

# Death, Killing, and War<sup>1</sup>

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*The question why killing people is usually wrong is distinct from the question why death is usually bad for the one who dies, but most people assume that the reason that killing is wrong is closely connected with the badness of death for the victim. In this article I will offer an account of the badness of death and then argue that wrongness of killing cannot be adequately explained by reference to the badness of death for the victim. I will conclude by offering some reflections on death in war and the justification for killing in war.*

## Death

In contemporary analytic philosophy there is a broad consensus that what is called a “deprivation account” of the badness of death must be right. According to this kind of view, death is a misfortune to the extent that it deprives the person who dies of a future life that would have been good.

The simplest and most common version of this view is that the badness of death is proportional to the extent to which the life that the person would otherwise have had would have been good. This is generally assumed to be equivalent to the view that the misfortune an individual suffers in dying is measured by the extent to which her life as a whole would have been better had she not died when and how she did. John Broome, who defends this view, states it this way:

To determine whether some event benefits or harms you, we have to compare the goodness of your life as it is, given the event, with the goodness it would otherwise have had. The comparison is between your whole life as it is and your whole life as it would have been. ... The badness for you of your death is the difference between

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<sup>1</sup> This article is not meant to develop a novel position but is instead intended to be an introduction to certain issues concerning death and killing that can be read by both philosophers and others. Most of the claims about the badness of death and the wrongness of killing are condensed versions of claims that are elaborated and defended in my book, *The Ethics of Killing: Problems at the Margins of Life* (2002), and most of the claims about killing in war are drawn from my book, *Killing in War* (2009).

the goodness of the longer life you would have led had you continued living and the goodness of the life you actually do lead. In general, the badness of death is the difference between the goodness of a longer life and the goodness of a shorter one.<sup>2</sup>

This simple version of the deprivation view, which I call the *Life Comparative Account* of the badness of death, has plausible implications in the case of adults. It implies, for example, that death is in general worse for 20-year-olds than for 90-year-olds, as 20-year-olds typically lose more good life. But it has misleading implications about death very early in life. If it were true that the degree to which death is bad for a person is a function only of the amount of good life she would otherwise have had, then the worst time for an individual to die would be immediately after beginning to exist. If it is true, as most people seem to believe, that we begin to exist at conception, and if the badness of death is proportional to the amount of good life lost, then the worst and most tragic deaths are those that occur immediately after conception. Yet that is highly implausible.

If it were true, there would be the greatest possible difference morally between preventing conception at the last moment (for example, blocking the entry of the sperm cell into the egg) and destroying the zygote immediately after it had formed from the union of the sperm and egg. This is because, while no one is harmed at all if the sperm is prevented from entering the egg, the destruction of the egg shortly after the entry of the sperm causes what is supposedly the greatest possible loss or misfortune that an individual can suffer – that is, the whole of a human life.

About two-thirds of human embryos die naturally before birth, through spontaneous abortion. In the US alone, there are millions of such deaths every year. Yet no scientifically advanced society spends more than a tiny fraction of its medical research budget to attempt to prevent these deaths from occurring. We would obviously do more than we do if people regarded these deaths as great misfortunes for the victims.

Even if we begin to exist at some point after conception, almost everyone accepts that we begin to exist before birth and hence that we once existed as fetuses. Yet almost no one thinks that the death of a fetus is worse than the death of a 20-year-old.

Some philosophers have offered accounts of the badness of death that avoid these implausible implications. Peter Singer, for example, claims that a loss is a harm only if the victim has a desire for what is lost.<sup>3</sup> On this view, death is not bad for the one who dies unless it frustrates some desire. If a conscious fetus has no desires, death cannot be bad or harmful for it at all. Infants have desires for immediate satisfactions, such as food, but they have relatively few such desires and, lacking self-consciousness, cannot desire to continue to live. Hence death for

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2 Broome 2013, 221, 225.

3 Singer 2011, chapter 4.

an infant can frustrate only a few relatively insignificant desires and hence cannot be more than a comparatively trivial harm or misfortune for an infant, on this view.

