The Incoherence of Walzer's Just War Theory

Michael Walzer closes his seminal book, *Just and Unjust Wars*,[1] on a curious note. He admits that his theory of just war produces inconsistent moral prescriptions. In certain situations, to be explored below, Walzer says his theory both permits and prohibits the same course of action. In these situations, he says, "our judgments are doubled, reflecting the dualist character of the theory of war ... we say yes *and* no, right *and* wrong."[2] Walzer tells us that this reveals "the ultimate incoherence of the theory of war,"[3] and that "the world of war is not a fully comprehensible, let alone a morally satisfactory place."[4]

In the course of developing his theory of just war, Walzer hints that this practical contradiction has its origins in a contradiction at the theoretical level, in particular, in a tension between his theories of *jus ad bellum*, justice of war, and *jus in bello*, justice in war. For instance, at the moment Walzer introduces the *jus ad bellum/jus in bello* distinction, he warns that the two categories may not cohere. As he says, "The dualism of *jus ad bellum* and *jus in bello* is at the heart of all that is most problematic in the moral reality of war."[5] He tells us that there is a "tension between ends and means, *jus ad bellum* and *jus in bello*."[6] And he cautions, "I am not sure whether the moral reality of war is wholly coherent."

Walzer closes Part 2 of the book, which articulates the substance of his theory of *jus ad bellum*, which he calls the theory of aggression, by saying, again, that there are tensions between it and the theory of *jus in bello*. Though the theory of aggression is itself coherent, he claims that it is not consistent with *jus in bello*. "Here," he says, "there appear to be tensions and even contradictions that are internal to the argument for justice."[7]

Though Walzer suggests that the theory's practical contradictions are a product of a contradiction between his theory of *jus ad bellum* and his

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[1]Michael Walzer, *Just and Unjust Wars*, 4th ed. (New York: Basic Books, 2006 [1977]).

[2]Ibid., p. 326.

[3]Ibid., p. 325.

[4]Ibid., p. 327.

[5]Ibid., p. 21.

[6]Ibid., pp. 21-22.

[7]Ibid., p. 123.

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theory of *jus in bello*, he does not explain precisely how these theories contradict each other. This paper is an attempt to find and explain the contradiction in Walzer's theory.

I shall argue that there is a contradiction in the foundations of the theory and that this explains the perceived tension between *jus ad bellum* and *jus in bello*. Although Walzer depicts his theory as having a coherent ground in the individual rights to life and liberty, the prescriptive contradiction results from the fact that Walzer actually bases substantial parts of his theory on the inherent and supreme rights of supra-individual entities. Contrary to his own description, some of his theory, specifically, the theory of *jus ad bellum*, is based on the supreme value of irreducibly social political entities that he calls "political communities." According to his theory of *jus ad bellum*, the survival and freedom of political communities is the highest good, higher even than the survival and freedom of private individuals. Yet, Walzer bases other components of his theory, specifically, the theory of *jus in bello*, on the supreme value of private individuals. According to his theory of *jus in bello*, the survival and freedom of private individuals is the highest good, higher even than the survival and freedom of political communities. It is for this reason that the theory produces incompatible practical guidance in certain situations.

I argue further that the reason Walzer fails to produce a theory based entirely on the individual rights to life and liberty is that he cannot justify the tenets of his theory of *jus ad bellum* by appeal to the rights of individuals as he conceives them. This is why he appeals, contrary to his own description, to the overriding intrinsic value of political communities to defend his theory of *jus ad bellum* and produces an incoherent theory.

1. Walzer's Dualism

As we can see, Walzer suggests that the prescriptive incoherence of his theory is a product of a tension between the theory of *jus ad bellum* and the theory of *jus in bello*. Walzer's discussion of the relation between these components of his theory is therefore where we will begin.

Walzer tells us repeatedly that his theory of just war is a dualist theory. What this means is that the relation between justice and war has two fundamentally distinct and logically independent categories. These two categories are *jus ad bellum* and *jus in bello*. The justice of a war in the terms of one category has no necessary connection to its justice in the terms of the other. One may wage a just war (i.e., a war consistent with the rules of *jus ad bellum*) unjustly (i.e., in violation of the rules of *jus in bello*), and one may wage an unjust war (i.e., a war in violation of the

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rules of *jus ad bellum*) justly (i.e., consistently with the rules of *jus in bello*).[8] Walzer calls this "The dualism of *jus ad bellum* and *jus in bello*."

Walzer says that the logical independence of *jus ad bellum*/*jus in bello* is not an assumption; he will give a justification for it. "It is my purpose," he says, "to see war whole, but since its dualism is the essential feature of its wholeness, I must begin by accounting for its parts."[9] The account he gives of this dualism is, ultimately, developed by his defense of the entirety of his theory of just war. It is intended to be the product of the foundations and structure of that theory. However, we can begin by noting its immediate origins within the theory.

The dualism of *jus ad bellum* and *jus in bello* is the result, most immediately, of another kind of dualism within the theory, namely, an explicit division of moral responsibility for the justice of war. For Walzer, responsibility for abiding by *jus ad bellum* and *jus in bello* is unequally divided between members of the political groups that engage in war. Political leaders are responsible for abiding by *jus ad bellum*, while political subjects, including soldiers, are obligated to obey their leader's commands. Yet, political leaders and their soldiers are jointly responsible for abiding by *jus in bello*. The *jus ad bellum* and *jus in bello* rules are thus binding on different things. *Jus ad bellum* is binding only on political leaders, while *jus in bello* is binding on political leaders and soldiers, that is, every individual person participating in war.

This dualism of moral responsibility is most clearly presented in Walzer's discussion of Erwin Rommel's decision to burn Hitler's order to execute all enemy soldiers encountered behind German lines. Walzer views Rommel's decision as praiseworthy and sees Rommel as having "fought a bad war well, not only militarily but also morally." He explains:

> The reason for this has to do with the distinction of *jus ad bellum* and *jus in bello*. We draw a line between the war itself, for which soldiers are not responsible, and the conduct of war, for which they are responsible, at least within their own sphere of activity ... We draw [the line] by recognizing the nature of political obedience. Rommel was a servant, not a ruler, of the German state; he did not choose the wars he fought but, like Prince Andrey, served his "Tsar and country" ... [B]y and large we don't blame a soldier, even a general, who fights for his own government. He is not the member of a robber band, a willful wrongdoer, but a loyal and obedient subject and citizen ...We allow him to say what an English soldier says in Shakespeare's *Henry V*: "We know enough if we know we are the king's men. Our obedience to the king wipes the crime of it out of us." Not that his obedience can never be criminal; for when he violates the rules of war, superior orders are no defence. The atrocities he commits are his own; the war is not. It is conceived, both in international law and in ordinary moral judgment, as the king's business—a matter of state policy, not of individual volition, except when the individual is the king.[10]

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[8]Ibid., p. 21.
[9]Ibid.
[10]Ibid., pp. 38-39.

