



Walzer's Soldiers: Gender and the Rights of Combatants

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DISCRIMINATION IN WAR

On March 3, 1943, the Battle of the Bismarck Sea took place off the northeastern shore of New Guinea. That morning Allied planes surprised a convoy of Japanese ships transporting the entire Fifty-First division, roughly 7000 men. Having intercepted and decoded Japanese communications about the troop movement, the Allies were aware of the significance of the transport. Planes attacked the convoy at low altitude in order

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to inflict maximum damage, using mainly .50 caliber machine guns and bombs. As bombs struck the ships, the Japanese soldiers tried to escape into the sea. In the process they were mowed down by the machine guns. Those who made it into the water climbed onto lifeboats or clung to debris. Still, planes continued to strafe these helpless men for the next several hours. As one account describes it, “the water was whipped into a bloody froth, the blood mixing with chunks of flesh and the oil from the sunken ships. There was no respite for the survivors, who now floated defenseless, naked and exposed to machine gun fire. The grisly business continued into the night. When nothing was seen to move in the water, the strafing runs ended.”¹ Almost 3000 Japanese soldiers were killed in the battle. There appears to have been no effort to rescue, to capture, or to solicit the surrender of Japanese forces even when they were floating in the open ocean. Allied forces operated on the policy that any Japanese combatant who is not presently offering to surrender may be attacked without hesitation. Reportedly, “some allied pilots and crews became sick and vomited at the low-level sight of the carnage their bullets and cannon shot were causing.”²

One need not be a pacifist to find this incident troubling. Like the nauseated Allied airmen, many of us find this battle more than a little repellant. But, in fact, this operation did not unambiguously violate any law of war or even the traditional ethics of war. Despite our repugnance, when we turn to conventional military ethics and law we find few resources for mounting a criticism of this action. According to conventional views, combatants as such are fair game. It is believed to be the responsibility of combatants to declare their intention to surrender in order to avoid being attacked. Until then, they are, in Michael Walzer’s words, “subject to attack at any time.”³

The traditional view of discrimination in war divides human communities at war into two relevant groups—combatants and noncombatants—and demands radically different treatment of them. On one hand, noncombatants are never to be deliberately attacked. They can, in certain circumstances, be subjected to the risk of unintentional harm, or collateral damage, but cannot be intentionally killed or maimed.

On the other hand, the traditional view permits nearly unrestricted attacks on combatants. Regardless of how they came to be combatants (e.g., whether they volunteered or were conscripted), regardless of the justice of their cause (e.g., whether they are fighting in a colonial conquest or are defending others from aggression), and regardless of their current

activity (e.g., whether they are asleep, retreating, or even on leave), those “fighting in war” are legitimate targets of deliberate attack. There are elaborate restrictions on the treatment of captured or surrendered combatants and there are some restrictions on the sort of weapons that may be used against them, but other than that combatants as such are legitimate targets. As Gabriella Blum concludes, “The striking feature of the mainstream literature is its general acceptance (albeit at times with some moral discomfort) of the near-absolute license to kill all combatants and of the law’s view of combatants as nothing more than instruments of war.”⁴

There is a small body of literature critical of the traditional permissiveness of the treatment of combatants.⁵ I wish to add my voice to this literature. Unlike the other critics of the permission, however, I will try to show the role that gender has played in legitimating the traditional view. The idea that combatants in war, no matter which side they are on, are legitimate targets of deliberate attack is based, in part, on a sometimes implicit, sometimes explicit appeal to gender norms, in particular the norms of masculinity.

To be specific, the traditional idea of combatant non-immunity presupposes that there are some members of our political communities who by nature are sacrificial instruments of war. This assumption originates in a gendered division of social labor wherein men *as men* are primarily responsible for self-sacrificial military service and largely exempt from other social responsibilities. This gendered presumption underpins three important claims that arguments for combatant non-immunity rely on. It underpins, first, the view that combatants as such are liable to attack; second, the idea that the individuals who occupy the office of military servicemember can be reduced to their office; and, third, the view that there is a stark separation between the military and other basic institutions of civil society. While I believe these assumptions are evident in the thinking of many just war theorists, I will focus on the work of Michael Walzer who is the preeminent contemporary advocate of traditional just war thought.

One way these assumptions can be discovered in the theory of discrimination is by recognizing another assumption that often goes unquestioned. This assumption is that the word “combatant” is synonymous with “soldier” and the word “noncombatant” is synonymous with “civilian.” Again and again in traditional just war theory, when its protagonists analyze the rights of combatants they speak only of the status of soldiers, and when they analyze the rights of noncombatants they speak only of the status of civilians. This is a highly presumptuous move.

Soldiers and civilians are much more specific things than combatants and noncombatants. The existence of soldiers and civilians presupposes not only the existence of states but the existence of states of a certain kind. To speak of soldiers and civilians is, according to conventional understanding, to speak of highly organized political communities, wherein soldiers are separated from the civilian world and given the singular social task of preparing for and engaging in war when ordered to by their political authority. In contrast, civilians are not so related to war and are engaged in the full spectrum of social activities that compose a robust human community, such as reproduction and child-rearing, the creation of cultural products, entrepreneurial activity, paid labor, and political activism. In short, soldiers and civilians exist in relation to each other. Soldiers live to protect civilians and civilians live nonmilitary lives in a civil society.

That the traditional theory of discrimination is based on the presumption of communities with a clear civilian-military divide is important because when traditional just war theorists defend the civilian-military divide they appeal very clearly to gender. It turns out that the duty to be a soldier, i.e., to be bound to fight in war to protect one's family and community when ordered to by one's political sovereign, is traditionally based on the view that men are by nature primarily responsible for self-sacrificial military service and largely exempt from other social responsibilities. This view of men, I will argue, is also what grounds the traditional view of combatant non-immunity in war. In this way, the presumed equivalence of the combatant/noncombatant distinction with the soldier/civilian distinction reveals the gendered origins of the theory of discrimination and the largely unrestricted permission to attack combatants.

