

## **A tale of two moralities**

*“In peace sons bury fathers, but in war fathers bury sons.” – Herodotus*

In this paper, I seek to close a gap in Walzer’s argument for the moral equality of soldiers. Specifically, I seek to show that Walzer’s argument for the moral equality of soldiers depends upon an implicit analysis of the function of excuses. I provide such an analysis.

Walzer argues that soldiers are moral equals—regardless of the justice of their cause, soldiers on either side are equally permitted to fight and kill. McMahan objects by denying that the moral right to use violence and kill can be determined independently of the cause that it serves. This disagreement depends upon how one interprets the conditions that distinguish war from peace. Essentially, Walzer thinks that these conditions support a distinct morality of war, whereas McMahan argues that these conditions merely excuse soldiers who fail to comply with the recognized norms surrounding violence and killing operant in peacetime.

My analysis shows that excuses identify exceptional circumstances that diverge from the conditions under which we expect compliance with a certain norm. Given this analysis, McMahan’s argument fails for it rests upon an inadequate understanding of excuses. Indeed, McMahan’s argument requires that we view war as a series of exceptions to some overarching condition of peace. Yet, war is not an exception to the normality of peacetime; war is the brutal interruption of peace.

### Part I: Walzer and McMahan

Michael Walzer argues that soldiers are moral equals. In this section, I unpack his claim and explain how a distinction between wartime and peacetime activities is the key to Walzer’s view. Then, I present Jeff McMahan’s view which rejects both the moral equality of soldiers and Walzer’s view on the moral difference between peacetime and wartime.

Walzer introduces the thesis of the moral equality of soldiers in *Just and Unjust Wars*.

He writes:

Armed, he is an enemy; but he isn't my enemy in any specific sense; the war itself isn't a relation between persons but between political entities and their human instruments. These human instruments are not comrades-in-arms in the old style, members of the fellowship of warriors; they are "poor sods, just like me," trapped in a war they didn't make. I find in them my moral equals. That is not to say simply that I acknowledge their humanity, for it is not the recognition of fellow men that explains the rules of war; criminals are men too. It is precisely the recognition of men who are not criminals.

They can try to kill me, and I can try to kill them. But it is wrong to cut the throats of their wounded or to shoot them down when they are trying to surrender. These judgments are clear enough, I think, and they suggest that war is still, somehow, a rule-governed activity, a world of permissions and prohibitions a moral world, therefore, in the midst of hell. Though there is no license for war-makers, there is a license for soldiers, and they hold it without regard to which side they are on; it is the first and most important of their war rights. They are entitled to kill, not anyone, but men whom we know to be victims. We could hardly understand such a title if we did not recognize that they are victims too. Hence the moral reality of war can be summed up in this way: when soldiers fight freely, choosing one another as enemies and designing their own battles, their war is not a crime; when they fight without freedom, their war is not their crime.<sup>1</sup>

I insist on this long quotation. First, Walzer's prose resists short expressions of necessary and sufficient conditions or quasi-algebraic formulations. Second, this passage already points towards the vital distinction between peacetime and wartime. Third, the passage allows me to preempt, and hopefully avoid, some confusion; it allows me to distinguish Walzer's actual claim for some similar claims which he does not make.

Walzer's thesis amounts to the claim that soldiers are all equal in their rights. These rights are *moral* rights; Walzer is not merely re-stating the legal rights of soldiers, sailors and airmen. The point is to claim that the soldiers who face each other in battle as equally entitled to use violence; *they do not wrong each other and they do no wrong when they fight*. Hence, "there is a license for soldiers, and they hold it without regard to which side they are on".

For Walzer, Ernst Junger did no wrong by fighting for Wilhelmine Germany, and more controversially, neither did the tank ace Michael Wittmann or the Field Marshall Erwin Rommel when they fought for the Third Reich. Still, this "did no wrong" must be qualified. Soldiers do no wrong only if they obey the rules of war that determine legitimate and

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<sup>1</sup> WALZER, Michael, *Just and Unjust Wars*, 4<sup>th</sup> edition, Basic Books, 2006, pp.36-37

illegitimate means of fighting. It is for this reason that Walzer writes “But it is wrong to cut the throats of their wounded or to shoot them down when they are trying to surrender”.

In technical terms, Walzer claims that the demands of *jus in bello* – the just conduct in war – can be determined independently of *jus ad bellum* – the justice of going to war. As McMahan notes, for Walzer the logical separation between *jus ad bellum* and *jus in bello* is vital.<sup>2</sup> For Walzer, soldiers do no wrong since they are only judged on their conduct in war and this conduct is judged independently of the justice of the cause for which they fight.

