

COMBATANTS, MASCULINITY, AND JUST WAR THEORY

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OVER the last several decades, the ethics of war has grown into a major subfield in philosophy. At least five major handbooks have been published on the subject in recent years.¹ There are journals, professional societies, newsletters, and major annual conferences in the United States, Europe, and Asia devoted to the topic. Over roughly the same period, there has developed a large literature spanning gender studies, political science, international relations, legal studies, and philosophy on the profound and complex relationship between gender and war.² This literature not only explores how gender can explain the occurrence and conduct of war. It also explores ways in which gender can *legitimate* the occurrence and conduct of war. This legitimization is sometimes thought to occur by grounding—explicitly or implicitly—the very moral and legal principles used to justify and criticize war itself. Partly because of this recognition of the connection between gender and the normative theory of war, there has also developed a large body of feminist theory calling, to varying degrees, for reconsideration of the ethics and law of war.³

Despite the obvious connections between these literatures, the conventional ethics of war literature and the literature on gender and war have remained largely independent. The mainstream ethics of war has not meaningfully

1 Allhoff, Evans, and Henschke, *Routledge Handbook of Ethics and War*; Johnson and Pattison, *The Ashgate Research Companion to Military Ethics*; Lucas, *Routledge Handbook of Military Ethics*; May, *The Cambridge Handbook of the Just War*; and Frowe and Lazar, *The Oxford Handbook of Ethics of War*.

2 See Tickner, *Gender in International Relations*; Elshtain, *Women and War*; Gardam, “Women and the Law of Armed Conflict”; Enloe, *Maneuvers*; Goldstein, *War and Gender*; Braudy, *From Chivalry to Terrorism*; Hutchings, “Making Sense of Masculinity and War”; Kinsella, *The Image before the Weapon*; Digby, *Love and War*; Mann, *Sovereign Masculinity*; and Sjoberg, *Gender, War, and Conflict*.

3 See Ruddick, *Maternal Thinking*; Peach, “An Alternative to Pacifism”; Elshtain, *Women and War*; Gardam, “Women and the Law of Armed Conflict”; Young, “The Logic of Masculinist Protection”; Sjoberg, *Gender, Justice, and the Wars in Iraq*; Held, *Why Terrorism Is Wrong*; and Robinson, *The Ethics of Care*.

engaged with the question of gender and its influence on war. Consider that of the five recent handbooks on the ethics of war cited above, only one, *The Routledge Handbook of Military Ethics*, contains chapters (just two out of thirty-seven) that deal with issues of gender and sexuality by way of discussing the inclusion of women and homosexual or bisexual people in the armed forces.⁴ Still, none of these handbooks engages meaningfully with the gender and war literature, and terms such as “feminism,” “gender,” “masculinity,” and “sex” are missing from their indexes (although, notably, the index of the above *Routledge Handbook* has an entry on “sexism”). At the same time, the literature on gender and war has not been deeply engaged with recent ethics of war literature. While the gender and war literature has been occupied with major historical figures in just war theory, the myriad debates that have sprung up in analytical just war theory in the twenty-first century—and which currently constitute the mainstream of the field—have not been of much interest.

This article aims both to contribute to each of these literatures and to show at least one way they interconnect. I will argue that there is an important and underappreciated relationship between the concept of the moral equality of combatants and masculinity. The doctrine of the moral equality of combatants holds that combatants in war have an equal right to attack and kill one another regardless of the justice of their wars from the perspective of *jus ad bellum*. In other words, even if the combatants on one side are fighting an unjust war and the combatants on the other side are fighting a just war, all the combatants are equally morally permitted to fight. I will call the challenge of defending permissive views of attacks on combatants in war such as the moral equality of combatants the *external problem* of the soldier in just war theory.

While it has been widely discussed, I will argue that the basis of the moral equality of combatants in just war theory has been misunderstood in the ethics of war literature. Rather than being based on a peculiar view of the ethics of interpersonal self-defense, the moral equality of combatants is based on a view of the inferior political standing of soldiers vis-à-vis their political authorities. Thus, the moral equality of combatants treats combatants as soldiers who have a subordinate political status. However, at the same time they attribute this political standing to soldiers, the theories of political justice that canonical just war theorists advocate undermine that standing. I call this the *internal problem* of the soldier in just war theory.

To mitigate the internal problem, these just war theorists appeal, sometimes explicitly and sometimes implicitly, to a presupposed gender ontology that prescribes the role of self-sacrificial military servant to men on the basis of

4 Lucas, *The Routledge Handbook of Military Ethics*.

their sex. In other words, the combatant in just war theory has been conceived of as a man who is bound to fight for his community and family on command because of his sexual nature. This gender ontology solves both the internal and external problems: by conceiving of the combatant as effectively a natural soldier, combatants both are expendable in war by their own governments and have a right to attack their enemies on the battlefield—they can be ordered into battle and kill their opponents not by virtue of their free choices but by virtue of who they are. If this is true, then the ethics of war literature should be much more concerned with the gender and war literature and make common cause with those who have treated the problem of the political standing of soldiers as a philosophical priority.

The idea of the moral equality of combatants has been the subject of intense debate in the field of just war theory over the last several decades. The debate has cleaved much of the ethics of war community into two camps—traditionalists and revisionists.⁵ Traditionalists argue that the moral equality of combatants is basically sound. Revisionists, on the other hand, argue that the doctrine is false and, instead, that only combatants fighting in a war that is justified (i.e., meets the standards of *jus ad bellum*) are morally permitted to fight, while combatants fighting in a war that is unjustified have no moral permission to fight. The debate between traditionalists and revisionists has tended to treat the moral equality of combatants as originating in an implausible view of the ethics of interpersonal violence. On my reading of the tradition, this is wrong. In fact, the moral equality of combatants originates in a gender ontology that treats the male members of political communities as bound by nature to engage in self-sacrificial violence in war. Gender is therefore deeply entwined with the moral equality of combatants, the issue that is so central to the mainstream ethics of war literature.

Much literature on the relation between gender and war has already shown that masculinity has been foundational to the construction of the duties and rights of soldiers. This article is deeply indebted to these commentators, especially Jean Bethke Elshtain, Lucinda J. Peach, and Helen Kinsella. My argument contributes to this literature by showing, first, how masculinity relates to a topic of great interest to recent ethics of war scholarship—the moral equality of combatants—and, second, that there are notable appeals to masculinity in the just war tradition to ground the duties and rights of soldiers that have gone unnoticed in the gender and war literature.

