On Killing the Red Cross

Introduction

The principle of non-combatant immunity holds that it is impermissible to target non-combatants in war. The principle is thought to hold universally: it covers all non-combatants in all conflicts. Most just war theorists argue that this is because non-combatants are not liable to defensive killing, by which they mean that non-combatants have done nothing to lose their rights against intentional attack. Intentionally killing them will therefore wrong them. But of course, just war theorists usually allow that it is permissible to target combatants during war. The traditional explanation of why combatants have lost their rights against intentional attack is that, unlike non-combatants, combatants threaten.

But these days, not many people think it plausible to claim that non-combatants don’t pose threats in war. Non-combatants make substantial causal contributions to their country’s war effort. In doing so, they pose what I call indirect threats to those on the other side of the war. I suggest that when non-combatants are morally responsible for posing these threats, they can be liable to defensive killing if their war is unjust. In this paper, I focus on an important implication of my view, namely that it will permit killing members of the Red Cross if they assist combatants on the unjust side of a war. I argue that this is no reason to reject my view; on the contrary, members of the Red Cross can be legitimate targets in war.

I. Indirect threats

A threat of harm is unjust if it is aimed at a person who is not liable to bear that harm – that is, at a person who has committed no relevant wrong, and who has not consented to bear the harm. A person who is not liable to a harm is wronged if they suffer that harm. In my view,

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1 This paper is extracted from my forthcoming book, Defensive Killing: An Essay on War and Self-Defence, (Oxford: OUP). The original objection was posed by Jimmy Lenman.
a person who is liable to a harm is not wronged by the harm, and is not permitted to defend herself against that harm.

I should make clear, though, that liability is not the whole picture when it comes to permissible defensive killing. One of the main themes of my work is to emphasise that a person’s liability to defensive killing is conceptually independent of the overall permissibility of killing her. On my view, it is (usually) permissible to kill a person only if she is both liable to be killed, and killing her is necessary to avert some proportionate threat. Often, killing non-combatants does not serve a military purpose, and thus such killings can be prohibited on the grounds that they are unnecessary even if the non-combatants are liable to be killed.

Thus, on my view, a murderous attacker is liable to defensive killing even killing him is unnecessary because I can, for example, safely retreat without needing to use force at all. Similarly, non-combatants can be liable to defensive killing even if killing them will serve no purpose, and it is thus overall impermissible to kill them. In these cases, I think that killing the non-combatants would be wrong, but not because it wrongs them (just as gratuitously killing the murderous attacker would be wrong, but not because it wrongs him.) So, whilst I defend the claim that many more non-combatants are liable to be killed than is generally assumed, it might not follow from this that it is permissible to kill many more combatants than is generally assumed.

A person poses an indirect threat to your life if she is not going to kill you, but she nonetheless contributes to a threat to your life in some other way. For example, someone who blocks your escape route from murderous aggressor counts as a indirect threat. So does the mafia boss who hires a hit man to kill his business rivals, and the person who drives the car for a drive-by shooting.

These people are morally responsible indirect threats if they had a reasonable
opportunity to avoid posing a threat of which they intentionally failed to avail themselves. Whether an opportunity is reasonable is (partly) a function of the cost to the agent of not posing the threat, and the cost to others if she does pose the threat. Consider *Selfish Bridge*:

*Selfish Bridge*: Victim is fleeing a dreadful forest fire. Victim’s only escape route is across a rickety bridge that can support only one person’s weight. Pedestrian is out for a walk on the bridge. Pedestrian could easily get off the bridge, but doing so will involve getting her feet wet and she has on her lovely new shoes. She decides, with a certain amount of regret, to stay on the bridge, realising that this will impede Victim’s escape.

Pedestrian poses an indirect threat to Victim. She’s not going to kill him, but she does block his escape from the fire. It will cost Pedestrian very little to move, and Victim will suffer a very great cost if she doesn’t move. Given this, Pedestrian has a reasonable opportunity to avoid posing a threat. If she nonetheless intentionally remains on the bridge, I think that Victim may knock her off to save his own life. Pedestrian is liable to defensive killing in this case: killing her does not wrong her, and she may not defend herself against Victim.

I also think that Pedestrian is required to bear more than a trivial cost to avoid posing a threat to Victim. If, for example, jumping off the bridge will break her ankle, I think that morality requires her to jump. If she refuses, I think that here too, Victim may knock her off the bridge to save his own life. Of course, there will probably come a point at which the cost to Pedestrian of jumping will be so high that we do not think that she is required to jump – perhaps if jumping will break both her legs. In these cases, Pedestrian lacks a reasonable opportunity to avoid posing a threat. She will not be liable to be killed in these cases.
However, I’m not going to attempt to establish here the cut-off point for a reasonable cost, because it is enough for my purposes if we are required to bear a least a moderate cost in order to avoid posing indirect threats, and we can render ourselves liable to defensive force if we refuse to do so.

