



BOOK REVIEW

Civilian Immunity in War

5 By IGOR PRIMORATZ, ED.

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10 This collection of essays is presented as offering the first real philosophical and legal treatment of the Principle of Non-Combatant Immunity (PNI). Primoratz's own essay serves as a useful summary of some of the most influential attempts to rule in all, but only, combatants as legitimate military targets. However, this will feel like very familiar territory to those already working in Just War Theory, as will Uwe Steinhoff's essay, which surveys the same positions (albeit drawing different conclusions). Several of the essays are expositional rather than analytical in nature, tracing the historical roots of the PNI. Whilst providing an undeniably interesting journey through early
15 Just War thought, these parts of the volume might feel less than gripping to those looking for engaging philosophical argument.

20 However, the collection is certainly not without such argument. Seamus Miller's essay offers a thorough and thought-provoking account of why certain groups of civilians should not be granted immunity from military force. Using the model of the forced removal of blacks in apartheid South Africa, Miller argues that those responsible for the planning of systematic rights-violations, along with government officials who culpably omit to oppose such violations, are legitimate targets of lethal force. This strikes me as correct, although one might wonder why the realm of culpable omission does not extend beyond the government officials to the citizens in general. A failure to resist a systematic programme of rights-violations by one's
25 own government does not seem like a significantly lesser wrong because one happens to be a private citizen rather than a civil servant, especially if such civil resistance is likely to be effective.

30 Tony Coady's defence of the Doctrine of Double Effect (DDE) is another highlight, dealing with what has become the best weapon in many a military strategist's arsenal. Coady draws our attention to what he calls a 'pre-condition' of invoking the DDE, namely that one may inflict collateral damage only when doing so is *unavoidable*. It is not sufficient that one be aiming at a military target whilst 'merely' foreseeing civilian deaths, even if the benefits of destroying the target will outweigh those deaths. It must
35 also be the case that this is the *only* way of destroying the target that has a reasonable chance of success. If alternative strategies are available that will not endanger civilians, these strategies are to be preferred, even when they are costlier to one's own troops, or will involve delaying the target's destruction. Coady argues that taking seriously this somewhat overlooked requirement will significantly restrict the number of cases in which the DDE can be cited.
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Coady's essay is direct, insightful and successfully takes to task the casual employment of the DDE by those who want to blow stuff up whilst gesturing towards moral reflection. But the biggest contemporary challenge to the DDE is left unanswered.

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45 If Jeff McMahan (2004, 2006) is correct that the moral equivalence of combatants is philosophically untenable, this will impact significantly upon the usage of the DDE. A country that wages an unjust war has no permissible targets, the pursuit of which justifies the foreseen production of bad side effects. The DDE cannot be invoked by unjust combatants.

50 What about just combatants – those who are engaged in a just war? Well, as Miller’s essay suggests, it is becoming increasingly uncertain that the citizens of a country waging an unjust war ought to be presumed innocent. And certainly, we have good reason to think that they are no *more* innocent than the just combatants protecting their homeland against an unjust war. Coady claims that the DDE requires combatants to bear greater costs and risks in order to protect civilians: perhaps risking
55 their own lives to minimize harm to non-combatants. But if just combatants are morally innocent, it is hard to see why they should adopt the precondition that Coady cites as crucial to the DDE’s proper use. Why should a just combatant be exposed to a greater risk of harm in order to protect the citizens of a nation engaged in an unjust war? Why delay the destruction of a target if doing so will risk the lives of
60 innocent combatants and non-combatants of the just nation?

In short, we might be left wondering exactly why we *need* the DDE. Who is going to use it? Those waging an unjust war are ruled out by the fact that they have no permissible aims to outweigh any incidental damage. And it is not obvious that those fighting a just war should be bound by Coady’s precondition, in which case it looks
65 like the DDE is not open to them either. Their attacks must be justified on other grounds. One cannot help but feel that addressing these issues ought to precede attempts to refine the DDE: a concept which, in light of recent literature, we might do best to abandon altogether.

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References

- McMahan, J. 2004. The ethics of killing in war. *Ethics* 114: 693–733.
75 McMahan, J. 2006. The moral equivalence of combatants. *The Journal of Political Philosophy* 4: 377–93.