Public Ethics Radio

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Episode 17, Seth Lazar on Self-Defense in War

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MATT PETERSON: Hello and welcome to Public Ethics Radio. I'm Matt Peterson.

All killing in war comes down to self-defense. This is a view that has become increasingly widespread among political philosophers over the past decade or so. Essentially, the only way we can justify killing anyone ever is that it's done in self-defense, with some exceptions for saving others. This means that war is just self-defense on a grand scale. There's no fundamental moral difference between ordering an army to defend a nation and shooting someone who has broken into your home to rob you.

This belief about self-defense makes a lot of intuitive sense in the big picture, but it turns out to pose a serious challenge to the traditional view of just war theory. And not everyone is convinced that self-defense is the right way to justify war.

What about an American fighter pilot bombing al-Qaida leaders meeting far off the front lines in Afghanistan? There are probably good reasons to think that kind of attack is justifiable, but do we really want to have to draw a line of individual self defense from the fighter pilot far above the battlefield all the way back down to those al-Qaida leaders?

And what about civilians? If civilians are contributing to the war effort by bankrolling it—think about oil-company executives in Syria or officials at the Syrian central bank—shouldn't it be OK to kill them too? But that would contradict our deeply held belief that it is unacceptable to target civilians in war.

Our guest today, Seth Lazar, is concerned about putting self-defense at the core of our beliefs about just war theory. Seth Lazar is a research fellow at the School of Philosophy at the Australian National University.

He spoke to our host, Christian Barry, in Canberra.

CHRISTIAN BARRY: Seth Lazar, welcome to Public Ethics Radio.

SETH LAZAR: Thank you for having me.

CHRISTIAN BARRY: One of the things that we're interested in about war, of course, is that it involves killing, and one of the things that makes war particularly difficult to justify is that it involves killing. Is war just another type of killing? And are the principles that are relevant to determining whether wars are justified just like the principles that are relevant to determine whether individuals are justified in killing other people?

SETH LAZAR: So that's the central contention of much of the contemporary work that's done in the ethics of war. I think its—in a way it's worth setting that in context. The way that the tradition of thinking about the ethics of war has developed, at least in the—among kind of Western and in particular European and Anglophone traditions more generally. We have a long period of it being largely a product of the religious schools, the Scholastics, from the early church fathers, such as Augustine, through to the Scholastics, people like Vittoria, and then the public international lawyers. And there are certain things that render their thinking about the ethics of war sort of radically different from anything that is kind of appropriate to contemporary secular life.

For a lot of it, certainly before Grotius, there's an assumption of perfect knowledge, because essentially we're talking about looking at things from God's eye. I mean, these are people who are devising principles for confessors, confessors who are confessing princes. So from their perspective, war was kind of seen as something that princes did. And the people who actually carried it out were regarded as at best instruments, I mean if they were thought about at all.

And I think that the—

CHRISTIAN BARRY: So the, on that, in that sense—

SETH LAZAR: Yeah.

CHRISTIAN BARRY: —then the idea of whether or not a particular soldier is justified in killing another particular soldier is—

SETH LAZAR: Doesn't really come into it.

CHRISTIAN BARRY: —doesn't really arise.

SETH LAZAR: War is really a matter for princes. The ethics of war is a matter for princes, and the principles are being given to the priests who are going to subsequently confess them. And that's obviously not something that's particular viable in kind of a modern secular age.

And so, contemporary just war theory, which starts really with Michael Walzer, tried to make sense of this conven—this tradition of thinking about the ethics of war, and in a way that didn't rely on the sort of theological presuppositions, and as well didn't have the same sort of attitudes, dismissive attitudes to the responsibilities of individuals.

So for Walzer, you know, he's talking about states—

CHRISTIAN BARRY: He's talking about war being a matter of the state. So the idea is that, in Walzer, is that there are different sets of requirements that individual soldiers are not treated as dismissively as they may have been in the tradition. They still have responsibilities. But the principles governing their responsibilities are distinct from the principles that govern the responsibilities of states.

SETH LAZAR: Yes, so you're not dealing with princes anymore and you're dealing with—you're not presupposing the kind of knowledge that God has of people's minds and souls and what have you.

But still, princes are replaced by states, and certainly as far as the question of resort to war goes, that for Walzer is solely an issue for the political leaders and the commanders of an armed force. And like you say, he divides it. He thinks that individual soldiers have responsibility for observing the principles governing conduct in war. So that's usually, usually people use the Latin phrase "jus in bello" for that. But the jus ad bellum, which is the justice of resort to war, is a problem that, or a question, solely for commanders and political leaders.

