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The Paradox of Double Effect: How Feminism Can Save the Immunity Principle

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Evidence is mounting to suggest that between 5,000 and 10,000 Iraqi civilians may have died during the recent war, according to researchers doing independent surveys of the country. ... “Thousands are dead, thousands are missing, thousands are captured,” says Haidar Taie, head of the tracing department for the Iraqi Red Crescent in Baghdad. “It is a big disaster”. By one measure of violence against noncombatants, as compared with resistance faced by soldiers, the war in Iraq was particularly brutal. In Operation Just Cause, the 1989 US invasion of Panama, 13 Panamanian civilians died for every US military fatality. If 5,000 Iraqi civilians died in the latest war, that proportion would be 33 to 1. (Ford 2003).

The just war tradition provides the non-combatant immunity principle to deal with the appropriate treatment of civilians in war. It instructs that belligerent militaries are not to target civilians, and that they are to attempt to minimize accidental civilian casualties. If the theory of noncombatant immunity is meant to protect civilians from the horrors of war, in practice it falls short of that goal. A number of just war theorists observe that, while protecting innocent civilians in a time of war is a nice idea, it is either outdated or fundamentally impracticable (Greenwood 1993). The immunity principle is often ignored or directly violated in war (Brundelein 2001). A critical look at the immunity principle shows that it is in need of radical reformulation if it is to serve as an effective ethical guideline for war-fighting decisions. I propose to turn the immunity principle on its head: focusing not on innocence, but responsibility; not on civilian death, but on civilians’ human security.

I begin by introducing some traditional interpretations of the non-combatant immunity principle. I discuss the failures of the immunity principle to protect civilians from the effects of 21st century warfare. I then introduce the argument that the increasing technological sophistication of the weapons of war could save the immunity principle, but show that the promise of technology is a false one. I criticize the conceptual foundations of the immunity principle. I discuss the paradox of double effect and the doubt that it casts on the viability of just war theory as a whole. I then introduce a principle that I argue can solve the contradictions within the immunity principle specifically and just war theories more generally, empathetic war-fighting. Empathetic war-fighting, derived from feminist security theory, focuses on responsibility and human security. I conclude by discussing the possibilities for a new immunity principle based on empathetic war-fighting.

Meanings of non-combatant and immunity

Traditionally, the foundation for the immunity principle is a distinction between those who are guilty of the enemy offense and those who are innocent. Non-combatant immunity tells militaries that they may only target people who are guilty. Limited

targeting is intended to decrease suffering and increase the chances that the belligerents find long-term peace (Giossi 2001). Different theorists and practitioners have different ideas about how to draw the line between innocent and guilty, and what it means once it is drawn.

The immunity principle has to know who is innocent to know who to protect. The process of identifying innocence is a source of much contention among just war theorists (Mavrodes 1975, 121). One model defines innocence as harmlessness and guilt as dangerousness (Teichman 1986, 66). An act-based model bases guilt on *acting guilty* and innocence on resistance (Hartigan 1982). Some classify fighting in a war as the only guilty act, but others count working in war-supporting industries.

A third approach assigns combatant status to all who take part in the hostilities, whether they do so on the battlefield or in a supporting role like advertising, industry, or government (Kalshoven 1973, 35). This is problematic, though, because people who work for war-supporting industries may be doing so in the normal course of making a living (Kalshoven 1973, 38-9). In this case, there is a question whether their acts count as belligerent because they did not specifically consent to the war.

Michael Walzer thinks that consent is important in determining combatant status, and abhors the practice of forcing people to fight. He observes, “war is hell whenever men are forced to fight, whenever the limit of consent is breached” (Walzer 1977, 28). He argues that in situations where combatants have not consented to their combatant status, their moral status resembles that of innocents (Walzer 1977, 147). In criminal law, guilt means both objective injury and guilty mind. In war, this principle might advise that most people fighting wars are innocent, because their minds hold the belief that they are doing right, not wrong. At the very least, persons could not be classified as guilty unless they knew that they were fighting a war. Multiple interpretations of innocence make it difficult to identify those “non-combatants” who merit immunity.

Even if just war theorists and practitioners could agree on a definition of innocence, it is difficult to define the “immunity” that they might receive. Michael Walzer’s theory of immunity is based on the assumption that people have positive rights that they must actively cede by fighting a war. Noncombatants are “men and women with rights and they cannot be used for some military purpose, even if it is a legitimate purpose” (Walzer 1977, 137). In a rights context, immunity is entitlement not to have one’s rights appropriated for military goals. Still, there is some ambiguity as to exactly what those ‘rights’ are. To George Mavrodes, *immunity* means that civilian deaths can never morally be an intended consequence of a military action (1975, 119).

