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## Revisionist just war theory and the impossibility of a moral victory

### Book section

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## Abstract

Recently, the militarization of the police has received much comment while less attention has been given to the application of civilian legal and moral standards to soldiers in combat zones. This shift is partly the product of 'revisionist' just war theorists, who understand war in terms of individual responsibility, challenging conventional views on the rights of states to defend themselves and replacing the Law of Armed Conflict with International Human Rights Law. This is a retrograde step; it loses contact with realities of warfare and validates the critique of just war thinking as encouraging a Manichean worldview. Classical just war thinking is about discrimination, avoiding the absolutism of both pacifism and an amoral *realpolitik*; revisionist just war theory is effectively pacifist insofar as no actual war could be fought that would satisfy its conditions. Discrimination disappears, and with it the possibility of a moral or any other kind of victory.

## Keywords

civilian legal standards

civilian moral standards

revisionist just war theory

human rights

militaristic policing

pacifism

# Revisionist Just War Theory and the Impossibility of a Moral Victory

Chris Brown

## INTRODUCTION

The just war tradition provides the predominant language through which the Christian and post-Christian West has framed the ethical aspects of war but this predominance is not uncontested. Critics argue that the notion of a just war encourages the demonization of enemies and actually works against attempts to limit conflict.<sup>1</sup> These claims will be addressed further in this chapter, but for the time being it suffices to note that they miss the point of the tradition, partly perhaps because the term ‘just war’ is, in fact, rather misleading insofar as it implies that war might in certain circumstances be a Good Thing. What the originators of the tradition had in mind was *justified* war, the circumstances under which one would be justified in resorting to violence; such violence was never to be seen as other than an unfortunate necessity. The first premise of figures such as Augustine and Aquinas was that God intended that we should live in peace with justice, in a world without violence. Violence was only justified to right a wrong—that is, to bring us back to a world of peace-with-justice—and then only if it was undertaken in the right way, and with due regard to the conventional requirements of right intention, right authority (that is, as a public act rather than as a private

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<sup>1</sup> This charge has a long history: see Johnson, ‘Letting Slip the Dogs of War: Unlimited War as Historical Phenomenon and Ideal’ in Chapter 5 in this volume.

enterprise), and with the provision that it be effective, proportionate to the offence, with a reasonable chance of success and with protection for the innocent (Johnson 1985; Finnis 1996). A justified war should be fought with victory in mind, but such a victory would be moral only if the cause is just and the aforementioned limits on the use of force are adhered to.

This position was produced by theologians who were concerned with the saving of souls, but one of the most important originators of the tradition, Thomas Aquinas, was also an Aristotelian who believed that just war principles were based in reason, and this rather than the religious link as such is why the tradition has survived into the twenty-first century. Modern writers on the just war, such as James Turner Johnson, Paul Ramsey, and Michael Walzer, have adapted the tradition for modern conditions—quite radically in Walzer’s case—but the basic framework remains the same (Ramsey 1961; Walzer 2015; see also Johnson’s Chapter 5 in this volume, for a complementary discussion). Just war thinking stands between pacifism, the belief that force is always wrong, and realism, the belief that issues of right and wrong are irrelevant to such matters. Just war is about discrimination and the exercise of various kinds of judgement. In essence, just war thinking provides a set of questions that should be asked when violence is at issue and before victory in war can legitimately be sought.

In short, the just war tradition can mount a solid defence against its enemies. But the aim of this chapter is to suggest that the tradition is actually under greater threat from those who think of themselves as its critical friends. Over the last twenty-odd years a new group of thinkers have emerged from out of analytical political philosophy: thinkers who have taken the language of the tradition and turned it into a theory, by which they mean a set of answers rather than a set of questions. Acknowledging that what they are doing is some way away from both Thomas Aquinas and Michael Walzer, they sometimes refer to themselves as

revisionist just war theorists. In what follows the case will be made that far from, as they claim, making the tradition more relevant to modern conditions, they are actually weakening it, making it more vulnerable to those who are its declared enemies.

In the main body of the chapter the arguments of the revisionists will be examined, along with their relationship to the tradition. The charge will be made that revisionist thinking loses contact with the realities of warfare, leaves the notion of a just war vulnerable to critics both conservative and radical, and makes the notion of a moral victory or indeed any kind of victory impossible of achievement. By way of a prologue, in order to introduce some important distinctions that revisionist just war theory blurs, the chapter will begin with an account of two ideal types, that of the *soldier* and the *police constable*.<sup>2</sup> The way in which these two—in principle very distinct—ideal types have been conflated in recent years is a good way of illustrating what is at stake in the project of defending the just war tradition from its false friends.