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If responsibility for *jus ad bellum* and *jus in bello* is divided in this way, then there is a logical independence of *jus ad bellum* and *jus in bello*. Given Walzer's dualism of responsibility for *jus ad bellum* and *jus in bello*, it would make sense to say that an unjust war can be fought justly. It would be possible for political leaders to violate their responsibilities (i.e., the rules of *jus ad bellum*) in taking their political community to war, yet, in that war, they and their soldiers conduct themselves in a manner consistent with their responsibilities (i.e., the rules of *jus in bello*).

But this division of moral responsibility is obviously quite awkward. Walzer is explicitly offering two distinct views of the responsibilities of soldiers for the justice of the wars they fight. Walzer's view is that with respect to *jus ad bellum*, soldiers are moral servants of their political leaders in that they are obligated to follow their leader's commands regardless of the justice of those commands. When under orders, soldiers may justifiably obey commands that violate *jus ad bellum* requirements. However, soldiers are obligated to ensure that they never violate *jus in bello* requirements even when ordered to by their political leaders. Under *jus in bello*, soldiers are not the moral servants of their political leaders. Rather, they are autonomous individuals with full responsibility for their conduct. Thus, for Walzer, soldiers in war occupy two distinct moral roles: they are moral servants of their political leaders and they are not their servants. These distinct roles are supposed to be occupied with respect to the two distinct categories of justice, *jus ad bellum* and *jus in bello*. In this way, Walzer hopes to make his dualism coherent.

It is Walzer's reasons for dividing responsibility for *jus ad bellum* and *jus in bello* that reveal the ultimate incoherence of his just war theory. We must then examine Walzer's reasons for his dualism of responsibility. This requires an analysis of the content and foundations of his theories of *jus ad bellum* and *jus in bello*.

2. *Jus ad Bellum* and the Theory of Aggression

The centerpiece of Walzer's theory of *jus ad bellum* is a principle of just cause. Walzer claims that war has a just cause only when it attempts to thwart and/or punish aggression or the imminent threat of aggression. Walzer defines aggression as any violation of the political independence or territorial integrity of an independent state. For Walzer, aggression is a violation of rights. States have the right to political independence and territorial integrity. It is these rights that make aggression unjust, or as Walzer calls it, a crime, and justify war in response.

Walzer's principle of just cause is the product of a systematic theory of justice in international relations that he refers to as "the theory of aggression." According to the theory of aggression, the rights of states are

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derived, most immediately, from the rights of political communities, or what Walzer sometimes calls peoples, or nations. These social entities are what possess the right to political independence and territorial integrity, and governments do, or do not, derive their legitimacy from them. Aggression is a crime, for Walzer, because it violates, by definition, the rights of political communities.

Walzer describes the political communities that have these rights as composed of individual men and women who are associated in such a way as to form a distinctive "common life." This common life is a set of "shared experiences and cooperative activity." The common life is the particular cultural and political activities or norms that constitute a distinct political body and set it apart from others.

Walzer describes the common life as the result of the history of relations between its individual members. The shared experiences and cooperative activities that constitute common lives develop between people over time. Walzer refers to this historical process as a "contract." However, he makes it clear that it is not a literal contractual process but merely a metaphor to describe the coming together of individuals freely and over time to form their own political associations with their own distinctive character. As he says:

> State rights are not constituted through a series of transfers from individual men and women to the sovereign or through a series of exchanges among individuals. What actually happens is harder to describe. Over a long period of time, shared experiences and cooperative activity of many different kinds shape a common life. "Contract" is a metaphor for a process of association and mutuality.[11]

And, in a response to critics of *Just and Unjust Wars*, Walzer restates the same point.

> [The political] community rests most deeply on a contract, Burkeian in character, among "the living, the dead, and those who are yet to be born." It is hard, therefore, to imagine the assembly at which it was ratified. Contract ... is a metaphor. The moral understanding on which the community is founded takes shape over a long period of time.[12]

The moral significance of common lives is what gives political communities and, in turn, states their moral significance. "The moral standing of any particular state," he says, "depends upon the reality of the common life it protects ... If no common life exists, or if the state doesn't defend the common life that does exist, its own defense may have no moral justification."[13] "[T]he right of a nation or people not to be invaded

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[11]Ibid., p. 54.

[12]Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy & Public Affairs* 9 (1980): 209-29.

[13]Walzer, *Just and Unjust Wars*, p. 54.

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derives from the common life its members have made on this piece of land."[14] "It is for the sake of this common life that we assign a certain presumptive value to the boundaries that mark off a people's territory and to the state that defends it."[15]

According to the theory of aggression, therefore, in a just war, that is, a war with just cause, what is being defended are the rights of a common life that forms the character of a distinct political community. The only occasion for justly waging war is to protect the basic interests of these types of communal entities. The basic interests of common lives make aggression a crime and wars against aggression just.

Furthermore, for Walzer, the common life is also the ground of political obligations for its individual members, in particular, the obligation of members to fight in war upon the command of their political authority. As we saw above, Walzer's view that soldiers are not responsible for the justice of the wars they fight, for *jus ad bellum*, is based on the view that soldiers are obligated to fight when called upon by their political authority. Soldiers are not obligated to ensure that the wars they participate in are just, but are merely obligated to obey orders from their political superiors to fight.

This reading of Walzer on the obligations of soldiers with respect to *jus ad bellum* requirements runs counter to the views of most of Walzer's commentators. Many commentators read Walzer as holding that soldiers who fight in a war that violates *jus ad bellum* are merely excused for their wrongdoing because of the coercive pressures they are placed under by their political establishment.[16] On this reading of Walzer, soldiers who fight in an unjust war are acting wrongly but are not blameworthy. Similarly, another commentator reads Walzer as asserting that soldiers who fight in a war that violates *jus ad bellum* are permitted to serve yet argues that Walzer's defense of this claim mistakenly conflates permission with excuse.[17] On my reading, Walzer in fact argues that soldiers are obligated to serve in war upon the command of their sovereign even when the war is unjust. Soldiers in an unjust war thus can have nothing to be excused for. This is not because they can be acting permissibly, but because they can be doing what is morally required of them.

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[14]Ibid., p. 55.

[15]Ibid., p. 57.

[16]See David Mapel, "Coerced Moral Agents? Individual Responsibility for Military Service," *The Journal of Political Philosophy* 6 (1998): 171-89; Lionel McPherson, "Innocence and Responsibility in War," *Canadian Journal of Philosophy* 34 (2004): 485-506; Igor Primoratz, "Michael Walzer's Just War Theory: Some Issues of Responsibility," *Ethical Theory and Moral Practice* 5 (2002): 221-43.

[17]Jeff McMahan, *Killing in War* (New York: Oxford University Press, 2009), pp. 112-13.

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For Walzer, soldiers have the political obligation to serve in war upon the command of their political sovereign because of the moral significance of the common life of which they are members. The need to protect the political independence and territorial integrity of the political community is what grounds this duty of the soldier. Thus, the same reason that gives states the right to wage war against aggression also gives subjects the duty to serve in wars when commanded to by their state.

