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What is Wrong in Killing Civilians?

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Abstract: In this article, we examine the status of civilians in the ethical context. For this purpose, we explore the ethical sources that address their status; specifically, we consider the ethical reasons that civilians should be protected in armed conflict by examining ethical concepts that could differentiate civilians from combatants and justify the protection of civilians. In order to assess how the status of civilians can be characterised and their protection justified by ethical concepts, we examine the five following concepts; moral innocence, innocence as harmlessness, responsibility, rights, and personal project. We conclude by arguing that the concept of personal project could further strengthen the claim of ordinary civilians to their protection, if used together with the concepts of harmlessness and responsibility.

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Introduction

It is a widely subscribed idea that killing civilians in armed conflicts is wrong, and this idea (and ideal) of civilian protection is reflected in the laws and customs of armed conflicts such as the Fourth Geneva Convention of 1949 and its Protocols of 1977 as well as in just war theory and ethics of war. However, it is often overlooked in the discussion surrounding ethics of civilian protection to explore the reason (s) to prohibit killing civilians and justify their protection in armed conflicts. The purpose of this article is to explore the reasons that civilians should be protected in armed conflict. In order to consider why civilians should be protected, we will explore five concepts that could characterise the status of civilians and justify their protection in the ethical context: namely, moral innocence; innocence as harmlessness; responsibility; rights; and personal project.

1. Moral Innocence

Initially, we will examine *moral innocence*, one of the five concepts in order to assess whether or not this concept could potentially characterise the status of civilians as protected persons.

It has been widely accepted in the literature on the ethics of war as well as on just war theory

that the distinction between being morally innocent (or ‘morally pure’ in Thomas Nagel’s words¹) and being morally guilty does not necessarily coincide with the distinction between civilians and combatants. If such a distinction were made by the concepts of moral innocence and moral guilt, according to Nagel, ‘then it would be justified in killing a wicked but noncombatant hairdresser in an enemy city who supported the evil policies of his government, and unjustified in killing morally pure conscript who was driving a tank toward us with the profoundest regrets and nothing but love in his heart’². That is to say, being morally innocent does not afford immunity from attacks on combatants, and being morally guilty does not deprive civilians of their protected status. To make this case, let us consider a civilian war supporter and a conscript. If we subscribe to the idea that being morally innocent predicates the protected status and being morally guilty predicates the loss of that status, we might feel uneasy about the legal prescription that the morally guilty (on the grounds that he supports the war for a racial reason, for example) civilian war supporter enjoys his protected status, whereas the morally innocent (on the grounds that he opposes the use of military force, for example) conscript could not be afforded the same protection as a civilian³.

Indeed, some conscripts would be willing to go to war, whereas others, for whom initially joining the military was against their will, would become attuned to the cause of the military through training, part of the purpose of which is to align their mentality and attitude with those of the military. Jonathan Glover argues that: ‘Military training has to make people do things which they would not do in civilian life’⁴ If successful, military training can fit the conscripts for soldiering and make them harmful to the enemy while maintaining moral innocence such as a sense of self-dedication and selflessness for the defence of others. In an extreme case, there might be a conscript described by George Mavrodes;

A young man of limited mental ability and almost no education may be drafted, put into uniform, trained for a few weeks, and sent to the front as a replacement in a low-grade unit. He may have no understanding of what the war is about, and no heart for it. He might want nothing more than to go back to his town and the life he led before⁵.

Although the above-described conscript’s moral innocence might be qualified, the person in question is, as Mavrodes rightly describes, a ‘without doubt combatant’ who is considered to be a legitimate target in combat⁶.

To clarify this point further, we can take the example of a conscript who is a pacifist but was

1 Thomas Nagel, ‘War and Massacre’, in Charles Beitz, Marshall Cohen, Thomas Scanlon and John Simmons (eds.), *International Ethics* (Princeton, NJ: Princeton University Press, 1985), pp. 53–74 at p. 69.

2 *Ibid.*

3 This does not mean that combatants are not entitled to protection at all in combat. They are still entitled to protection under the First, Second and/or Third Geneva Conventions of 1949.