## THE CONSTABLE AND THE SOLDIER

As will be apparent, actual police officers and soldiers are rarely adequately described by the idealizations employed here, but the latter serve a purpose nonetheless. English examples will be used; some other common law countries exhibit similar characteristics, but Continental systems less so. In France, for example, the *Compagnies Républicaines de Sécurité* (CRS) are a paramilitary force that fall between the two ideal types set out here. Still, this parochialism allows important distinctions to be made.

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<sup>2</sup> As an aside, it is useful to note that Amy Eckert (Chapter 12 in this volume) treats a third category of warrior or combatant, the mercenary.

In England, all police officers are ‘constables’ irrespective of their rank in the police force; the Office of Constable is actually medieval in origin but in its modern form it was created by Sir Robert Peel’s Metropolitan Police Act of 1829. Constables are sworn officers; the wording of the oath is as follows:

I do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.

To quote a Police Federation pamphlet of 2015:

The Office of Constable means a police officer has the additional legal powers of arrest and control of the public given to him or her directly by a sworn oath and warrant. These are not delegated powers simply because they have been employed as an officer and officers are not employees, they are not agents of the police force, police authority or government. Those who hold the Office of Constable are servants of the Crown. Each sworn constable is an independent legal official and each police officer has personal liability for their actions or inaction.

Personal responsibility and liability is central to the Office of Constable, and the terms under which violence may be used by the police follow from these principles. ‘Upholding fundamental human rights’ is central to the oath of office, and although the police have powers of arrest and control which if necessary they may exercise using minimum force,

deadly force may be used only in self-defence or in defence of the public, and constables are personally liable for whatever action is taken.

Contrast the Office of Constable with the role of the soldier, as set out in *Queen's Regulations for the Army* (1975); first, the oath of allegiance is very different from that sworn by a constable, thus:

I swear by almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors and that I will as in duty bound honestly and faithfully defend her Majesty, her heirs and successors in person, crown and dignity against all enemies and will observe and obey all orders of her Majesty, her heirs and successors and of the generals and officers set over me. (Chapter 3.15)

Allegiance is to the sovereign with no reference to principles such as human rights, and with respect to conduct the key term, indeed the only term, is obedience. Soldiers are not independent legal officials, they are members of a team who must obey the orders of those set over them. Whereas constables may use lethal force only in self-defence or the defence of others, chapter 3 of *Queen's Regulations* states that:

Soldiers are required to close with the enemy, possibly in the midst of innocent bystanders, and fight; and to continue operating in the face of mortal danger. This is a group activity, at all scales of effort and intensities. Soldiers are part of a team, and the effectiveness of that team depends on each individual playing his or her part to the full. (Chapter 3.5)

Discipline is central to army operations, and obedience to orders is central to the operation of the military, but this does not mean that any order must be carried out: 'All soldiers are subject to the criminal law of England wherever they are serving . . . When deployed on

operations soldiers are subject to international law, including the laws of armed conflict and the prescribed rules of engagement, and in some cases local civil law' (chapter 3.18).

In this conventional understanding of the role of the soldier, it is the Law of Armed Conflict (LOAC)—an umbrella term including the Hague and Geneva Conventions and the Protocols attached thereto—and the prescribed rules of engagement that regulate conduct. Only 'in some cases' is local civil law involved, although English criminal and civil law applies, which as we will see in every section below, poses potential problems.

In summary, a constable is an independent actor, personally responsible for his or her actions and subject to domestic law, including human rights law. A soldier is a team player, bound to follow lawful orders, lawful in this context being defined primarily by the LOAC. These differences are starkly illustrated when the issue of 'victory' is raised. Victory is the *raison d'être* of the soldier, whether this is achieved by actual fighting or by the threat of the use of force, whereas the *raison d'être* of the constable is the preservation of peace, tranquility, and the opportunity for all to enjoy their rights.

## **WARRIOR COPS AND COP WARRIORS**

Both of these idealizations have come into question recently, most obviously in the case of the role of the constable in the context of the policing of demonstrations and the emergence of Special Weapons and Tactics (SWAT) teams and, in the UK, special firearms units, such as the Metropolitan Police's SC&O19. The notion of individual responsibility is difficult to sustain when large numbers of police with shields, batons, and possibly water cannons are deployed, and SWAT teams are required to operate precisely as teams rather than as individuals. This development has become a source of concern to the police themselves and to observers. Consider, for example, an article that appeared in the *Wall Street Journal*



(hardly a newspaper given to bleeding heart liberalism) on 7 August 2013, ‘The Rise of the Warrior Cop: Is It Time to Reconsider the Militarization of American Policing?’ (Balko 2013) and a similar article in the US edition of *The Economist* on 22 March 2014, ‘Cops or Soldiers? America’s Police Have Become Too Militarized’ (Anon 2014).

