



War and Innocence

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Source: *Philosophy and Public Affairs*, Vol. 5, No. 1, (Autumn, 1975), pp. 90-97

Published by: Formerly published by Princeton University Press

Stable URL: <http://www.jstor.org/stable/2265022>

Accessed: 25/05/2008 03:56

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## I

In a war, is it morally permissible intentionally to kill noncombatants? Elizabeth Anscombe and Paul Ramsey argue that noncombatants may not be intentionally killed.<sup>1</sup> We are obligated to refrain from such killing because it is murder; and it is murder because noncombatants are innocent.

George Mavrodes questions the grounds for asserting that in war noncombatants are “innocent” and combatants are “guilty.” If immunity of noncombatants from killing is to be established this way, he says, then we must find a “sense of ‘innocence’ such that all non-combatants are innocent and all combatants are guilty,” and “this sense must be morally relevant.” Mavrodes fears, however, that immunity theorists such as Anscombe and Ramsey are actually using “innocent” and “noncombatant” synonymously. He believes that the sense of “innocence” used in their arguments has no moral content.<sup>2</sup>

Mavrodes’ main argument is this. There are noncombatants who may enthusiastically endorse and support the war their nation is waging, while there are combatants who may be under arms unhappily and unwillingly, who may not support the war but are unable to

1. Elizabeth Anscombe, “War and Murder,” in *War and Morality*, ed. Richard Wasserstrom (Belmont, Ca., 1970); Paul Ramsey, *The Last War* (New York, 1968). See also John C. Ford, “The Morality of Obliteration Bombing,” in *War and Morality*.

2. George I. Mavrodes, “Conventions and the Morality of War,” *Philosophy & Public Affairs* 4, no. 2 (Winter 1975): 121, 123.

resist conscription. It is odd to claim that the enthusiastically supportive noncombatant is innocent and the reluctant conscript guilty. "Is it not clear," Mavrodes asks, "that 'innocence,' as used here, leaves out entirely all morally relevant considerations . . . ?"<sup>3</sup>

Anscombe and Ramsey both invite this sort of counterargument by the way they defend their immunity thesis. Anscombe implies that the thesis is rooted in the Principle of Punishment: no man is to be punished except for his own crime.<sup>4</sup> Ramsey, too, employs the model of the criminal in defending the thesis.<sup>5</sup> But, from the point of view of punishment, it is odd, if not perverse, to view the enthusiastically supportive noncombatant as innocent and the reluctant combatant as guilty. Mavrodes, in my judgment, is right in believing this defense fails to establish the immunity of noncombatants from intentional killing.

Mavrodes believes that the obligation not to kill noncombatants intentionally can rest only on a convention among nations. Such an obligation, if it exists, is at best contingent, conditioned as it is on the existence of such a convention in force. Anscombe and Ramsey believe the obligation to refrain from intentionally killing noncombatants is noncontingent. It is not convention-dependent.<sup>6</sup>

In this paper I shall briefly sketch an argument for the immunity of noncombatants which avoids Mavrodes' criticisms. It will establish that in warfare there is a morally relevant distinction between non-combatants and combatants which prohibits the intentional killing of the former at the same time as it justifies the intentional killing of the latter. My argument will appeal to a nonconventional principle, and thus the obligation deriving from the principle will not be convention-dependent (or anyway not wholly so). I will then go on to show that even if certain considerations undercut drawing the line of immunity between combatants and noncombatants, a weaker version of the immunity thesis is still viable.

3. Mavrodes, pp. 122–123.

4. Anscombe, p. 49; Mavrodes, pp. 120, 123.

5. Ramsey, p. 144; Mavrodes, p. 123.

6. For Mavrodes' definition of convention-dependent obligation, see p. 126 of his article.

## II

To set the scene, first consider an example. Jones is walking down a street. Smith steps from behind the corner of a nearby building and begins to fire a gun at Jones, with the appearance of deliberate intent to kill Jones. Surrounded by buildings, Jones is afforded no means of escape. Jones, who is carrying a gun himself, shoots at Smith and kills him.

Jones is morally justified in killing Smith by the Principle of Self-Defense. Smith's actions put Jones' life directly and immediately in mortal jeopardy, and Jones' killing Smith was necessary to end that threat. From the point of view of self-defense, these facts about Smith's actions are the *only* relevant ones. The moral justification of the killing rests on them alone given the legitimacy of self-defense.

But let me now sketch in some possible background circumstances to Smith's assault on Jones. Suppose Smith's wife, spurned by Jones when she made advances toward him, tells Smith she has been raped by Jones. Furious, and egged on by his wife, Smith seeks out Jones and begins firing. Or, suppose Smith, through heavy gambling losses, is in debt to the mob for \$100,000. The mobsters propose to Smith that if he will kill Jones (a crusading district attorney, say), they will forgive his debt. Unable to pay the debt, and knowing what will happen to him if he fails to pay it, Smith seeks out Jones and begins firing. Or, suppose the mobsters kidnap Smith's children and threaten to kill them unless he kills Jones. Driven by the threat, Smith seeks out Jones and begins firing.