This point is made when Walzer argues that the triggering of this political obligation to fight is what compounds the severity of the crime of aggression. For Walzer, aggression is such an extraordinary crime not simply because it violates the rights of communities, but also because it forces individual men and women to fight and die in resistance against it. It forces them to do so because they are obligated, as members of a community victimized by aggression, to do so. As Walzer says, "The wrong the aggressor commits is to force men and women to risk their lives for the sake of their rights. It is to confront them with a choice: your rights or (some of) your lives."[18] "The state that does resist, whose soldiers risk their lives and die, does so because its leaders and people think that they should or that they have to fight back. Aggression is morally as well as physically coercive."[19] "Aggression is a singular and undifferentiated crime because, in all its forms, it challenges rights that are worth dying for."[20] Explaining which rights are worth dying for, Walzer says, "The rights in question are summed up in the lawbooks as territorial integrity and political sovereignty."[21] As we have seen, these rights are based on the moral significance of political communities and their distinctive common lives. Thus, it is the rights of political communities for which the lives of soldiers are worth sacrificing.

Moreover, Walzer makes it clear that he does not see the decision to participate in war against aggression as freely made by each participant. For him, it is not the case that each participant privately decides that it is worth fighting against the aggression they face for the sake of the community. What actually happens is that most participants, that is, soldiers, are ordered to fight by their state, and they are obligated to obey those orders. For Walzer, soldiers in wars against aggression are "victims" not only of the injustice committed by the aggressor community, but also of the political establishment of their state that conscripts them into its service. This is what Walzer means when he writes of "the tyranny of war." As he says, we can understand aggression "as the exercise of tyrannical power, first over [the aggressor's] own people and then, through the me-

[18]Walzer, *Just and Unjust Wars*, p. 51.
[19]Ibid., pp. 52-53.
[20]Ibid., p. 53.
[21]Ibid.

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diation of the opposing state's recruitment and conscription offices, over the people they have attacked."[22] "Hence the peculiar horror of war: it is a social practice in which force is used by and against men as loyal or constrained members of states and not as individuals who choose their own enterprises and activities."[23] Thus, for Walzer, aggression turns (most of) those who fight against it into the pawns of their own political community, mere instruments to be sacrificed for the sake of the survival or integrity of the common life.

This conscription, this rendering of subjects into mere instruments, Walzer believes, is not necessarily unjust. Indeed, it is the legitimate response of a political community threatened with aggression. Political communities have the right to use (at least some of) their members in wars against aggression for the sake of the good of the community. Walzer makes this point when he distinguishes mercenaries from soldiers. He claims that mercenaries as such have no duty to serve anyone in war and cannot be legitimately forced by anyone to fight. Soldiers, on the other hand, are bound to serve a particular political authority and may be legitimately forced by that authority to fight. Unlike a mercenary, in the case of a soldier, "We assume that his commitment is to the safety of his country, that he fights only when it is threatened, and that then he has to fight (he has been "put to it"): it is his duty and not a free choice."[24] The crucial difference between mercenaries and soldiers

> ... is the extent to which war (as a profession) or combat (at this or that moment in time) is a personal choice that the soldier makes on his own and for essentially private reasons. That kind of choosing effectively disappears as soon as fighting becomes a legal obligation and a patriotic duty. Then "the waste of life of the combatants is one which," as the philosopher T. H. Green has written, "the power of the state compels. This is equally true whether the army is raised by voluntary enlistment or by conscription."[25]

This is why Walzer describes aggression as "morally as well as physically coercive."[26] It turns (most of) its individual protagonists into servants who are obligated to fight and die upon the command of their sovereign and who may legitimately be forced to fight and die by their sovereign.

It is for these reasons that Walzer asserts that soldiers on the battlefield confront each other as moral equals, that is, as persons who have done nothing wrong by fighting, but are merely acting in accordance with their political obligations. This moral equality of soldiers is indifferent to the justice of the wars soldiers participate in. Even if a soldier is

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[22]Ibid., p. 31.
[23]Ibid., p. 30.
[24]Ibid., p. 27.
[25]Ibid., p. 28.
[26]Ibid., p. 53.

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fighting in an unjust war, as long as he or she is obeying orders from political superiors, he or she is acting dutifully. Thus, "the moral status of individual soldiers on both sides is very much the same: they are led to fight by their loyalty to their own states and by their lawful obedience."[27]

What this view of just war entails, then, is that just wars are actions undertaken by political communities, not by mere individuals or sets of individuals. The rights that justify war are the rights, most immediately, of communities of certain kinds. Thus, wars are intercommunal in character, not straightforwardly interpersonal. As Walzer says, "[W]ar itself isn't a relation between persons but between political entities and their human instruments."[28] And later, "The victim of aggression fights in self-defense, but he isn't only defending himself, for aggression is a crime against society as a whole. He fights in its name and not only in his own."[29]

War is thus analogous to, not reducible to, a relation between individuals. In war, communities confront each other in the way individuals do in private conflicts. International society is a society of communities in the way domestic society is a society of individuals. This is what Walzer refers to as the "domestic analogy."[30] Just as individuals have rights, so "Nations have similar rights in international society, above all the right not to be 'blotted out', deprived forever of sovereignty and freedom."[31]

What Walzer's theory of aggression is based upon, then, is the justice of a world of separate and distinct peoples wherein each enjoys political autonomy. What is wrong with aggression is that it violates the rights of communities to be politically independent and to carve out for themselves a place on earth where they can practice that independence and make it a reality. As he says,

> The theory of aggression presupposes our commitment to a pluralist world, and that commitment is also the inner meaning of the presumption in favor of resistance [to aggression]. We want to live in an international society where communities of men and women freely shape their separate destinies.[32]

And later, "the survival and freedom of political communities—whose members share a way of life, developed by their ancestors, to be passed on to their children—are the highest values of international society."[33]

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[27]Ibid., p. 127.
[28]Ibid., p. 36.
[29]Ibid., p. 59.
[30]Ibid., p. 58.
[31]Ibid., p. 113.
[32]Ibid., p. 72.
[33]Ibid., p. 254.

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3. The Rights of Political Communities and the Rights of Individuals

Though the rights of political communities to political independence and territorial integrity and their right to use their members as instruments in war are derived from the moral significance of political communities themselves and the common lives that constitute them, Walzer says they have a deeper, ultimate foundation. This foundation, he says repeatedly, is the rights of individuals to life and liberty. Walzer says, for instance,

> The [rights to political independence and territorial integrity] belong to states, but they derive ultimately from the rights of individuals, and from them they take their force. "The duties and rights of states are nothing more than the duties and rights of the men who compose them." That is the view of a conventional British lawyer, for whom states are neither organic wholes nor mystical unions. And it is the correct view.[34]

In the preface to *Just and Unjust Wars*, Walzer summarizes the foundations of the moral theory it contains: "I want to suggest that the arguments we make about war are most fully understood ... as efforts to recognize and respect the rights of individual and associated men and women. The morality I shall expound is in its philosophical form a doctrine of human rights."[35] In the course of developing that doctrine, he says, again, "Individual rights (to life and liberty) underlie the most important judgments that we make about war."[36] And, he says that the justifications of military interventions "reflect deep and valuable ... commitments to human rights."[37]

How are the rights of political communities and the political obligation of their members to serve in war based on the rights of individuals to life and liberty? How could the substance of Walzer's theory of *jus ad bellum* actually be based on the rights of individuals to life and liberty?

