

Reviews

The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian, Helen M. Kinsella (Ithaca, N.Y.: Cornell University Press, 2011), 264 pp., \$34.95 cloth.

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In the “human security” era (since approximately the end of the cold war), a burgeoning literature in political science has debated both the effects of the civilian immunity norm and the tensions in the concept, ostensibly to better understand how to protect civilians in armed conflict. Yet as Helen Kinsella rightly tells us, there has been too little *critical* attention to the concept of the civilian itself. Her sweeping historical genealogy of the “civilian” not only debunks various myths about the concept but also exposes certain problems and tensions that may be at the root of the current crisis in the civilian immunity norm itself.

The Image before the Weapon makes two key contributions to scholarship on the laws of war. The first is its stunningly comprehensive historical breadth. Kinsella traces the concept of the civilian from medieval times through the colonial era and up to its eventual, gradual, and deeply politicized codification in the formal laws of war only a few decades ago. In each epoch she demonstrates in detail how notions of civilian immunity and their semantic and conceptual underpinnings

were connected to broader sociohistorical processes by which diplomats, theorists, and statesmen reconceived world orders—and by which weapons-bearers enacted these orders on civilians. Her analysis demonstrates that, as she puts it, “the laws of war might be best characterized as a strategic expression of morals and a moral expression of strategies” (p. 188). This is a helpful rearticulation of the existing consensus among even constructivist international relations theorists of the law of war: that the law reflects power structures even as it regulates behavior within those structures. For Kinsella, the relevant structures include not just power differentials between states but between categories of states, social orders, and gender, race, and class hierarchies.

The value of Kinsella’s contribution is in its depth as well as breadth. Her discussion of the codification of humanitarian law at the Geneva conferences in 1949 and the later revising of the law in 1977 to fit post-colonial realities is one of the best, and hers is the only critical treatment of these events as they pertain to the concept of the “civilian.” In particular, she exposes the political

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causes and consequences of the choice not to define “civilian” in the 1977 Additional Protocols. Her chapters are full of new insights even for specialists in the area, such as her discussion of the Soviet position on Common Article 3 of the Geneva Conventions, which provides a minimum standard of humanitarian conduct even in conflicts not covered by the rest of the treaties; and of the pernicious effects of the new language on civilian immunity in the 1977 Additional Protocols, which many at the time—including the International Committee of the Red Cross—assumed would be a strengthened standard for civilian protection. She also provides three new case studies on civilian protection as it pertained to frontier warfare in the United States, the behavior of the French in Algeria, and the civil wars of Guatemala and El Salvador. Each expands the corpus of case studies on the topic within a field dominated by treatments of Bosnia-Herzegovina and Rwanda, and each examines the nexus between discourses of “civilization” and the treatment of civilians by weapons-bearers. As a work of history, then, Kinsella’s analysis makes a substantial contribution.

As a work of international relations theory, however, *The Image before the Weapon* leaves open some room for critique by scholars of international norms. While Kinsella provides an incisive analysis of classic texts, she avoids engaging with much recent literature on the relationship between gender and the civilian immunity norm: indeed, she explicitly states that “the role of gender in determining combatant and civilian . . . has thus far been overlooked in any analysis of the laws” (p. 128). This statement overlooks some important recent works in this area, including Judith Gardam’s writings on both noncombatant

immunity and on gender; Joshua Goldstein’s seminal work, *War and Gender*; Jean Bethke Elshtain’s and Laura Sjoberg’s feminist reinterpretations of just war theory; and the various writings of Adam Jones, who famously raised concerns about the conflation of “women and children” with “innocent civilians” in a landmark *Review of International Studies* article. A clearer engagement with these earlier views on the tensions between gender and civilian status might have further elucidated and strengthened Kinsella’s own distinctive argument.

As a result, while her substantive arguments are fascinating, Kinsella’s key theoretical claim seems not wholly convincing. This claim *is* distinctive and original—that discourses of gender *constitute* the civilian—and is perhaps best articulated in her assertion that “the distinction between combatant and civilian, which governs international humanitarian law and contributes to its formative power, is an effect of particular, historically rooted philosophical and juridical formations of sex and sex difference” (p. 125). Yet I see two problems with this thesis.

First, humanitarian law is not “governed” by the distinction between combatants and civilians. In fact, the distinction principle is designed to distinguish combatants and *noncombatants*—a category that includes prisoners, wounded, and others combatants no longer able to fight. Indeed, early humanitarian law was primarily articulated through reference to the sick and wounded soldier, not the civilian. Stripped of its documented association with gender essentialisms, the humanitarian imperative is to protect those not or no longer taking part in hostilities, not to protect gender or age groups per se. And civilians are but one component

of this category, their constitutive feature being (like wounded soldiers) *noncombatancy*, not sex or age.

