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### Flaws in the Premise of Discrimination

In his seminal work *Just and Unjust Wars*, Michael Walzer sets the standard for our current interpretation of what constitutes wartime justice, outlining the requirements for war to be justly initiated, prosecuted, and concluded. Of Walzer's three premises of just prosecution, or *jus in bello*, the premise of discrimination is the most intrinsically valid at first glance, but becomes more tenuous with further exploration. The premise of discrimination serves to outline the conditions in which a person can be morally harmed in the context of war, and the conditions in which a person maintains the sanctity of the right not to be killed. Walzer draws a clear distinction between a soldier's right to life and a civilian's right to life during times of war. He argues that when a person enters military service, he waves his right not to be killed by enemy combatants. However, soldiers are the only individuals who wave this right, and as a result, the atrocities of war must be confined to "combat between combatants" (Walzer 42). In this paper, I will argue that the difference between combatants and non-combatants has not been articulated in a sufficient way to enable the just killing of one group and not of the other, and that the prominent interpretations of discrimination fail to provide sound grounds for any just killing during wartime.

While it is generally accepted that violence in wartime is best kept between enemy combatants, there is little agreement on what makes one combatant justified in the killing of another combatant. These discrepancies have staggering implications in regards to who can be justly killed during war. In order to settle on the factor that justifies the killing of a combatant, the definition of combatant must be further expanded. Walzer's definition of a combatant hinges on the choice that a person makes to take violent action against another combatant in the context of war times. Since every combat soldier makes this choice, he argued, they are liable to be killed in self defense by the enemy soldiers.

In contrast, the primary revisionist critique, penned by Jeff McMahan, focuses on a soldier's choice to fight for a specific cause. Soldiers that elect to fight for a just cause, he reasons, are never liable to be killed in the line of active duty, as their actions on behalf of a just war will always be just. Soldiers that elect to fight for an unjust cause, however, are always liable to be killed, as the injustice of their enrollment nullifies their right to life. Therefore, to McMahan, it is the decision to fight for a given cause, whether or not this decision results in violent action or not, that dictates the morality of combatant killings.

These definitions are predicated on the idea that soldiers sacrifice their right to life through an autonomous act, an expression of free will. However, military service is structured on coercion, whether it be economic, political, or forceful. In order to identify whether soldiers truly waive their right to life, it is critical to identify an accompanying choice that they freely make in exchange for the loss of their rights. One such choice is, as McMahan notes, the decision to enter military service with the intent to serve in a given war. In this context, it may be possible to argue that individuals who choose to fight for a just cause are justified in their actions. However,

this assumption fails to protect the rights of many individuals who may be forced to fight for a cause by no choice of their own. Countries with mandatory drafts eliminate the opportunity of choice for many soldiers. Additionally, soldiers may have enrolled in military service with just intentions, and been conscripted to fight in an unjust war against their better judgement. In these cases, it is not clear that these individuals made a free choice that would cost their right to life. Even in the cases of soldiers who enlist for the economic benefits of service, it is unclear whether their choice is at all influenced by the morality of the conflict, and thus it is unclear whether these individuals would be morally liable.

Walzer's assertion is equally problematic, because by his logic, only soldiers with intent to commit acts of violence in military combat could be justly killed. This suggests that there may be a difference between soldiers and combatants. If one were to truly operate based on this premise, then soldiers are not liable to be killed until the moment they commit an act of wartime violence against the opposing side. Soldiers who have yet to commit an act of wartime violence, even if they may appear poised to, can still make the choice to not participate in violent combat, and as a result have not waived their right to life.

One of the primary flaws in both these arguments is the idea that the choices of soldiers are reflective of free will. In his 2007 book *War Crimes and Just War*, Larry May argues that "it is usually a mistake to treat soldiers as if they were acting entirely on their own when they commit harms against others," citing that the commands of their superiors reduce soldiers to pawns rather than agents of free will. He elaborates by highlighting not only the strict penalties for disobedience, but the way in which the severe emotional burden of war warps a person's ability to act based on the sound faculty of unclouded judgement. Soldiers, he argues, are not in a

position to act as rational moral agents, as both the extreme burden of the horrors of war and the brainwashing of the army distorts their ability to act in a way that is fully informed. His argument hinges on the fact that soldiers then are not fully morally responsible for their wartime actions, and thus the factor that determines justice in their killing can not be based solely on their own behavior, as his predecessors have argued.

Taking these viewpoints into account, both the definition of a combatant and the moral grounds to for intercombatant violence become fragile. Even with the acceptance of the tenuous proposal that combatants wave their right to life and therefore are liable to be killed, the argument for justice in discrimination is still is heavily contingent on the shaky distinction between combatants and non-combatants. The above analysis suggests that soldiers and combatants may not be interchangeable terms, and that combatants are marked by their choices in support of the war effort. Many other individuals have a similar vested interest in war, and do just as much as soldiers to enable enemy killings. Weapons developers and manufacturers, strategists, and transportation authorities are among other positions that are crucial to the waging of war. Unlike soldiers, individuals employed in these wartime industries have greater moral facilities, as they are not bound by strict military command, nor are they subjected to the emotional fog of war. While many of these workers may still feel economic pressure to continue their jobs whether or not they agree with a morality of a conflict, it still stands to reason that non-combatants in wartime industries may have greater ability to make moral choices than soldiers do, and as a result may have an increased moral culpability for their actions.

Walzer argues that the “men and women who supply [war’s] belly are doing nothing warlike,” but I believe this fails to recognize the scope of wartime activities. The violence of a battlefield is only a small facet of war, and to abstract this away from the other aspects of war seems overly limiting. If an individual waves the right to life in wartime by making the unencumbered choice to take violent action on behalf of a cause, then it becomes unclear that those who make an unencumbered choice to enable violent action on behalf of a cause would not be similarly liable, and would have similar resulting consequences.

Ergo, the current iterations of the premise of discrimination are too unstable and contradictory to provide sufficient grounds for just killings during wartimes. The idea that combatants make a choice that nullifies their right to life is a dangerous oversimplification, as is the notion that there is a clear moral line between combatants and non combatants. While this should not mean that all wartime killings are immoral, it does emphasize the shortcomings in the current argument of discrimination as just grounds for violence during war.

Works Cited

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