GENDER, PUBLIC WAR, AND SACRIFICE

It is not an accident that the office of military servicemember has, until quite recently, been reserved for men exclusively. Indeed, the exclusion of women from the military is nearly a universal, cross-cultural phenomenon.⁶ Historically, the presence of women in combat units is extremely rare. In fact, often when women are allowed in the ranks it is in a noncombat role, such as the nurses of the Army Women's Corps. And, when women have been allowed to participate in combat, it is often because they are believed to be men, such as Deborah Samson, known as Robert Shirliff in the American Revolution.⁷ This being said, we should not succumb to the illusion that women are or have been

passive in war. Even when they are excluded from combat women have often been enthusiastic supporters of war, acting as advocates, nurturing wounded, providing comfort, food, and clothing, and aggressively raising future fighters. Still, the business of fighting, of life-risking combat, has historically been seen as a males-only occupation.

The gender exclusivity of military service is due in large part to the central place that war sacrifice has in notions of masculinity.⁸ Military service and the burdens it entails are central to the notion of manliness. On this view, a good man is not only physically strong but also knowledgeable in the arts of violence. Importantly, a good man also uses this capacity to protect others, thereby putting his body in harm's way for the sake of others. Facing fire without fear, or at least without debilitating fear, is a reliable way to affirm one's manhood. The self-sacrificial warrior is what Jean Bethke Elshtain calls, "the exemplary male identity."⁹

This view of masculinity is often assumed to have a basis in nature. It is believed that men are naturally endowed with the characteristics of a sacrificial warrior. For a man to fail to show these characteristics is a failure to reflect masculine virtues or even to possess the essence of his biological sex. As General George Patton once said, "a real man will never let his fear of death overpower his honor, his sense of duty to his country, and his innate manhood."¹⁰ But this naturalist assumption is false. There is no evidence of the existence of innate warrior inclinations in men as a group. In fact, men and boys need to be socially conditioned to accept this identity beginning in their first years.

Boys are encouraged from a very early age that toughness and courage are the highest virtues of manhood. Preparing oneself for battle, physically and mentally, is one of their most important tasks. They often play with toys that simulate fighting and war, or play sports that prize physical, often injurious, competition. They are discouraged from showing feelings of empathy, fear, and sadness. As Joshua Goldstein says,

Cultures produce male warriors by toughening up boys from an early age...Although boys on average are more prone to more rough-and-tumble play, they are not innately "tougher" than girls. They do not have fewer emotions or attachments, or feel less pain. It is obvious from the huge effort that most cultures make to mold "tough" boys that this is not an easy or natural task. When we raise boys within contemporary gender norms, especially when we push boys to toughen up, we pass along authorized forms of masculinity suited to the war system.¹¹

Gender norms like these can influence how we think and act in many ways. Often they cause us to apply principles, rules, or laws in biased ways. But they can also bias the very principles, rules, or laws themselves. Our very standards can be grounded in gender bias. This has certainly happened in many cases. Our standards of marriage and divorce, paternity and reproductive rights, and the difference between the public and the private have been shaped by gender.¹² To overcome this form of bias we cannot simply apply the same old standards in a neutral way; we cannot simply “add women and stir.” We must rethink the standards themselves and purge them, if possible, of gendered assumptions.

I want to show how traditional just war theory utilizes warrior masculinity to legitimate the duties of military service and, in turn, the idea that soldiers as such are disposable in war. The appeal to gender is subtle in traditional just war theory. Nevertheless, the appeal is clear. When traditional military ethicists attempt to explain how it is that a political subject can be bound to engage in life-risking battle upon command they appeal to the virtues of masculinity. In the end, then, the theory of public war is based on the idea that it is good for men—as men—to risk their lives in war for the sake of their communities. Any man who is unwilling or unable to risk his life in war is thought to be morally deficient.

Early modern military ethicists struggled more than their premodern predecessors to justify the duties of military service because in the early modern period the rights of individuals began to form the foundations of political justice. In the early modern period, the primary purpose of political society came to be seen as the protection of the equal natural rights or interests of individuals or, more accurately, men. Because the obligation to risk one’s life for the sake of the community seems to imply that the community is more important than the individual, it was more of a challenge for theorists during this period to justify the obligations of military service. As Hegel describes the problem, “It is a grave miscalculation if the state, when it requires this sacrifice [military service], is simply equated with civil society, and if its ultimate end is seen merely as the security of the life and property of individuals. For this security cannot be achieved by the sacrifice of what is supposed to be secured—on the contrary.”¹³ As a result of this problem, early modern theorists worked hard to justify military service, offering substantive discussions of the basis of the obligations of soldiers. In most cases, they appeal to masculine virtues to justify the duties of military service. In this way, early modern contract theorists understand society as composed of naturally free and equal men

who act in the service of their private rights or interests *and* men who are naturally bound to risk their lives in combat for the sake of their families and communities.

Hugo Grotius describes individual rights as prior to political society and political society as designed to protect those rights.¹⁴ However, for Grotius, the duty to face danger in combat is based in natural virtue, not a social contract made by equal persons in a state of nature. He says, "some Acts of Virtue may by a human law be commanded, though under the evident Hazard of Death. As for a Soldier not to quit his Post..."¹⁵ The relevant virtue for Grotius here is charity.¹⁶ While charity is not immediately associated with masculinity, in an early work Grotius appeals more clearly to gender. Grotius praises risking one's life for the state as an expression of the virtue fortitude, one of the two virtues "most beneficial [to others], both in private and in public life."¹⁷ Fortitude is a masculine virtue for Grotius. In the same passage, he quotes approvingly a passage from Tyrtaeus: "It is a glorious and manly thing,/To risk one's life in battle with the foe,/Defending loved ones, wife and native land."¹⁸

