

## **Child Soldiers: The Ethical Perspective**

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What can moral philosophy contribute to the resolution of the problem of child soldiers? It obviously has nothing to say about the urgent practical problem of preventing unscrupulous recruiters from forcing children to fight their unjust wars for them. That is a question of political and legal policy on which philosophers have no special competence to pronounce. But the problem of child soldiers does have a normative dimension and raises questions that philosophers are specially qualified to address. Among these questions are the following. Do conditions of ignorance and duress in which child soldiers normally act ever make their action morally permissible, even if the war in which they are fighting is unjust and even if they commit war crimes? Even if their initial action in fighting is wrong, is it permissible for them to kill in individual self-defense when they are threatened? Or is their action somehow exempt from moral evaluation altogether? Might it be that even though they act wrongly, they are fully exculpated by their nature as children, in conjunction with the conditions in which they act? Can they be seen as morally responsible agents at all? Can they deserve punishment, or blame? Perhaps most importantly, how do the answers to these questions bear on how morally conscientious adult combatants should fight against them? Is there a moral requirement to exercise restraint in fighting them? Should adult combatants, for example, accept greater risks to themselves in order to minimize the harm they inflict on child soldiers?

### **The Orthodox Theory of the Just War**

To address these questions, it would be helpful to have some guidance from moral theory. Many of the resources we need are, I believe, available, but we will not find them in the theory

of the just war in its currently orthodox form. According to this theory, the *jus in bello* requirement of discrimination holds that while it is impermissible for combatants intentionally to attack noncombatants, all enemy combatants are legitimate targets, irrespective of whether they have a just cause for fighting and irrespective of whether they can be held morally responsible for their action. For the currently orthodox theory of the just war follows the international law of war in treating combatant status as the ground of liability to attack, though it offers a different and supposedly deeper rationale for distinguishing between combatants and noncombatants.

In international law, the rationale is primarily pragmatic. Given the inevitability of war, it is necessary to have a neutral rule that grants all combatants the right to attack certain targets and assures them that if they confine their attacks to those targets, they will not be held criminally liable for the harm they cause and will be treated well if they are captured. Both in granting combatants the right to attack other combatants and denying them permission to attack noncombatants, international law aims to limit and contain the destruction of war, insulating ordinary domestic life from the effects of war to the greatest degree possible.

Just war theory, by contrast, grounds the significance of the distinction between combatants and noncombatants in a certain conception of the right of self-defense. On this view, when a person poses a threat to another, he thereby makes himself liable to defensive attack. It is therefore because combatants pose a threat to others that they are legitimate targets of attack; and it is because noncombatants threaten no one that they are not legitimate targets. This view is reflected in the language of just war theory, which endorses the venerable principle that it is wrong intentionally to kill the innocent, but interprets innocence in accordance with the etymology of the term. In Latin, the innocent are those who are not *nocentes* – that is, they are not those who are injurious or threatening.<sup>1</sup>

Because child soldiers pose a threat in exactly the same way that adult combatants do, they have combatant status and are therefore legitimate targets of attack according to contemporary just war theory. Whether they are morally responsible for the threat they pose is irrelevant, as is the fact that they are children. It is permissible to fight against them in exactly the same way one would fight against adult combatants.

I think the orthodox theory is right on three points. (1) The principal justification for killing in war appeals to the idea that the target of attack is *liable* to attack. (2) Liability is individual rather than collective. (3) And – a closely related point – liability derives from individual action and not merely from membership in a group. Yet I think the orthodox theory has the wrong account of the basis of liability to attack in war. The right account, as the orthodox theory recognizes, has to be grounded in the morality of individual self- and other-defense. But when applied at the individual level and outside the context of war, the orthodox theory's criterion of liability to defensive violence is plainly unacceptable.

Suppose that someone attacks you without justification. The attack is malicious and culpable. You will be killed unless you kill the attacker in self-defense. Most of us think that you are justified in fighting back. But according to the orthodox theory, if you do fight back you will pose a threat to the attacker and will thus be morally liable to attack by him. On this view, merely by fighting back you lose your moral right not to be attacked by the culpable aggressor. But that cannot be right; you cannot lose your right not to be killed by an unjust assailant merely by defending yourself against his unjust attack. For you are morally *justified* in attacking your attacker, who will not be *wronged* by your action, even if you kill him.