These developments cause concern but it is worth noting that even harsh critics of the militarization of the police acknowledge that there are real-world problems that lie at the root of the changes. It is clear that the kind of unrest seen in Ferguson, Missouri in August 2014 or in the London riots of August 2011 cannot easily be policed by the kind of lone operators envisaged by the classical account of the role of the constable. Similarly, the rise of gun crime in major British cities means that some kind of SWAT force is needed. The question is, how much of the old notion of the role of the police constable can be preserved under these new conditions? Opinions differ on this, but few deny that there are new conditions.

The situation is rather different for the other side of the medal, which, adapting the terms of the *WSJ* and the *Economist*, we might call ‘the rise of the cop warrior’ or ‘western armies have become too civilianized’. To a certain extent this may reflect the employment of troops in peacekeeping operations and in the kind of policing operations that follow humanitarian interventions (see Chapter 10 by Mills in this volume), but for the most part other factors are involved. Whereas police tactics have changed because of the nature of the problems the police have faced, changes in the way Western European militaries operate have been generated not in response to enemy tactics, but in response to domestic developments within the homeland and to the writings of political philosophers. These developments reflect a different conception of the ethics of war to that set out in the just war tradition and in such documents as the *Queen’s Regulations*. On this new conception, individual rights are paramount, and the LOAC is being required to give way to international human rights legislation. Ironically, just at the point where the rise of the warrior cop is undermining the

individualism of the constable, the process is going in reverse for the soldier, with serious implications for the possibility of any kind of victory in war.

## REVISIONIST JUST WAR THEORY

It would be a mistake to imagine that this shift has taken place simply in response to developments in political philosophy, and relevant other factors will be examined later, but nonetheless the work of the revisionist just war theorists is worth exploring. In simple terms, these theorists are a group of scholars who approach the subject from the perspective of liberal individualist analytical political theory. The core assumptions of this general approach to political theory are, first, that problems are there to be solved and can be solved if enough brainpower is devoted to the task, and second, that the rights of individuals are central to any such solution. Both assumptions are somewhat at right angles to classical just war tradition, hence the revisionist tag associated with this work. To return to a point made in the introduction, the just war *tradition* presents a series of questions concerning the use of force and violence which invite the exercise of judgement. Just war *theory* as espoused by the revisionists attempts to arrange these questions into a series of law-like propositions which will provide answers, that is, will tell us how we should behave (Brown 2013). Early statements of this approach include David Rodin's *War and Self-Defence* (2002) which contests the notion that states have a right to defend themselves from attack, and Jeff McMahan's *The Ethics of Killing* (2002) which took war as simply one element of a larger problem about killing, but perhaps the most substantial and influential work is McMahan's *Killing in War* (2009) which contests the just war tradition on a number of points, most

famously arguing against the view that combatants should be treated as moral equals. Other major writers include Cecile Fabre (2012), Henry Shue,(2016) and Seth Lazar (2015).<sup>3</sup>

The central feature of the new thinking is a refusal to conceptualize war as a *collective* enterprise; instead, the revisionists argue, war has to be understood in terms of individual responsibility at all levels, from the high command down to the frontline soldier. As a general proposition, this stance involves replacing the idea that there is a specific body of laws associated with war—the LOAC or International Humanitarian Law—by an assertion of the universal scope and authority of International Human Rights Law. Such a substitution has dramatic consequences. In order to show how dramatic, it may be useful to set out some conventional positions which are supported by International Humanitarian Law and, for the most part, by arguments drawn from the just war tradition but opposed by the revisionists.

Conventionally, both the just war tradition and the LOAC are concerned with, and distinguish between, what is usually called *jus ad bellum* (just resort to war) and *jus in bello* (just conduct of war). The division of just war thinking into these two categories is relatively recent but quite well established nowadays. The clearest expression of the distinction between the two can be found in Michael Walzer’s highly influential *Just and Unjust Wars* (2015), where he identifies and distinguishes the ‘theory of aggression’ from the ‘war convention’. Walzer’s theory of aggression argues that members of international society are entitled to defend their political and physical integrity, and thus that attacks on the same, except in very limited legal and moral circumstances, constitute a crime and justify a war of self-defence. However, on his account, the ‘war convention’ states that the combatants in such a war, whether on the side of the aggressor or the defender, should be treated as morally equal with the same rights.

