Jeff McMahan, *Killing In War,* (New York: Oxford University Press, 2009), 248 pages. ISBN: 978-0199548668 (hbk.). Hardback $35.

Killing in War is based upon McMahan's 2007 Uehiro Lectures, but draws on the substantial body of work on the ethics of war that McMahan has produced over the last decade or so. In this sense, it was a classic before it was written, representing as it does the most sustained, persuasive, and influential attack to date on the 'orthodox' Walzerian view of just war. It is, undoubtedly, compulsory reading for anyone working in this field, and consolidates McMahan's position as the most important just war theorist of the last forty years.

Two central claims underpin McMahan's account of the ethics of war. First, he thinks that the rules of war are extensions of the rules governing defensive killing between individuals. He thus rejects collectivist accounts of war, which hold that the group nature of wartime violence somehow yields permissions different to those enjoyed by individuals engaged using force. Second, McMahan thinks that the question of whom we are permitted to attack in war is answered by thinking about which individuals have rendered themselves morally liable to attack. If a person is liable to a harm, she is not wronged by that harm, and cannot justifiably complain about its infliction. A person becomes so liable, McMahan argues, if harming her will avert a proportionate unjust threat for which she is morally responsible.

There is much in this book that will rightly generate discussion, and I will restrict my comments here to some thoughts about McMahan's account of liability. McMahan thinks that liability has a kind of internal necessity condition, such that a person can be liable to a harm only if that harm is instrumental in averting an unjust threat for which she is morally responsible. He identifies this as perhaps the "most important" of all the considerations that might afford non-combatants protection against intentional attack, arguing that non-combatants "cannot be liable to attack unless attacking them can make an effective contribution to the achievement of a just cause" (p. 225).

I think we ought to reject McMahan's claim that liability is subject to this sort of internal necessity condition. Consider *Lucky Escape*:

Lucky Escape: Murderer is trying to kill Victim because he hates him. Victim happens to have a parachute. He can jump to safety without needing to kill Murderer.

It seems pretty implausible that Murderer does not render himself liable to defensive force in a case like this. He is, after all, maliciously chasing Victim with a gun and shooting at him. I do not think that if Victim kills Murderer in this case, he *wrongs* Murderer. Murderer certainly has no grounds for complaint if Victim uses force against him ('but you should have jumped!'). Nor could he permissibly defend

himself if Victim tries to shoot him rather than parachute to safety. McMahan identifies both these features as indicative of liability to defensive harm (p. 11).

Yet killing Murderer is not necessary if Victim is to save his life. If, like McMahan, we argue that a person can be liable only to necessary force, Murderer cannot be liable to defensive killing. An upshot of this, on both my view and McMahan's, is that Murderer *can* permissibly defend himself against Victim should Victim try to kill him rather than jump.

Of course, McMahan might reply that his account stipulates only that the defensive harm must be *effective* in averting a threat. Killing Murderer still meets this condition, since Victim can save his life *either* by jumping, *or* by killing Murderer. Killing Murderer is an effective means of averting the threat to Victim's life. But I would have thought that since Victim can save his life without killing anyone, McMahan will want to say that he ought to do so. But if so, McMahan will need to invoke a separate necessity condition that operates independently of Murderer's liability and that makes it impermissible for Victim to kill Murderer even though Murderer is liable to be killed. If he does this, the idea that necessity is internal to liability drops out of the picture. Liability is, I think, based on what an agent has done, and these facts are not changed by variations in the usefulness of killing him, although the all-things-considered *permissibility* of killing him may depend upon such variations.

