very much like that behind the presumed cosmic order. But if such a belief, that we are created "in the image and likeness of God," is dismissed (because the deity in question is deemed not to exist), then it is not at all clear why we should continue to hold science in such high esteem. Of course, the bits of science most directly connected to technologies whose material benefits to *Homo sapiens* can be demonstrated in the short-to-medium term are salvageable in a post-theological, Darwinized world, that is, if they do not create more problems than they solve (which is what many Darwin-inspired ecologists fear). But to be fair to McGinn, he has form in refusing to defer to science as the final epistemic arbiter in matters of mind. Indeed, he may be the most explicit of the "new mysterian" philosophers who deem consciousness, by virtue of its first-person character, to be beyond the reach of natural science.

(3) Is McGinn's disbelief in God reversible in light of some evidence or reasoning that might be presented in the future?

Given the ease with which McGinn transitions from denying God's existence to proposing a serviceable discursive context for fictional entities such as God, I suspect not. Indeed, he seems more concerned with explaining what he means by his denial of God's existence than with justifying the denial itself. Thus, his atheism does not emerge from the elimination of God as one of several alternative hypotheses for the character and/or extent of order in nature, as one might expect of a devotee of Bayesian statistical inference, Peircean abduction or Putnamian inference to the best explanation. Perhaps McGinn's curious dogmatism reflects his not thinking that anything of value to him might hang on the existence of one intelligible, universal God. And if McGinn holds the epistemically diminished view of science that I attributed to him above, such a stance would make sense. Rather like David Hume, McGinn might be happy to see *both* science and theology suffer an epistemic demotion insofar as they attempt to transcend what is generalizable from experience. However, the question remains whether McGinn's inability to recognize

evidence for the distinctive workings of divine agency means that his beliefs do not presuppose that there are such workings. After all, if McGinn is already motivated not to believe in God, beyond what the evidence alone suggests, he may easily overlook his own cognitive dependency on theism.

To his credit, McGinn recognizes that contemporary atheism relates to Abrahamic monotheism much as the latter historically related to the various polytheisms it supplanted. But the lessons run deeper than he thinks. In particular, the Abrahamic religions promised to bring an empowering sense of focus to the disparate beliefs of the polytheists they converted and/or conquered. This was originally most explicit in the case of Islam, part of whose mission was to draw all human knowledge into a theologically coherent package that could be used to spread the Word. The practice was, of course, adopted by the Christians starting in the 12th century, and then carried forward into the modern post-Newtonian projects to unify the sciences, which have been increasingly justified without recourse to the Christian theological overlay that, say, Edward Feser continues to import from Thomas Aquinas.

The vehemence with which the "New Atheists" oppose the Abrahamic faiths speaks to the animus of this lineage: A completely godless world is nowadays held to provide greater focus and power for humanity than a god-filled one. Yet, such a claim must sound strange to those familiar with thinkers from the past who might have been reasonably called "atheists", namely, Epicureans and sceptics. Their general message was that human sanity lay in abandoning godlike delusions of knowledge and control (Fuller 2010: chap. 6). Yet, many of the key explanatory concepts of the natural sciences to which New Atheists such as Richard Dawkins routinely appeal are themselves secular descendants of historic attempts at fathoming divine agency. Ironically, it may be all too easy for Dawkins to find God a superfluous concept because the operation of natural selection on genetic information captures exactly the sense of organic adaptation that a natural theologian such as William Paley would have attributed to God's handiwork (Fuller 2008: chaps. 4-5).

Indeed, contrary to some of the stereotyping of today's intelligent design theory (usually by its opponents but sometimes by its friends), Paley did not believe that God's plan could be simply read off the morphology of organisms. Indeed, he was an early supporter of fellow cleric Thomas Malthus, whose controversial population views appeared to operationalize the idea of each individual's life as a divine trial, the prototype of Darwin's theory of natural selection (Fuller 2010: chap. 7; Fuller 2011: chap. 4). Thus, while Dawkins (like Darwin before him) may not find Paley's rather heartless deity a fit object of worship, Paley himself would have no problem seeing the outworking of the divine plan in modern evolutionary theory.

This point speaks to whether McGinn can so easily escape the legacy of theism without drastically altering human epistemic aspirations. So called "New Atheists" retain the high epistemic ambitions of the old natural theologians, whereas the refusal to entertain any such ambitions was the therapy administered by the more skeptical atheists of antiquity, the modern legacy of which passes through Hume. These older style sceptics are properly called "post-theistic" in that they have truly "got over" God in the way one might get over a destructive personal relationship. Unlike Dawkins, they do not then proceed to replace the old object of desire with something having almost exactly the same properties. McGinn's discourse equivocates between the ancient and contemporary forms of atheism in a way that places his "post-theistic" credentials in doubt.

Nevertheless, as my critique of McGinn equally suggests, I do not buy into Feser's self-serving, question-begging construct, "classical theism," or his corresponding charge that McGinn is "pre-theistic." My guess is that in keeping with a certain strand of Catholic sophistry, Feser wants to banish the very idea of atheism as conceptually incoherent, and that self-avowed "atheists" are simply people who have yet to master the classical theist's way of making sense of God. I doubt that McGinn would take seriously such a high-handed attempt at metaphysically pre-empting atheism.

However, Feser's distinctive rhetorical strategy

points to the theological concerns that make him want to ring-fence God from serious epistemic contestation. He basically wants to rule out of the discussion those who would argue that divine qualities differ from human ones only by degree and not kind. Such a person, I include myself, holds that God is an infinite being, but the dimensions along which God is infinite are the same ones in virtue of which humans prove finite. In that respect, if you scale up all of our virtues indefinitely and imagine them contained within one being, then you have God, just like the best possible version of the triangles you see in nature and textbooks is the triangular form itself. Of course, in the latter case (to recall Feser's opening examples), this would not be Plato's or Aristotle's way of seeing things (Euclid himself may be a different matter) but it would be familiar from defenders of a nominalist approach to universals and an univocal approach to predication, starting with the high mediaevals Duns Scotus and Ockham and leading to Hobbes and Mill in the modern period. Indeed, it is the theological tradition whose bloody-minded literalness in envisaging God as the cleverest mechanic working with the most tools in the largest possible shop that animated the imaginations behind the 17th century Scientific Revolution.

Feser demonizes the nominalist tradition as "anthropomorphic" and "personalist" in its conception of God, as if that were a kind of intellectual corruption, if not blasphemy, or some otherwise settled sacred truth. But truth be told, at stake here is a matter of how one interprets the contents and processes of one's own mind. While Feser is undoubtedly correct that an idealized triangle differs significantly from actual ones, including those drawn to represent the ideal, the key point is not the difference but the similarity. In effect, the ideal triangle serves as a goal or standard, against which actual triangles may be judged, so as to result in measures of distance and, by implication, progress towards realizing the ideal. It follows that actual triangles are not imperfect versions of some pre-existent ideal but works in progress towards reaching a vividly imagined ideal. The ideal triangle



exists for us more as a hypothesis than an indubitable *a priori* concept, let alone a metaphysical foundation.

While Feser, in good Thomist fashion, can logically accommodate a version of scientific inquiry within what he calls "classical theism," it is by no means clear that he is in any better position than McGinn to motivate its actual historical development, integral to which has been the ambition to "enter the mind of God," even when the scientists (e.g. Steven Weinberg, Stephen Hawking) officially profess a disbelief in God. The most theologically striking feature of this development, of course, is the epistemic efficacy of merely acting as if there were a "mind of God" to fathom. Such efficacy exceeds the edification and entertainment values that McGinn ascribes to a fictionalist endorsement of the deity, while also taking more literally than Feser the prospect of second-guessing a hypothesized deity's *modus operandi*. Indeed, on Feser's view, science

appears doomed to dwell in a shadow universe vis-à-vis the protected ontological zone reserved for theology. While this neatly tracks the modern political separation of state and church, it undermines any strong reading of the New Testament doctrine of *logos*, whereby through language humans partake of the deity's creative potential. Without such an interpretation, which is arguably more concerned with the Bible's literalness than its truth, Christians would not have been emboldened to make the great leap into the modern scientific world-view (Fuller 2010: chap. 5).

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What is Wrong with Atheism and Classical Theism?

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In his “Why I am an Atheist” Colin McGinn provides a lucid and exhaustive definition of strong *atheism*. McGinn is not merely a non-believer. He believes that those who believe in one or another god are mistaken, because no gods of any sort exist. McGinn “is as much a believer as the theist; he just believes different things....The atheist is a red-blooded believer, indeed a confident (purported) knower.” With deftness he draws other believers into his atheist camp by pointing out how monotheists are themselves atheists when it comes to the beliefs of polytheists. McGinn rejects the purported existence of all gods, not just the one theists select. “I favor total atheism; they favor selective atheism....My state of belief mirrors theirs, except that I affirm zero gods instead of one.” Nicely put. Concise and clear. Now I know just what an atheist is.

McGinn provides a clear definition of strong atheism. He grounds his belief in the non-existence of the gods in reason and takes his “belief to be justified” even if it is not quite “certain.” He offers two arguments.

In reverse order, the first is an argument against God’s existence on the grounds that we lack sufficient evidence. The classical proofs for God’s existence are not persuasive, he says. McGinn rejects the testimony of miracles. Traditional reasons for God’s existence are preemptively rejected. Rather than knowledge of God, McGinn finds himself lacking such knowledge. Ordinarily this situation leads to agnosticism; but McGinn argues that this lack of knowledge warrants strong atheism—that is, belief in God’s non-existence. This form of argument is classically known *argumentum ad ignorantiam* or the argument from ignorance. It is fallacious to argue that lack of knowledge leads to a positive conclusion worthy of strong belief.

McGinn’s second argument is based upon analogy. He proceeds to provide us with colorful reasons

why he disbelieves in Santa Claus or Draggy the dragon. Because children who grow up eventually cease believing in Santa Claus, by analogy this applies to McGinn’s ceasing to believe in God. Because the dragon in the next room is a fiction, by analogy so must claims about God’s existence be a fiction. If Santa and Draggy don’t exist, *ergo* God does not exist. Should an argument via analogy count as rational justification for atheism? What if God is unlike Santa and Draggy in some significant way? Will the argument by analogy hold?

Edward Feser rightly points out that the God of classical theism does not belong in the same category as Santa or Draggy. Nor does God belong in the same category with Zeus or the other gods of the polytheists. I would dub non-existent figures such as Zeus intra-cosmic or pen-ultimate entities rather than the ultimate ground of reality. “To suggest that belief in the God of classical theism is relevantly comparable to believing in Zeus, werewolves, ghosts, or Santa Claus is to miss the whole point,” says Feser. “Each of these beings would be an instance of a kind: ‘a being’ among other beings, ‘a cause among other causes...[God] is not ‘a being’ alongside other beings...but rather Being itself.”

What this means is that McGinn’s arguments from analogy are not persuasive to Feser. By making a category mistake, they fall short of providing the kind of reasoning that could justify McGinn’s belief in God’s non-existence.

I concur with Feser’s critique of McGinn. However, does this settle the issue? Even if belief in the God of classical theism could be proven from either a priori or a posteriori arguments, the product would be *that than which nothing greater can be conceived* or the first cause or something of this sort. This would be a philosophical achievement, to be sure. Yet, would this suffice for a person who fervently believes in his or her

heart that the creator of this cosmos is gracious and loving and caring?

I wish to say more about God than Feser does. For me the issue is not whether or not the God of classical theism provides the ground of our being; rather, the issue is whether or not this God is gracious. When we walk through the valley of the shadow of death (Psalm 23), is God present with us? When we look with awe at the starry heavens above and the moral law within us (Kant), is it God who kindles in our soul the yearning for transcendence? When our hearts are moved with



compassion at injustice and suffering, are we prompted by the divine spirit? Was Saint Paul right or wrong when trumpeting that nothing in this world or the next can separate us from the love of God in Christ Jesus (Romans 8)?

For me, the issue centers on the truth or falsity of these beliefs and claims, not on the question of God's existence or non-existence.

I will grant that proving these claims about God's grace with certitude is difficult, yet they are not unreasonable. These affirmations do not depend upon generic patterns of logical reasoning, but rather upon the

testimony of witnesses both ancient and contemporary. The decisive ancient testimony is that of the witnesses to the resurrection of Jesus on the first Easter who drew out its significance, namely, God promises a future redemption for us. The decisive contemporary testimony comes from individuals who experience the presence of God in their daily lives, a presence that exudes joy and love. The burden of belief remains on the shoulders of the believer, to be sure; yet reasons for this belief are provided by the history of such revelation.

As an atheist, McGinn says he takes each day with equanimity. He does not get fired up over arguments regarding God's existence, at least not any more. Perhaps this is healthy in its own way. In contrast, however, I find the God of grace worth getting excited about. The reasons for believing in the God of grace are persuasive to me, even if they fall short of apodictic certitude. Some doubts remain unavoidable. Still, a review of these reasons from time to time might shore up a confidence that this life is well worth living because it is a life shared with the creator and redeemer of this world.

McGinn, Atheism, and Religious Commitment

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Colin McGinn gives a compelling defense of the rational integrity of atheist belief that mirrors the critical stance developed by the "New Atheism." He differs, however, in adopting a less militant attitude towards the survival of religion by suggesting that its narratives be taken as useful fictions. In this commentary, I claim that by focusing exclusively on religious belief, this critical stance runs the risk of being insensitive to the important social and moral functions of religious commitment. I summarize Philip Kitcher's recent work on this question, and briefly discuss how McGinn's religious fictionalism fails to do justice to those religious orientations that are defensible means for maintaining stability in one's life.

Colin McGinn offers us some clear headed lessons in the epistemology of religious belief or, I should rather say, in the epistemology of non-religious belief. He is intent on demonstrating the rational integrity of atheist belief against those religious believers who think it rash, hasty and just plain irrational. Against the backdrop of recent controversies generated by the so-called "New Atheism," McGinn can then be seen as sharing their general critical stance towards religious belief.[1] But interestingly, his atheism is much less militant for two main reasons. First, he thinks the question of God's existence is intellectually stale and except when pressed to discuss his own viewpoint, it is not for him a live concern that prompts an active and ongoing response. Second, he defends a form of fictionalism with regard to God-talk, suggesting that the theological doctrines that often sustain religious commitment may retain some value once they are taken as non-literal fictional stories we tell about ourselves. Such stories, like works of art, literature and film, can, he tells us, be good both artistically and morally without being literally true. In thinking of God and his works in such fictional terms we might then find what is good in the concept of "god" without retaining any of its traditional metaphysical baggage. Unlike the New Atheism then, McGinn's atheism is decidedly non-militant.

Even so, his discussion does glide over other issues concerning the nature and function of religious

commitment involving its connection to the psychological and social factors that can help to sustain human life. This is due to McGinn's focus on what Kitcher calls the "belief model" of religious commitment and his further examination of its general epistemological failings (2011a, 3). But, as we will see, the belief model is not the only way to think about religious commitment and it arguably fails to capture the way participation in religious practices and rituals can help to give direction to individual lives. Moving beyond the "belief" model of religious commitment helps to bring such issues into sharper focus, and to consider some of philosophical issues that emerge from considering the social and cultural dimensions of religious commitment.