As we have already seen, Walzer explains the creation of political communities and their rights in contractarian terms. As he says, the process by which states gain their rights from the rights of individuals "is best understood ... as it has commonly been understood since the seventeenth century, in terms of social contract theory."[38] He claims that it is the consent of individuals to be members of particular political communities that gives those communities their rights. As he says, "The rights

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[34]Ibid., p. 53.

[35]Ibid., pp. xxiii-xxiv.

[36]Ibid., p. 54.

[37]Ibid., p. 108. Walzer reiterates this view in subsequent work. For instance, in the preface to *Spheres of Justice* (New York: Basic Books, 1983), p. xv, he says, "the theory of justice in war can indeed be generated from the two most basic and widely recognized rights of human beings—in their simplest (negative) form: not to be robbed of life or of liberty."

[38]Walzer, *Just and Unjust Wars*, p. 54.

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of states rest on the consent of their members."[39] But this consent cannot be explicit, as there is no literal contract upon which the political community is founded. As he says, "'Contract' is a metaphor for a process of association and mutuality."[40] This can suggest that the consent to membership in a particular community is offered tacitly in some sense. On a reading like this, it is by living in and "belonging to" a particular political community that a person reveals her consent to membership in it.

This consent of the members of political communities is morally significant because individuals have the right to determine their own social and political circumstances. As Walzer says, people "are morally entitled to choose their form of government and shape the policies that shape their lives."[41] In his reply to critics, Walzer says that the rights of political communities are derived from "the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves."[42] We can presume that, for Walzer, the individual right to liberty entails this right to choose a political community. Thus, assuming individuals express a sufficient degree of consent in their "choice" of political communities, the rights of the community are grounded in the rights of the individual. This is how the crime of aggression can be fundamentally a crime against individuals. By violating the integrity and independence of a political community, one consequently violates the rights of the individuals who compose the community to freely "choose" their own political community and to freely determine its shape and character.

This gives us an account of the basis of the moral significance and rights that Walzer attributes to political communities vis-à-vis foreign parties. So stated, it seems as though the basis of Walzer's theory of *jus ad bellum* is the rights of private individuals as such. On this reading, Walzer appears to be working within an ontological and moral individualist frame, basing the rights of political communities on the rights of individuals conceived as fundamentally private beings with no essential connection to a particular political community.

But Walzer's articulation of his justification of the rights of political communities in *Just and Unjust Wars* can be profoundly misleading. This becomes clear when we consider how it is that, as Walzer claims, individuals are instruments of their political communities in war. How does Walzer think the duties of political subjects in war, in particular, the duty of soldiers to fight and to risk life and limb upon the command of their sovereign, are derived from the individual rights to life and liberty?

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[39]Ibid.
[40]Ibid.
[41]Ibid., pp. 53-54.
[42]Walzer, "The Moral Standing of States," p. 219.

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Unfortunately, Walzer never directly answers this question in *Just and Unjust Wars*. However, Walzer does point us to previous work of his for the substance of his views on the origin of the obligations of soldiers to fight in war. The only place in *Just and Unjust Wars* where Walzer acknowledges the issue of the foundations of the political obligations of soldiers to serve in war is in a footnote to his discussion of the origins of the rights of political communities.[43] Here, he tells us that the issue is related to the origin of the rights of political communities and that he has discussed the matter in earlier work. Along with another article, Walzer points us to his essay, "The Obligation to Die for the State."[44]

The reference to this essay is extremely important, as it is here that Walzer argues against the possibility of deriving the obligation to serve in war from a contract between self-interested private individuals. He calls this the liberal contractarian method and argues that any liberal contractarian theory cannot justify an obligation to die for the state. According to Walzer in this earlier essay, the only kind of political theory capable of grounding an obligation to die for the state in terms of the interests of the political subject is one that posits an essential connection between the political community and the individual. Only when the individual who is called upon to sacrifice himself for the sake of the community is seen as essentially a part of the communal whole can it justifiably be said that individuals are obligated to die for the community, for, in such a case, the continued existence of the community is, in some form, the continued existence of the individual. In this way, the interests of the community can trump the interests of private individuals and soldiers can be the servants of their political authority.

Walzer describes a kind of nonliberal "contract" that could generate an essential connection between the individual and the community in which the individual is transformed into a new person with a new character:

> Into the state, according to this interpretation, a man brings the life which he has received from the bounty of nature and which is wholly his own. From the state, that is, from the shared experiences and general will of the political community, he receives a second life, a moral life, which is not his sole possession, but whose reality depends upon the continued existence of his fellow-citizens and of their association.[45]

And,

> A good society is one in which the new man, a moral member of a moral body, achieves his fullest development. The very instincts of pre-social man are overwhelmed and above

[43]Walzer, *Just and Unjust Wars*, pp. 54-55.

[44]Michael Walzer, "The Obligation to Die for the State," in *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, Mass.: Harvard University Press, 1970), pp. 77-98.

[45]Ibid., p. 91.

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all the instinct for self-preservation. When the state is in danger, its citizens rush to its defense, forgetful of all personal danger. They die willingly for the sake of the state, not because the state protects their lives—which would be ... absurd—but because the state is their common life. So long as the state survives, something of the citizen lives on, even after the natural man is dead. The state, or rather, the common life of the citizens, generates those "moral goods" for which ... men can in fact be obligated to die. The character of the political community obligates the citizen who participates in it to die on its behalf and it simultaneously provides him with a motive for dying.[46]

Importantly, Walzer refers here to the "common life," the same phrase he uses to describe the character of political communities in *Just and Unjust Wars*. It is clear in this earlier article that the common life is literally common; it is a supra-individual ontological entity with a life and interests that are its own and cannot be reduced to its parts. Indeed, here the common life is ontologically prior to its individual parts; it is what makes the parts what they are. So long as the common life persists, something of its individual member persists even after he or she has died. However, if the common life were to perish, something of its individual members would perish as well even if they were not literally killed.[47] It is for this reason that its members could be obligated to die for the sake of the common life. On this view, the obligation to die is not based on the private rights to life and liberty, but is based on the fact that the individual is essentially a part of the political community and, as a result, the interests of the community have a moral force that the private interests of the individual do not.

Since Walzer refers us to this earlier essay in *Just and Unjust Wars* by way of pointing to the connection between the origin of the rights of political communities and the obligation of soldiers to serve in war upon the command of the sovereign, and Walzer never suggests that his thinking has departed from this earlier argument, we ought to view it as expressive of Walzer's view of the origin of the rights of political communities and the political obligation to serve in war that is at work in *Just and Unjust Wars*.

This version of Walzer's social contract is also articulated in a more recent essay of his, in which Walzer argues that people are not perfectly free to choose what groups to associate with.[48] Some associations are

[46]Ibid., p. 92.

[47]Walzer also makes this point in *Just and Unjust Wars* in a footnote to his discussion of the policy of demanding unconditional surrender. Against the views of Montesquieu and Rousseau, who argued that it is possible to destroy a state and not destroy any individuals, Walzer argues that to destroy a state is, in some sense, to destroy the individuals who are its subjects. As he says, "if the citizen is killed or the state destroyed, something of the man dies too" (p. 113).