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<sup>3</sup> See Johnson’s Chapter 5 in this volume, for related discussions of revisionist just war theory.

As will be discussed later, Walzer's position is somewhat at odds with the medieval just war tradition, but it is broadly supported by modern international law. The UN Charter outlaws the use of force (Article 2[4]) except in self-defence (Article 51) or as directed by the Security Council, and self-defence is recognized by most conventional just war thinkers as the most obvious example of a just cause for war; indeed, so obvious that it is rarely discussed. As to the war convention, the LOAC extends protection to all combatants and non-combatants irrespective of the alleged justice of their cause; the same rules apply to all. The just war tradition is a little less committed to this principle (again, see later in this section but there are good pragmatic and moral reasons for adhering to it. Pragmatically, it is clear that if either side in a conflict could waive the rules on the basis that their opponent was the wrongdoer, then in effect there would be no rules, to the detriment of troops on both sides. The moral case for following the war convention is equally strong: most combatants in a large-scale war are likely to be conscripts, not given a choice whether or not to fight. Such soldiers are responsible for their conduct in the war, but the conventional approach acquits them of responsibility for the actual war.

Revisionist just war theory is critical of both the theory of aggression, the current version of *jus ad bellum*, and the moral equality of combatants, the current core principle of *jus in bello*, predictably criticizing the international legal status quo and the just war tradition from an anti-collectivist position which focuses on the rights and responsibilities of the individual. David Rodin's *War and Self-Defence* presents the core argument with respect to *jus ad bellum*, later extended by other just war revisionists (Rodin 2002; Fabre and Lazar 2014). From the revisionist perspective states do not have an unqualified right of self-defence. Such a right is conditional; only just societies have the right to defend their political and territorial integrity. Only just communities are entitled to defend themselves, and even then, attacks on the sovereignty or territorial integrity of a state are not in themselves justifications for war;

they are such if, and only if, individual rights are violated. So, for example, a bloodless invasion would not count as an act of aggression.

Jeff McMahan's *Killing in War* is the most important revisionist work on *jus in bello*, along with a collection on *Just and Unjust Warriors* edited by David Rodin and Henry Shue (McMahan 2008, 2009; Rodin and Shue 2008). Here the revisionist argument is that combatants (and non-combatants) are rights-holders, but that they hold different rights, depending on the justice of their cause; there is no moral equivalence between combatants fighting a just war and combatants in an unjust war. Combatants in an unjust cause are not entitled to act aggressively or to defend themselves and the fact that they were conscripted into the army and may not share the beliefs of their leaders is irrelevant in the context of their moral responsibility. However, they are still rights-bearers who possess the right to life, therefore they can only be killed in self-defence by just combatants who *do* have the right to defend themselves. The model here is very much that of domestic policing where the police have powers of arrest and may use necessary force if they are resisted; the criminal may not resist arrest but may not be subjected to violence in the event of non-resistance. This makes sense in a domestic context but produces somewhat surreal scenarios on the battlefield. In Afghanistan, for example, successive British governments were unwilling to describe the conflict as a war (and therefore subject to the Laws of Armed Conflict), instead regarding British soldiers as present in a police role, supporting the civil power; the result was that soldiers were obliged to act as live bait to provoke the enemy into attacking them and thus legitimating a violent response (Owen 2012). The notion that soldiers might be required to engage the enemy in a proactive way, and thereby contribute towards achieving a victory, went by the board.

The revisionist positions are counter-intuitive, but, of course, that does not make them wrong. Still, there are compelling reasons to be concerned at the development of revisionist

just war theory and, in particular, its impact on western armies. But before elaborating the case against revisionist theory, it may be helpful to say a little more about the relationship between this version of just war theory and the tradition; this will raise one or two issues that will form the basis for the later critique.