Ineffective immunities

As noted above, the immunity principle is often ignored or directly violated in war. This is a fundamental problem for non-combatant immunity, because “it is obvious that if the practice does not coincide with the theory, something is wrong: either the commitment to norms is not real or is not possible” (Hartigan 1982, 7).

Practical protection of civilians in war has never been absolute. Judith Gardam observes that “some civilian casualties have always been tolerated as a consequence of military action” (1993a, 398). A number of scholars observe that those belligerents who

feel their war is *ad bellum* just often ignore the standards of just *in bello* behavior. John Howard Yoder explains that, “often, ‘military necessity’ means that an otherwise-applicable rule can be discarded because it would be disadvantageous to the goal of winning the war (Yoder 1996, 27).

Belligerents are also unlikely to respect the immunity principle when they believe that their opponents attacked civilians. Often, a belligerent uses its opponent’s behavior to argue that it is no longer obligated to respect civilian immunity. Richard Regan notes that “belligerents have a self-interest in observing international conventions governing war conduct; their failure to do so would invite enemy retaliation in kind,” but it becomes cyclical when one party breaks the perceived rules (1996, 99).

A number of scholars question the practicability of the immunity principle, even were belligerents committed to following it. Judith Gardam worries about the fruitlessness of attempts to discriminate between combatants and non-combatants in the face of total warfare (1993b, 401). The concern is about the impossibility or strategic impracticality of distinguishing civilian and military targets in a war that involves whole societies (O’Brien 1969, 248ff). In order to discriminate effectively, soldiers would have to meet each other in combat, which is outdated in the practice of war-fighting (Wells 1969, 827).

Instead, many of the wars in the 20th century were aerial wars, where discrimination is substantially more difficult. Gorry characterizes aerial warfare as technologically advanced hostage-holding, where the captor shoots some of the hostages (2000, 182). Kenneth Vaux explains that guerilla wars also make it impossible to know who is a combatant and who is not (1992, 137). Walzer argues that it would be an unreasonable risk to soldiers’ lives to require them to spare civilians in a guerilla war (1997, 156). James Turner Johnson notes that ideological warfare has also become more prevalent, and *in bello* discrimination is less influential during ideological wars (1999).

Technology and the immunity principle

Despite these changes to the nature of warfare, the principle of discrimination has not disappeared but attempted to adapt. Technological advances of the 1990s appeared to revive the discrimination principle through precision targeting, using smart weapons and surveillance technology. Johnson argues now “wars can be waged while avoiding means and methods that are grossly and disproportionately destructive” (1984, 19).

Still, precision weapons may still miss, may have side effects, or may be targeted immorally. Tucker recognizes that precision-guided munitions are a “double-edged sword” because they give the illusion of having solved the problems of fairness and discrimination, when they have not done so (1985, 470). Kenneth Vaux worries that the technology of precision warfare creates problems for the immunity principle rather than solving them. He explains, “the cleanliness of surgical attack has proved more like [messy] obstetrical care,” yet the discourse of cleanliness appears to be an open-and-shut answer to immunity in war (Vaux 1992, 28).

A precision-guided missile targeted to hit a power-producing plant will not immediately kill very many civilians, but those who depend on that power source will experience long-term effects, like lack of power to their homes, their schools, and their

hospitals. Likewise, bombing a railway may not kill civilians directly, but it may hinder food distribution and stop them from getting to their jobs. Finally, precision-targeting industries in an enemy territory may have long-term economic or health effects which amount to or surpass the harm that could be caused by the direct targeting of civilians in war. Richard Regan worries that, in an era of precision targeting, it has become acceptable to target civilian infrastructure, which destroys social welfare (1996, 90). Even if belligerents wanted to follow the discrimination principle, its lack of specificity means that civilians may still be severely hurt.

The paradox of double effect

Just war theorists and practitioners realize that civilians will be hurt in war despite the noncombatant immunity principle. In fact, the just war tradition considers the situations in which civilian deaths may be acceptable. *Jus in bello* theories agree that civilians cannot be attacked, but disagree on the moral consequences of accidental or inadvertent harm to civilian lives and/or property. The foundational just war principle to deal with this issue is ‘double effect’, which “holds that even foreseen bad consequences are acceptable so long as they are unintended” (Smith 2002, 360; Johnson 1984, 32). The moral requirements of double effect center around the belligerent’s primary intent. An action with a *double effect* has both a morally defensible (military target) effect and a morally questionable (usually civilian) effect. To be permissible, the intent must be focused on the morally defensible target. Hare and Joynt lay out the principle of double effect in one of its more basic forms:

The principle of double effect sets to separate the intended effect of an action from the anticipated effect that may result as consequences of that action. Hence, ‘unintended side effects are permissible even if they are foreseen, as long as the intention is good in itself and the permitted evils are not disproportionate to the intended benefits (Hare and Joynt 1982, 6).

