

## Introduction

To talk about war with any authority, we must talk about *people*. Wars are fought by people; wars advance the interests of some people and do so at the expense of those of other people. Wars shape the identity and destiny of communities and nations made up of people. People are forced to make sometimes agonizing decisions that affect the lives of other people. In some cases, wars help people, liberate people, save people's lives, drastically improve people's basic living conditions. Most importantly, for the purposes of the present book, wars harm people. People lose limbs and eyes and their lives in war. People starve, people are forced from their homelands, people's houses and cities are reduced to ruins. People experience profound psychological and emotional trauma that may last a lifetime.

War is, in sum, a human practice. And yet, *people* are often missing from both classical and contemporary discussions of the morality of war. Ethical writing about war often takes the shape of impersonal, abstract, formal principles or generalizations. It is possible to read whole books on the ethics of war without ever getting a sense of the real people whose lives are impacted by the violence of war—or even that war is always violent, in the sense that war always involves violations of human personhood. To a certain degree, this omission of human experience is unavoidable; a book devoted to philosophical reflection on the morality of war will never capture the lived experience of war, and this book is no exception. But certainly ethicists could go further than they generally have in addressing that experience and in acknowledging the moral relevance of that experience. Even more fundamentally, however, ethicists must do their work in a way that reflects the fact that morality, like war, is a

human practice. Morality is not ahistorical, universal, or theoretical; rather, it is practiced by and embedded in historical communities, institutions, and systems made up of persons. Placing the human person at the center of discussions of morality and war has significant implications not only for the normative conclusions an ethicist might draw regarding the morality of war, but also for the theoretical and methodological choices one might make as a scholar of the ethics of war.

One might assume that a person-focused project on morality and war would be an individual-focused one. In a way that is true of this book, in that I will spend considerable time reflecting on the nature of individual character and intention. However, I write as a feminist ethicist. Thus, the individual I have in mind is one who, like all persons, is situated within multiple layers of relationships, one whose character and intentions are shaped by and expressed within the context of those relationships. As I understand it, feminist ethics has at least three identifying characteristics. First, it focuses attention on persons as embedded within and constituted at least in part by relationships. Second, it understands morality as a set of practices constructed and maintained in the context of human social relations. Finally, feminist ethics recognizes that these relations are not always relations of equality and reciprocity; morality therefore cannot be fully distinguished from power, nor can it be considered unchanging given the ways moral concepts and practices change when used by individuals and groups with varying interests and levels of authority.

Feminist ethics arises from a tradition of activism and philosophy that seeks to identify and dismantle structures of gender and sexism that contribute to the oppression of women. But note that, as I have defined it, feminist ethics is not necessarily confined to the study of gender, nor does it necessarily focus primarily on women. What makes ethics feminist is not its subject matter but its method, particularly its relentlessly critical attention to the ways communities, made up of individuals in various power relationships with one another, shape moral norms and individual character. Feminists criticize norms and practices that construct relationships such that some parties are vastly more powerful, and others vastly more vulnerable, than others. Importantly, however, feminist ethics does not stop at critique. To say that morality is a human practice shaped by power is not to say, as some have suggested, that we can no longer make moral claims. To the contrary, this understanding of morality implies some normative conclusions of its own.

In the following chapters, I present an immanent critique of the tradition of just war reasoning, focused on one issue in particular:

*Introduction*

3

responsibility for harm to noncombatants.<sup>1</sup> I will argue that to practice just war reasoning from the perspective of feminist ethics results in an expansion of this responsibility. I can make such a critique only from my own particular position in the world as an American feminist trained in the study of comparative religious ethics—a position that helps to explain some of what this book is and does and some of what it is not and does not do. I am not a theologian, though I engage the work of theologians insofar as they participate in the conversation about just war reasoning; I advance no theological claims, nor do I justify my normative claims with reference to religious or other transcendent reasons. The examples I use to illustrate my arguments come largely from American uses of armed force since the 9/11 attacks in 2001—what some have come to call the post-9/11 wars, a set of conflicts that over fifteen years after 9/11 continue to unfold into new territories against new enemies.<sup>2</sup> However, I am not myself a journalist, nor a policymaker; I do not present original research on what happened in Afghanistan, Iraq, or Syria, and I rely heavily on others' reporting in the examples I employ (which do not constitute an exhaustive account). Nor do I present any detailed policy plans or legal suggestions for addressing international conflicts.