Right, so there's this awkward tension between these two views, where he wants to be able to say, that, you know, one of his claims is that the primary value of, one of the primary values of international society is the survival and independence of political communities. But at the same time he wants to make individual human rights central. So he has this kind of fudge where he more or less says that people kind of have a human right to a politically independent state.

Now the problem with that obviously is that we standardly think people have rights not to be killed. And warfare involves an awful lot of killing. So this means that if warfare is going to be consistent with individual human rights, we have to explain how the people who are going to be killing in war, at least those whom we're going to be intentionally killing, are going to be—have lost their right to life, or it's going to be unsuitably weakened or forfeit or something like that.

And so Walzer argued that merely in virtue of becoming a threat to me, an enemy combatant loses his right not to be killed. And this is simply a very implausible account of what it takes to lose one's right to life. I mean, the standard counterexample that's used is if, I don't know, is if a rapist is attacking a person who then uses lethal force to defend herself, she now poses a threat to the rapist's life. The idea that she on that consequence, on that basis, loses her own right to life, is extremely implausible.

So that kind of leads us up to the contemporary, the dominant view in the contemporary understanding of the ethics of war. And what it really starts with, ironically, considering it's defined by its opposition to Walzer, is the same basic thesis, which is that the killing that we do in war must be justified under principles of self-defense. And that the people

who we kill in war, especially those who we intentionally kill, have to have somehow lost or forfeit their life not to be killed in self-defense.

CHRISTIAN BARRY: So the idea, so nothing is particularly special about war. We can't say anything about the justification of killing in war that couldn't be said about the justification of killing between those individuals in entirely different contexts that didn't have to do with war.

SETH LAZAR: Right, and this, so this is the view that David Rodin called reductive individualism. And it's called that, because it's about reducing war to an aggregation of individual acts of justified self- and other-defense. And yeah, that's very much the underlying thread of most contemporary work in the ethics of war. This notion that you could redescribe an armed conflict without any reference to states, institutions, collective entities, you know, groups, whatever. Simply in terms of the individuals who are doing the fighting. And that would be sufficient to give you an account of whether it was justified or not.

Jeff McMahan, who's the foremost advocate of this view, which I called the new orthodoxy, by the way, so Jeff McMahan, who's the foremost advocate of this new view, basically says that, you know, he gives this analogy. Suppose you start from one person defending himself against another person. Then you have a few people defending themselves against a few other people. And then more people defending themselves against more people. And if you, all you need to do is just increase the numbers, and yeah, the result is more complex than cases of individual self-defense; it may be very difficult to apply, the principles of individual self-defense in that context, but there's no moral difference. In particular, there's no difference in the content of the principles that justify killing in self-defense from in war.

CHRISTIAN BARRY: So what do you see as the problem with that, though?

SETH LAZAR: Right, so as you point out, I'm a critic of this view. I'm—it doesn't seem to me that the permissibility of killing in war depends on, to put it—of killing someone in war, depends on it being permissible to kill them in self-defense. I think that on any plausible theory of self-defense, a huge amount of the killing that we do in war would be impermissible. it would be proscribed. And I think if we applied a plausible a theory of self-defense, and therefore a plausible reductionism to the ethics of war, we would be led inexorably toward pacifism.

If we think that wars can nonetheless be justified, then either what we have to do is either endorse a more permissible and hence less plausible theory of self-defense, or we have to look towards other resources. And in particular, if we do endorse a more permissive theory of self-defense, I think that we are going to find it extremely difficult to put barriers around who can be killed in war. So essentially, what I'm saying here is that—

CHRISTIAN BARRY: So if you adopt this individualist picture, it's going to be extremely difficult to justify any wars, including wars, that you think, most people would think would be justified.

SETH LAZAR: Yeah, the way I think it's best to put it, if we ground the justification of war in self-defense, we're not going to be able to get a plausible theory of national defense. And if you think about the nature of modern warfare, I mean if you look at, I don't know, the situation in Afghanistan, if you think of it from the British perspective, I think, Britain has lost about 360 soldiers. The most recent reports on civilian casualties in Afghanistan put them at something like 7,000, I think, for last year. I mean, a lot of those are coming about as a result of Taliban activities, but if you—the actual proportions of people who are killed in war and during the early stages of the Iraq invasion, there's an awful lot of collateral killing that goes on. It's definitely a non-negligible amount. So the numbers are significant.

