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ELIMINATIVE KILLING AND THE TARGETING OF NON-COMBATANTS COMMENTS ON SETH LAZAR'S *SPARING CIVILIANS*

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ABSTRACT. At the heart of Seth Lazar's arguments in support of what he calls Moral Distinction – 'In war, with rare exceptions, killing noncombatants is worse than killing combatants' – is his treatment of eliminative and opportunistic killing. He adopts the standard line, that eliminative killing is easier to justify than opportunistic killing. And he acknowledges that there are various circumstances in which one might be able to justify killing noncombatants on eliminative grounds. Nonetheless, he relies on the notion of a mixed kind of agency to argue that intentionally killing civilians is normally 'more opportunistic than intentionally killing soldiers', and is therefore normally more wrongful. I argue that his argument in favor of this claim fails. If we distinguish objectively available reasons from subjectively motivating ones, and pay attention to the limited relevance of subjectively motivating reasons, then it becomes clear that mixed agency cannot do the sort of work for just war theory that Lazar wants it to do. This failure need not impugn other parts of his defense of Moral Distinction. But it takes the heart out of his defense of it, putting a greater burden on the other parts of his argument.

I. INTRODUCTION

Seth Lazar is concerned that just war theory has taken a bad turn, one that undermines the protection noncombatants normally – and he thinks properly – are thought to enjoy. According to the law of war, it is a crime to target noncombatants, unless and only for so long as they function as (illegal) combatants.¹ This is the *Principle of*

¹ The *Principle of Distinction* is listed as 'Rule 1' by the International Red Cross on Customary International Humanitarian Law. 'Rule 1. The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians'. https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1. Rule 6 qualifies that protection: 'Civilians are protected against attack, unless and for such time as they take a direct part in hostilities'.

Distinction, requiring combatants to distinguish enemy combatants from non-combatants, and to restrict their targeted attacks to other combatants. A number of moral theorists have questioned the moral soundness of the *Principle of Distinction*.² But Lazar argues that it is at least generally morally defensible.

Those who question the moral soundness of the *Principle of Distinction* focus, in part, on cases in which civilians contribute to the ability of combatants unjustly to wage war.³ But Lazar argues that even in such cases the following principle holds:

Moral Distinction: In war, with rare exceptions, killing noncombatants is worse than killing combatants.⁴

This is meant to be a general deontological position, true whether one is fighting for or against an unjust aggressor. If one is fighting a just war, it implies that it is harder to justify killing noncombatants than combatants;⁵ if one is fighting an unjust war, it is already true that one ought not to fight, but *Moral Distinction* implies that one acts worse if one kills noncombatants than if one kills combatants; and if one is uncertain of the justness of one's war, *Moral Distinction* implies that one should try to target combatants rather than noncombatants as the latter is more likely impermissible.

At the heart of his defense of *Moral Distinction*, Lazar engages with the concept of eliminative killing. He introduces the concept this way: 'When I kill you eliminatively, I am aiming only at ends that I

² For example, Jeff McMahan writes: 'The account of liability to attack in war that I have defended cannot rule out the possibility that civilians may be liable to intentional attack'. *Killing in War* (New York: Oxford University Press, 2009), p. 221. More recently, Helen Frowe takes the point further, writing:

[N]on-combatants knowingly turn themselves into threats by contributing to their country's war effort. ... Most non-combatants who contribute to the unjust side of a war do not have very good evidence that they lack a reasonable opportunity to do otherwise, and thus can be liable to defensive harm in virtue of their contributions to unjust threats.

Defensive Killing (New York: Oxford University Press, 2014), p. 187. Frowe does not mean to suggest that these civilians *know*, or even have good reason to believe, that they are supporting the ability of soldiers who wage war unjustly. Hers is a fact-relative point: as matter of fact, they contribute to unjustifiable violence being inflicted on innocent victims, and they had a reasonable opportunity to do otherwise.