## REVISIONIST VS CONVENTIONAL JUST WAR

### THEORY

As suggested above, revisionist just war theory is a product of liberal, post-Rawlsian analytical political philosophy, but it also has an interesting relationship with conventional just war thinking, in particular with the work of Michael Walzer. Walzer is the central opponent of the revisionists, the figure that they define themselves against. His liberal communitarianism stands against their liberal individualism, his account of the theory of aggression is, from their point of view, excessively statist, and his account of the moral equality of combatants denies what they regard as the central significance of individuals and the choices they make. These are substantive issues, but it is also the case that Walzer's style of reasoning is one that the revisionist just war theorists reject. Walzer himself has commented on this in the context of his interactions with friends and colleagues at Harvard in the 1970s. He remarks: 'I couldn't breathe easily at the high level of abstraction that philosophy seemed to require ... And I quickly got impatient with the playful extension of hypothetical cases, moving farther and farther away from the world we all lived in' (*Imprints* interview, 2003, reprinted in *Walzer* 2007). Playful is not the word that immediately comes to mind when looking at, say, Jeff McMahan's hypothetical cases in *Killing in War*, but they certainly move a long way away from the world we live in.

Predictably, if the revisionists are critical of Walzer, Walzer certainly returns the compliment. His most substantial critique of the revisionists appears in the Afterword to the fifth edition of *Just and Unjust Wars*, but the flavour of his response is nicely caught in a 2012 online interview with Nancy Rosenblum, where he remarks that for the revisionists, ‘the subject of just war theory is just war theory [whereas] I think the subject matter of just war theory is war’ (Rosenblum 2012)—a criticism that will be returned to later in this chapter.

Still, arguably, Walzer opens himself up to the critique of the revisionists by basing his approach on individual rights which he argues are realized via political communities. The rights of these communities depend on their protection of individual rights, such that ‘[The] moral standing of any particular state depends on the reality of the common life it protects and the extent to which the sacrifices required by that protection are willingly accepted and thought worthwhile’ (Walzer 2015: 54). It is easy to see how this approach can be turned against him: he stands for the rights of political communities, but the theory of aggression he presents takes states as the referent object and it is by no means clear that the majority of states can actually be seen as protecting a common life in the way that his approach requires. The revisionists have a point when they say that by basing their account on the rights of the individual they avoid the implausible attribution of moral value to the state, even though their approach may well throw up other implausibilities.

The revisionists are not much concerned with the medieval writers on just war. Walzer is a target much closer to home and with whom they share quite a lot; this is certainly not the case where Catholic theologians of the thirteenth century are concerned. Still, if they were to take an interest, they would find that in some respects their own work fits rather better with the thinking of Augustine and Aquinas than it does with that of Walzer or modern international lawyers. The medievals were also concerned with individuals and their motivations, they were not remotely statist or communitarian, they did not regard self-

defence as the epitome of a just cause, and they did not accept the moral equality of combatants. On the face of it, they seem to be proto-revisionists, closer to Rodin, McMahan, et al. than to Walzer. The points of contact here are obvious, but there are also major differences: the key point is that medieval just war thinking exists in, and cannot be divorced from, a theological framework. Aquinas and the scholastics were concerned about the fate of individual souls, which is why, for example, so much attention was paid to the principle of 'right intention'; what individuals did was in some ways less important than why they did it. Walzer explicitly will have none of this; aggression is an international crime and we don't worry about the motivations of those who respond to it unless those motivations undermine the response. Revisionists would, I think, have to agree.

Still, medieval just war thinkers did not focus on self-defence in the way that non-revisionist modern writers tend to; they believed that a just cause involved righting a wrong. Self-defence might come into this category, but it was not the be-all or end-all of just cause. Indeed, Aquinas barely mentions self-defence, simply taking for granted that individuals are entitled to defend themselves, while focusing his attention on more contestable issues (Finnis 1996). Another point of contact with the revisionists is that medieval thinkers certainly believed it important to distinguish between those warriors who were fighting for a just cause and those who were not, and equally certainly they rejected the idea of the moral equivalence of combatants. We can use our God-given capacity to reason and exercise judgement in order to form a view as to where justice lies and this should guide our approach to the judgement of the responsibilities of combatants. The revisionists would agree, but for medieval thinkers this is ultimately a question for God and God alone to decide, either in the Last Judgement or on this earth.

Here we see the all-important difference between the revisionists and the medievals. In effect, revisionist just war theorists substitute the judgement of political philosophers such as



themselves for the judgement of God. They will decide where justice lies, and which soldiers should enjoy the advantage of being declared just combatants. This is, of course, problematic: unlike God, political philosophers have the advantage that no one doubts that they actually exist, but their claim to infallibility is rather less well-founded.

## **CRITIQUING REVISIONIST JUST WAR THEORY:**

### **THE IMPOSSIBILITY OF A MORAL VICTORY**

This account of the revisionists has already contained implicit, and sometimes explicit, criticisms which now need to be pulled together. There are two points here which are basic and which address the underpinnings of revisionist just war theory. First, war is a collective enterprise that cannot be understood in liberal individualist terms. The idea that all social behaviour can be understood in terms of the behaviour of individuals is something that revisionist just war theorists share with other analytical political theorists and mainstream economics, and is subject to the same critiques that those disciplines attract.