So the question is can we justify killing in war under these individualist, by reducing it to these acts of individually justified self- and other-defense. OK, so what's it going to take in order to say all of the people whom we intentionally kill in war are going to be liable to be killed. There's going to be a sufficient basis for reducing their interests relative to others. How are we going to know that that condition is satisfied? Well that's going to depend on what our theory of liability is. And so the question is what does it take for someone to become liable to be killed in self-defense.

Now there are lots of different views about this. My view is that one's right to life is a fundamental component of one's moral status, and that it shouldn't be lost through some sort of negligible action, it should be lost through one's agency, one's responsibility. You should have done something serious. You should pose a serious threat to somebody's life—something like that. Because this is a big deal. It's a massively big deal.

If you just think about what the sort of burden of proof that's required in order to kill someone in capital punishment. It's extraordinary, right? We should take these decisions very, very seriously. So the question is, how are we going to come up with a plausible theory of when one loses the right to life, and will that plausible theory deliver the permissibility of killing soldiers in war?

And my view essentially, is that any theory of the right to life that is sufficiently permissive to justify the sort of indiscriminate killing of soldiers that happens in war and is essential to war, is going to be too indiscriminate, too permissive in order to be a plausible theory of the right to life and how and when it can be lost. So I think that—

CHRISTIAN BARRY: It would just be too many soldiers who by hypothesis haven't done enough to have forfeited their right to life.

SETH LAZAR: Many of the people who you kill in war do not pose immediate threats. The soldiers who fight wars, the actual firing rates of people who fire their weapons—it's

an ongoing kind of disputed issue, but it's generally recognized that large proportions of soldiers who fight don't pose direct threats to anyone's life.

CHRISTIAN BARRY: And can be known to pose no such threat.

SETH LAZAR: Yeah, and we can know this very well. And yes, so we know that they don't pose significant threats. A lot of soldiers can be incompetent. They can be fearful. They can be playing backup roles. They simply might not have the opportunity; it might not arise, especially in the sort of fragmented types of conflict that we see today. So—they may not yet have had the opportunity—they may be just arriving at the front—there's many different ways in which the situation of killing a soldier from one-and-a-half miles with artillery fire is radically different from killing a psychotic who's attacking you with a knife to the throat, which is the sort of example that's usually given to say, well, if you… You know, why do you need...

So, people who talk about the permissibility of killing unjustified threats, regardless of their responsibility, they want to say "Well, why should we about responsibility? If I'm innocent, the threat to me is unjustified, you know there's nothing I can do, the guy's right on top of me. This is the only way I can defend myself." The choice situation that you face in these sort of examples is radically circumscribed.

You know, another example that's often used is, I'm at a bottom of a well unable to move left or right and someone is falling down towards me. Now, people, a lot of people think, regardless of how that person came to be falling down towards me, it's permissible for me to kill him. Sure, maybe, but the point is that there's literally nothing else I can do besides kill this person. I have a one-on-one choice.

And that is not what happens in war. You drop bombs on people who you're never going to see, you've no idea what they're doing. And that's how wars are fought, and I think it is the only way that wars are fought. The idea that you wait until they pose a direct threat to your life before you kill them, that's that's the required thing to do would, I think that would entail, either it would entail leading something towards pacifism, because you would never have the opportunity to kill them, or it would entail putting yourself at a radical disadvantage against adversaries.

And here I think we have a significant problem for these sorts of theories, which is roughly this. I think that there is a large cohort in most—most armed conflicts, all armed conflicts, it's hard to say; it's a speculation—but I think there will be a large cohort of combatants and noncombatants who are responsible to much the same degree for much the same quantum of contribution. For combatants, this will involve those who don't directly pose any kinds of threats, just contribute to the threats their colleagues pose.

People like, who play support roles like chefs. Judge-advocate generals, the guys who provide legal counsel. People who don't fire. People who are incompetent and therefore don't pose any threats. People who might be incompetent and therefore pose a drag on their fellow combatants. There are a lot of people who are going to contribute to a very

small degree. So combatants' contributions can be small. Their responsibility can also be small.

And I think there's going to be a large cohort of noncombatants of whom the other sorts of things can be said, right, who do contribute in some small ways. There are ways in which we vote; we pay our taxes, which can enable our governments to fight. There's estimates that in modern economies, 25 percent of people work in war-related industries. That's from an Alexander Downes book, *Targeting Civilians in War*.

I don't want to say anything more than there's a large number of combatants, and a large number of noncombatants who contribute to roughly the same degree. So anything that we say about these questions about responsibility and risk and that sort of thing, they're going to apply to both.