4 Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (London: Jonathan Cape, 1999), p. 51.

5 George I. Mavrodes, ‘Conventions and Morality of War’, in Beitz et al, *International Ethics*, pp. 80–1 at pp. 75–89.

6 *Ibid.*, p. 81.

conscripted against his will, and who in combat deliberately shoots over the head of an enemy in order to avoid harming him. This pacifist conscript may be considered to be a morally innocent person. Suppose also that there is an enthusiastic war-supporting civilian who donates as much money as he can afford to contribute the war effort. If we borrow a case from Mavrodes again, this civilian can be more precisely characterised by the following descriptions:

A person may be an enthusiastic supporter of the unjust war and its unjust aims, he may give to it his voice and his vote, he may have done everything in his power to procure it when it was yet but a prospect, now that it is in progress he may contribute to it for both his savings and the work which he knows best how to do, and he may avidly hope to share in the unjust gains...⁷

If we apply the concept of moral innocence to the distinction between the protected and the unprotected, then the civilian might be considered as a legitimate military target whereas the conscript might be entitled to protection.

However, the above-illustrated line of argument on moral innocence does not necessarily help to clarify the protected status of civilians. As several commentators argue, it is problematic to apply the distinction between moral guilt and innocence too readily to combatants and civilians⁸. Jeffrie G. Murphy points out a moral dilemma brought by the concept of innocence in war:

Suppose, then, we try to make use of notions of moral innocence *of the war* and moral guilt *of the war* (or something within the war). Even here we find serious problems. Consider the octogenarian civilian in Dresden who is an avid supporter of Hitler's war effort (pays taxes gladly, supports warmongering political rallies, etc.) and contrast his case with that of the poor, frightened, pacifist frontline soldier who is only where he is because of duress and who intends always to fire over the heads of enemy. It seems reasonable to say that the former is much more morally guilty of the war than the latter...⁹

Geoffrey Best also poses a series of critical questions on the awkward relationship between the concept of innocence and civilians:

... but what about the adult who shared in the political and psychological encouragement and support of war? Was it reasonable, was it right that they should be spared all but accidental ill-effects of a war for which they did not conceal their support or for which, as was usually the case, their support was credibly claimed by their ruling representatives?¹⁰

⁷ *Ibid.*, p. 80.

⁸ Nagel, 'War and Massacre', p. 69; Mavrodes, 'Conventions and Morality of War', pp. 80-1; Richard Norman, *Ethics, Killing and War* (Cambridge: Cambridge University Press, 1995), pp. 166-9; and A. J. Coates, *The Ethics of War* (Manchester: Manchester university Press, 1997), pp. 234-5.

⁹ Jeffrie G. Murphy, *Retribution, Justice and Therapy: Essays in the Philosophy of Law* (D. Reidel: Dordrecht, 1979), p. 6.

¹⁰ Geoffrey Best, *War and Law since 1945* (Oxford: Clarendon Press, 1994), p. 260.

These arguments show us that although the concept of moral innocence might give us some important *prima facie* insights concerning rightness and wrongness of killings in armed conflict, the concept of moral innocence is not always useful when it is used as a means of distinguishing civilians from combatants. There are morally innocent combatants who are conscripted and not engaged in military activities. As we have discussed above, it seems rather doubtful whether we can accept that their moral innocence can be considered as the primary reason making civilians immune from direct attack. Indeed, in many ways, some civilians, such as infants and children, are morally innocent. However, it seems less clear whether or not moral innocence as a concept can be used to characterise the status of civilians and to differentiate them from combatants when we consider, for example, civilian war-supporters. In sum, being morally innocent cannot be seen on grounds for affording the protected status to combatants, and that at the same time being morally guilty does not deprive civilians of their protect status.

2. Innocence as Harmlessness

In Section 2 we will explore the second of the five concepts namely, *innocence as harmlessness*, in order to consider how this concept characterises the status of civilians as protected persons and justifies their protection.

