The ethics of war justness beliefs

Why ignorantia non est argumentum for unjust combatants

by Richard Bell
Leiden University
March 2025

(Word count: 2088)

Abstract
A major recent development in the just war theory is the rejection of moral equality of just and unjust combatants. Unjust combatants are claimed to have a lower moral standing. Yet they could object that they did not know their war was unjust, and should not be liable. In this paper, I offer a deontological epistemic defence of combatants' inequality against this objection. By invoking epistemic obligations, my argument carries more normative force than the one offered by Jeff McMahan.

One of the most controversial parts of the just war theory is the principle of moral equality of combatants (MEC). According to MEC, the combatants at the just and the unjust sides in a war are equally liable to be attacked, and have equal moral permission for killing combatants of the other side(s) and inflicting proportional harm. As long as they adhere to jus in bello, all combatants have moral immunity from blame, and equal moral rights and duties. MEC lies at the core of other elements of the just war theory such as discrimination (Lazar 2010, 181) and is currently embedded in international law that confers equal legal status on just and unjust combatants alike. Until now, MEC has been unquestionably accepted. This presents a genuine puzzle since the principle is philosophically untenable, at least according to Jeff McMahan.

MEC is undermined by the fact that no means of achieving an unjust end can be just themselves. So, *unjust combatants*, i.e. the combatants of the party that has no just cause for war, can never reach a good end by fighting, and thus their violence can never satisfy the in bello requirements of proportionality. None of their targets is legitimate. This obviously holds for civil situations, and McMahan (2006, 381-383) shows that war situations are no different since the earlier Walzerian analogies of gladiatorial and boxing fighting fail in contemporary conditions.

The consequence of the rejection of MEC is that *just combatants*, i.e. the combatants who fight for a just cause[1] are not legitimate targets since they have done nothing to forfeit their universal right of not being attacked. At the same time, just combatants retain the moral right to kill unjust combatants and cause harm that is proportionate for achieving their good ends. None of this holds for unjust combatants. By pursuing an unjust end, they forfeit their right of not being

[1] Recognized just causes are defence, other-defence or legitimate humanitarian intervention.

attacked and hence are liable to be killed. None of the killing and harm they inflict can be morally justified, thus they are responsible for murder and all the harm and damage they cause.

Why is admitting the moral inequality of combatants (MIC) important? The international law does not recognize the difference in rights and liabilities of just and unjust combatants and there seem to exist certain pragmatic reasons for this (Lazar 2010, 182). However, a key difference between law and morality is that law can be immoral. Besides legal rights and duties, people have moral rights and duties. Regardless of law, there is a moral duty to prevent harm inflicted by unjust combatants. This can justify and urge people, communities and states in taking action such as military aid to the just party in a war, imposing sanctions on an unjustly fighting state and even limiting the rights of the citizens of such state if that can be shown to help prevent harm and promote good ends. Ultimately, international law ought to be adjusted to reflect the moral rights and liabilities in contemporary wars rather than outdated analogies of gladiators and boxers. If there are some pragmatic reasons for the legal equality of combatants, these should be recognized as such, namely as legitimate reasons to deviate from the moral maxim in cases when pursuing the maxim does more harm than good. However, the existence of such reasons does not justify ignoring or negating the moral maxim itself. In the absence of deviational cases, the moral maxim ought to be pursued.

Now one may accept the principle of moral inequality of combatants and agree that unjust combatants have fewer, if any, rights. However, forfeiting one's rights[2] is an intentional act that is made by an informed individual. What if the individual accepts moral inequality, believes that their war is just and thus believes they do not forfeit any of their rights by enlisting or being conscripted[3], but in reality their belief is false and their war is unjust? This is the argument from ignorance, discussed by Helen Frowe (2011, 131-134) with frequent references to McMahan[4] (2006).

A possible reply is that the individual ought to know their war is unjust. But again, many philosophers will argue that ought implies can. Since governments typically misinform their citizens about the facts about their war cause, the individual could not know the truth and thus had no epistemic obligation. Therefore, he still could not forfeit his rights.

McMahan has the following reply to the objection from ignorance. According to him, MEC permits actions that are justified by reasonable beliefs, even if these beliefs are actually false. However, it is usually not reasonable for combatants to

---

[2] Most unjust wars are fought by authoritarian states where people do not have much knowledge about their rights. So, young men and women who enlist or are conscripted will typically be quite ignorant of the fact that they are forfeiting their rights. However, as mentioned, their moral inequality is of prime importance to third parties, and thus it is primarily important that they ought to know the unjustness of their war rather than the fact that they forfeit their rights.