David Velleman similarly argues that nothing can be bad for an individual unless that individual is capable of caring about it.<sup>4</sup> According to this view, since an infant is incapable of caring about its future life, its loss of that life cannot be bad for it. These implications of Singer’s and Velleman’s views about the badness of death for infants are hard to believe.

There is a more plausible alternative. Its theoretical grounding is in Derek Parfit’s pioneering work on “what matters,” according to which the basis of rational egoistic concern about one’s own future is not personal identity – the fact that some person in the future will be oneself – but certain relations that are the basis of identity in the normal case. Here is a very brief sketch of one of his arguments.

Suppose a person’s cerebral hemispheres were separated from the rest of his organism and transplanted into the body of his identical twin, whose cerebral hemispheres had been destroyed. Most people believe that the person whose hemispheres had been transplanted would continue to exist in his twin’s body. Most people also accept that if a person were to lose one cerebral hemisphere, for example through a stroke, he would continue to exist as long as the other hemisphere continued to function. Combining these claims, it seems that if one of a person’s hemispheres were to die and the other were transplanted into the body of his identical twin, he would continue to exist in his twin’s body.

Next suppose that the cerebral hemispheres of person A are separated and separately transplanted into the bodies of his identical triplets. There are then two persons, B and C, each with one of the original person’s hemispheres. If only one of these two people existed, he would be A. But A cannot be both B and C, for one individual cannot be identical with both of two non-identical individuals. There is, moreover, no reason to suppose that A is one of the two but not the other, for his relation to each is the same. Parfit concludes that A is *neither* B nor C. He has ceased to exist. But his relation to each contains most or all of what matters in ordinary survival, since he could have survived as either of them, just not as *both* of them. Because what matters is preserved both in A’s relation to B and in his relation to C, it would have been rational for him, prior to the transplants, to care about what would later happen to B just as if he were going to be B, and rational to care about what would happen to C just as if he were going to be C. The basis of rational egoistic concern about the future is therefore not identity – that is, it is not the fact that some future person will be *me* – but is instead the set of relations that are constitutive of identity in the normal case.

These relations are the physical, functional, and organizational continuities of the brain that underlie the continuities of a person’s psychology over time. For brevity, we can refer to these relations together as *psychological continuity*. As I understand it, psychological continuity is a matter of degree. Since the basis of

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4 Velleman 1991.

egoistic concern about the future is a matter of degree, the extent to which it is rational to be egoistically concerned about the future is also a matter of degree. How much it is reasonable for one to care in an egoistic way about oneself in the future depends on how strong the relations constitutive of psychological continuity will be between oneself now and oneself in the future.

This supports an account of the badness of death according to which how bad death would be for an individual, or how strong an interest that individual has in avoiding death, is a function of two variables: (1) the net amount of good life the individual would have were he not to die, and (2) the degree to which the individual at the time of death would have been psychologically continuous with himself in the future at the times at which the good events in his life would have occurred.

This account of the badness of death explains why a very early death is a lesser misfortune for an individual than a later death. A fetus or newborn infant is almost wholly disconnected psychologically from itself in the future: it has no desires or intentions for the future, no memories, beliefs, values, or general psychological architecture that it will carry forward into the future, and in the future it will have no memories of its present life. It is for this reason that the extent to which it is a misfortune for the fetus to lose this future through death cannot be a function only of the amount of good its life would otherwise contain. The badness for the fetus of the loss of this good must be discounted for the weakness of the psychological relations that would have held between itself as a fetus and itself later when the good of its future life would have occurred.

Before discussing the wrongness of killing, it is necessary to clarify the relation between the Life Comparative Account of the badness of death and the account I have sketched. They are not necessarily competing accounts of exactly the same thing. I do not claim that the Life Comparative Account is false. On the contrary, it can be understood as stating an obvious truth: namely, that when an individual dies, she loses all the good life that she would have had if she had not died when and how she did. Suppose that the intrinsically good elements of the life she would have had would have outweighed the bad by a certain amount. The nonoccurrence of that net amount of good life *is* a loss, and since that good life would have been *hers*, she is the victim of the loss.