In this brief response, my aim is not to question McGinn's epistemology of religious belief or to argue that the question of God's existence remains a live intellectual issue (I am in general agreement with McGinn on these issues). Rather, I will briefly situate his remarks against the backdrop provided by the more militant stance of the New Atheism and argue that his religious fictionalism is unable to do full justice to types of religious commitment that function to establish a stable and meaningful perspective (or orientation) towards one's life. My aim is then the modest one of highlighting some relevant aspects of recent work on this issue that remain intellectually significant once we move beyond the shared focus of McGinn and the New Atheism on the

epistemology of religious belief.[2]

The Epistemology of Atheist Belief

McGinn begins by noting that atheists are not simply "non-believers," since they believe that God does not exist. This belief is taken to be based on reasons, justified and then understood as something that is known. Because atheists take themselves to know that God does not exist, they have sufficient grounds for wanting to change what others think about the existence of God. As a result, atheists are often seen as arrogant, as individuals with simply too much hubris. They are seen as overly confident concerning an issue that should still be viewed as an open question. Their steadfast denial of God's existence is then taken by many religious minded people as simply irrational. However, McGinn thinks the belief in God's non-existence is a reasonable one since it has the same status as other negative existentials that others affirm about the non-existence of Santa Claus and tooth-fairies. It is prudent to embrace a reasonable agnosticism when the evidence for and against a specific claim is fairly even. However, in the case at hand, McGinn emphasizes that we would be engaging in a selective and excessive agnosticism in claiming that the atheist's belief is unwarranted. To accept the belief in the non-existence of tooth-fairies as reasonable but to recommend agnosticism about God's existence is to shift the standards of evidence in an extreme and unfair fashion.

McGinn further explains that the evidence itself provides us with no good reason to believe that God exists. Atheists are not then hasty or epistemically irresponsible in their belief, but are actually practicing a complete and total atheism, while other theists, in virtue of believing in one God at the expense of others are simply selective atheists. McGinn is not bashful in then affirming his commitment to a more thorough atheism, one that is a reasonable and given the evidence, an epistemically responsible position. Yet, the title "atheist" is, he thinks, odd since it suggests a much more serious engagement with the issue than he is capable of. His belief has over time achieved a kind of implicit, habitual status and is no longer under active intellectual scrutiny.

As a result, the issue of God's existence is a stale one that is not an intellectually live issue for him. He does not think, however, that we should then simply give up talk of God and his works. McGinn briefly defends a fictionalism about religious language, where when thought of as useful fictions, supernatural narratives can be morally and artistically uplifting. Once we accept the literal falsity of religious beliefs about God's existence we free ourselves to both enjoy, and possibly learn from, the fictional tales offered by various religious traditions and practices.

Religious Belief and Orientation

We can, I think, accept much of McGinn's remarks about the epistemology of religious belief as well as his lack of intellectual excitement about the question of God's existence, and yet still wonder about the nature of religious commitment and the possible social and cultural roles it plays in giving meaning to human life. McGinn does begin to touch on such issues with his suggestion that we view religion as a kind of useful fiction, but there is room to further wonder if this view does full justice to other possible forms of religious devotion.[3] In order to further highlight the relevant issues, it is useful to briefly contrast two general forms of religious commitment, one taking the acceptance of doctrinal beliefs as basic, the other involving a fundamental acceptance of an orientation directed towards certain values and aspirations for human life.

The discussion of religious commitment found in the New Atheism and shared by McGinn illustrates the "belief model" where commitment to a specific religion involves believing those doctrines that are constitutive of that religion (Kitcher 2011a, 3). But religious commitment often involves more than just belief, and includes a further set of other psychological states such as emotions, desires, aspirations and actions. The belief model can be made to acknowledge these other psychological elements of religious commitment but still affirm that they all flow from a prior belief in the necessary religious doctrines. When the issue is framed in such terms we can easily consider other possible

conceptions of the religious life. Kitcher has recently explored this possibility by examining the other elements in the complex network of psychological and sociological states and processes found within religious life, by taking some others as basic with doctrinal beliefs themselves built on them (2011a, 4). On this conception of religious commitment, these doctrines are seen as means for achieving certain aims that are highlighted through a more basic commitment to various attitudes and values.

This view is further explored with Kitcher's introduction of an "orientation": "An orientation... is a complex of psychological states, states of valuing, desires, intentions, emotions and commitments, a complex that does not include factual beliefs, and that embodies a person's sense of what is most significant and worthwhile in his life and in the lives of others" (2011a, 4). We get a different view of religious commitment if we take an orientation as basic rather than a group of doctrinal beliefs. As an alternative to the belief model, we then have the "orientation model," which applies to someone's life when they both have an orientation and one that is "reflectively stable," that is, "can be upheld as a worthy choice for the direction of one's transient existence" (2011a, 5).

Forms of spiritual religion that eschew any literal interpretation of religious texts but defend certain religious values and aspirations would fall under such a model. Kitcher describes this group as mythically self-conscious (2011a, 5). Such individuals may engage in organized religious practices, but for them this does not represent a belief in the statements uttered in Church, for example, but highlights a commitment to basic values that they think human beings should strive to advance. Others are more "doctrinally entangled" (2011a, 5). They maintain some beliefs about the existence of transcendent beings, because such beliefs provide clear and significant examples of their basic values. The case for holding such beliefs is not typically about the available evidence, but is found through the way their adoption helps to further these values. Still others are doctrinally indefinite and are generally unsure about how to interpret religious doctrines and texts. They do not reject any literal

interpretation of the texts, but do not commit to any definite interpretation either. They are content to note that language itself appears simply ill equipped to handle such religious questions (2011a, 6).

These three non-secular forms of religious devotion can then be seen as expressions of the orientation model of religious commitment, since they take basic human values and aims as more fundamental than any belief in religious doctrine. Kitcher goes on to argue that they all are in varying degrees defensible positions. This is perhaps easiest to see with the mythically self-conscious since here religious commitment in no way depends on accepting the literal truth of canonical religious texts or beliefs. He further suggests that doctrinal indefiniteness can be seen as a reasonable kind of epistemic modesty, and that doctrinal entanglement can be justified when it is the only way to maintain a reflectively stable orientation within a specified social and cultural environment. What some might see as the apparent tenacity of religious commitment can instead be viewed as a justified response to the need for a stable set of values and aspirations coupled with the further recognition that modern social environments make the fulfillment of this need extremely difficult outside of religious commitment and devotion (2011a, 10-12).[4]

Religious Orientation and Fictionalism

How then does this account of religious devotion as involving commitment to an orientation bear on McGinn's discussion, especially his advocacy of religious fictionalism? We have seen that in his examination of the epistemological details of atheist belief, McGinn, like the New Atheism, targets the belief model of religious commitment. Kitcher argues that because of this exclusive focus on the belief model, the militant response of the New Atheism remains unable to recognize the types of religious commitment that stem from a primacy of orientation rather than of belief. This model seduces us into thinking that correcting false beliefs will automatically lead to a better view of what is valuable and worth pursuing in human life (2011a, 10). However, this

is not the case if the point of religious commitment is to arrive at a stable orientation concerning human life and its activities, and is not primarily about possessing certain doctrinal beliefs. It is not difficult to imagine circumstances where the psychological and social conditions that support life, in terms of providing individuals with worthwhile goals to achieve, can only be sustained through their communal participation in religious practices and institutions. While criticisms of religious belief are legitimate in offering a compelling case against the having of such beliefs, they remain insensitive to the way an individual's orientation may serve to condition their religious commitment and how this can include various social, cultural and psychological factors that, for them, may only be capable of satisfaction through religious devotion.

The key point then is this: for individuals whose religious commitment fits the orientation model it does not follow that they can simply obtain a better reflectively stable orientation by rejecting the beliefs that the New Atheism and McGinn find false. Militant forms of atheism miss this because they wrongly assume that fixing an incorrect belief can further lead to an adequate outlook concerning what is truly meaningful and significant in one's life (Kitcher 2011a, 6). McGinn's own reflections on the rational integrity of atheist belief share this focus, and to the extent that this demonstrates blindness to the other types of religious life found within the orientation model then he too runs the risk of making this mistaken assumption. There is some indication that this is the case; since he claims that in virtue of their superior epistemic position atheists have sufficient warrant for wanting other religiously minded individuals to change their beliefs. This would seem to suggest that obtaining a reflectively stable and satisfying perspective on life is readily achieved by possessing more accurate beliefs. But no such simple change of belief will improve the situation of those who, in their devotion to the religious life, assign a primacy to an orientation rather than a set of theological beliefs. This is because what is ultimately meaningful and important for them through such a commitment is not the endorsement of a set of

doctrinal beliefs about the supernatural, but rather their acceptance of a set of values, aims and aspirations that they deem significant for human life and which are further realized through their participation in various religious rituals and practices.



However, this cannot be the whole story with regard to McGinn's atheism, since he also suggests that giving up the literalness of religious belief need not require a further rejection of religious talk altogether. Religious accounts of God's existence can simply be viewed as works of fiction and then provide whatever goods come from this type of art form. This approach can be viewed as attempt to move beyond the belief model in order to uncover other useful features of God-talk. Of the possible positions that flow from the orientation model this most resembles the perspective of the mythically self-conscious. For them, theological doctrines are myths, and their further participation in religious practices highlights their commitment to a certain set of values and aspirations for patterning human life and interrelations. This, I think, largely coincides with the general fictionalism about religious language promoted by McGinn. What seems missing, however, is some explanation of what motivates individuals to participate in religious rituals and communities, and continue in their use of such fictional language. Here, it is the primacy of an orientation, with its own values, goals and ends that motivate the continued membership in communities that engage in fictional discourses. This orientation is what gives value to such participation, which then further motivates an ongoing involvement within religious communities.

The other types of religious commitment captured within the orientation model suggest further problems with McGinn's religious fictionalism. The doctrinally entangled, who accept some religious beliefs as expressions of their underlying orientation to specific human values, would have their stable perspective on human life undermined by accepting fictionalism. Whatever advantages might be gained through possessing such beliefs would be undermined by the psychological and social loss that would accompany their acceptance.

Take, for example, a doctrinally entangled Christian who believes that Jesus is the divine human embodiment of the being who created the universe. This belief counts for them as a further expression of their basic commitment to values and ends involving the establishment of loving relations amongst all humans. The rejection of this belief might then render suspect such aims and values, and further cause instability within the religious orientation that psychologically and socially sustains their understanding of what is significant both in their life and for human life in general. The situation is somewhat messier for those who are doctrinally indefinite, but since they do not explicitly reject a literal interpretation of religious statements, their religious orientation could in a similar way become unstable if they took all religious narratives as fictions. It then appears that McGinn's religious fictionalism is unable to do full justice to other possible forms of religious commitment that follow from the orientation model. Even though his fictionalism moves beyond his initial focus on the belief model, it remains too constrained by that model in reducing the question of the value of religious commitment to the

having or not of specific beliefs. It then fails to recognize the way stable orientations help to sustain human life, and it downplays the importance of the social, communal functions often found in religious commitment.

This last point suggests that their remain issues of both an intellectual and practical nature concerning religious commitment that turn on achieving a better understanding of the forms such commitment can take, and in further specifying the social and cultural functions that sustain it. Such issues might be seen as philosophically significant if we think that philosophy has a role in addressing and alleviating moral and social conflict. In dealing with the various conflicts between secularists and the religiously minded, a central philosophical challenge might then involve the articulation of a perspective that both recognizes the debilitating impact of religious belief while seeking to acknowledge and preserve the vital social and communal role often found in religious life and which remains significant for so many.

Notes

1. The principal works of the "New Atheism" are Dawkins (2006), Dennett (2006), Harris (2004), and Hitchens (2007). While differing somewhat in their basic motivations, they all question the intellectual foundation of religious beliefs. For a useful overview see Gottlieb (2007).
2. Another live issue would include the way religious commitment can lead to serious obstacles for the effective workings of American democracy (Hollinger 2008). For some of the epistemological dimensions of this problem see Kitcher 2008.
3. For another perspective on the question of whether we should continue to engage in God-talk, see Rorty (2007).
4. This emphasis on the social, communal function of religious commitment is influenced by John Dewey's reflections on the religious life (1934). For a more extended discussion of this influence see Kitcher (2007 and 2011b). My own attempt to situate Dewey's view in relation to the New Atheism is outlined in (2010).

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Co-existence as an Ethics of War

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An ethics of war provides criteria for determining what morality permits states to do against external threats. I think that just war theory is overly permissive and justifies wars (and actions in war) that are morally objectionable. But I also reject pacifism. I instead propose the “philosophy of co-existence” as an ethics of war that falls between pacifism and just war theory. In my view, even when conditions of just war are adhered to, the wars that result can be morally objectionable. I suggest that these problems are symptoms of a basic flaw in just war theory, namely the premise that there is a *right* to go to war and to do certain things in war, including the killing of innocent people, once conditions for just war are satisfied. But the moral problems posed by the harmful effects war has on people cannot be adequately addressed by reference to the rights of those causing the harms. So even if there is such a thing as a right to fight one’s enemies, it may not be right to do so, given the great evil of war itself. Yet a threat can be so seriously evil that it is no longer possible to prevent the evil without going to war. The problem is how to determine whether war is the morally right choice. In Aristotelian virtue ethics, there are no decision-making procedures for agents to choose the right course of action. A virtuous political leader relies on practical wisdom to make the right choices. Because practical wisdom is largely a matter of intuitive judgment and sensibility to particularities, it is not possible to provide a set of necessary and sufficient conditions in the fashion of just war theory for use by a political leader to justify going to war.

Introduction

States have enemies that threaten them with violence. They have to choose how to respond to such threats. If violence has to be met with violence, then states have to wage wars against their enemies. Are there limits to the use of violence by states? An ethics of war provides criteria for determining what morality permits or forbids states to do. There are three standard views on this. *Realism* denies the application of ethics to war. Ethical limits make no sense and war must be fought according to what is politically or militarily necessary.[1] *Pacifism* holds morality to forbid war altogether. The use of violence by the state is never permitted, even in self-defense.[2] The *just war tradition* consists of theories regarding the justification for going to war and for taking certain actions in war. Some wars but not all wars are morally justified. When certain conditions are satisfied, states have a right to go to war. But what they do in fighting the war is also limited by the requirements of morality. The attraction of just war theories is that, unlike realism, they show how ethics applies to war, but unlike pacifism, they do not apply ethics in a way that denies the moral

legitimacy of every war.

I think that just war theory is overly permissive and justifies wars (and actions in war) that are morally objectionable. But this view does not make me a pacifist. In this paper, I will propose the philosophy of co-existence as an ethics of war that falls between pacifism and just war theory. I will begin by showing that we need an ethics of war that is more restrictive than just war theory. I will then articulate how co-existence can be the morally correct response to threats to the state from external enemies. But I will also show the limits to co-existence that render war to be, in rare circumstances, morally legitimate. Therefore, as an ethics of war, the philosophy of co-existence lies between pacifism and just war theory, avoiding the problems that confront the latter theories.

The Permissiveness of Just War Theory

There are many versions of just war theory. What they have in common is an approach to the ethics of war that focuses on a set of conditions that differentiate between just and unjust wars. Historically, these conditions were formulated by Christian

theologians to justify exceptions to the moral prohibition on killing so that Christians could be permitted to fight against their enemies to defend (or expand) Christendom. In modern times, just war thinkers have approached the ethics of war as a secular doctrine and used it as the basis for the law of nations and international conventions of armed conflict. The conditions that justify a state in going to war (*jus ad bellum*) include legitimate authority, just cause (in particular self-defense and punishment), right intention and last resort. Once war begins, *jus in bello* requires that the actions taken in fighting the war must satisfy the conditions of proportionality and discrimination (between combatants and noncombatants). The tradition of just war thinking has developed to reinterpret these conditions, as well as to add new conditions. Some of these developments reflect changes in how wars were fought, and new forms of political organization.

A criticism of just war theory as an ethics of war is that it has been ineffective in limiting the wars that have continued to plague human history, taking more destructive forms with higher casualties. Pacifists have suggested that just war theory actually makes it easier for war to take place because it creates the illusion that the conditions for just war can be satisfied (Fiala, 2008). What I want to argue in this paper is that even when the conditions of just war are adhered to, the wars that result can be morally objectionable.