Rather, as an ethicist, my central focus is on the tradition of moral reasoning that has come to underlie international humanitarian law and U.S. military policy, as well as much of the public discourse around American uses of armed force today. As a feminist, I am especially interested in the ways this reasoning justifies practices of assigning, taking, and evading responsibility—particularly for acts that cause harm to noncombatants, the most vulnerable persons in any armed conflict. I will argue that contemporary just war reasoning has enabled the evasion of responsibility for many harms to innocent persons. How it has done so is in large part by its failure to recognize the relational nature of human persons, which has led to a concomitant lack of critical attention to relative power and vulnerability among the parties who participate in

<sup>1</sup> Here and throughout the book, I use the terms “noncombatants” and “civilians” interchangeably. While, as discussed in chapter 2, there are some debates regarding whether these two terms are always synonymous, my own focus is less on the sometimes difficult question of drawing clear boundaries around these categories and more on the simple fact that some persons are innocent in war, and sometimes those innocent persons are harmed during and by war. It is these innocent persons to whom I refer as noncombatants or civilians.

<sup>2</sup> On the duration and spread of the post-9/11 wars, see Callimachi et al., “An Endless War.”

and are impacted by war. As I will show, to introduce the fact of human relationality into just war reasoning leads to an expanded understanding of agency and intention and further to an expanded understanding of responsibility for the infliction of harms. I will argue that for those normatively committed to the minimization of violence, this expansion of responsibility is essential insofar as it leads to the reconstruction of vastly asymmetrical relationships that enable violence against vulnerable persons.

I begin by offering an overview of feminist ethics in Chapter 1, in which I explain in detail the three characteristics mentioned above: an understanding of humans, and in particular of human autonomy, as relational; attention to power and vulnerability; and an emphasis on the practical nature of morality. I note that some aspects of the project of feminist ethics are compatible with approaches to the study of moral philosophy endorsed by pragmatist philosophers. These same pragmatist thinkers also offer a helpful method for the critical study of traditions, a project feminists have often eschewed because of the ways in which traditions can authorize and reinforce historical power asymmetries. Putting the two traditions in conversation with each other, I build on each of their arguments to propose a feminist approach to the critical study of moral traditions—a model for the feminist immanent critique of just war tradition that I will undertake in the remainder of the book.

I begin this project in the second chapter with an historical overview of how just war reasoning's primary means of addressing the moral problem of harms to innocent persons—what is now called the criterion of discrimination or the principle of noncombatant immunity—developed. I show that from early on in the tradition, just war reasoning has been employed to evade responsibility for harming innocent civilians, an outcome achieved by the systematic narrowing of the concept of responsibility. Claims of necessity have regularly been invoked to explain many such harms, which are characterized as regrettable but inevitable side effects of just war. This notion of side effects has been formalized in the just war tradition's version of the principle of double effect, which holds that an agent is not responsible for the harms she inflicts on innocent persons, even if she knows in advance that those harms will occur, as long as those harms were the unintended effects of a proportionate act aimed at a good end. As the just war criteria have been translated into moral principles, military policies, and in some cases law, it has sometimes become harder to see the role that agents play in deliberation regarding their potentially harmful acts. The language of deliberation has come to

*Introduction*

5

be replaced with that of necessary courses of action in accordance with law. When principles or laws conflict, even intentional harm to noncombatants has sometimes been justified as a necessary exception. Because most just war thinkers make free choice and intention of a given act a prerequisite for responsibility, these invocations of necessity all become ways of denying responsibility. I end this chapter by turning to three contemporary possibilities for thinking about harm to noncombatants that seem at first glance to overcome some of the tensions in these traditional approaches. However, I conclude that because all three shift the responsibility for harm in one way or another onto the persons who are harmed, they fail to address the heart of the problem in which I am interested.