Perhaps we should say, therefore, that the criterion of liability to attack is posing an *unjust* threat – or posing a threat of unjust or *wrongful* harm. This explains why you would be justified

in killing your attacker in self-defense, though he would not be justified in killing you, *even* in self-defense. I think, indeed, that this is right as far as it goes – that is, that it is not the posing of a threat but only the posing of an *unjust* threat that can make a person liable to defensive violence. But if this is right, we have arrived at a view that is radically in conflict with the orthodox theory of the just war: namely, that in general the only combatants who are morally justified in fighting are those who fight for a just cause in a just war.

### **The Relevance of Moral Responsibility**

Yet, while merely posing a threat is neither necessary nor sufficient for liability to defensive violence, posing an *unjust* threat, or a threat of unjust harm, is also neither necessary nor – though this is quite controversial – sufficient for liability to defensive violence. Suppose that I put a drug into a person's drink that causes him to lose all control of himself, so that he ceases to be responsible for his action. And suppose that, for a brief period, it also causes him to become wholly and uncritically suggestible; it makes him do whatever he is told to do. Suppose that during this brief period, I direct him to kill some innocent person and, because of the effect of the drug, he sets out to kill this person. At this point he ceases to be suggestible and I lose the power to control him. He will continue to try to kill the potential victim until the drug loses potency. Suppose, finally, that for some fantastic reason characteristic of hypothetical philosophy examples, the potential victim can save herself either by killing me or by killing him. What ought she to do?

The drugged person poses a threat of unjust harm but is not responsible for his action. I do not pose a threat to the innocent person but am morally responsible for the unjust threat she faces from the drugged person. Normally, of course, posing an unjust threat and being morally

responsible for the unjust threat coincide: those who pose an unjust threat are normally responsible for doing so. But when responsibility for a threat and proximate causation of the threat diverge, as in this case, responsibility seems more important. If asked whether the potential victim ought to kill the drugged person, kill me, or allow herself to be killed, virtually everyone would answer that she ought to kill me, or at least that she ought to kill me rather than him.

This shows that most people think that moral responsibility for an unjust threat is, on its own, a sufficient basis for liability to defensive violence. It is not necessary that one also be the agent who poses the threat. I go further, however, and make a stronger claim. I claim that merely posing an unjust threat, without being in any way morally responsible for doing so, is not a basis of liability at all. In the case I just sketched, the drugged person is in no way morally responsible for the threat he poses. I call such a person a *nonresponsible threat*. In this case, the drugged person *acts*, but not as a morally responsible agent. This person's action is wholly nonvoluntary. And it seems true, and may indeed be a necessary truth, that only voluntary action can generate liability. This is true even of strict liability. Only when a person has voluntarily acted in a certain way – constructed a building, manufactured a product – can she become strictly liable for events that are entirely beyond her control. She has to take a certain action voluntarily in order to place herself within the scope even of strict liability. There has to have been some point at which, by avoiding acting in some way, she could have avoided the possibility of becoming strictly liable.

The main reason for accepting that a nonresponsible threat cannot be liable for the threat he poses derives from a requirement of consistency. Most of us believe that it is not permissible to kill an innocent bystander as a means of self-preservation. The innocent bystander – perhaps as

a matter of conceptual necessity – has done nothing to make himself liable to be killed as a means of saving someone else’s life. Unless, therefore, there is some morally significant difference between an innocent bystander and a nonresponsible threat – a difference that would explain why the nonresponsible threat is liable while the innocent bystander is not – we are forced on pain of inconsistency to concede that a nonresponsible threat cannot be liable either.

It is true, of course, that a nonresponsible threat is causally involved in the threat to the potential victim, whereas this is not true of an innocent bystander. This means that a nonresponsible threat can be killed in *self-defense*, whereas an innocent bystander cannot be. But this is just a fact about the nonresponsible threat’s location in the local causal architecture. The nonresponsible threat’s causal position is such that it is necessary for the potential victim to kill him in self-defense in order to survive. But notice that something similar is true of the innocent bystander: his causal position is also such that it is necessary for the potential victim to kill him in order to survive. The difference between them is only one of causal position. The nonresponsible threat finds himself, through no fault or voluntary choice of his own, on the causal path of the threat itself, while the innocent bystander, also through no fault or voluntary choice of his own, finds himself on a possible causal path to averting an equivalent threat. How can this mere difference in the positions they occupy in the causal architecture constitute a difference in personal liability to be killed?