Thomas Hobbes struggles mightily to justify the obligations of soldiers. In his discussion of the problem, he clearly presupposes warrior masculinity as natural. He excuses women and feminine men from the duty to serve in war upon command. He says, "And there is allowance to be made for natural timorousness, not only to women (of whom no such dangerous duty is expected), but also to men of feminine courage."¹⁹ The basis of the exception here is a character deficiency in women and some men. Feminine people are timorous; they have inadequate courage. In particular, they lack the moral character that would enable them to put their lives on the line in war upon command. This sort of feminine character is to be expected of women but not of men. This deficiency in men must be rare enough that not only can we burden men with the political obligation to serve in war, but also that we can be confident that the commonwealth will have a sufficient pool of soldiers to rely on in the event of war. Hobbes also asserts this gender division when he defends his claim that the succession of the throne should go to the monarch's male over his female offspring. This is because, according to Hobbes, "men are naturally fitter than women, for actions of labor and danger."²⁰

Samuel von Pufendorf also describes political society as a contract made by its members so as to protect the equal rights they have by nature. Still, Pufendorf appeals directly to the virtue of bravery to ground the duty to risk one's life in war. According to him, it would simply be cowardly

for a man to refuse to engage in combat out of fear of injury or death. In fact, Pufendorf claims that a good man will praise his commander for ordering him to risk his life. As he says, a soldier "is bound to defend the Post his Commander appoints him to, tho' perhaps he foresees he must in all probability lose his Life in it...And no man of Bravery or Spirit will ever complain that he is commanded upon such a Duty, but will rather commend his General's Judgment and Conduct in it."²¹ Bravery and spirit are central to masculinity. In this way, then, gender norms form the foundation of Pufendorf's theory of public war.

Emer Vattel too asserts that political society is a voluntary association of its members so as to protect their equal natural rights. Yet he also appeals to the same gender division in his discussion of the duties of military service. As he says, "Every man capable of carrying arms should take them up at the first order of him who has the power of making war...Although there be some women who are equal to men in strength and courage, yet such instances are not usual; and rules must necessarily be general, and derived from the ordinary course of things."²² For Vattel, only men have the political obligation to participate in military service because men, by nature, are inclined to have the moral character suited to "supporting the fatigues of war." In particular, men tend to have the courage to risk their lives in battle upon command. For a man to fail to do this is a peculiar kind of moral failure.

We can see in each of these cases, the theory of public war grounds the obligations of military service by appeal to norms of masculinity. It turns out that the gender norms endorsed by many cultures, which encourage boys and men to find honor in self-sacrificial service in war, are also at work in our traditional theories of military ethics. Gender bias has therefore infected the standards we use to evaluate military conduct. According to traditional military ethics, states have the right to use the male members of their society as instruments in war because men as men ought to be instruments of war for their communities and families. On this view, the duty to serve in war upon command is independent of any particular war, any particular enlistment contract, or the civil rights afforded to the members of any particular political society. Those who are bound by the duties of the office of soldier are so bound because of their nature. In this sense, those who occupy the office are reducible to it; their duties as soldiers are inseparable from who they are.

If traditional just war theorists presuppose this view of gender and military service, it is relatively easy for them to conclude that all combatants

in public war are legitimate targets of attack. Their theories presuppose that political communities have members who are naturally bound to fight in war and for whom risking their life in battle is honorable. Simply put, they believe that political communities contain within them individuals who are expendable in war. Just as it is appropriate for the young men in one's own community to face fire in war, it is also appropriate to subject the young men in the enemy community to fire. Therefore, there is nothing objectionable to treating all combatants as legitimate targets. Assuming the combatants are performing their natural role, they are reducible to the status of soldier, a self-sacrificial instrument of war. They may be killed because that is what they are for.

WALZER'S SOLDIERS

Michael Walzer endorses roughly the same political duties of soldiers and the theory of discrimination in war advocated by the traditional theorists. He holds that political subjects are bound to serve as soldiers in war and that combatants as such are legitimate targets in war. However, Walzer certainly does not endorse the gendered division of labor that the early modern just war theorists do. He does more than even most of his contemporaries to avoid gendered assumptions and in explicitly using gender-inclusive language, including frequently referring to the duties of military service as the duties of "men and women." In this sense, then, we might think of Walzer's goal here as simply to "add women and stir." That is to say, he embraces the traditional political and ethical duties of the office of the soldier while allowing women an equal opportunity to occupy it. Moreover, when he attempts to justify the traditional duties of military service, he does not appeal to the virtues of masculinity or any other gender norms directly. Ostensibly, he offers us a gender-neutral version of traditional military ethics.

This is not an easy task, however. The political obligation to fight for one's community upon command and the right to attack combatants as such in war are hard to justify. As the early modern theorists discovered, this is especially true when working within a broadly liberal-individualist framework. In at least one passage, Michael Walzer recognizes the problem:

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...‘Soldiers are made to be killed,’ as Napoleon once said; that is why war is hell.²³

As we have seen, the appeal to natural masculinity helped solve this problem in traditional just war theory. If he is not going to do the same, how is Walzer going to solve this problem?

The Argument from Material Non-Innocence

One of Walzer’s arguments is most conspicuous and has received the most comment. According to this argument, combatants in war are liable to attack because they are currently threatening their enemies, rightly or wrongly. According to this view, in as much as they are engaged in fighting, combatants are thereby liable to attack by their opponents. It is by becoming combatants, i.e., those engaged in or directly contributing to combat, that they lose their right not to be attacked. Combatants are liable to attack because, “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.”²⁴

Noncombatants by contrast are not threatening their enemies and are therefore not liable to attack. The relevant distinguishing feature of non-combatants is innocence. According to Walzer, “innocent [is] a term of art which means that they have done nothing, and are doing nothing that entails the loss of their rights.”²⁵ However, “innocence” here is used in a nonmoral sense. The innocent, according to this view, are those who are simply not threatening others. The non-innocent, then, are those threatening others. Their reasons for threatening others are irrelevant. To threaten others simply is to give up one’s innocence.

