

The Boundaries of Battlefields, Collaboration Between Enemies, and Just War Theory (Reply to Commentators)

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Thank you for awarding *Conspiring with the Enemy: The Ethic of Cooperation in Warfare* the North American Society for Social Philosophy (NASSP) 2019 Book Award. I am delighted to receive this honor, and am grateful to the book award committee (Karen Adkins, Abby Gosselin, Emily McGill, Michael Merry) for devoting their time to reading all the books and for their careful and challenging engagement with mine here.

By studying a common yet overlooked phenomenon—the ethic of cooperation between enemies in warfare, even as they are trying to kill each other—*Conspiring with the Enemy* proposes a new and constructive way of thinking about the ethics of war, draws out the challenges, contradictions, limitations, and unintended consequences of this phenomenon, and explores the implications for not only how we should fight but also for larger questions of legitimacy, accountability, and justice.

Is There a Single Ethic of Cooperation?

This book discusses three major types of cooperation between enemies in warfare and draws on so many different kinds of examples (e.g., individual cooperation in war, legal institutions that induce cooperative behavior, the cooperative structure of modern warfare, etc.), that I, too, have questioned whether all these different types of cooperation can really be said to be part of a single ethic of cooperation. Are bans on hollow-point bullets or poison gas, requirements to wear uniforms or other identifying markers in combat, the principle of medical neutrality, and the practice of short and decisive wars, for example, really all part of the same phenomenon? Not only does each operate with its own dynamics, but cooperative behavior—or not—on each issue is motivated differently depending on the position that one occupies, e.g., officer vs. enlisted.

The book shows how these different types of cooperation are being driven by more than just self-interest or the moral rightness of an action, how new rationales get layered on top of existing practices and then evolve those practices, how ethical reasons to cooperate with the enemy can grow out of other motivations (including self-interest, human rights considerations, or military professionalism), and how the explicit language of cooperation makes its way into international law.

But even if all these different types of cooperation are driven by *an* ethic of cooperation, the question remains whether they are grounded in the *same* ethic of cooperation between enemies in warfare.

The “ethic of cooperation in warfare” can seem overly broad, but I think it is still useful to think of these different things as part of the same—albeit rather capacious—category. These disparate practices do more than simply converge by sheer coincidence on cooperating with the enemy.

In an inherently agonist activity, that it can be morally desirable or positive to cooperate with the enemy *while fighting each other* is in itself significant to note. A variety of reasons can motivate that moral desirability—e.g., the reciprocity or warrior honor/professionalism that underlies the “fair fight” ethic differs from human rights considerations that may prompt cooperation to protect civilians—but cooperation itself between enemies can have moral value, and that is the common thread through these dramatically different types. Even in cases of less obvious cooperation such as the short, decisive wars of classical Greek hoplites, their cooperation on the structure of warfare confers legitimacy on its process and outcomes.

Concern with legitimacy is also common to cooperation across different levels, and whether or not it should be the case, legitimacy at one level often affects legitimacy at another. For example, whether a person is considered a legitimate warfighter under international law and international norms—which terrorists and non-state actors are not—determines whether the international community considers the fighters to represent a “right authority” that is necessary, although insufficient, for *jus ad bellum*. (See Chapter 6.)

Thinking about the “fair fight” ethic, cooperation to protect classes of people, and cooperation to end war quickly as all parts of a broader phenomenon also highlights the ways in which different levels of cooperation relate to each other. For example, individual-to-individual cooperation about “fair fights” is a partial foundation for international laws banning certain weapons. Some weapons bans also protect classes of people such as civilians, and these *jus in bello* restrictions are connected to the collusion between modern nation-states to define what qualifies as “legitimate” warfare in terms of both strategy and participation, e.g., terrorism is not considered a legitimate strategy and only officially enrolled military personnel of commonly-recognized nation-states are considered legitimate warfighters.

One reason that warfare is so troubling not only as a human enterprise but also as a subject of study is precisely Adkins’s point about people’s different positions

(e.g., civilian, soldier on the ground, commanding officer, political leader, etc.) and the differing effects and burdens on them, and I share those concerns.