[48]Michael Walzer, "Involuntary Association," in Amy Gutmann (ed.), *Freedom of Association* (Princeton: Princeton University Press, 1998), pp. 64-74.

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involuntary; we do not choose to be members of some groups, membership in them is inherited. Among these involuntary associations are political communities. As he says, "We are born citizens (unless we are very unlucky) and are rarely invited to agree to our citizenship."

Membership in involuntary associations, for Walzer, brings with it moral obligations, among them the duty not to abandon the association arbitrarily. Like membership, these obligations are not chosen, but given. The duty not to exit is especially stringent with respect to political membership. Walzer argues that, as a citizen of a republic, a person is morally bound to actively protect the community from external threats. This duty could include putting one's life on the line to protect the community by engaging in battle against an enemy. "If the republic is under external attack," he says, "we may well be bound (there are difficult arguments here) to sign up as soldiers and march off to fight its enemies."

Thus, according to Walzer in this later essay, the duty to serve in war is not something that a person places upon him- or herself through voluntary contract, explicit or tacit. Rather, a person has this duty placed upon him by the fact of his membership in a political community, a membership that he did not choose, but inherited. We can freely abide by this duty, when we have it, but we cannot freely accept the duty itself. Acting in accordance with duties such as these "is a mode of action simultaneously free and unfree. How so? Because we have neither determined nor chosen the right thing that we are now bound in conscience to do."

Given these considerations, we ought to revise our original understanding of the contract that Walzer describes in *Just and Unjust Wars* as originating the rights of political communities.

The historical process of mutuality and association that creates the political community is also a process by which the individuals party to it are transformed from pre-social, fundamentally private beings into new beings with distinctive social and political characters who are bound to one another and cannot exist without the continued existence of the community itself. In other words, the social contract creates a supra-individual social political entity whose members are its ontological parts. The common life created by the contract is literally common; it is the life of a supra-individual social entity. Since, according to the theory of *jus ad bellum*, it is the rights of the common life that are at issue in just wars, it must be Walzer's view that wars are ultimately justified by appeal to the value of these irreducibly social entities. Further, since the members of political communities are obligated to sacrifice themselves for the sake of the community upon the command of the community's authority, it must also be Walzer's view that the interests of this irreducibly social thing trump the private interests of its members.

Therefore, rather than operating within an individualist frame, as it

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originally appeared, Walzer's theory of *jus ad bellum* is based on a strong anti-individualism wherein the interests of irreducibly social entities not only have intrinsic value, but this value trumps the deepest interests of individuals, privately conceived. It is not the rights of private individuals that are the ultimate ground of the rights of political communities, but the rights of fundamentally communal entities that have individuals as their ontological parts. For the theory of *jus ad bellum*, the highest values of justice are the basic interests of supra-individual political communities, not the rights of individuals. That Walzer's theory of *jus ad bellum* is founded in this way is also further corroborated by his justification of the deliberate targeting of noncombatants in supreme emergencies, discussed below.

4. *Jus in Bello* and the Principle of Discrimination

Turning now to Walzer's theory of *jus in bello*, we may begin by noting Walzer's view of the origin and basis of all the rules of *jus in bello*. He calls the collection of rules that constitute *jus in bello* "the war convention," and claims that its substance is the product of "a kind of practical casuistry" conducted over centuries by politicians, lawyers, jurists, and philosophers.[49] It is not, however, a set of mere conventions. Rather, he says, the war convention is founded on universal moral principles.[50]

The principles upon which the war convention is founded are human rights, specifically, the individual rights to life and liberty. As he says, "The theory of *jus in bello* ... is founded on the rights of life and liberty."[51] "A legitimate act of war is one that does not violate the rights of the people against whom it is directed. It is, once again, life and liberty that are at issue."[52] And, again, "The standards of permissibility [in war] rest on the rights of individuals."[53] Thus, according Walzer's description, the rules of *jus ad bellum* and the rules of *jus in bello* are all ostensibly derived and grounded in the same individual rights to life and liberty.

Furthermore, Walzer claims that the justification of the rules of *jus in bello* presuppose the theory of aggression, *jus ad bellum*. This is clear from the fact that Walzer claims that the theory of *jus in bello* presupposes the moral equality of combatants.[54] Since the moral equality of combatants is grounded in Walzer's theory of *jus ad bellum*, where it is

[49]Walzer, *Just and Unjust* Wars, pp. 44-45.
[50]Ibid., pp. 47 and 131.
[51]Ibid., p. 124.
[52]Ibid., p. 135.
[53]Ibid., p. 143.
[54]Ibid., pp. 45 and 137.

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argued that the use of soldiers as instruments is morally justified by the political obligations of subjects to serve in war upon the command of their sovereign, the theory of *jus in bello* is said to presuppose the theory of *jus ad bellum*. In this sense, the rules of *jus in bello* are supposed to build upon the justification of the rules of *jus ad bellum*.

Though these statements entail a fundamental continuity between Walzer's theory of *jus ad bellum* and his theory of *jus in bello*, Walzer, however, asserts a certain discontinuity between them. As we have seen, according to Walzer, *jus ad bellum* and *jus in bello* are logically independent of one another. As we have also seen, this logical independence of *jus ad bellum/jus in bello*, is the product, most immediately, of Walzer's division of moral responsibility for the justice of war between two distinct aspects of the communities that engage in it. For Walzer, political authorities are responsible for ensuring that their wars abide by the rules of *jus ad bellum*, while their subjects are obligated to serve in war when ordered to by their political sovereign. At the same time, political authorities and their soldiers are responsible for ensuring that their conduct in war abides by the rules of *jus in bello*.

To understand this explicit discontinuity between *jus ad bellum* and *jus in bello*, it is crucial that we understand how Walzer justifies his dualism of responsibility. Why are soldiers responsible for not violating the rules of *jus in bello* yet not responsible for participating in violations of the rules of *jus ad bellum*? We know that Walzer holds that soldiers are not responsible for participating in violations of *jus ad bellum* because of his conception of the rights of political communities and the political obligations of soldiers as outlined in his defense of the theory of aggression. For Walzer, at the level of *jus ad bellum*, war is a relation between political entities and their human instruments because of the "contract" that originates political communities and the political obligations of their members. Why does Walzer not think the same of war at the level of *jus in bello*? Why, in the conduct of war, are soldiers no longer mere instruments of their political authorities, but fully responsible autonomous individuals?

The answer is that Walzer conceives of combat as fundamentally and immediately a relation between private individuals who are in equal possession of the fundamental rights to life and liberty. On the battlefield, there occurs a direct interaction between individual men and women that is unmediated by any antecedent political obligations. In the conduct of war, men and women confront each other simply as men and women, as mere individual human beings. For Walzer, the rules of combat therefore derive immediately from the rights of private persons, and because these rights are said to be the foundation of justice, they constitute absolute restrictions on the conduct of war between political communities.