Second, revisionist just war theory relies on implausible assumptions about the capacity of the theorist to make authoritative judgements as to the justice of particular causes or particular tactics. The revisionist just war theorist believes that with enough concentrated brainpower the justice of a cause can be accurately assessed, just as the Rawlsian believes that sufficient thought can tell us which arguments are reasonable and which can legitimately be excluded from an 'overlapping consensus' (Rawls 2005). This assumes too much; human beings do not possess the means to achieve that kind of certainty. The just war tradition, rooted in a Christian adaptation of Aristotelian *phronesis*, stresses the centrality of judgement but does not hold out the possibility of certainty. Once again, it is worth stressing that

classical just war thinking provides questions, while revisionist just war theory purports to provide answers.

These two, as it were, generic criticisms feed into the specific content of revisionist just war theory. It is indisputable that, as the Michael Walzer quote presented earlier indicates, this theory loses contact with the realities of war. One of the most difficult challenges faced by conventional just war thinking in the modern era is the need to find morally acceptable ways of fighting enemies who refuse to accept the notion of rules and conventions; those who will not reciprocate attempts to exercise restraint. The application of revisionist principles to western militaries would make a difficult task more or less impossible; the opposition to individual rights exhibited by the Taliban, Al Qaeda, or ISIS makes them impervious to the human rights culture prized by the revisionists, and the rules that the latter would like to extend to all military forces will actually only affect those of the West.

There is, I think, a wider point here which relates directly to the possibility of a victory, let alone a moral victory under any circumstances and not just those of asymmetric warfare. It is quite evident that it would be next to impossible to fight and win a war that satisfied all the requirements of the revisionists (see also Patterson's Chapter 7, this volume). The first requirement of a moral victory is, surely, a just cause and it is difficult to discern what kind of cause would be regarded by the revisionists as fitting this bill. The revisionists may be right to think that self-defence is an inadequate proxy for a just cause, but they clearly would not wish to follow the more expansive account of just cause favoured by, for example, James Turner Johnson (2001, 2005). On the contrary, their aim in undermining the idea that self-defence automatically counts as a just cause is not to widen but to limit further the circumstances under which any cause could be considered just.

Assuming that, by some quirk of fate, a just cause that would satisfy the revisionists could be found and therefore a war could be justly undertaken, the kind of *in bello*

restrictions that they would impose would almost certainly rule out the possibility of victory. An army that is unable to take the initiative, that may not close with the enemy, that is obliged to recognize the right to life of its opponents, could hardly be expected to achieve victory. The best that could be hoped for, if both armies were fighting with the same revisionist restraints, would be a pointless stalemate. And this conclusion can be reached even before bringing in some of the other factors that restrict an army obliged to take onboard the full set of domestic and international human rights. Here, the aforementioned non-philosophical factors that promote the civilianization of western militaries come into play. The 'health and safety' culture of Western European armies already produces bizarre results; witness the way in which British coroners conduct inquests into the deaths of soldiers in Afghanistan and apply criteria that take no account of battlefield conditions. For just one example, a coroner in Salisbury investigating the deaths of three soldiers in a road accident in Afghanistan commented, 'The speed of the Ridgeback was a contributory factor in terms of the collision as no evasive action could be taken. Another contributory factor was the inconspicuous presence of the unlit and darkly coloured ANP [Afghan National Police] patrol vehicle when set against the dark background' (Taylor 2015). The notion that driving fast and as inconspicuously as possible might be dangerous on country roads in Wiltshire but wholly appropriate in Afghanistan seems not to have occurred to the coroner. The civilianization of the military is clearly not only the product of revisionist just war theory, albeit the latter provides the intellectual justification for the phenomenon.