This view produces a valid defense of all the aspects of the traditional principle of discrimination. If true, it would follow that the combatants on all sides of a war—regardless of their military usefulness, their particular role in combat operations, the strategic importance of attacking them,

how they came to be combatants, or what their understanding is of the war—are liable to be attacked. According to this argument, combatants as such are legitimate targets.

That being said, the argument from material non-innocence has significant weaknesses. First, it seems unconvincing as a theory of justified violence. As Walzer himself admits, this view of liability to attack does not apply to other areas of social life. It is simply wrong to assert that one's liability to attack is independent of the morality of one's actions. Certainly, a person who attacks me on the street to take my wallet is liable to defensive attack. However, if I were to engage in defensive violence against this assailant I do not in turn become liable to attack because I now constitute a threat to her or him. I surely maintain my right not to be attacked even when I use violence to protect myself in situations like this. But the view of liability to attack presupposed by the argument from material non-innocence would seem to entail that by defending oneself against unjust violence, people become liable to attack. There is good reason to be skeptical of this.²⁶

But there is another problem for the argument from material non-innocence. The argument runs into trouble when we try to reconcile it with the theory of public war and the view that soldiers are obligated to serve in war upon command.²⁷ Walzer, like traditional just war theorists, is a proponent of the theory of public war. According to him, soldiers are obligated to threaten their enemies when ordered to by their executive. As he summarizes, from the perspective of those who do the fighting, war is "morally as well as physically coercive."²⁸ But according to the argument from material non-innocence, combatants lose their right not to be attacked by threatening their enemies. The problem with this position is that it seems to over-determine the soldier's liability to attack in war. If one is obligated to engage in combat despite its life-risking character, it seems that one has already lost one's right not to be killed. Whether or not engaging in war makes one liable to be killed, so long as engaging in war is dangerous then the obligation to fight in war upon command is tantamount to the obligation to risk one's life upon command. In that case the soldier's social and political standing makes his life expendable. But to be subordinated in such a way is already to have one's right to not be killed undermined. Regarding soldiers then it seems that asserting that they lose their rights not to be harmed only because they have threatened others is redundant. They have already been rendered dispensable in war when they were bound to fight upon command. For

this reason, the theory of public war embraced by traditional just war theory seems to make the argument from material non-innocence only indirectly relevant. If we want to figure out what is really rendering combatants liable to attack, we need to figure out why they are bound to fight upon command in the first place.

The Communitarian Argument

I have noted the tension between the sacrificial obligations of soldiers and a basic liberal vision of political society as designed to protect the rights of its members to life and liberty. As we have seen, this tension was handled by traditional just war theorists by asserting that it is a part of natural virtue for men to fight in war in service of their families, communities, and political sovereigns.

How does Walzer resolve the tension? In a number of places, Walzer leans heavily on the communitarian strands in this thought to ground the duties of military service and arguably abandons the ostensibly liberal framework he employs in *Just and Unjust Wars*. It should be recalled that Walzer is a famous protagonist in the communitarian critique of liberalism that began to flourish in the 1980s.²⁹ His rejection of liberalism was made most clear in *Spheres of Justice*, published in 1983, the book of his that immediately followed *Just and Unjust Wars*. In *Spheres*, Walzer abandons universalism in the theory of justice and embraces a radical pluralism. Instead of grounding justice in the universal rights of individuals, he holds that justice is grounded in the shared understandings of communities with a common way of life. Justice is relative to each particular view of the good embraced by each distinctive community and its culture, institutions, and language.³⁰ Interestingly, in the preface to *Spheres*, Walzer distinguishes the approach to distributive justice he takes in that work from the rights-based approach to the justice of war he takes in *Just and Unjust Wars*.

But perhaps we should not distinguish the two approaches, at least not so starkly. What if we attempted to use the communitarian theory of *Spheres* to solve the problem of the obligations of military service? In point of fact, there are many passages in Walzer's corpus where he defends the obligation to serve in war in communitarian terms. To cite just one example, in an early essay, "The Obligation to Die for the State," Walzer describes a non-liberal basis for the obligation to risk one's life in war upon command. According to this argument, it is the identity of

individuals with the common life that they share with their fellows which makes death a potentially worthy price to pay to protect the community:

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, as Hegel argued, 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 these “moral goods” for which...men can in fact be obligated to die.³¹

On this approach, we must prioritize the shared meanings of our common lives over our rights as abstract individuals. We must treat justice as a theory of the good embodied in our particular community rather than a theory of liberal rights. Taking this approach does seem to effectively solve the problem of the ground for the duties of military service. On this view, there is no tension between the status of combatants and the rights of human beings in general. For we have abandoned the view that the status of soldiers must be reconciled with their rights as human beings. Instead, all we need to show is that the status of soldiers is grounded in the shared meaning of membership and communal protection in a particular community. It appears that this is not difficult to do.

One of the obvious concerns with this approach, however, is that it risks turning individuals into mere instruments of the state without any protections against harms or domination by political authorities. If our lives and liberties can be taken away by the state for the purposes of war, then it is difficult to see any limit on the power of the state over us. Of course, Walzer never does (and never would) endorse the complete reduction of the individual to servant of the state. As he argues in *Spheres*, the provision of national security and the burdens it places on citizens operate in their own sphere whereas other goods such as security and welfare operate in other autonomous spheres. Modern societies have developed distinct shared understandings of goods and, internal to those understandings, ideas about how they should be distributed. The various things we value as a community have relative significance and meaning to us that determines who ought to have access to them and to what extent. Thus, national security, the honors (and burdens) of military service, as well as personal security, welfare, and recognition are all things we are committed to providing to our co-citizens in ways that follow from

how we have come to understand what they mean. As long as these various goods are allowed to be distributed in the ways that follow from the understandings internal to each good, then distributive justice is achieved.

