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Article:

Brunning, L orcid.org/0000-0003-4763-2817 (2023) Revisiting the comparison between healthcare strikes and just war. *Journal of Medical Ethics*, 49 (12). pp. 799-802. ISSN 0306-6800

<https://doi.org/10.1136/jme-2023-108941>

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Revisiting the comparison between healthcare strikes and just war

Abstract

In the United Kingdom, healthcare workers are again considering whether to strike, and the moral status of strike action is being publicly debated. Mpho Selemogo argued that we can think productively about the ethical status of healthcare strikes by using the ethical framework often applied to armed conflict (2014). On this view, strikes need to be just, proportionate, likely to succeed, a last resort, pursued by a legitimate organisation, and publicly communicated. In this article I argue for a different approach to the just war comparison. Selemogo adopts a traditional, collectivist, conception of just war reasoning, but this is not the only view. So-called ‘individualist’ approaches to the morality of war can also be applied to strike action. Taking an individualist perspective complicates the traditional picture of a dispute arising between three well-defined groups of healthcare workers, employers, and the innocent subjects of collateral damage: patients and the public. We arrive instead at a more complicated moral picture: some people might be more morally liable to be harmed than others during a strike, or can justly bear increased risks, and some are more obliged to strike than others. I describe this shift of framework before critically examining some of the traditional *jus ad bellum* conditions as applied to strikes.

Introduction

In the United Kingdom, Healthcare strikes are back on the agenda as various groups of healthcare workers – from nurses to paramedics – strike to contest perceived poor pay, unsustainable working conditions, and concerns about patient safety and care.

These strike actions and proposed actions are emotive, and rarely discussed with nuance in the media. Individual healthcare workers might agonise whether to strike or not. They want to know if strikes are ever morally permitted. If they are, under what conditions are they permitted. More personally, they want to know whether it is right for them, as an individual, to join a specific strike action (we shall assume they are a member of a recognised union).

Mpho Selemogo argued that we can think productively about the ethical status of healthcare strikes by using the ethical framework often applied to armed conflict [1]. His view has been developed and discussed by others [2, 3]. Selemogo appeals to a traditional conception of *jus ad bellum*, or the conditions which would make a war just. But this framework has been

challenged as it applies to war in ways which help us think better about strikes, both in terms of the general shape of the framework, and in terms of some of its specific components.

Strikes and the analogy with warfare

Selemogo justifies his comparison between just war theory and the ethical status of healthcare strikes with three reasons. [1, p.37]

1. They both involve ‘confrontational action’ in pursuit of their demands
2. The actions are disruptive and produce ‘collateral damage’
3. Both soldiers and doctors are obliged to save life and reduce suffering

He then argues that strikes are morally justified if they meet the conditions armed conflicts must satisfy; namely, if they are:

1. They are based on a just case/right intention
2. Proportional
3. Have a reasonable hope of success
4. Are a last resort
5. Are pursued through a legitimate body
6. Are publicly communicated

His discussion makes no explicit mention of *jus in bello* or justice *during* a war: the general framework concerning the conduct of combatants during a conflict (although he does consider the need to retain right intention, on which more below). Typically, the overall moral status of a conflict requires the war to have a just basis, and for combatants to behave ethically within the scope of the conflict. Applying this reasoning to strike action means that we only have half the story in determining whether a specific action is justified, or not. We also need to understand how the strike action is conducted as it continues; a matter of importance when individuals are considering their own conduct during a labour dispute. This absence is telling because on a traditional account of *jus in bello*, military necessity can justify collateral damage to civilians.

Different approaches to the morality of war

The analogy between healthcare strikes and just war is initially appealing. It is easy to frame the dispute as a conflict between healthcare workers on the one side, and their employers on the other, with patients and the general public occupying the status of innocent civilians.

But there are different ways to approach the ethics of war and, by analogy, the ethics of strike action. For simplicity, we can divide these approaches into two camps: the collectivist approach favoured by Selemogo (and developed in more detail by Michael Waltzer [4]), and the individualist approach exemplified by Jeff McMahan (for a broader discussion, see Frowe [5]).