None of this background information alters the situation from the point of view of self-defense. Whatever prompted Smith to fire at Jones, the justification for Jones' killing Smith lies solely in the fact that Smith was the direct and immediate agent of a threat against Jones' life. From the point of view of self-defense, this fact justifies Jones in killing Smith—and *only* Smith.

Again, suppose that Smith's wife was standing across the street egging Smith on as he fired at Jones. Jones, though he justifiably shot Smith in self-defense, could not justifiably turn his gun on the wife in self-defense. Or suppose the mobsters were parked across the street to observe Smith. After killing Smith, Jones could not turn his gun

on them (assuming they were unarmed). No matter how causally implicated the wife or the mobsters were in Smith's assault on Jones, in the situation it was only Smith who was the agent of immediate threat to Jones; the wife and the mobsters were not posing a direct and immediate danger. From the point of view of justifiably killing in self-defense, they are not justifiably liable to be killed by Jones; they are immune.

There is a point of view from which these background features I have drawn in become morally relevant, namely the point of view of retribution or punishment. Smith's wife and the mobsters would be viewed as morally culpable for their contribution to Smith's assault on Jones' life. They ought to be punished. Perhaps Jones might be justified in taking his own retribution, and killing the wife or mobsters in revenge; but even if he is justified in killing them in retribution, he still cannot justify killing them on the grounds of self-defense.

In these cases of killing and attempted killing there are two points of view: the point of view of self-defense and the point of view of punishment. Some considerations that become morally relevant from the second point of view in justifying killing are not relevant from the first point of view. We use the notions of guilt and innocence almost always in connection with the second point of view, the perspective of punishment. From that point of view, Smith's wife and the mobsters are as guilty as Smith. In the instance where the mobsters cause Smith to act under duress, perhaps they are more guilty.

If we were to speak of innocence and guilt as categories applying in cases of self-defense, then for the purpose of justifiably killing in self-defense and from that point of view we would say that Smith alone was guilty (justifiably liable to killing) and his wife and the mobsters were innocent (not justifiably liable to killing), though all are guilty from the point of view of punishment.

It should be obvious now how my argument for the immunity thesis is going to run. The moral relevance of the distinction in war between combatants and noncombatants will be derived from the Principle of Self-Defense. Because we most commonly speak of innocence in connection with crime and punishment and because we also speak of innocent victims of war, Anscombe and Ramsey have been led to defend the innocents in war by appeal to the wrong model. For these same

reasons, Mavrodes has failed to see an alternative to his conventionalism.

### III

I shall now sketch an argument for the moral immunity of noncombatants from intentional killing.

The question at hand is the killing in war and its justifiability. Why is any killing at all justified? I claim that a nation may justifiably kill in self-defense. From the point of view of self-defense, only those are justifiably liable to be killed who pose the immediate and direct jeopardy. In the case of war, it is nations' armed forces which are the agents of the jeopardy. In a war, the armed forces of nation *A* stand to opponent nation *B* as Smith stood to Jones.<sup>7</sup> It is against them that *B* may defend itself by the use of force. The active combatants, their arms, ammunition, war machines and facilities, are the legitimate targets of intentional destruction.

Though *A*'s civilian population may support its war against *B* and contribute to it in various ways, they stand to *B* as Smith's wife or the mobsters stood to Jones. For the purpose of justifiably killing in self-defense and from that point of view, the civilian population is morally immune—it is "innocent." To intentionally kill noncombatants is to kill beyond the scope of self-defense. It is to kill unjustifiably from the point of view of self-defense.

This, in brief, is my argument. It provides for drawing a line between combatants and noncombatants, and prohibits intentionally killing the latter. This is just where the immunity theorists want to draw the line of prohibition. Furthermore, they see the prohibition as "natural," not convention-dependent. My argument supports them in this. The distinction between combatants and noncombatants derives from the operation of the Principle of Self-Defense. Our obligation not to kill noncombatants stems from our obligation not to kill without justification; and the Principle of Self-Defense justifies killing only combatants. Since both the obligation to not kill without justifica-

7. In a war each side is likely to view the other as the aggressor and itself as the defender; thus each side will claim to be acting in self-defense. I ignore the question of how we determine who is correct in making such a claim. My argument has to do with how *much* one may claim if one claims to act in self-defense.

tion and the Principle of Self-Defense are “natural” rather than conventional, the moral immunity of noncombatants does not rest (solely) upon the existence of appropriate conventions among nations.<sup>8</sup>

#### IV

From the point of view of killing in self-defense in war, Mavrodes’ reluctant conscript is “guilty” (justifiably liable to killing), and his non-combatant partisan is “innocent” (not justifiably liable to killing). To say that the reluctant conscript is guilty and the noncombatant partisan is innocent is to stand the matter on its head, claims Mavrodes. So it is—from the point of view of punishment. This, I have urged, is not the fundamentally governing point of view when it comes to justifying killing in war. The innocence of the noncombatant seems inexplicable to Mavrodes because he takes up the wrong point of view for evaluating killing in war. He is, of course, encouraged to take up this view by Anscombe’s and Ramsey’s own arguments in defense of the innocence of noncombatants. Viewing killing in war from this evaluative standpoint, and finding it incapable of explaining the prohibition against killing combatants, Mavrodes turns to conventionalism.