This article is divided into three parts. The first section introduces the internal and external problems of the soldier by examining the debate over the moral equality of combatants and showing how, contrary to conventional readings, it

5 See Lazar, “Just War Theory.”

is based on a particular view of the domestic political standing of soldiers. This section also explains the tension between the political standing of soldiers and canonical just war theorists' visions of political justice. The second section aims to uncover the ways in which just war theorists mitigate the problem of justifying the political status of soldiers by appealing both overtly and covertly to gender and argues that this solves both the internal and the external problems. Last, I conclude that an urgent challenge for the ethics of war is to rethink the rights and duties of soldiers at both the international and domestic levels. In particular, we need to grant members of the military basic civil liberties domestically and recognize greater restrictions on attacks against combatants internationally. These goals can only be accomplished once we recognize the pernicious ways in which gender continues to lead us to reduce the people in military service to their office.

1. THE SOLDIER AS A PHILOSOPHICAL PROBLEM

Conventional military ethics conceives of soldiers as having a relatively diminished moral standing. This is evident in at least two places. One—the external problem—is the permissive attitude taken toward attacks against combatants in war. I call this the external problem because it is a problem regarding the treatment of soldiers representing foreign or external political societies in war. The other—the internal problem—is the subordination of military servicemembers within their domestic armed forces and the denial of their basic civil liberties, especially their right to self-preservation. I call this the internal problem because it is a problem regarding the treatment of soldiers within their own political society. I refer to both as problems because, as I will contend, the prominent arguments for them are quite weak and it is unclear how they can be persuasively defended. In this section, I will examine both of these problems and argue that they are connected in the sense that the political subordination of military servicemembers is the source of the permissive view of killing combatants in war in the just war tradition.

1.1. *The External Problem*

One of the most important constraints on conduct in war is the prohibition of all deliberate attacks on noncombatants. One may, according to the doctrine of double effect, subject noncombatants to the risk of unintentional harm in certain circumstances. Nevertheless, the immunity of noncombatants to deliberate harm is a bedrock principle of military ethics.⁶

6 While some revisionist just war theorists have sought to undermine the immunity of noncombatants as such at the moral level, it is unclear to what extent they intend their moral assessments to alter conventional military practice and law. Jeff McMahan, for instance,

The conventional view of the status of combatants in war is much different. It is often claimed that while noncombatants are immune to intentional attack, combatants are generally fair game. Of course, wounded or captured combatants regain immunity as well as other positive rights. There are also prohibitions on the use of certain weapons used against combatants. But other than that, the law and conventions of war offer little or no further restrictions on harming combatants.⁷ According to this view, the right to kill a combatant is not limited by the reasons for the combatant's enrollment in the armed forces, the justice of the combatant's cause, or whether they are currently engaged in combat. 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."⁸

This is an astonishingly permissive vision of the ethics of killing in war. Killing combatants is unconstrained by the principles of necessity and proportionality or the goal of achieving a peaceful resolution to the conflict. Regardless of their cause, personal motivations, or their present activity, combatants are legitimate targets. If they are not wounded or actively attempting to surrender, it appears combatants can be killed on sight. This view would seem to permit such scenes as the controversial "highway of death" in the 1991 Persian Gulf War.⁹

I have argued elsewhere that this view is expressed not just in law and conventions but also defended by canonical just war theorists such as Michael Walzer.¹⁰ As Walzer puts it, combatants in war "can be attacked and killed at will by their enemies."¹¹ While he may not consistently assert this view, in multiple works, Walzer describes the permission to attack combatants as a class-based

while highly critical of the idea that noncombatants as a group are not liable to attack, nevertheless concludes that the prohibition of attacks on noncombatants ought to remain in place as a practical matter. See McMahan, "The Morality of War and the Law of War."

7 See Blum, "The Dispensable Lives of Soldiers"; Ohlin, "Sharp Wars Are Brief"; and Haque, *Law and Morality at War*.

8 Blum, "The Dispensable Lives of Soldiers," 72.

9 On February 26–27, 1991, American-led coalition forces attacked large numbers of retreating Iraqi military personnel as they tried to escape Kuwait and enter Iraq. The estimates of how many people were killed vary widely from a few hundred to several thousand. In addition to allegations of indiscriminate attacks on civilians, the event is controversial because the destruction was arguably unnecessary given that the goal of the war was effectively achieved at the time of the attacks. For one account, see Atkinson, *Crusade*, chs. 16 and 17.

10 See Parsons, "Walzer's Soldiers."

11 Walzer, *Just and Unjust Wars*, 135–36.

permission tied to the combatant's status in the war, not their present activities, intentions, or strategic significance.¹²

But even if Walzer does apply the principles of necessity and proportionality to combatants, it is undeniable that he accepts the moral equality of combatants and its permission to attack combatants regardless of the justifiability of their cause. This is a strikingly permissive view of attacks on combatants in its own right. As has been pointed out by many revisionist commentators, this view permits violence against combatants that violates conventional restrictions on violence against people in other circumstances.

These revisionist critics have shown that one prominent argument Walzer offers in defense of the moral equality of combatants fails. The argument in question comes from his *Just and Unjust Wars*. He argues that all combatants are liable to attack because, as combatants, they are currently threatening their enemies. Whether they have just cause to threaten their enemies is not relevant. In Walzer's view, it is merely their threatening activity, whatever its cause, that makes combatants liable to be killed. As he says, "simply by fighting, whatever their private hopes and intentions, [combatants] have lost their title to life and liberty, and they have lost it even though, unlike aggressor states, they have committed no crime."¹³

As many revisionists have pointed out, this argument rests on an implausible view of liability to harm.¹⁴ In all other circumstances, it is highly counterintuitive to hold that a person loses their right not to be killed simply by threatening others. A police officer, for example, who resorts to force to stop a person committing assault does not thereby become liable to attack by the assailant. Even though the officer poses an immediate threat to the assailant, it seems obvious that the officer retains his right to not be attacked while the assailant does not. The divergent causes of their threatening behavior seem to explain their divergent entitlements. It is only when one poses an *unjust* threat to others that one can be liable to attack. Those who *justly* threaten others maintain their right to not be harmed.

These critics argue that, by extension, the moral equality of combatants is wrong. Only combatants engaged in unjust wars are liable to attack, whereas

12 In the preface to the second edition of *Just and Unjust Wars*, Walzer criticizes the treatment of combatants on the highway of death (see note 9 above) seemingly on the ground that the attacks were unnecessary. Despite such statements, there are numerous other passages where Walzer clearly does not apply necessity and proportionality to combatants. Some of these passages will be referenced in the subsequent discussion.