It can indeed be troubling to see how leaders evaluate military personnel as resources (e.g., the process of medical “salvage”) and to recognize the possibility for their dehumanizing exploitation, but the extent to which leaders see warfighters as resources “only” will depend to a great degree on the type of governance system the military operates in. In liberal democratic societies, for example, military personnel are also citizens, which means that their lives are considered to have value beyond their military function, and that makes a difference in how they are treated and deployed.

Even when the warfighters are not liberal democratic citizens, seeing them as a resource can cut both ways. If resources are expensive, as individual personnel in advanced militaries such as the United States are, then the resource is likely to be more judiciously utilized. Professional warfighters are not easily replaceable: they are highly-skilled human capital who must be cultivated and managed at great expense, and therefore must be carefully and thoughtfully allocated to the greatest effect, with sufficient consideration for efficiency. Every organization, company, or social movement faces these challenges of resource allocation—and the relatively egalitarian nature of military work and promotion in highly-professionalized militaries, at least, can work to military personnel’s advantage relative to personnel in other industries.¹

It is true that attempts to restructure warfare, if any, will be made primarily by those who are not risking their bodies and lives, so we might still end up with a system that unduly exploits warfighters while leaving the decision-makers divorced from the consequences of their actions, which is exactly what has developed over the past 400 years or so. This is a moral problem for every large, complex institution in any large, complex, modern society: government agencies, universities, companies, etc., in addition to militaries.

What are realistic ways of mitigating this? In the case of warfare, at least part of the answer must lie in the civil-military relations of individual countries, especially by increasing republican accountability in Kant’s *Toward Perpetual Peace* sense—the more the better. In the United States, at least, perhaps also choosing more political leaders who have some military experience or more than a passing familiarity with military matters would be beneficial. As of 2015, less than half a percent of the U.S. population served in the military, and only 7.3 percent of the population had ever served in the military (Chalabi 2015). In the Congress that started its term in January 2019, there are only 96 veterans, just 18 percent of the country’s legislative branch. This is a decrease from the previous congress, and is part of a steady decline since the post-Vietnam War years, when nearly three-quarters of congresspeople had served (Shane 2018).

Why is this important? When it comes to deciding when and how to deploy troops, it turns out that civilians with no military experience are more enthusiastic about using military force than current military officers or military veterans are (Feaver and Gelpi 2005). This should be unsurprising, as those with military experience better understand the horrors of war, and are often reluctant for themselves or others to pay that price. Once the decision to use military force has already been made, however, those with no military experience will be more supportive of *jus in bello* restraints in warfare—so the ideal may be to have more political leaders with military experience, but not too many.

Colluding on the Structure and Boundaries of Warfare

The third type of cooperation in warfare that I discuss in this book is cooperation to end war quickly (Chapter 4), and here, I rely on classical Greek hoplite warfare as a model. The concept of structural cooperation may be too thin, as McGill argues, if it claims that it constitutes cooperation to merely acknowledge that there are no rules on the battlefield. But there is more to the Greek hoplite model. In classical Greek hoplite warfare, there were other cooperatively-derived rules that enabled the rule-that-there-are-no-rules-on-the-battlefield to persist: there were norms about the battlefield and specifically its parameters (e.g., where, when, how long), and in the absence of rules for fighting the battle, these rules about the battlefield become more important.

More generally, rules *about* the battlefield are just as important as rules for actions *on* the battlefield. At the international level, however, the cooperation written into the modern international laws of war focuses disproportionately on *jus in bello* and comparatively neglect other aspects of war, including *jus ad bellum* and its accompanying questions of decision-making responsibility and accountability. This effectively makes warfare a trial by combat using warfighters as “champions”—an “appeal to heaven”—even as questions of earthly justicial right have become increasingly important in international politics over the past two centuries. (See Chapters 6 and 7.)

Contemporary structural cooperation in warfare at the international level also includes laying the parameters for *who* can be on the battlefield. Existing nation-states, as the dominant form of political organization, collude to define “legitimacy” in warfare and to determine who has standing to fight, and this becomes an especial problem with contemporary terrorism (Chapter 6) Although terrorism is nothing new in the history of warfare, it challenges norms of cooperation for “fair fights” and modern expectations that certain classes of people should be shielded from attack. Mainstream militaries, embedded within the dominant contemporary international framework around warfare, have difficulty figuring out how to

engage with what falls outside of that framework, especially terrorism as a tactic and non-state terrorist organizations as political entities.