Collectivism: on a traditional collectivist view the moral status of war is distinct and understood in terms of how states interact; there is a clear distinction between *jus ad bellum* and *jus in bello*; during war, combatants on both sides have to abide by the same moral constraints; all soldiers are equally liable to be harmed simply in virtue of being combatants; non-combatants are not liable to be harmed.[1, 4]

Individualism: on McMahan's individualist view, the moral status of wars is understood derivatively in terms of the moral rights of individuals, particularly the rights of self-defence; the distinction between two stages of moral thinking before and then during war is less clear; liability to be harmed is distributed in complex ways: combatants on the just side of a conflict are not liable to be harmed simply because they are soldiers, some unjust combatants might not be liable to be harmed, and some non-combatants might be liable to be harmed.[6]

Moral responsibility is central McMahan's view. His approach to war aims to reflect the moral contribution of different people not simply of larger groups. Whether this moral reality yields a workable legal framework is another matter.

A collectivist approach to conflict strains our intuitions about self-defence and the moral relevance of acting as a group. On the collectivist view, once a war is underway combatants on the non-just side of the conflict are permitted to fire on those on the just side of the conflict, even though the latter are defending themselves from an unprovoked attack.

Similarly, once the war is underway, combatants on the just side are allowed to fire upon soldiers on the unjust side who play a limited role in the conflict or who pose no direct threat, like mechanics or chefs. In ordinary situations of self-defence, these actions would not be permissible.

The individualist approach to war aims to reflect our unease at this situation, and capture the intuition that moral evaluations of complex situations must not obscure the fact that individual people can make different morally relevant contributions to their situation.

This point can apply to our thinking about strikes. Asking whether a strike as a whole is justified, or not, might not be all there is to consider when evaluating the moral character of one healthcare worker's participation in industrial action. Indeed, presupposing a collectivist approach to strikes can make it harder for individuals to reflect on their own contribution to the group cause.

Complicating the traditional framework

The way Selemogo applies traditional just war criteria to strike action is also problematic. Some of these criteria are easily and typically fulfilled. Healthcare workers typically strike due to activity undertaken by a recognised and legally legitimate union, such as the British Medical Association, and are communicated publicly. But some are more controversial.

This is what Selemogo has to say about *just cause* and *intention*:

‘in the healthcare context, a just cause is one that is intended to confront a real and certain danger to the health of the population... wage disputes, however, constitute a just cause only if the wages of the doctors can be shown to be so poor as to compromise public health... During the strike action, the doctors must demonstrate the right intention, meaning that they should remain faithful to their cause and avoid unnecessary destructive acts (or imposing unreasonable conditions) that may compromise their just cause.’[1, p.36]

This characterisation of just cause is designed to exclude forms of self-interested labour organisation which might harm patients. But as Roberts has noted, there is an obvious sense in which strikes do not cause harm in the ways wars do, so some consideration of self-interest might be reasonable.[2, p.699] Moreover, self-interestedness is not selfishness, and is often

morally significant. A nurse who wants a pay-rise, for example, may want it so as to better care for his children or aging parents. Someone could be striking because their quality of life is not minimally decent.

But note how strange Selemogo's appeal to just cause is in the case of strikes. The most typical cause taken to legitimise warfare is an attack on a group's sovereignty. Just wars are usually seen as wars of *self-defence*. What is more, wars of self-defence are often taken to be morally acceptable in cases of *anticipated* threats, not necessarily occurrent harm. If this was extended to the case of striking healthcare workers, the self-defence rationale might justify strikes on grounds of pay, or in protest of working conditions, or concerns about unaddressed malpractice.

But Selemogo takes a different approach and wants to embrace the analogy with just war, while insisting that the paradigmatic form of a healthcare strike is to strike *for* patients or the wider population. This is to view strikes in terms of *other-defence* or humanitarian intervention. The idea is that healthcare workers should act to benefit other people not themselves.

Two points are important here. First, even if we accept the other-defence constraint on justified strikes, we might think the range of acceptable reasons extends beyond concerns with patient healthcare. Doctors went on strike in Myanmar in 2022, for example, as a form of civil disobedience to protest a military coup. We could also imagine cases where senior staff strike in support of junior staff, and so on. Selemogo needs additional argument to explain why the range of acceptable other-defence justifications of healthcare strike action is limited to patient health, and to explain how this restriction is compatible with working within the general just war framework he favours.

Secondly, understanding strike action by analogy with humanitarian intervention, rather than defensive conflict, raises questions which would otherwise be absent if strikes were seen, more straightforwardly, as self-interested attempts by healthcare workers to defend their own interests like pay or working conditions. Such questions include:

- a. Does the group *want* our intervention on their behalf?
- b. Is the group *able* to defend themselves?
- c. Does another legitimate authority have a duty to intervene on their behalf first?