Second, therefore, it is hard to accept the claim that gender discourses are “constitutive” of the civilian, in the sense that in their absence the concept of the civilian would lack meaning. Indeed, there is much historical evidence to the contrary. For one thing, the law acknowledges that women *can* be combatants—for example, they are explicitly referenced as such in the 1949 treaty on Prisoners of War. And the law does not in fact rely on “innocence” but rather “participation” as a metric for civilian status. Moreover, the two sets of somewhat incongruous norms—civilian immunity and female immunity—have not always been historically linked. The immunity norm emerged prior to its association with gender discourse and was originally designed to protect clerics; separate rules sparing women from massacre in antiquity were not based on innocence or nonparticipation at all but on women’s property status. These two sets of norms indeed became fused during the Enlightenment and continue to be muddled today in social practice, as Kinsella shows. But the relationship between the two concepts would seem to be something other than “mutually constitutive.”

This is not to argue that there is no relationship between gender assumptions and the notion of the civilian. Quite certainly there is, if not in legal terms then in social interpretations of those laws, as the scholars noted above have documented and as Kinsella’s work also shows: “women and children” often becomes a synecdoche for “innocent civilian.” But Kinsella’s sweeping assertions about this do not help us understand precisely *how* these different moral claims fit together to

produce certain gendered norms and behaviors in armed conflict. This reflects a common tendency in much constructivist international relations literature to refer broadly to any relationship between two ideational concepts as one of “mutual constitution.” The right questions to ask are what to make of the apparent discursive relationship between gender and the civilian and how precisely this functions in the development, articulation, and implementation of international humanitarian law.

In empirical terms, Kinsella is on much firmer ground with the *opposite* explanatory claim: if gender does not necessarily constitute civilian status, perhaps the civilian/combatant distinction as a gendered discourse does help constitute certain gender hierarchies in the modern period. As she notes, “Distinguishing among . . . individuals during war produces . . . distinctions of sex and sex difference” (p. 126). Kinsella convincingly shows that the laws of war have helped inscribe and reproduce certain gender norms—that, in her words, the law “produces the subjects it ostensibly protects” (p. 190) by functioning as yet another site where women are defined as weak, dependent, morally innocent, and physically vulnerable. Her case study on the U.S. Civil War, for example, demonstrates how Union respect for Southern women—indeed, their very definition of what it meant to be a woman—was bound up in expectations about women’s civilian status and political neutrality; and her discussion of the Geneva Conventions documents how the drafting process reinscribed women as presumptive civilians in the postwar and postcolonial period.

Ultimately, Kinsella stops short of analyzing what the concept of the “civilian” might meaningfully look like if disentangled

from the various discourses to which it is connected: gender, innocence, civilization. Her analysis suggests, by contrast, almost a historical inevitability to the current state of affairs. If so, this leaves hanging an important ethical question, just as any path-breaking work of international relations theory should do: What are the ethical and practical consequences of destabilizing the concept of the “innocent civilian”—which, even in its essentialized, gendered, and inadequate guise arguably provides *some* protection in war *some* of the time to

some civilians—without simultaneously reinvesting it with an alternative, nongendered moral foundation?

I do not know the answer, but this thoughtful book will certainly inspire students to debate the question.

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Poverty and Morality: Religious and Secular Perspectives, edited by William A. Galston and Peter H. Hoffenberg (New York: Cambridge University Press, 2010), 312 pp., \$97 cloth, \$29.99 paper.

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This latest in the Ethikon Series in Comparative Ethics offers a valuable collection of articles for understanding the normative dimensions of poverty. Covering the six major religious traditions and such secular perspectives as classical liberalism, contemporary liberal egalitarianism, Marxism, and feminism, the book also contains a chapter on the natural law tradition and an opening chapter by Sakiko Fukuda-Parr on the nature and trends of global poverty and inequality from the perspective of developmental economics.

Poverty and Morality gives us a wealth of information on how the six major religions—Hinduism, Buddhism, Confucianism, Islam, Judaism, and Christianity—view poverty and our obligations to the poor. These traditions regard the plight of the

poor as a moral and spiritual challenge for the rest of us. The theistic traditions struggle to explain the baffling theological question of why the poor suffer in God’s world if it is due to no apparent fault of their own, whereas the Hindu tradition focuses on the idea of karma and reincarnation, which de-emphasizes God. Buddhism preaches compassion toward all living creatures and charity for the poor, but more fundamentally it prescribes mindfulness and simplicity—the Buddhist middle way—for overcoming life’s miseries, which are due to people’s cravings and excesses. In contrast, Confucian humanism is more socially engaged, and emphasizes virtue in both rulers and subjects in order to create social cohesion and respond to social ills, such as poverty.