My claim is that this account leaves out a dimension of the evaluation of death that is just as important as the dimension it identifies. What it leaves out is how great a *misfortune* death is for the individual who dies. This is what is correlative with the strength of the reason that the individual (or someone who cares about her for her own sake) has, at the time of her death, to want, for her own sake, that she not die. And this is in turn correlative with the strength of the interest she has, at the time, to avoid death by continuing to live. Hence I have labeled this account the *Time-Relative Interest Account* of the badness of death.

One way to explain the difference between these two forms of evaluation is to understand the Life Comparative Account as providing an *impersonal* evaluation of the badness of death – that is, an evaluation of the extent to which an individual's

death makes the outcome worse, independently of its effects on others. That the evaluation is impersonal is compatible with the fact that there is a victim to whom the loss can be attributed. The Time-Relative Interest Account, by contrast, evaluates a death by reference to the strength of the individual's egoistic interest in continuing to live that is frustrated by her death.

There is a closely related distinction in Broome's views about causing people to exist. According to Broome, it is important to distinguish two points on the scale that measures well-being. One is the *neutral level*, above which life is worth living but below which life is intrinsically bad for the person whose life it is. The other is the *critical level*. On one understanding of the critical level, lives that are between the neutral level and the critical level are worth living but do not make the outcome better. That is, while such a life is good for the person who lives it, it does not add to the value of the world. While it is not bad to create such a life, neither is it good. I understand this view to imply that, while the death of a person whose life is between the neutral and critical levels is bad for that person (because he loses something that is for him worth having), it does not make the outcome worse. Although I expect that Broome would say that there is a moral reason to save that person's life for his own sake, I doubt that he could say that this is because the person's death would be bad.

## Killing

That killing human beings is usually wrong is a datum, an assumption that we all accept. It is not that we require a proof that killing is usually wrong; rather, we know that it is usually wrong but are uncertain what the best explanation is of why it is wrong. Understanding why killing is normally wrong is essential to determining when killing may be permissible. For in cases in which some or all of the reasons why killing is normally wrong do not apply, killing may be less seriously objectionable or not wrong at all.

It is natural to suppose that killing is usually seriously wrong because death is usually very bad – that is, that killing is wrong because of the great harm it inflicts on the victim, which is the harm involved in the loss of all the good life that that individual would otherwise have experienced – discounted, if the Time-Relative Interest Account is correct, for diminished psychological continuity in the case of the very young.

But this simple view, like the simple view about the badness of death, has implications that are counterintuitive. It implies, for example, that an act of killing is more seriously wrong the more harm it inflicts on its victim – that is, the greater the loss it causes. Thus it implies that, when other things are equal, it is more seriously wrong to kill a younger adult than to kill an older adult, to kill a person with a cheerful disposition than one with a gloomy disposition, to kill a person with higher psychological capacities than one with lower capacities, to kill a rich person

than a poor person, and so on – for in all these cases the future life that the person of the first type would lose is likely to be better, in quality or quantity or both, than that which the person of the second type would lose.

Yet it seems in general that the degree to which an act of killing is morally objectionable does not vary with the extent to which death is bad for the victim. In this respect, killing seems unlike other forms of harming. For it *is* more seriously wrong to break both a person's arms than to break his little finger, and more wrong to steal \$5000 than to steal \$5. But it does not seem more seriously wrong to kill a 30-year-old than to kill a 40-year-old. (Our intuitions may begin to break down when the amount of good life a person would lose in dying is tiny, for example, when he would otherwise live for only a very short time. Yet in law it remains an act of murder to kill a person to harvest one of his organs for transplantation, even if he is permanently unconscious and would inevitably die within a day or two, and even if killing him now is the only way to save the life of the potential recipient of the transplant.)

Killing seems to violate a requirement of respect for persons. What killers fail to respect is not so much the value of their victim's *life*, which varies with the amount of good the life would contain, but the value or worth of the *person* herself. So while the badness of death is a function of the value of the *contents* of the person's life, the wrongness of killing is a function of the value or worth of the person herself, considered independently of what would happen in her life.