13 Walzer, *Just and Unjust Wars*, 136.

14 See McMahan, "Innocence, Self-Defense, and Killing in War"; and Rodin, *War and Self-Defense*.

combatants engaged in just wars are not liable to attack. Hence, combatants do not have an equal right to kill other combatants regardless of their cause.¹⁵

Moreover, these revisionist theorists have consistently argued that attacks on combatants in war must also be necessary and proportionate.¹⁶ As pointed out above, the legal view of the right to kill combatants is indifferent to the necessity, proportionality, and conduciveness to sustainable peace of attacks against combatants. According to this view, combatants are simply fair game. The above criticism of the moral equality of combatants only takes issue with the traditional view's insensitivity to the moral justifiability of a combatant's overall cause. But Walzer's argument, even if true, gives no reason to think that attacks against combatants must not be necessary, proportionate, and conducive to future peace.

In sum, it seems plausible to conclude that there is more to justifying an attack on persons than their mere participation in hostilities. An attack against a combatant could be unethical because they are doing no wrong or because it is unnecessary, disproportionate, or hinders a sustainable peace.

1.2. *The Internal Problem*

Critics of the moral equality of combatants have also been puzzled by another feature of traditional just war theory. In addition to the assertion of an equal right to kill between combatants, the traditional theory claims that combatants are not responsible for *jus ad bellum* but are responsible for *jus in bello*. This is sometimes called the *independence thesis* because it implies that *jus ad bellum* is logically independent of *jus in bello* in the sense that a war that violates *jus ad bellum* can nevertheless be fought in accordance with *jus in bello*.

Most commentators have taken the independence thesis to originate in Walzer's above defense of the moral equality of combatants.¹⁷ Because that argument justifies killing any threatening combatant regardless of their cause, it seems to make killing in war independent of the reasons for resorting to war, or *jus ad bellum*.

In fact, the independence thesis has a different origin. Appreciating its actual origin helps us to see the internal problem of the soldier and highlights the relationship between the internal and external problems. Foundational figures in the just war tradition, including Walzer, quite clearly state that soldiers, not simply combatants, are not responsible for *jus ad bellum* because of their

15 See Rodin, *War and Self-Defense*; McMahan, *Killing in War*; Frowe, *Defensive Killing*; Draper, *War and Individual Rights*; and Tadros, *To Do, to Die, to Reason Why*.

16 See Lazar, "Necessity in Self-Defense and War"; and McMahan, "Proportionate Defense."

17 See Rodin, *War and Self-Defense*; and McMahan, *Killing in War*.

prior obligations as occupants of peculiar social roles. Specifically, soldiers are obligated to fight in wars they are ordered to participate in by their legitimate political authority. This duty to obey can obligate soldiers to participate in wars even when those wars are unjust. Responsibility for *jus ad bellum* is thus divided between political authorities and soldiers—the authorities are obligated to abide by *jus ad bellum*, and soldiers are obligated to obey their authorities. Hence, a soldier could serve in an unjust war justly. If they were ordered to serve in a war that turned out to violate *jus ad bellum*, soldiers could still participate in that war and do nothing immoral.

Contrary to Walzer, most canonical just war theorists allow for exceptions to the soldier's responsibility to follow *jus ad bellum* decisions by their political leaders. When it is obvious that a war violates *jus ad bellum*, soldiers are not merely permitted to disobey but are obligated to. However, if they are unsure that a war they are ordered to participate in meets the standards of *jus ad bellum*, their duty to obey their sovereign trumps their duty to avoid participation in an unjust war. To cite just one example, Francisco de Vitoria argues that soldiers ought not to participate in wars that are patently unjust, but when they are unsure about the justice of the war they are "required to carry out the sentence of [their] superior."¹⁸

This view of the political obligations of soldiers is the ground of the independence thesis in the just war tradition. Because they are not responsible for *jus ad bellum* and are responsible for *jus in bello*, it is possible for soldiers to fight in a war that violates *jus ad bellum* yet fight justly. In this way, a soldier can fight an unjust war justly. For instance, contrary to how many commentators have read him, Walzer quite clearly states this is the ground of the independence thesis.¹⁹ In his discussion of Erwin Rommel's conduct in World War II, he says:

We draw a line between the war itself, for which soldiers are not responsible, and the conduct of war, for which they are responsible, at least within their own sphere of activity. . . . We draw [the line] by recognizing the nature of political obedience. . . . By and large we don't blame a soldier, even a general who fights for his own government. He is not the member of a robber band, a willful wrongdoer, but a loyal and obedient subject and citizen. . . . We allow him to say what an English soldier says in Shakespeare's *Henry v*: "We know enough if we know we are the king's men.

18 Vitoria, *Political Writings*, 312; see also Suarez, *Selections from Three Works*.

19 Most commentators have interpreted Walzer as arguing that soldiers who participate in an unjust war are innocent in the sense that they are excused from blame, not that they are justified. See Mapel, "Coerced Moral Agents?"; Primoratz, "Michael Walzer's Just War Theory"; McPherson, "Innocence and Responsibility in War; and McMahan, *Killing in War*.

Our obedience to the king wipes the crime of it out of us.”... [War] is conceived, both in international law and in ordinary moral judgment, as the king’s business—a matter of state policy, not of individual volition, except when the individual is the king.²⁰

This picture of the division of responsibility for *jus ad bellum* not only produces the independence thesis. It also grounds a version of the moral equality of combatants. If soldiers are generally not responsible for *jus ad bellum* but are obligated to obey their legitimate authority, then it will be common for the soldiers on opposing sides of a conflict to have the same moral status: they will be innocently carrying out their duties. Therefore, even if one side is fighting a war in violation of *jus ad bellum* and the other is fighting a war consistent with *jus ad bellum*, the soldiers on both sides will be equally innocent. As Vitoria puts it, “subjects neither must nor ought to examine the causes of war, but may follow their prince into war, content with the authority of their prince and public council; so that in general, even though the war may be unjust on one side or the other, the soldiers on each side who come to fight in battle or to defend a city are all equally innocent.”²¹

But this subordination of soldiers creates a problem for the just war tradition. The problem is that it is hard to see how the obligation to fight in war on command can be justified in the first place. This is the internal problem of the soldier. It has to do with domestic political justice and the limits of political authority.

The idea that a person can be obligated to participate in war on command is the idea that a person can be a violent instrument of another. It entails that a person can justifiably engage in unjust violence because their obligations to obey trump their obligation to not engage in unjust violence. This is why traditional just war theorists thought *jus ad bellum* was independent of *jus in bello*: as instruments of their sovereign, soldiers can be obligated to fight even if the sovereign’s war is unjust. Additionally, and crucially for my argument, this instrumentalization of soldiers implies that their lives are expendable. Given that the duty to fight in war on command binds soldiers to fight even under the threat of death—as traditional just war theorists clearly hold—the instrumentalization of soldiers entails that their right to life and self-preservation can be trumped by their duty to serve others. In this way, to conceive of soldiers as instruments in war is to conceive of them as expendable resources of communal defense: their personal interests in health and survival are not legitimate grounds to refuse an order to participate in war, even a war that turns out to be

20 Walzer, *Just and Unjust Wars*, 38–39 (emphasis added).

21 Vitoria, *Political Writings*, 321.

unjust. Indeed, most classical just war theorists considered it a capital crime to disobey an order out of fear that following it would cause injury to oneself.