In this understanding, the just-war fighter is morally obligated to only target and intend to kill combatants (Wells 1969, 826). Still, “the killing of non-combatants incidental to the prosecution of a necessary military operation in a justified war may also be morally acceptable (Phillips 1984, 30).

The double effect principle requires that the intent must be only directed towards the morally good consequence, that the evil effects are not intended means to a morally good end, and that on balance the effects were more good than evil (Regan 1996, 96). Robert Phillips provides an example, using the case of drilling teeth. He explains that drilling teeth for medical reasons is painful, but the pain is a collateral effect (Phillips 1984, 45). This action passes the double effect test. On the other hand, drilling teeth as torture for the purposes of extracting information fails the double effect test (Phillips 1984, 45). Here, the pain is a means to the (possible morally defensible) ends.

Any *in bello* choice could then be justified, depending on how the choice happens to be described (Quinn 1989, 339; Predelli 2004, 19). There is substantial controversy among just war theorists about the validity of the principle of double effect around this

point. Many just war theorists worry that double effect permits too much. To answer this controversy, Walzer reformulates the double effect principle:

- 1) The act is good in itself or at least indifferent, which means, for our purposes, that it is a legitimate act of war
 - 2) The direct effect is morally acceptable—the destruction of military supplies, for example, or the killing of enemy soldiers
 - 3) The intention of the actor is good, that is, he aims narrowly at the acceptable effects, the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimize it, accepting costs to himself.
 - 4) The good effect is sufficiently good to compensate for allowing the evil effects; it must be justifiable under Sidgwick's proportionality principle.
- (Walzer 1977, 153-155)

The major change is in Walzer's third point, which requires an actor affirmatively attempt to minimize any negative effects of a double effect action. Walzer strengthens the principle's attempts to protect non-combatants, but does not solve all of its problems. The question of measuring "minimization" has a number of the same problems as measuring proportionality. It is subjective. Further, without accepting a strong moral foundation for the immunity principle, it is unlikely that any belligerent will accept cost to self in order to spare others. It also fails to include a comparative calculus to measure proportionality or limit the number of proportional double effect actions. Some, like Walzer, contend that the double effect principle's ineffectiveness is no more than lazy or irresponsible application. Others find the problem to be a fundamental one with the principle.

Yoder sees the double effect as a dangerous precedent because the logic can be used to defend just war theories, or to defend breaking the rules of just war (1996). Evaluating an (*ad bellum*) decision to go to war with the double effect principle demonstrates the contradiction. The double effect principle would interpret just war as paradoxical. Certainly, a war could be fought where the intent was morally acceptable and the good outweighed the evil. It is the intermediate standard that even a 'just' war necessarily fails. Double effect holds that evil cannot be used as a means to a good end. Were that to be applied to the *whole war*, it would mean that the *evil* (war) cannot be used as a means to the *good* (the just cause). This contradiction weakens the internal validity and external applicability of any theory of just war.

Is just war a paradox?

The paradoxical foundation of just war on the permissive principle of double effect leads one to question the credibility of the just war tradition more generally. We can assume that war is evil if we need such an elaborate moral framework as just war theory to control its used. If 'evil' cannot be used as a means to good, then war cannot be used to increase the justice of the international political environment. If war cannot be used for good, then just war is an inherently contradictory concept. This chain of reasoning, however, is unnecessary. It is not the idea of justice in war that is flawed, but the construction of an immunity principle on the basis of double effect.

Most people who think about ethics in warfare would agree that there are alternatives in global politics which are less morally acceptable than fighting a just war. For example, the holocaust was less morally acceptable than fighting a just war to end it. In this example, evil is *relative*, not absolute. Certainly, war is evil; but a just war against the holocaust is not as evil as the holocaust itself. A lesser evil can be used to defeat a greater evil.

The double effect principle fails to realize that we live in a world where we more often must choose between relative evils than between absolute good and evil. It further fails to realize that, often, our only means of combating evil is to fight it with a lesser evil. In the holocaust example, given a certain progression of German politics leading up to the 1940s, it is difficult to envision means that would have stopped the holocaust that would not have involved some evil.

Just war, then, is not a paradox: the reality of global politics is such that evil must be used as a means to prevent greater evil or produce good. So long as the evil does not overshadow the good, most human moral schemas permit the use of that evil. Just war recognizes that; the double effect principle does not.