Thinking of necessity as external to liability might also help with another tricky case. McMahan imagines that ten innocent civilians have been unjustly imprisoned by the enemy (p. 24). He suggests that each military guard at the prison is liable to be killed during an operation to free the civilians. If so, killing each guard in a bid to free the civilians must be proportionate. But what if (a) the guards are reluctant conscripts, and (b) to free the civilians, we will have to kill five hundred guards? McMahan suggests that killing so many guards to free just ten people would in fact be *dis*proportionate. But how can this be? If each guard is liable to be killed, this means that killing him is proportionate. How, then, could increasing the number of liable guards make killing them *dis*proportionate? It doesn't look like this is possible. If killing five hundred guards to rescue ten civilians is indeed disproportionate, we must conclude that none of the five hundred were liable to be killed in the first place.

This is indeed McMahan's explanation of this puzzle: "[I]f this guard is one of five hundred, killing him would make only a small contribution to the release of the prisoners. The good that can be achieved by killing him alone is therefore insufficient for the harm he would thereby suffer to be narrowly proportionate – that is, proportionate in relation to his potential liability" (p. 24). Since killing him is disproportionate, the guard is not liable to be killed.

McMahan suggests that killing a person can be proportionate only when the good that the killing produces passes some threshold. But imagine a case in

which a gang of ten people try to kill one person. Killing just one of the gang will not do much good: the other nine will kill the one just as easily. Killing a single gang-member in this case produces very little good – it certainly will not save the one's life. So it's hard to see how killing the one can be proportionate on McMahan's view, and thus how the one can be liable to be killed. But it seems clear that the gang-member *is* liable to be killed. He could not permissibly defend himself against the victim, and he would have no justified complaint if the victim killed him. Proportionality thus seems to be subject to a kind of compositional truth – if it is proportionate for the victim to kill all ten gang-members to save his life (which it is), it must be proportionate for him to kill one gang-member to save his life, even if killing that person will not do much good.

It seems to me that the constraint on which McMahan's solution implicitly relies is actually a necessity constraint, not a proportionality constraint. Suzanne Uniacke has drawn attention to the sense in which it is hard to describe a use of force as *necessary* to avert a harm if one knows that it will be *insufficient* to avert the harm ('Self-Defence, Just War and a Reasonable Prospect of Success', unpublished manuscript, 2010). Say that I can avert a threat that you pose only by killing you. But I'm not able to kill you – I'm able only to break your arm. If I *know* that causing a harm will not achieve my end, there is something fishy about saying that inflicting that harm is *necessary* for the achievement of that end. In his explanation of the wrongness of killing the guards, McMahan says that killing the single guard alone would not produce a sufficient good – it will not, for example, achieve the end of rescuing the civilians, where this *would* warrant lethal force. But this seems akin to breaking the attacker's arm when I know both that I can't kill him, and that only by killing him can I save my life. And this is not a problem of proportionality, but of necessity.

This interpretation is further supported by noticing that McMahan's claim that killing a single guard alone produces an *insufficient* good is somewhat misleading, because, in fact, *no* good is achieved by killing a single guard alone. If we need to kill five hundred guards to achieve a good, and we have no intention of killing more than one, killing the one does not achieve a good *at all*. And so perhaps killing a single guard is indeed impermissible – not because killing him is disproportionate to the good it brings, but because killing him brings no good at all. And harms that produce no good at all are usually condemned not as disproportionate, but as unnecessary.

What I think McMahan's solution demonstrates is not that it is disproportionate to kill five hundred guards, but that it would be impermissible to kill a single guard, if one killed *only* a single guard. But it does not follow from this that it is impermissible to kill the five hundred guards. All that follows from this is that we may not kill one guard if we have no intention of killing the other four hundred and ninety nine.

I suspect that accounts that reject the idea that liability has an internal necessity condition might better capture what is going on in the prison case, and cases like it. It seems to me that the claims that I made about the single gang-member – that he would not be permitted to engage in counter-defence, and that he would have no justified complaint against being killed – apply equally to the prison guards. Killing a single guard would not, I think, wrong *him*. Thus, it seems to me that all the guards *are* liable to be killed, because they are morally responsible for an unjust harm, the prevention of which warrants lethal force (or so we are supposing). If it's nonetheless wrong to kill them, it's for some reason other than a lack of liability.

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