Soldiers, abiding by the rules of war, are moral equals in the sense that they are all entitled to fight; they do not wrong each other by doing so, regardless of the cause of their government.

I wish to dispel some possible misinterpretations or ambiguities about Walzer’s thesis. First, the thesis of the moral equality of soldiers is not a view about whether it is equally good that either side should win. Walzer’s claim is not that each side understood as a political entity is equally just, but rather that the soldiers who are the agent—the “instruments” of these political entities—all hold the same moral right to fight. This is an important point for questions surrounding third parties. A third party that endorses Walzer’s view can both claim that the soldiers on either side of a conflict are moral equals and claim that it ought to help or favour one side. The logical separation of cause and conduct means that a third party can endorse a cause in a way that distinguishes between the conduct of soldiers who fight the war and the cause endorsed by the political entity that initiates the war. Soldiers are likened to boxers or gladiators in the literature and one can coherently think that it is preferable that one boxer or gladiator wins without claiming that his adversary is wrong to engage in combat. We could easily imagine two prisoners of war condemned to fight in the Coliseum. We can imagine that one fighter belongs to a much maligned or persecuted group and we might prefer that this fighter wins—his victory would be symbolic and consoling in a way that his

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<sup>2 2</sup> McMahan, J. (2009). *Killing in War*. Oxford: Clarendon Press. pp. 4

adversary's would not. Yet, we would not also need to claim that the gladiator who hails from a less oppressed group commits some wrong by fighting to the best of his abilities.

Second, Walzer's claim is not that soldiers are total and comprehensive moral equals. They are not moral equals in every possible sense of the term. Rommel was, by all accounts, a noble soldier unwilling to kill civilians, or murder Jews or POWs while Arthur Harris, the chief of Bomber Command, appeared to worry little about bombing German cities. Yet, Rommel fought for Nazi Germany and Arthur Harris for the British Crown. Rommel may have been more virtuous, yet, as a soldier, he was Harris' equal in terms of his right to fight. If one finds it difficult to think clearly about Rommel's case, one can simply think about whether it makes sense to assume that the Wehrmacht necessarily had more thieves and wife-beaters than the Red Army or the British Expeditionary Force. The point is simply that men in their roles as soldiers are equals; they are not equals in any and every possible respect.

In sum, Walzer's thesis is that soldiers on either side of a conflict possess the same moral rights—soldiers who fight for unjust regimes or in an unjust cause do not wrong soldiers fighting for a just regime or a just cause. Thus, soldiers are not judged according to the justice of the war they are fighting; they are only judged on how well they follow the rules of war. Hence, Walzer's insistence that only soldiers who fight well are moral equals.

As stated above, Walzer's claim depends upon the logical separation of *jus ad bellum* and *jus in bello*. For Walzer, political leaders are judged on the former—perhaps the latter if they are responsible for the violations or fail to prevent them—whereas soldiers are only judged on how they fight the war. The reason that soldiers can be moral equals is that their moral rights do not depend upon the justice of their cause. Soldiers can be moral equals because they only do wrong by failing to abide by the rules of *jus in bello*. Why?

The answer for Walzer lies in the very conditions of soldiering. The reality of war is such that soldiers and political leaders must be judged very differently. This is obvious in his

paper “*What is Just War Theory About?*” He writes “War, I want to argue, isn’t a ‘case’ to which the law and morality of everyday life can be applied—and, by definition, it doesn’t take place in civil society.”<sup>3</sup> This belief is further emphasized when Walzer insists that just war theory should “ring true” to those who need to do the fighting, and the dying.<sup>4</sup> This condition can only be satisfied, says Walzer, if one pays serious attention to war itself and not only to moral theory.<sup>5</sup> He adds that many of the claims and arguments of the lawyers and the theorists who have constructed a law and morality for war will appear bizarre or incomprehensible if we do not start by first understanding what it is like to be soldier at war.<sup>6</sup>

Cumulatively, these claims illustrate Walzer’s adamant rejection of a theory-driven project; to paraphrase Frankena “Just war theory is made for soldiers, not soldiers for just war theory”. The central idea is that ethical theorizing is unlike mathematics – its validity cannot be established purely in the realm of abstraction. Human beliefs, experiences and judgments are indispensable constraints on theories that purport to guide human life.