Exactly what the properties are that ground the respect-worthiness of persons is highly controversial. Many think they include capacities for self-consciousness and at least minimal rationality and autonomy. Others protest that many human beings, including fetuses, infants, and some cognitively impaired adults, fail to satisfy these criteria; hence the criteria cannot be right. Others warn that if the standard were lower, the implication would be that some nonhuman animals have a degree of worth equal to our own. Some then respond by claiming that membership in the human species is a ground of higher worth, while others argue (plausibly, in my view) that there is nothing about belonging to a particular biological species that could by itself be the basis of an individual's inherent worth.

It seems, however, that if killing lower animals is in general significantly less seriously wrong than killing normal adult human beings, some two-tiered account of the morality of killing must be correct. It seems plausible to suppose that there is some threshold above which all individuals have equal worth, and deserve equal respect, despite any variations in the properties that ground their high moral status, so that killing them is presumptively equally wrong. Individuals below the threshold have a lower moral status, so that killing them is in general less seriously wrong, and the wrongness of killing them may vary with certain of their individual properties. An important question, then, is whether human fetuses and newborn infants are above or below this threshold.

I think there is no reasonable alternative to the idea that moral status is grounded in individual psychological capacities. If liberal egalitarianism is right, there must be

a threshold of psychological capacity above which all individuals have equal value and equal moral status. We can call such individuals *persons*. Although persons may vary in the degree to which they are self-conscious, rational, or autonomous, these differences are irrelevant to their moral status, and to the morality of killing them.

This yields a two-level view about the wrongness of killing. There is a presumption that, in those cases in which killing a person is wrong, it is equally wrong. The degree of wrongness does not vary with the degree of harm caused to the victim. But the killing of individuals below the threshold – individuals that are not persons, such as animals, fetuses, and newborn infants – is wrong (when it is wrong) primarily because of the harm it causes and not because it violates a requirement of respect. Thus the wrongness of killing these individuals may vary with the degree of the harm caused.

While the killing of persons is usually wrong, and more seriously wrong than most other forms of wrongdoing, it can on occasion be permissible, or even morally required. But if the default assumption is that all persons have a right not to be killed, a justification for killing a person must explain what happens to that right when the killing is justified.

There are various distinct types of justification for harming people. Each may also be a justification for killing. And each justification comes with an account of what happens to the right of the person when it becomes permissible to kill him. Among these justifications, there are four that are particularly salient.

Many people believe that a person can act in ways that make him *deserve* to die, or be killed. This is the view of most of those who believe in the permissibility of capital punishment. If a person can deserve to die, it is because he has acted in such a way as to have *forfeited* his right not to be killed.

This is true also of those who have made themselves morally *liable* to be killed. But, although both desert and liability involve the forfeiture of a right, they are quite different phenomena. Among the various differences between desert and liability, two are most significant. One is that whereas a person can deserve to be harmed when harming him will not prevent any other harms, a person can be liable to be harmed only when harming him will be either instrumental to or an unavoidable side effect of the prevention of further harm. That is, while the infliction of harm in accordance with desert may be an end in itself, so that the harm inflicted is entirely avoidable, the infliction of harm in accordance with liability is always a matter of how harm ought to be distributed among potential victims when *some* harm is unavoidable.

The second significant difference between desert and liability is that what a person is liable to varies with circumstances in a way that what a person deserves does not. The amount and perhaps even the kind of harm a person deserves is fixed by the nature of the wrongdoing for which he is responsible and the degree to which he is responsible for it. What a person deserves cannot, I believe, depend on factors over which he has no control. But the degree of harm to which a person

is liable is not fixed by the magnitude of the expected harm he may cause and the degree to which he is responsible for the threat he poses. These two factors may set a *limit* to the harm to which a person can be liable, but they do not fix or determine how much harm a person is liable to.

The amount and perhaps even the type of harm to which a person is liable can vary in many ways with the circumstances. I will cite only one example. Consider two variants of a case in which a culpable attacker threatens to kill an innocent victim. In the first case, the only weapon the potential victim has to use in self-defense is a grenade, which will inevitably kill the attacker. In the second case, she has both the grenade and a pistol with which she can shoot the attacker in the leg, thereby incapacitating him. It seems that in the first case the attacker is liable to be killed, while in the second he is liable only to be shot in the leg. This is true if, as I believe, there is a necessity condition internal to the notion of liability. A person cannot be liable to a greater harm if the infliction of a lesser harm would have an equal or greater probability of fully achieving the justified defensive aim.