In just war theory and the ethics of war, those persons who are immune from attack are distinguished from those persons who are not by the concept of innocence as harmlessness¹¹. Nagel, for example, argues that “innocent” means “currently harmless”¹². Persons who are called innocent are persons who are not harmful: literally, as Hugo Slim points out, the ‘word innocent comes from Latin *nocens*’ (meaning harmful)¹³. Indeed, as Best also argues, those persons who were entitled to protection were usually harmless to others, useful from the military, political and/or economic points of view, or helpless, such as clerics, peasants, pregnant or nursing women, and young children¹⁴.

The concept of harmlessness is not an axiomatic concept that distinguishes civilians from combatants, however. Indeed, not every commentator on the ethics of war necessarily agrees that harmlessness is the valid concept to characterise civilians and justify their protection. For example, Jenny Teichman argues that the legitimate and illegitimate targets in war are not differentiated by a single dichotomy of guilt and innocence because there are other concepts necessary to distinguish legitimate targets from illegitimate ones, although she does not specify what constitutes those other concepts¹⁵. The problem of the concept of innocence as harmlessness

11 Nagel, *Ethics, Killing and War*, p. 69; Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* 2nd ed. (New York: basic Books, 1992), p. 235; and David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002), p. 84.

12 Nagel, ‘War and Massacre’, p. 69.

13 Hugo Slim, ‘Why Protect Civilians? Innocence, Immunity and Enmity in War’, *International Affairs*, 79: 3 (2003), p. 499.

14 Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflict* (London: Weidenfield and Nicholson, 1980), p. 55.

15 Jenny Teichman, *Pacifism and the Just War: A Study in Applied Philosophy* (Oxford: Basil Blackwell, 1986), pp. 63–8.

is that it does not necessarily guarantee civilians *qua* civilians as protected persons, because civilians are not necessarily harmless in war. It is often incontestable that some civilians, such as babies and the senile, are generally harmless in war. But, let us consider a test case, a bishop who blesses military conduct that involves the killing of harmless civilians. It is arguable whether or not he is really innocent as harmless. We can agree that the clergyman is physically harmless in the sense that he does not harm civilians by himself. However, it is obviously another matter whether or not he acts in a harmful way by abetting atrocities against civilians. Let us consider another test case, an *hors de combat* trooper who used to serve in an unpopular war of indiscriminate attacks. After being injured in combat, he was captured as a prisoner of war and tortured by interrogators, but finally succeeded in escaping from the enemy and came back alive, although permanently disabled. His story about his ordeals and the trauma inflicted upon him was so inspiring that people began supporting the war enthusiastically enough to push the government to increase the scale and degree of indiscriminate offences against the enemy population. It is questionable whether or not he can be considered as a harmless person. The above illustrated clergyman and ex-trooper are not considered as harmful in the just war terms because they do not take a direct part in hostilities. However, it seems difficult to regard these persons as the harmless because they may appear greatly to contribute to the war effort while enjoying their protected status as the harmless.

It therefore seems that the concept of harmlessness does not give a clear insight regarding the distinction between those persons who are entitled to protected status and those who are not. Although it is a useful concept to the extent that we might have a general sense of who should be protected and who should not, being harmless is not enough to characterise the status of civilians as protected persons. This is due to the fact that being harmless does not precisely correspond to the civilians as protected persons in the commonly understood in just war theory that noncombatants include not only civilians, but also *hors de combat* persons such as the wounded, the sick, and prisoners of war. This additional complication indicates that the distinction between the harmless and the harmful does not coincide with the distinction between civilians and combatants.

Thus far, our argument has revealed that the distinction between the innocent as harmless persons and the guilty as harmful persons is not identical with the distinction between civilians and combatants. In other words, harmlessness is not necessarily a clear-cut concept that can be used to distinguish civilians from combatants. If guilt is based on their harmfulness, a bishop who rallies moral support for war might be seen as a legitimate target because of his presumed harmfulness to the enemy as being a moral/ideological leader to war effort. Upon examination of these cases, therefore, it has been found that the concept of innocence as harmlessness is not a useful definition to characterise the protected status of civilians.