In the following chapter, I address a different way in which just war reasoning has tended to narrow responsibility for harms inflicted during war: by addressing only certain kinds of harm. Because modern just war thinkers tend to define moral personhood in terms of rights, their discussions of harm tend to focus solely on rights violations. One of the glaring oversights I attempt to redress in this book—though I am able to do so in only partial fashion—is the near-total absence in scholarship on ethics of war of the voices of noncombatants who live through war. Listening to those persons' voices makes clear that war inflicts many harms that are not best described as rights violations. In particular, civilian survivors of the post-9/11 wars describe grave damage to their most important personal and social relationships, as well as to their senses of moral self and personhood. These kinds of harm, which we might call moral injury, are violent even though they do not necessarily violate rights or involve the breaking of any of the laws described above. Recognizing this fact is significant. The word "violence" is absent from a large proportion of contemporary work in just war reasoning. Conceptualizing war—even just war—as a practice of violence invites us to think more seriously about the impact of war on relationships and thus on different groups' relative power and vulnerability to future violence. Only when we recognize the violence of war (and the various physical, mental, and moral forms that violence can take) can we adequately consider what it would mean to take responsibility for the harms that war inflicts.

As noted above, just war thinkers have also narrowed responsibility for harms by tying it to intention. I begin Chapter 4 with a discussion of the two roles intention has traditionally played in just war reasoning. The first is in the *jus ad bellum* criterion of right intention, which requires that a just war be aimed at the end of peace. The second is in the *jus in bello*

criterion of discrimination, which requires that acts of war be aimed only at legitimate military targets. According to most interpretations of the latter, when harms to innocent persons resulting from acts of war are unintended side effects of proportionate attacks on military targets, the agents who carried out those acts are not responsible for the consequent harms, even if they were foreseen. I offer two challenges to this interpretation. First, I argue that intention cannot be understood as a purely private, mental state, but rather is social in that it is attributed by others based on the evidence provided by how an agent acts over time. If an agent claims not to intend to harm civilians, but repeatedly does so, there is good reason to doubt the sincerity of that intention. We might also say that such evidence gives us reason to doubt that an agent intends *not* to harm civilians. Second, I argue that foresight cannot be completely separated from, but rather is best understood as one constitutive aspect of, intention. When an agent performs an act that she knows will harm civilians, that knowledge is part of the intention with which her act is performed. Moreover, there are cases in which the failure to foresee harm may also provide important evidence of one's intention. Those who intend not to harm civilians will do the research necessary to accurately predict, so far as possible, the harmful outcomes of their acts and will incorporate that knowledge into their deliberations. All of this means that the information relevant to intention is much wider than the momentary thought an agent has at the instant of undertaking a particular act. It does not mean, however, that intention is irrelevant to the moral evaluation of acts. To the contrary, given that intention is best understood in the longer context of an agent's acts over time, intention is centrally important because those who do intend not to harm civilians will in fact harm fewer innocent persons over time.

By expanding our concept of what might count as an intended harm, this account has already suggested a significant expansion in responsibility according to the predominant just war model, which assigns responsibility only to the agents of intended harms. However, in Chapter 5 I argue for a further expansion. While intention may help to determine a narrow aspect of responsibility we might call culpability, assigning responsibility exceeds the task of assigning blame or guilt. Relational autonomy means that humans do not have total control over their acts and the subsequent effects of those acts. Thus, persons would be responsible for very little if responsibility pertained only to consciously intended acts and effects. Instead, persons are responsible even for the unintended effects of their acts. Additionally, because relationality means

*Introduction*

7

that agents have a significant impact on the outcomes of one another's acts, responsibility will be widely shared among organizations and communities. This responsibility does not necessarily imply culpability, however. I argue that in the case of harmful acts, responsibility implies at least four distinct practices. First, those whose acts harm others must recognize those harmed persons as persons. Second, they must listen and respond to those persons' needs. Third, when they are able they must act to repair the harms they caused, to the degree possible and in accordance with the stated needs of the harmed persons. Finally, they must rehabilitate themselves, doing the work described in the previous chapter of learning from their mistakes in order to minimize their future harmdoing.

Because the vast majority of harms inflicted by the U.S. military in the post-9/11 wars are understood as unintended, the responsibility-as-culpability model leaves the persons who have suffered these harms unrecognized and unresponded to. By contrast, this expansion in responsibility encourages the recognition of harmed persons and subsequent response to their needs, repair of their harms, and self-rehabilitation to avoid future similar episodes. In Chapter 6, I discuss some of the specific practices through which the U.S. government and military, along with ordinary American citizens and civil society organizations, might accept these responsibilities. I argue that doing so has the potential to reconstruct relationships less asymmetrically and thus less enabling of future violence. Contrary to those who have suggested the elaboration of a new *jus post bellum* category of just war reasoning, I argue that many of these practices are relevant not only to the postwar period but also to the periods before and during war, and that they are therefore better understood as connected to the criterion of right intention.