McMahan rejects the logical separation of *jus ad bellum* and *jus in bello*. The use of violence, McMahan thinks, is always judged on its aim and therefore we cannot judge the behaviour of soldiers who use violence without also judging the cause for which they use it. For McMahan, the strongest argument against the criterion for the liability to attack that applies in war—the posing of a threat—is that this criterion has no intuitive plausibility outside of war.<sup>7</sup> In other words, *pace* the use of violence by soldiers, when we judge violence we always judge its use in relation to the cause for which it is used. To make his case, McMahan appeals to the example of the threat posed by a police officer to the criminal he confronts.<sup>8</sup> The police officer threatens the criminal, but this does not justify the criminal taking aim at

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<sup>3</sup> Walzer, Michael, “What is Just War Theory About?”, (2013, unpublished lecture) p. 5

<sup>4</sup> *Ibid.*, p. 3

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, p. 6

<sup>7</sup> McMahan, 2009, pp. 13-14

<sup>8</sup> *Ibid.*, p. 14

the police officer. The example is meant to show that force justly exercised cannot be justly opposed. The just use of violence is asymmetrical; one party can justly use force the other cannot. The just party is just precisely because of the aim or cause for which he uses violence. The corollary is that the criminal's use of violence is unjust precisely because of the cause for which he uses it. McMahan concludes that what holds for peace should hold for war, pending some convincing reason why war would be different.

Moreover, McMahan explicitly rejects the plausibility of a discontinuity between the norms that apply in war and those that apply in peace. McMahan believes that discontinuity has unacceptable consequences: he claims that accepting discontinuity compels us to accept that unjust combatants who successfully provoke civilians into combat will then be able to legitimately target them because the civilians will now pose a threat to the soldiers.<sup>9</sup> If violence can be justly exercised in war regardless of the cause for which it is used, then posing a threat can make one a liable to attack and if this is the case, then it is a criterion that leads to infelicitous results. Lastly, McMahan challenges the advocate of the discontinuity thesis—the claim that the norms of war are different than the norms of peace—to explain what it is about war that renders invalid the norms of peace.<sup>10</sup> McMahan wants a clear story about why the morality of peace would not also apply to war.

In sum, for McMahan soldiers cannot be moral equals because there is no logical separation of *jus ad bellum* and *jus in bello*. Soldiers *qua* soldiers do not have the right to fight and kill; only soldiers fighting for a just case have the right to fight and kill. There is a moral inequality of soldiers, for some are using violence for a just cause while others are not. Last, on McMahan's view, the reality of war is the source of excuses rather than the grounds for a parallel morality; the same conditions that Walzer invokes to justify separate norms for war are, for McMahan, a set of full or partial excuses to which soldiers can plead.

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<sup>9</sup> *Ibid.*, p. 15

<sup>10</sup> *Ibid.*, p. 35

Given this overview of the debate, I present a negative argument in favour of Walzer's view. The negative argument shows that McMahan's view of excuses is deeply flawed. An examination of how excuses work and what they presuppose reveals that the conditions of war cannot be adequately analyzed in terms of excuses. He writes "Some people who accept the moral equality of combatants seem to do so because they confuse permission with excuse. The confusion of these two notions is common."<sup>11</sup> McMahan attributes this error to prominent authors such as Francisco de Vitoria and Michael Walzer.<sup>12</sup> The reality of war explains why soldiers may not be blameworthy or subject to little blame, but it does not, for McMahan, provide them with a license to kill.

### Part III: Excuses, Normality, and War

Before presenting a theory of excuses, I begin with a case. After the Netherlands were liberated, collaborators with the Nazi regime were tried by the thousands. Collaborators were tried as individuals and mitigating circumstances were considered. Presumably, some presented veritable excuses for their actions. However, no one proposed to try the German soldiers, sailors and airmen on the grounds that they fought for the III Reich. The collaborators were treated as individuals, whereas in the case of soldiers they were treated as a collective. Walzer explains these differences in attitudes and practice by claiming that the Dutch citizens broke with their own, whereas the soldiers "were doing the done thing".<sup>13</sup> Though Walzer tentatively claims that the soldiers were collectively excused, he immediately backtracks; the so-called 'excuses' granted to soldiers are not really excuses because they do not work as ordinary excuses do.<sup>14</sup> I agree with Walzer, but he fails to provide an analysis of excuses to support his claim. In this section I offer such an analysis. I use this analysis to show how McMahan's argumentative strategy relies on an implausible view of excuses.

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<sup>11</sup> McMAHAN, 2009, p.111

<sup>12</sup> Ibid, pp.111-112

<sup>13</sup> Walzer, M. (2006). Response to McMahan's Paper. *Philosophia*, 34, p. 2

<sup>14</sup> Ibid.