Still, the fact that we are willing to acknowledge the use of evil as a (sometimes) necessary means to achieving some desirable moral end does not mean that we surrender all sense of controlling the means of warfare. It simply means that our *in bello* principles should not be based on an internally contradictory logic. It is not a more permissive immunity principle that I am looking for, but one with more solid moral foundations which translate into more certain enforceability. In the following sections, I review some of the fundamental problems with the immunity principle and propose a new schema for the moral consideration of *in bello* targeting, which I argue corrects both the morally contradictory and practically counterproductive results of the current immunity principle.

Problems with the immunity principle

The first problem to be addressed is the inaccuracy of the labels ‘combatant’ and ‘non-combatant’ in just war discourses. The term ‘combatant’ is negative distinction; it is generally defined by what one is not, as opposed to what one is; by appearances rather than queries into meanings. These dichotomies are unrepresentative enough to be insidious. They do not take into account the complexities of consent, human interdependence, and political choice in a way that allows true distinction between ‘those who ought to be held liable for the war’ and ‘those who ought not be liable for the war.’

The non-combatant immunity principle fails to make the distinctions that it was created to distinguish; the result is that wartime effects on ‘non-combatants’ are often ignored, or considered under the principle of double effect. The principle of double-effect allows for the (near-complete) side-stepping of the promise of limited damage to those not culpable for the war. It does so by allowing damage to non-combatants if and only if it is a side effect of actions that are otherwise intended to deal with military targets.

The use of the term ‘immunity’ is also false and misleading. Most formulations of the immunity principle do not recognize the full immunity of those classified as non-combatants. The double-effect principle usually reigns; civilian ‘collateral damage’ is tolerated. The strategic decision of air war-fighting is a decision to value military lives

over civilian lives, and any attempt to protect civilians within that context is necessarily handicapped. Infrastructural damage, economic destruction, and destruction of trade routes for essential supplies can be perpetrated while still touting the principle of ‘non-combatant immunity’ because these activities do not directly target (or directly kill) civilians. Still, these attacks do substantial damage to peoples’ lives and thus are unjust. The humanitarian impacts of war are so far reaching that it is not possible to be *immune* to them.

The immunity principle perpetuates gender subordination. The immunity principle classifies women in chivalric terms as Beautiful Souls who merit protection by heroic just warriors (Elshtain 1987). The non-combatant immunity norm presents women as peaceful, withdrawn from the sphere of politics, unable to participate in wars, defenseless against war, and in need of heroic men’s protection even when it is ‘heroic’ men that are putting them in danger (Elshtain 1992). Women’s innocent is at once the reason to fight the war and the war’s first casualty. The dichotomy of “innocent/guilty” echoes many other gendered dichotomies in global politics; terming civilian protection as “immunity” abstracts gendered violence. These critiques demonstrate that the problem is not the implementation of the immunity principle, but with its very foundational structure. In the next section, I explain what gender has to do with the immunity principle.

What’s gender got to do with it?

John Howard Yoder argues that we could identify just war theory by what it is not: macho or male-validating, because just war is about morals, not male heroism (1996). But Jean Elshtain argues that gender has everything to do with our interpretations and perceptions of the immunity principle (1987). The immunity principle is not only ineffective, its ineffectiveness is skewed by gender (Cuomo 1996, 38). The just war tradition generally does not discuss the impact of war on sex equality norms in a society, nor does it discuss wartime atrocities against women, such as rape. The immunity principle does not address the effects of war on family dynamics, domestic violence, or women’s ability to work inside or outside of the home. Just war theorists rarely address the long-term health and safety effects of war on women’s lives.

Very few just war theorists analyze physical or structural violence before or after a war when they make determinations concerning the justice of the war. The immunity principle has no means to account for the suffering of a family that ate contaminated food during a food shortage in a war, went to a hospital lacking electricity and doctors, and had chronic stomach problems for the next twenty years. Double effect will not count a woman whose malnourishment in a time of conflict deprived her breastmilk of nourishment to feed her child, leaving the child chronically developmentally disabled. The immunity principle has no way to analyze the impact of a war on a man who took the train to a job forty miles from home until the war destroyed the train. It is inadequate to identify and analyze the institutional and structural violence that is an important part of the impact of international combat; isolated from the everyday life impacts of global political conflicts.

Some would argue that gender bias in the immunity principle is independent of its internal contradictions and external ineffectiveness, but I demonstrate that the gendering of the immunity principle is intrinsically tied to its conceptual and practical problems.