Now the problem that that raises is that wherever you set the threshold of liability, you're going to get problems. If you set the threshold—if you make it a sort of restrictive account of liability, so you protect the noncombatants—

CHRISTIAN BARRY: So you have to be a significant contributor and highly responsible.

SETH LAZAR: A significant degree of responsibility. Then you protect the noncombatants, that's great. But you also protect a large number of combatants. Since it's evidently impossible to distinguish between responsible and nonresponsible combatants, to discriminate between combatants according to their degree of liability, any theory that doesn't deliver "you can kill all combatants" is going to be, is going to lead us towards pacifism, because there's no way of ensuring that we kill only those who are liable.

Now, I should say, that's, that is a viable position. I think it is consistent and coherent to be a pacifist. And I think that there are a lot of people who really are pacifists who don't think they are. But I think that the thing we shouldn't do is to have our cake and eat it, to ground our theory of war in these individualist principles, while at the same time thinking that we can get plausible conclusions about the practice of warfare.

So then what do you do? Well, you say, well, actually, no, we need a lower threshold of responsibility. We need to say that a small contribution for which you are responsible to some degree, that that can do the job. But then you obviously get the reverse problem. You make it permissible to kill the combatants, but you also make it permissible to kill the noncombatants.

So this is what, I've called this the responsibility dilemma for the new orthodoxy. And I think on the one hand, it means that you don't get national—you don't get noncombatant immunity, if you adopt the permissive standard of liability. But on the other hand, if you adopt a more restrictive standard, then you don't get the permissibility of fighting wars of national defense.

But supposed we grant it and say let's have this, let's endorse this view. I still think that where you certain like—the way McMahan, that McMahan says, oh well. So he gives these examples of the executives in the United Fruit Company, who helped prompt the American invasion of Guatemala, or intervention in Guatemala, in the, what was it, the 50s? And says, "Well, here are some noncombatants who are clearly responsible. Surely you would think it was OK to kill them, right? If you could avert the war then that way."

But again he's loading the balance in his favor. So if that's the case, then what about being a financial worker, who's paid, who we can be sure has paid a significant amount of taxes over a period of time, if we target an office block, where there, where we know that there are only financial workers working, maybe a few, maybe they have a day-care center there as well, but that will be permissible collateral damage.

And what I think we're really trading on there is something broader, something different from the individualist account. Something—either some theory of complicitous liability, or some thing broader to do with the institutions that people are involved in, which suggests that it's simply not as wrong to kill an innocent soldier than it is to kill an innocent noncombantat. There are ways in which that type of killing just doesn't involve the same degree of wrongdoing. Because they're a soldier. Why is that? I don't know, but it's not to do with the, with principles of individual self-defense.

Right, so my argument against the reductionist view is that it has these implausible practical implications. You can't get wars of national defense without also losing noncombatant immunity. You're led—the way I put it in a paper, is you're either led towards a form of contingent pacifism, or towards a form of total war.

If I'm an individual combatant, and I'm convinced by Jeff McMahan about the permissibility of killing, what governs the permissibility of killing in war, I would quit. I would resign my commission immediately, because I think that it would be—the risks of grievous wrongdoing would be so great, that I could never have the requisite level of evidence to satisfy it. And the fact that I wouldn't be breaking the law in doing these actions would be neither here nor there.

CHRISTIAN BARRY: We're discussing justifying war with Seth Lazar. We're going to take a brief break and be back.

MATT PETERSON: This is Public Ethics Radio. If you'd like to hear more about Jeff McMahan's views on just war theory, check out the episode we recorded with him in 2009, during the Israeli invasion of Gaza. Go to publicethicsradio.org and click on "Jeff McMahan" in the tag cloud.

CHRISTIAN BARRY: Welcome back to Public Ethics Radio.

So far you've been claiming that if there's any hopes of justifying wars of national self-defense, they're not going to be based on the same principles that we appeal to in justifying individual self-defense.

And of the views that you've positioned—or the, of the options you've presented, it seems, I would imagine, that on the principles that most people have of individual self-defense, if they try did to think about war in these terms, they really would be drawn to a view of pretty close to pacifism, if not outright pacifism.

Now, you've acknowledged that that's a coherent position, but you think that that's not where we should rest the argument, that you think there are other plausible ways of justifying national self-defense that don't rely on these individualist premises. But it's always been very difficult for people to argue from anything but individuals' premises, in justifying things.