Consider a sovereign state A that is attacked by another state B. Enemy troops have crossed A's border and seized territory. The aggressors ignore international appeals to end their occupation. State A declares war and sends troops to fight with the intention of driving off the invaders. If in addition, fighting is confined to battles between the armies using conventional weapons, the war satisfies the requirements of just war theory and is a just war for A. Now consider what other facts are consistent with the case for just war in this example. State A could be ruled by a dictator who oppresses an ethnic minority in the state. The incursion by state B could have been

carried out to protect the oppressed minority. B refuses to withdraw its troops because that would leave the minority unprotected. Moreover, B does not threaten to overthrow A's regime or to take territory beyond that needed to protect the oppressed minority. Do these considerations change the justice for A to go to war? Just war theorists seeking a place for humanitarian intervention as a just cause have struggled with the issue, since if it is just for the state intervened with to defend itself, then the intervening country seems unjust. There has been a persuasive argument in a recent book that the use of humanitarian intervention to justify war is fundamentally inconsistent with contemporary just war theory's emphasis on self-defense as the only just cause for going to war (Rodin, 2002, pp. 130-2).



Following standard just war theories that apply *jus ad bellum* and *jus in bello* as independent considerations, we can evaluate what soldiers do in war regardless of the justice of the war declared by their leaders. Suppose both sides seek to avoid killings that are unnecessary for their military objectives, and they concentrate their attacks on military targets. Their soldiers are trained in the war conventions and follow rules of engagement designed to minimize civilian casualties. But the war drags on without either side gaining a decisive advantage in battle. Meanwhile, soldiers on both sides suffer increasing casualties and it becomes difficult to maintain troop morale and support for the war at home. It becomes evident that victory is possible only if it is achieved quickly. It is possible to do this by using a massively destructive weapon against military targets in a way that would unavoidably inflict large numbers of civilian casualties. Given that proportionality requires that "the force used against the enemy must be no more than required to attain the justified end," the use of the weapon can be justified in relation to the objective of ending the war quickly.[3] As the foreseen killing of civilians need not be intended as a means to win the war, the principle of

discrimination is satisfied by doing what is permitted using the Doctrine of Double Effect that allows unintended foreseen killings of noncombatants in proportionate numbers. There would then be no violation of *jus in bello* in killing large numbers of civilians in this way.

Just war theorists could respond to the issues raised in examples such as this by either insisting there is no injustice when the conditions for just war are met, or by finding ways to amend the conditions to disallow what seems intuitively wrong. But I would suggest instead that problems such as the above are a symptom of a basic flaw in just war theory, namely that the theory is premised on the *right* to go to war and to do certain things in war, including the killing of innocent people, once the conditions for just war are satisfied. The moral problem of war is dealt with by a check-list of conditions. If so, war itself does not have to be a bad thing, all things considered. It is only morally objectionable if it does not satisfy one or more of the conditions for just war.

In my example above, the standard conditions for just war are satisfied. If it seems that there are still moral problems with what is done when the conditions are satisfied, then moralists have to choose between coming up with a better version of just war theory or giving up on just war theory. Given that the tradition of just war thinking has evolved for over two thousand years without producing a problem-free version, I am skeptical that there could be an acceptable version of just war theory that could be arrived at by fixing the problems that critics have identified.[4] Ethicists who think that the only alternatives are realism and pacifism may prefer to stick with just war theory. So I will now propose an alternative that enables those who are skeptical about just war theory to abandon the theory without being forced to be either realists or pacifists.

The Philosophy of Co-Existence

An alternative ethics of war would not simply lay down more stringent limits on the resort to war and for what soldiers can do in war. No matter how

stringent the conditions, an ethics of war remains a just war theory in seeking to provide an account of the right to go to war and to do certain things in war. It is the rights-based approach characteristic of just war theory that is the source of the problem of permissiveness. But what is bad about war is what is done to people in war (Chan, 2006). When people are killed or made to suffer in the way that they are in war, the moral problems posed cannot be adequately addressed by reference to the rights of those who cause the harms. The idea that by satisfying a set of conditions, it could be justified to cause such harms on the scale seen in war seems to amount to a failure to recognize the moral seriousness of war and what is done in war.

I will make the case for co-existing with enemies instead of fighting them.[5] Even if there is such a thing as a right to fight one's enemies in war, it may not be right to do so because of the seriousness of the harm of killing and causing suffering on a large scale. I am not using a utilitarian objection here.[6] The utilitarian case for or against war is one that turns on whether the harms of fighting outweigh the harms of not fighting. I want instead to consider the harms of war *without comparison* with alternatives to war. What I am saying is that the harms to people are so serious that war should be considered *evil* in itself. In a recent account, evil is defined as "foreseeable intolerable harms produced by culpable wrongdoing" (Card, 2002, p. 3). Obviously, the killing and maiming of people and the suffering imposed on those who survive in displacing them from their homes and depriving them of their means of living are foreseeable intolerable harms of war and insofar as they are undeserved harms, the agents of the harms are culpable for the deliberate choices that cause these harms.

Two things follow from this. First, war cannot be justified as something that we have a right to do. Torture for instance is intrinsically evil, so there is no plausibility in a just torture theory that lists conditions under which one has the right to torture. Similarly, I reject a rights-based theory of just war. Second, choosing to fight a war is choosing to do evil. There is

thus a moral presumption against war, contrary to the view of traditionalists on just war such as James Turner Johnson and George Weigel who reject such a presumption.[7] Although there can be reasons to choose war, any non-evil alternative to war is *prima facie* morally preferable. The moral problem of war becomes that of whether something as evil as war may be rightly chosen. This, as I said, should not be just a matter of showing war to be less harmful than its alternatives in utilitarian fashion. In my view, whether war is the right choice requires an answer to a question posed in terms of *virtue ethics*: Would a political leader with all the moral virtues such as compassion, courage and justice ever choose something as evil as war?[8] I will now argue that the threat of violence from external enemies is not sufficient reason for a virtuous political leader to wage war on them.

Consider how humans deal with other serious threats besides foreign enemies. First of all, many animals pose threats to human life. Occasionally, a human being is killed by a predator. Now clearly, there are lots more people who believe in the value and sanctity of human life for religious, cultural and moral reasons than those who believe that a human life and a non-human life have equal value.[9] So it is not



surprising that there have been times in history when humans had no moral qualms about nearly wiping out an entire species (e.g., wolves) to keep humans safe. But nowadays, we try to keep humans safe without hunting animals out of existence. We have learned to co-exist with wild predators. Yet wars continue to take place in which large numbers of humans are killed just because they are the enemies of one's state. So what explains the inability to co-exist with human enemies even among those who supposedly value human life greatly?

To answer the question, differences between humans and animals may be elicited to show that human enemies are more dangerous than animals: (1) Humans act intentionally and are blameworthy for their actions. (2) Humans pose threats through weapons of

mass destruction. (3) Humans depend on the same scarce resources in an overpopulated world. (4) Humans are motivated by the desire for glory. But I think none of these differences can show that we cannot co-exist with human enemies: (1) The human ability to act intentionally means that humans choose before they act, and it is possible to give them reasons not to attack us through treaties and incentives. (2) The threat from advanced weaponry can be reduced or eliminated by mutual agreement, as in the case of chemical weapons, land mines and nuclear weapons, once it is recognized that these weapons make war more devastating and each country less safe. (3) Humans are the most versatile of species and can satisfy their needs in more than one way. Unlike animals, they do not have to fight or die when there is a shortage of resources. (4) The Hobbesian idea of competition in the state of nature is answered by the Hobbesian social contract in which humans give up their right to use violence to satisfy their needs (Hobbes, 1991, Ch. 13).[10]

An objection to the last point is that not all human threats are eliminated through a social contract. Within the state, the threat posed by domestic criminals is contained by civil authorities. But there is no global sovereign with the power to enforce international law. The only safeguard that individual states have against threats from other states is to deploy their own armies to defend themselves from violators of international law. In making this point, Michael Walzer asserts: "Every conflict threatens the structure as a whole with collapse. Aggression challenges it directly and is much more dangerous than domestic crime, because there are no policemen" (Walzer, 1977, p. 59).

I think this objection overlooks the fact that even civil authorities do not make citizens completely safe from criminals. Yet we do not use more violence to deal with lawbreakers or give the police greater leeway in going after the bad guys. Those of us who live in liberal democracies are willing to co-exist with threats posed by criminals within our society because the use of unrestrained violence to protect citizens

would change the nature of our society and undermine our values.[11] These values determine the kind of people we are, the kind of community we live in, and the kind of relations we have with fellow citizens. Moreover, the moral autonomy and integrity of citizens are undermined by excessive use of force by agents of the state, even if the violence is directed at protecting our lives and property. A liberal democracy, unlike a police state, enables its citizens to make choices on the basis of legitimate goals without having to fear interference by the state in the form of detention, searches and police violence that endanger the innocent as well as the guilty. A good example is how Americans have become upset with security measures at airports after 9/11.

Is an analogy between the policeman and the soldier appropriate? Both are asked to engage in coercive acts to defend the state and its people. I have argued that we limit police violence not on the basis of whether it is effective but by reference to the values of our society. Although soldiers act against those who threaten us from *outside* the state, their failure to practice the values that the state claims to uphold also undermines the moral integrity of the state and the survival of those values. First, soldiers return home and the violent acts they do in war affect their ability to transition to life with their families and communities. This is documented in the numerous cases of post-traumatic stress disorder (PTSD) and many instances of suicide and marital breakdown among war veterans. Second, those who direct the military to disregard the harm done to enemy civilians are the same people who run our country. If leaders can "justify" violating enemy noncombatant rights for the sake of military advantage, it does not take much for them to similarly discount the rights of citizens for the sake of national security, as evidenced by the practice of domestic spying and extra-judicial detentions against those who oppose the Vietnam War and the post-9/11 "War on Terror." Third, citizens at home are not unaware of what the troops do overseas. To the extent that they do not object to the failure of soldiers in war to uphold the

values that they claim to defend, they are implicitly endorsing harms to innocent and vulnerable people in other countries. In effect, they are disavowing the values of liberal democracy.[12]

How do we answer the objection that to limit the use of violence by soldiers will make it more difficult to win wars and to eliminate foreign threats? We can answer it in the same way that we answer the objection that limiting the use of force in domestic law enforcement would make it more difficult to eliminate crime. This is true, but we choose to co-exist with the threat of crime rather than to live in a police state. Similarly, we can choose to co-exist with foreign enemies rather than to undermine our values to fight brutal wars against them. The Romans chose to destroy those foreign powers that could possibly pose a threat to them. For example, the Romans wiped Carthage out of existence in 146 B.C.E. even though Carthage had been comprehensively defeated some fifty years earlier at the end of the Second Punic War.[13] I have argued that we cannot fight like Romans abroad and uphold liberal democratic values at home. We may satisfy the conditions for just war and have the right according to just war theory to wage war against many foreign threats. But the moral compromises that result from fighting our enemies in war are often too high a price to pay. We should instead seek to co-exist with enemies abroad, just as we already co-exist with other threats at home such as wild animals and criminals.

The Choice of War

As there are limits to co-existence, it is not pacifism in disguise. Dangerous predators such as man-eating tigers are destroyed for the safety of humans. SWAT teams use snipers and explosives to rescue hostages from criminals. And a foreign threat can be so serious that it is no longer possible to stop the enemy without weakening them militarily. The problem is how we are to determine whether war is the morally right choice.

War is an evil, but I do not think it follows that it is never correct for a political leader to choose to

fight a war. As stated earlier, the question that needs to be answered is: Would a political leader with all the moral virtues such as compassion, courage and justice ever choose something as evil as war? Suppose such a leader was faced with Hitler's advance across Europe. How could the leader not engage Hitler in battle to stop his advance? The triumph of Nazism did seem so evil it had to be prevented by war if necessary. Nazism has been described as "an ultimate threat to everything decent in our lives" and "evil objectified in the world" (Walzer, 1977, p. 253). This may not be so obvious when we consider how terrible the Second World War was. That is because many morally unacceptable things were done, such as the terror bombing of cities carried out by both sides. If we assume that the choice of war against Hitler was made by a morally virtuous leader, the war would be prosecuted in a way that respected innocent lives. Such a leader would recognize that the taking of innocent lives in war damages the values of his or her society and the psychological and moral well-being of the soldiers, preventing these citizens from flourishing as human beings. Moreover, the leader would also end the war at the point where Nazism was no longer a threat that could not be co-existed with. Thus, the war that a virtuous political leader would have fought against Hitler would be far less evil than the actual war that was fought. In contrast, Walzer in his account of just war theory uses the concept of a "supreme emergency" to permit terror bombing against Nazi Germany when Britain was in imminent danger of defeat before the U.S. entered the war (Walzer, 1977, pp. 255-63).[14]

The choices that I am assuming the virtuous political leader would make are correct ones in that the leader displays the intellectual virtue of practical wisdom in making them. In Aristotelian virtue ethics, the judgment of the practically wise (or *phronimos*) is not determined by a utilitarian calculation nor is it a matter of following rules. Unlike utilitarianism and Kant's deontological ethics both of which provide decision-making procedures for agents to choose the right course of action, virtue ethics is an agent-centered

ethics that defines the right action as what an agent with the ethical character of a fully virtuous person would choose in the circumstances. The virtuous person is one who is sensitive to the particularities of the situation when judging what the right thing to do is and this sensitivity is attained in the course of the person's life experiences and moral training. Aristotle tells us in his *Nicomachean Ethics* that ethics is uncodifiable because no rule can cover every situation and the right thing to do in one situation may not be the right thing to do in another situation (Aristotle, 1998).

This is why for a virtuous political leader, the decision to go to war cannot be made on the basis of a check-list of conditions, and I have criticized just war theory for that. Because practical wisdom is largely a matter of intuitive judgment and sensibility to particularities, it is not possible to provide a set of necessary and sufficient conditions in the fashion of just war theory for use by a political leader to justify going to war. I can however assert that the case of Hitler and Nazi Germany provides a clear example where a virtuous political leader would be faced with circumstances in which it is correct to go to war. This distinguishes the philosophy of co-existence from pacifism. On the other hand, what is important in distinguishing my approach from just war theory is that there are many other wars that would not be chosen by a virtuous leader even if they were wars that would satisfy the requirements of just war theory. The virtuous leader would be concerned to avoid the evil of war. There are few wars in history that compare to the war to defeat the Nazis, yet leaders of Western democracies have often likened their enemies to Hitler.[15] The most recent example is how Saddam Hussein was portrayed by the Bush administration before the American invasion of Iraq in 2003. Of course, what is comparably evil is a debatable matter. Perhaps the Romans with their murderous spectacles in the Coliseum, or the Aztecs with their rituals of human sacrifice on captives from neighboring tribes, were evil enough. But these are arguably less convincing cases for waging war than the paradigmatic Hitler test case.

Even less convincing are those enemies, like Saddam Hussein, whose evil was used to justify wars in recent history.

The choice of war can be a correct choice only when the alternative to war involves such great evils that the virtuous political leader may choose the evil of war in order to act against these other evils. This is a tragic choice for the leader in the face of a moral dilemma, not a choice of evil for its own sake. As a tragic choice, the choice of war is not justified by the good achieved by fighting a war.[16] Once we consider how evil war is, it is very difficult to come up with cases besides the few in the last paragraph, in which a virtuous political leader would choose war over the alternative of co-existence. Although virtue ethics does not provide a clear line that determines every case, I

can say that such a leader will not be a pacifist committed never to use force, yet the leader will be less likely to choose war than those who decide based on the right to go to war according to the just war theory. Thus, the virtuous leader will hold a moral stance on war in between pacifism and just war theory.