As mentioned, the international community considers terrorist warfighters and terrorist organizations to lack the legitimacy to fight wars—but this is only partly because of the non-cooperative tactics used in terrorism.² When the terrorist organization happens to be a recognized state—of which there are more than a few—its warfighters are considered legitimate, even though their governments are not normatively so, and this leads to gross inconsistencies and even greater injustices. Contemporary terrorism demonstrates both the greater difficulty in dealing with warfare that falls outside the dominant cooperative framework, and the inconsistencies within that modern framework which are perpetuated by cooperation (or collusion, if you will) between the primary entities in that system—here, nation-states.

Adverse and Unintended Effects of Well-meaning Cooperation

Although the ethic of cooperation seems harder to maintain now, engaging in—much less sustaining—cooperation in warfare has never been easy. What makes things more difficult now is that there are greater expectations than ever before for cooperation of certain types and these expectations have been formalized to a previously-unknown extent, e.g., in the massive and still-growing body of international laws of war.

Ironically, as expectations for cooperation in warfare have grown over the past four centuries, the potential for cooperation is increasingly challenged, as globalization and technological advances have made it possible to fight wars across massive distances and against people of whom one does not have any linguistic, historical, or cultural familiarity. Challenges of communication and lack of familiarity, understanding, and trust make the ethic of cooperation in warfare harder to cultivate and sustain.

These expectations are and continue to be in large part aspirational, because there was never a long-ago “golden age” of noble or chivalric or widespread cooperation in warfare. If anything, the golden age is now, because warfare has been and still is overwhelmingly anarchic, so as little cooperation as there is today, it is still much more than ever before, at every level. And there is now the institutionalized expectation for cooperation, where there was not before.

Gosselin is concerned that if the ethic of cooperation to engage in intentional humanitarianism often leads paradoxically to greater harm, then it might mean that breakdowns in cooperation should not be mourned. But “the humanist in me disagrees,” she concludes, and I concur.

In specific types of cases, e.g., humanitarian pauses and humanitarian corridors (Chapter 5), cooperation may cause more damage on net, but *overall* outcomes with

an ethic of cooperation must be compared to *overall* outcomes when there is no ethic of cooperation. Especially given technological advances in warfare and the ability to kill on a massive scale, the overall outcome absent an ethic of cooperation (which is mostly how war has been fought, until relatively recently in human history) *may* be much worse—and I suspect it probably would be.

But it is still important to grapple with the fact that particular types of cooperation for humanitarian purposes can cause greater harm. Cooperation is thought of as a positive action, and it is often motivated by good intentions, so it is all the more dangerous to believe that cooperation for humanitarianism or human rights will *always* yield better outcomes. There are always unintended consequences, and we should take care not to fetishize either the concept of “human rights” or a cooperative, seemingly-civilized structure of warfare.

This does not mean that specific types of cooperation, within this ethic, cannot be honed, revised, and improved to mitigate the damages in particular cases. For example, maybe third parties that try to negotiate humanitarian pauses can advocate for more effective provisions, inspections, or sanctions that would make it harder for warring parties to surreptitiously rearm.

But suppose we can know that cooperation for humanitarian purposes does in fact cause more *overall* damage, not just specific damage, as an unintended consequence: we might still consider retaining practices such as humanitarian pauses or corridors, for at least two reasons:

- It might be that it is more important to save the *particular* lives that are in front of us now, that can be saved *now*, than it is to save unspecified lives of an unknown number at an unknown future time, even if that unknown number will be greater than the number of lives we could save now. Maybe particularity matters. (This argument could draw on an ethic of care. A utilitarian calculation might also reach the same conclusion, perhaps if the value of future lives saved should be discounted relative to present lives saved.)
- There may be value in prioritizing humanitarianism or human rights even if they do cause more damage overall, if they play a role in the rest of society, beyond waging war. I have argued, for example, that war should not be treated as an entirely separate activity, wholly divorced from the constraints of ordinary society, and that it is especially important for liberal democratic societies to wage war in a way that both reflects and buttresses its everyday values and principles (Chapter 7; Chiu 2018).