It is tempting to claim at this point that the relevant difference is that the nonresponsible threat is about to violate the potential victim’s rights, whereas this is not true of the innocent bystander. But the response here is the same, for the conditions for the violation of a right are the same as the conditions of liability. The drugged person in my example does not threaten to violate the innocent victim’s rights; he is merely a threat to her life. Rights can be violated only

through morally responsible agency. Neither a falling rock nor a charging tiger can violate a right; neither, therefore, can an individual whose capacity for voluntary agency has been eliminated by a drug.

Some people argue that if a person who is in no way responsible for his action threatens your *life*, it is permissible for you to kill him simply on the ground of self-preference. If you and the person who threatens you are both equally innocent and you must choose between your life and his, surely you are permitted to give priority to yourself. But this will not do, since it would also justify the killing of an innocent bystander in self-preservation. Few people would disagree that if I can save my life or a stranger's but not both, I am permitted to give priority to myself. But personal partiality functions differently in a choice of whom to save from the way that it functions in a choice between allowing oneself to be killed and killing another.

The upshot of my argument here is not that it is never permissible to use violence in defense against a nonresponsible threat who poses a threat of unjust harm. It is instead that if there is a justification for defensive violence against a nonresponsible threat, that justification will not be that the nonresponsible threat is morally liable to be attacked. There may be other forms of justification – for example, a lesser-evil justification – for defense against a nonresponsible threat, and even for the defensive killing of a nonresponsible threat. But if there is no morally significant difference between a nonresponsible threat and an innocent bystander, then in general a threatened person is permitted to do in self-defense against a nonresponsible threat only what he or she would be permitted to do to an innocent bystander in self-preservation.

This conclusion is contrary to common sense intuition. The common sense intuition, which I share, is that it is permissible to kill a nonresponsible threat if that is necessary to prevent oneself from being killed by him. But I have come to believe that there is no justification for this



intuition, that the intuition itself is indefensible. It is, I suspect, the product of our tendency to overgeneralize the robust core of our beliefs about the permissibility of self-defense.

### **The Moral Status of Child Soldiers**

Suppose it is right that there can be no liability without some element of responsibility. What are the implications for conduct in war? One question, of course, is whether combatants in war are ever really nonresponsible threats. There are at least a couple of serious possibilities. One derives from epistemic considerations. Suppose that certain combatants are fighting in a war that is objectively unjust but that all the evidence accessible to them supports the belief that the war is just. Suppose, in other words, that they are epistemically justified in believing that their unjust war is just. In an earlier time it would have been said that they suffer from “invincible ignorance.” Because of this, although they pose an unjust threat, or a threat of unjust harm, they are not morally responsible for doing so. Because their beliefs are reasonable in the circumstances, they either act permissibly in fighting in the objectively unjust war or are fully exculpated for their participation. Either way, it seems that they would be nonresponsible threats and would not, on the assumption that liability presupposes responsibility, be liable for their objectively wrongful action.

Another possibility is that some combatants who fight in an unjust war are not morally responsible agents at all. It is, of course, rare to find adult soldiers so mentally defective or disturbed as to be incapable of morally responsible agency. But child soldiers put the assumption that soldiers must have the capacity for moral agency under pressure.

There is certainly a case to be made for the claim that in many or most child soldiers, the capacity for moral agency is absent or has been systematically subverted. Here is a sketch of a

case that, although hypothetical, is not atypical. A group of armed men enter a village and, through a credible threat to kill him or his parents, force an 8-year-old boy to kill his best friend, in view of the entire village, including the victim's parents. The boy is then abducted and taken to a camp where he is further brutalized and also indoctrinated. His having killed his best friend not only makes him feel irredeemably tainted, and therefore helps to blunt his conscience, but has also effectively severed him from his previous community, making him thereafter dependent on his captors. (In his final reflections on the Nazi concentration camps, Primo Levi wrote of those prisoners who became collaborators with the Nazis that "the best way to bind them [was] to burden them with guilt, cover them with blood, compromise them as much as possible, thus establishing a bond of complicity so that they [could] no longer turn back."<sup>2</sup> It is surprising how naturally accessible to otherwise ignorant and psychologically insensitive men this one piece of knowledge of human psychology seems to be.) Several years later, when the boy has been fully indoctrinated and trained, he is given a light automatic weapon and administered drugs that further anesthetize his conscience and subdue his fears, and is then sent to fight for an unjust cause. Can we reasonably hold this boy, now aged 11 or 12, morally responsible for the wrongful action in which he is engaged?