The philosophy of co-existence that I have outlined in this paper is clearly an alternative ethics of war that is less permissive than just war theory but it does not rule out the use of war by virtuous political leaders against threats posed by very great Hitler-like evils.[17] Its advantage is that it provides non-realist critics of just war theory with a moral position that is less extreme and more attractive than pacifism.[18]

Notes

1. Carl von Clausewitz is the most well-known realist of war. See Clausewitz (1976).
2. While absolute pacifism was the view of the early Christian church, many pacifists today are conditional pacifists who object to war on the grounds that the conditions for just war are never satisfied.
3. This specification of proportionality is taken from Ramsey, 1961.
4. I leave aside the view that just war theory worked fine in the past but changes are needed nowadays due to the changing nature and reality of war. One such view is based on the claim that recent wars are fundamentally different from wars in earlier times (Kaldor, 1998). Another view is that the absence of reciprocity in asymmetric conflicts renders obsolete International Humanitarian Law as it stands today (Gross, 2010). To me, these views are tinged with realism.
5. Co-existence does have a limit, as I will discuss in the next section. So it is not pacifism.
6. Thus, I am not using the type of utilitarian argument used to object to the rights-based account of capital punishment: The state has the right to execute murderers who have forfeited their right to life, but it is not right to execute them when it is not overall beneficial for society to do so.
7. They both disagree with the U.S. Conference of Catholic Bishops on this point (Johnson, 2005, pp. 36-7; Wiegel, 2002, pp. 22-6).
8. This question is more fully answered in the next section.
9. For instance, how many people would say that both options are equal when forced to choose between saving a human life and a non-human life when there is no possibility of saving both?
10. These four points summarize arguments I make in greater detail in Chan (2012a).
11. Admittedly, there are quite a few Americans who think that their government and courts are too soft on crime and overly concerned with protecting the rights of criminals, so there is no complete consensus about how much power the police in liberal democracies should have in dealing with lawbreakers. For instance, a majority but not all Americans are against the use of racial profiling to identify suspects.

12. Claudia Card (2006) makes similar remarks about the unacceptability of the practice of torture in a liberal democracy.
13. However, in later periods of the Empire, Rome's policy evolved from preventive attack to containment and border protection.
14. In a forthcoming paper (Chan, 2012b), I argue that supreme emergencies only justify going to war against Hitler-like evils, not fighting in ways that violate the immunity of noncombatants and worsen the evil of war.
15. Carl Lesnor (2005) writes that in every war since the Second World War, the West has sought out Hitler clones to repeat the justification for the "Good" War.
16. On tragic choices in connection with virtue ethics, see Nussbaum (1986).
17. The full account of the philosophy of co-existence, including the practical application of the theory, is found in Chan (2012a).
18. An earlier version of this paper was presented at the Annual Conference of the Society for Philosophy in the Contemporary World at Oregon State University on July 21, 2010. I am grateful for comments I received there and also from the editor and referees of this journal.

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The Moral Equality of Modern Combatants and the Myth of Justified War

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Introduction

In the tradition of just war theory two assumptions have been taken pretty much for granted: first, that there are quite a lot of justified wars, and second, that there is a moral inequality of combatants, that is, that combatants participating in a justified war may kill their enemy combatants participating in an unjustified war *but not vice versa* (Reichberg, 2008).[1]

In the second part of this paper I will argue that the first assumption is wrong and that therefore the second assumption is virtually irrelevant for reality. In the first part of this paper, I will in addition also argue, primarily against Jeff McMahan, that his particular thesis about the moral inequality of “just” and “unjust combatants” is an analytical truth which, moreover, does hardly apply to anything (there are few if any “unjust combatants” as he defines them).[2] If one takes his thesis less literally, namely in the above sense of a thesis about combatants participating in a justified war and combatants participating in an unjustified war, it is correct in principle, but still of little practical relevance even if one disregarded the fact that there are virtually no justified wars.

McMahan’s Moral Inequality Thesis is True by Stipulation

According to McMahan, the combatants on the “just” and the “unjust” side do not both have a liberty-right to kill each other and are not both liable to attack (McMahan, 2004, p. 706).[3] Rather, the “unjust” combatants have *no* right to kill the “just” ones, and the “just” ones have a claim-right to kill the “unjust” ones (McMahan, 2009, p. 64). This is why:

People don’t lose moral rights by justifiably defending themselves or other innocent people against unjust attack; therefore, unless they lose rights for some reason other than

acquiring combatant status, just combatants are innocent in the relevant sense. So, even when unjust combatants confine their attack to military targets, they kill innocent people. Most of us believe that it’s morally wrong to kill innocent people even as a means of achieving a goal that’s *just*. How, then, could it be permissible to kill innocent people as a means of achieving goals that are *unjust*?

McMahan is of the opinion that arguments of this kind “conclusively demonstrate the moral *inequality* of combatants at the level of basic morality” (McMahan, 2006, p. 379).

However, his thesis that just combatants are not liable to attack by unjust ones and unjust ones are liable to attack by just ones actually doesn’t need any arguments, for it is true by definitional fiat. This is relatively easy to see, as McMahan gives the following definitions:

As I understand it, a just cause is an aim that satisfies two conditions: (1) that it may permissibly be pursued by means of war, and (2) that the reason why this is so is at least in part that those against whom the war is fought have made themselves morally *liable* to military attack. With this notion as background, we can now distinguish between “just combatants,” who fight in a just war, and “unjust combatants,” who fight in a war that lacks a just cause. (McMahan, 2009, p. 5)

Thus, obviously, “just combatants” are *defined* in such a way that those they are fighting against (the unjust combatants) are liable to their attack, while the “unjust combatants” are *defined* in such a way that those they are fighting against (the just combatants) are not liable to their attack.

This definitional fiat, however, cannot decide the question of whether combatants participating in a justified war and combatants participating in an

unjustified war have an equal liberty-right to kill each other or not, for the question is precisely whether combatants participating in an unjustified war are “unjust combatants” in McMahan’s sense. It is quite possible that there are no such “unjust combatants” at all.

There Are No “Unjust Combatants” in Modern Wars

It is correct *in principle* to reject Walzer’s thesis of the moral equality of combatants, that is, the thesis that combatants on the unjustified side have as much a liberty-right to kill combatants on the justified side as *vice versa*. By saying that it is correct in principle I mean that it is not true that in *all* wars the combatants on both sides have the same liberty-right to kill enemy combatants, provided they abide by the traditional *jus in bello* restrictions. Nevertheless, McMahan (and others) greatly exaggerate the scope of their counter-position.[4] For many, if not most modern wars it has little relevance, since in many, if not most modern wars “just” soldiers do kill innocent and non-threatening people or participate in their killing. The military euphemism for this is “collateral damage”; I prefer the term “concomitant slaughter.” By participating in or engaging in the killing of innocent and non-threatening people one wrongs these people, for innocent and non-threatening people have (and McMahan agrees) a *right* not to be killed; and someone who *wrongs* others cannot be *just*. Thus, the soldiers are at best justified, but that does not make them innocent in the relevant sense (namely in the sense of not wronging others). They remain liable to attack. And therefore those warring against them are not “unjust combatants,” for “unjust combatants” war against people who are not liable to attack.

“Unjust combatants” therefore also do not have a just cause. But in modern wars all combatants have a just cause, namely to defend their own innocent bystanders from being killed or maimed by enemy combatants. After all, for a war to *have* a just cause it need not be fought *for* that just cause. To claim the

contrary would be to confuse the criterion of just cause with that of right intention. And the mentioned cause certainly “satisfies two conditions: (1) that it may permissibly be pursued by means of war, and (2) that the reason why this is so is at least in part that those against who the war is fought have made themselves morally *liable* to military attack”, (McMahan, 2009, p. 5). If those the war is being fought against violate the rights of innocent people, they are liable to attack (provided justification does not defeat liability; I argue below that it does not).

Helen Frowe however, struggles “to see this [the defense of innocent people on the unjustified side] as a *just cause* when the need for defence arises from my own impermissible action” (personal communication). Yet, first, McMahan’s definition is entirely compatible with considering this as a just cause, and it is McMahan’s definition I am talking about. Second, while the *first* aggressive soldiers have acted impermissibly, it is simply question-begging to claim that their comrades who *later* join the fray act impermissibly, too. One must not tar all combatants on the unjustified side with the same brush. There are *different* unjustified soldiers, not an amorphous mass called “the unjust combatants.” Besides, one must not ignore collective action problems. An individual combatant joining the fray later cannot reasonably be said to have provoked the justified war (he can, however, reasonably say to have been provoked by the “just” soldiers’ killing innocent people on the unjustified side), nor can he reasonably be said to be able to stop it by simply surrendering.[5]

Thus, there will always *be* a just cause even in an unjustified war. Moreover, many combatants who fight in an unjustified war will actually fight *for* a just cause. Conversely, in every war, including the “just” ones, there *is* also an unjust cause, for example the unjust cause of killing or maiming large numbers of innocent people on the other side.[6] And many combatants on the justified side will actually be fighting *for* unjust causes. However, even if they aren’t, they still objectively *contribute* to an unjust cause.

Thus, we again have a moral equality of combatants: there are just and unjust causes and contributions and intentions on both sides.

Justification Does Not Defeat Liability

McMahan tries to block the argument that “just combatants” who wrong innocent people are liable to attack by claiming that “justification defeats liability,” and he tries to rest this claim on the authority of the law.[7] In particular, he mentions tort law and explains that strict liability is “the only kind of liability in either criminal or tort law that is not defeasible by a justification, and it governs only a very limited domain of the law of torts” (McMahan, 2008, p. 233). However, this statement is a pure tautology. Strict liability is *defined* as liability that is not defeasible by a justification or an excuse. The more interesting question to ask, therefore, is whether in tort law justification always defeats liability. The existence of strict liability shows that it does not, which proves my point.

Moreover, McMahan now explicitly says the justification with which the “just” combatants kill innocent bystanders as a side-effect of their attacks on military targets is a *necessity* justification (McMahan, 2010, p. 2). However, in tort law (and in common moral sense, which tort law simply expresses here) *the necessity justification is the prime example of a justification that does not defeat liability*. [8]

In addition to not defeating liability to pay compensation, it also does not defeat (and this is of course of the highest importance for the issue at hand) liability to being killed. Following the Model Penal Code, the statutes of some US states seem to allow deliberately killing an innocent person in order to save many others. Still, this same Model Penal Code makes clear that this privilege “does not abolish or impair any remedy for such conduct that is available in any civil action” (*Official Model Code*, section 3.01, as quoted in Christie, 1999, p. 1026), which means, as the legal scholar George C. Christie points out, that a person killing another innocent person out of necessity “would

be liable in tort for substantial damages in a wrongful death action brought by [the victim’s] next of kin” (Christie, 1999, p. 1026). It seems, however, that if the potential victim killed the self-helper, such a wrongful death action could not, for good legal reasons, be brought against the potential victim (*ibid.*, pp. 1034-9). As Christie notes: “If any of the parties would be free from tort liability, it would be the [innocent potential victim of a “necessary” attack]. I cannot conceive of any American court holding an innocent person liable in tort for shooting another person to prevent that other person from killing him” (*ibid.*, p. 1039). [9] Thus, American tort law takes it that a person who kills another innocent person out of necessity *wrongs* this innocent person, while the innocent person killing the attacker does *not* wrong the attacker. But this then *means, both* on McMahan’s previous definition of liability and on his current one, that the first person must be legally liable to be killed, while the second is not. [10]

Thus, McMahan’s claim that justification defeats liability in the legal cases relevant for the present discussion is simply wrong. In addition, McMahan certainly has not advanced any argument to undermine my verdict that his claim that justification *morally* defeats liability is and remains ad hoc and implausible. [11]

McMahan’s Thesis Has (Virtually) No Scope of Application

In the first part of this paper we saw one reason why McMahan’s thesis about the inequality of “just” and “unjust combatants” with regard to their existent or absent liberty-right to kill the enemy combatants is of no practical relevance. The reason is that in modern wars “unjust combatants” do not exist.

A further reason, one which reduces to near zero the scope of applicability of even the revised (and hence non-analytical) thesis, namely the thesis of an inequality with reference to combatants in justified wars and to combatants in unjustified ones, is that there are virtually no justified wars. [12]

The reason for this is that if you look into the actual historical facts, there simply is no war that comes close to fulfilling all just war criteria. Let me only focus on four of these criteria, namely on the two *ius ad bellum* criteria of legitimate authority and right intention, and the two *ius in bello* criteria of discrimination and proportionality.

For legitimate authority, formal authority is not sufficient by itself. The medieval just war theorist Francisco de Vitoria already emphasized that the decision to go to war must not be taken without extensive deliberation, including discussion and entertaining the advocacy of contrary opinions (Vitoria, 1952, p. 137; see on this also Steinhoff, 2007, pp. 20-1). In addition, it seems that in a democracy the state leader or the parliament must not lie to the people in order to gain public support for the decision to enter a war. Nor may they manipulate them, for example by bringing about events or situations that might then in turn prompt the public to support a decision to go to war. (The latter, for example, was arguably the strategy of Roosevelt with regard to Japan. One aim of the oil boycott after July 1941 might well have been to provoke a Japanese military reaction.) If they do, they are not a *legitimate* authority with regard to the decision to go to war any more. Given the enormous extent to which state leaders, if war is at issue (and, actually, not only then), lie barefaced to the people or withhold information, it would be very naive indeed to think that there are many wars which would satisfy the criterion of legitimate authority.

The problem with right intention is also considerable. The Allied war against Nazi Germany, which is for many the unrivalled paradigm case for a just war, did certainly *not* fulfill this criterion. To take a domestic analogy: someone, X, witnesses a rape and attacks the perpetrator with the intention of stopping him. That is a good intention, isn't it? Well, actually, that depends. If X fights off the rapist in order to do the raping himself, it is not (even if X should be the less brutal rapist). The evil intention alters the act itself: it is not, or not only, saving from rape any more, it is

preparing to rape.

To apply this to the case under discussion. Yes, the USA and Great Britain declared in the Atlantic Charter that they endorsed the right to self-determination of all people; but as we know Britain had second thoughts (peoples were supposed to be self-determining only if they weren't already determined by Britain) and the USA never really meant *peoples* in the first place, or it could not have propped up so many dictatorial *regimes* and plundered and exploited with their help the riches and the resources of third world countries (compare Barkawi and Laffey, 2006; Friedman, 2003; Niess, 1990). With this I do not want to say that right intention vanishes as soon as the intentions aren't "pure" or there are ulterior motives. Such a purity is not required (Steinhoff, 2007, p. 27-8). However, the additional intentions or ulterior motives have at least to be legitimate, which only means (but this at least it does mean) that one does not intend the good thing (for example the defeat of Nazi Germany) in order to do or to continue doing bad things without having to worry about a competitor.

Nevertheless, I think that there might be some wars that have historically fulfilled this criterion. Wars of pure national self-defense (that is, without afterwards seizing other peoples' territory) come to mind. Yet I doubt that the number will be particularly large. States rarely go to war without illegitimate ulterior motives undermining right intention.