Two other types of justification for killing are consent and lesser evil. Consent, which involves the *waiving* of a right, is in many cases an important element in the justification for euthanasia. And some just war theorists have thought that consent is an important part of the justification for killing in war. They think that by becoming members of the military, soldiers consent to become legitimate targets in a time of war.

There is a lesser-evil justification for killing only when killing a person who is not liable to be killed is necessary to prevent substantially greater harms to others – for example, to prevent the wrongful killing of a significantly greater number of people who are also not liable to be killed. When there is a lesser-evil justification for killing a person who is not liable to be killed, he retains his right not to be killed but that right is *overridden*. The most familiar example of killing that is sometimes justified as the lesser evil is the killing of innocent bystanders as a side effect of military action in a just war. Most people also accept that it can be permissible, though only rarely, to kill innocent people *intentionally*, as a means to an end. But the proportionality constraint on intentional killing is widely recognized to be significantly more stringent than the proportionality constraint on killing innocent people *unintentionally*, as a side effect.

## Killing in War

My view is that most justified killing in war is justified on grounds of liability. Even if, as I am inclined to doubt, people can deserve to be killed, few of those who fight in just wars are sufficiently evil to belong in that category. Nor do soldiers consent to be killed. At least when soldiers enlist voluntarily, they consent to assume the risk of being killed. But even when they fight voluntarily, they do not give enemy combatants their consent or permission to kill them. Finally, while there can



sometimes be a lesser-evil justification for killing in war, the scope of this form of justification is quite limited. Certainly in any particular war there cannot be a lesser-evil justification for killing by combatants on both sides.

The claim that most permissible killing in war is justified on grounds of liability is accepted by most just war theorists. But there are deep disagreements about what the basis or criterion of liability to be killed is. Traditional just war theorists distinguish between the innocent and the noninnocent. They use “innocent” to refer to those who are not liable to attack and “noninnocent” to refer to those who are. But these same terms also have additional meanings that derive from their etymology. “*Nocentes*” is a Latin term meaning “one who is injurious, or threatening.” The *innocent* are *not nocentes*, that is, those who are not threatening. The noninnocent, by contrast, are those who *are* threatening. Combining the two senses of each term yields the view that those who do not pose a threat – noncombatants – are not liable to attack and thus are not legitimate targets of attack, while those who do pose a threat – combatants – are liable and therefore are morally legitimate targets. In Michael Walzer’s words, the right not to be attacked “is lost by those who bear arms...because they pose a danger to other people.” This is true of just and unjust alike. “Simply by fighting,” Walzer claims, they lose “their title to life... even though, unlike aggressor states, they have committed no crime.”<sup>5</sup> According to this view, all killing in war that is defensive is self-justifying, assuming it is also necessary and proportionate.

Traditional theorists may claim that this criterion of liability is action-based, in that it is what certain people do – posing a threat – that is the basis of their liability. But when the theory is actually applied, it turns out that the criterion is in effect status-based, in that traditional theorists tend to claim that anyone who is a combatant in time of war is liable to be killed at any time, irrespective of whether he poses or will ever pose a threat to anyone.

Usually when a person forfeits his right not be killed, he also loses his right of self-defense. For example, if someone is trying to murder me, I may kill him in self-defense because he forfeits and because he forfeits he has no right of defense against my defensive action. Yet the traditional theory holds that all combatants forfeit their right not to be killed yet retain their right to kill in self-defense. This peculiar combination of views is the basis of the widely accepted view that all combatants are permitted to kill other combatants in war, regardless of whether they fight for a just or unjust cause.

Some people have raised questions about the moral significance of the distinction between combatants and noncombatants. During the early phase of the Iraq war, for example, a Princeton economist, Uwe Reinhardt, wrote an op-ed piece in *The New York Times* in which he expressed understandable impatience with those who “prattle on about innocent civilians, as if the number of fallen enemy

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5 Walzer 1977, 136.

soldiers did not count. What does ‘innocent’ mean in the context of war?”<sup>6</sup> Similarly, two Israelis, Asa Kasher and Amos Yadlin, wrote around the same time that “a combatant is a citizen in uniform. ... His blood is as red and thick as that of citizens who are not in uniform. His life is as precious as the life of anyone else.”<sup>7</sup> The difference between these complaints is that, whereas Reinhardt was protesting the idea that the deaths of *enemy* soldiers do not matter, Kasher and Yadlin were objecting to the idea that because *our* soldiers are in uniform, their lives somehow have less value than the lives of enemy civilians.