If, given his age and all that has been done to him, this child lacks the moral resources to resist the command to fight, then he is, in the circumstances, a nonresponsible threat. If I am right that a nonresponsible threat cannot be *liable* to defensive attack, the justification, if there is one, for attacking this child must, it seems, appeal to the idea that attacking him is dictated by necessity: the necessity of averting a much greater evil – for example, the greater evil that would be involved in the success of his leaders' unjust cause. (If child soldiers are fighting for a just cause, there cannot be a justification for fighting against them at all, according to the account of

the morality of war that I have sketched. But it would seem that the causes for which child soldiers are mobilized are usually unjust, and I will restrict the discussion in this paper to cases in which this is so.)

Such a lesser-evil justification, if it succeeds at all, seems to impose on those who fight against child soldiers a requirement of restraint. If child soldiers are nonresponsible threats, then in fighting against them, just combatants must exercise restraint, accepting greater risks to themselves in order to minimize the harm they inflict on the child soldiers. The commander of a force fighting against a unit of child soldiers might be morally required to order his own soldiers to fight in a way that would predictably cause them to suffer greater casualties, and even a greater number of deaths.

There are, however, reasons for resisting the claim that child soldiers, or at least very many child soldiers, are actually nonresponsible threats. Even if they are cognitively and emotionally immature, and even if they have been brutalized and brainwashed, they are still, it might be argued, sufficiently morally responsible to be able to recognize that indiscriminate killing is wrong. And in the areas of the world in which child soldiers are found, and especially in the types of conflict in which they are deployed, much of the business of warfare does in fact consist in killing the innocent – for example, while destroying villages for purposes of terrorization, intimidation, or forced relocation of populations.

The idea that even terribly abused children can be morally responsible for their action is not implausible. Human children beyond a few years of age are, after all, vastly more highly developed psychologically than any animal. And all parents regard their own and their neighbors' children as morally responsible to a degree. If one's own child or the neighbor's

child torments the cat, one regards it very differently from the way one regards the dog's efforts to harm the cat.

We do, of course, regard a child's responsibility as diminished, often greatly so. But the generally recognized age at which childhood officially ends and adulthood begins is 18 (thus in law the category of child soldiers includes all those below the age of 18), and those of us who accept that most adult human beings are morally responsible agents will find it impossible to believe that all or even very many 17-year-olds are wholly lacking in the capacity for morally responsible agency. After all, many of the combatants in properly constituted armies are between the ages of 18 and 20, and in most cases there is very little difference with respect to the capacity for moral agency between a 17-year-old and a 19-year-old - certainly not enough to make it a reasonable presumption that the one lacks the capacity for moral agency while the other is a morally responsible agent.

What seems most reasonable is to view child soldiers, in general, as people who have a diminished capacity for morally responsible agency and who act in conditions that further diminish their personal responsibility for their action in war. If, as I suggested earlier, moral responsibility for an unjust threat is the basis of liability to defensive violence, and if liability is a matter of degree and varies with the degree of a person's responsibility, then child soldiers may be liable to attack in war but to a significantly diminished degree. This view contrasts sharply with that of the orthodox theory of the just war, which holds that the criterion of liability to attack in war is all-or-nothing: a person is either a combatant or a noncombatant and there are no degrees of combatancy.

To some it may seem puzzling to say that child soldiers are liable to attack but to a diminished degree. It may seem that either it is permissible to attack them or it is not. In fact,

however, the way in which the degree of a person's liability affects what it is permissible to do to him in war is through the proportionality constraint. Suppose that there are two combatants fighting in an unjust war, one who is responsible to a high degree for the unjust threat he poses, and another who is only minimally responsible for the threat he poses. A goal that might be sufficient to justify attacking the highly responsible combatant might not be sufficient to justify attacking the minimally responsible combatant; a degree of harm that it would be permissible to inflict on the highly responsible combatant to achieve a certain end might be an excessive or disproportionate degree of harm to inflict on the minimally responsible combatant for the same purpose; and risks that one would be required to take in order to reduce the harm one would inflict on the minimally responsible combatant might be ones there would be no reason to take for the sake of the highly responsible combatant.