II. War

Non-combatants often pose unjust indirect threats by contributing to the direct threats posed by unjust combatants. They contribute politically, perhaps by voting for the war, or writing pro-war newspaper articles. They contribute materially, by producing weapons, clothing and food for the armed forces. They also make technological contributions to war, by designing and testing weapons and machinery. And, of course, the war is financed by taxes paid by combatants and non-combatants alike.

In the light of these contributions, it is hard to credit the idea that non-combatants are not part of the unjust threat that their country poses: that they are ‘not harming’, as the traditional view holds. On my view, people who have a reasonable opportunity to avoid making such contributions, but who intentionally fail to avail themselves of that opportunity, are morally responsible for unjust lethal threats. Many non-combatants fall into this category. In the US and in most of Europe, the penalties for failing to indirectly contribute to a war effort are not severe. Indeed, such contributions are often wholly voluntary. These unjust non-combatants are thus liable to defensive killing on my view.

Of course, we might nonetheless think that there are pragmatic reasons for just combatants to not target non-combatants on the unjust side. Just combatants presumably do not want their own non-combatants to be attacked, and might thus agree not to attack non-combatants on the unjust side. But such an agreement would not eradicate non-combatant liability on the unjust side of the war. Such an agreement would be nothing more than an
agreement not to inflict the harms to which those non-combatants are liable.

III. The Red Cross Objection

The Red Cross provide medical care to both just and unjust combatants alike, returning many of them to the battlefield where they continue to fight and kill. This means, in effect, that the medics of the Red Cross contribute to the unjust threats posed by unjust combatants in war. They presumably realise that they do so: they know that the unjust combatants whom they heal will be sent back to the front to fight. And members of the Red Cross act voluntarily – nobody is coerced into joining the organisation. It looks, then, like Red Cross medics are morally responsible for unjust indirect threats, and, according to my account, are therefore liable to defensive killing by just combatants. But, as my (now ex) head of department suggested, this is surely proves that my view is absurd, and quite possibly evil.

I’ve been mulling this over, and I’ve decided that it isn’t absurd after all. Consider Rescue:

Rescue: Attacker breaks into Victim’s house, and kills Victim’s family. As he is trying to strangle Victim, Victim hits Attacker over the head, rendering him unconscious. Victim calls the emergency services, who dispatch both the police and an ambulance. The ambulance arrives first. Paramedic immediately starts trying to revive Attacker.

Assume that Victim correctly believes that if Paramedic revives Attacker, Attacker will continue in his attempt to murder Victim. Victim hastily tells Paramedic this. Now imagine that Paramedic replies, ‘Oh yes. I assumed as much. But if I don’t revive him now, he’ll die.’ Victim, in terror, asks whether Paramedic will restrain Attacker before waking him up,
or help Victim to fend Attacker off once he resumes his attack. ‘Oh no’, replies Paramedic. ‘I couldn’t possibly do that. You see, I’m neutral. And, what’s more, I swore an oath in medical school to do no harm. So, whilst you have my sympathy, I’m afraid you’re on your own. And I’d grab something heavy if I were you, because I’m about to wake him up.’

Nobody would think Paramedic’s response reasonable or morally permissible. If she cannot (or will not) restrain Attacker, she cannot wake him up if she knows that he will then try to kill Victim. If Paramedic has indeed sworn to do no harm, she must refrain from contributing to the unjust threat that Attacker will pose. The prohibition on causing harm trumps the prohibition on allowing harm. And the prohibition on causing unjust harm certainly trumps rescuing someone from just harm. Paramedic’s proclaimed neutrality, and her Hippocratic Oath, simply have no purchase in a case like this. If Paramedic tries to revive Attacker, I think that Victim may forcibly prevent her from doing so. By knowingly contributing to an unjust threat to his life, she renders herself liable to defensive force.

If I’m right that Paramedic may not treat Attacker because Attacker will then try to kill Victim, why is it absurd to think that the Red Cross may not treat unjust combatants who will then try to kill just combatants? Take two of the popular explanations of why the Red Cross are not liable to be killed. The first is that they provide only welfare support, not military support. The second is that doctors have a duty to aid, and doing one’s moral duty cannot render one liable to be killed. But these explanations pertain no less to Paramedic in Rescue, and they do not manage to exempt her from liability to defensive harm. I think that these explanations fail to show that the Red Cross are not liable to be killed. As Cécile Fabre has argued, “although it is true that, strictly speaking, it is the guns as used by combatants which kill, not their specialised rations or wound dressing, it is equally true that combatants are not able to kill if hunger or untreated wounds make it impossible for them to lift their arms and train those guns on the enemy. Generally, meeting combatants’ material need for
food, shelter, appropriate clothing, and medical care goes a long way toward enabling them to
call in war, even if the resources in question do not in themselves constitute a threat.” I
agree with Fabre that the putative distinction between welfare contributions and military
contributions lacks moral significance. I also agree with her that doctors have at best a *prima
facie* duty to heal the sick that is defeated by the duty not to cause unjust harm. This is why,
in cases like *Rescue*, the paramedic cannot invoke her Hippocratic Oath as a justification for
reviving Attacker.