³ To be clear, critics of the *Principle of Distinction* like McMahan and Frowe think that there are generally sufficient reasons why it is impermissible to target civilians. But they think these reasons are more contingent than Lazar does.

⁴ *Sparing Civilians* (New York: Oxford University Press, 2015), p. 2.

⁵ This implication does not follow from the very notion of a feature of an act making it worse than it would otherwise be. For example, one might think that an agent's reasons for actions cannot affect whether her act is permissible or not, and yet think that a permissible act is worse if performed for a bad reason. But Lazar defines 'worse' in a narrow way that does not allow that result: 'X is worse than Y' means 'the objective moral reasons against X are weightier than those against Y'. *Id.* p. 3.

could just as easily have realized had you been absent. Rather than treating you as a resource that I can use, you are instead a problem that killing you solves, or eliminates'.⁶ This contrasts with opportunistic killing, in which agents treat those who are killed 'as a resource, an opportunity to advance their killers' ends'.⁷

Though Lazar does not say this explicitly, there are two reasons why these concepts, as he understands them, threaten to undermine his argument for *Moral Distinction*. First, on his view, '[o]pportunistic killing is worse than eliminative killing'.⁸ That implies that eliminative killing is easier to justify, all else equal, than opportunistic killing. Of course, it is hard to say just how much easier, but Lazar offers a sense for where he comes down. Focusing on lesser-evil justifications, where liability is not an issue, he says that, 'It might be permissible to kill [one person eliminatively] if you were saving, say, four lives besides your own. Whereas if you were killing opportunistically, you would need to save (many) more lives to have a lesser-evil justification'.⁹ Second, he offers many reasons why killing noncombatants could be justified on eliminative grounds. For example, he writes: 'Killing civilians can diminish the adversary's productive capacity, so one is not profiting from their presence, but eliminating their contribution to the enemy threat'.¹⁰

Combining these two points might lead one to the view that it is not particularly difficult to justify eliminatively targeting noncombatants. Lazar thinks, however, that he can avoid that conclusion, at least with regard to intentional killing. He argues that, 'Intentionally killing civilians is *more* opportunistic than intentionally killing soldiers'.¹¹ This, he thinks, suffices to support the thesis that the targeted killing of noncombatants is generally *worse* than the targeted killing of combatants.

I argue here that Lazar mistakenly relies on the notion of a mixed kind of agency to argue that intentionally killing civilians is '*more* opportunistic than intentionally killing soldiers', therefore is more likely to be impermissible. If we distinguish objectively available

⁶ *Id.* p. 60.

⁷ *Id.* p. 57.

⁸ *Id.* pp. 62 and 66.

⁹ *Id.* p. 65.

¹⁰ *Id.* p. 69.

¹¹ *Id.* p. 72 (italics in the original).

reasons from subjectively motivating ones, and pay attention to the limited relevance of subjectively motivating reasons, then it becomes clear that mixed agency cannot do the sort of work for just war theory that Lazar wants it to do. As a result, Lazar's treatment of the distinction between eliminative and opportunistic killing does not support *Moral Distinction*. This failure need not impugn other parts of his defense of *Moral Distinction*. But it takes the heart out of his defense of it, putting a much greater burden on the other parts of his argument.

II. LAZAR'S MISGUIDED APPEAL TO MIXED AGENCY

Near the end of his chapter on eliminative and opportunistic killing, Lazar sums up its central argument: '[I]ntentionally killing civilians is *more* opportunistic than intentionally killing soldiers; and killing soldiers almost always involves an eliminative dimension. Each kind of killing involves mixed kinds of agency. But the mixture in anti-civilian violence is more opportunistic than it is for counterforce attacks'.¹² Combining this claim with the principle that opportunistic killing is, all else equal, worse than eliminative killing, Lazar concludes that, 'the generalization that killing civilians is worse than killing soldiers is borne out'.¹³

To show that this is an unsound argument, I will argue two points. First, the idea of mixed kinds of agency makes sense only if we focus on subjectively motivating reasons for action, not on the objectively available reasons that can be cited to justify a given act. Second, acting on mixed motives does not tend to make acts impermissible. And even acting on bad motives tends to make acts impermissible – if it has that power at all – only in the sort of minor way that just war theory should not care about. I will then apply these points to Lazar's argument to show that it does not work.