This is where feminists' insights are crucial. Feminist look for the effects of certain political situations on women. As Betty Reardon explains, "*feminism* is the belief that women are of equal social and human value with men, and that the differences between men and women, whether biologically based or culturally derived, do not and should not constitute grounds for discrimination against women" (1985, 20). In this conception, feminism is a political theory that prioritizes protecting women from harmful differential treatment. Feminism is not only a political theory, however. It is a political theory that coexists with and interacts with a political movement dedicated to eradicating the problems that women experience because of their sex (Ruddick 1989, 234; Chodorow 1995). As feminists are looking for the effects of war on women, they find that women and others at the political margins are disproportionately affected by the horrors of war.

When feminists find women at the margins of war, they observe structural violence as it impacts women's abilities to provide their families with shelter, nutrition, health care, and stability. It is not only women, however, who suffer at the hands of the structural violence of war. It is the entire society affected by the war-fighting. Feminists, then, are able to observe that security is appropriately theorized through battlefields, airplanes, and tankers. But it is also appropriately theorized through civilian casualties, power outages, structural violence, food shortages, militarism, and human rights (Steans 1998).

Human lives are more secure when people are free from unsafe working conditions, the threat of war, unemployment, the financial squeeze of foreign debt, structural violence, ethnic violence, poverty, and family violence (Tickner 2001). Feminists see that women can be insecure even when states are secure, and they broaden their understanding of security accordingly. Feminist security is seen through the eyes of people whose lives are affected by insecurity, theorized at the individual level, and linked to emancipation for the marginalized (Tickner 2001). Feminists share a number of these understandings with theorists from different perspectives; feminisms uniquely contribute the perspective of how *individual women's lives* demonstrate the *violence* in tactics not traditionally understood as 'attacks on civilians'. Gendered lenses, then, see war differently than traditional inspirations for just war theories.

Lenses serve as filters; choosing, sorting, and ordering what a person sees and understands (Peterson and Runyan 1999, 1). We use cognitive lenses, consciously or unconsciously, "to foreground some things, and background others" (Peterson and Runyan 1999, 21). The just war tradition has not agreed on a lens: they see through the eyes of either Catholic doctrine, various protestant doctrines, other non-western religions, ancient philosophy, a particular political affiliation, or more than one of those lenses at once (Yoder 1996). This can cloud just war's moral coherence and practical effectiveness. The question of lenses can be seen as a question of framing. Frames are intersubjective systems of representations and representation-producing practices (Laffey and Weldes 1997). Frames are present across political, social, and academic discourses. They guide the way that actors understand events and relations. In social inquiry, some questions about the world are enabled and other questions are disabled by the frame that orders the questioning (Ferguson 1993, 7). I argue that a feminist frame for evaluating

the immunity principle provides new insight into protecting real people from real wars. A feminist frame for the immunity principle would prioritize human security, women's needs, and individual suffering. I argue that a feminist reformulation of the ethics of targeting, empathetic war-fighting, goes a long way towards fixing the conceptual and practical problems of the immunity principle outlined above.

Empathetic war-fighting: a new immunity principle?

As I mentioned above, feminists' moral priorities include highlighting gender subordination and political marginality. These moral concerns suggest directions for a new foundation, or 'motivating morality' to address questions of immunity and war. This motivating morality will center around a reformulated understanding of security, or a security ethic, focusing on the human security of individuals and communities.

Most security ethics employed in international politics are conflictual in nature, concentrating on relative gains and state security. Feminists critique conflictual politics, noting the harm that constant political competition causes at the margins of social and political life. Therefore, a feminist security ethic moves away from centering political behavior around conflict and competition.

To achieve this move, I present empathetic cooperation as a feminist security ethic. Empathy is the willingness to enter into the feeling or spirit of something and appreciate it fully – to hear others' stories and be transformed by our appreciation of their experiences (Sylvester 1994, 96; Bystudzienski 1992). Empathy is neither experiencing others' lives nor feeling sorry for them; it is, through emotional identification, *feeling their pain*. Feminists recognize both the global prevalence of gender subordination and the diversity of its manifestations. Each woman does not experience others' subordination, but they hear of it and they talk about it. They can find common ground to understand gender subordination, both generally and in the context of their individual experience.

Empathy can be, at least in part, understood as solidarity: supportive interaction in an interdependent world (Ruddick 1989, 239; Sylvester 2002; Arendt 1970). Sylvester provides a definition of empathetic cooperation and expands on the political implications of this understanding:

To be empathetically cooperative is to become relationally rather than reactively autonomous with those we have defined as unmistakably other, with those who are not inside 'our' community, our value system One does not take up permanent domicile in the other when one has empathy; one does not universalize her experience as something 'I' can know absolutely, thus cannibalizing her. Rather, one appreciates the similarities that are echoes of one's independent experience Empathy enables respectful negotiations with contentious others because we can recognize involuntary similarities across difference as well as differences that mark independent identity. There is no arrogance of uniqueness. Precious little committed defensiveness. (Sylvester 2002, 119-20).