The last of these points is of considerable practical significance. For the claim is the same one I made in connection with the lesser-evil justification – namely, that if the liability of child soldiers is, in general, diminished relative to that of most other unjust combatants, there should be a requirement to exercise restraint in fighting against them. Just combatants are in general required to accept greater risks to themselves in fighting against child soldiers, in an effort to minimize the harm inflicted on them. The idea that there is a moral requirement to exercise restraint in fighting against those who are not culpable has precedents in the history of thought about the just war. For example, in a passage in his work, *On the American Indians*, Vitoria argued that if the “barbarians” attack the Spanish out of unfounded but excusable fear, “the Spaniards must take care for their own safety, but do so with as little harm to the barbarians as possible, ... since in this case what we may suppose were understandable fears made them innocent. ... This is a consideration which must be given great weight. The laws of war against

really harmful and offensive enemies are quite different from those against innocent or ignorant ones.”<sup>3</sup>

There is, however, an objection to the idea that variations in the degree of a person’s liability *always* affect the proportionality constraint in this way. Perhaps the best way to see this is to consider an example of individual liability outside the context of war. Suppose that instead of my putting a drug in your drink, you take a drug that you believe will just make you pleasantly high but that turns out to be a drug that causes you to begin hallucinating and to lose control of your behavior. As a result, you begin to attack an innocent person. You will kill him unless he kills you in self-defense. You may ordinarily be a very kind person and your mistake may have been one that anyone in your situation might easily have made; but the fact that you are responsible, even if only to a slight degree, for the fact that either you or the innocent person must die makes you liable, and arguably makes it permissible for him to kill you in self-defense. Even a slight asymmetry in responsibility can be morally decisive when the outcome is all-or-nothing. (If the harm could somehow be divided between you, the innocent person might be obliged to accept some nonlethal harm in order to avoid killing you.)

If we extend this conclusion to the case of child soldiers, it seems that in a situation in which either a certain number of minimally responsible child soldiers must be killed or they will kill a certain number – perhaps a lesser number – of just combatants, there is no requirement for the just combatants to sacrifice themselves for the sake of the child soldiers. Indeed, if third parties could intervene, it seems that they would be required by considerations of justice to intervene on the side of the just combatants and against the child soldiers. If the child soldiers are morally responsible even to a minimal degree for the unjust threat they pose, and if the just combatants are in no way at fault for the threat they face, it does not seem that justice could

require even one just combatant to allow himself to be killed in order to spare the life of a child soldier.

This is a harsh doctrine, which clashes with my intuition that just combatants ought to fight with restraint against child soldiers. But it may well be that the source of that intuition is not that child soldiers are nonresponsible threats but simply that they are *children* – that is, individuals who have hardly had a chance at life yet and who, in this case, have already been terribly victimized.

Just combatants have reason to show mercy and restraint, not because child soldiers are altogether lacking in responsibility for their action, but because they are owed leniency because of their special vulnerability to exploitation and loss. Just combatants should show them mercy, even at the cost of additional risk to themselves, to try to allow these already greatly wronged children a chance at life.

I am reluctantly compelled to conclude inconclusively. The reason that just combatants have to exercise restraint in fighting child soldiers may in some cases be a requirement implied by the proportionality constraint. But in other cases – for example, a case in which there is an unavoidable trade-off between the lives of just combatants and the lives of child soldiers – proportionality may not require self-sacrifice by the just combatants. Their reason to show restraint in such cases is not a requirement of *justice*. It is a reason of *mercy*, which may not rise to the level of a moral requirement. These are cases in which our higher ideals may demand the surrender of our rights. I know of no formula for the resolution of such conflicts.<sup>4</sup>

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- <sup>1</sup> For representative statements of this currently orthodox view, see G.E.M. Anscombe, “Mr. Truman’s Degree,” in *Ethics, Religion, and Politics, Collected Philosophical Papers*, Vol. 3 (Minneapolis, MN: University of Minnesota Press, 1981): 62-71, p. 67; Thomas Nagel, “War and Massacre,” in Charles R. Beitz et al., eds., *International Ethics* (Princeton: Princeton University Press, 1985): 53-74, pp. 69-70; Robert K. Fullinwider, “War and Innocence,” in Beitz, *International Ethics*, pp. 90-97; Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 136 and 145; Anthony Kenny, *The Logic of Deterrence* (London: Waterstone, 1985), p. 10; and John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Clarendon Press, 1987), pp. 86-90.
- <sup>2</sup> Primo Levi, *The Drowned and the Saved* (New York: Vintage, 1989), p. 43.
- <sup>3</sup> Francisco de Vitoria, *On the American Indians*, excerpted in Gregory M. Reichberg, Henrik Syse, and Endre Begby, eds., *The Ethics of War: Classic and Contemporary Readings* (Malden, MA: Blackwell, 2006), p. 303.
- <sup>4</sup> I am grateful to Gregory Reichberg and Scott Gates for helpful comments on an earlier draft.