Prior to the seventeenth century, canonical just war theorists operated within the framework of scholastic, quasi-Aristotelian social ontologies and theories of justice.²² For them, political communities are natural bodies and individuals are their parts, analogous to the limbs of biological bodies. As such, the good of individuals is inextricably tied to their proper contribution to the community. The good of the political community, or the common good, can eclipse the private good of the individual. This vision of political justice makes justifying the obligations of soldiers relatively unproblematic. Vitoria, for instance, can argue that the commonwealth's right to use the soldier in war is analogous to the body's "right" to use its limb in self-defense. As he says,

Every man has the power and right of self-defense by natural law, since nothing can be more natural than to repel force with force. Therefore the commonwealth, in which "we, being many, are one body, and every one member one of another" as the Apostle says (Rom. 12:5), ought not to lack the power and right which individual men assume or have over their bodies, to command the single limbs for the convenience and use of the whole. Individuals may even risk the loss of a limb if this is necessary to the safety of the rest of the body; and there is no reason why the commonwealth should not have the same power to compel and coerce its members as if they were its limbs for the utility and safety of the common good.²³

But this method of grounding the subordination of soldiers was threatened by a philosophical revolution initiated by the seventeenth-century just war theorist Hugo Grotius. Grotius was arguably the first social contract theorist.²⁴ He rejects the natural character of the political community and instead argues that it is a human artifact made voluntarily by men to protect their private natural rights. According to this view, the rights of men are prior to the rights of the state, and the purpose of the state is to protect the rights of its male members. As Grotius says, the state is "a compleat Body of free Persons, associated together to enjoy peaceably their Rights, and for their common Benefit."²⁵ Grotius makes it clear that the "persons" of the political association are only men.

22 See Parsons, "What Is the Classical Theory of Just Cause?"

23 Vitoria, *Political Writings*, 11.

24 See Tuck, *Natural Rights Theories and The Rights of War and Peace*; Haakonssen, "Hugo Grotius and the History of Political Thought"; Schneewind, *The Invention of Autonomy*; and Darwall, "Grotius at the Creation of Modern Moral Philosophy."

25 Grotius, *The Rights of War and Peace*, 162.

He excludes women as naturally inferior to men and asserts that the patriarchal household is prior to the social contract.²⁶

While the social contract is supposed to protect the rights of male participants, Grotius argues that soldiers are instruments of their political communities who are bound to risk their lives for the sake of others.²⁷ On the surface, the origin of this obligation is the social contract. According to Grotius, the reason the commonwealth offers more protection for the rights of men than the state of nature is precisely its ability to command its members to come to the assistance of other members and their association as an organized military force. For him, “the Design of Society is, that everyone should quietly enjoy his own, with the Help, and by the united Force of the whole Community.”²⁸

Some version of this contract argument for the right of the state to treat its members as instruments in war is shared by all the canonical early modern just war theorists. Samuel von Pufendorf and Emer Vattel, for instance, offer a similar theoretical framework that includes the explicit restriction of the social contract to men. Pufendorf is not quite as strident as Grotius regarding the natural inferiority of women but nevertheless treats patriarchal marriage as prior to the social contract and political society as an association of men.²⁹ Unlike Grotius and Pufendorf, Vattel does not develop a theory of marriage and its place in nature. However, he consistently speaks of the state as a “society of men” and, based on the rights and duties of citizens he develops (including the right of nations to “carry off” women in foreign countries), it is clear that he views political society as literally a society of men and not women.³⁰ Early modern just war theory thus has a gender hierarchy at its very foundation and, in turn, conceives of political membership and military service as roles for men exclusively and reduces women to natural domestic assistants to men.³¹

26 Grotius, *The Rights of War and Peace*, 709; see also Kinsella, *The Image Before the Weapon*, 71–72.

27 Grotius, *The Rights of War and Peace*, 386.

28 Grotius, *The Rights of War and Peace*, 184.

29 See Pateman, *The Sexual Contract*, 50–51; Sreedhar, “Pufendorf on Patriarchy”; Drakopoulou, “Samuel Pufendorf, Feminism, and the Question of ‘Women and Law’”; Parsons, “Contract, Gender, and the Emergence of the Civil-Military Distinction.”

30 Vattel, *The Law of Nations*, 321.

31 This point has been made about social contract theory generally by many prominent feminist critics of modern liberalism (see, for instance, Pateman, *The Sexual Contract*; and Okin, *Justice, Gender, and the Family*). My argument relies on this interpretation of social contract theory and accepts that women are victims of acute gender oppression in theory and in social practice. The fact that the argument I develop below focuses on the way that gender imposes self-sacrificial norms on men should not be taken to imply that women are not severely oppressed by gender. It would be illuminating to compare and contrast

But even if we put aside the gender hierarchy presupposed by this theory, the contract method of grounding the subordination of soldiers still has serious problems. If the purpose of the social contract is to protect the individual rights of the participants, and the rights of the participants are prior to the rights of the political authority, then the rights of individual men always prevail over the rights of the state. Regardless of which sexes are included in the social contract, the contract method strongly prioritizes the individual over the state such that the individual cannot be treated as a mere instrument of the state. In effect, the contract argument for the subordination of soldiers amounts to arguing that participants to the social contract render themselves instruments of the state to be used and sacrificed in war for the sake of protecting their private rights. This seems simply irrational. G. W. F. Hegel recognizes this problem for the contract tradition when he states that “it is a grave miscalculation if the state, when it requires this sacrifice [service in war], 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.”³²

But the failure of the contract argument for military subordination is not simply a failure of the means-to-ends reasoning of the supposed participants to the social contract. More fundamentally, the problem is simply that to treat soldiers or anyone else as instruments is to violate their status as free and equal persons. Even if there were a social contract theory that could make alienating one’s rights rational, we should still object to the treatment of people as instruments. Such subordination of persons is intrinsically wrong in that it patently treats others as mere means. Indeed, this is Immanuel Kant’s very objection to standing armies. As he says, “the hiring of men to kill or be killed seems to mean using them as mere machines and instruments in the hands of someone else (the state), which cannot easily be reconciled with the rights of man in one’s own person.”³³

Some might respond by asserting that this is only a concern for systems of conscription. If militaries recruit only volunteers, then there is no conflict between the rights of servicemembers and the obligations of military service. Voluntary military service is no different from employment in hierarchical private firms.