A. *Acts and Actions*

Lazar does not specify whether the relevant reasons for him are objectively available reasons that might be offered by anyone seeking to justify the agent doing what she does, or reasons that are subjectively motivating

¹² *Id.* p. 60.

¹³ *Id.* p. 72.

the agent to act. Sometimes he writes as though he is discussing the former;¹⁴ at other times he writes as though he is discussing the latter.¹⁵ I will argue in this section that one cannot make sense of mixed agency in terms of objective reasons. Therefore, his argument presupposes that what is relevant is the mix of subjectively motivating reasons.

To appreciate the limited significance of subjectively motivating reasons, it will help to introduce the distinction between acts and actions.¹⁶ An action is an act performed for a particular set of reasons. An act is an action understood by abstracting from the reason for which it is performed. For example, one and the same physical bombing run (an act of dropping bombs on some target) can be two or more different actions. It can be the action of tactical bombing – aiming at a legitimate military target, even knowing that people who may not be targeted will be killed. Or it can be the action of terror bombing – aiming at killing people who may not, we can assume, legitimately be targeted.

An act is permissible if a successful justification for it can be given. An action corresponding to a permissible act may or may not be permissible, depending on whether the subjective reasons on which the agent acts make the action impermissible. This way of conceiving of the distinction is analytically preferable to one that takes actions as basic, as it allows one to identify potential wrong-making factors, other than illicit reasons for action or illicit intentions,¹⁷ that may make an act impermissible regardless of the reasons for action that an agent acts on. In other words, taking acts as basic allows us to distinguish factors that would make it impermissible for any agent to perform the act in question, no matter what her reasons for doing so,

¹⁴ E.g.: 'In general, when soldiers kill enemy combatants in war, they achieve goals that they could have realized in their enemies' absence'. *Id.* p. 68.

¹⁵ E.g.: 'When I kill you eliminatively, I am aiming only at ends that I could just as easily have realized had you been absent'. *Id.* p. 60. This is most naturally read as a description of an agent's subjective reasons for action.

¹⁶ As far as I know, this distinction was introduced by W.D. Ross, *The Right and the Good* (Indianapolis: Hackett, 1988), p. 7 (originally published by Oxford University Press, 1930). This distinction is also sometimes described as the difference between acts thinly and thickly described. See Ralph Wedgwood, 'Defending Double Effect', *Ratio* 24 (2011): 384–401, p. 388.

¹⁷ Illicit reasons can be distinguished from illicit intentions as follows: Illicit reasons are reasons for action that, in a particular situation, would not help to justify that action; in fact, in that situation, they count as reasons *not* to perform the action in question. Illicit intentions are – following Michael Bratman's notion of intentions as plans for action – plans that include within the scope of the acts that the agent is prepared to perform, should certain conditions arise, acts that it would be impermissible for her to perform. I developed that distinction in Alec Walen, 'The Doctrine of Illicit Intentions', *Philosophy and Public Affairs* 34 (2006): 39–67.

from the intentions and reasons for action that might also serve as wrong-making factors.¹⁸

There are two further reasons why it is important to be able to distinguish between those two kinds of wrong-making factors. First, even if an agent's subjectively motivating reasons for action can make an otherwise permissible act impermissible, they do not have the same wrong-making power as other features of an action; they cannot make an otherwise permissible act into a serious wrong. I will argue this point in the next section.