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Walzer makes this point most clearly when he discusses five firsthand accounts of combat experience wherein a combatant recounts a reluctance to attack an individual enemy soldier. According to Walzer's interpretation, what underpins this reluctance to open fire on the enemy in all five cases is the recognition of the enemy as a person with a right to life. As Walzer explains, "For what does it mean to say that someone has a right to life? To say that is to recognize a fellow creature ... whose person is as valuable as my own."[55] Though a person can alienate their right to life in certain circumstances, "the alienation is temporary, the humanity imminent."[56] According to Walzer, it is this recognition of the humanity of the enemy soldiers in combat that is at "the heart of the war convention."[57] Thus, the war convention rests on the understanding of combat as a relation between private human persons each with an equal right to life.

It is for this reason that moral responsibility for the conduct of war is distributed to all individuals engaged in combat. In a relation between mere individuals who have absolute rights, responsibility for respecting the rights of those individuals falls on every individual party to the relationship. In a strictly interpersonal relationship, a person cannot violate the rights to life and liberty of another and claim that they are obligated to because they are acting under orders from their political authority. Here, the buck stops with the individual: the rights of human beings to life and liberty override any political obligations a person may have and bind every person to their strict observance. A person is obligated to not violate the rights to life and liberty of another she is in a direct relationship with even when ordered to by her political authority. Thus, in the conduct of war, soldiers are responsible, along with their superiors, for not violating the rights of the individuals against whom they are fighting, regardless of the orders of their superiors.

Since combat is a relation between individual human beings with rights not to be killed, the question of who may legitimately be deliberately attacked in war and who may not, that is, the principle of discrimination, must be derived from a view of when it is permissible for one person to deliberately attack and kill another and when it is not. What, according to Walzer, makes it permissible to deliberately kill a person, and how can one impermissibly kill a person in war?

In answer to this question, Walzer asserts a general principle. As he puts it, "no one can be threatened with war or warred against, unless through some act of his own he has surrendered or lost his rights."[58] Thus, for Walzer, though individuals have the right not to be killed, they

[55]Ibid., p. 142.
[56]Ibid.
[57]Ibid.
[58]Ibid., p. 135.

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can lose that right if they act in a way that entails the loss of that right. What acts can a person commit that cause her to lose the right to life and make her liable to be killed?

For Walzer, the only relevant thing a person can do to lose her right to life and become liable to deadly attack is to violently threaten another person's life or liberty. As soon as a person constitutes a violent threat against the life and liberty of another person, she makes herself liable to be killed in defense of the victim's rights. This is why Walzer thinks that soldiers in war are always permissible targets of deliberate attack. Simply by taking up arms against their enemy, soldiers have lost their rights to life and become liable to be killed. As Walzer says, "Simply by fighting, whatever their private hopes and intentions, [soldiers] have lost their title to life and liberty."[59] A person "can be personally attacked only because he already is a fighter. He has been made into a dangerous man."[60] People become liable to deliberate attack, "when they are actually engaged in activities threatening and harmful to their enemies."[61] Because soldiers in war are, as such, engaged in activities threatening and harmful to their enemies, they are liable to deliberate acts of violence.

Noncombatants, on the other hand, are, as such, not engaged in any activities threatening or harmful to their enemies. Thus, noncombatants have done nothing to surrender their right to life and are not liable to be deliberately attacked. The morally relevant feature of noncombatants is just that they are *not combatants*, that is, people "who are not currently engaged in the business of war."[62] Thus, noncombatants "are men and women with rights and ... they cannot be used for some military purpose, even if it is a legitimate purpose."[63]

Walzer distinguishes his view of the origins of soldiers' liability to attack from the issue of the justifiability of the threat they pose as soldiers when he acknowledges a difficulty in justifying soldiers' loss of their rights. As he says,

> States exist to defend the rights of their members, but it is a difficulty in the theory of war that the collective defense of rights renders them individually problematic. The immediate problem is that the soldiers who do the fighting, though they can rarely be said to have chosen to fight, lose the rights they are supposedly defending. They gain war rights as combatants and potential prisoners, but they can now be attacked and killed at will by their enemies.

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[59]Ibid., p. 136.
[60]Ibid., p. 145.
[61]Ibid., p. 146.
[62]Ibid., p. 43.
[63]Ibid., p. 137.

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The reason, he continues, that soldiers, despite their moral innocence, can justifiably be killed by their enemies is that, "Simply by fighting, whatever their private hopes and intentions, they have lost their title to life and liberty, and they have lost it even though, unlike aggressor states, they have committed no crime."[64]

Thus, Walzer's principle of discrimination in war is based on a peculiar theory of self-defense between individual persons. According to Walzer, though all people have the equal right not to be killed, one can deliberately attempt to kill another when the other has antecedently threatened one with imminent harm. When a person constitutes a threat of imminent harm against another, that person loses his right not to be killed, and defensive violence may be used against him. The loss of the right to life occurs even when a person justly threatens another. The moral character of the threat and the blameworthiness of the threatening person are irrelevant to the issue of the maintenance of the right to life. Simply by threatening another, justly or unjustly, a person loses his right to life.[65]

It is for this reason, Walzer believes, that the principle of discrimination is equally binding on all parties to war, even to those who are fighting an unjust war against those who are fighting a just war. Though soldiers may be participating in an unjust war, they are not responsible for that injustice but are obligated to participate, and therefore, all soldiers on the battlefield are moral equals. What justifies their killing of each other is that, as soldiers at war, they constitute a threat to their enemies. They are thus equally justified in killing each other. But they cannot be justified in killing anyone else, for all others who are not soldiers in war have done nothing to lose the right to life. Thus, all soldiers are equally prohibited to deliberately kill or harm noncombatants.

In this way, Walzer grounds his theory of *jus in bello*, in particular, his principle of discrimination, in the rights of private individuals. These rights are the deepest values of his theory of *jus in bello* and they ground absolute limits on the conduct of war between political communities. According to the theory of *jus in bello*, the rights of private individuals trump the rights of political communities in war.

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[64]Ibid., p. 136.

[65]This theory of justified violent self-defense has been convincingly attacked for its insensitivity to the justifiability of and blameworthiness for threats. According to this criticism, if a person justifiably threatens another with imminent harm, she does not surrender her right not to be attacked and is not liable to violent harm. Therefore, violent self-defense against a just attacker is not justifiable. See, for example, Jeff McMahan, "Innocence, Self-Defense, and Killing in War," *The Journal of Political Philosophy* 2 (1994): 193-221; and David Rodin, *War and Self-Defense* (New York: Oxford University Press, 2002), esp. chap. 4.

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5. Supreme Emergencies and the Incoherence of Walzer's Theory

We can now begin to see the incoherence of Walzer's just war theory. Despite his claims to the contrary, Walzer has two distinct views of justice at work in his theory. On the one hand, according to his theory of *jus ad bellum*, just war is based on the rights of supra-individual political communities whose interests trump the private interests of individuals. This is why Walzer thinks that war is a relationship between political entities and their human instruments. On the other, according to his theory of *jus in bello*, just war is based on the rights of autonomous, private individuals whose interests trump the rights of political communities. This is why Walzer thinks that combat is a relationship between mere persons who are individually responsible for not violating the rights of others. In this way, the basis of justice in his theory of *jus ad bellum* is different from and inconsistent with the basis of justice in his theory of *jus in bello*. According to Walzer's theory of *jus ad bellum*, what matters most are the basic interests of supra-individual political communities. According to Walzer's theory of *jus in bello*, what matters most are the basic interests of individual human persons.