Consider a pedestrian example of a legitimate excuse: a man is excused for failing to honour an obligation because his flight was cancelled. Consider now that a Dutch collaborator claimed that he was excused on the grounds that the country was occupied. This is not an excuse. To understand the difference we need to examine how excuses work. Or rather, what is the function of an excuse and what are the conditions for the use of excuses?

Excuses are claims that diminish or eliminate responsibility for an agent's transgression or failure. An excuse recognizes the violation of a norm or a form of failure on the part of the agent; to plead an excuse is to deny that one is, wholly or partially, at fault. In this way, excuses differ from justification; a justification is a claim that an action was warranted; if one is justified, there is no moral transgression because one had good reason to do what one did. Though excuses are quite varied – ill-health, diminished agency or *force majeure* – what they all do is identify something extraordinary and relevant about the circumstances under which the agent needed to act. That is to say that the practice of making excuses, and judging them to be adequate or inadequate, always occurs against a normative landscape. Norms always presuppose a picture of normality and the function of excuses is to recognize the interruption of the normality by exceptional circumstances. An excuse is the claim that there are morally relevant differences between the agent's situation and the background conditions under which a norm holds. Consider an ordinary excuse concerning traffic and how it changes once we change the background conditions. Imagine that a teacher fails to arrive on time to give his class—the class is cancelled as a result. Reproached by a student, he replies “Our subway train broke down. There was nothing that I could do”. Notice that this reply can only function as an excuse if the subway is ordinarily reliable. If the teacher lived in a city where public transportation was notoriously unreliable, his reply will appear feeble and irresponsible. The student could then reproach the teacher his lack of foresight, his imprudence—“You know that public transit is unreliable. Why did you risk it? Why didn't you



leave earlier?" In the first case, the excuse functions because it identifies something extraordinary and relevant that eliminates or diminishes the teacher's responsibility for failing to give him class. In the second case, the excuse fails to diminish or eliminate responsibility precisely because what is invoked is part and parcel of the picture of normality. In so far as people keep appointments in the city, everyone is expected to plan around the poor public transit. Therefore, excuses presuppose a picture of normality, some set of background conditions, against which agents are expected to act and to conform to norms.

Recall the Dutch collaborators. A Dutch citizen could not invoke the occupation as an excuse precisely because the norm of loyalty which he violated presupposes these very conditions for action; loyalty demands more than being a fair-weather friend. If mere occupation or threat generated a legitimate excuse, then no one could be guilty of treason in virtue of cooperating with the occupier since the very fact of occupation would provide a general excuse for failing to comply with the norm of loyalty. Similarly, soldiers can't invoke danger as a reason to break rank and flee as they are expected to act in the face of the gravest danger. Yet, if my above analysis is correct, then a man could be excused for his ill-health. The reason is that the excuse identifies a morally relevant difference between the agent's situation and the conditions of normality presupposed by the norm; ill health is not part of the background conditions under which one is legitimately expected to comply with the norm. In a word, any norm that accepts ill health as an excuse must be a norm that tacitly presupposes that the conditions for compliance with the norm include good health or at least a state better than ill health.

The key claim is that norms are supported by background conditions that provide constant and coherent reasons for compliance; norms are binding when the background conditions generally obtain and an excuse is legitimate when it identifies exceptional circumstances that are not part of the background conditions for compliance with the norm.

Consequently, if the function of an excuse is to identify conditions for action that were not presupposed by the norm, the excuse cannot identify a feature that is characteristic of the general conditions that support compliance. If it did, the excuse would identify nothing special about the case; it would be akin to claiming that one could not come to work because one was healthy or a student pleading that he could not be faulted for cheating because the exam was difficult. At the risk of repeating myself, recall that the Dutch collaborators could not invoke the occupation as an excuse precisely because the background conditions of the norm of loyalty do include occupation and similarly trying circumstances.

The point of this analysis of excuses is to show that McMahan would be wrong to characterize the conditions of war as providing excuses. And this is McMahan's claim.<sup>15</sup> The reason why the conditions of war cannot be adequately described as excuses is that war is not a series of isolated exceptional circumstances that clash with the background conditions of everyday morality. War by its very nature creates new general conditions for action that are radically at odds with the general conditions that support compliance with the norms of everyday morality.

At this point, I want to show that we already accept this view concerning the triadic relationship between moral norms, a background of normality and excuses. More specifically, I want to illustrate that we accept this view outside of the controversial case of war.