Second, once we make that distinction, it becomes immediately obvious that if a particular act is permissible, then the fact that wrongheaded or unsuccessful reasons might be offered to justify it is irrelevant. Any permissible act could be defended in any number of wrongheaded ways. That simply cannot make the act itself impermissible.¹⁹ Wrongheaded reasons are morally relevant only if we assume that the act is itself permissible and ask whether performing it for illicit reasons can make it impermissible.

B. The Limited Significance of Mixed Motives

An agent often acts for a combination of reasons, and if some of those reasons are morally suspect or worse, that can increase the extent to which her action is blameworthy. But whether she acts impermissibly is a more complicated affair. I argue here that if her motives are mixed, and if she is at least constrained by her commitment to morally proper reasons to performing only morally permissible acts, at least on a particular occasion, then she still acts permissibly on that occasion. What that says about agents who are not so constrained is another matter, but then what matters seems to be the openness to acting wrongly, not the acting on a mixed motive.

To illustrate the disconnect between acting on a mix of licit and illicit reasons and acting impermissibly, compare three different

¹⁸ To be clear, I do not suppose that wrong-making subjective reasons have to be literally operative and motivating. Sometimes, what would make an action impermissible is the *lack* of an appropriate motivating reason. But this detail need not concern us in the main text.

¹⁹ What if the reasons against killing in some context just barely tipped the scales against killing if viewed simply as a case of eliminative killing? Might it not be that adding an opportunistic justification might tip the balance? That seems unlikely, but suppose that in a particular case it worked like that. Then offering that reason, objectively speaking, would not compromise the justifiability of the act; it would establish it.

kinds of bystanders at a trolley switch.²⁰ Each is choosing whether to divert a trolley that cannot be stopped from a track where it will kill five to a track where it will kill one, the sidetrack man. They all see that there are five people on the track straight ahead and only the sidetrack man on the other track, and they all know – assuming that this is both true and knowable – that saving the five makes the act of turning the trolley morally permissible. Moreover, they all know – same assumptions – that the ‘act’ – the omission understood without reference to the reasons for which the act is *not* performed – of allowing the trolley to hit the five is permissible. They differ, however, in the reasons that are subjectively motivating to them.

Benevolent Bystander: the agent regrets that her actions will kill the sidetrack man, but she is more concerned to save the five than not to kill him.

Mixed-Motive Bystander: the agent hates the sidetrack man and is glad to have a chance to kill him, but also sees that it is important to save the five, and acts on both reasons. Moreover, the benevolent reason is dominant for her: she cannot imagine killing anyone without taking the justifying reason to be a reason for her; she also believes that she would act like the benevolent bystander if she did not hate the sidetrack man.

Malicious Bystander: the agent hates the sidetrack man and is glad to have a chance to kill him. She would do so only on the condition that the act itself is morally justified. But the reasons that justify it are not her motivating reasons for action; she would not turn the trolley to save the five; her reason for turning it is that it would kill the sidetrack man.

The benevolent bystander deserves praise. The mixed-motive bystander deserves some praise and some blame. And the malicious bystander deserves more blame still, and arguably no praise, for doing the right thing for a bad reason. The question I want to address now is: Do their actions differ in terms of permissibility?

There are two sorts of ways to think about the relevance of illicit reasons for action to the permissibility of their actions: (1) illicit reasons could be seen as intrinsically wrong-making, or (2) illicit reasons could be seen as objectionable from the point of view of those who have claims on the agent. The first framing may make sense within a perfectionist morality, but it should be rejected by a fundamentally liberal morality. While a liberal morality must be able to make sense of the thought that agents have moral reasons to strive to be better people, and thus have moral reason to care about

²⁰ Granted, trolley cases are not the stuff of war, but they are a useful tool for analyzing what is relevant to permissible acts and actions. And Lazar himself does not shy away from using them for that purpose. Indeed, he discusses trolley cases three times in the chapter I focus on in this paper. See *Sparing Civilians*, pp. 59, 60, and 64.

the reasons on which they choose to act, it should treat permissibility as a notion reflecting the constraints that respect for others – expressed in terms of norms of rights and justice – imposes on agents.²¹ Thus a liberal morality should accept that the reasons on which agents act are relevant to permissibility only insofar as they are objectionable from the point of view of those who have claims on the agent.

