

11-2016

How We Fight: Ethics in War

Roger Bergman

Follow this and additional works at: <https://digitalcommons.unomaha.edu/id-journal>



Part of the [Ethics and Political Philosophy Commons](#), [International and Area Studies Commons](#), [International and Intercultural Communication Commons](#), [International Relations Commons](#), and the [Political Theory Commons](#)

Please take our feedback survey at: https://unomaha.az1.qualtrics.com/jfe/form/SV_8cchtFmpDyGfBLE

Recommended Citation

Bergman, Roger (2016) "How We Fight: Ethics in War," *International Dialogue*: Vol. 6, Article 11.

DOI: <https://doi.org/10.32873/uno.dc.ID.6.1.1125>

Available at: <https://digitalcommons.unomaha.edu/id-journal/vol6/iss1/11>

This Book Review is brought to you for free and open access by the The Goldstein Center for Human Rights at DigitalCommons@UNO. It has been accepted for inclusion in International Dialogue by an authorized editor of DigitalCommons@UNO. For more information, please contact unodigitalcommons@unomaha.edu.

Review

How We Fight: Ethics in War

Helen Frowe and Gerald Lang (eds). Oxford: Oxford University Press, 2014. 240pp.

Roger Bergman *

As indicated by the editors, the ten essays in this volume “arose from a conference on just war theory held at the University of Sheffield [United Kingdom] in August 2010” (vii). The authors are all academics and all but two are philosophers; the outliers are professors of law and of politics. The emphasis is indeed on just war *theory*, not investigation of the development of the just war tradition over many centuries in theological, philosophical, or legal contexts, or of its application to historical cases from the remote or recent past. One should not look here for scholarly illumination, say, of the justification given for the invasion of Iraq by the United States and the United Kingdom in 2003. This despite the fact that four of the essayists are employed at universities in the U.S. and two in the U.K., with the remainder representing Sweden, Denmark, Australia, and Israel.

Men outnumber women seven to three. Authors residing in member nations of the North Atlantic Treaty Organization (NATO) likewise outnumber those residing outside NATO seven to three. This might be thought to represent a potential historical and political context for the discussion, but the level of discourse is so consistently abstract that whatever practical focus or even ideological partiality or partisan bias might be suspected in so relatively similar an assemblage of geopolitical perspectives is difficult if not

*Roger Bergman is director of the justice & peace studies program, and professor in the Department of Sociology and Anthropology at Creighton University. He has published in a number of journals, including *Journal of Religion & Society* and *Journal for Peace & Justice Studies*. He is working on a book on selective conscientious objection, or refusal to participate in unjust war.

impossible to detect. To be blunt, these are English-speaking philosophers addressing one another and their university peers in highly sophisticated argument with frequent reference to carefully analytic thought experiments (yes, the infamous Trolley Case makes an appearance).

None make any reference to military experience of their own or, for that matter, of anyone else. Only one actual case, that of “The Taliban Women” in Afghanistan prior to 2001, is discussed at any length and even then with very little concrete texture. The atomic bombing of Hiroshima/Nagasaki, the Falklands/Malvinas war, and the like are only mentioned. On the other hand, the reader is frequently asked to consider at more length such theoretical cases as that of Altruistic Bomber, Amoral Bomber, Diabetic, Free-Fire Zone, Goaded, Humanitarian Aid, Innocent Onlooker, Locked in the House, Lucky Escape, Machine, Provocation, Proximity, Two Option Bombing, and most prominently, Tactical Bomber (more on this later).

It is no wonder then that the editors feel compelled to address in their introduction this emphasis on abstract theory to the detriment of concrete application. They observe that “It strikes some people as especially odd to employ abstract examples when dealing with a topic such as war, because history provides us with a wealth of ‘real life’ examples that seem to capture the sorts of situation that philosophers discuss, such as the inflicting of collateral damage or the waging of unjust war” (xvi). They are willing further to admit that “Others might even find the philosophical literature’s appetite for abstract cases distasteful: as evidence of a lofty refusal among philosophers to acknowledge the hard politics and the visceral tragedies of war” (xvi). No one will mistake this book for anything like that of fellow moral philosopher A.C. Grayling’s *Among the Dead Cities: Is the Targeting of Civilians in War Ever Justified*” (Bloomsbury, 2007), which opens with four pages of maps of Allied bombing targets within Germany and ends with a 46-page appendix of the “Schedule of RAF bombing attacks on Germany, with civilian casualties and RAF losses sustained.”