Let us finally turn to *ius in bello*, which comprises the principle of discrimination (between innocents and non-innocents) and the proportionality principle, which demands to not cause disproportionate destruction in pursuing one's military aims. Discrimination and proportionality are not completely separate. If the number of civilians killed as a "side-effect" of attacks on military targets is grossly disproportionate, it is disingenuous to claim that one discriminates in one's attacks between innocents and non-innocents (indeed, it is questionable whether the death of the civilians is really a mere side-effect under these conditions). But then it is quite difficult (in fact,

I claim, impossible) to find a war in which the principle of discrimination would actually have been honored. As far as I see, all wars share, to a greater or lesser degree, a distinct *nonchalance* about “collateral damage.” In fact, already the term is *nonchalant*. Michael Neumann aptly describes the usual military approach towards discrimination and proportionality:

Strategic bombing aims at military installations, factories important to the war effort, or vital infrastructure. It is often impossible to mount such attacks without inflicting civilian casualties. . . . One might suppose that, before undertaking acts that we know with moral certainty will kill innocent civilians, we would require a very high degree of certainty that the act were truly necessary. Not at all. For one thing, as a matter of fact, military men rarely if ever claim anything like such certainty: of course there might be yet-unconceived strategies and tactics that would work as well or better. Besides, the strategic bombing strategy could fail, or prove far less effective than supposed. Usually the proponents of a particular strategic bombing campaign claim only that it would confer an important local advantage, not make the difference between victory and defeat. . . . In practice, military men use air power largely because they fear that otherwise they’ll take considerably more casualties, and because they’d rather not test unproven alternatives. (Neumann, 2006, pp. 3-4ff)

Neumann concludes from this: “The doctrine of the double effect [which claims that killing innocents as a means to some further end is prohibited while killing them as the side-effect of an attack on a legitimate target is allowed if such killing is proportionate in light of the good that arises from the attack on the legitimate target] has questionable authority, but even unquestioned it does little to raise expected collateral damage above terror” (Neumann, 2006, p. 5). This conclusion presupposes that this relaxed attitude of collateral killers is a correct application of the doctrine of double effect and *ius in bello* proportionality. However, it seems to me that very few just war theorists endorse such a relaxed attitude. A notable exception is Michael Walzer:

The proportionality rule [posits that] civilian deaths and injuries, euphemistically called “collateral damage,” should not be disproportionate to the value of the military victory that is being sought. But because I don’t know how to measure the relevant values or how to specify the proportionality, and because I don’t think that anyone else knows, I prefer to focus instead on the seriousness of the intention to avoid harming civilians, and that is best measured by the acceptance of risk. (Walzer, 2004, p. 137)

Yet, the fact that there are no uncontroversial criteria to determine proportionality (or that there are perhaps no criteria at all) does not mean that we should or can throw proportionality overboard. One simply might have to rely on judgment, *phronesis*, *Urteilskraft*. This is more than relying on mere intuition; it involves argumentation. Incidentally, there aren’t any uncontroversial criteria either which would establish what liberalism required. Should we therefore simply throw liberalism overboard instead of continuing the discussion? I don’t think so.

Besides, I really do not know how to escape proportionality requirements; and I don’t think that Walzer knows. After all, he says:

But there is a limit to the risks that we require. These are, after all, unintended deaths and legitimate military operations, and the absolute rule against attacking civilians does not apply. War necessarily places civilians in danger; that is another aspect of its hellishness. We can only ask soldiers to minimize the danger they impose. (Walzer, 2000, p. 156)

Yet that is not what Walzer asks them to do. If they have literally to *minimize* the danger they impose, they would have to make it *as small as possible*. There is an easy way to achieve that: do not attack at all, then you will not produce dead innocents as a side-effect of your action. Or, theoretically, the soldiers could take an extremely high risk themselves, thereby not imposing risks on innocent bystanders. But Walzer requires neither of these two options. He does not require the soldiers to take extreme risks. Nor does he require that they impose no damage. He only requires them to

accept risks to a sufficient degree, and to sufficiently limit the danger they impose. But how could it be established what is sufficient in a given case without taking into account what is at stake? If, however, you take into account what is at stake in order to determine the risks the soldiers are required to bear and the danger they may impose on bystanders, you have already and inevitably engaged in proportionality considerations.

Thus, I see, morally speaking, no way to do without proportionality. And, morally speaking, I see (probably in accord with most just war theorists) no reason to accept the relaxed attitude towards proportionality that Neumann accurately describes. Since, however, it is quite right that this attitude is the habitual one in war, it is very, very difficult indeed to find any war that has satisfied the *ius in bello* criteria.

Thus it can be seen that it would be hard work to discover a war that has satisfied just one of the only four mentioned just war criteria: legitimate authority, right intention, discrimination, (*ius in bello*) proportionality. The idea then that there is a war that has satisfied *all* of them is rather daring.

This insight does not commit me to a pacifist position, though. Why not? The fact that the war the Allied *actually* fought against Germany was not justified does not mean that they should not have fought a war against Germany. It only means that they should have fought *another* war (one that was not partly constituted by the indiscriminate killing of civilians and partly driven by the intention to uphold an unjust British empire), they should have fought in a different way (for example, again, without indiscriminately killing civilians in terror bombing campaigns) (Anscombe, 1981).[13] The same holds good for some other wars.

It also does not follow that it is impermissible to participate in or to support an unjustified war (see Steinhoff, 2007, p. 26 and 95-7). The reason for this has nothing to do with the Walzerian arguments for the moral equality of combatants nor with somewhat oversophisticated contractarian reasons.[14] The *real* (and

mostly overlooked or unappreciated) reason why it can be justified to participate in (or to support) an unjustified war is less spectacular and does not rely on any special features of wars but on a quite general truth, namely: It is simply wrong that the *individual* participation in or support of an unjustified *collective* action is necessarily unjustified itself.[15]

Imagine, for example, that A tries to murder B. There is C, who cannot stop A but can instigate D, E and F, who are known for their brutality, to stop A. C knows that if she does so instigate D, E and F, A will become the victim of an impermissible collective act, namely of excessively brutal self- or other-defense. Nevertheless, if the damage done to A is still much less bad than B's death would have been, and C has no other means to interfere, than C is clearly allowed to support D's attack against A. She is also allowed to *join* D, E and F in their attack against A if this heightens the chances of the defensive collective (comprising D, E, F and now also C) to succeed in their rescue of B, and does so without making the collective action even more excessive.[16] (You can imagine, if you wish, a group of martial artists known for their excessive force in bar brawls willing to join C in her attempt to stop a muscular racist from beating his victim to death.) According to the same logic, and all else being equal, British soldiers were justified in participating in the unjustified actual British war against Germany.

Concluding Remarks

Whether or not persons are allowed to participate in an unjustified war, thus, cannot be decided without a closer look at the details and circumstances of the specific unjustified war in question. Even if the enemy-combatants they are fighting against should, oddly enough, be fighting in a justified war, this does not mean that they, the enemy-combatants, are not liable to attack. Conversely, even if they *are* liable to attack, this does not yet mean that one can permissibly kill them. It only means that one can kill them without wronging them. Yet,

considerations that have nothing to do with the liability of the target might forbid killing them. Conversely, if they are *not* liable to attack, this does also not mean that one *must not* kill them. Rights can sometimes be violated justifiably. The focus on “liability” obscures the fact that whom you may kill in war and why is not reducible to the question of who is liable to attack and who is not.[17]

Finally, it is also worth mentioning that one cannot only sometimes participate in an unjustified war

justifiably, it is *also* possible to participate in a justified war *unjustifiably*. A person might have other, more important duties she or he would breach if she or he participated in the justified war.[18]

Notes

1. Michael Walzer (2000, esp. pp. 34-41), of course, is a strong dissenting voice within this tradition, arguing for the moral equality of combatants.
2. This first part partly draws on arguments I develop in much more detail in Steinhoff (2011). Incidentally, I use the terms “just combatant” and “unjust combatant” in scare quotes because even on McMahan’s account combatants who kill innocents violate their rights and therefore cannot be just. Then, however, calling them “just” anyway is misleading, and I wish to dissociate myself from McMahan’s misleading usage. Second, as we will see below, given McMahan’s technical use of “unjust combatants,” there are no unjust combatants in the real world.
3. That a person has a liberty-right towards another person P to do *x* means that she is under no duty towards P not to do *x*. If she has a claim-right towards P to do *x*, this means that P is under a duty not to interfere (at least not violently) with her doing *x*. P is not under this duty if the person in question has only the liberty-right to do *x*.
4. I have made this argument in Steinhoff (2007), p. 95-7, and (2008). McMahan has replied to my criticism in McMahan (2008) and (2009), pp. 38-51.
5. Gerald Lang (2011), p. 515, commits the same mistake as Frowe.
6. Cécile Fabre, Helen Frowe and Jeff McMahan (personal communications) claim that this is not a cause but a side-effect. But that is mistaken. A cause, in McMahan’s account, is an *aim*, and hence something you can want to achieve with a war, and of course people can participate in or support a war because they want that certain innocent people get killed or mutilated. This happens, for example, in extermination wars, but of course people can have this aim in other wars too. Conversely, if nobody participates in or supports the “unjust war” with the unjust aim in mind, then the presumed unjust cause would in fact only be an unjust side-effect. Again we have reached equality.
7. He also tries to burden my account with two specific, counter-intuitive implications. However, in order to derive those implications he has to ascribe assumptions to me I simply do not make. Conversely, I think that it is actually his account that comes with completely counter-intuitive implications. I cannot go into these issues here but do so in “Rights, Liability, and the Moral Equality of Combatants,” unpublished ms.
8. The classic case in US tort law (and McMahan refers to US law) is *Vincent vs. Lake Erie Transportation Co.*
9. Helen Frowe (personal communication) claims that if we are talking about “unjust combatants” the proper analogy would be a different one, and states that she cannot conceive of a court finding *you* liable for the death of one person by diverting the trolley away from two hundred towards the one when I tied all those people to the track and set the trolley in motion. In response, let me note, first, that when we talk about “just” combatants the proper analogy is not to diverting existing threats (like trolleys already set in motion by someone else) but to initiating completely new ones

(like dropping bombs). And I can very well imagine a court finding you liable for wrongful killing if you blow up one hundred innocent people when this is the only way to keep me from killing one thousand. Second, Frowe *again* tars all “unjust combatants” with the same brush; see n. 5. Some of them have *not* tied the innocent people to the track but joined the fray later. And the question is whether *they* would be held liable if they kill you in order to defend themselves or people to whom they have special responsibilities from your attack.

10. Here is his old definition, and the new one: If “the person to be killed has acted in such a way that to kill him would neither wrong him nor violate his rights, even if he has not consented to be killed or to be subjected to the risk of being killed ... I will say that the person is liable to be killed” (McMahan, 2005), p. 386. “What it means for a person to be liable to attack is that there’s a substantial *moral asymmetry* between him and those who might attack him. He has no right not to be attacked, and is therefore not wronged by being attacked, while the attackers *retain their right* not to be attacked” (McMahan, 2010, p. 5).

11. I made this observation in Steinhoff (2007), p. 96, and in (2008), pp. 223-4. In addition, whether justification defeats liability does not even matter, as I have already argued *ibid.* McMahan (2010) now seems to concede me quite a lot of my points, but reinterprets his tactical bomber example on which my argument in question was based in a completely new way, drawing the line of defense in a different manner than he did in McMahan (2008), pp. 236-8. I do not think that his new argument is successful and argue so in detail in Steinhoff (2011). I cannot go into this here, but take the liberty to give just one hint: If the tactical bomber on the justified side has a necessity justification for killing the innocent bystanders (by doing so he saves the lives of a larger number of other people) the innocent bystanders and the combatants on their side *also* have a necessity justification to kill the bomber, for by doing so they prevent him from killing still more innocent bystanders “collaterally” on his next mission and thus save a larger number of innocent people to which, moreover, they might have special responsibilities.

12. In a single paragraph McMahan considers the possibility that both sides in a war might be unjustified and claims: “In a war in which all are in the wrong, none are justified in fighting. One need only reflect on urban gang ‘wars’ to appreciate this.” *Ibid.*, p. 17. Actually, I don’t think that one can never justifiably take part in a gang war. A moment’s reflection should show that one can. Second, if “being in the wrong” means “fighting unjustifiably,” McMahan’s statement is analytical and uninformative; if it means “being a participant in an unjustified war,” it is wrong, as the discussion in this section will show. Incidentally, I draw in this section on material I have published somewhat inaccessibly as Steinhoff (2007b).

13. Jeff, McMahan, by the way, apodictically states twice in his book *Killing in War*, without ever providing any argument whatsoever for this claim, that in “World War II, Britain’s war was just.” See *ibid.*, p. 5, see also p. 153. He does, however, mention a “dissenting view, though one that is articulated through selective presentation of historical material rather than thorough moral argument” (*ibid.*, p. 243, n. 39). It might actually be also somewhat selective, on McMahan’s part, not to mention Anscombe, whom he quite often mentions in other contexts. However, McMahan (personal communication) has suggested to me that I might be unduly uncharitable here and that he actually only meant to say that Britain’s war had a just cause. In reply, let me note that he could and should have said that then; not least because there is no evidence in his published work that he means by a “just war” simply a war that has a just cause, quite the contrary (see *ibid.*, p. 5). Second, since McMahan acknowledges that even the soldiers on the unjustified side are permitted to oppose “just” enemy soldiers who are in the process of committing, or about to commit, war crimes, the German side would obviously have had a just cause, as defined by McMahan, too.

14. The paradigmatic example is Benbaji (2008) and (2009). For a critique, see Steinhoff (2010). Walzer’s account is to be found in Walzer (2000), pp. 34-41. McMahan (2009), in particular pp. 58-9 and 112-54, has provided an excellent criticism of Walzer’s account. For further criticism see also Steinhoff (2007), pp. 68-71.

15. Saba Bazargan (2010) has recently developed an argument along the same lines. Strangely, Bazargan seems to think that his idea that it can be permissible to fight in an unjust war is compatible with McMahan's rejection of "the Independence Thesis," namely of the thesis that "the moral permissibility of participating in a war does not depend on whether that war is just" (ibid., p. 5). However, there obviously is no compatibility. Bazargan's own thesis not only implies, but *is* the independence thesis.

16. Sometimes, by the way, such participation can be justified even if it makes the collective action more excessive.

17. I answer the question as to who may be killed in war and why by reference to four different principles which all have to be taken into account. See *On the Ethics of War and Terrorism*, Ch. 4.

18. I thank the participants of the conference "War and Self-Defence" at the University of Sheffield (25th-27th August 2010) for comments on a first draft of this paper. I owe special thanks to Ned Dobos, Cécile Fabre, Helen Frowe, Bernhard Koch, Seth Lazar, Michael Neu, Gerhard Øverland, James Pattison, Daniel Statman and, in particular, Jeff McMahan for elaborate and enormously helpful written comments.

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The Fragility of Justified Warfare: A Comment on Steinhoff

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Introduction

Uwe Steinhoff's brief intervention seems like a collection of little heresies: Steinhoff questions the practical relevance of Jeff McMahan's thesis of the moral inequality of combatants by insisting that it has (virtually) no scope of application in modern wars; he effectively claims that wars are unlikely to be waged without a *nonchalant* attitude towards "collateral damage" (or what Steinhoff prefers to call "concomitant slaughter") being taken; he presses for an interpretation of *jus ad bellum* that mainstream just war theorists are likely to regard as far too stringent; and he argues that such a stringent interpretation would render nearly all wars in human history unjustified. Indeed, Steinhoff comes close to defending a new version of contingent pacifism, by expressing deep skepticism about the *actual* possibility of politicians ever waging a justified war. And if that was not enough, Steinhoff then proceeds to temper this "pacifism" by suggesting that a combatant may be justified in participating in an unjustified war, namely to prevent innocent bystanders from being slaughtered.

In this essay, I want to suggest that, despite the heretical content of Steinhoff's suggestions, there is reason to take them seriously. While there remain promising ways of critiquing or qualifying Steinhoff's view according to which combatants have an equal liberty-right to kill each other even in wars that have a justified and an unjustified side to it, and while Steinhoff may go too far in suggesting that wars which are justified by the standards of *jus ad bellum* are virtually non-existent, we can extract two plausible claims from Steinhoff's account: First, one should be careful about pressing the reality of war into a rigid, binary structure, as this reality is normally too complex, dirty, and tragic for that. Second, it is wrong to assume that any given war has a decent chance of being morally justified (in the narrow

sense of one of the two warring sides being justified, that is).