Feminists' understandings of human connectedness inspire their commitment to empathetic cooperation. Connectedness comes from related experiences; feminists understand that the collective experience of social life in a constructed world is a related experience. Therefore, they realize that communication and cooperation are sources of power even where a social group is marginalized or subjugated (Allen 1998).

Empathetic cooperation can connect the immunity principle to real people's experiences. The immunity principle is depersonalized such that it talks about states, their weapons, and their military choices but it often omits discussion of the people affected by war, individually or collectively. Robin Schott worries that, in the immunity principle, "concerns and feelings that express emotional awareness of human reality behind the sanitized abstractions of death and destruction become marked as feminine, and thus are difficult both to speak and hear" (1996, 24). The emotional experience of war is left out of the just war tradition. Feminists insist on highlighting the suffering that war causes, the people that endure that suffering, and the emotional and physical pain involved with war. Empathetic cooperation moves away from reactive combativeness and focuses on intersubjective connections between persons. As a motivating morality for a feminist reformulation of the ethics of targeting, empathetic cooperation provides a focus on real people's *physical* and *social/emotional* lives.

A feminist revision of the non-combatant immunity principle must humanize and revitalize just war theories' understandings of targeting. I propose this reformulation, called 'empathetic war-fighting':

In the conduct of war, belligerents must attempt to understand the composition and political commitments of the people in the opposing society. They must evaluate these commitments with an eye towards an empathetic understanding of opposing positions. Given such an understanding, choice of targets should rely on a responsibility-for approach.

Empathetic war-fighting employs a responsibility-for approach to help determine appropriate targeting strategies (Steans 1998). The responsibility-for approach asks who will be affected, and how, by any *ad bellum* or *in bello* decision. It holds the belligerent party responsible not only for its intent but for any reasonably foreseeable impact of its war-fighting tactics. The immunity principle asks who the party intends to shoot at; empathetic war-fighting asks who the party might hit. Though distinction sounds trivial, it is crucial. Double effect allows civilian damage so long as it is unintended. In fact, unless the bad effects severely outweigh the good effects, double effect does not disapprove of war-fighting tactics predicted to affect civilians. The responsibility-for principle is inspired by care for people; people die when civilians are hit in war regardless of intent.

This approach deconstructs the artificial barrier between intent and reasonable foreseeability in the principle of double effect. If decision X leads belligerent A to winning a minor but not inconsequential battle, and it also cuts off the water supply to a small village, both effects would have to be considered as primary. Belligerent A would be morally accountable for both (and any other) impacts of its targeting decision.

The second element of a reformulated feminist ethics of targeting is the way that it treats mistakes. Belligerents miss their targets as they fight wars. Sometimes civilians

are inadvertently hit in battle as a result of belligerents missing targets. This is not a case of immoral targeting. The belligerents likely targeted legitimate targets. A technical glitch, a missed calculation, or a soldier's error meant that the belligerent did not hit the intended target. A belligerent intends to hit a munitions factory, but a miscalculation in the flight plan means that the airplane drops the bomb on the hospital next door. No matter how careful belligerents are, they sometimes fail to hit their targets. When belligerents fail to hit their targets, there is often civilian 'collateral' damage. There is no way to stop missing entirely. Just war theorists like Walzer contend that minimizing misses and errant targeting fulfills of the moral obligation of the immunity principle. The principle is then about either not trying to hit civilians or *trying* not to hit them, but never about not hitting them.

Civilians still die when belligerents miss, even when the belligerents try not to hit them with weapons. A feminist ethics of targeting acknowledges that mistakes are not *targeting* per se, but that they also cannot be left out of the ethical calculus. A feminist ethics of war suggests that the possibility of mistakes is a part of war, and should be weighed in the moral decision-making about going to war. The knowledge that those not implicated in the war might die as a result of it should be considered as a part of the question of the justice of the cause to go to war.

The responsibility-for approach reverses the logic of non-combatant immunity. Non-combatant immunity claims that, to the extent possible, a war should be fought against those towards whom the war-fighting party has just cause and legitimate grievance. Empathetic war-fighting argues that, in order to choose to fight a war, a party must have just cause and legitimate grievance towards those whom the war will affect. It is not about trying to miss the innocent, but about who a war is against and who will feel the impacts of the war most dramatically. Civilians' lives (however classified) should be a concern of both *in bello* and *ad bellum* decision-making. Empathetic war-fighting requires that the war be against those whose human security is threatened by the fighting. The responsibility-for approach assigns moral culpability for targeting mistakes as a part of the choice of having gone to war. It further instructs that *in bello* decisions should be made with an eye towards those people that they will affect as a primary consideration in targeting; with special attention towards those whose voices less frequently heard in politics. An immunity principle should not look to avoid civilians after choosing to engage in a war with military targets with potential collateral casualties. Instead, human security and interhuman empathy should be the basis of war decision-making, from choices about just cause to decisions about weaponry.