Frowe and Lang offer two brief rebuttals to such responses. “First, philosophers, no less than scientists, are entitled to test moral principles in ways which diverge from their particular application to real world situations” (xvi). Fair enough: there is a role for “pure research.” Before we can apply ethical principles insightfully and cogently, those principles themselves must be examined and clarified—and that may be accomplished through argument by professional thinkers. “Second, while real life often does provide us with

examples of the sorts of situation discussed by philosophers, the theoretical discussions are not always best illuminated by the use of those examples" (xvii). But one might ask, in discourse about ethics, should application be at the service of theory, or the other way around? Presumably some sort of dynamic interaction is needed, in which theory illuminates history and history puts theory to the test. Indeed, the editors continue, "By abstracting away from real life examples, we are able to focus on what strike us as the salient or interesting features of a moral problem for the purposes of answering a specific question, and this will allow us to produce more informed and lucid responses to new occurrences of war, or to new calls to go to war" (xvii). Ethics, after all, is concerned with human action and normative judgement about it, not only theoretical or contemplative understanding. As even the editors themselves acknowledge, the point of doing moral philosophy in this context would seem to be to "allow us to produce more informed and lucid responses to new occurrences of war, or to new calls to go to war" (xvii).

So, how do these ten essays stand up to that standard? Can a reader who is herself not a moral philosopher specializing in the ethics of war come away from this volume with more informed and lucid responses to the profoundly moral problem that is war? Or are these estimable thinkers talking mainly among themselves?

Saba Bazargan, Assistant Professor of Philosophy at the University of California San Diego, in "Varieties of Contingent Pacifism in War," not only distinguishes absolute from contingent pacifism, but also "proportionality-based" contingent pacifism from "epistemic-based" contingent pacifism. He finds arguments for the former to be wanting: unless proportionality becomes, in effect, a strict noncombatant immunity, some degree of "collateral damage" can be justified if larger values are thereby upheld. He is more sympathetic to arguments for a pacifism that is contingent on the credibility of a nation's war-making past. Can this nation or its leaders be trusted to provide truthful and cogent reasons for going to war? If not, a pacifism of the moment may be warranted. That is, Bazargan recommends a "doubly contingent" pacifism: some wars may indeed be just, but some countries may lack a history of just war-making. In a nice summary statement, the author observes that "a proponent of epistemic-based contingent pacifism might point out that countries with a history of waging only just wars are ones that wage wars only in extremely rare circumstances" (17).

Victor Tadros, Professor of Law at the University of Warwick, in an essay on "Punitive War," distinguishes wars of "special deterrence" from wars of "general

deterrence.” In the former, nation X attacks nation Y to prevent a future attack by Y. As the editors put it, such wars “may be permissible just as long as there is evidence that an attack is planned” (xix), which raises the same sort of epistemic question discussed by Bazargan; can we believe assertions by X that such an attack by Y is indeed imminent? (The 2003 invasion of Iraq comes to mind, but it is not mentioned by the author.) In wars of general deterrence, “If Y attacks X to prevent itself from being attacked by Z, then it would seem that X is not just *harmed* by Y, but *used* by Y” (xix), which is usually forbidden according to the “means principle.” But in exceptional circumstances, an individual victim may be permitted to use a past offender to shield herself from further harm from a third party. Tadros calls this the *Duty View* of punishment and asks whether such a view can be applied to warfare and not just individuals. He concludes that such a punitive view of war can lead to loss of respect for the lives of the innocent within the punished nation and so cautions against making this application. In the simplest terms, who, in an offending nation, is deserving of punishment?

One of the editors, Gerald Lang, Lecturer in Philosophy at the University of Leeds, in “Why Not Forfeiture?” examines what he calls the “Central Normative Tradition” which justifies the self-defense of a victim against an attacker by asserting that the attacker therewith forfeits his right not to be attacked. As the editors put it, the “normative baton” (xxi) is passed from attacker to victim. Lang defends this intuitively appealing approach against complaints that it is an assertion and not an argument by recommending that we keep our focus not just on what the attacker loses (the right of self-defense), which seems to be the target of the critics of the forfeiture account, but also on what the victim gains (the same right of self-defense). The CNT is more right than not.

Suzanne Uniacke is Professor of Philosophy at the Centre for Applied Philosophy and Public Ethics at Charles Stuart University in Australia. Her essay, “Self-Defense, Just War, and a Reasonable Prospect of Success,” compares the permissions for self-defense available to the individual and permissions available to nations for defensive war. According to Uniacke, an individual is justified to defend herself against attack as long as there is *some* chance that her action will be successful. But the strictures on nations acting in their own defense must be tighter, because of questions of collateral damage, escalation, and other unpredictable but likely consequences. National leaders thus have responsibilities far beyond that of an individual. Here the epistemic problem is not so much the trustworthiness of any particular nation or leader but the difficulty if not impossibility

of even the most credible decision-maker knowing what warfare will lead to. A *reasonable* prospect of success thus becomes a criterion that looms large indeed.