In Section 2, we have considered the concept of innocence as harmlessness, about which we argued that the idea that innocence as harmlessness does not always clarify the protected status of civilians or justify their protection. If innocence as harmlessness is not able to offer a clear-cut justification for civilian protection, some other concept is required to characterise more completely the status of civilians, which could aid the cause of civilian protection. In Section 3, let us explore the third concept that might characterise the status of civilians as protected persons.

3. Responsibility

Responsibility — whether or not a person in question is being responsible for military action — is often considered as a method that can be used to characterise the status of civilians and to justify their protection, and is supported by some commentators. G. E. M. Anscombe, for example, supports this position¹⁶. In the same vein, Richard Hartigan claims that whether or not a person in question is a civilian is determined by his responsibility for military actions. According to Hartigan, the protection of civilians is justified on the grounds that a civilian is ‘not responsible in any personal way for the conduct of war.’¹⁷ Hartigan also argues that the concept of responsibility for military actions coincides with the contemporary characterisation of civilians: ‘The modern classification of the civilian, the noncombatant who should be treated in some special, protective fashion, rests on an assumption of nonresponsibility’¹⁸.

Although the concept of responsibility seems to make sense as one of the definitional criteria for civilian status, this concept has a parallel limitation to the concept of harmlessness in the sense that both assume that a person in question is entitled to the protected status as a civilian even if he is responsible for the conduct of war. This implies that by their action in taking a direct part in hostilities, combatants are entitled to their combatant status, and by their action in not taking a direct part in hostilities, civilians are entitled to their protected status. If so characterised, there is little difference in the assumption of civilian status between the concepts of responsibility and of harmlessness. If this is the case, then we are still shadowed by the same theoretical problem that has been previously mentioned; that is, whether or not the war-abetting bishop is immune from attacks. The bishop may be considered not to be responsible for military action in the sense that he does not directly involved in any military action — taking up arms, commanding terror bombing campaign, or ordering extrajudicial execution of prisoners of war, and therefore considered to be entitled to protection, according to the concept of responsibility. However, more importantly, the bishop is indeed responsible for military action taken by the combatants if it were committed as a result that they are inspired by the blessing which he gives to them.

In a nutshell, the concept of responsibility is not necessarily a more useful concept than innocence as harmlessness when attempting to define the status of civilians. This is due to the fact that both concepts assume that civilians do not take a direct part in hostilities, and fail to take into account some of the most senior civilians responsible for war. Given that, in Section 4, we will explore the concept of rights, the fourth of the five concepts which could potentially help us to characterise the status of civilians and justify their protection.

4. Rights

In ethical terms, one of the staunchest defenders of the moral relevance of the concept of

16 G. E. M. Anscombe, ‘War and Murder’ in G. E. M. Anscombe, R. A. Markus, P. T. Geach, Roger Smith, and Walter Stein, *Nuclear Weapons and Christian Conscience* (London: Marlin Press, 1961), pp. 45–62 at p. 49.

17 Richard Shelly Hartigan, *The Forgotten Victims: A History of the Civilian* (Chicago: Precedent Publishing, 1982), p. 90.

18 *Ibid.*, p. 35.

rights concerning the distinction between civilians and combatants is Michael Walzer. In Walzer's argument, soldiers forfeit their rights to life and liberty in the sense that even if they do not or are unwilling to fight, they 'gain war rights as combatants and potential prisoners, but they can now be attacked and killed at will by their enemy. Simply by fighting, whatever their private hopes and intentions, they have lost their title to life and liberty'¹⁹.

The concept of rights seems neatly to characterise the protected status of civilians and justify their protection. However, if this concept may trigger doubt in us, it is probably due to the fact that there is an issue of concern about its relevance to the borderline cases which we have already discussed. The concept of rights does not fully cover noncombatants who greatly contribute to war effort while not taking a direct part in hostilities. Recall the octogenarian civilian in Murphy's case which we discussed earlier, the bishop who blesses the indiscriminate use of military force against the enemy population, and the ex-trooper who influenced the public opinion and government policy. According to the concept of rights, they are entitled to protected status as civilians in the same way as other civilians who do not in any way contribute to war effort. In other words, the concept of rights does not give us any just reason to see a difference in protection between these war-supporting civilians and other civilians who have no direct part in hostilities. If the concept of rights has a limitation when addressing the ethical issue concerning civilian protection, it is likely to be found in these cases.