So how do you understand the justification of self-defense. How do you think it might be better grounded?

SETH LAZAR: Right, so yes, you're right, I do think that pacifism should be the position that we adopt if, on individualist premises. And I don't really have any arguments against pacifism. I think that it's a fairly, it's a plausible position; it's coherent. The only argument that I have against it is that it would require such a radical revision of our understanding of political life that we should do our best to find an alternative if one can be found.

And I think that's important not just because, that's not just to say that we're going to be facing lots of wars of national defense that we need to justify fighting in the near future, but because we've predicated, predicate a large amount of our political institutional law on the assumption that national defense is justified. The military spending that we do, the attitude that we take towards our military to sustaining a standing army. The security treaties that we endorse. There's an awful lot that goes around believing that we're justified in defending ourselves, which we would have to reject if we were pacifists.

But what I'm interested in is trying to find an alternative, and trying to find an argument that can justify something like our regular principles of national defense, and our regular principles of noncombatant immunity. And to look elsewhere than at the resources which have been so far mined.

CHRISTIAN BARRY: I'm going to conclude by asking a more speculative question. If I understand your view, it is that, on the one hand, we have an interesting, fairly plausible view of individual self-defense, with plausible moral foundations, rigorously defended. There are various views, but more or less we kind of understand how individual self-defense ought to operate. But that that theory or any plausible theory of self-defense is not one that we can use to justify war.

So as a result, we have two choices. One is we can look for other foundations. Or we can embrace a form of pacifism. Now, pacifism, there's some resistance to it, because much of our life is organized about it. On the other hand, in the absence of foundations, what ought we to do? That is, should we just go on as we are in the absence of some credible

foundation. Is that the sort of thing that we should think? To some degree it's about what we should do in the face of uncertainty about whether or not there's a plausible justification for the views that we have, which is slightly different.

SETH LAZAR: Yeah, that's interesting, an interesting way of looking at it. I mean, from my perspective, I think that this is what makes this such an interesting philosophical problem. So what my response, my response is to keep looking for those foundations.

But in terms of action-guiding conclusions, I don't know, I mean, I'm not so sanguine about the influence of moral and political philosophers that I think that the absence of a good argument for justifying the way things are is going to be any obstacle to things remaining the way they are. So then the questions comes up as to, well, what should we advocate given that we know nothing much is going to change?

CHRISTIAN BARRY: Well, let me ask this slightly differently. Suppose, if you were a soldier, if you were an individual soldier now, on the one hand—

SETH LAZAR: Right.

CHRISTIAN BARRY: Yeah.

SETH LAZAR: Yeah, and that is very much the way that I, certainly when I was writing my doctoral thesis, that was very much the way I thought about it. I think I would—I think we have a clash here between theory and intuition. You know, I think it's the classic case of, I guess what you call Rawlsian reflective disequilibrium, where the best worked-out theory, I concede that it's the best-worked-out theory, the new orthodoxy, although I have various objections to it. It's still better than anything else that's out there. Obviously until I write my book.

The best-worked-out theory delivers conclusions that conflict with deeply held intuitions. Now in these circumstances, one thing to do is to endorse the theory. One thing to do is to reject the theory and endorse the intuitions. And if I were in that position, I think my views about it are that the theory is the problem, not my intuitions. So I would go with my gut. Not necessarily to Iraq and Afghanistan, but certainly insofar as being a, you know, If I was an Australian soldier who is being used in national defense, or used in preparation for national defense, or for operations in Timor-Leste, the Solomon Islands, then I would feel very happy with myself. I wouldn't feel a moral problem in the absence of a good moral theory.

If I believe the moral theory, on the other hand, if I were convinced by McMahan, and I hadn't yet read any Lazar, then I would, then yes, I would, I think that the only thing that you could do in that circumstance would be to give up participating in wars. Or give up the risk that you'll participate in a war. Because if you take that view seriously, if you endorse it, then that's the only viable conclusion.

CHRISTIAN BARRY: Seth Lazar, thanks for joining us on Public Ethics Radio.

SETH LAZAR: Well, thank you very much for having me.

MATT PETERSON: Thanks for listening to Public Ethics Radio. The show is produced by me, Matt Peterson, and Barbara Clare. Christian Barry is our host. The show is supported by the Centre for Moral, Social, and Political Theory at the Australian National University and the Carnegie Council for Ethics in International Affairs.

We'll be back soon with another conversation about Public Ethics. In the meantime, you can find us on the web at publicethicsradio.org. Thanks for listening.