This reply misunderstands the severity of military subordination both in theory and in practice. To be under command is to be legally bound to obey

the experiences of women in the household and men in the military. Unfortunately, there is no room for that comparison in this article.

32 Hegel, *Elements of the Philosophy of Right*, 361; see also MacIntyre, “Is Patriotism a Virtue?”

33 Kant, “Perpetual Peace,” 96.

orders even under the danger of death.³⁴ Insubordination in the military is a crime, not simply grounds for dismissal. Soldiers exist in a political space separate from civilians. Soldiers have radically diminished civil standing; they are literally second-class citizens. As the enlistment contract of the US Armed Forces puts it, the “enlistment/reenlistment agreement is more than an employment contract. It effects a change in status from civilian to military member of the Armed Forces.”³⁵ Once a civilian becomes a service member, they are legally obligated to obey commands that can impact nearly all aspects of their lives. As one commentator summarizes the difference between civilians and service members:

Once military status is acquired, military service loses its voluntary character. Once an individual has changed his or her status from civilian to military, that person’s duties, assignments, living conditions, privacy, and grooming standards are all governed by military necessity, not personal choice. In a nation that places great value on freedom of expression, freedom of association, freedom of travel, and freedom of employment, the armed forces stand as a stark exception. Military commanders have the authority, as they have throughout our nation’s history, to tell servicemembers where to live, where to work, and when they must put their lives at risk.³⁶

For this reason, even voluntarily enlisted military service is a violation of the rights of the volunteer.

2. MASCULINITY AND THE PROBLEM OF THE SOLDIER

To reiterate, traditional just war theory treats soldiers as possessing a diminished moral standing in at least two respects. First, soldiers are legitimate targets in war regardless of its cause. Second, soldiers may be subordinated to their political authorities such that they can be used and sacrificed by their states on command. As we have seen, the prominent arguments for these positions in the just war tradition are weak. Nevertheless, both positions are manifest in domestic and international law and are often treated as common sense. What is it that has made these positions seem so defensible over the centuries?

34 Ned Dobos demonstrates the extent to which this is a departure from the rights workers are granted in other contexts. See Dobos, “Punishing Non-Conscientious Disobedience.”

35 US Department of Defense, Enlistment/Reenlistment Document.

36 Nunn, “The Fundamental Principles of the Supreme Court’s Jurisprudence in Military Cases,” 5.

A significant part of the answer to this question is the influence gender has played in just war theory. These problematic aspects of just war theory are grounded in part in the presumption of a natural, gendered division of social labor. We have seen that early modern just war theory presupposes a hierarchical gender ontology that reduces women to the status of domestic instruments for men and grounds the restriction of political society to men only. The rights and duties of political subjects in these theories are the rights and duties of men. But while these theories describe men as free and equal individuals who come together in political society to protect their freedom and equality, they simultaneously rely on masculine virtues to ground the duty of military service. To be specific, the just war tradition has relied on the assumption that it is good for men as men to sacrifice themselves in violent combat to protect their families and communities.

Kinsella has argued persuasively that just war theory's moral distinction between combatants and civilians is constructed on a conception of individuals that reduces them to their sex based upon a presupposed gender ontology.³⁷ As she argues, we can see how just war theory uses a gender ontology to divide communities into combatants and civilians by observing how its major protagonists construct the category of the civilian. The boundaries of the "civilian" are constructed in part by appeal to the status of women, whom traditional just war theorists have held to be subordinate to men politically and excluded from combat because of their supposedly natural characters and social roles. The view I develop here complements Kinsella's reading of the role of gender in the just war tradition. However, my argument focuses more directly on how just war theorists construct the category of the combatant. As I argue, when major protagonists of just war theory defend the duties and rights of combatants, they appeal to the supposedly natural characters and social roles of men. This reinforces Kinsella's view of the role of gender in the construction of the combatant/civilian distinction and, I argue, explains the emergence of the external and internal problems of the soldier in just war theory.

A substantial body of literature in gender studies has concluded that there is a prominent construction of masculinity embedded in many cultures that links manhood with military service.³⁸ According to this construction, by virtue of their sex, it is good and honorable for men to provide protective martial labor in defense of their communities and families. Men as men ought to carry out this type of labor and bear the burdens it entails. If a man fails to provide this labor

37 Kinsella, *The Image Before the Weapon*.

38 See Elshtain, *Women and War*; Goldstein, *War and Gender*; Braudy, *From Chivalry to Terrorism*; and Digby, *Love and War*.

either by choice or because he lacks the supposedly appropriate character traits (e.g., he fears being killed or maimed, or he is repulsed by violence), then he has failed ethically. A reliable way to affirm one's manhood across cultures is to be adept in the arts of war and to demonstrate the physical and characterological capacity to engage in battle without fear.

A crucial feature of this construction of masculinity is that while it is nevertheless a social construction, it treats the normative content of masculinity as natural to biological sex. In other words, this social construction of masculinity asserts that it is due to the biological nature of men that they ought to have warrior virtues. Failures of masculine virtue are failures to have or achieve the supposed essence proper to the male sex. As General George Patton, who notoriously assaulted soldiers for suffering from apparent cases of shell shock, said in a speech to his troops, "a real man will never let his fear of death overpower his honor, his sense of duty to his country, and his innate manhood."³⁹

However, as the bulk of the gender studies literature concludes, there is no evidence of a natural connection between the male sex and propensity for war or warrior characteristics. Human males seem to be just as naturally inclined to the full array of human emotion, connectivity, and forms of social labor as human females. In fact, the naturalistic vision of masculinity is belied by the obvious and pervasive efforts to enforce masculine norms on men and boys. From a very early age, boys begin to experience social pressure to exhibit toughness and joy in violent activity.⁴⁰ Physical and mental strength, as well as expertise in the arts of physical domination, are highly praised in men and boys, whereas tenderness, sensitivity, and any disinclination to violence are shamed. Most men are constantly aware that if they fail to display the appropriate masculine standards of toughness, they can be subjected to abuse of the most homophobic and misogynistic kind. As 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.⁴¹

39 Hirshson, *General Patton*, 474.

40 See Way, *Deep Secrets*; and Chu, *When Boys Become Boys*.

41 Goldstein, *War and Gender*, 287–88.

This construction of masculinity is a problem for all of us. It is a source of various social, psychological, and interpersonal problems affecting all sexes. In addition to this, it is a source of numerous philosophical problems. The external and internal problems of the soldier are the products of the influence of this notion of masculinity on our moral theory. As we have seen, many of the arguments in defense of the permissibility of attacks against combatants and the subordination of soldiers are unpersuasive. However, when they attempt to directly explain their positions regarding the expendability of soldiers, many canonical just war theorists abandon these arguments and appeal directly to masculinity.