To summarise, we have argued that we might find limitations in the concept of rights since this concept provides blanket protection to those civilians who do not take a direct part in hostilities despite the fact that some of them nevertheless greatly contribute to the war effort. In Section 5, we will consider the concept of personal project.

5. Personal Project

Thus far, we have discussed four concepts that might characterise the status of civilians and argued that it cannot be perfectly characterised by any of these four concepts. However, if there is one clue that is needed to unlock the complexity concerning the status of civilians, it might be found in the concept of personal 'project'²⁰, which primarily flows from the concept of the meanings of life and death in war of combatants and noncombatants. Barrie Paskins and Michael Dockrill point out that a 'noncombatant is a person who is not a combatant' and a combatant is a 'person who (i) is engaged in activity which has a military dimension which (ii) is among the activities which confer, if anything does, meaning on the person's life'²¹. They argue

19 Walzer, *Just and Unjust Wars*, p. 136.

20 J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), p. 116–7. Although Williams does not provide any definition of personal project, he uses the concept of personal project for his criticism on utilitarianism by pointing out that 'the distinction my killing someone, and its coming about because of what I do that someone else kills them' is based 'on the distinction between my project and someone else's project' (p. 117). The reason for this is, according to Williams, that a person 'is identified with his actions as flowing from projects and attitudes which in some cases he takes seriously at the deepest level, as what his life is about' (p. 116).

21 Barrie Paskins and Michael Dockrill, *The Ethics of War* (London: Duckworth, 1979), p. 222.

that the distinction derives from the difference in meaning and implication of their deaths in war between a combatant and a non-combatant. In their words:

Because of an internal connection between combatancy and being killed, a combatant has the option and opportunity to regard the prospect of death in war as meaningful: written into what he is doing is a connection with being killed that gives his own death a meaning... But death in war of a noncombatant does not have any such guaranteed meaning: it may be something better than a meaningless episode but if this is so then that is for some other reason than that the relation of the person's activity to war makes it so²².

This seems to indicate that soldiers are more likely to find their death in war meaningful because it is part of their prospect when going to war. Contrary to the case of combatants, civilians are likely to have a much slighter chance of finding their death in war meaningful because they have not been able to give the prospect such due consideration as part of their prospect²³. If we see a difference in the meanings of life and death between soldiers and civilians when following along the same line of thought, we can also see a clear difference in personal project between them. To shed light on this point, let us consider the case of the 9/11 aircraft. We can assume that there were two categories of people aboard on the hijacked commercial aircraft on 11th September 2001, which eventually crashed into the World Trade Centre, the Pentagon, and the ground in Pennsylvania. One was a group of hijackers and possibly sympathisers for their cause, and the other was the bulk of crew and passengers. Although this distinction might seem somewhat oversimplified, if there is any difference between two groups, part of this is in the difference in their personal project. This can be seen when we consider that the first group would likely regard their act as part of their own personal project, whereas the second group would be highly unlikely to regard their own tragic death as such.

The significant role of the concept of personal project is to reinforce the justification of the protection of civilians in that the vast majority of ordinary civilians who have no direct part in hostilities do not see the prospect of death in war as part of their personal project, but as something that destroys it. Presumably there are civilians who regard the prospect of death in war as part of their own personal project. This does not mean, however, that they forfeit their right to be protected as civilians as long as they do not take a direct part in hostilities.

There are two reasons to support blanket immunity of civilians regardless of their personal project: One reason is that it is technically impossible to confirm whether or not each individual civilian holds the view that death in war is part of their personal project and then to target only those civilians who hold such a view; and the other reason is, more fundamentally, that attacking civilians who are entitled to protection could blur the distinction and consequently undermine the foundation of the idea of civilian protection²⁴. When considering the concept of personal

²² *Ibid.*, p. 225.