For example, if patients thought their standard of care was acceptable, or did not support the strike, or had independent means to protest their situation through voting or civil disobedience, then intervention risks being paternalistic in ignoring their autonomy. Similarly, if a government had a duty to improve care but has not had an opportunity to do so, then a strike by healthcare workers might be premature. In both cases, strike action resembles hasty military intervention to aid group that is genuinely struggling but that does not want, or need, assistance.

Put another way, modelling strike action on forms of other-defence in war, rather than on self-defence, forces us to confront potential tensions between patient well-being and autonomy, and requires us to consider a wider framework of responsibilities. This does not rule out strike action but it does introduce a layer of complexity that Selemogo has neglected. He assumes concerns for patient well-being are *sufficient* to give just cause for a strike when actually they are necessary but not sufficient.

Talk of intention is also more complex than Selemogo allows. First, we can ask: whose intention do we have in mind? That of an individual healthcare worker, healthcare workers at large, that of a specific union? Identifying and individuating intentions is not easy and often serves as a simplifying heuristic rather than tracking something morally relevant.

Second, because of this complexity, and the opacity of human reasoning, we might think the notion of just cause supersedes any talk of intention. If the cause is just the conflict is just, irrespective of what any leader intends.

Third, intentions are often plural. In striking, healthcare workers can intend to both increase their pay and also reduce pressure on patients.

Fourth, and most interestingly, discussion of justice in war is the paradigmatic example of the attempt to distinguish between intended consequences and unintended but foreseen consequences of an action (so called ‘double effect’ reasoning). Criticisms of striker’s self-interest often presuppose that strikes require strikers to intend harm to their patients as harm or the threat of harm is what pressures employers to change. August Fiestler, for example, calls this the ‘striker’s strategy’.[7, p.13] But the intentional structure of most striker’s reasoning is arguably different. They instead intend to hurt bosses by denying them labour. Harm to patients is at most an unintended albeit foreseeable side-effect of their strike action. Double effect reasoning might be doomed for independent reasons, but appealing to just war theory seems to provide strikers with ample resources to view their actions as just even when they might produce foreseeable kinds of harm.

Concerns about harming patients also enters into our thinking about a strike’s *proportionality*. On the framework Selemogo favours, we perform a cost-benefit analysis of

the strike, ensure the benefits outweigh the costs, and try to minimise ‘collateral damage’ to patients. In practice there are significant epistemic challenges to evaluating proportionality, not least because we might have to compare a range of different goods which are not obviously commensurate. That said, there is evidence to think strikes are less harmful than portrayed which could mean this proportionality constraint can be met. [8, 9]

A more substantive problem with the traditional framework is that it obscures how *responsibility* is distributed between different people, and the connections between risks and benefits. These issues may shape our evaluation of proportionality. In particular, two assumptions warrant scrutiny. First, that the people at risk of harm from a strike are not liable for that harm. Second, that being a potential beneficiary of a strike does not increase the degree of risk you can be expected to face.

Some members of the public will have actively supported the government policies which contributed to the situations being opposed by healthcare workers, perhaps by voting, lobbying, or working in management roles to implement the policy. Other people, in contrast, other people will have opposed those policies or will be healthcare workers themselves. We cannot presuppose that everyone who is impacted by a strike is best thought of as an innocent bystander, or is innocent to the same extent, or are equally free from liability for harm.

Similarly, in general terms it seems plausible to argue that people are more likely to *benefit* from an action can be asked to bear increased risks which stem from that action, relative to people who would not benefit.[4, pp.157-59] In the context of a healthcare strike, it may be reasonable, therefore, to ask people who are likely to benefit from an action – a particular patient group, perhaps – to bear a slightly increased risk of being harmed by the action, relative to a different patient group, or the general public.

These considerations can be cumulative. If you have supported action which erode the service you are receiving, and stand to benefit from strike action which might improve that service, the harm you risk experiencing due to reduced service might be more warranted than that experienced by another patient.

In practice, of course, making these evaluations is complex and requires careful argument. Here it suffices to show that we should be wary of thinking about proportionality of harm in a way which views all impacted parties in the same way. Many will object that healthcare is a fundamental right which cannot be revoked, and so considerations of responsibility are not appropriate.

Crucially, however, we do not need to deny that all patients have a fundamental right to healthcare to think matters of moral responsibility are relevant when thinking about strikes.

