

CIVILIAN IMMUNITY

Civilian immunity is perhaps the most important moral principle in the tradition of just war, and is also reflected in international laws and treaties on war. The principle of immunity means that civilians should not be deliberately targeted by the use of military force, and even those attacks on civilians that are not intentional, but merely results of negligence, can be seen as war crimes. However, civilian casualties caused as collateral damage by military strikes necessary for a justifiable defensive war can sometimes be justified by the principle of the lesser evil.

However, the fact that in modern wars the proportion of civilian casualties among all war victims is constantly increasing tells a grim story of how the principle of immunity is far from always respected. The figures for the proportion of civilian deaths in wars in Chechnya, for example, bear witness to Russia's deliberate and determined attacks on the civilian population and infrastructure in particular. War is always a terrible moral and human tragedy, but the growing, anonymous mass graves of civilian victims often shake the core of humanity to a whole new level of moral horror.

Even if there was a consensus on the importance of civilian immunity, the nature of modern wars still poses challenges to the principle of immunity, as it is difficult to formulate a common universal definition of who are civilians in the first place. For example, in the Napoleonic wars, the theatre of war and the roles of the opposing sides were still quite clear. In modern wars, however, the theatre of war comes directly into towns, villages and homes, forcing even civilians to choose between "fight or flight". When civilians take up weapons or prepare petrol bombs in their cellar, they become in effect 'combatants' and, according to the so-called revisionist interpretation, are transformed from a victim into a threat.

The *revisionist interpretation* has to do with how the moral principles of the just war tradition are understood and applied. According to the revisionist interpretation, the division between civilians and soldiers — or rather between combatants and non-combatants — is based on who constitutes a threat of violence and who does not. An unarmed civilian is merely a victim of war, but an armed civilian is a threat and is therefore interpreted as a combatant in much the same way as soldiers. In this interpretation, therefore, a civilian can be a combatant and, being a combatant, a legitimate target of violence. Non-combatants, on the other hand, are only those civilians who are not responsible for the threat of violence.

The threat of violence can also be generated and supported in other ways than by becoming a combatant. For example, munitions factories are generally considered military targets, even though they employ mainly civilians, because they directly and concretely sustain the military activities and exist for that purpose only. However, many other structures and infrastructures of civil society, such as the energy or metal industries, are also often harnessed for military operations in times of war. Indirectly, the military performance of the state is also supported by the democratic support of the citizens, the will to defend or fight and, for example, the payment of taxes. In the revisionist interpretation, every participant in society is at risk of becoming at least some kind of military threat in the eyes of the adversary, and thus a legitimate target of violence. This kind of thinking

erodes the principle of civilian immunity and actually encourages violence against them.

In contrast, the *traditionalist interpretation* sees the principle of immunity as a strict prohibition that protects civilians and civil society.

Another important principle of the traditionalist interpretation is that there is a so-called 'equality thesis' between soldiers on both sides, according to which soldiers fighting both a legitimate defensive war and an illegitimate war of aggression are equally entitled to strike at the soldiers and military targets of the opposing side. Thus, even those soldiers, who fight an unjustified war of aggression for morally dubious goals of their state, are still acting in an acceptable manner under the laws of war, as long as they do not commit torture, executions — or attacks on civilians.

The revisionist interpretation denies this thesis of equality of soldiers. Instead, the idea that the legitimacy of violence is based on the right to suppress the threat of violence that the opposing side poses, leads to the conclusion that soldiers engaged in legitimate defensive warfare should be as untouchable as non-combatant civilians. This is because soldiers engaged in legitimate defensive warfare are not considered to pose a threat of violence; they would not use force except as a necessary means of defending themselves and their country and people from attack. In contrast, soldiers fighting on the opposite side, fighting a war of unjustified aggression, are not justified in using force against anyone, not even the enemy's soldiers, because only they themselves are responsible for the threat of violence. In this interpretation, the only right thing that soldiers engaged in unjustified wars of aggression can do is lay down their arms and surrender. In a certain way it is certainly logical to claim that violence by unjustified soldiers is morally unacceptable in any form, since their side is responsible for the necessity of military action in the first place, leaving the defending side no choice but to take up arms or surrender. However, this interpretation easily leads to the practice, where all the enemy soldiers are automatically seen as war criminals — or as humans, who do not deserve to be treated as humans.

Furthermore, in the revisionist interpretation, soldiers fighting a legitimate defensive war are sometimes considered justified in targeting even the civilians of the aggressor state, if this is necessary for their defense.

According to this interpretation, civilians can be held responsible for their state's belligerence because they voted into power, tacitly accepted or fiscally supported governments and leaders who wrongly launched a war of aggression. This kind of reasoning was once used, for example, to justify the mass bombing of civilian cities in Nazi Germany by the USA and Britain. The Allies justified the bombing on the basis of the collective guilt of the Germans — and the Allies' need to crush the fighting spirit of the German people.

In this battle of ideas between revisionism and traditionalism over who is a civilian, a combatant or a soldier, the civilian is often interpreted as a violent threat, and therefore a legitimate target of violence. However, it is often almost impossible to determine the degree of responsibility that citizens, as individuals or even collectively, bear for the military actions of their state. When do civilians bear such a responsibility for starting

or continuing a war that the opposite side can really justify violent acts against these civilians?

And if civilian casualties are accepted in principle as a method of legitimate defensive warfare, this exemption immediately opens the door to a wide range of abuses. Anyone who declares their war to be justified can then allow themselves any means to achieve their own lofty ends.

If, on the other hand, attacks on civilians by both sides are regarded as the worst immoral acts of war, the principle of immunity of civilians is more likely to be respected.

It is difficult to achieve a full consensus on whose in war are civilians, who are combatants and who are soldier — and how these groups should be treated. However, most people probably feel that, at least when mass graves are filled with old people and children, the value of life has been completely subordinated to military objectives.

Another challenge is to take account of animals and nature when assessing the legitimate targets of war. The infiltrating nature of modern wars into civil societies creates an increasing temptation to use, for example, certain natural resources or ecosystems and ecosystem services as weapons against civilian populations, for example by poisoning soil or groundwater, destroying water bodies, mountains or forests, or using biological weapons.

Even if one considers that non-human species have only instrumental value, attacks on these targets are still immoral because the harm they cause, such as lack of clean water or drought and the resulting thirst, famine and disease, ultimately disproportionately affects civilians and thus indirectly violates the principle of civilian immunity.

It can also be argued that not only human beings but also other living species have intrinsic value and that it is therefore morally important to protect them for their own sake. Thus, for example, the destruction of a forest or a body of water in a war would be a tragedy and a moral wrong also because of their intrinsic value, irrespective of the military benefits of the destruction. Thus, it is possible that, in addition to a strict interpretation of the principle of human civilian immunity, it may be necessary to grant some degree of civilian status to other living species — not just humans. In that case, the principle of immunity should even apply to the entire biodiversity of life that does not participate in the violence, but does suffer significantly from it. In this case, the principle of civilian immunity becomes a very demanding one, but that is what morality is, and war must also make room for morality, so that the death toll in future wars does not look like it does in modern wars.

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