Might it not be contended against my defense of the immunity thesis that the point of view of self-defense is not the sole governing point of view when it comes to killing in war? Nations, it might be argued, exist in a state of nature, and thus possess the right to exact their own punishments on transgressors. Thus, in war, justifying deliberate killing may be done by appeal to both the Principle of Self-Defense *and* the Principle of Punishment. Finally, to the extent that retribution justifies some of the killing in war, it will justify killing some noncombatants.<sup>9</sup>

I have two answers to this challenge. The first answer preserves

8. In his argument against Anscombe and Ramsey, Mavrodes does not claim that conventionalism is true because the Principle of Punishment, to which they appeal, is itself conventional. Mavrodes does not dispute their assumption that the Principle of Punishment is a nonconventional source of obligation. Nor does Mavrodes support his conventionalism by arguing that *all* moral obligation is convention-dependent. Thus, I take it that the Principle of Self-Defense and the obligation not to kill without justification are nonconventional sources of obligation, since they are at least as nonconventional as the Principle of Punishment.

9. Some Allied air raids against German cities in World War II seem to have been clearly punitive in intent.

the strong immunity thesis, but it requires an assumption of fact which may, theoretically, not obtain. The second answer, dropping the assumption, requires me to weaken the immunity thesis.

For purposes of argument, I will concede that nations have the right to exact their own punishment in war. Even so, the Principle of Punishment justifies punishing *only the morally guilty* (culpable from the point of view of punishment), not the *morally innocent* (innocent from the point of view of punishment). Techniques of warfare—combat, bombing, shelling, burning—are too indiscriminate in their destruction to serve as legitimate instruments of punishment. They cannot be used discriminatingly between the morally guilty and the morally innocent. It is not justified by the Principle of Punishment intentionally to kill the morally innocent. If a nation claims punitive rights in war, it must adopt mechanisms of punishment which will discriminate between those who deserve punishment and those who do not. Bombing, shelling, and other such techniques kill guilty and innocent alike. Consequently, if we wish to justify killing during war by the means of war, the only applicable perspective is self-defense.<sup>10</sup>

If, however, contrary to the facts, there were some perfectly discriminating techniques of warfare, then, since I have conceded the right of nations to exact their own punishment, I see no argument against a nation legitimately taking up both points of view in its prosecution of a war. Some of the justified killing will be justified by self-defense, some by merited punishment. This would require a weakening of the immunity thesis, since the Principle of Punishment would justify some intentional killing of noncombatants, namely those that were morally guilty. Nevertheless, a version of the immunity thesis can be preserved: some line prohibiting intentional killing would still be mandated. The Principle of Self-Defense will

10. The Principle of Self-Defense also requires discrimination—between combatants and noncombatants. Since usually combatants are in uniform, with weapons, on battlefields, instruments of war can be used in a way which (roughly) avoids the death of noncombatants. However, instruments which cannot be used in a discriminating way, and whose use entails extensive non-combatant casualties (e.g. hydrogen bombs), are ruled out for use even in self-defense. See Richard Wasserstrom, "On the Morality of War: A Preliminary Inquiry," in *War and Morality*, pp. 100–101. (See also pp. 89 ff. where Wasserstrom discusses the justification of self-defense; and pp. 94–96, where he discusses the meaning of innocence in war.)



justify intentionally killing combatants, even the morally innocent among them. The Principle of Punishment will justify killing (if this is proportional to the crime) the morally guilty noncombatant. But neither principle will sanction or permit the intentional killing of the morally innocent noncombatant, many of whom will be found in any nation at war.<sup>11</sup> There will thus be a line of immunity required to be drawn around a certain class in war, the class of morally innocent noncombatants. We shall be morally obliged to refrain from intentionally killing members of this class, and this moral obligation will not disappear in the absence of any particular convention among nations.

Because of the indiscriminate nature of modern techniques of destruction, I see two reasons why the line of immunity is to be maintained between combatants and noncombatants. First, if nations recognize the Principle of Punishment, they may nevertheless be required to refrain from attempting to use it as a justification for killing because they shall not be able to meet the discrimination requirement. Second, nations may find it collectively beneficial to agree to forgo the exercise of their punishment rights during war (the exercise of which is morally ruled out anyway). They might thus, as Mavrodes suggests, adopt conventions confirming the line of immunity during warfare between combatant and noncombatant. To this extent, Mavrodes' conventionalism has support. The obligation not to kill noncombatants may be partly conventional; but if my arguments have been correct, it is not wholly so.<sup>12</sup>

11. Consider merely what percentage of a nation's population is made up of children under the age of ten.

12. In order to present a clean line of argument I have omitted discussion of various questions and qualifications that must be dealt with in any thorough defense of killing in war. Sometimes self-defense will not sufficiently justify killing. The Principle of Punishment may not justify any killing—I only assume that it does in order to consider a strong objection to the immunity thesis. I omit important questions such as whether persons have a moral right to a hearing before they may be punished, and so on. I believe that none of these issues, when resolved, will justify *more* killing.