A feminist ethics of war-fighting moves away from abstracting humanitarian damage in war and towards belligerents' taking responsibility for all of the effects of war-fighting; immediate or long-term, traditionally considered or invisible. Empathetic war-fighting pays attention to the impacts of war decision-making on real people's lives. It makes a special effort to take note of those impacts of war least likely to be recognized in traditional just war evaluations. These impacts include the health effects on the state's poorest citizens, effects on family structure, problems with literacy, reactive gender conservatism, and the like. It abandons gender essentialism, but pays attention to the real gendered impacts of war-fighting. It does not perpetuate the illusion that people formally uninvolved in a conflict could hope to escape the effects of the war. Empathetic war-

fighting is a more realistic, more responsible, and less gendered way to answer just war questions about the morality of targeting.

Empathetic war-fighting and human security

Current formulations of the immunity principle provide civilians' lives inadequate protection from the harmful effects of war; both in the case of the immediate harm of collateral damage and in the inevitable long-term suffering from infrastructural damage. During a war, people's immediate security is threatened. Should they survive the war, however, they often are greeted with long-term threats to their health, economic well-being, education, environment, and stability. Feminist interest in political marginality sheds light on these threats to human security.

Human security is a priority a feminist reformulation of an immunity principle that has proven woefully inadequate to deal with the damages structural and physical violence cause social and political life in war-torn areas. Empathetic cooperation offers a new standard, based on care and human security, which may offer societies involved in war true protection by turning the immunity principle on its head. Empathetic war-fighting, instead of minimizing civilian damage in each targeting decision, considers the civilian damage that will be incurred as a question of whether or not to pursue a war. It focuses not on who is innocent, but on the question of whether the people who will be affected by the physical and structural violence of war are those who the war is against.

Empathetic war-fighting could revitalize *jus in bello* as an ethical instructive for decisions about going to and fighting in war. It cannot save the tens of thousands of civilians who have already died, despite their 'immunity' from 21st century wars. It can, however, provide a new way of looking and thinking at war-making and targeting decisions that focuses on the security and welfare of individual lives. A focus on individual human security will strengthen just war's effectiveness, increase its relevance to modern warfare, and decrease its insidious abstraction and gender bias.

Sources referenced

- Allen, Amy. 1998. Rethinking power. *Hypatia* 13, n.1:21-40.
- Arendt, Hannah. 1970. *On Violence*. New York: Harvest Books.
- Brundelein, Claude. 2001. The end of innocence: humanitarian protection in the 21st century. In *Civilians at war*, edited by Simon Chesterman, 221-36.
- Bystudzienski, Jill M., ed. 1992. *Women transforming politics: worldwide strategies for empowerment*. Bloomington, IN: Indiana University Press.
- Calhoun, Laurie. 2002. Legitimate authority and 'Just War' in the modern world. *Peace & Change* 27, n.1:37-58.
- Chodorow, Nancy J. 1995. Gender as a personal and cultural construction. *Signs: Journal of Women in Culture and Society* 20, n.3:516-544.
- Cohn, Carol. 1987. Sex and death in the world of rational defense intellectuals. *Signs: Journal of Women in Culture and Society* 12, n.4:687-718.
- Cuomo, Chris J. 1996. War is not just an event: reflections on the significance of everyday violence. *Hypatia* 11, n.4:30-45.
- Elshtain, Jean Bethke, ed. 1992. *Just war theory*. New York: New York University Press.
- Elshtain, Jean Bethke. 1987. *Women and war*. Washington Square, New York: New York University Press.
- Ferguson, Kathy E. 1993. *The man question: visions of subjectivity in feminist theory*. Berkeley, CA: University of California Press.
- Ford, Peter. 2003. Surveys pointing to high civilian death toll in Iraq. *Christian Science Monitor* 22 May.
- Gardam, Judith G. 1993a. Proportionality and force in international law. *The American Journal of International Law* 87, n.3:391-413.
- Gardam, Judith G. 1993b. Gender and non-combatant immunity. *Transnational Law and Contemporary Problems* 3:345-370.
- Gardner, Martin R. 1993. The mens rea enigma: observations on the role of motive in the criminal law, past and present. 1993 *Utah Law Review* 635.
- Giossi, Sylvie. 2001. *Strengthening protection in war: a search for professional standards*. Geneva: International Committee of the Red Cross.
- Gorry, Jon. 2000. 'Just War' or just war? The future(s) of a tradition. *Politics* 20, n.3: 177-183.
- Greenwood, Christopher. 1993. Customary international law and the First Geneva Protocol of 1977 in the Gulf conflict. In *The Gulf War 1990-1 in International and English Law*, edited by Peter Rowe. London and New York: Routledge, 63-88.
- Hare, John and Carey Joynt. 1982. *Ethics and international affairs*. London: MacMillan.
- Hartigan, Richard Shelly. 1982. *The forgotten victim: a history of the civilian*. Chicago: Precedent Publishing.
- Hirschmann, Nancy. 1989. Freedom, recognition, and obligation: a feminist approach to political theory. *The American Political Science Review* 83, n.4:1277-1244.