It is not hard to imagine that the sidetrack man could have a claim – a *pro tanto* right – not to be killed for malicious reasons.²² His claim not to be killed is arguably stronger, and may be a right (a claim that may not be contravened), if the person who would kill him would act on malicious reasons. Thus, it is at least plausible that the malicious bystander acts impermissibly.

Some have objected that the prior claim has the ‘absurd’ implication that someone like the malicious bystander must simply let the five die.²³ But this absurd implication follows only if the malicious bystander could avoid acting on her malicious reason for action only by not saving the five. If instead she can choose to perform the act for a better reason, then *that* is what she should do. And I think she *can* do just that.²⁴

I believe that agents can choose not to act on illicit reasons because I think we can choose to commit ourselves across a range of possible cases, just as we can choose to pursue one of two or more actual options. That sort of counterfactual commitment can give practical meaning to the thought that one is acting for one set of reasons, and not for another. In the present case, I think the malicious bystander can make a commitment to act for the morally relevant reasons, which, by hypothesis, she recognizes as morally

²¹ To be clear, my point is not as narrow as the harm principle. Some actions wrong others without harming them. For example, some actions are simply unfair. Some are attempts to do wrong that do not actually harm. Some fail to take into account the interests of those who are not yet born, and who do not have rights, but whose inevitable existence (as a category, not as identifiable individuals) must carry weight in limiting the rights of agents in the present. The point is simply that a liberal morality must treat permissibility as a patient-focused (as opposed to agent-focused) matter. See Frances Kamm, ‘Non-Consequentialism, the Person as an End-in-Itself, and the Significance of Status’, *Philosophy and Public Affairs* 21 (1992): 354–389, p. 382. (I do not, however, follow her usage of ‘agent-focused’.)

²² Warren Quinn, for example, thinks that people who have *pro tanto* rights not to be harmed have stronger *pro tanto* rights not to be harmed when another deliberately involves ‘them in something in order to further his purpose precisely by way of their being so involved’. ‘Actions, Intentions, and Consequences: The Doctrine of Double Effect’, reprinted in *Morality and Action* (New York: Cambridge University Press, 1993), p. 184. See also Victor Tadros, *The Ends of Harm*, (New York: Oxford University Press, 2011): ch. 7.

²³ See Judith Jarvis Thomson, ‘Physician Assisted Suicide: Two Arguments’, *Ethics* 109 (1999): 497–518, p. 515.

²⁴ See Nico Kolodny, ‘Scanlon’s Investigation: The Relevance of Intent to Permissibility’, *Analytic Philosophy* 52 (2011): 100–123, pp. 104–105. See also Tadros, *The Ends of Harm*, pp. 145–146.

relevant, and not to act for her malicious reason, which we can suppose she also recognizes is morally illicit. The commitment to act for the morally relevant reasons rather than malice would affect her choices by causing her either not to turn the trolley onto the sidetrack man, or to turn it to save the five even if she were to discover that the one on the other track was not someone she hated and wanted dead. Arguably, she must reject the first possibility because she showed herself willing to kill for an illicit reason, and thus, unless the circumstances change in some material way, she has forfeited her claim not to have to bear the burden of killing for the sake of the greater good. This would leave her with an obligation to save the five even if she were to discover that the one on the other track was not someone she hated and wanted dead. I think that obligation suffices to answer the absurdity challenge.