In other words, justice is the maintenance of the autonomy of each sphere pertaining to each good. Injustice occurs when the understanding of appropriate distribution in one sphere is applied to, or “invades,” another. For instance, if we distribute medical care to people who can afford to pay for it at prices that are determined by firms operating to maximize profit, we are allowing the standards of distribution appropriate for commodities in markets to be applied to a good that is not a commodity. The standards of distribution for markets has come to dominate another sphere that ought to maintain its autonomy. This domination of one sphere over others is the important form of injustice for Walzer. Hence, the provision of the good of national security and its attendant burdens is a sphere of justice that ought to exist alongside the other spheres we expect to exist in a modern society, including personal security, welfare, and liberty. In this way, Walzer’s theory justifies the burdens of military service while offering philosophical resources that limit the power of the state over its citizens.

But this pluralistic autonomy of spheres is hard to comprehend when considering individual military service members. The sphere of military service prioritizes the community over all other goods. Soldiers are expected to fight and die upon command. The understanding of this good (an example of what Walzer calls a “negative good”) is self-sacrificial. It asks everything of its participants. For those who are demanded (either through enlistment or conscription) to do it, this good is dominant over others. Personal security, welfare, liberty, along with all other things are “invaded” by the demands of military service. Even if we restrict the distribution of this good to certain members of our community so that we can preserve the other spheres for the other members, those on whose shoulders the burden falls are dominated by this one sphere. Walzer argues that military service requires self-sacrificial labor³² and that this labor must be forced, at least once the enlistment contract has been completed.³³ Because of the severity of these burdens as well as the fact that it is socially necessary that it be performed, Walzer argues that conscription ought to be how the burdens of national security are distributed.³⁴ This may randomize the distribution of this burden, but it still does not solve the extent to which the conscripted (or enlisted) are dominated by this sphere.

There is another problem for this approach to justifying the obligation to fight and die in war. Because it makes justice relative to the shared understandings of goods that particular groups of people have developed, it provides few tools for perceiving and criticizing the gendered character of that understanding. As I have argued, military service is tied to notions of manliness and traditionally has been expected only of men as men. Another way of putting this is to say that our shared understanding of this good entails a gendered distribution of its burdens. If our shared understandings are all there are to justice, then this gendered distribution will go unchallenged and perhaps even unnoticed. As feminist critics of communitarianism have argued, theories of justice such as these leave gender invisible and provide insufficient critical distance between gender and justice.³⁵

In *Spheres*, Walzer strongly rejects gendered distributions like the traditional exclusivity of military service. Understandings that attribute burdens to a certain subgroup based upon claims about the natural suitability of that subgroup to shoulder those burdens, he calls "ideologies." He seems deeply suspicious of ideologies in general. Indeed, in Chapter 7, he explicitly rejects the notion that negative goods like military service can be distributed to some subgroup only. However, immediately after this assertion, Walzer comes very close to claiming that military service should be restricted only to men due to their nature. As he says,

Soldiering is a special kind of hard work. In many societies, in fact, it is not conceived to be hard work at all. It is the normal occupation of young men, their social function, into which they are not so much drafted as ritually initiated, and where they find the rewards of camaraderie, excitement, and glory...Young men are energetic, combative, eager to show off; fighting for them is or can be a form of play...John Ruskin had a wonderfully romantic account of "consensual war," which aristocratic young men fight in much the same spirit as they might play football. Only the risks are greater, the excitement at a higher pitch, the contest more "beautiful"...We might attempt a more down-to-earth romanticism: young men are soldiers in the same way that the French socialist writer Fourier thought children should be garbagemen. In both cases, passion is harnessed to social function. Children like to play in the dirt, Fourier thought, and so they are more ready than anyone else to collect and dispose of garbage...[But] it is hardly an accurate description of what garbagemen do to say that they *play* with the garbage. Similarly, the account of war as the natural activity of young men or the sport of aristocrats fits only a small number of

wars, or it fits only certain sorts of engagements in war; and it doesn't fit modern warfare at all. Mostly soldiers have little opportunity for play; nor would their officers be happy with their playfulness. What soldiers do is, in the strictest sense, hard work. [emphasis in original]³⁶

This passage is remarkable because Walzer rejects the proposals of Ruskin and Fourier only on the grounds that they are misunderstanding the hardness of soldiering. He does not directly attack them for making false assertions about men (and women), for claiming that men are naturally disposed to combat (whereas women are not). Nor does he explicitly reject the notion that soldiering is the natural social function of men. Rather, Walzer is concerned to point out that soldiering should not be treated as a casual activity that does not require discipline, training, focus, and sacrifice. If this is all that is wrong with these accounts of the distribution of the burden of military service, then Walzer has left standing the gendered nature of the distribution clearly asserted in these accounts. Perhaps we should not be surprised then to see him, in the following paragraph, describe the purpose of conscription as "to universalize or randomize the risks of war over a given generation of *young men*" [my emphasis].

If in these passages Walzer is implying that military service is for men as men, I am inclined to conclude that it is not a considered opinion he would assert in other contexts. The view seems to fly in the face of other settled positions he takes in *Spheres* and elsewhere, especially his grounding of military service in communal membership, his rejection of ideologies, and his defense of universal conscription. Still, it is revealing that the gendered assumptions about military service can so easily slip into the discussion. Not only does it corroborate my view that military service has been and continues to be gendered in our shared understandings, but it also suggests the limitations of communitarian theories of justice in addressing such gendered understandings. The worry is that simply resting our critical standards on our shared understandings will enable gender inequalities to go unquestioned in precisely this way.