In the first section, I will examine Steinhoff's contingent rejection of the moral inequality thesis, briefly exploring five routes of critique (not all of which I consider equally promising). Then, in section two, I will add some thoughts to Steinhoff's skepticism about the actual possibility of justified wars. Steinhoff talks about the "myth" of justified war. I would prefer to say that justified warfare is more fragile than conventional wisdom assumes.

Steinhoff's Thesis of the Equality of Combatants

Steinhoff does not present his critique of Jeff McMahan's inequality thesis for the first time (Steinhoff, 2007, pp. 95-7; 2008, 2011a, 2011b). Yet in the present paper Steinhoff also claims that the distinction between "just" and "unjust combatants," as drawn by McMahan, "is true by definitional fiat" (Steinhoff, 2012). That is, "'just combatants' are *defined* in such a way that those they are fighting against (the unjust combatants) are liable to their attack, while the 'unjust combatants' are *defined* in such a way that those they are fighting against (the just combatants) are not liable to their attack" (Steinhoff, 2012). Steinhoff, however, rejects McMahan's view that combatants participating in an unjustified war are necessarily "unjust." Essentially, he argues that they "have as much a liberty-right to kill combatants on the justified side as *vice versa*" (Steinhoff, 2012).

While Steinhoff, contrary to Michael Walzer (2006, pp. 34-41), does not think it is true "*in principle*" that combatants on the justified side are liable to attack, he thinks so for reasons that have to do with the nature of modern warfare (Steinhoff, 2012). For it is inescapable, in modern wars, that "'just' soldiers do kill innocent and non-threatening people or participate in their

killing,” something Steinhoff provocatively refers to as “concomitant slaughter” (Steinhoff, 2012). To be precise, Steinhoff thinks that “combatants who participate in unjust collective actions that kill and mutilate innocent people or impose significant risks on them violate the rights of those innocent people and are therefore liable to attack even if they *justifiably* participate in those collective actions that (partly) constitute the war” (Steinhoff, 2011b, pp. 8-9). Steinhoff insists that combatants who wrong non-liable parties cannot be *just*; they can at best be *justified*. The underlying assumption that innocent bystanders are wronged in justified wars is empirically contingent, as Steinhoff knows, but entirely plausible. One only needs to look at the numbers of civilian casualties in recent wars to see this (e.g., Kosovo, Afghanistan, Iraq, and Libya).

Contemporary just war theorists may not like Steinhoff’s insistence that it is possible for a moral act to be simultaneously justified *and* unjust (though McMahan himself shares this view), but this insistence is less controversial than two further conclusions Steinhoff draws. First, by wronging non-liable parties, justified combatants make themselves liable to counter-attack. This is indeed something McMahan denies, holding instead that justification defeats liability, or, more precisely, that “a moral justification for acting excludes liability to defensive harm” (McMahan, 2011, p. 4). Second, innocent bystanders are permitted to defend themselves against the objectively justified tactical bomber. This is a position McMahan used to subscribe to as well, arguing that innocent bystanders have an agent-relative permission to defend themselves against justified threats. In such a situation of “intuitive moral parity” (McMahan 2005, p. 400; also see Mapel, 2010; Shalom, 2011),

[c]onsiderations of justice do not seem to favor the distribution of inevitable harm to one party or the other. Call cases of this sort ‘symmetrical defense cases.’ In such cases, the just combatants act justifiably in attacking, the civilians are justified in killing the combatants in self-defense if they can, and the combatants are in turn justified in killing the civilians in preemptive self-defense. All are innocent in the relevant sense, none is liable to be killed, yet

those on each side are morally justified in killing those on the other, provided that only one can succeed. (McMahan, 2008, p. 236)

McMahan has now withdrawn this position, considering the bystander’s defensive action no longer permissible, but merely excusable (McMahan, 2011). There is a sense in which McMahan’s recent move brings him further away from Steinhoff and, perhaps, somewhat closer to a position articulated by C. A. J. (Tony) Coady.

Coady argues that one can lose one’s immunity even if one has *not* acted in a way that would make one lose it: “[I]f we accept that some incidental killing (collateral damage) is morally legitimate in a just war, either because of the [Doctrine of Double Effect] or for some other principled reason, it is then unclear (at least to me) how the non-combatants ... have been wronged. They have not been done any injustice, though their deaths are a horrible and deeply regrettable outcome of what we are assuming to be right action” (Coady, 2008, p. 84). If Coady is correct, parties can effectively become liable to be killed for reasons not intrinsically connected to these parties themselves, that is, to things they have done, or omitted to do, as morally responsible agents. This position would be even more unacceptable to Steinhoff than McMahan’s, who continues sharing Steinhoff’s view that the innocent bystander is not liable to be killed and that a (justified) *infringement* of the innocents’ right not to be killed constitutes a *wronging*. McMahan also refuses to think that the tactical bomber’s acting with objective justification would necessarily, under certain conditions, require innocent bystanders to sacrifice themselves, which is implied by Coady’s view.[1]

Despite this agreement, the difference between infringements and violations appears more significant in McMahan’s writings than in Steinhoff’s. According to McMahan, “[w]hen one is morally justified in doing what another has a right that one not do, one *infringes* her right. When one acts without justification in doing what another has a right that one not do, one *violates* her right” (McMahan, 2005, p. 388). Steinhoff finds that language objectionable, distinguishing instead

between justified rights violations on the one hand and unjustified rights violations on the

other precisely by using the terms 'justified rights violation' and 'unjustified rights violation.' Thus, I reject the habit some have of calling the former 'violation' and the latter 'infringement.' It does not make any difference for the victim, after all, and the distinction between 'violation' and 'infringement' might mistakenly suggest otherwise. (Steinhoff, 2011a, p. 2, fn. 5)

One might be tempted to say that the case of innocent self-defense against justified threats seems to pose a genuine dilemma to both the justified tactical bomber *and* the victim: a moral conflict with no right solution to it. But just war theorists, including Steinhoff and McMahan, are generally no believers in moral dilemmas in a conceptually narrow sense. That is, they deny the possibility that moral agents may end up in situations where they simply cannot act permissibly anymore: neither by dropping the bomb nor by *not* dropping it; neither by shooting down the justified tactical bomber (to protect one's family, for example) nor by *not* shooting him or her down.

While I am sympathetic to the view that action-guiding moral philosophy may sometimes reach its limits (in the sense of having run out of permissible options to suggest), I am not going to pursue this line of thought here. McMahan himself refers to an apparent "dilemma," elaborating that

[o]n the one hand, if the bomber is *not* liable to defensive attack by the civilians, it is hard to see how an agent-relative permission they might have could override his right not to be killed. On the other hand, if he *is* liable to defensive attack, it seems to follow that he cannot have a right of self-defense against them, and that seems intuitively implausible. (McMahan 2011, p. 5)

However, McMahan then proceeds to "opt for the first horn of the dilemma, according to which, even if the civilians have a prima facie agent-relative permission to engage in self-defense, that is insufficient to justify their shooting down the bomber. His right outweighs their permission" (McMahan, 2011, p. 5). It is at precisely this point that Steinhoff would blame McMahan for blurring relevant distinctions, particularly the distinction between claim-rights and mere liberty-rights (Steinhoff, 2011b, p.

2, fn. 7). Following Wesley N. Hohfeld (1919), Steinhoff holds that the justified bomber and the innocent victim have a liberty-right (or privilege) to kill each other, but no claim-right *not* to be killed by each other. As Steinhoff puts it, "I can have a liberty-right to stop you from exercising your liberty-right by stopping me from doing what I have no claim-right to do" (Steinhoff, 2011a, p. 16, fn. 40).

If we dismiss the dilemma perspective as generally incoherent or inapplicable to the present case, we are left with at least five ways of critiquing Steinhoff's position. The first is Coady's, according to which the innocent bystander is not wronged if killed by the justified tactical bomber. I cannot discuss this here, but rather accept, without argument (and in agreement with both Steinhoff and McMahan), that targeting innocent bystanders is a case of *wronging* them. Regardless of whether the targeting is justified or not, it is *unjust*.

Second, one could attempt to argue, as McMahan does, that justified tactical bombers are not liable to be targeted, since their acting with objective justification, "at the behest of morality" (McMahan, 2008, p. 234), excludes them from liability to defensive harm. Steinhoff, however, insists that even if justification did defeat liability, his contingent equality thesis would still hold (Steinhoff, 2008, p. 223). This is so because "if justification defeats liability, then, since 'unjust' combatants are permitted to defend the innocent civilians on their side ... and the goal of saving them would give the combatants 'positive' justification, *both* the 'unjust' and the 'just' combatants are not liable to attack" (Steinhoff, 2011a, p. 12). Steinhoff's claim is premised on the view that innocent bystanders do indeed have a right to defend themselves against justified threats, which, as we have seen, is a view McMahan no longer holds (for Steinhoff's objections to McMahan's revised position, see Steinhoff, 2011b).

What Steinhoff fails to grasp is how innocent bystanders can be (i) *not* liable to attack, (ii) *not* morally required to sacrifice their lives, and (iii) *not* permitted to



fight back. If this “failure” rested on a moral error, which I leave for others to examine, Steinhoff’s moral architecture would of course fall apart. I do not think, though, that one can deny bystanders the permission to defend themselves and shoot down the bomber without also making it mandatory for them to sacrifice their lives (assuming they can only choose between defending themselves by killing the bomber and sacrificing their lives, with no alternative course of action available). Steinhoff’s application of Hohfeld’s conceptual distinction between claim-rights and liberty-rights may indeed offer a promising way out of this theoretical conundrum.

Third, one might press Steinhoff on empirical, rather than moral, grounds. Steinhoff insists that “there is no *a priori* reason to assume that there are more liable soldiers on the justified side than on the unjustified side” (Steinhoff, personal communication). This is so because Nazi combatants, for example, are not liable to be killed simply by virtue of being Nazi combatants on Steinhoff’s view; they do not *necessarily*, and certainly not *at every moment* of their existence as Nazi combatants in war, contribute to the unjust causes of committing genocide and of invading other countries to murder or enslave their innocent people. Only if *each* Nazi combatant *constantly* did that, then *all* Nazi combatants would be liable to attack *all the time*. But that is not the case, Steinhoff argues. Some Nazi combatants will be asleep or on a holiday. Others will contribute to, and fight for, just causes, such as defending innocent bystanders against attacks launched by justified combatants. Hence “there is no principled reason to suppose that ‘unjust’ combatants are liable all the time while ‘just’ ones aren’t” (Steinhoff, personal communication). If we accept this proposition as plausible, the question remains if it is also true that Nazi combatants do not even have a *greater chance* of being liable than justified combatants. I cannot determine this here. Steinhoff, at any rate, is aware of this potential problem, stating that “even if the percentages were very different, nonetheless *any* combatant on the unjustified side who has a liberty-right to kill combatants on the justified side limits the scope of the general thesis of the

moral inequality of combatants” (Steinhoff, 2011b, p. 13).

The fourth line of critique concerns third party extensions of permissions to self-defense. One variant of this would be McMahan’s (former) argument according to which “[t]he relation of being a citizen of the same state is, like being a member of the same race, not sufficiently significant to justify a third party’s killing a morally justified attacker in defense of his compatriot in a symmetrical defense case” (McMahan, 2008, p. 237). Another (in my view more promising) variant, however, is encapsulated in McMahan’s comment that

[L]iability seems to be a three-term relation. A person is liable *by virtue* of having done some specific act, *to* some specific harm, inflicted *by* some specific agent or agents ... it may make sense to say that while just combatants are liable to be killed by the innocent civilians they threaten, and perhaps by individuals who are specifically related to these civilians in some highly significant way, they are not liable to be killed by others, including unjust combatants. (McMahan, 2008, p. 240; compare McMahan, 2009, pp. 17-8)

There is something about “unjust combatants” that seems to disqualify them as legitimate defenders of innocent parties. McMahan introduces the concept of “ultimate responsibility,” which is closely related to his point about liability being an agent-relative concept:

The unjust combatants ... went to war *despite* the fact that doing so would expose their civilian population to risks that would otherwise not have existed, such as risks of harm as a side effect of justified, defensive attacks by just combatants. They, not the just combatants, therefore bear ultimate responsibility for the threat their innocent civilians face. This, admittedly, gives them a special responsibility for protecting those innocent civilians from the threat they face. But it may also morally constrain what they are permitted to do that might provide that protection. (McMahan, 2008, p. 239)

The crucial question here is if Steinhoff’s account is sufficiently sensitive to whom the “unjust combatants” *are*. Reading Steinhoff’s essay made me think of the blatant lie with which Hitler announced (and legitimized) the Nazi invasion of Poland: “Since 5.45 we’ve been

shooting back!” If we grant, apparently against Steinhoff, that the Polish defense against Nazi-Germany was a justified war, and if we also assume, hypothetically (and almost certainly counter-factually), that Polish combatants began to threaten innocent German civilians from around 6.45, would *that* be the point at which Hitler’s *ad bellum* cynicism turned into an *in bello* truth? A truth according to which Nazi combatants *then* had a liberty-right to *shoot back*, namely in order to defend German bystanders from being concomitantly slaughtered by justified Polish combatants (who were thus no longer innocent in the relevant sense of not wronging others)?

Steinhoff may escape this charge by insisting that Nazi combatants only had a liberty-right to kill Polish combatants, but were nonetheless *not* permitted to do so, since “[l]iability is not the all-decisive factor for permissible killing” (Steinhoff, 2011b, p. 18) and “liberties, for the sake of the greater good, must sometimes not be exercised” (Steinhoff, 2011a, 13, fn. p. 32). It is also true that, in addition to considerations about the greater good, certain agent-relative constraints on permissible killing can be accommodated within Steinhoff’s moral architecture, to the effect that *some* Nazis-soldiers could not permissibly do what they had a liberty-right to do. Moreover, Steinhoff may qualify his argument by suggesting that those Nazi combatants who *began* the shooting, thus clearly contributing to the unjust cause of killing innocent Poles, but *not* to the just cause of defending innocent Germans, did not even have a liberty-right to kill Polish combatants (compare Steinhoff, 2011b, 9, fn. p. 24; 17), as opposed to German combatants joining the fray later. After all, “[o]ne must not tar all combatants on the unjustified side with the same brush,” thus ignoring “collective action problems” (Steinhoff, 2012). What Steinhoff is effectively saying here is that any strictly binary distinction between just and unjust combatants, any treating of all combatants on the justified side as “just” and all combatants on the unjustified side as “unjust,” is likely to do injustice to the actual pursuits of a fair number of individual soldiers in war. War, Steinhoff seems to contend, is more complex, dirty, and perhaps tragic than a moral classification that

divides people in two categories can possibly grasp.

While these caveats are carefully drafted, Steinhoff’s “equality thesis” may leave a sour taste with some readers nonetheless: if not already for suggesting that a justified combatant may be killed *without being wronged*, then for insisting that the justified combatants may be killed without being wronged *by Nazi combatants*. A moral commentator in early September 1939 may have felt awkward saying that *it might be impermissible for Nazi combatants to exercise their liberty-right of killing the justified Polish combatants*.

The fifth and final point picks up on Steinhoff’s caveat that “liberties, for the sake of the greater good, must sometimes not be exercised” (Steinhoff, 2011a, p. 13, fn. 32). Depending on how we interpret this comment, Steinhoff’s contingent equality thesis might end up being a case of much ado about not as much as it initially seems. It would be mildly ironic, of course, if the scope of application of Steinhoff’s version of the equality thesis turned out to be quite narrow after all. Yet it is Steinhoff himself who stresses that “the obsession with ‘liability’ obscures the fact that whom you may kill in war and why is not reducible to the question of who is liable to attack and who is not” (Steinhoff, 2011b, p. 25). Among all just (and justified) war theorists whose writings I am familiar with, Steinhoff would generally be the last one to concede that a given war meets the standards of any plausible account of *jus ad bellum* (particularly since Steinhoff would reject any *nonchalant* attitude towards proportionality, as we shall see in section two). To express this point in slightly different terms, Steinhoff would tend to insist that the kind of rights-violations that the unjustified side (as a collective) engages in must be pretty severe for a modern, innocent-slaughtering war waged *against* that side to be justified. If this is correct, it does not seem obviously implausible to suggest that an argument according to which liberty-rights (of combatants fighting for the unjustified side) must not be exercised “for the sake the greater good” would have a fairly decent chance of being fundamentally applicable in *that* kind of war. But then again we are talking about a war that is very unlikely to occur anyway.