Consider an action, which like killing, seems morally problematic and in need of justification. Take lying for instance. Imagine an engineer both works for a competitive industry and who is also involved in some academic research. As an employee of a large engineering firm, his work essentially involves working with fellow engineers and it might appear that there is little distinction between the cooperation between members of a research team in a firm and in a university. Yet, his firm is not devoted to pure research – ultimately, it

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<sup>15</sup> McMahan (2009) chapter 3 provides the bulk of the claim that soldiers are excused but that they have no permission to fight in an unjust war. For McMahan, war does not have its own morality, but provides excuses under the morality of peace.

is part of a competitive market and other engineers or employees are competing over lucrative contracts. In this context, engineers are not even nominally fellow members of a borderless community of disinterested researchers; they are rivals and they pitted against each other. If this same engineer was involved in teaching duties at a local university, he would become immersed in a very different setting. Fellow instructors are not, or should not be, divided in rival factions. His students are all equally entitled to his help and time.

This engineer would be subject to different norms governing truth-telling depending on whether he is acting as part of a competitive firm and whether he is acting within the context of academic research. Immersed in the first context, we cannot expect the engineer to answer any question truthfully or to avoid deception. Trade secrets are a vital part of competitive work in the market and members of research teams are not expected to share the fruits of their labour with their rivals. Compliance with a norm that recommends telling the truth, the whole truth and nothing but the truth seems to be a very bad idea and we could hardly expect an engineer to be truthful or forthright when he suspects that trade secrets are at stake or that industrial espionage is likely. Yet, if the same engineer was working with his fellow instructors or with students, the kind of reticence, ambiguity or outright deception that we would never imagine blaming within the context of competitive industrial activity would be seen as an egregious breach of the norms governing academic life. Thus, we have a stark contrast. Whereas no one would seriously believe that there is anything to excuse if an engineer is wilfully ambiguous or dishonest with a rival in the context of industrial competition, no one struggles to see why this engineer would be in need of an excuse if he confused or misled a student or instructor, from his own institution or another.

Why the diverging judgments on what might appear like the same act of confusing or deceiving? The most natural explanation is to claim that we expected the engineer to abide by different norms—in the former case, we expected compliance with a much weaker truth-telling

norm and in the latter case we expect compliance with a much more demanding norm. In order to explain these different expectations and norms, we would naturally invoke the context. That is to say, we would point to the general conditions for action and we would identify something like a picture of normality for engineers involved in a competitive market and engineers involved in academic life. In short, our judgements take into consideration a triadic relationship of moral norms, a picture of normality and excuses. That we do not expect excuses in the first case and we do in the second shows that we expect compliance with different norms and the different norms are best explained by the very different picture of normality that is presupposed by competition in a market and teaching within a university.

Yet for McMahan, the norm should be the same and the conditions of competition within a market merely excuse the engineer for failing to comply with the truth-telling norm that we endorse in the academic world. If the engineer is merely excused and not granted permission to confuse and deceive, then we must be committed the idea that he wronged his rivals by failing to tell them the truth. This strikes me as an absurd conclusion.

This case shows that our ordinary judgments recognize the triadic relationship between moral norms, a picture of normality and excuses that I proposed. Once this is recognized, there is no principled reason to deny that killing in war could be governed by a norm that is very different than killing in peace.

Given that our expectation of compliance with a moral norm always presupposes a background picture of normality, excuses identify exceptional circumstances that eliminate or diminish blame for failure to comply. Thus, what is recognized as a legitimate excuse depends upon the background picture that is assumed in the expectation for compliance.

Armed with this analysis, I present an ordinary case in which our readiness to blame someone for deception depends primarily on the context in which deception is used. As the most natural explanation for these differing judgments – a parallel to our differing judgments

concerning killing in peace and in war—involves an appeal to the differing expectations grounded on very different contexts for action, this case is evidence for my analysis.

The point is that my analysis introduces the conceptual possibility that killing in war is governed by a very different norm than killing in peace. What remains to be shown is why we expect compliance with a very different norm during wartime. The answer inevitably concerns just how much the pictures of normality diverge in war and peace.

Before proceeding, I raise and answer an objection. My hope is that answering this objection pre-empts some confusion and illuminates both my analysis and my work below.

