Innocent Civilians: The Morality of Killing in War

Colm McKeogh

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The immunity of civilians in war against deadly violence is a central tenet of the *jus in bello* prong of just war theory, and indeed of any ethics of war. It has pride of place in the laws and customs of war; it is the most important result of centuries of attempts at confining warfare within morally defensible limits. Yet, since World War I, it has suffered major setbacks. Today, in view of the ‘new wars’ at the turn of the century, the globalization of terrorism, and some of the rhetoric of the ‘war on terror’, its status and its prospects seem precarious. This book couldn’t have been more timely.

It fills a major gap in the literature on the morality of war. The status of civilians in war has been discussed in a number of articles in scholarly journals and chapters in books on the ethics of war. The sole book-length study of the subject, R.S. Hartigan’s *The Forgotten Victim: A History of the Civilian* (Chicago, 1982) is now dated. McKeogh’s book supersedes it not only in being up to date, but also in being both more comprehensive and more analytical. It offers a history of the idea and practice of civilian immunity and a systematic discussion of the main lines of argument grounding this immunity and delineating its proper scope. McKeogh holds, rightly, that civilian immunity in war can’t be understood independently of the lack of such immunity on the part of combatants, and accordingly reviews the development of just war theory and the social and technological changes that have affected the character of war. He traces the history of just war theory from its origins in the philosophy of Augustine and Thomas Aquinas through early modern political and legal theories of Vitoria and Suarez, and theories of international law of Grotius and Vattel, to the codification of some central tenets of the theory in the Hague and Geneva conventions, and the discussions of the morality of war in contemporary philosophy.

The concluding chapter offers a systematic discussion of civilian immunity. It distinguishes three types of killing that have been thought pertinent to war: punitive, defensive, and consensual. Unlike medieval and some early modern thinkers, we don’t think of war as punishment. We think of it as defence, and hold that combatants may be killed in defence of self or others. But McKeogh

construes defence in a narrow, 'here and now' sense; therefore, this justification does not apply in all relevant cases. The third justification, combatants' consent, helps fill the gap. By volunteering, or consenting to be drafted, combatants consent to be put in harm's way by their own commanders, and to be harmed by the enemy. Intentional killing of civilians, on the other hand, can't be justified in any such way. They are innocent, and can't be killed punitively; they aren't fighting, and can't be killed in defence of self or others; they have chosen to remain civilians, rather than join the military, and can't be killed consensually.

If civilians mustn't be killed with intent, may they be killed without intent, but with foresight, as a side effect of attacking military targets? Adherents of just war theory usually deploy the doctrine of double effect in order to allow for some such killing. But McKeogh rejects this doctrine, and calls for taking civilian immunity as an absolute prohibition of killing civilians knowingly, with or without intent. Only accidental killing of civilians may be excused.

My main objection to McKeogh relates to his rejection of the doctrine of double effect, which I find too quick, and to the absolute prohibition of all non-accidental killing of civilians, which then appears as an inescapable conclusion. We can stay clear of all non-accidental killing of civilians only as long as we fight at sea or in a desert. When fighting with modern arms and in a more usual theatre of war, we are bound occasionally to kill civilians while attacking military targets — to kill them without intent, but with foresight. Both mainstream just war theory and the laws of war say that this is justified, if civilian casualties are proportionate to the importance of the military aim sought. If it isn't, that means that just wars are a thing of the past. Now McKeogh seems to be presenting his argument in favour of further tightening civilian immunity as one *within* the ethics of war; but its true import turns out to be the *renunciation* of war and embracing *contingent pacifism*. We have seen such convergence of just war theory and contingent pacifism in the work of philosophers such as Robert L. Holmes or Richard Norman. But they, unlike McKeogh, were clear and explicit about it.

This objection isn't meant to detract from the value of the book as a history and analysis of civilian immunity in war. It is a careful, clear, and stimulating discussion of this important and highly topical issue. I recommend it to researchers, teachers, and students of philosophy, politics, and law. The general reader, too, should find it both accessible and thought provoking.

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