Steinhoff's Thesis of the Myth of Justified War

Steinhoff thinks that the assumption has been taken "pretty much for granted . . . that there are quite a lot of justified wars" (Steinhoff, 2012). But this is not true, according to Steinhoff. On the contrary, virtually all wars in history were *obviously* unjustified. If that is true, then why are theorists so pre-occupied with *in bello* discussions that only make sense in principle, but have nothing to do with the world we occupy? A lot of contemporary just war thinking, Steinhoff claims, is based on a certain theoretical premise, namely a binary distinction between just and unjust wars, which virtually never holds. There are two points Steinhoff makes.

First, warfare can never be just, but merely justified, for it inevitably leads to the violations (or infringements) of rights. War cannot be waged without wronging people. This sense of the tragic nature of justified wars, which Steinhoff has pressed elsewhere as well (Steinhoff, 2007, p. 57), is something which most just war theorists would find hard to accept. Yet I believe Steinhoff is right on this issue (see Neu, 2011). There is a difference between an act that is just (in the sense of not involving any rights-violations) and an act that is justified (in the sense of involving rights-violations, but being the right thing to do nonetheless). The concept of justified wronging seems largely alien to, or is at least underemphasized in, contemporary just war theory, which tends to make binary distinctions between right and wrong, rather than also draw a fundamental distinction between (i) a war or an act of war that is justified and does *not* involve the collateral killing of any non-liaible person and (ii) a war or an act of war that is justified and *does* involve the collateral killing of 10,000s of non-liaible people. If the killing is proportionate and if some other conditions are met, the killing is considered just, and the moral case is closed. This view fails to do justice to the moral complexity of justified war situations (i.e., situations in which one may justifiably go to war or conduct certain military operations in war), for it does not properly acknowledge the "side-effect" of allegedly justified conduct, namely the killing of non-liaible parties. Actually, justified wars do many other nasty things to

people than kill them, including things that a victim might not necessarily prefer to being killed. There is a certain obsession with killing in the contemporary just war discourse, though Steinhoff admittedly talks about "mutilating" as well (Steinhoff, 2001b, 6). In any case, the unavoidable harm that justified wars causes to innocent people cannot be just, which is why *just* wars are indeed a myth.

While Steinhoff's first point may be conceptual mainly and have no immediately obvious action-guiding implications, it is his second point which is likely to meet resistance: "[I]f you look into the actual historical facts, there simply is no war that comes close to fulfilling all just war criteria" (Steinhoff, 2012). Steinhoff claims this to be true (at least) for the *jus ad bellum* criteria of legitimate authority and right intention, as well as the *in bello* criteria of discrimination and proportionality. Note that Steinhoff's claim is stated from *within* the just war discourse; in arguing that there are virtually no justified wars, he is applying just war theory's own stringent standards (one might argue, of course, that legitimate authority and right intentions should not be part of the *jus ad bellum* set of criteria, but I leave this complication aside here).

Essentially, Steinhoff holds that when it comes to war, politicians, including democratically elected ones, quite simply tend to lie to the public, thus rendering themselves an illegitimate authority *with respect to the particular decision of waging war*. Moreover, "[s]tates rarely go to war without illegitimate ulterior motives undermining right intention" (Steinhoff, 2012). It may have been helpful if Steinhoff had provided more historical examples here, but perhaps detailed empirical evidence would only have taken away from the intended provocation. Or at any rate Steinhoff seems to be right in implying that the burden of proof rests with those who claim the opposite, namely, that politicians do not ordinarily (i) lie to the public when trying to gain the public's support for waging war and (ii) wage war without ulterior motives undermining right intention.

What is revealed here is a rather gloomy understanding of the nature of political conduct and the

course of human history. Like pacifists, political realists may have their own interpretation of Steinhoff (for a realist critique of just war theory, see Hendrickson, 1997). Perhaps I am reading too much into Steinhoff, but he appears to be critiquing a certain kind of war progressivism: the double belief that (i) war will be eradicated at some point in the future, and (ii) that morally justified war itself may in a necessary and appropriate instrument to achieve lasting peace.

Steinhoff also discusses the *jus in bello* principles of discrimination and proportionality. He claims that “all wars share, to a greater or lesser degree, a distinct *nonchalance* about ‘collateral damage’” (Steinhoff, 2012). While Steinhoff does not reject the criterion of proportionality as such, he refuses to take a “relaxed attitude” towards it (Steinhoff, 2012). I agree with Steinhoff that we should not and cannot “throw proportionality overboard,” that to make proportionality judgments “is more than relying on mere intuition” (Steinhoff, 2012), and that proportionality requirements are notoriously susceptible to *nonchalant* interpretations on the battlefield. And yet I wonder if this relaxed



attitude does not already tend to be manifest in ordinary calculations of *ad bellum* proportionality, rather than only *in bello* proportionality. To argue, as Steinhoff does, that the criterion of *in bello* proportionality is virtually impossible to be met in war, also seems to suggest, at a minimum, that the challenge of ever confirming *ad bellum* proportionality may be a more demanding task than conventional just war wisdom assumes. Politicians cannot easily claim to be waging a proportionate war if the war’s conduct is foreseeably going to be disproportionate (for these two realms of moral thinking are *not* logically separate).

Is Steinhoff right, then, about the myth of justified war? One cannot reasonably claim that there has not been any justified war without having encyclopedic knowledge of all wars in human history (which, of course, no one has). Perhaps Steinhoff would have to agree, in line with his argument about collective action problems, that the war against the Nazis was not just one,

big, “amorphous” war. I tend to think, for example, that the actual Polish war against Nazi-Germany was indeed justified, even if the Second World War, seen as one amorphous moral enterprise, was not justified by the high *ad bellum* standards Steinhoff insists on. I also believe (without having much expertise on the issue) that many “American” and African tribes were justified in engaging in collective self-defense against being exterminated or enslaved in the history of European and US-American imperialism; indeed, it would seem reasonable to assume that similar forms of legitimate violent resistance against mighty suppressors, exploiters, and missionaries can be traced throughout human history. The Athenians were not justified in attacking Melos (killing all the males and enslaving all the women and children) only on the grounds that Melos refused to surrender and effectively join Athen’s war against Sparta. I am not sure if it makes sense to apply, *ex post facto*, the standards of a moral tradition that would develop over the two and a half millennia to follow, but if we do apply some plausible version of those standards, it is difficult to see how the Melians were not justified in taking measures of collective self-defense.[2] In other words, I would be more careful than Steinhoff about making sweeping historical comments.

Moreover, I feel that Steinhoff’s thoughts about the myth of justified warfare are implicitly critical of a Euro- or state-centric theory of “just” war. What Steinhoff is really (and rightly) saying is that the “mighty,” which for quite some time now have been countries of Western Europe and North America, do not tend to wage wars that have a fair chance of being morally *justified* (let alone morally *just*), even though many of these countries’ politicians have an unfortunate habit of assuming or pretending that their wars *are* justified, or indeed just. It is the innocent and powerless who will end up suffering from that kind of moralistic attitude.

In the end, Steinhoff’s thesis about the “myth” of justified warfare seems to me to be both extremely important and too strong. It is the essence of Steinhoff’s argument which “we” (in the West and elsewhere) can

learn from. We should stop taking for granted that any given war, as waged by one of two warring parties (and particularly as waged by “us”), has a reasonable chance of being justified. The chances for a war to be justified are slim, since the just war criteria, if applied properly, are very stringent indeed. Wars are not usually a morally *justified*, let alone a morally *just*, enterprise. One of the main problems Steinhoff alerts us to is the nature of our just war discourse, then, which pretty much takes for granted that war may regularly turn out to be a morally legitimate method of choice. If I interpret Steinhoff correctly, he considers such an attitude dangerously moralistic. Moral theorists of war should not encourage or facilitate political moralism, though; they should try to forestall it.

Concluding Remarks

Steinhoff’s moral architecture is a courageous attempt to deal with moral complexity without declaring theoretical defeat or blurring relevant distinctions. In Steinhoff’s intricate moral world, justification does not defeat liability; unjust conduct may be justified, while just conduct may be unjustified; individuals may be justified in participating in unjustified collective actions (and unjustified in participating in justified collective actions); claim rights must be distinguished from liberty-rights; liable justified combatants may have a liberty-right to defend themselves against the innocent bystanders’ permissible self-defense against their (= the justified combatants’) initial unjust attack; and having a liberty-right to do something does not necessarily imply that one can permissibly do that thing.

It almost seems like Steinhoff is pressing for a paradigm shift. At a minimum, this shift would require an increased degree of awareness about (i) the inherent limitations of making liability-based moral arguments about war, and (ii) the susceptibility of these arguments to abuse by political moralists, particularly the mighty ones. A revised justified war paradigm would have to become rather more sensitive to the innocent victims of allegedly justified conduct, or, more generally put, to the moral complexity and tragedy of justified warfare. It

could also no longer afford to underestimate the problem of epistemic uncertainty. The world to which just war theory applies is one of radical uncertainty: where politicians, voters, and combatants do not always know who their enemies are, whether or not they really exist (and if so, *why* they exist, and where), what weapons they have (if any) and whether or not, when, and how they are willing to employ them. Much of just war theory is written as if certainty was the rule, and uncertainty the exception. The opposite is the case. Moreover, there is certain degree of vertical and horizontal short-sightedness in contemporary just war theory. Theorists are pre-occupied with attributing moral responsibility to individual agents. They do not, however, tend to consider acts of aggression from a perspective that is critically sensitive to (i) history (rather than perhaps only looking at, and judging on, what media-driven discourses suggest to be happening right *now*) and (ii) the existence of (possibly amendable) *structural* patterns in the world that might be conducive to repeated eruptions of political violence. Politics, and political violence, is not just about morally responsible agents.

For all intents and purposes, Steinhoff seems to be critiquing a certain a-political, a-historical, and Euro-centric way of thinking morally about war, one that displays a certain degree of ignorance about the nature of political conduct, or, to put things more bluntly, to what is going on in the real, moralistic world of immoral politics. What is true for all philosophical thinking is also true for just war thinking: it can be highly intelligent, impressively coherent, and completely irrelevant. In general terms, this is not necessarily a problem; there is a place for somehow irrelevant philosophical thinking. However, a realm of thinking that is concerned with large-scale political violence, including violence as terrible as the bombing of little toddlers, arguably cannot afford to be irrelevant. If Steinhoff’s “irrelevance thesis” has some purchase, it poses a serious challenge to contemporary just war theory.[3]

Notes

1. I add “necessarily” here, since, according to McMahan, conditions may be “so dire that the potential victims are morally required to sacrifice themselves, despite having done nothing to lose or waive their rights” (McMahan, 2008, 236; compare McMahan 1994, p. 175).
2. I consider this true despite the Melians’ lacking prospect of success. I also do not think the Polish were unjustified in defending themselves against the Nazis only because they had no chance to succeed.
3. I would like to thank Chris Herrera, Bernhard Koch, and Uwe Steinhoff, as well as one anonymous reviewer, for helpful comments on a previous draft.

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Just Cause, Liability, and the Moral Inequality of Combatants

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Uwe Steinhoff makes three major claims in his essay: first, that Jeff McMahan's attack on the 'Moral Equality of Combatants' doctrine is true by definitional fiat; second, that combatants fighting for an unjust cause may, *pace* McMahan, successfully collect a moral justification for fighting, if they are doing so to defend the lives of non-combatants; and third, that most combatants in most actual wars have been morally unjustified in fighting. In this reply, all three claims are challenged. It is claimed that McMahan's argument against the Moral Equality of Combatants is substantive, not trivial; that unjust combatants cannot collect a justification for fighting as easily as Steinhoff imagines; and that Steinhoff has been too hasty in his condemnation of most combatants in most actual wars.

Uwe Steinhoff's characteristically bracing, insightful, and wide-ranging essay raises a number of important issues for Just War Theory. [1] His three leading theses, which will be discussed in detail below, can be summarized as follows:

(A) The influential attack on the 'Moral Equality of Combatants' doctrine adumbrated by Jeff McMahan is true by definitional fiat, or true by stipulation, and is thus, as it stands, unpersuasive.

(B) Any substantive attack on the Moral Equality of Combatants doctrine is (partly) undermined by the truth that there may be different justifications for fighting which are available no less to combatants fighting for an unjust cause than to combatants fighting for a just cause.

(C) The number of justified wars that have been fought is, in any case, vanishingly small, with the result that very few combatants can be claimed to have acted justly.

The three theses contain, or are significantly related to, a number of further sub-claims, some of which will be addressed as we go on.

This article will be structured as follows. First, I briefly outline the Moral Equality of Combatants doctrine, and report McMahan's arguments for its indefensibility. After that, I recount Steinhoff's reasons for thinking that McMahan's attack on the doctrine is true by definitional fiat, and I offer some criticisms of Steinhoff's argument. These sections take care of (A).

Next, I address Steinhoff's arguments for (B). Despite the criticisms I make of Steinhoff's argument, I believe nonetheless that he is getting at something deep and important, and I try to indicate what that is. Finally, I examine Steinhoff's reasons for holding (C), and I criticize the austerity of his conclusions.

McMahan's Attack on the Moral Equality of Combatants

Steinhoff provides a clear explanation of the Moral Equality of Combatants doctrine (or MEC for short): according to MEC, combatants on both sides of a war, regardless of whether their cause has been deemed just by *jus ad bellum*, have the liberty-right to kill enemy combatants, just as long as their conduct conforms to the rules of *jus in bello*. Following customary practice, I shall refer to combatants whose cause has been ratified by *jus ad bellum* as "just combatants," and combatants whose cause has been condemned by *jus ad bellum* as "unjust combatants." McMahan has two main arguments against MEC (McMahan, 2009, ch. 1). Both of these fasten on the implications for unjust combatants' ability to meet the standards of *jus in bello*, given the failure of the cause for which they fight to have met the standards of *jus ad bellum*.

The first major complaint against MEC concerns the "proportionality requirement," or the component of *jus in bello* which instructs combatants not to engage in

military activity whose value is less than proportionate to the disvalue produced by that same activity. The fundamental problem with unjust combatants, according to McMahan, is that they have nothing to offer to the positive side of the moral ledger. As agents of an unjust cause, the outcomes they seek to bring about have already been condemned by *jus ad bellum*, and so should also be placed on the negative side of the moral ledger.

The second major complaint which McMahan advances against MEC concerns the “discrimination requirement,” or the component of *jus in bello* which instructs combatants whom they may attack, and whom they must refrain from attacking. The traditional picture is that non-combatants are considered immune from attack, whilst combatants on the opposing side may be killed. But McMahan questions whether unjust combatants are permitted to attack just combatants. Just combatants are justified in what they do; they have, by assumption, been given a morally sufficient reason to repel unjust combatants. This much is established by their success in meeting the standards of *jus ad bellum*. But then it is unclear how unjust combatants can acquire any justification for attacking just combatants. For they lack the prior morally sufficient reasons for attacking just combatants which just combatants have for attacking them. In terms of both the proportionality requirement and the discrimination requirement, then, unjust combatants can collect no moral justification for fighting; they go home empty-handed.

Is McMahan’s Argument Trivial?