But the claim that soldiers are morally liable to be killed in war does not imply that their deaths do not matter or that their lives are of lesser value. It is only to say that they have acted in a way that provides a justification for attacking them. The claim that they are noninnocent bears only on the permissibility of killing, not on the tragedy of death.

While traditional just war theorists have long argued that the basis of liability to be killed in war is posing a threat to others, a more recent school of “revisionist” just war theorists has argued for a quite different criterion of liability to attack in war. According to the revisionists, one becomes liable to be attacked or killed in war by virtue of being morally responsible for a threat of wrongful harm to others. This criterion of liability differs from the traditional criterion in two respects. First, it implies that one can be liable to be killed even if one does not actively pose a threat, provided that one is morally responsible for a threat in such a way that one’s being killed would serve to eliminate or mitigate that threat. Second, it implies that one can pose a threat to others without being liable to defensive attack, provided that one is morally justified in posing the threat.

This view thus follows the common view of killing in individual self-defense, which is asymmetrical between wrongful aggressors and innocent victims. A police officer who is about to kill a rampaging murderer poses a justified threat. The murderer is liable to be harmed but the officer is not. Hence the murderer has no right of self-defense against the officer.

This asymmetrical account of defensive killing leads to a very different understanding of justified killing in war from that of traditional just war theory. The traditional view holds that all combatants are liable and that combatants on both sides are permitted to kill other combatants. The revisionist view, by contrast, holds that while most combatants who fight in unjust wars are liable to be killed, combatants who fight in just wars are not, unless they pursue their just cause by impermissible means. This revisionist account of liability to be killed in war is clearly action-based rather than status-based. It holds that combatants become liable not

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6 Reinhardt March 22, 2003.

7 Kasher & Yadlin 2005, 17.

because they are combatants but because they act wrongly in threatening the lives of people who are not liable to be harmed.<sup>8</sup>

## Death in War

I will conclude with a few reflections about whether there is anything special about death in war. Many people have thought that death in war is, or can be, specially glorious. As a general matter I think this is false but I do think that when a person is killed in pursuit of a just cause, his death can have a special meaning that most deaths lack.

There is something about giving one's life for a cause greater than oneself that mitigates what would otherwise be the great tragedy of an early death. That a person is killed in pursuit of a just cause does not affect the degree of the loss, or harm, or misfortune he suffers. But it can affect the meaning of the loss.

I also think, however, that it matters to the meaning of the death whether the just cause is actually achieved. Soldiers are generally willing to risk and sometimes even to sacrifice their lives for the achievement of a just cause, but it matters to them that the just cause actually be achieved. If the just war in which a soldier has died later ends in victory, that soldier will have died while contributing to the achievement of a just goal. The "bb" achievement of the just cause can partially redeem the sacrifice the combatant has made. But if the war ends in defeat, the soldier's death may seem to have been wasted, or pointless. This raises an important moral issue – namely, whether the redemption of the sacrifices made by those combatants who have been killed while fighting for a just cause constitutes an additional good that could be achieved through victory, and thus provides an additional moral reason to continue to fight.<sup>9</sup>

There seems to be no parallel claim to be made about the death of a civilian who has been killed as a side effect in war. The difference is that the soldier has devoted and invested himself in the goals of the war. This is part of the explanation of why the outcome of the war can retroactively affect the meaning of his death.

There is also no parallel with the deaths of those who have died while fighting for unjust aims. Their deaths cannot be redeemed by the success of the aims for which they fought. Indeed, their deaths are arguably even more ignominious if their lives were sacrificed in the successful service of injustice.

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8 For a brief critique of the traditional view, which is also by implication a defense of the revisionist view, see Jeff McMahan, "Rethinking the 'Just War,' Part 2" (2012).

9 For further elaboration, see McMahan 2015.

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