

Chatterjee, Deen K., ed. *The Ethics of Preventive War*. Cambridge: Cambridge University Press, 2013. Pp. 280. \$104.99 (cloth); \$29.99 (paper).

The issue of preventive war came to the fore in the aftermath of the 2002 *National Security Strategy of the United States (NSS)*. The Bush administration sought to broaden the range of threats that could legitimize military force. It moved away from the imminence requirement established by the *Caroline* incident in 1841 (in which a threat must be ‘instant, overwhelming, leaving no choice of means, and no moment for deliberation’) toward a rather more vague notion of ‘emerging’ threats that must be tackled ‘before they are fully formed’. The *NSS* characterized this expansion as a broadening of preemptive war in response to the ‘capabilities and objectives’ of terrorist organizations. But many commentators saw it as a clear attempt to legitimize preventive war. Unlike preemption, preventive war is illegal under international law and generally taken to be morally impermissible.

The Ethics of Preventive War is a collection of twelve essays (including the introduction) by philosophers, political theorists, and legal scholars. The book is divided into four parts: “Conceptual, Normative, and Methodological Terrains”; “International Law”; “Critiques of Preventive War”; and “Beyond Preventive War: Exploring Other Options.” It thus covers a range of issues from a range of perspectives.

The quality of the essays is somewhat mixed. Notably lacking in the introduction is a clear statement of what constitutes preventive war. The contrast with preemption is drawn repeatedly, but we’re not told in what this difference consists. Without some substantive account of these key concepts, it’s hard for the introduction to give a useful framework for the rest of the book.

The first conceptual essay, by Jean Bethke Elshtain, also fails to shed much light on this distinction. Elshtain suggests that prevention and preemption are not synonymous and that “one invites serious misunderstanding by failing to discriminate between the two” (17). And yet her attempt to distinguish between them moves immediately to the justificatory bar for each (prevention is harder to justify than preemption) without any conceptual analysis. She later offers only the familiar thought that the distinction is a temporal one: preemption deals with immediate threats, and prevention with ‘nipping threats in the bud’ before they are fully emerged, adding that such threats will later be “nearly impossible to contain or defeat without significant cost in blood and treasure” (19). But this too seems to conflate the concept of prevention with its possible justification. It’s not part of the concept of temporally distant threats that they will later be nearly impossible to contain without a greater expenditure of lives or resources. Rather, the trade-off between the certainty of the threat and the costs of waiting is what forms the bulk of discussions about whether prevention is justified—not whether an act counts as prevention.

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Chris Brown's essay is also unclear on the preemption/prevention distinction (he swims against the tide by treating the *NSS* as dealing with preemption rather than prevention but seems to view preemption as controversial in its own right. Given that all defense is preemptive—one cannot defend oneself against a harm that has already occurred—this seems mistaken). It's also hard to escape the feeling that much of the chapter attacks straw men. Brown claims that "the assumption" is that endorsing preemption entails endorsing the *NSS*, and so people have wrongly thought that preemption must be rejected (27). There are no references to tell us who makes this rather bizarre assumption. Brown grants that prevention might be hard to justify as self-defense but suggests that "the just-war tradition is *not* committed to the view that the only just use of force is in self-defence," citing medieval theorists who wrote of 'just cause' in terms of protecting and sustaining peace. Leaving aside the worry that this would still count as a form of defense—national defense—it seems to me generally misguided to talk of what just war theorists are or are not committed to. The only view to which just war theorists are committed is that war can, at least in theory, sometimes be just. That claim is the essence of the just war project—to deny it seems to lead to either pacifism or realism. Beyond that starting point, there are no views to which just war theorists are committed in virtue of being just war theorists.

Brown's positive thesis is that we should abandon what he calls 'rule-based' approaches to moral reasoning (that say, e.g., 'never preempt') in favor of a kind of Aristotelian approach that "takes into account the totality of the circumstances" (39). Once more, it's not clear who or what is Brown's target here. I don't know of any just war theorists who adhere to the sort of rule-based system Brown has in mind (he offers the Ten Commandments and Kant's Categorical Imperative as examples). Perhaps some just war theorists think that a just cause obtains only when one has already suffered some wrong and anticipates further wrongs—and so might, in effect, endorse a rule that says 'never strike first'. But I can't think of any proponents of such a position, and such an account would still entail that possession of a just cause is partially dependent on preempting future wrongs.

Michael Blake's essay is a highlight of the collection, exploring the role of illegality in a state's decision about whether to engage in preventive war. Blake considers three arguments against a state's disobeying international law: (i) that states owe duties to obey the law, (ii) that disobeying the law will result in worse consequences overall, and (iii) that the law is a forum in which states can improve their epistemic positions concerning the war's legitimacy. Blake persuasively argues that a state's duty to obey the law is defeasible in cases where the cost of obedience looks to be the unjust killing of its citizens and that it thus has little force. He is also skeptical about predictions concerning the consequences of violating international law—that if, for example, the United States endorsed preventive war, many others would follow suit. It is, he argues, rather unlikely that it is merely the United States' perceived moral authority that is stemming an otherwise inevitable tide of preventive war. With respect to iii, he argues that the function of interstate discourse of the sort that occurs in legal forums is valuable, but only because it forces states to produce evidence that their war is just. The value is in improving the state's epistemic position, not in the state's attempt to adhere to the law.