The Argument from the Purpose of the Military

Walzer appears to offer a different argument in defense of combatant non-immunity than either of the above in a more recent essay, "Terrorism and Just War."³⁷ Here, Walzer again defends the traditional view

of discrimination in war. He asserts, "once the fighting has begun, it is entirely legitimate to kill soldiers at random, as they come into range, so to speak, and it is legitimate to try to terrorize the ones who never come within range."³⁸ According to Walzer, this is because of "the meaning of membership in an army and in civilian society." Soldiers have a singular purpose—to fight their nations' wars. They are isolated from the rest of the community, trained and conditioned to pose a unified threat against any of their state's enemies. As Walzer describes it,

The army is an organized, disciplined, trained, and highly purposeful collective, and all its members contribute to the achievement of its ends. Even soldiers who don't carry weapons have been taught how to use them, and they are tightly connected, by way of the services they provide, to the actual users. It doesn't matter whether they are volunteers or conscripts; their individual moral preferences are not at issue; they have been mobilized for a singular purpose, and what they do advances that purpose. For its sake, they are isolated from the general public, housed in camps and bases, all their needs provided for by the state. In time of war they pose a unified threat.³⁹

Noncombatants, on the other hand, are not members of a military. Civilians differ from soldiers in two relevant respects. First, on the individual level, civilians are a diffuse set with myriad roles and purposes, many of which are peaceful. They are engaged in ordinary activities of human existence, including family life. As Walzer says

[C]ivilians have many different purposes; they have been trained in many different pursuits and professions; they participate in a highly differentiated set of organizations and associations, whose internal discipline, compared to that of any army, is commonly very loose. They don't live in barracks but in their own houses and apartments; they don't live with other soldiers but with parents, spouses, and children; they are not all of an age but include the very old and the very young; they are not provided for by the government but provide for themselves and one another. As citizens, they belong to different political parties; they have different views on public issues; many of them take no part at all in political life; and, again, some of them are children. Even a *levée en masse* cannot transform this group of people into anything like an organized military collective.⁴⁰

Second, civilians differ from soldiers in that they, together with the members of their military, form a distinctive political community.

Organized political societies have unique identities, cultures, and institutions. These are the groups who go to war.

[Civilians] are, together with their sons and daughters in the army, a people. Whether their peoplehood is ethnic or national in character or wholly political, constituted only by their citizenship, doesn't matter here. They identify themselves as French, or Irish, or Bulgarian; they commonly share a language and a history and, in some prosaic sense of the term, a destiny. Their individual futures are closely linked, and this linkage is especially tight when their country is at war.⁴¹

Corresponding to the above two features separating civilians from soldiers, Walzer distinguishes two relevant types of attacks on civilians. Murder is the name for deliberately attacking civilians individually. To kill specific civilians such as political leaders, collaborators, or symbols of power is to kill the innocent. Unlike soldiers, they have done nothing to make themselves legitimate targets. In contrast with simple murder, terrorism is the name for indiscriminate attacks against the civilian population as such. To do this is to treat an entire political community as expendable. One can permissibly go to war with a political community but one cannot make the annihilation of that community a goal of war. To take the entirety of the enemy community as a legitimate target would be to devalue them as a people. Terrorists devalue both communities and individuals.

Terrorists attack both these immunities [individual and collective]. They devalue not only the individuals they kill but also the group to which the individuals belong. They signal a political intention to destroy or remove or radically subordinate these people individually and this "people" collectively. That is the long-term purpose of the fear they inspire. Hence, while all terrorists are murderers, all murderers are not terrorists. Most murderers intend to kill specific people; terrorists kill at random within a specific group of people. The message they deliver is directed at the group: *we don't want you here*. We will not accept you or make our peace with you as fellow-citizens or partners in any political project. You are not candidates for equality or even co-existence. [emphasis in original]⁴²

In this way, terrorism and murder are both wrong, but for different reasons. Terrorism is unlimited war; murder is not. With terrorism "identity is liability," but not necessarily with murder.

But isn't there a tactic of targeting civilians in war that falls between what Walzer describes as simple murder on one hand and terrorism on the other? Suppose a group targets, randomly, some subgroup within the larger enemy community, say women or the industrial working class or intellectuals, but respects the immunity of the other members of the community. Perhaps the Katyn Massacre is a case in point: The Soviet Union executed some 22,000 officers, police, and intellectuals in an effort to solidify its control over Poland in 1940. This was apparently an attempt to incapacitate Polish resistance, not simply to assassinate specific individuals. The individual targets were irrelevant; it was the social position they occupied that mattered. If the individual victims had different roles, they presumably would not have been targeted. Still, the attack was not random in the sense that it did not treat any Polish person as a legitimate target. Is this an act of simple (mass) murder or terrorism as Walzer understands them?

It seems Walzer wants to call this terrorism rather than murder because it rests on an arbitrary line and thereby makes all members of the community vulnerable. According to his position, there is no moral reason for limiting attacks to one specific group. Hence, anyone who would go this far in war would also go further if necessary. Targeting civilians in this way is a totalizing practice and puts the entirety of the community in danger. This is Walzer's view of the Atomic bombing of Japan in World War Two. While the Allies did not aim to destroy Japan itself and would cease fighting as soon as Japan surrendered, their willingness to use nuclear weapons against Japanese cities to attain this showed that their war was unlimited morally. As he says, "There can't be any doubt that the destruction of Hiroshima and Nagasaki implied, at the moment the bombs were dropped, a radical devaluation of Japanese lives and a generalized threat to the Japanese people."⁴³

But if targeting, at random, a subgroup of civilians within a community is terrorism, why isn't targeting soldiers at random terrorism too? What is the difference between randomly attacking intellectuals, say, and randomly attacking military servicemembers? The answer must be that there is a morally significant difference between soldiers and civilians whereas there is no morally significant difference between other subgroups within a community. Soldiers, unlike civilians, are liable to attack because they are members of a highly organized, threatening military. In other words, soldiers are materially non-innocent whereas civilians are

materially innocent. Randomly attacking only combatants is not to draw an arbitrary line and does not devalue the enemy people as such.

However, this attempt to draw a line between attacking soldiers and attacking civilians randomly won't do because it relies on this appeal to the argument from material non-innocence. As we've seen, it is highly questionable that material threats are liable to attack. Moreover, in as much as we are committed to the theory of public war, the liability of soldiers precedes their engagement in combat. Without this appeal to material non-innocence, the argument cannot distinguish between attacking soldiers as a class and attacking civilians. Therefore, we are still lacking a reason for allowing indiscriminate attacks on combatants. This being said, it would be uncharitable to dismiss Walzer's argument here altogether. There is another argument for combatant non-immunity that could be implied by the above passages. Perhaps what Walzer is doing is appealing to the principle of necessity to distinguish combatants from noncombatants.