The fact that it would be virtually impossible to fight and win a just war under revisionist terms is a conclusion that the revisionists themselves would probably welcome. The argument would be that if a war could not be fought justly, as they define fighting justly, it ought not to be fought. Revisionist just war theory is, when the chips are down, essentially pacifist; this loses contact with the central aim of the just war tradition, which is to

discriminate between cases. There is a perfectly good set of arguments in favour of pacifism, and therefore no need to approach this position from the direction of the just war tradition; better to preserve the latter for arguments in favour of discrimination. Of course, if everybody adopted revisionist ideas the problem of war would disappear, but it is clear that this is not likely to happen anytime soon. The replacement of the LOAC with Human Rights Law is taking place in Western Europe, but nowhere else; a situation that generates obvious dangers. Interestingly, at the end of *Killing in War*, McMahan more or less acknowledges the dangers here. In a book dedicated to undermining the moral equivalence of combatants and the immunity of non-combatants—the guiding principle of the LOAC—his concluding argument acknowledges that until something better is generally agreed, the LOAC should be adhered to. As he puts it in the final sentence of the book, ‘while absolute civilian immunity is false as a moral doctrine, it remains a legal necessity’ (McMahan 2009: 235).

A final substantial critique of revisionism relates back to a charge which is often directed at conventional just war thinking, but which actually fits revisionist just war theory rather better. This is that just war thinking encourages a Manichean view of the world. Carl Schmitt is the strongest voice here; his position, expressed most clearly in *The ‘Nomos’ of the Earth*, is that to describe a war as ‘just’ encourages a self-righteous fury which will demonize the enemy and stand in the way of establishing limits in warfare. Every war becomes a total war, because every war is a war between good and evil, and with evil there can be no compromise (Schmitt 2003; Brown 2007). This is strikingly similar to the argument put forward, in different terms, by some modern students of ‘critical security studies’ who write of just war theory as delegitimizing ‘the Other’, encouraging a Manichean worldview, and so on (Booth 2000). Just wars allegedly justify escalation, degrade opponents, encourage militarization and self-righteousness, stimulate delusion and legitimize war. This represents a fundamental misreading of the tradition, but a reasonable critique of revisionist just war theory. The

medieval just war thinkers were always clear that justice was ultimately a matter for God to decide, and that reason and adherence to the Golden Rule mandated proportionality and the protection of the innocent. Total war is not part of medieval just war thinking. Modern just war thinkers such as Michael Walzer endorse the LOAC which places limits on the conduct of combatants. Insofar as the Schmitt/Booth critique has any merit it is with respect to the revisionists whose insistence on distinguishing the just combatant from the unjust could precisely be said to encourage the demonization and degrading of opponents.

## CONCLUSION

There is a widespread consensus—from the libertarian right to the liberal left—that the militarization of the police constitutes a problem, and there is general agreement that a return to something like the notion of community policing in which the police are part of the communities they patrol and rely on support from civil society rather than brute force would be desirable. Such is the role for the police envisaged by the Office of Constable and it is generally agreed that it would be good to get back to a world where such an approach to policing is possible. No such consensus surrounds the civilianization of the military although senior military figures in the UK are clearly seized of the issue; see, for example, the letter to the *Times* on 7 April 2015 from five former Chiefs of the Defence Staff which ends thus:

We urge the government to recognise the primacy of the Geneva Conventions in war by derogating from the European Convention on Human Rights in time of war and redefining combat immunity through legislation to ensure that our serving personnel are able to operate in the field without fear of the laws designed for peacetime environments. The military is neither above nor

exempt from the law, but war demands different norms and laws than the rest of human activity. (Guthrie et al. 2015)

But it is precisely this latter sentiment—that war demands different norms and laws than the rest of human activity—that is denied by the revisionists, that more general trends in western society make difficult to sustain, but that must be defended if the notion of victory in war is to have any meaning. It may be that there are roles for a military that are compatible with laws designed for a peacetime environment. Peacekeeping operations where there actually is a peace to keep, unlike the situation in Afghanistan, are an obvious example where a civilianized military, acting precisely like constables rather than soldiers, may be appropriate (see Chapter 10 by Mills). But not every conflict will be manageable in this way; sometimes war will be justified, and when it is, the defeat of an enemy will be necessary. The notion of a moral victory is not one that can be set aside, and it is not only the generals who should be worried about the operational implications of revisionist just war theory and the civilianization of Western European militaries.

## References

Anon. 2014. ‘Cops or Soldiers? America’s Police Have Become Too Militarised’, *The Economist*, American edition, 22 March. Available online at <<http://www.economist.com/news/united-states/21599349-americas-police-have-become-too-militarised-cops-or-soldiers>>, accessed 18 May 2015.

Balko, Radley. 2013. ‘Rise of the Warrior Cop: Is It Time to Reconsider the Militarization of American Policing?’, *Wall Street Journal*, 7 August. Available online at <<https://www.wsj.com/articles/rise-of-the-warrior-cop-1375908008>>, accessed 19 May 2015.

Booth, Ken. 2000. ‘Ten Flaws of Just Wars’, *The International Journal of Human Rights* 4: 314–24.