2.1. *Contractarian Arguments*

While not a canonical just war theorist, it is illuminating to begin by considering Thomas Hobbes's defense of the obligation of soldiers to fight in war on command. Hobbes's struggle to justify this obligation is well documented.⁴² What is less well documented is that in his discussion of the problem, he clearly presupposes a warrior masculinity. Hobbes excuses women and feminine men from the duty to serve in war on command. He says that "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."⁴³ Strikingly, the basis for the distinction between men's and women's duties is a presumption about their divergent natural characters. Women and some men are feminine precisely in the sense that they lack the courage to risk their lives in war on command. While this character trait is natural to women, it is unnatural to men and therefore an ethical failing. Feminine men are cowardly. This presumption helps mitigate the weakness of Hobbes's contract argument for the political obligation to fight in war on command. Interestingly, Hobbes also asserts this gender division in defense of his view that the succession of the throne should go to the monarch's male descendants over his female descendants. Male descendants should inherit the throne because "men are naturally fitter than women, for actions of labor and danger."⁴⁴ As we can see, Hobbes thinks men, and not women, are naturally suited to military service.

This is roughly the same approach to defending the subordination of soldiers taken by many canonical just war theorists. While Grotius describes the rights of men as prior to political society and political society as designed to protect those rights, he does not defend the obligation to risk one's life in

42 See Hampton, *Hobbes and the Social Contract Tradition*; Goldie, "The Reception of Hobbes"; and Sreedhar, "In Harm's Way."

43 Hobbes, *Leviathan*, 142.

44 Hobbes, *Leviathan*, 126.

battle as based on the social contract. Rather, he grounds the duty to engage in self-sacrificial military service in natural virtue. 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. . . .”⁴⁵ In this case, Grotius appeals to the virtue of charity. In an early work, however, Grotius appeals more clearly to warrior masculinity. He argues that the virtue expressed by risking one’s life in battle for the state is fortitude. He describes fortitude as one of the two virtues “most beneficial [to others], both in private and in public life.”⁴⁶ Grotius then directly connects fortitude with masculinity. He quotes approvingly a passage from the poet 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.”⁴⁷

Pufendorf, too, describes the rights of men as prior to political society and political society as a contract made by its male members to protect their natural rights. However, Pufendorf also appeals directly to natural virtue to support the duty to engage in self-sacrificial military action on command. He claims that it would 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. He says that 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.”⁴⁸ The character of the “man of Bravery or Spirit” lines up neatly with the manly warrior ideal. In this way, masculinity is serving to ground Pufendorf’s view of the subordination of the soldier.

Vattel is another canonical just war theorist who argues that political society is a voluntary association of its male members to protect their equal natural rights. Yet he too 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.”⁴⁹ For Vattel, only men have the political obligation to participate in military service because men are by nature inclined to have the moral character suited to “supporting the fatigues

45 Grotius, *The Rights of War and Peace*, 357.

46 Grotius, *Commentary on the Law of Prize and Booty*, 440.

47 Grotius, *Commentary on the Law of Prize and Booty*, 441.

48 Pufendorf, *The Law of Nature and Nations*, 567.

49 Vattel, *The Law of Nations*, 474.

of war.” In particular, men tend to have the courage to risk their lives in battle on command. The implication is that for a man to fail to have such a character is a moral failure, one much more severe than the same condition in a woman.

2.2. *Walzer’s Argument*

Walzer describes his theory in *Just and Unjust Wars* as a social contract theory that grounds the rights of states and the political obligations of citizens in the image of an agreement of mutual protection between free and equal individuals.⁵⁰ This appears similar to the early modern approach discussed above but is stripped of its gender exclusivity. However, this account of his theory is misleading. The most substantive discussions Walzer offers of the duty of soldiers to engage in self-sacrificial military service occur in works of his other than *Just and Unjust Wars*. In these works, Walzer expresses skepticism about the ability of traditional social contract theory to ground the self-sacrificial duties of soldiers. For instance, in an early essay, “The Obligation to Die for the State,” Walzer endorses Hegel’s criticism (quoted above) of the social contract method and instead offers a nonliberal theory of the responsibilities of soldiers. According to this argument, after the formation of the state of which one is a member, a person can find their identity transformed from a private individual to a member of a common life that they share with their fellows. This new identity enables the possibility of obligations of self-sacrificial military service for the sake of the state. As Walzer says, “so long as the state survives, something of the citizen lives on, even after the natural man is dead. That state, or rather, the common life of the citizens, generates these ‘moral goods’ for which . . . men can in fact be obligated to die.”⁵¹ For Walzer, the self-sacrificial duties of the soldier are grounded in a communitarian theory of justice that prioritizes the state over the individual.

In *Spheres of Justice*, the book he published immediately after *Just and Unjust Wars*, Walzer takes this nonliberal approach to justice even further. He argues that justice is grounded not in the equal rights of abstract individuals but in the shared meanings embedded in communities with a common way of life. For him, justice is relative to the shared understandings of the good rooted in the culture, institutions, and language of each community.

Central to Walzer’s theory in *Spheres* is his pluralistic account of the just distribution of goods within distinct communities. Justice is not only relative to specific communities. It is also relative to each good and the particular

50 Walzer, *Just and Unjust Wars*, 54; see also Walzer, *Spheres of Justice*. For an extended discussion of the role of gender in Walzer’s view of soldiers, see Parsons, “Walzer’s Soldiers.”

51 Walzer, “The Obligation to Die for the State,” 92; see also Walzer, “Involuntary Association.”

understanding of it within each community. Walzer distinguishes between the goods of national security, personal security, welfare, and recognition, among others. He argues that each community forms a shared understanding of each of these goods and that within that understanding there is contained an understanding of how the good ought to be distributed. In order for justice to be achieved, each good ought to be distributed in accordance with its own internal meaning. Injustice occurs when the standards of distribution peculiar to one good are applied to other goods. We must not let one good come to dominate or invade other goods. For example, we must not let medical care be distributed in accordance with the standards of justice for commodities in markets. Medical care, according to our shared understanding, is not a commodity, and to treat it as if it were is to allow markets to dominate goods that ought to maintain their autonomy.

In this way, Walzer's communitarianism can ground the duties of military service while also offering material to protect individuals from complete subservience to the state. The good of national security and the burdens of military service can be distributed according to standards that can require self-sacrificial labor from members of the community. However, the good of national security cannot dominate other goods such as personal security, welfare, and recognition. This pluralism of goods and their distribution protects members of the community from being reduced to instruments of the state while permitting the self-sacrificial duties of military service.