I turn now to (A). How, on Steinhoff’s view, does McMahan manage to deliver only a trivial truth? It is because he appears to define the notion of a just cause in terms of liability. This is the offending passage:

“As I understand it, a just cause is an aim that satisfies two conditions: (1) that it may permissibly be pursued by means of war, and (2) that the reason why this is so is at least in part that those against whom the war is fought have made themselves morally liable to military attack” (McMahan, 2009, p. 5).

By “liable,” McMahan is referring to that property of an

individual, whatever it is, which entails that attacking him would not wrong him (McMahan, 2009, p. 8). (McMahan’s answer, roughly speaking, to what *makes* an individual liable is that he or she is responsible for an objectively unjust threat. [2])

Steinhoff’s essential concern with this argument is that it is explanatorily impoverished. His complaint might be put as follows: if McMahan is going to define a just cause in terms of the liability of individuals against whom one is fighting, and an unjust cause in terms of the non-liability of the individuals against whom one is fighting, then there may indeed be grounds for denying MEC, but the worry which arises at this point is that McMahan will have provided no real explanation of *why* MEC is false. What we wanted to know, Steinhoff will insist, was *why* fighting for a just cause makes combatants non-liable, and *why* fighting for an unjust cause makes combatants liable, but the definitional connections McMahan is relying upon will plainly obstruct the execution of that explanatory project.

What are we to make of Steinhoff’s complaint? His dismissal of McMahan’s argument strikes me as uncharitable. After all, and as we already know from the previous section, McMahan *does* give substantive arguments for the falsity of MEC, which draw upon the proportionality requirement and the discrimination requirement. It would be deeply uncharitable to suppose that these arguments have nothing to do with McMahan’s hostility to MEC, since he goes to the trouble of spelling them out in some detail. So, if some of McMahan’s argumentation smells of triviality, it is reasonable to suspect that the offence is a venial one: some infelicitous formulation may have crept into his argumentation. But, in this particular case, we do not even have to rely on that trump card. Three further remarks are in order.

First, the connections between the justice/injustice of the cause and the non-liability/liability of the combatant who is fighting for that cause are looser than Steinhoff acknowledges. Here the words “is at least in part” are important. If we are prepared to take these words seriously, then we should be prepared to entertain the thought that there may be more to having a just cause

than being non-labile to being killed, and there may be more to having an unjust cause than being liable to be killed. Of course, we would have to speculate about what these further conditions might be, but even so, a just cause is not being *defined* in terms of non-liability any more. But perhaps, the Steinhoff-flavored complaint will continue, the non-liability of combatants still counts as a *necessary* condition, if not a necessary and sufficient condition, for the justice of the cause for which they are fighting. And the insistence on even a necessary condition will inhibit the provision of a satisfying explanation for *why* just combatants are non-labile, while unjust combatants are liable.

This worry takes me to my second and more decisive point, which is that McMahan's characterization of a just cause does not, in any case, freeze out normative explanation, precisely because it makes room for a specification of the relevant *liability-making* and *liability-excluding* conditions of the combatants. The fact that combatants are liable or non-labile to military attack cannot be simply a brute fact about them. Combatants are liable, or non-labile, in virtue of certain other facts about them. And we know what these facts are, because McMahan has spelled them out for us. On McMahan's view, a just cause is a cause which has been approved by *jus ad bellum*, from which it follows that the ("just") combatants fighting for that cause have morally sufficient reasons for fighting; this means, in turn, that they are non-labile. An unjust cause, by contrast, is a cause which has been condemned by *jus ad bellum*, from which it follows that the ("unjust") combatants fighting for that cause lack morally sufficient reasons for fighting; this means, in turn, that they are liable. According to this picture, combatants who fight for a just cause cannot fail to be non-labile (as long as they conform to the rules of *jus in bello*), and combatants who fight for an unjust cause cannot fail to be liable, yet the connections are secured by substantive arguments which purport to be explanatory. McMahan's substantive arguments concerning the proportionality requirement and the discrimination requirement still need to be consulted in order to show us *why* certain combatants are liable, while other combatants

are non-labile. Thus, while McMahan's understanding of what a just cause is cannot ultimately escape association with the non-liability of the combatants who fight for it, he is not boringly *stipulating* that just causes are those causes for which just combatants are non-labile, while unjust causes are those causes for which unjust combatants are liable.

Third, and given his argumentative purposes, it makes sense for McMahan to lay particular emphasis on the importance of combatants' liability and non-liability. It would be dialectically unsatisfying for him to advert simply to the justice, or injustice, of the causes for which those individuals fight, since defenders of MEC are fully aware that combatants differ in this particular respect. What ultimately exposes MEC to error, for McMahan, is the collection of facts about liability and non-liability which underlies combatants' allegiance to the causes for which they fight. Given these underlying facts, MEC simply cannot be upheld.

Individual Combatants and Collective Causes

Now I consider (B). Here Steinhoff restates and enlarges a forceful challenge which he had described in an earlier article. [3] In that earlier article, Steinhoff argues that unjust combatants may be justified in fighting, and killing, just combatants in order to protect non-combatants who are in danger of being killed as a side-effect of the military activity of just combatants which is deemed to be justified all things considered. (Double effect reasoning will tend to be recruited into this justificatory story; I lack the space to enter into the relevant details.) Steinhoff insists that innocent civilians are *wronged* if they are killed by just combatants, and that this fact licenses those civilians to defend themselves against just combatants. This fact also, more relevantly, licenses the right of other-defense which, due to civilians' typical defencelessness, can only be legitimately fulfilled by unjust combatants. But if unjust combatants are acting in other-defense of civilians who would be wronged by being killed by just combatants, then they are justified



in fighting, and this restores a degree of moral symmetry between just and unjust combatants. Or so Steinhoff maintains.

Steinhoff does not think that the liberty-right of unjust combatants to defend non-combatants can result in any comprehensive restoration of MEC, and concedes that McMahan's attack on it is "right in principle" (Steinhoff, 2008, p. 220). But in the new essay, he argues more explicitly for the point, implicitly advanced in the earlier essay, that the combatants fighting for an unjust cause do not necessarily share a common moral denominator. They are not, that is, *merely* unjust combatants in virtue of fighting for an unjust cause. If they are defending the lives of their innocent non-combatant co-nationals, then they have a morally worthy reason for fighting, which may not be true of some of their fellow unjust combatants. As Steinhoff suggests:

One must not tar all combatants with the same brush. There are *different* unjustified soldiers, not an amorphous mass called "the unjustified combatants"... [T]here will always *be* a just cause even in an unjustified war. Moreover, many combatants who fight in an unjustified war will actually fight *for* a just cause. (p. 4; original emphases)

One of the points McMahan made in his reply to Steinhoff's earlier article is that, even if non-combatants are wronged by being killed by just combatants, it does not follow that unjust combatants are permitted to fight the just combatants, as opposed to being required to refuse to fight, or to surrender (McMahan, 2008, pp. 242-3). After all, the reason why the lives of non-combatants are endangered lies ultimately in the fact that the just combatants are engaged in warfare against the unjust combatants. And, to explain *that* fact, we must surely go beyond citation of the narrowly defensive aims of those unjust combatants who are acting in other-defense of non-combatants. These other-defensive aims cannot explain why there is any fighting in the first place. It must therefore be the larger *non-defensive* ambitions of the unjust combatants which explain why this fighting is taking place, and we already know that these larger non-defensive ambitions have failed to satisfy *jus ad bellum*.

Steinhoff responds to McMahan's challenge by

appealing to collective action problems among unjust combatants. If *every* unjust combatant surrendered, or refused to fight, then there would indeed be no war, and the lives of non-combatants would no longer be endangered. But individual unjust combatants, or small groups of them, cannot count on any such outcome. Selective individual surrender cannot be relied upon to inspire any wider surrender among unjust combatants. It may therefore be defensible for these particular unjust combatants, Steinhoff claims, to continue fighting in order to protect non-combatants from harm inflicted by just combatants.

Let us think about this argument in more detail. *Because* individual unjust combatants cannot rely on their individual defection inspiring any wider defection among unjust combatants, Steinhoff thinks that they may enjoy a justification for continuing to fight. But Steinhoff's line of argument is problematic, because the point he establishes surely cuts both ways. Even if these unjust combatants have *local* just causes to pursue, such as the protection of innocent civilians, they cannot count on the fact that their continuing to fight is not also contributing to the success of the *non-local* unjust causes which explained their recruitment into the armed services in the first place. (Steinhoff's repeated references to the "unjustified combatants," despite his attempts to divide them into different moral categories, appear to me to inadvertently confirm this point.) After all, these unjust combatants will be killing, or attempting to kill, just combatants, thus frustrating the just cause which those just combatants are fighting for. This fact will surely sap the unjust combatants' involvement in local just causes of justificatory power.

With these points in mind, it is possible to construct an alternative picture of the moral plight of unjust combatants which relieves some of the pressure that McMahan has brought to bear on MEC. This picture brings combatants, whether just or unjust, morally closer to each other. The resulting picture is broadly in line with Steinhoff's purposes, though it will also require some concessions from him. According to this picture, we should think of combatants' allegiance to causes in terms

of a moral lottery. Both just and unjust combatants have some *ex ante* non-trivial probability of serving just local causes, as well as the wider non-local causes which ultimately explains their enrolment into military service. The fact that unjust combatants unavoidably promote causes which have already been condemned by *jus ad bellum* prevents them from arriving at any full-strength justification for what they do. Yet their contribution to local just causes, or the non-trivial *ex ante* probability that they may be called upon to contribute to such causes, may help to provide them with an excuse for what they do. Similarly, just combatants' promotion of a just cause facilitates a full-strength justification for what they do. Yet their contribution to activity which wrongs non-combatants, or the non-trivial *ex ante* probability that they may be called upon to engage in such activity, may either weaken their justification for fighting, or else explain why, despite being justified, unjust combatants may be excused for attacking them.

Steinhoff has argued for an approach to combatant liability which insists upon attention to only their local involvements and activities. That approach cannot be sustained. But he is right to suppose that the moral complexion of unjust combatants is typically brighter than McMahan is prepared to admit. [4]

Degrees of Justification for Wars

I turn, finally, to (C). Steinhoff's claim that defenders of Just War Theory have tended to think that many actual wars have, in fact, been comfortably justified may well be correct. But it is no part of Just War Theory that justifications for actual wars are easy to come by. Presumably, the application of such theory to different actual wars will yield different results, depending on how the relevant facts are interpreted, and on the stringency of their interpretation. (In connection to this point, Steinhoff points to some particular difficulties with handling the notion of proportionality in its *jus ad bellum* role. I am inclined to agree with him that this area of Just War Theory is, at present, only weakly understood.)

The various conditions, distributed between *jus ad bellum* and *jus in bello*, which Just War Theory insists

upon for the justifiability of warfare are clearly complex and difficult to satisfy. Steinhoff concludes that very few wars can survive this array of moral obstacles, with the implied result that MEC may win by default: most combatants, regardless of the cause for which they fight, will turn out to be equally *unjustified* in fighting. Though I agree with Steinhoff that it is more difficult than is commonly realized for wars to collect any robust justification, I suspect that he overplays his hand. To see why, let us fasten on a particular example which Steinhoff enrolls into his discussion. Consider Britain's involvement in the Second World War, which is routinely offered as a relatively unproblematic case of justified warfare. Steinhoff challenges this cosy consensus, pointing, in particular, to deficiencies in the "right intention" condition of *jus ad bellum* displayed by the Churchill government. This carries the consequence, for Steinhoff, that the actual war fought by the British army has to be deemed unjustified.

For the purposes of argument, I will not dispute this historical assertion, or the evidence Steinhoff adduces for it. I want instead to focus on two further lessons he draws from these considerations. The first is this: though the *actual* war as fought by the British army was unjustified, Steinhoff suggests that *another* war *would* have been justified. This other war is a merely *possible* war, which was not actually fought. In this merely possible war, the just cause for war would be supplemented by satisfaction of the further *jus ad bellum* conditions for legitimate warfare, and therefore the war as whole would have been justified. The second lesson Steinhoff wishes to draw from these considerations is a negative one: it is not the case, on Steinhoff's view, that individual British combatants were acting impermissibly in fighting for the Allied cause. This follows from the falsity of the claim that "the *individual* participation in or support of an unjustified *collective* action is necessarily unjustified itself" (p. 12; original emphases). Presumably, each individual may have a good enough justification for fighting in a collectively unjustified war where the value of his contribution to a specific just local cause (for example, the defense of non-combatants) outweighs the

costs inflicted by his fighting.

What should we make of this argument? Let me start with the second lesson, concerning individual permissibility for fighting in collectively unjustified wars. If, as Steinhoff maintains, they were fighting for a cause which was collectively unjustified, it is far from clear that individual British soldiers could have successfully appealed to this particular consideration to justify their involvement in the Second World War. For these soldiers were just as likely to endanger non-combatants as to protect non-combatants from acts of aggression performed by the Axis armies. Moreover, the subtraction of any given individual just combatant from Allied forces was unlikely to make any decisive practical difference to the successful pursuit of the just causes pursued by the Allies. So if Steinhoff wants there to be a justification for the involvement of individual British combatants, the first lesson he draws needs to be reviewed.

The first lesson seems implausible, even taken on its own merits. As we have seen, Steinhoff is suggesting, in effect, that our moral appraisals of the British war should be restricted, austere, to only two wars: the *actual* war which was *wholly unjustified*, and a *possible* war which would have been *fully justified*. But to restrict the number of appraisable wars in this way is surely *too* austere, for it overlooks a plausible middle way. If the actual war fought by the British, morally imperfect as it might have been, can be regarded as being more justified than mere capitulation to the Axis powers, then it appears to follow that the actual war, in virtue of its satisfaction of the just cause condition, was *partly* justified, or justified *to some degree*.

Let us take a closer look at this proposal. It should not be surprising that justification for war should come in degrees, since there are several *jus ad bellum* conditions: just cause, right intention, proportionality,

legitimate authority, formal declaration, reasonable prospect of success, and last resort. Moreover, these conditions are largely independent; they have to be satisfied, if they are satisfied, one at a time. (They are not wholly independent: the reasonable prospect of success condition and last resort condition can arguably be absorbed into a more complex form of the proportionality condition. [5]) Some of these conditions, but not all of them, might be satisfied in any given war. Supposing we agree that all of these conditions are relevant to the moral appraisal of war, non-satisfaction of any one of them will generate a moral blemish which will prevent the war from being fully justified. But some wars are more blemished than others, just in case a great number of the *jus ad bellum* conditions are not satisfied, and we will lose that graded type of moral appraisability if we insist that justification is always all-or-nothing. Reflective common-sense will find it easy to acknowledge that wars can be *broadly justified* without being *unblemished*. The actual Allied war was certainly blemished, or imperfect, but it does not follow from the evidence Steinhoff cites that it was not fundamentally justified.

One further and final lesson should be drawn: if the actual war was justified to some degree, then the moral asymmetry between combatants who fought on the Allied side and combatants who fought on the Axis side must also, to some degree, be reinstated. As we saw earlier, combatants cannot plausibly escape a deep association from the justice or the injustice of the non-local cause for which they fight. To some degree, and despite Steinhoff's strenuous denials, unjust combatants must indeed be tarred with the same brush.

Notes

1. Uwe Steinhoff, 'The Moral Equality of Modern Combatants and the Myth of Justified War', this issue. Page references in the main text will be to this essay.

2. For details, see McMahan (2005).

3. See Steinhoff, 2008; for McMahan's reply, see McMahan (2008 and 2009, pp. 39 ff.)
4. A complementary line of argument for the excusability of unjust combatants, though one which carries slightly different emphases, is advanced in Lang (2011).
5. For one way of spelling out the details, which needn't detain us here, see Hurka (2005).

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