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Ultimately, Blake concludes, a state must use its own judgment about the legitimacy of its war, and the fact that a war is illegal provides scant (if any) reason to refrain from a war that meets certain criteria of justice. Blake's argument is consciously contextualized: he repeatedly acknowledges the background assumptions against which he is making his case and that these idealized conditions are often not met. In some respects, then, the implications of his claims are limited. But this doesn't detract from the value of spelling out at least one set of conditions under which preventive war might be just.

I'm not persuaded by the role that Blake identifies for the distinction between prevention and preemption. He argues that this distinction is not based on any empirical differences in the character of the threat but rather indicates whether a state has produced evidence sufficient to persuade other states that the war would be legal. Without such agreement, the war is preventive. With such agreement, it has been shown to be preemptive. It's not clear why we should accept this equating of prevention with illegality or endorsement. We can imagine, for example, a war that is clearly responding to an imminent threat but that violates proportionality and is thus illegal. Blake's view suggests, oddly, that should the United Nations Security Council refuse to sanction the war, the war is preventive no matter how imminent the threat. Moreover, legal discussions about threats often include discussion about whether the threat is 'fully formed'—this judgment can thus hardly be identical to the outcome of those discussions. But his more substantive arguments are interesting and provocative. However, there's no obvious reason why they would be restricted simply to judgments about when to wage war: we can imagine other cases in which the cost of obedience to the law is high (even if it doesn't result in the unjust killing of one's civilians). The implications of his account might thus be rather more wide reaching than he acknowledges here.

The best chapter is Jeff McMahan's essay on the conditions of liability to preventive attack. An overwhelming proportion of the literature on preventive war focuses on the general effects of sanctioning prevention: on whether this would, for example, lead to more wars or to more unjust wars. In contrast, McMahan's contribution offers a welcome, and thorough, analysis of the morality of preventive war from the perspective of those who would be killed in such wars. Despite being part of the "Critiques of Preventive War" section, McMahan's essay offers a theoretical defense of preventive war from the perspective of his liability-based account of war.

McMahan argues that the problem of justifying preventive war is not that we are harming people before they pose a threat. Someone who is merely intending, or perhaps merely considering, the infliction of wrongful harm on others can be liable to preventive harm before they act on that intention. McMahan argues that even someone who is merely considering killing an innocent person (but has not yet decided to do so) increases the probability that that person will be unjustly killed. And, "if the *only* opportunity for intervention is now, why should a wholly innocent person have to bear a 10 percent risk of being murdered in order that the person who has wrongfully created that risk should be spared?" (126).

But, of course, when it comes to preventive war, the people considering or intending wrongful harm are typically political leaders, and such people are not

usually the targets of military action. Rather, it is the combatants whom they will later order to fight who will be harmed by any preventive action, and thus it is primarily their liability that we must consider. This is why justifying preventive war is difficult. Call these combatants, who have not yet been ordered to fight, *potentially unjust combatants*. Call the combatants who will preventively fight against them *preventing combatants*.

McMahan argues that a potentially unjust combatant can be liable to preventive harm if two conditions are met: (i) she joined the military foreseeing the risk that she would fight in an unjust war; (ii) she will obey an order to fight in an unjust war that she will receive unless she is preventively attacked. McMahan argues that the majority of combatants whose government is planning an unjust war will satisfy both conditions. Even combatants who enlisted reasonably believing that their government would fight only just wars knew there was a risk they would be ordered to fight in an unjust war, since everyone knows that governments sometimes fight unjust wars. And, very few combatants refuse an order to fight in an unjust war. It's therefore true of the vast majority of combatants that they will follow the order to fight that they are about to receive. They will pose lethal unjust threats and are thus liable to lethal preventive force.

What of those who do not satisfy the second condition—that is, merely apparent potentially unjust combatants who would not, in fact, obey an order to fight an unjust war? McMahan argues that these combatants are not liable to be killed but that killing them may be justified on lesser-evil grounds. Moreover, he thinks it matters that these combatants bear responsibility for the fact that the preventing combatants believe that killing them is necessary. While responsibility for someone else's reasonable belief that one will pose an unjust threat cannot ground liability to being killed, it can make a moral difference to one's moral status. Specifically, McMahan suggests that these combatants will lack rights of defense against preventing combatants. He also claims that if they are killed, they are not thereby wronged to the same extent as wholly innocent people who are killed, and their deaths thus count for less in proportionality calculations.

It seems true that the merely apparent potentially unjust combatants cannot be liable to be harmed, because liability to defensive harm is essentially instrumental—one can be liable only to harms that are a means of averting a threat. Since harming merely apparently potentially unjust combatants is not a means to anything—it neither averts future threats nor decreases the objective probability of such threats—they cannot be liable to harm.