- Jabri, Vivienne. 1999. Explorations of difference in normative international relations. In *Women, culture, and international relations*, edited by Vivienne Jabri and Eleanor O’Gorman. Boulder, CO: Lynne Rienner.
- Johnson, James Turner. 1999. *Morality and contemporary warfare*. New Haven, CT: Yale University Press.
- Johnson, James Turner. 1984. *Can modern war be just?* New Haven, CT: Yale University Press.
- Johnson, James Turner and George Weigel, eds. 1991. *Just War and the Gulf War*. Lanham, MD: Ethics and Public Policy Center and University Press of America.
- Johnston, Alastair Iain. 1995. *Cultural realism: strategic culture and grand strategy in Chinese history*. Princeton, NJ: Princeton University Press.
- Kalshoven, Fritz. 1973. *The law of warfare: a summary of its recent history and trends in development*. Leiden: A. W. Sijthoff.
- Mavordes, George R. 1975. Conventions and the morality of war. *Philosophy and Public Affairs* 4, n.2:117-131.
- O’Brien, William V. 1969. *War and/or survival*. Garden City, NJ: Doubleday.
- Peterson, V. Spike and Anne Sisson Runyan. 1999. *Global gender issues*. Boulder, CO: Westview Press.
- Phillips, Robert L. 1984. *War and justice*. Norman, OK: University of Oklahoma Press.
- Predelli, Stefano. 2004. Bombers: some comments on double effect and harmful involvement. *Journal of Military Ethics* 3(1):16-26.
- Quinn, Warren S. 1989. Actions, intentions, and consequences: the doctrine of double effect. *Philosophy and Public Affairs* 18:334-351.
- Reardon, Betty. 1985. *Sexism and the war system*. New York: Teachers’ College Press.
- Regan, Richard J. 1996. *Just War: principles and cases*. Washington, D.C.: The Catholic University of America Press.
- Robinson, Fiona. 1999. *Globalizing care: ethics, feminist theory, and international relations*. Boulder, CO: Westview Press.
- Ruddick, Sara. 1989. *Maternal thinking: towards a politics of peace*. New York: Houghton-Mifflin.
- Sayre, Francis E. 1932. Mens rea. 45 *Harvard Law Review* 974.
- Schott, Robin May. 1996. Gender and ‘postmodern war.’ *Hypatia* 11, n.4:19-29.
- Smith, Thomas W. 2002. The new law of war: legitimizing hi-tech and infrastructural violence. *International Studies Quarterly* 46:355-74.
- Steans, Jill. 1998. *Gender and international relations: an introduction*. New Brunswick, NJ: Rutgers University Press.
- Sucharov, Mira. 2003. Anthologizing the peace process. In *Traditions and transitions in Israel studies: books on Israel, volume 6*, edited by Laura Eisenberg, Neil Caplan, Naomi Sokoloff, and Mohammed Abu-Namir. Albany, NY: State University of New York Press.
- Sylvester, Christine. 2002. *Feminist International Relations: an unfinished journey*. Cambridge: Cambridge University Press.
- Sylvester, Christine. 1994. *Feminist theory and international relations in a postmodern era*. Cambridge: Cambridge University Press.
- Teichman, Jenny. 1986. *Pacifism and the just war: a study in applied philosophy*. Oxford: Basil Blackwell.

- Tickner, J. Ann. 2001. *Gendering world politics*. New York: Columbia University Press.
- Tucker, Robert W. 1985. Morality and deterrence. *Ethics* 95, n.3:461-78.
- Vaux, Kenneth L. 1992. *Ethics and the Gulf War*. Boulder, CO: Westview Press.
- Walzer, Michael. 1977. *Just and unjust wars*. New York: Basic Books.
- Wells, Donald A. 1969. How much can 'the Just War' justify? *The Journal of Philosophy* 66, n.23:819-29.
- Yoder, John Howard. 1996. *When war is unjust: being honest in just-war thinking*. Maryknoll, NY: Orbis Books.