[3] Being conscripted is not an action that is undertaken by the individual but rather them fulfilling their duty. It is questionable whether there can exist a duty that implies forfeiting rights. This debate is, however, beyond the scope of the present essay.

[4] McMahan calls it the "epistemological argument" for the moral equality of combatants, discussed in part 5 of his essay (McMahan 389-391).

accept the justness of war by deferring to the judgment of their political[5] authority. McMahan offers[6] three inconclusive[7] reasons for this. First, it is unwarranted to trust in the honesty of even democratically elected governments. Second, statistically, one's odds of fighting an unjust war are much higher than a just one. Third, once at the battlefield, one can encounter facts that cast reasonable doubt on the justness of their war. Overall, combatants should investigate facts and engage in serious moral reflection because of the magnitude of the potential consequences of fighting.

In my opinion, a stronger deontological argument can and should be made against the argument from ignorance. Since we are talking about moral rights and duties that are contingent on an agent's epistemic conditions, invoking epistemic rights and duties can provide a more robust foundation than the contingent considerations mentioned by McMahan.

An account of deontological judgments about belief is offered by Richard Feldman (2000). Feldman defends evidentialism, i.e. the view that epistemic agents have an obligation to adopt doxastic attitudes of believing, not believing or suspending judgment towards propositions based on the available evidence[8].

An "ought implies can" objection can also be made here against such a categorical argument. Epistemic agents sometimes cannot adopt the proper attitude informed by the available evidence, for example, because of their prior beliefs. Feldman rejects the objection by invoking the concept of "role oughts". People in certain roles ought to behave in certain ways regardless of whether they can do so on some particular occasion. Analogous to parents who ought to take care of their kids, epistemic agents have an epistemic obligation to adopt the proper attitude towards a proposition (Feldman 2000, 676).

So let us use Feldman's argument for a somewhat naïve attempt to defend MIC. Suppose the following case:

> **Sectarian**
> A member of a religious sect travels to a foreign country and kills the owner of a pizza restaurant. The reason given by the sectarian is that the pizza restaurant was a disguise for a pedophile community club where children were sexually abused and even murdered, according to the doctrine of the sect. Since the government of the country in question would not take any action, the sectarian took up the moral duty of preventing significant harm by a lesser evil of killing its perpetrator. Killing was the only possible option, according to the guru of the sect. In reality, all the mentioned claims of the sect were false.

---

[5] Perhaps, one should say "political or military authority" as these can diverge in some states.
[6] The mentioned reasons can also be found in a somewhat restated form in McMahan's later essay arguing against collective defence of MEC (McMahan 2007, 58).
[7] McMahan admits (2006, 390) that "it's sometimes reasonable for unjust combatants to believe that their war is just".
[8] An example offered by Feldman (2000, 667) is that "We say that a typical well-informed contemporary American ought to believe that the Earth revolves around the Sun and should not believe that the Earth is flat."

If we grant the principle of proportionality under peaceful conditions, did the Sectarian have the right to kill? On the legal side, most if not all legal systems would say no, contrary to international martial law – which once again highlights its inconsistency with morality. The fact that the Sectarian believed himself to be acting justly is at best a feeble excusing circumstance but certainly not a justification conferring a right to kill. He ought to know the truth and he could have known the truth.

What about the moral side? Did Sectarian have the right to kill that was founded in his right to believe the sect narrative? On a naïve approach, one could say that Sectarian ought to disbelieve his sect's propositions in light of the total evidence available to him. The total evidence includes all evidence besides that endorsed by his sect. Thus, he ought to know that he is not acting justly, and therefore he committed a wrongful murder. Given that misinformation campaigns of states, especially authoritarian ones, resemble sects in relevant ways, this would prove that the epistemic objection to MIC is untenable.

There is a problem with this approach. According to Thi Nguyen (2020), sects are echo chambers that prevent epistemic agents from changing their beliefs in light of contradicting evidence. In fact, one cannot even use the term "contradicting evidence" for echo chamber members because they were led to reject information from distrusted sources as valid evidence. Thus, sectarians can, and most of them do follow Feldman's precepts of adopting proper beliefs given their available evidence. The problem is that their evidence is manipulated. So, if Sectarian spent his entire life in the sect[9], he is not blameworthy for believing in the justness of his action. In fact, he would have a right to believe it and hence a moral right to kill. The naïve argument fails.