Describing the differences between war and peace is one, but whether or not one ought to follow everyday morality in war is a normative question. You cannot answer this question, says the objector, with descriptions, accurate, insightful or whatever.<sup>16</sup>

The objection is ill-founded because it fails to recognize that the very practice of offering excuses, or justifications for that matter, compels us to look at the world through a normative lens. If we are to make use of excuses at all, we need to recognize certain descriptions of the world as normatively relevant. For example, to claim that one is sick is, at one level, a descriptive claim. Nevertheless, it is not merely a description; invoking ill health as an excuse is an appeal to a set of circumstances that are taken to be normatively relevant. There can be no excuses if we do not recognize that certain circumstances, certain facts, are shot through with normativity. To say that ill health ought to excuse someone amounts to saying that under certain conditions, i.e. *when certain facts obtain*, a particular kind of moral claim is legitimate. The very function of an excuse is to identify circumstances under which we do not expect compliance with a norm or under which failure is not blameworthy because these circumstances fall outside of the normative landscape in which the norm is at home.

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<sup>16</sup> This objection was raised when I presented an earlier draft of this paper at a conference.

It should now be clear why I examine how war presents a radically new set of conditions for action. Below, I examine three reasons proposed by Walzer to explain how war creates conditions that are radically different from peace. I will add two of my own. The point is to show just how confused it is to conceive of war as a set of conditions that provide excuses for failing to comply with ordinary morality. War is not a monumental sick day that collectively excuses people from failing to show up for ordinary morality. Instead, war is a radical departure from the conditions for compliance with everyday morality; it creates a new set of general conditions that support a separate morality.

First, Walzer claims that war creates an extreme level of coercion, unlike any other activity.<sup>17</sup> On the battlefield, life is always threatened and men are forced to commit acts that they would find otherwise unconscionable. This is part of what Walzer meant when we spoke of soldiers as victims; they suffer wars just as much as they wage them.<sup>18</sup> This explains why soldiers can see in each other “a poor sods, just like me.”<sup>19</sup> Soldiers fight wars, but they do so more as servants or slaves than as autonomous individuals. “Military necessity” is an expression meant to convey the extreme coercion of battle; a level of coercion that it is hard to exaggerate and that is inescapable from the soldier’s perspective.

The second characteristic of war is that it constitutes a powerfully collective and collectivizing experience.<sup>20</sup> It is mistaken, for Walzer, to conceive soldiers as primarily defending themselves; thus analyses which starts from self-defence are bound to fail. Wars are fought by individuals, but these individuals are fighting the wars as soldiers; these individuals are acting *qua* members of a collective. Their actions will seem incomprehensible if analysed as instances of self-defence. Further, the cause for which soldiers fight is never only their own and these collective causes are such that many are willing to die in their

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<sup>17</sup> Walzer (2013), p. 8

<sup>18</sup> Walzer (2006), see particularly pp. 15, 30, 36

<sup>19</sup> *Ibid.*, p. 36

<sup>20</sup> Walzer (2013), p. 10

defence. The central idea is that war is an unusually collective activity and that individuals are not engaged in self-defence, so much as they are involved in a collective action that is explained and justified in terms of identities and allegiances that are irreducibly collective. To understand war as an aggregation of acts of self-defence is like trying to understand friendship as the aggregation of acts of self-interest.<sup>21</sup> In ordinary life our loyalties to collectives are balanced and often defeated by our individual rights and interests. In war, our personal interests are defeated in the name of the collectives to which we give our loyalties. Orwell wrote: “Above all, war brings it home to the individual that he is *not* altogether an individual. It is only because they are aware of this that men will die on the field of battle.”<sup>22</sup>

To illustrate these two features and to show that war creates a wide and deep rupture with everyday morality, Walzer draws our attention to the prisoner of war convention.<sup>23</sup> A prisoner of war is very unlike a prisoner in civil society. Soldiers surrender under the gravest threat and those who capture them have no warrant. Yet their surrender is considered binding. In peacetime, one does not surrender to mere force and one cannot give binding consent under duress. Yet, the prisoner of war convention allows it all. This is why soldiers that attempt to escape are punished; they were spared under the promise to give up the fighting and escape is a violation of that promise.<sup>24</sup> Yet, not only is the punishment a practice accepted as legitimate by soldiers and officers, but soldiers and officers also view escape as legitimate. They attempt to escape and their efforts are celebrated in fictional and historical literature. How could we explain this fact if soldiers were only engaged in self-defence? Are they trying to put themselves back into cases of self-defence? That would be grotesquely absurd. For Walzer, soldiers are trying to rejoin the fight and take their place among their fellow soldiers.<sup>25</sup> The prisoner of war convention rests upon the reality of war is an unparalleled level of coercion