It's also true that one can sometimes have a right not to be harmed and yet not be permitted to defend oneself. For example, it might be that one's only available means of defense against a liable attacker would cause disproportionate collateral harm to a nonliable third party. The rights of the third party constrain one's defense in such a case. But on McMahan's view of preventive war, it looks like it is the rights of preventing combatants that constrain the rights of the merely apparently potentially unjust combatants. How can this be, if the preventing combatants are inflicting unjust harm? McMahan's position rests on the claim that the merely apparent potentially unjust combatants are responsible for the preventing combatants' beliefs that harming them is necessary. I'm not sure that this is correct.

Imagine *Trolley*:

Trolley: A runaway trolley is heading toward a child. Her mother is standing nearby, unaware that she is next to a switch that can change the tracks. However, as soon as she looks around, she will see the switch. If she flips the switch, she will divert the trolley down a sidetrack, saving her child's life. However, the trolley will then kill Alice and Bryan, who are stuck on the sidetrack.

Let's assume that it's unjust to kill Alice and Bryan as a side effect of saving the child's life. It might nonetheless be true that, historically, parents nearly always act to save their children's lives even at disproportionate cost to others. Alice and Bryan therefore reasonably believe that as soon as the mother sees the switch, she will flip it. Flipping the switch will take her only a second—once she moves, it will be too late for them to stop her. They thus believe that they must shoot her now, preventively, before she sees the switch. However, they are mistaken: the mother would not act to save her child at the cost of two people's lives. Even if she saw the switch, she would not flip it.

The mother seems to satisfy McMahan's conditions for being morally responsible for Alice and Bryan's belief that she will unjustly kill them. She must have foreseen the risk that, if she had a child, her child's life might some day be in danger, just as McMahan claims that all combatants must foresee that there is a risk that they will be ordered to fight in unjust wars. (Runaway trolleys probably didn't feature much in the mother's thinking, but she must have known that car accidents and fires, e.g., regularly endanger children.) And, it's plausible that she knew that parents nearly always try to save their children's lives, even if doing so involves inflicting some unjust harm on other people, and that there was a risk she might do the same. Indeed, her moral status is even shakier than that of some potentially unjust combatants, if we assume that she was merely permitted, and not evidentially justified, in having a child. McMahan's view thus suggests that should Alice and Bryan try to shoot the mother in what they wrongly take to be an act of prevention, the mother lacks a right of self-defense against them.

But it seems to me wholly implausible that the mother would lack rights of defense against Alice and Bryan or that she would be less wronged by being killed than some other innocent person. One explanation of this is that the mother cannot plausibly be described as responsible for Alice and Bryan's mistaken belief, because their belief rests on facts about what other people have done. Perhaps if she has in the past unjustly killed people to save her child's life, and Alice and Bryan know this, we might be inclined to think her responsible for Alice and Bryan's belief that she will also kill them. But citing the past behavior of other parents doesn't seem to make the mother responsible for Alice and Bryan's beliefs, even if she had a child knowing that it's true that most parents would inflict unjust harms to save their child's life. And this seems equally true of the merely apparent potentially unjust combatants: they are not responsible for the preventing combatants' beliefs that they will pose unjust threats if the preventing combatants' beliefs are grounded in facts about what other people have done.

I think McMahan is right that being morally responsible for a person's belief that one will pose an unjust threat can result in the loss of one's defensive rights. But I don't think merely apparent potentially unjust combatants are so responsible. If so, the only possible explanation of why these combatants lack defensive rights is that the preventing combatants are objectively justified in killing them on lesser-evil grounds. Their deaths are unavoidable to secure the just cause, given that the preventing combatants cannot tell who would follow the order to fight and who would not. If McMahan is correct that those who act with objective justification are not liable to defensive harm, then the preventing combatants will not be liable to be killed, and this could explain why the merely apparent potentially unjust combatants may not kill them.

I also think that McMahan's first condition for liability—that there must have been a foreseeable risk that a combatant would be ordered to fight in an unjust war—might turn out to be redundant. McMahan argues that this can help ground a combatant's liability if "the likelihood of his becoming a threat is traceable to his having risked becoming one" (132). But McMahan's second condition stipulates that a combatant is liable only if he will in fact follow an order to fight in an unjust war that he is going to receive unless prevented from doing so. If it's true of any given combatant that he will receive and follow such an order, why does it matter whether there was a foreseeable risk that he would receive such an order? I suspect McMahan's thought is that he cannot be morally responsible unless he foresaw the risk. But this implies that it's responsibility for receiving the order that matters, which is surely incorrect. It's responsibility for following the order that matters, and that seems independent of the foreseeability of receiving it.

There's some important and interesting work in this collection. But I think that more rigorous editing was called for: the unreferenced claims, the meandering arguments, and the at times fairly clear political bias detract from several of the chapters and thus from the book as a whole.

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QUERIES TO THE AUTHOR

q1. AU: Italics omitted here and throughout when used for emphasis yet meaning seems clear without them or when not at first use of key terms.

q2. AU: Please provide page number for quote (“the just-war tradition is *not . . .*”).