What about the neutrality of the Red Cross? I suggested above that Paramedic ought
*not* to be neutral between Victim and Attacker, because Attacker poses an unjust threat to
Victim. Does this mean that the Red Cross ought not to be neutral between just and unjust
combatants?

I think that the answer to this question is yes, but that this does not entail that the Red
Cross may not assist unjust combatants. I think that it *is* permissible for the Red Cross to
assist unjust combatants. But it is permissible if, *and only if*, the just combatants consent to
their doing so. Imagine a variation on *Rescue*, *Dangerous Rescue*:

*Dangerous Rescue*: Victim and Attacker are both badly injured. Attacker’s
accomplices are guarding the entrance to Victim’s house, and
will let Paramedic in only if she agrees to treat both Victim and
Attacker.

It might well be in Victim’s best interests to consent to Paramedic’s treating both of them.
And if he does consent, he thereby consents to the threat that she poses to him by treating
Attacker. I said above that a threat of harm is unjust if the target is not liable to bear that

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harm. And I said that a person can become liable to a harm either by committing a relevant wrong, or by consenting to bear the harm. In the event that Victim consents to the threatening activities of Paramedic, he becomes liable to the threat that she poses to him. Thus, the threat that Paramedic poses to Victim by treating Attacker under these circumstances is not unjust. Therefore, treating Attacker under these circumstances does not render her liable to defensive killing.

Similarly, when just combatants consent to the activities of the Red Cross, they consent to the threats that the medics pose. Thus, the medics do not pose unjust threats in aiding the unjust combatants, and are not liable to defensive killing. It is the consent, and not their neutrality or status as medics, that gives the Red Cross immunity from intentional attack.

Why would just combatants consent to the Red Cross assisting unjust combatants? Well, presumably they would do so only if consenting is in their interests. It would obviously be best for them if the Red Cross only assisted their combatants. But the Red Cross cannot operate under these conditions, because it is only when they treat both sides that combatants on both sides refrain from attacking them. If they only treated just combatants, they would be attacked by unjust combatants. So, the just combatants have a choice between having the Red Cross help both sides, or having them help neither side. If they are made better off overall by having the Red Cross help both sides, they could rationally consent to the Red Cross contributing to the threats posed by unjust combatants.

But we can imagine cases in which the just combatants are not made better off overall by the activities of the Red Cross. Perhaps the just combatants have plenty of medics of their own, and are thus unlikely to derive any great benefit from the presence of the Red Cross. The unjust side, however, might have comparatively few medics, and thus benefit substantially from the Red Cross’s assistance. Under such circumstances, it seems irrational
for the just combatants to agree to the Red Cross’s intervention, because this intervention will make them worse off. If they do not consent to the Red Cross’s activities, it seems to me that they are wronged by those activities, and that Red Cross medics are liable to attack if they try to help unjust combatants return to the battlefield where they will maim and kill just combatants, and frustrate the achievement of their just cause.

Why doesn’t this argument also offer protection to other non-combatants who contribute to an unjust war, like munitions workers? I suggested earlier that it might be in the just combatants’ interests to agree not to target unjust non-combatants if this will stop their own non-combatants being targeted. But I said that this did not show that the unjust non-combatants were not liable to be killed. Rather, I said that it is an agreement to not inflict the harms to which they are liable.

The difference arises because it will never be in the interests of those on the just side of a war to consent to unjust non-combatants posing threats in the first place. Such consent would be wholly irrational, because if the non-combatants do not supply the military with money, food, weapons, clothes and the like, there can be no war at all. Thus, the unjust non-combatants will always fail the condition – which can be met by the Red Cross – that they pose unjust threats just in case the just combatants consent to their doing so. Any pragmatic agreement to refrain from attacking unjust non-combatants is made under duress, and is not binding on the just combatants.

**Conclusion**

I have argued that those who make indirect contributions to unjust threats can be liable to defensive killing. This applies even to groups like the Red Cross, whose proclaimed neutrality is generally supposed to afford them some kind of moral immunity. I suggested that the Red Cross lack liability only when those on the just side of a war explicitly consent to
their presence. If they do not so consent, members of the Red Cross are liable to attack if they assist combatants on the unjust side of the war.