This brings me to my final point. In order to fulfil the epistemic obligation, one has to know that one's available evidence is not insufficient[10] (Feldman 2000, 676-677). Believing a proposition based on available but insufficient evidence is wrong. Therefore, in order to be justified in believing a proposition, an epistemic agent needs to have second-order evidence that the evidence about the proposition is not insufficient. In simplified terms, before one accepts a certain belief, one has to make sure they gather enough[11] evidence in its favour.

perhaps mixed up positive/ negative

So, can we say that Sectarian could know that his evidence in favour of the justness of killing was not insufficient? If he joined the sect as an adult, perhaps yes. Had he been born in the sect, perhaps not (Nguyen 2020, 154). However, there is reason to say yes in both cases if we bring the sect analogy closer to actual war.

An important disanalogy of the Sectarian case with actual war is that the confrontation takes place between an organization, i.e. the sect, and an

[9] The parallel here is with citizens who typically spent their entire lives in their states.
[10] I am following Feldman's formulation that involves double negation, i.e. "not insufficient" instead of "sufficient". Feldman makes a point that these are not equivalent.
[11] The technically correct term is "not insufficient", substituted here with "enough" for the sake of simplicity.

individual, i.e. the victim[12]. Suppose now that an armed confrontation takes place between two sects. Sectarians of Sect A are told to fight against Sect B and they know that Sect B members fight against them. There is a conflict between parties of the same kind.

Now it is common knowledge that conflicting parties have different narratives about the conflict. This knowledge is available to any member born to any sect since we cannot imagine people who live in groups and yet do not witness conflict and do not hear the conflicting parties' stances. It is also common knowledge that a stance that first appears just turns out to be unjust upon hearing the opposite side. It takes little skill to infer that a single party's evidence is insufficient to believe their claims of justness.

Therefore, Sectarians of both sects have no right to believe the claims about the justness of their sects because they know that their evidence is insufficient since it is provided or supported by their sect. Due to indoctrination, they might still disbelieve other bits of evidence, and thus have insufficient evidence for any claim. In that case, they ought to suspend their belief.

Back to real-world wars, we can conclude that combatants ought not to believe[13] claims about war justness if such claims are only supported by evidence provided by their authority. Due to the basic considerations of partiality available to them, they ought to seek evidence from independent sources[14]. Such evidence is available[15] because, unlike sects, states[16] cannot block access to balanced information entirely. In sum, if combatants ought not to believe the sole claims of their authorities, they cannot hide behind the excuse that they could not know their war was unjust and must bear the moral responsibility for their unjust acts.

Our conclusion is stronger than McMahan's argument that it is usually reasonable for combatants to know their war is unjust. On our account, the loss of unjust combatants' moral rights is based on their failure to fulfil an underlying epistemic duty.

---

[12] A possible objection is that the Sectarian was already led to believe that he was struggling against an organized community. If one finds it plausible, this would not lead them to different conclusions from ours.
[13] That is, they ought to disbelieve or to suspend judgment.
[14] A possible pragmatic objection is that a state's ability to engage in a just war can be undermined if its combatants are hesitant to accept the claims of justness. However, contrary to unjust causes, independent evidence about an invasion of one's own country is readily available and should not pose a problem. Other-defence and humanitarian interventions might be a bit trickier. Yet arguably, reflection is rather a virtue than a vice in such cases, and, as argued by George Fletcher and Jens Ohlin (Frowe 2022 77) it should be based on publicly observable facts.
[15] Strictly speaking, our argument does not require availability of independent evidence. In the absence of it, an epistemic agent is obliged to suspend judgment. But the availability of independent evidence makes our argument even stronger.
[16] The only exception at this moment is North Korea. Citizens of other authoritarian states such as Iran or Russia still have access to balanced information online even if some of its sources are blocked by their governments.

Bibliography

Feldman, Richard. 2000. "The Ethics of Belief." Philosophy and Phenomenological Research 60, no. 3 (May): 667–95.

Frowe, Helen. 2011. The Ethics of War and Peace: An Introduction. London: Routledge.

Lazar, Seth. “The Responsibility Dilemma for Killing in War: A Review Essay.” Philosophy & Public Affairs 38, no. 2 (2010): 180–213. doi:10.1111/j.1088-4963.2010.01182.x.

McMahan, Jeff. “Collectivist Defenses of the Moral Equality of Combatants.” Journal of Military Ethics 6, no. 1 (2007): 50–59. doi:10.1080/15027570601183295.

McMahan, Jeff. “On the Moral Equality of Combatants.” The Journal of Political Philosophy 14, no. 4 (2006): 377–93. doi:10.1111/j.1467-9760.2006.00265.x.

Nguyen, C. Thi. “ECHO CHAMBERS AND EPISTEMIC BUBBLES.” Episteme 17, no. 2 (2020): 141–61. doi:10.1017/epi.2018.32.