The Argument from Necessity

The principle of necessity says that states are permitted to do what is necessary to achieve their just cause for war and nothing more. A just cause for war permits violence but only the violence that is necessary to achieve that cause. Any violence that is unnecessary is simply wanton cruelty. Moreover, to carry out attacks that are unnecessary to achieve a just cause would seem to indicate that one's aims go beyond the defensive. Why else would one do something that is unnecessary to defensive war? It must be because one has aims (expansion, conquest, and extermination?) that make such acts necessary.

According to the conventional principle of just cause, the only justifiable reason for war is defense against aggression. A just war seeks to thwart an unjust attack on another community. This view is based on a collectivist conception of war in that the participants are understood as organized political communities with communal rights. A just war is, in part, an act by or on behalf of an innocent political community against another community that is currently attacking it.

According to Walzer's discussion in "Terrorism and Just War," political communities have militaries which sequester their members from the broader society in times of war. These militaries train for fighting exclusively and in war constitute a singular, unified threat to their enemies.

In the case of a community committing aggression, their military will be the unique source of the threat to their victims. To thwart aggression one need simply stop and roll back an attack. To do that would seem to require only targeting the armed forces of the aggressor.

Perhaps this is what Walzer is suggesting in this essay. This argument would provide a good reason for concluding, as Walzer does, that targeting noncombatants indiscriminately indicates unjust war aims. If it is true that in a defensive war it is only necessary to target combatants to thwart the threat and never necessary to target noncombatants, then targeting noncombatants would suggest that one is not fighting a defensive war. Targeting noncombatants would indicate that one aims to subjugate or destroy the enemy community. It sends the message that "*we don't want you here.*" Why else would noncombatants be under attack?

Traditionally, the principle of discrimination is thought to be a side-constraint on the conduct of war independent of the cause of the war and the necessary means to that end. In other words, one cannot violate the principle of discrimination even if it is necessary to achieve a just cause. But, according to the argument from necessity, the principle of discrimination is not independent of necessity. Rather, discrimination is derived from necessity. This argument holds that targeting noncombatants is never, or very rarely, necessary to achieve a just cause; only targeting combatants could be necessary.

As a case against targeting noncombatants, I happen to think this argument has promise. But as a defense of unrestricted attacks on combatants, the argument does not fare well. While the argument does render a justification for attacks on certain combatants in certain circumstances, it generates tight restrictions on attacks against combatants generally.

On its face, the argument only permits attacks on combatants that are necessary to achieve the just cause of the war. Surely, not all attacks on combatants are necessary to win every war. One needn't kill all combatants to get to the goal. The principle of necessity requires adopting strategies and tactics that minimize the harm to the enemy community. Even if it is true that attacking noncombatants always or usually fails to minimize the destructiveness of one's war, it does not follow that one cannot minimize the destructiveness further. We can look for and adopt methods of war that are strategically effective but more or less destructive to combatants. The argument from necessity requires that we find and adopt the least harmful of the methods at our disposal. It does not permit indiscriminate attacks on combatants.⁴⁴

Walzer's argument also makes claims about the nature of military servicemembers and the military-civilian distinction that, if true, minimize the destructiveness of attacks on combatants. According to Walzer, civilians are a highly differentiated set of people who occupy many distinct roles and relationships. Civilians are in close relation to intimate others including parents, spouses, and children. They come in all possible ages and could accept any possible political perspective. In general, they are highly integrated into the broader civil society. If this description is true, and I do not doubt that it is, then attacking civilians runs the risk of significant harm to the community affected. Not only will civilians be difficult to isolate from others physically, but their integration into the broader community means that many people and institutions are dependent on them. Hurting civilians will hurt all those in physical and social proximity to them.

Walzer argues that soldiers, on the other hand, are isolated from the broader community. Not only do they live sequestered from civilians but they also do not occupy the various roles and responsibilities that civilians do. They have "a singular purpose," as Walzer says. If this is true, then it would seem that attacking soldiers risks significantly less harm to the community than attacking civilians. There will not be the same dreadful indirect effects of such attacks on the broader community. Hence, while the argument from necessity may not permit indiscriminate attacks against combatants, it would treat taking the life of a combatant as significantly less injurious than taking the life of a noncombatant.

However, it only takes a moment's reflection to determine that this description of soldiers is false. This account of soldiers and the military-civilian distinction rests on an extraordinary presumption—the individuals who are military servicemembers are reducible to their office. Only if we do not distinguish the individual soldier from their office could Walzer's description be true. But, obviously, we can distinguish the individual from the office. Just like civilians, soldiers are a diverse set who occupy just as many roles and relationships. They too are our parents, spouses, children, and friends. And not only nominally. They are actively engaged in intimate, caring work with loved ones. They too have all types of political perspectives. Many people and civilian institutions are dependent on them materially and morally. There is no reason to assume that attacking them is less destructive than attacking civilians. In general, soldiers are no more disposable than civilians. For this reason, the argument from

necessity should permit attacks on combatants in much more restricted circumstances than Walzer's discussion would seem to suggest.

The clear connection between Walzer's reduction of the individual soldier to their office and the traditional gender-based defense of military service must be pointed out. First, note that his discussion in "Terrorism and Just War" treats "combatant" as synonymous with "soldier" and "noncombatant" as synonymous with "civilian." There are numerous background assumptions that motivate this move. To treat combatants as soldiers and noncombatants as civilians is to presume the framework of public war and its supposedly neat separation of the civilian and the military realms. As we have seen, the traditional defense of military service grounded the office of the soldier in the nature of the individual who was to occupy the office. Men were held to have the natural duty to serve in war upon command. This is their primary social purpose and it springs from their nature, not from any particular contract they have elected to sign. Walzer's presumption of the identity of individual soldiers and their office appears to be a vestige of this traditional view of gender.