However, while this theory of the pluralistic autonomy of the various goods protects some members of the community from domination by the good of national security, it does not protect the individuals who are burdened with military service from such domination. Soldiers are expected to fight and risk death on command. Walzer argues that military service requires self-sacrificial labor and that this labor must be forced, at least once the enlistment contract has been completed.⁵² Because it asks everything of its participants, those who provide military service are necessarily dominated by it, especially at the moment the service is provided. The personal security, welfare, liberty, and all other goods of the military servicemember are overridden by the good of national security. For the servicemember, it seems impossible to maintain the autonomy of all the spheres of justice.

Like the way the other just war theorists appeal to gender to overcome the weaknesses in their contractarian arguments for the subordination of the soldier, Walzer's discussion also benefits from implicit appeals to gender to overcome the weaknesses of his communitarian argument for military service.

52 Walzer, *Spheres of Justice*, 169, 180.

Walzer explicitly rejects the idea that negative goods such as military service can be justly distributed to some subgroup only because of their supposed natural suitability for it. Nevertheless, immediately after asserting that such unequal distributions are unjust, Walzer seems to assert 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 gargagemen. 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.⁵³

Walzer criticizes this view of military labor, but not on the grounds that it unjustifiably burdens men only with the responsibility to perform it on the basis of false assumptions about the nature of men and women. Rather, he criticizes the view that soldiering is similar to play. He argues that such a view ignores the burdensome nature of the work. While Walzer is surely right that military service is dissimilar to play, it is remarkable that he does not take issue with the gender-based account of the distribution of responsibility for military service clearly expressed in the above passage. In fact, in that passage Walzer appears to be endorsing this gendered account. In the following paragraph, he embraces conscription as a method "to universalize or randomize the risks of war over a given generation of *young men*."⁵⁴ This gender-exclusive distribution of the burdens of military service appears to be based on the account of natural masculinity offered in the preceding passage.

It is tempting to discount these appeals to gender in Walzer's theory as momentary lapses in an otherwise progressive work that attacks gender-exclusive distributions of goods. Still, the fact that it is easy for Walzer to depart from

53 Walzer, *Spheres of Justice*, 168–69.

54 Walzer, *Spheres of Justice*, 169 (emphasis added).

his other settled positions and make such a clear appeal to masculine nature shows us how deeply engrained in our thinking about soldiers and war gender is. But more troublingly, the appeal to masculinity to ground the duties of military service helps Walzer's theory. As we have seen, Walzer's communitarian argument for the distribution of military service is challenged by his insistence that the plurality of goods embedded in the shared meanings of communities must maintain their autonomous spheres; one good cannot come to dominate the others. The problem is that for soldiers, who are obligated to put their lives and liberties on the line for their community, the good of national security necessarily dominates all their other personal goods. Walzer's implicit appeal to the natural character of men as the basis of their military obligations would help mitigate this problem. If by making men responsible for military service we were harnessing passion to social function, then we would minimize the tension between the burdens of military service and the personal good of soldiers. For according to this view of masculinity, the performance of military service would be the personal good of the (male) soldier.

2.3. From the Internal to the External Problem

As we can see, then, the appeal to natural masculinity has served all these canonical just war theorists. Most immediately, it has helped them solve the internal problem of the soldier. In as much as it is unclear how the self-sacrificial duties of soldiers are reconcilable with the rights or basic interests of individuals, the appeal to masculinity helps fill the gap. Soldiers can have their self-sacrificial responsibilities because they are men whose natural virtue is realized by carrying out those responsibilities regardless of whether those responsibilities can be reconciled with the rights of individuals or the purpose of the political society.

But the appeal to gender to solve the internal problem of the soldier also helps solve the external problem as well. As we have seen, traditional just war theorists have struggled to straightforwardly defend the moral equality of combatants. The gender-based justification of the duty to serve in war on command helps solve this problem. If the reason soldiers are bound to serve in war on command is that, as men, it is their natural duty to engage in military service on command and even under the danger of death, then they are being conceived of as expendable instruments of war prior to the initiation of any particular war. A person who does not have the standing to refuse to obey an order that puts their life in danger, even the most acute danger imaginable, is a person who does not have a right to life, at least not a right that is able to offer any meaningful protection of their life in a time of war. Combatants understood this way are not people who begin with a right to life and then voluntarily waive that right

by accepting danger to themselves. Rather, they are people whose purpose is to engage in violent combat with others no matter the risk to themselves. From this perspective, we simply do not presume combatants have a right to life that needs to be overridden to justify their engagement in combat.

It is true that being bound to face the danger of death in combat is not equivalent to the right to kill others in combat. It is possible to imagine a normative world where combatants on all sides are bound by nature to face the fire of their opponents, but none have a right to dispense fire on their opponents. How, then, does the masculine gender ontology bridge this gap and justify not only using combatants as instruments of defense in war but also giving them a permission to attack and kill their opponents?⁵⁵

The masculine gender ontology links the duty to face death in war with the right to kill in war by construing the natural purpose of men to be to risk their lives not in any activity that protects their communities or families but *in violent combat*. On this view, manhood is tied not to any self-sacrificial activity for the sake of others. It is tied specifically to self-sacrificial violence. As the poem Grotius relies on puts it, “It is a glorious and manly thing, // To risk one’s life *in battle with the foe*, // Defending loved ones, wife and native land.”⁵⁶ Hence, the performance of violence is a central component of this masculine good. It is not achieved in decidedly nonviolent self-sacrificial activities such as nursing during a pandemic, carrying a child to term with inadequate access to health-care, or working for the International Committee of the Red Cross in a warzone without a personal security detail. It is through engaging in violent combat that self-sacrificial labor comes to affirm manhood most effectively. Attacking and killing others in combat is a central part of this vision of masculine virtue.

In this way, the gender ontology that just war theorists presuppose to solve the internal problem also solves the external problem. Men as men are bound both to risk their lives for the sake of their communities and families in war and to attack and kill the combatants representing their opponents. Not only is the self-sacrifice good for men; so is the dispensing of violence upon others. Combatants, therefore, are conceived from the beginning as lacking a right to refuse self-sacrificial orders in war and possessing the right to attack and kill other combatants. They are people who are reduced entirely to the status of combatants—those who *fight and die* in war.