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<sup>21</sup> Foot, P. (2001). *Natural Goodness*. New York: Oxford University Press, pp. 101-103

<sup>22</sup> ORWELL, George, «The English Revolution », in *The Lion and the Unicorn*, London, 1941

<sup>23</sup> Walzer (2013) pp. 9-12

<sup>24</sup> *Ibid.*, pp. 9-10

<sup>25</sup> *Ibid.*, pp. 10, 12

and that it is profoundly collective and collectivizing. Walzer also believes that the coercion and collectivization are mutually reinforcing and this explains why volunteers and conscripts are closer than they may appear.<sup>26</sup> Belonging to these collectives is probably the most profound form of membership: it alone determines who is a legitimate target. In war, we do not use the procedures available in peacetime to establish responsibility or individuate persons; membership is enough because it is all that we can consistently expect. Membership in the collective of soldiers, legitimate targets, is paralleled by membership in the collective of illegitimate targets, civilians; no peacetime membership makes such a difference.<sup>27</sup>

The last feature of war that Walzer discusses is the pervasive and radical uncertainty of war.<sup>28</sup> Information is painfully incomplete, deception is ongoing, the outcome of any action is hard to predict. Our moral understanding is equally chaotic. The routines and authorities of everyday life disappear. Uncertainty is characteristic of war in that the morality and authorities we recognize in everyday life are radically contested. There is no one, and Walzer insists here, quite literally no one in the world who can act as an impartial and authoritative arbiter to whom soldiers can turn.<sup>29</sup> Uncertainty exists at the highest level and it never truly disappears; wars end, but the arguments about them continue. In such conditions of uncertainty, when bearings are lost and all discourses are subject to radical critique, soldiers have the right to be wrong, to not know and to defer to their leaders.<sup>30</sup> The reason is simple: there may be an objective answer concerning which side is just, but that objectivity has no political or judicial embodiment.<sup>31</sup> It is an inaccessible objectivity, let alone certitude.

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<sup>26</sup> Ibid., p.13

<sup>27</sup> Ibid., pp.13-14

<sup>28</sup> Ibid., p.16

<sup>29</sup> Ibid., p.17

<sup>30</sup> Ibid., p.18

<sup>31</sup> Ibid., p.19



Consequently, Walzer claims that soldiers have the right to have doubts and to defer to their superiors; nothing else could be expected given the radical conditions of uncertainty.<sup>32</sup>

For Walzer, these three features conspire to exempt war from everyday law and morality. In the terminology of norms, these features of war undermine the conditions for compliance with the norms of ordinary life. These conditions are not excuses precisely because these conditions constitute a new picture of normality that is at odds with the normality of peacetime activities. And this is unsurprising. The lawyers, jurists and statesmen that crafted laws for war and emergencies must have thought that there would be something wrong with believing that under such radically different conditions one still has a reason to follow ordinary law or morality. After all, it is only by attending to the features of everyday life that we can hope to find the moral norms that should govern it. How else could we have come to decide what everyday morality requires and what it can't except by attending to how the conditions of everyday life and its norms fit together?

I add two further features. The process of training soldiers is also the process of transforming moral agents. Soldiers do not stumble into combat; they are made warlike. It hardly matters that training can be (relatively) short.<sup>33</sup> The relevant perspective is *from the inside*. For the political critic or the historian, wars are more or less necessary and dangerous. For soldiers, all orders are binding and no battlefield is safe. Military life means that soldiers become peculiar moral agents. The coercion of the battlefield imposes itself on civilians such as war correspondents who enter it, but soldiers look upon it with different eyes. We know that soldiers are made into agents unlike the agents that live under the aegis of ordinary morality and law; we can't apply the morality of everyday life because this morality is the morality of ordinary agents. The proof of this transformation is the need for reintegration into

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<sup>32</sup> Ibid., p.18

<sup>33</sup> The French Foreign Legion's training is 15 weeks (<http://www.legion-recrute.com/en/chronologique.php>). One is made a member of an elite fighting force in the span of a fall semester at the University of Toronto ([http://www.artsandscience.utoronto.ca/ofr/calendar/1314\\_Calendar.pdf](http://www.artsandscience.utoronto.ca/ofr/calendar/1314_Calendar.pdf)).

civilian life. Thus the conditions for everyday morality are again eroded because a feature of war is the first person perspective of soldiers; they are no longer ordinary agents.