This foundational conflict is brought to the fore in Walzer's discussion of the ethics of supreme emergencies. Supreme emergencies, Walzer admits, pose particular trouble for his theory. For Walzer, it is in cases of supreme emergencies that "the ultimate incoherence of the theory of war" is revealed.[66]

The inconsistency in the theory that occurs in supreme emergencies is that, in such cases, Walzer's theory both permits and prohibits the deliberate targeting of noncombatants. These inconsistent practical demands are the product of the tension between Walzer's theory of *jus ad bellum* and his theory of *jus in bello*, of his theories of just ends and just means in war. As we will see, what happens in supreme emergencies is that the achievement of just ends in war can require the violation of just means. When this happens, according to Walzer, the theory cannot prescribe a coherent course of action and "our judgments are doubled."[67]

Supreme emergencies occur when an aggressor seeks to subjugate or exterminate a political community as such and the achievement of those ends is imminent. What is under imminent threat in a supreme emergency is not just the rights of a political community, but the very existence of a community as a free people. Here, a whole nation (or nations) is faced with the imminent possibility of being "blotted out," the common life of a people (or peoples) imminently threatened with enslavement or destruction.

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[66]Walzer, *Just and Unjust Wars*, p. 326.
[67]Ibid.

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This is the most severe kind of aggression a political community can face because, as we have seen, the theory of *jus ad bellum* is based on the rights of political communities to freedom and survival. According to Walzer's theory of *jus ad bellum*, war is only justified in order to protect these rights of political communities. In a supreme emergency, the aggressor thus threatens the ultimate harm to a political community by threatening to eliminate, permanently, the very possibility of those rights being exercised.

What happens when a political community is faced with a supreme emergency and the only hope of defeating it is by employing means that violate the theory of *jus in bello*, in particular the prohibition against deliberately attacking noncombatants? On the one hand, Walzer argues that the political community is justified in overriding the rules of war and may deliberately attack noncombatants. According to Walzer, this is because the rights of a political community are more important than the rights of individuals. Walzer struggles to make this claim and it is worth quoting his struggle in full.

> [I]t is not usually said of individuals in domestic society that they necessarily will or that they morally can strike out at innocent people, even in the supreme emergency of self-defense. They can only attack their attackers. But communities, in emergencies, seem to have different and larger prerogatives. I am not sure that I can account for the difference, without ascribing to communal life a kind of transcendence that I don't believe it to have. Perhaps it is only a matter of arithmetic: individuals cannot kill other individuals to save themselves, but to save a nation we can violate the rights of a determinate but smaller number of people. But then large nations and small ones would have different entitlements in such cases, and I doubt very much that that is true. We might better say that it is possible to live in a world where individuals are sometimes murdered, but a world where entire peoples are enslaved or massacred is literally unbearable. For the survival and freedom of political communities—whose members share a way of life, developed by their ancestors, to be passed on to their children—are the highest values of international society.[68]

If we deconstruct this passage, we find that the reason supreme emergencies can justify violations of the principle of discrimination is simply that the basic interests of political communities trump the basic interests of sets of individuals. As Walzer says, this is not because communities have a high amount of instrumental value in that their preservation serves the interests of a large number of individuals, for this would mean that a community composed of more individuals than another would have more permissive defensive rights. Rather, the point Walzer is making here is that when we compare the intrinsic value of a political community, any political community, with the intrinsic value of a set of private individuals, any set of individuals, the value of the political community will always transcend the value of the set of individuals. This is why he thinks

[68]Ibid., p. 254.

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it is possible to live in a world where individuals are murdered but not in a world where whole communities are murdered. On his view, for a political community composed of 1000 individuals to be destroyed is absolutely intolerable, but for an arbitrary set of 1000 individuals to be destroyed is not as intolerable. Though Walzer says that this is to attribute to "communal life a kind of transcendence that I don't believe it to have," he nevertheless attributes communal life with this transcendence. An indeterminate number of individuals, even innocent bystanders, can be sacrificed when it is necessary for the survival or freedom of a political community. According to the argument here, the highest values of the theory of justice at work in his theory of just war are the survival and freedom of common lives, not the survival and freedom of individuals.

On the other hand, however, Walzer does not think that this entirely justifies the violation of the principle of discrimination in supreme emergencies. Walzer maintains that it is always wrong to deliberately target noncombatants in war. He consistently calls such acts "murder." This is because, Walzer says, they are violations of the rights of individuals to life and liberty. These rights, as Walzer has argued, are the basis of justice. Their violation is therefore always morally intolerable. As he says of acts that violate the principle of discrimination,

> We recognize their horror only when we have acknowledged the personality and value of the men and women we destroy in committing them. It is the acknowledgement of rights that ... forces us to realize that the destruction of the innocent, whatever its purposes, is a kind of blasphemy against our deepest moral commitments. (This is true even in a supreme emergency, when we cannot do anything else.)[69]

It is now clear that Walzer's explanation of why there is no coherent answer to the question of the permissibility of deliberately targeting noncombatants in a supreme emergency is that he is holding that there are two distinct things that are uniquely the highest values of justice. On the one hand, we can justifiably override the prohibition against deliberately targeting noncombatants in supreme emergencies because the survival and freedom of political communities is the highest good, higher even than the survival and freedom of individuals. On the other hand, we cannot justifiably override the prohibition against deliberately targeting individuals, because such acts are violations of the rights of individuals, and the rights of individuals are the highest good, higher even than the rights of political communities. At one and the same time, the survival and freedom of political communities are the highest values of international society *and* the survival and freedom of individuals are our deepest moral commitments. When we face a conflict between both these values, as we do in

[69]Ibid., p. 262.

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supreme emergencies, there is thus no unequivocally right way to act.

This conflict is not the product of a confusion peculiar to his discussion of supreme emergencies. Rather, it is the product of the incoherent foundations of his theory of just war. According to his theory, as we have seen, war is at once a relation between political communities and their human instruments *and* a relation between mere individuals with the rights to life and liberty. Although Walzer claims that the entirety of his theory of just war is based on the individual rights to life and liberty, it is not so. His theory of *jus ad bellum* is based on the inherent and supreme rights of supra-individual entities that he refers to as common lives. The rights of these irreducibly social political entities are the deepest values of his theory of *jus ad bellum*, deeper even than the rights of individuals. His theory of *jus in bello*, however, is based on the supreme rights of individual private persons. The rights of individuals are thus the deepest values of his theory of *jus in bello*, deeper even than the rights of political communities. This theoretical conflict is simply played out in his discussion of supreme emergencies.

6. Why *Jus ad Bellum* Can't Be Based on the Rights of Individuals

Why, despite his claim that the theory has a coherent ground in the individual rights to life and liberty, does Walzer instead appeal to the fundamental and transcendent value of supra-individual political entities to justify parts of his theory?