That the assumption of the expendability of soldiers is helping to ground the permissive view of killing combatants in war is illustrated in a more recent essay by Walzer. In “Terrorism and Just War,” Walzer defends the permission to

55 I am grateful to an anonymous referee for this journal for posing this question to me.

56 Grotius, *Commentary on the Law of Prize and Booty*, 441 (emphasis added).

kill combatants in war “at random.”⁵⁷ Central to his argument is the assertion of a fundamental difference between soldiers and civilians. As Walzer describes it, the singular purpose of soldiers is to fight wars, whereas civilians have varied other purposes. According to Walzer,

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.⁵⁸

Civilians, on the other hand, are quite different:

Civilians 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.⁵⁹

Based in part on this distinction between soldiers and civilians, Walzer concludes that there is a blanket permission to kill combatants in war whereas noncombatants are immune from attack. But Walzer's account of what makes civilians unlike soldiers is certainly false. Soldiers, like civilians, have multiple social roles and engage in the full spectrum of social activities that civilians do. The person who is a soldier is also many other things. Soldiers too live in

57 Walzer, “Terrorism and Just War,” 264–65.

58 Walzer, “Terrorism and Just War,” 265.

59 Walzer, “Terrorism and Just War,” 265–66.

houses and apartments with parents, spouses, and children. Soldiers too have many different views on public issues or no view at all. Soldiers too participate in a wide variety of private organizations and associations with no connection whatsoever to the military. Soldiers are, in other words, people in just the same way that civilians are. And just like civilians, they cannot be reduced to any particular office.

Walzer's argument for the blanket permission to attack combatants presumes otherwise. For him, combatants in war are fair game for attack because combatants are simply inseparable from their office. That this obviously false position can make its way so explicitly into this argument, I submit, is explained by the assumption of the masculine nature of soldiers. As we have seen, according to this assumption, the labor of combat is to be performed by those who are bound to engage in combat because of their sexual nature. The combatant and the individual in the role of combatant are inseparable; combatants are conceived of as natural combatants. While he does not appeal to masculinity directly, Walzer appears to embrace this reduction of the military servicemember to their office, and he uses this position to defend the right to attack combatants in war. In this way, Walzer uses the resources provided by the masculine gender ontology to solve the external problem of the soldier.

3. RETHINKING THE SOLDIER

Revisionist just war theorists have pushed us to reconsider traditional assumptions about the equal right to kill combatants in war and, in so doing, emphasized the responsibilities of soldiers for the wars they fight. Nevertheless, the debate over the moral equality of combatants in contemporary just war theory has not appreciated the full extent of the subordination of soldiers in theory and in practice. Recognizing the origin of the notion of the moral equality of combatants in just war theory reveals the need for a more fundamental reengagement with the political status of soldiers and their relationship to civil society and the state. Importantly, the need for this more fundamental rethinking has been recognized by feminist theorists for some time.

For instance, in a summary of feminist criticisms of just war theory, Peach argues that just war theory relies on an abstract conception of people and that this enables the theory to construe enemy forces as dehumanized "Others" who can readily be killed in war.⁶⁰ Moreover, Peach argues that feminists rightly criticize just war theory for subordinating soldiers to their political communities and the commands of political authorities. She argues that this subordination

60 Peach, "An Alternative to Pacifism?," 159.

contributes to the view of enemies as mere instruments, thereby making it easier to justify killing them.⁶¹ In this way, Peach argues that what I am calling the external and internal problems are connected and that they have been central concerns for many feminist theorists of the ethics of war. According to her, these problems arise because of the tendency of just war theory to rely on an abstract vision of the person.

As Peach concludes,

a feminist approach to just-war theory would entail reformulated understandings of the proper relationship between the individual and the state. It would consider both the impact of war on individuals as well as the obligations of both men and women to defend the nation. It should provide a formulation with which the merits of a particular military engagement may be assessed by the individual soldiers and civilians involved in it as well by the relevant "authorities"... It would include a reassessment of women's exemption from military combat and draft registration, as well as established laws governing conscientious objection and civil disobedience.⁶²

I hope that this article has shown anyone engaged in military ethics that this approach is a worthy one. That said, my argument identifies a source of the problem of the status of combatants that is different from Peach's. According to traditional just war theorists, the unique duties of the military servicemember are identical to the natural duties of the individuals who are supposed to occupy the office. This reduction of the individual to the office is accomplished because of the presupposition that they are men whose duties and virtues are determined by a gender ontology that prescribes for them the role of military servant. In this way, rather than treating the soldier as an abstract person, just war theory has reduced the individual occupying the office of soldier to the office itself. The soldier has been conceived of as a man whose natural obligations bind him to carry out the duties of his office even under the danger of death, thereby making him expendable in war.

Once we consciously reject this picture of the combatant, the permissive view of killing combatants in war, as well as the subordinate political status of soldiers, should also become untenable. Once we stop thinking of people who fill the ranks of militaries as nothing more than soldiers, people who are merely instruments of their country's security, we will need to rethink the status of combatants at all levels. As this article has emphasized, soldiers are not just seen

61 Peach, "An Alternative to Pacifism?" 161.

62 Peach, "An Alternative to Pacifism?" 167.

as expendable externally (i.e., when confronting them as enemies in war); they are also seen as expendable internally (i.e., when we create militaries for the purposes of confronting enemies). In fact, it is the internal expendability that has helped ground the external expendability. In our ethics and laws, soldiers are denied civic equality with civilians. Their country's interest in national security overrides soldiers' private interests, even their interest in survival.

Ending this internal subordination will require fundamental changes to the way we conceive of the military. The revisionist literature on the liability of combatants to be killed in war has led to criticism of conscientious objection laws in many countries. It has created a push to embrace selective conscientious objection, that is, the legal option to apply for conscientious objector status for specific wars or campaigns, not simply conscientious objector status for all wars. While this is a step in the right direction, it does not address the full depth of the subordination of the soldier. Selective conscientious objection rights give soldiers more liberty to refuse orders on the grounds that the orders are immoral. However, such entitlements do not recognize the right of soldiers to refuse an order or to leave the profession because it conflicts with their personal interests. Most strikingly, even with conscientious objection rights, soldiers are not permitted to disobey an order to avoid death or injury or to leave the profession at will. What we need to do is recognize the full scope of the rights and interests of the individuals who serve as soldiers and bring them fully into line with the status of civilian employees. Simply put, we need to recognize that the people who happen to be soldiers are more fundamentally *people* with lives and interests that can transcend the interests of the state.

Moreover, this effort is linked with the ongoing battle to end gender exclusions and discrimination within the military. That integrating the military with genders and sexualities other than cisgender heterosexual men has proven harder than it has in other institutions should not be surprising. According to the argument of this article, gender exclusivity and subordination in the armed forces have the same origin. As we reconsider the office of military servicemember and its relation to its officeholders, we need to simultaneously appreciate the imperative of gender inclusivity. In fact, achieving a truly gender-integrated armed force requires abandoning the picture of the servicemember as expendable.⁶³

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63 Disclaimer: the views expressed in this article are those of the author and do not represent the views of the United States Military Academy, the United States Army, or the Department of Defense.

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