F.M. Kamm, Professor of Philosophy at Harvard, continues in a similar vein in “Self-Defense, Resistance, and Suicide: The Taliban Women.” What if, as in the case of women in Taliban-ruled Afghanistan prior to 2001, resistance to oppression and repression were so futile as to amount to suicide? Can such failed resistance be justified? Perhaps what Kamm calls “mere resistance” is a kind of success even in failure, as it expresses a protest against the terrible wrong being done even if it does not end it. While such mere resistance may be imprudent, it hardly justifies the oppressors, the Taliban in this case, in defending themselves against the rebellious violence of the oppressed, even when it escalates. This seems to call into question the heightened reasonableness recommended by Uniacke in the preceding essay. Prudence may not be the only value in a situation of extreme desperation. It might be added that knowing one’s actions may lead to one’s death is not the same thing as intending one’s death.

A further reflection on self-defense is offered by Adam Hosein, Assistant Professor of Philosophy at the University of Colorado, as posed by the question that frames his essay, “Are Justified Aggressors a Threat to the Rights Theory of Self-Defense?” What happens when the asymmetry assumed by what Lang called the Central Normative Tradition and the Forfeiture Account is complicated by circumstances beyond innocent victim and unjust attacker? Hosein is responding to Jeff McMahon’s analysis of the *Tactical Bomber* case, which goes like this, as summarized by the editors:

Six just war combatants, in a war of humanitarian intervention, destroy a military installation in order to ensure that one hundred innocent civilians will not be killed by unjust combatants. The debris from the bombing stands to kill six villagers who are gathered in a neutral company just across the border from the site of the military installation. May the villagers defend themselves against the bombers, whom McMahan described as “justified threateners”? (xxiv)

Hosein argues that since the villagers are not liable to harm they are permitted to use force to repel the attack even though they are not deliberately targeted and even though their success may result in the bombers’ failure to prevent the deaths of one hundred other non-liable civilians. One may defend oneself not only against violation (intended attacks) but also against infringement (not intended but foreseen threats) of one’s right to life.

Hosein counters McMahon's *Tactical Bomber* case with *Machine* case, in which "agent A will be killed by a machine unless agent B suffers a serious but less severe injury: a crushed arm, say....Is agent C permitted to impose that injury upon B in order to save A?" (xxv). Hosein answers in the negative, and believes that if C attempted to do so, B would have the right to deflect C's arm into the machine in order to save his own—and also so save A's life. Hosein, by analogy, argues that the villagers are allowed to defend themselves against the Tactical Bombers, despite the deadly consequences to the much larger number of equally innocent civilians. McMahon's position on Tactical Bombers is summed up by his claim that "justification excludes liability" (118). Since the bombers are justified in attacking the military installation in order to save one hundred lives, they are not liable to attack by the six nearby villagers whose lives are threatened by that same attack. The six villagers' right of self-defense does not extend to attacking the tactical bombers, although that may mean their own deaths.

Jeff McMahon, Professor of Philosophy at Rutgers and author of *Killing in War* (Clarendon Press, 2009), is described by the editors as having had "a profound influence on both those who share and those who reject his view that war is an extension of ordinary life, to be judged by our ordinary moral rules" (xv). McMahon is best known for his argument against the moral equivalence of combatants on both the just and unjust sides of war, as advanced by Michael Walzer in his landmark book, *Just and Unjust War*, first published in 1977. The war convention, as articulated by Walzer, establishes the independence from one another of *jus ad bello* (the law of going to war) and *jus in bello* (the law of war's conduct). A combatant in an unjust war has the same right to defend himself as does his opponent on the just side of the war. He has the same right to kill his enemy as the just combatant has to kill him, the unjust combatant. The contrast with the morality of self-defense in civilian life is obvious. A violent criminal suspect being pursued by a police officer is not thought to have the same right to defend himself against the officer as has the officer against the suspect. The relationship is morally asymmetrical.

McMahon carries this approach into his essay in *How We Fight*, "Self-Defense Against Justified Threateners," at 34 pages easily the longest in the book. Neither the six tactical bombers nor the six threatened villagers are liable to attack, but the bombers are justified in unintentionally but unavoidably threatening the villagers because of the greater number of lives thereby saved. They are not thereby liable to attack by the villagers. Justification trumps liability. Since the villagers are not intentionally threatened, it is not a

question of self-defense but of self-preservation, and tragically that would come at the cost of one-hundred other lives equally deserving of preservation, which cannot be justified.

Kasper Lippert-Rasmussen, Professor of Politics at Aarhus University in Denmark, in “Just War Theory, Intentions, and the Deliberative Perspective,” defends what is known in philosophical discourse as the Doctrine of Double Effect against criticisms by Thomas Scanlon. (In theological discourse, which traces the origin of the idea to Thomas Aquinas, the preferred terminology is Principle of Double Effect, but the content is the same.) The DDE can be illustrated by contrasting the Tactical Bomber, who foresees that his well-intended action will endanger nearby civilians, and the Terror Bomber, who intends to kill civilians and thereby terrorize the population in hopes of advancing his particular political aims. The Tactical Bomber’s action has two effects, one intended and good and another neither intended nor good, and the DDE suggests under what conditions, especially proportionality, such an action would be justified. The Terror Bomber, by contrast, has only one intention and one effect, the immoral killing of civilians.