²³ *Ibid.*

²⁴ This idea is implied in AP (I) Art. 50 (3), which reads: 'The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character'.

project, it is less important that there may be civilians who regard the prospect of death in war as part of their own personal project than that the vast majority of ordinary civilians do not see as such²⁵.

There is the possibility of a strong objection to this line of argument, however. If we recall the pacifist conscript and the war-supporting civilian discussed previously, the pacifist conscript is not ready to fight or die. We may consider that this is mainly because he does not regard the prospect of death in war as part of his personal project. However, we might consider that the war-thirsty civilian may indeed regard the prospect of death in war as part of his own personal project. Although what seems to be the definitive answer depends on their own personal state of mind, it seems not necessarily incorrect to assume that the pacifist conscript might not regard his own death in war as part his personal project. Moreover, it could be concluded that the chance that the conscript regards the prospect of death in war as part of his personal project is probably smaller than the chance that the professional soldier does.

From this discussion it has been revealed that the concept of personal project does not necessarily characterise the status of civilians or justify their protection. This is due to the possibility that a pacifist conscript could potentially have a smaller chance of regarding the prospect of death in war as part of his personal project than a civilian war-supporter might have. However, we have to bear in mind that a pacifist conscript, during the course of his military training and service, could potentially change his personal project and envisage that being a soldier and going to war is part of his personal project, whereas the prospect of the same change is not likely in the vast majority of civilians.

Despite the fact that the concept of personal project is limited in being able independently to determine the status of civilians and justify their protection, it could help to explain the reasons that it is sometimes permissible to kill or maim some civilians, using military force if necessary. Through this concept we can argue that the death of the war-abetting civilian is somewhat different from the deaths of the bulk of non-war-supporting civilians, primarily because the war-abetting civilians have a greater chance to envisage the prospect of their injury and death in war caused by the legitimate attack as part of their personal project associated with their active contribution to the military aspect of the war effort. We can find a fairly direct and straightforward connection in the war-abetting civilians and their prospect of death in war, whereas we cannot find it in non war-supporting civilians who have nothing to do with the war effort. In other words, the death of the war-abetting civilians is different from the death of non war-supporting civilians in terms of personal project.

During the course of our discussion, therefore we have found that the concept of personal project might not stand by itself as a determining concept that characterises the status of civilians, but it certainly aids in the clarification and complements the idea of civilian protection. If there is a key advantage in using the concept of personal project, it is that this concept explains the reason that harming civilians, such as the war-supporting civilian and the war-instigating bishop is less impermissible than harming ordinary civilians. This is because, according to the concept of personal project, the former group of civilians could have a greater likelihood of envisaging

25 Paskins and Dockrill, *The Ethics of War*.

their death in war, whereas the latter group could be less likely to see their death in war as part of their own personal project. To conclude, the concept of personal project seems to reinforce the idea of the protection of civilians who have no connection with the military aspect of the war effort.

Concluding Remarks

In this article, we have discussed the status of civilians by examining ethical concepts concerning civilians such as moral innocence, innocence as harmlessness, responsibility, rights, and personal project. We have shown that although the distinction between civilians and combatants is usually held by the concept of harmlessness, this concept is limited in its ability correctly to address the status of civilians, which is very complex in contemporary armed conflicts. When considering the ethical dimension, we have established that none of the five concepts which we have examined is an axiomatic, clear-cut concept available to characterise the status of civilians and to justify their protection, let alone to differentiate morally justifiable or permissible killings of civilians from unjustifiable or impermissible ones. Thus, we have discussed the issue that the status of civilians cannot be fully explained by existing ethical concepts alone. We have also argued that the status of civilians can be more clearly understood through the use of the concept of personal project, which explains the reason that civilians in general have to be protected, but that some civilians may have a weaker claim to protection, in that ordinary civilians are unlikely to see their death in war as part of their own personal project, while war-supporting civilians may be more likely to consider death in war as a possible outcome of their involvement. The concept of personal project could further strengthen the claim of ordinary civilians to their protection, if used together with the above-discussed concepts of harmlessness and responsibility.