The second feature is the erosion and breakdown of trust. The very declaration of war undermines the conditions of trust that can obtain across borders. The coercion and collectivization override the trust that is granted to individual persons. Because we know that war is a collective practice with collective aims, we cannot trust or presume to trust members of the enemy collective. Imagine friends in competition. In everyday life, they can trust each other and make choices that take this friendship for granted. However, once they face each other as competitors, particularly as members of opposing teams, they no longer can act or decide as friends—or not only as friends. They will be tempted to stress the limits of the game and they would be naïve to assume otherwise. *A fortiori*, war makes certain kinds of trust impossible and if not impossible, foolhardy and irrational for those involved. If war limits the bonds we can form with those beyond our collectives, then it seems that a strong, perhaps disquietingly strong, patriotism is permissible. If effective and rational trust cannot exist between members of opposing or non-allied collectives, then one has very good reasons to favour one's fellow countrymen in a way that would seem incompatible in ordinary life.

The reality of war is deep and extensive; it undermines the general conditions for compliance with ordinary morality because it breaks with ordinary life. The reply to McMahan's challenge is to show that considering the general conditions of war as excuses is to fail to understand how excuses function against a backdrop of normality. To treat the realities of war as excuses is to presume that war is like a flat tire that happens as ordinary life goes on. However, war is not an exception to ordinary life; it is its most brutal interruption.

#### Part IV: Loose ends

Walzer and McMahan disagree on how to interpret the differences between war and peace. The former claims that they warrant a separate morality of war; the norms governing

killing in war are distinct from peacetime norms. The latter thinks that killing is always subject to the same norms; the conditions of war serve as excuses in regards to these norms. In the previous section, I argued that McMahan's characterization is deeply confused.

McMahan's challenge to the advocate of a discontinuity between the morality of war and morality of peace can now be met. The above analysis of the function of excuses allows us to undermine McMahan's interpretation of the normative relevance of the conditions that prevail in war. If the differences between war and peace cannot be adequately understood as providing excuses, then we open space to press for Walzer's claim. Indeed, the conditions of war are not merely excuses for non-compliance with the norms that obtain during peacetime; a better account of these differences is that they support a morality of war because they provide a general background against which actions are chosen and judged. This account fits the rules of war that treat soldiers as equals—regardless of the justice of their cause.

Furthermore, we can argue for the logical independence of *jus ad bellum* and *jus in bello* on the grounds that the presumption in favour of their dependence is drawn from self-defence analyses set in peacetime. Yet, if war constitutes its own normality by creating a general set of conditions for action, why should we assume that the judgments we make in peacetime should also apply in wartime? Crucially, McMahan's own attempt to show that this is the case involved explaining away any differences between how we judge cases in war and peace involved account for the conditions of war as providing excuses for non-compliance with the norms that govern peace. However, we have seen the shortcomings of this analysis.

In sum, I have argued against McMahan's revisionary account much more than I have argued for Walzer's view. My aim has been to show that the rational pressure on Walzer's account depends upon McMahan's analysis of the conditions of war as providing excuses. Our analysis of the function of excuses reveals this account to be deeply inadequate.

Further challenges remain for the thesis that soldiers are moral equals. The advent of drones seems to eliminate the coercion and danger of the battlefield for their “pilots”. The conditions of war do not apply to these servicemen as they apply to the marines who knockdown doors and engage in firefights. The view may need to be adapted as working on a continuum between total war and complete peace. Or, perhaps the view only applies to combatants rather than all service members. Whatever the response, something needs to be said because the conditions described by Walzer clearly apply to soldiers, but not all of them.

Additionally, further work needs to be done to explain how and why the morality of war resembles ordinary morality. The stark differences between war and peace could be interpreted as warranting an even harsher morality for war. The truly astonishing, to my mind, is not that there could be a morality of war but that it is so much like the morality of peace.

Finally, more needs to be said about the fact that soldiers, even those who serve on the frontlines, are granted leave. Soldiers at war do not spend all of their time on and around the battlefield. If the conditions of war are also in part the conditions of the battlefield, then we need to say something about the relevance of leave and time spent away from the front.

These issues are only a few further challenges that face the thesis of the moral equality of soldiers. However, the aim of this paper has been to identify a serious weakness of McMahan’s critique. If the characteristic conditions that distinguish war from peace cannot be adequately interpreted as providing soldiers with excuses, then McMahan’s view fails.<sup>34</sup>

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<sup>34</sup> Sincere thanks to Philip Clark, Yitzhak Benbaji, Étienne Brown, Sebastian Becker and Vladimiro Dagkas-Tsoukalas, Jean-François Kervégan and Sophie Guérard de Latour.