Remember the concern is not whether appeals to the moral contribution of patients could provide a good cause for a strike. I am not suggesting, for example, that healthcare workers strike to punish people who defunded a healthcare system. Instead, the concern is with proportionality and whether, and to what extent, disruption or ‘collateral damage’ is justified in pursuit of an independently valuable cause. The idea here is simply that patients’ moral contribution to the situation the strike aims to address plays *some* role – perhaps only a small one – in assessing to what extent disruption is justified. In a society where all patients worked to oppose the erosion of a healthcare system, disruption is less justifiable than one in which patients had a causal role in that erosion. To return to the analogy with war, although all non-combatants have a *pro tanto* right not to be killed, an elevated risk of collateral damage might be more justifiable when borne by civilians who actively enabled an aggressive war than when borne against civilians who are subject to an unprovoked attack or who have actively resisted an aggressive war.

I questioned these assumptions as part of a general move away from collectivist thinking and towards more individual thinking about morality and war or, by analogy, morality and strike action. The core idea is that it is wrong to assume liability for harm is spread equally, or adheres to predetermined groups (healthcare workers, employers, patients, public) just as it is wrong to assume soldiers on both sides are morally equal. Instead, the moral calculations here are messier.

An additional dimension to this thinking concerns the personal contribution of potential strikers. Some healthcare workers will bear varying degrees of responsibility for the situation the strike is aimed at addressing. Those in management roles, or who have endorsed or failed to contest various cuts, or who lend political support to an intransigent management response to worker concerns, have helped bring about or sustain the situation at hand. Arguably, those individuals have a heightened obligation to strike insofar as striking would serve to remedy the situation they caused.

In practice, such people are less likely to strike. But our concern here is with the moral status of strike action. The collectivist view, in which we understand the morality of a strike in general terms, relative to some collective good, overlooks the different strengths of moral involvement at stake. For many strikers, especially those who have long opposed the situation which causes their industrial action, striking is morally legitimate as a form of self-defence or supererogatory as a form of other-defence. For those who have contributed to the situation which causes the industrial action, striking might be morally required.

Finally, requiring a strike to have *hope of success* and be a *last resort* can also be challenged. Even within the traditional collectivist framework, the idea that a combative action has to have a hope of success can seem strange. If the cause is just, e.g., if people are defending themselves against an aggressor, then let them get on with it. With respect of individual self-defence, it is not *wrong* for someone to stop defending themselves from a much stronger aggressor, even if pretty hopeless.

Requiring a strike to be effective also risks precluding smaller, or less powerful, groups of workers from taking action. But those groups might have particular need to try and redefine the conditions of their employment, or act on behalf of other people, precisely because of their weakened state.

We can also question what counts as evidence for a strike's likely effectiveness. If an employer or government, for example, said it would not change policy due to strikes is that declaration enough to think the strike would not work and is thus not justified? If so, a government could undercut the moral justification for a strike just by saying they are not going to take it seriously; but that seems to produce a situation in which a strike is more likely to be justified, than not, given the unreasonableness of the other side.

Similarly, it is not so obvious a strike should be a last resort. If it was shown to be an effective method of changing conditions why wait until other methods have been exhausted? In cases where patient care is under scrutiny, or there are safety concerns, waiting for talks to fail might seem less reasonable, especially if we anticipate talks being used unconstructively. Indeed, the assumption that a strike should be a last resort increases the effectiveness of striking before that point.

Finally, it is important to note that the idea of last resort applies in cases where group is considering engaging in a conflict, not in cases where conflict is underway.[4, p.65] Some forms of strike action take place within the horizon on an ongoing dispute between workers and employers, and so it is less clear that successive strike actions have to be understood in the same way.

Conclusion

There is value in thinking about strike action using the moral frameworks of war, even if we ultimately find the framework unworkable. Selemogo offers one way we might do this by reaching for a standard collectivist account of when a conflict or strike is just. In contrast, I

have suggested the moral picture is more complicated. For one thing, we can appeal to the traditional framework favoured by Selemogo in ways that might legitimate more collateral damage than he would favour, or would have strike action starting in different circumstances.

The deeper criticism, however, is that we should consider rejecting the collectivist view and approach the morality of strikes in a manner similar to individualist approaches to war and justice. Central to this new framework is the idea that the morality of conflict relates closely to individual morality of self-defence.

In practical terms this has us asking different questions when thinking about the moral justification of strike action. We must consider the possibility that the familiar binary of healthcare workers on the one side and public or patients on the other, fails to track what is morally relevant when evaluating strikes. Not all members of the public are innocent to the same extent when it comes to strike action, and some healthcare workers have a stronger obligation to strike than others. These differences will impact any assessment of whether a strike is proportionate, and should also shape individual moral reflection about what to do.

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