Brown, Chris. 2007. 'From Humanised War to Humanitarian Intervention: Carl Schmitt's Critique of the Just War Tradition', in Louiza Odysseos and Fabio Petito (eds), *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*. London: Routledge, 56–9.

Brown, Chris. 2013. 'Just War and Political Judgment', in Anthony F. Lang, Cian O'Driscoll, and John Williams (eds), *Just War: Authority, Tradition, and Practice*. Washington, DC: Georgetown University Press, 25–48.

Fabre, Cecile (2012) *Cosmopolitan War* Oxford: Oxford University Press.

Fabre, Cecile & Lazar, Seth eds. (2014) *The Morality of Defensive War* Oxford: Oxford University Press.

Finnis, John. 1996. 'The Ethics of War and Peace in the Catholic Natural Law Tradition', in Terry Nardin (ed.), *The Ethics of War and Peace*. Princeton: Princeton University Press, 15–39.

Guthrie, Field Marshall Lord, et al. 2015. 'Combat Zones', *The Times* Letters to the Editor, 7 April. Available online at <http://www.thetimes.co.uk/tto/opinion/letters/article4403459.ece>, accessed 18 May 2015.

Johnson, James Turner. 1985. *Just War Tradition and the Restraint of War*. Princeton: Princeton University Press.

Johnson, James Turner. 2001. *Morality and Contemporary Warfare*. New Haven: Yale University Press.

Johnson, James Turner. 2005. *The War to Oust Saddam Hussein: Just War and the New Face of Conflict*. Lanham, MD: Rowman & Littlefield.

Lazar, Seth (2015) *Sparing Civilians* Oxford: Oxford University Press

McMahan, Jeff. 2002. *The Ethics of Killing*. Oxford: Oxford University Press.

McMahan, Jeff. 2008. 'The Morality of War and the Law of War', in David Rodin and Henry Shue (eds), *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*. Oxford: Oxford University Press, 19–43.

McMahan, Jeff. 2009. *Killing in War*. Oxford: Oxford University Press.

Metropolitan Police Act. 1829. Available at

<<http://www.legislation.gov.uk/ukpga/Geo4/10/44/contents>>, accessed 18 May 2015.

Owen, Jonathan. 2012. 'British Soldiers Resort to "Baiting" Taliban to Beat Rules of Engagement', *The Independent*, 27 August. Available online at

<<http://www.independent.co.uk/news/uk/home-news/british-soldiers-resort-to-baiting-taliban-to-beat-rules-of-engagement-8082165.html>>, accessed 18 May 2015.

Police Federation of England and Wales. 2015. *The Office of Constable: The Bedrock of Modern Day British Policing*. Available online at

<[http://www.polfed.org/documents/The\\_Office\\_of\\_Constable\\_July15.pdf](http://www.polfed.org/documents/The_Office_of_Constable_July15.pdf)>, accessed 14 May 2017.

*Queen's Regulations for the Army*. 1975. Available online at

<<https://www.whatdotheyknow.com/request/223530/response/550986/attach/4/QR%20Army.pdf>>, accessed 18 May 2015.

Ramsey, Paul. 1961. *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* Durham: Duke University Press.

Rawls, John. 2005. *Political Liberalism*. Expanded edition. New York: Columbia University Press.

Rodin, David. 2002. *War and Self-Defence*. Oxford: Oxford University Press.

Rodin, David and Henry Shue (eds). 2008. *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*. Oxford: Oxford University Press.



Rosenblum, Nancy. 2012. 'A Conversation with Michael Walzer'. Available online at <https://www.youtube.com/watch?v=TvpnmmlO38>, accessed 18 May 2015.

Shue, Henry (2016) *Fighting Hurt: Rule and Exception in Torture and War* Oxford: Oxford University Press.

Schmitt, Carl. 2003. *The 'Nomos' of the Earth in the International Law of the 'Jus Publicum Europaeum'* New York: Telos Press.

Taylor, Joshua. 2015. 'Mersey Soldiers Afghanistan Deaths Lead to Coroner Safety Call', *Liverpool Echo*, 24 April. Available at <http://www.liverpoolecho.co.uk/news/liverpool-news/mersey-soldiers-afghanistan-deaths-lead-9113970>, accessed 20 May 2015.

Walzer, Michael. 2007. *Thinking Politically*. New Haven: Yale University Press.

Walzer, Michael. 2015. *Just and Unjust Wars*, 5th edition. First published 1977. New York: Basic Books.