Nevertheless, there are two ways in which this result is weaker – it shows less about the relevance of acting on illicit reasons – than many have taken it to be. First, even if we assume that it is impermissible to kill someone solely out of malice, even if one does so as a ‘loopholer’ – that is, killing only when one is aware that conditions exist that would justify performing that act – that still leaves unanswered an important question: What kind of a wrong is that? Is it like murder? Is it a wrong like killing someone when there is no justification for the act itself? One need only briefly consider two cases to see that it is a much lesser wrong.²⁵ Contrast the malicious bystander, who seeks to exploit the opportunity to kill her enemy when the act of doing so is justifiable, with an *unconstrained* malicious bystander, who turns a trolley onto a sidetrack man even though doing so saves no one. The latter commits murder; the former commits, at most, some much lesser wrong.²⁶ The former’s failure is acting on a reason that is objectively offensive to the sidetrack man, but that is acting offensively, not murdering.

Second, it is unclear how to extend the reasoning that supports the thought that the malicious bystander acts impermissibly, by

²⁵ I first made this argument in Alec Walen, ‘The Restricting Claims Principle Revisited: Grounding the Means principle on the Agent-Patient Divide’, *Law and Philosophy* 35 (2016): 211–247, pp. 218–219.

²⁶ What if the agent did not see that there were five on the other track, and thought of herself as an *Unconstrained Malicious Bystander*? I think she could then be held for attempted murder. In a purely fact-relative sense, she performs an acceptable act. One could even permissibly shout encouragement if one knows that it is permissible to turn the trolley. See Alec Walen, ‘Permissibly Encouraging the Impermissible’, *Journal of Value Inquiry* 38 (2004): 341–354. But her intention was to murder. She should therefore be subject to punishment for choosing to act on that intention.

committing her relatively insignificant wrong, to the case of the mixed-motive bystander. She, by hypothesis, would already turn the trolley even if she did not hate the sidetrack man. That is, she already acts on the morally relevant reasons for action. Her problem is that she *also* acts on a morally illicit reason for action. She could try to convince herself that hatred of the one does not provide her with *any* reason to kill him. But such a realization may not quell the desire. Moreover, it is much less clear in *Mixed-Motive Bystander* than in *Malicious Bystander* what choice the agent can make to ensure that she is not acting on illicit reasons. By hypothesis, the illicit reason is for her only a secondary or supplemental reason for action. She can focus on the second-order reasons not to take malice to give her a reason, but that may not suffice to rid her of malice. And if she is honest with herself (and us) she may have to admit that her malice gives her some extra motivational interest in doing what she already takes herself to have sufficient moral reason to do, namely to turn the trolley. She may be blameworthy for having this sort of hatred in her and for letting it play a motivational role in her action,²⁷ but given (a) the moral desirability of her turning the trolley, and (b) the difficulty of her purifying her reasons for action, it does not seem reasonable to say that she violates any right of the sidetrack man if she acts with malice as one of her motivating reasons for action. To say that *would* be to embrace the absurd result that morality should prefer that five innocents die than that one innocent be killed – an innocent who can justifiably be killed for the sake of the five – if he is going to be killed by someone acting in any way on an illicit reason for action.

This discussion of *Malicious Bystander* and *Mixed-Motive Bystander* shows, I think, that acting on an objectionable reason is at most a weak wrong-making factor. It may make actions like those of the malicious bystander impermissible, but would not make them the kind of serious wrongs that we care about when we think of murder.²⁸ The action the

²⁷ See Angela Smith, 'Responsibility for Attitudes: Activity and Passivity in Mental Life', *Ethics* 115 (2005): 236–271. Smith would actually blame her for having malice even if she does not take it to give her a reason for action.

²⁸ I say this with full knowledge that most people think that intentions matter to the *Principle of Distinction*. This is, I think, a vestige of the history of moral thought, in which the doctrine of double effect was dominant in explaining the *Principle of Distinction*. But now that we have ways of capturing the distinction between harming as a means and harming as a side-effect that can be stated without reference to an agent's intentions, and given the greater appeal of these alternative accounts – a point I defend in 'The Restricting Claims Principle Revisited' – I think we should put this part of our history behind us.

malicious bystander performs may be a *wrongful* killing, but it is not a *wrongful killing*. And in cases like *Mixed-Motive Bystander*, it seems to have no impact on the permissibility of her actions at all.