As I argue in the conclusion, the criterion of right intention, and specifically the idea that the proper aim of just war reasoning is that of a just and lasting peace, imposes high demands on just war thinkers. In particular, it requires that those who deliberate using the just war criteria always ask whether a given act or practice is a prudent means toward the eventual achievement of just peace. If the arguments of this book are sound, then we must conclude that war, even just war, is violent, and that violence structures relationships such that vulnerable people are made more vulnerable to future violence. In other words, whatever its positive effects, even when war is fought in accordance with just war norms (and, of course, we must recognize that it often is not), it contributes to conditions that make future violence more likely. To see that this is so, we need look no further than the spiraling and spreading of violence of the

post-9/11 wars, and the ways in which those wars have inflicted increasing, repeated, and lasting harm on some of the world's most vulnerable populations. Given these facts, I suggest that a feminist approach to just war reasoning is one that will be much more critical in its consideration of when the use of armed force is a prudent response to injustice rather than a path to the reinforcement of vulnerable persons' vulnerability.



## I

**Feminist Ethics**

Human beings are relational. This statement is a foundational premise of my argument. It ought not to be controversial. The ways in which humans are related to one another are so plentiful and diverse that it should be impossible to deny that relationality is a basic fact of human-ness. However, human relationality has often been neglected and even explicitly denied in modern moral philosophy, which takes the independent and autonomous agent as its paradigmatic and ideal person. By contrast, feminist philosophers have argued not only that humans are relational, but that the fact of human relationality has moral relevance. In this chapter, drawing on the work of several feminist philosophers, I outline an approach to the study of ethics informed by these arguments. What I call feminist ethics begins with the assumption that human beings are embedded within and formed by relationships of mutual dependence. A second defining characteristic of feminist ethics is its critical attitude toward the asymmetries in these relationships and the ways in which relatively more powerful persons and groups are able to exploit and enlarge the dependence and vulnerability of others. Finally, feminist ethics complements the study of moral theory with attention to the social practices by which moral principles and norms are developed and enforced.

Feminist writing on the topic of war has in different ways exhibited each of the three characteristics of feminist ethics. However, for reasons having to do with their suspicion of the ways in which the authority of tradition can be wielded in the service of powerful interests, feminists have largely failed to engage just war reasoning as a tradition. I argue below that to treat just war as a theory divorced from its development in a historical,

relational tradition is to give up an important means of critiquing contemporary uses of just war categories. Following recent developments in the field of religious ethics, I suggest that an understanding of tradition shaped in part by pragmatist thought answers feminist concerns and allows ethicists to take a critical approach to just war reasoning as a tradition.

## FEMINISTS ON WAR

Feminists have been writing about the implications of feminist theorizing for moral evaluation of the uses of military force and other forms of violence for several decades now. Both the foci and the conclusions of these projects have been quite diverse, representing various aspects of feminist philosophy. They share certain features that distinguish them from the present project: first, the vast majority of these projects have focused primarily on questions related to women and gender in particular; and second, very few of these projects have engaged seriously with the tradition of just war reasoning. However, as I briefly describe here, these works exemplify several aspects of feminist philosophy that have influenced my own approach.

Several early contributors to this conversation argued that feminists ought not to be talking about war, *per se*, at all. Instead, they suggested, the proper focus of feminist scholars is on peace. The justification provided for this focus was the claim that there exists an inherent link between womanhood (often interpreted as motherhood) and peacemaking. This link can be understood in different ways. Birgit Brock-Utne, for example, suggested in *Educating for Peace* that mothers could transform society by protecting their children from cultural celebrations of violence and educating them about peace and cooperation. Motherhood's connection to peace was described slightly differently by Sara Ruddick, who characterized peacemaking as an intrinsic aspect of "maternal work." Mothers, Ruddick argued in *Maternal Thinking*, develop skills of non-violent persuasion and conflict resolution that ought to be employed in international politics. In a later collaboration with Carol Cohn, Ruddick characterized her position somewhat differently as "antiwar feminism." Carefully distinguishing antiwar feminism from absolute pacifism, Cohn and Ruddick nevertheless emphasized that antiwar feminists "oppose war as a practice" and do so for feminist reasons.<sup>1</sup>

<sup>1</sup> Cohn and Ruddick, "A Feminist Ethical Perspective," 406.