Scanlon has objected to the psychologism of the DDE, arguing that intentions are relative to evaluation of the agent but that principles determine the quality of the act. The difference between the Tactical and the Terror Bombers is that the former does not use the deaths of the villagers as a means to an end, whereas the latter does, and that is a matter of principle and not of intention. But Lippert-Rasmussen is not convinced that principles alone are sufficient to judge the act. This reviewer would point out that the classical formulation of the DDE in the theological tradition requires attention to both intention *and* the means question. A bad effect may be neither intended *nor* the means to the good effect. It is a question of both/and, not either/or. Lippert-Rasmussen’s further concern is with what he calls “the Deliberative Perspective,” which objects, in effect, that both the Tactical Bomber and the Terror Bomber will believe their intentions are good since they have already judged their actions to be justified, which undermines the value of judging intentions rather than the acts and their effects. Lippert-Rasmussen responds that one’s own evaluation of intention may be unreliable but that a third party’s evaluation is another matter. Historians reasonably attend to a ruler’s intentions for undertaking a war when making an evaluation of that war. Intentions are not purely subjective.

In the volume’s penultimate essay, Noam Zohar, Associate Professor of Philosophy at Bar Ilan University in Israel, addresses “Risking and Protecting Lives:

Soldiers and Opposing Civilians.” In brief, given the just war principle of noncombatant immunity, even as relativized by the Doctrine of Double Effect, how much risk should soldiers assume to protect the lives of enemy noncombatants? Consider military Plans A, B, and C, each meeting the proportionality imperative but B protecting civilians more than A and C more than B. Everything else being equal, B is clearly morally superior to A and C to B. But what if the risk to the soldiers is inversely related to the degree to which civilians are protected? According to the Soldiers’ Safety First approach, the plan with the least risk to the soldiers, everything else being equal, should be chosen, even if that puts more civilians at risk. But Zohar describes this scenario as misleading, for the soldiers are not so much protecting the civilians to different degrees in each of the plans as knowingly exposing them to death, although the numbers so exposed will differ according to how much risk the soldiers are willing to take. Killing fewer civilians should not be construed as protecting more civilians, who would not otherwise be threatened. That does not answer the question of how much risk soldiers should assume when the lives of enemy civilians are at stake, but it does bring moral clarity to the question.

In the final essay, co-editor Helen Frowe, Wallenberg Academy Research Fellow in Philosophy at the University of Stockholm, takes an unexpected approach to the issue of “Non-Combatant Liability in War.” Whereas Zohar specifically and the just war tradition generally assume the innocence or non-liability of almost all civilians in a nation engaged in unjust war, Frowe doubts such innocence since even civilian noncombatants can and do contribute to the war effort in a variety of ways short of pulling a trigger. Perhaps they helped manufacture the trigger or assembled the weapon it operates, or baked the bread that nourishes the soldier firing that weapon, or paid taxes that financed the making of the trigger or the baking of the bread. Why should these contributions to an unjust war not be counted as rendering liability in the same way as the finger on the trigger? Frowe seems to believe that the only issue at stake is military necessity, which may sometimes mean that the factory worker or the baker or the taxpayer may be deliberately targeted. It would seem that in a modern society there really is no such thing as an innocent noncombatant, if that person’s country is engaged in unjust war. Remember that Victor Tadros had worried that a punitive view of war can lead to loss of respect for the lives of the innocent within the punished nation and so cautions against making this application. In the simplest terms, who, in an offending nation, is deserving of punishment? Apparently this might include the child who carries a loaf of bread to his father for lunch at the trigger

factory. If Frowe has read John Ford's classic analysis of exactly this issue, "The Morality of Obliteration Bombing" (*Theological Studies* V/3, 1944) she has not taken it to heart. Her analysis is effectively a warrant for total war, which places her, if I am reading her aright, outside the just war tradition itself.

As with perhaps any book of essays by various authors, even authors within a single disciplinary field engaged in discourse on a single tradition of thought, there can be no single judgment made about *How We Fight*. Some of the clarifications of the theory at hand may be more insightful or persuasive than others, as even the no-doubt inadequate summaries above might suggest. Whether any of these essays "allow us to produce more informed and lucid responses to new occurrences of war, or to new calls to go to war" seems to be an open question, since none of the essayists have themselves moved from theory to application, from the abstract to the concrete, from the lecture hall to the public square—much less the war room or battlefield HQ. Perhaps a follow-up conference and a second volume of essays are called for.