C. Application to Lazar's Argument

Let us now take these points and reconsider Lazar's claim that '[I]ntentionally killing civilians is *more* opportunistic than intentionally killing soldiers; and killing soldiers almost always involves an eliminative dimension. Each kind of killing involves mixed kinds of agency. But the mixture in anti-civilian violence is more opportunistic than it is for counterforce attacks'.²⁹

To fix ideas, consider this outline of an example. Suppose that a combatant sees that there is an eliminative reason to kill a set of noncombatants on the other side. And suppose that, all things considered, such a killing would be a permissible act. Would acting based on some mixture of licit eliminative reasons and illicit opportunistic reasons turn the act into an impermissible one? Not if the legitimate reason also played a guiding role. In such a case, a mixture of reasons in the mind of the agent would be just as *irrelevant* to the permissibility of her action as it was in *Mixed-Motive Bystander*.

What if the combatant acts primarily on opportunistic reasons? Would that affect the permissibility of her action, assuming that she is still constraining herself so that she performs only a permissible act? Maybe. But even so, she would be guilty of a relatively small wrong, nothing on a par with wrongfully killing people who may not be killed regardless of the intention of the agent. This wrong need not be trivial, but it is not the sort of wrong on which to hang much of interest for just war theory. It is too much about acting offensively, rather than engaging in *wrongful killing*. The real issue in the *Principle of Distinction* – and per force in *Moral Distinction* – has to be the justifiability of acts, not of actions that *might* be wrong in some relatively minor way.

Lazar might want to object that it is still the case that agents are more likely to act on opportunistic reasons when occasions for killing noncombatants arise than when occasions for killing com-

²⁹ *Sparing Civilians*, p. 60.

batants arise. And he might argue that this means that agents are more likely to be led astray and to perform impermissible *acts* if they allow themselves to act on opportunistic reasons for action. That is an empirical claim, and I am fairly certain that the empirical studies that would support it have *not* been done. But even if we grant the empirical premise, it would show only that targeting civilians is more likely to be wrongful than targeting combatants. Lazar has a separate argument to show that acting in ways that are more likely to be wrongful is a wrong-making feature that can make otherwise permissible acts impermissible.³⁰ I am dubious, but that is beyond the scope of this paper. My point here is merely that even if it is true that ‘the mixture [of reason for action] in anti-civilian violence is more opportunistic than it is for counterforce attacks’, that, by itself, is irrelevant to any kind of distinction between permissible and impermissible action that should be a concern to just war theory.

III. CONCLUSION

Lazar’s discussion of the distinction between eliminative and opportunistic killing fails to support his principle of *Moral Distinction*. That does not mean that his defense of *Moral Distinction* fails overall. But as eliminative killing was at the heart of that discussion, it puts pressure on the rest of the argument.

The point of this discussion is not to say that it should be open season on the killing of civilians who contribute to the ability of unjust combatants to wage unjust wars in an unjust manner. Doing so may be counterproductive. In addition, the limits of proportionality are likely to make it very hard to justify targeting civilians. Most civilians contribute only very little to the ability of others to wage an unjust war. Killing a few of them would do little, by way of eliminating the threat to which they contribute, to undermine the ability of unjust combatants to wage war. To kill enough of them to make a difference, just in terms of the eliminative effect, would, I presume, normally require killing far too many for that sort of attack to be proportionate. Moreover, killing them to inflict terror on the population – something that might be possible even if only a few are killed – should not be confused with eliminative killing. Thus, the

³⁰ *Id.* ch. 4.

conclusion I reach here is of limited practical import. But it does undermine Lazar's project of shoring up traditional just war theory's principled distinction between the permissible targeting of combatants and the impermissible targeting of civilians.

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