I submit that Walzer has to claim that the interests of political communities transcend the interests of individuals because, contrary to his argument, the rights of political communities and the duties of soldiers upon which his theory is based cannot be justified by appeal to the rights of private individuals as he conceives them. In other words, the rights of political communities and the political obligations of their members cannot be derived from Walzer's view of the rights of individuals to life and liberty.

Walzer's theory of the rights of private individuals underpinning his theory of *jus in bello* conflicts with the rights of political communities and the political obligations of soldiers at work in his theory of *jus ad bellum* in two respects.

First, according to Walzer, when private individuals interact, responsibility for not violating the rights of others is distributed individualistically. That is, respecting the rights of individuals is the obligation of all individuals. This responsibility cannot be alienated to a political authority to whom subjects owe obedience regardless of the justice of the authority's commands. A person cannot justifiably violate the rights of another person even when his legitimate political authority orders him to. That Walzer is committed to this view is clear from the fact that he claims

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soldiers are responsible for not violating the rules of *jus in bello* because these rules are grounded in the individual rights to life and liberty.

This view is inconsistent with Walzer's view of the rights of political communities and the political obligations of soldiers in his theory of *jus ad bellum* in that it is his view that the responsibilities of soldiers are relative to the commands of their political superiors, not to the justice of those commands. As he states clearly, political subjects are obligated to serve in war when ordered to by their political authority, regardless of the justice of the war. Therefore, Walzer could not possibly base this view of the obligations of political subjects on the same view of justice upon which his theory of *jus in bello* is based, for the view of justice underlying his theory of *jus in bello* renders all political subjects responsible for not participating in violations of the rights of individuals and thereby gives them the duty to disobey all rights-violating orders. In this way, his theory of *jus in bello* undermines his theory of *jus ad bellum*.

For this reason, though Walzer says the theory of *jus in bello* presupposes the moral equality of soldiers, the substance of the theory actually undermines the moral equality of soldiers. The moral equality of soldiers is based on the idea that soldiers are obligated to serve in war upon the command of their sovereign regardless of the justice of the war. However, the substance of the theory of *jus in bello* makes it impossible for there to be an obligation to serve in war upon the command of one's political sovereign regardless of the justice of the war. According to his theory of rights underpinning *jus in bello*, soldiers would always be responsible for ensuring that the sovereign's orders with respect to *jus ad bellum* do not violate individual rights, and any soldier participating in a war that does would be acting unjustly.

From this perspective, it is clear that Walzer's assertion of a logical independence between *jus ad bellum* and *jus in bello* lacks a coherent justification. As we know, the logical independence of *jus ad bellum/jus in bello* is based most immediately on Walzer's dualism of responsibility, that is, the claim that political authorities and not their subjects are responsible for abiding by *jus ad bellum*, while soldiers and their political authorities are jointly responsible for abiding by *jus in bello*. However, what we have revealed is that Walzer's reasons for viewing soldiers as instruments of their political communities under *jus ad bellum* and his reasons for viewing soldiers as fully autonomous individuals under *jus in bello* are mutually exclusive. If soldiers are instruments of the political communities under *jus ad bellum*, then they are instruments of their political communities under *jus in bello*. And, if soldiers are fully autonomous individuals under *jus in bello*, then they are fully autonomous individuals under *jus ad bellum*. Walzer's assertion of a division of responsibility for *jus ad bellum* and *jus in bello* is simply arbitrary and serves

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merely to mask this deep conflict within his theory.

Second, the theory of justified violent self-defense that Walzer appeals to in defense of his principle of discrimination is inconsistent with his view of the rights of political communities and the political obligations of soldiers.

The theory of justified violent self-defense that Walzer posits to defend his principle of discrimination in war is very permissive. It permits people to violently defend themselves against even justified attacks. Even if a person were justified in taking up arms against another, the target of their attack, according to Walzer, would be justified in fighting back. For Walzer, anyone who threatens another with imminent violence, for whatever reason, is liable to deliberate defensive attack. The problem is that this theory of justified self-defense contradicts the theory of political authority and the political obligations of soldiers underpinning the theory of *jus ad bellum*.

According to Walzer's theory of *jus ad bellum*, soldiers are obligated to obey orders by their political sovereign to participate in war. Thus, soldiers may have their lives threatened in war for the sake of their political community and upon the command of their sovereign. Moreover, political authorities have the right to coerce their subjects into adherence to this political obligation. This is the sense in which war is morally as well as physically coercive for Walzer; soldiers are obligated to be used in war and may be used against their will if they refuse.

This view of political authority and the obligations of soldiers entails that, in certain circumstances, soldiers are obligated to face imminent destruction without resistance. Soldiers may not permissibly refuse to serve in war simply because it would mean facing death. This is because facing the threat of death in war is their duty; they may not shirk that duty simply because fulfilling it is dangerous. Refusal would be a violation of their duty to their political community and its political authority.

Moreover, even if a soldier refuses to serve, she may nevertheless be legitimately forced to face imminent destruction by her political authority. If this forced conscription of subjects into war is legitimate, then it cannot be the right of subjects to resist conscription by force of arms simply because the conscription would put them at risk of imminent destruction. If forced conscription is legitimate, then nonresistance to that conscription must be obligatory.

Thus, according to Walzer's theory of political obligations that is at work in his theory of *jus ad bellum*, it is not permissible for a person to use defensive violence against anyone who, justly or unjustly, threatens her with imminent violence. There are at least some instances where a person is obligated to face threats of imminent and deadly violence without resistance.

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However, as we have seen, Walzer's theory of justified self-defense at work in his theory of *jus in bello* rejects this. To repeat, according to his defense of the principle of discrimination, any person who threatens another with imminent harm is liable to be killed. If we applied this view universally, then not only would soldiers always be justified in attacking the soldiers on the opposing side of the battlefield, but they would also be justified in refusing to serve in war and in attacking the political superiors on their own side who attempt to coercively conscript them. Since it is permissible to attack any threat of imminent harm and one source of imminent harm in war is a soldier's own political establishment, soldiers are always permitted to refuse orders to serve in war and to violently resist any attempt to force them to serve.

Thus, Walzer's theory of justified self-defense underlying his principle of discrimination undermines his theory of *jus ad bellum*. The theory of political authority and the political obligations of soldiers in Walzer's theory of *jus ad bellum* could not be grounded in the same theory of individual rights that grounds his theory of *jus in bello*.

This explains why, despite his claims to the contrary, Walzer argues that the survival and freedom of supra-individual political entities are the highest good, not the rights of private individuals, in order to justify his theory of *jus ad bellum*. Given his view of the rights and responsibilities of individuals at work in his theory of *jus in bello*, it would be impossible to justify his tenets of *jus ad bellum* by appeal to them. But the tenets of his theory of *jus ad bellum* could be justified, and Walzer chooses to so justify them, by appeal to the transcendent significance of irreducibly social political communities. This is why Walzer fails to coherently ground the entirety of his theory in the private rights to life and liberty and produces instead an inconsistent theory of war.

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