Just War Theory Versus Contingent Pacifism

My starting point for this book is that I consider war to be deeply tragic and often unjustified, but that the reality of human nature is such that we will never eliminate it completely. Someone will always be willing to resort to force, so the best that we can do is to try to prevent war as often as possible and in specific cases. Even when violence is justified in the service of a right cause—and there are certainly some—it is horrific, so we should try to mitigate its effects.

To the question of whether I am a contingent pacifist: There are different types of contingent pacifists, such as adherents of particular religious beliefs or on the basis of types of military policies, etc. I would be sympathetic to a contingent pacifism on the basis of certain governance structures: specifically that unless the political system is structured such that political decision-makers for war bear their share of the costs of war and can be held accountable for their decisions, then the strong default should be to not go to war, because the people would have good reason to be skeptical of the thoroughness of the decision. (This approach would resemble Kantian republicanism in some ways.)

More commonly, however, people think of contingent pacifism as principled rejection of *jus ad bellum* reasons for particular wars, and in that case, I would question the category of “contingent pacifism,” because it implies that non-pacifists (whether absolute or contingent) do not normally take morality and prudence into consideration when deciding whether or not to go to war. Yet, this is what “just war theory” does, in studying the morality of various aspects of war. Even if the assumptions, judgments, and conclusions might differ between those who decide it is morally acceptable to fight and those who decide it is not, moral and prudential considerations are made. To carve out a separate category of “contingent pacifism” in contrast to “just war theory” seems to stipulate that their defaults are different: that the default of contingent pacifism is peace and restraint from war, while the default of just war theory is not.

But I think that is not quite correct: the historical origin of medieval Christian just war theory was to justify to Christians, who espoused non-violence, that they could in fact fight wars under some circumstances. The underlying assumption of the enterprise is that the default of peace and non-violence needs strong reason to be overcome.

Modern and contemporary just war theory should be the same: its purpose is to develop stringent moral principles for warfare, apply them with rational and analytic calculation, and weigh them against prudential considerations. By its very nature, the subject of just war theory will always be combat, but to grapple with violence and to sometimes acknowledge its necessity is not to wantonly condone it—just war theory’s default should also be peace and non-violence.

The particulars of just war theory principles and their weight and application may not get everyone to the same place and maybe not to the same conclusions

as contingent pacifists, who themselves will disagree with each other, but just war theory's purpose is to ask questions about those contingencies and about the circumstances on which peace depends. If that is sometimes not what just war theorists do or assume, then the rest of the field should hold them to the standard that peace and non-violence are the norms, that war really should be the last resort—a core principle in traditional just war theory—and treated as an extraordinary action, and that it should be rather *ordinary* to think of war that way.

This framing becomes especially important when considering that those who make decisions about warfare would not usually consider themselves to be “contingent pacifists.” Instead, they are interested in what “just war theory” can tell them—and thus all the more reason to stick with the framework of just war theory and to fold the concerns of contingent pacifism into this field in a stringent and robust way.

Notes

1. One thing that differentiates the military from other large bureaucratic organizations, such large corporations, is that officers in professional militaries have necessarily had ample experience in the military, and both commissioned and non-commissioned officers will have worked and fought alongside the people they command, which makes them more loath to brutally exploit them. (There are some notable and crucial exceptions, of course; see Chapter 2.)

One additional anecdote here: By the Vietnam War, the complexity of military organization was such that American officers did not often draw their own weapons in normal combat—if they did, something had gone terribly wrong—because they were busy managing their men. Because they were largely unable to fire back, they had to rely on their men to keep them safe. Carelessly or exploitatively sending their troops to their deaths would have been rather difficult under these organizational and personal circumstances. This highlights a general difference with most other industries, as many managers and leaders in businesses have not been in the metaphorical trenches with their employees, e.g., they have never actually made the product they are selling. While the military is not alone in thinking of its personnel as resources to be allocated, its leaders are more likely to have experiences that generate greater affinity to and specific sympathy (in Adam Smith's sense) for their human resources.

2. It does not make *conceptual* sense to try to exclude terrorism from the category of “warfare” proper, the way that the cooperative norms of contemporary warfare tend to do. My argument is not that all warfare is cooperative—far from it, as most warfare is not—but rather that cooperation between enemies pervades the norms and practices of warfare in unseen ways. Including terrorism in the category of war is separate from any normative or ethical judgment about terrorism as a tactic or strategy.

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