THE RIGHTS OF COMBATANTS

Perhaps, then, the intuition that something is wrong with the indiscriminate killing of unarmed soldiers adrift in the open ocean is telling. We have found that the false assumption that it is naturally virtuous for men to risk their lives in war has played an important role in arguments defending combatant non-immunity in war. Traditional just war theorists made the assumption explicit. Walzer, while attempting to defend the theory of public war and the traditional principle of discrimination in a gender-neutral way, nevertheless struggles to do so. His arguments either assume methods that are too accommodating to gender discrimination, do not adequately eschew gendered positions, or fail to validly defend combatant non-immunity. For this reason, it might be best to think not only of the treatment of Japanese soldiers in the Battle of the Bismarck Sea but of any act of war that treats combatants merely as "fair game" as unjust, gender-based violence. Throughout modern history combatants have been treated as disposable instruments of war because of the gendered character of their work. I think we owe more to soldiers, our own as well as our enemy's.

NOTES

1. Quoted in Arthur Herman, *Douglas MacArthur: American Warrior* (New York: Random House, 2016), 469.
2. Ibid.
3. *Just and Unjust Wars*, 5th ed. (New York: Basic Books, 2015 [1977]), 138.
4. "The Dispensable Lives of Soldiers," *Journal of Legal Analysis* 2, no. 1 (Spring 2010): 72.
5. See Blum, "The Dispensable Lives of Soldiers." For similar readings of the law see Larry May, "Humanity, Necessity, and the Rights of Soldiers," in *Weighing Lives in War*, eds. Jens David Ohlin, Larry May, and Claire Finkelstein (New York: Oxford University Press, 2017), 77–110; Adil Haque, *Law and Morality at War* (New York: Oxford University Press, 2017), 84–105.
6. Joshua Goldstein, *War and Gender* (New York: Cambridge University Press, 2001), 10–22.
7. Jean Bethke Elshtain, *Women and War* (Chicago: University of Chicago Press, 1995), 174–75.
8. See Tom Digby, *Love and War: How Militarism Shapes Sexuality and Romance* (New York: Columbia University Press, 2014); Goldstein, *War and Gender*; and Elshtain, *Women and War*.
9. *Women and War*, 205.
10. Quoted in Stanley Hirshson, *General Patton: A Soldier's Life* (New York: HarperCollins, 2002), 474.
11. *War and Gender*, 287–88.
12. A large school in moral philosophy has even concluded that justice itself is based on the assumption of masculine individuals. For one representative statement, see Virginia Held, *The Ethics of Care: Personal, Political, and Global* (New York: Oxford University Press, 2006).
13. *Elements of the Philosophy of Right*, ed. Allen Wood (New York: Cambridge University Press, 1991 [1821]), §324, 361.
14. For more detailed readings of Grotius, Pufendorf, and Hobbes on these issues see my "Contract, Gender, and the Emergence of the Civil-Military Distinction," forthcoming in *The Review of Politics*.
15. *Rights of War and Peace*, ed. Richard Tuck (Indianapolis: Liberty Fund Inc., 2005 [1625]), I.IV.VII, 357.
16. Ibid., II.XXV.VII, 1158.
17. *Commentary on the Law of Prize and Booty*, ed. Martine Julia van Ittersum (Indianapolis: Liberty Fund, Inc., 2006), 440.
18. Ibid., 441.
19. *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Co., 1994 [1651]), XXI.16, 142.

20. Ibid., XIX.22, 126.
21. *The Law of Nature and Nations*, trans. Basil Kennett (New Jersey: The Lawbook Exchange, Ltd., 2005 [1672]), VIII.II.IV, 759.
22. *The Law of Nations*, eds. Béla Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, Inc., 2008 [1758]), III.II.10, 474.
23. *Just and Unjust Wars*, 135–36.
24. Ibid., 136.
25. Ibid., 146.
26. For more sophisticated articulations of this objection see Jeff McMahan, “Innocence, Self-Defense, and Killing in War,” *Journal of Political Philosophy* 2, no. 3 (September 1994): 193–221; David Rodin, *War and Self-Defense* (New York: Oxford University Press, 2002).
27. Many commentators miss Walzer’s conviction about this. For substantiation of this reading of him see my “The Incoherence of Walzer’s Just War Theory,” *Social Theory and Practice* 38, no. 4 (October 2012): 663–88.
28. *Just and Unjust Wars*, 53.
29. See Will Kymlicka, “Community and Multiculturalism,” in *A Companion to Contemporary Political Philosophy*, 2nd ed., eds. Robert E. Goodin, Philip Pettit, and Thomas Pogge, vol. 2 (New York: Blackwell, 2007), 463–77.
30. See *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 312–13.
31. “The Obligation to Die for the State,” in *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge: Harvard University Press, 1970), 92. See also “Involuntary Association,” in *Freedom of Association*, ed. Amy Gutmann (Princeton: Princeton University Press, 1998), 64–74.
32. *Spheres of Justice*, 169.
33. Ibid., 180.
34. Ibid., 169.
35. See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989); Elizabeth Fraser and Nicola Lacey, *The Politics of Community: A Feminist Critique of the Liberal-Communitarian Debate* (Toronto: University of Toronto, 1993).
36. *Spheres of Justice*, 168–69.
37. In *Thinking Politically: Essays in Political Theory*, ed. David Miller (New Haven: Yale University Press, 2007), 264–77.
38. Ibid., 264–65.
39. Ibid., 265.
40. Ibid., 265–66.
41. Ibid., 266.
42. Ibid., 266–67.
43. Ibid., 267.

44. This seems to cohere with Jeff McMahan's distinction between narrow and wide proportionality. See his "Proportionate Defense," in *Weighing Lives in War*, eds. Claire Finkelstein, Jens David Ohlin, and Larry May (New York: Oxford University Press, 2017), 131–54.

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