

## Book Reviews

***The Image Before the Weapon: A Critical History of the Distinction between Combatant and Civilian.* By Helen M. Kinsella (Ithaca and London: Cornell University Press, 2011)**

In 2012 *The New York Times* published a long profile of the Obama administration's drone strikes, describing the policy in depth and detailing weekly meetings, known as "Kill Tuesdays," in which kill lists are compiled of individuals to be remotely assassinated. The article went on to portray President Obama as an ethically engaged leader, describing him as "a student of writings on war by Augustine and Thomas Aquinas," and citing "the president's attempt to apply the 'just war' theories of Christian philosophers to a brutal modern conflict."<sup>1</sup> Some professional philosophers have been enthusiastic about such images of just war theory at the heart of executive power.<sup>2</sup> From a more skeptical perspective, however, such scenes appear to be as much about the authorization and legitimation of the prerogative to kill as they are about establishing limitations to it. The article's set pieces of just war theory and the brooding, thoughtful leader, wrestling with tragic choices, serve to emphasize the distinction between the sort of legitimate killing done by civilized, morally responsible nations — a killing preceded by a close reading of Augustine, for instance — and the illegitimate, uncivilized killing that would have been done by our enemies. Such ambivalence is not new to just war theory. Indeed, a persistent theme in its long history has been this peculiar mixture of limitation and authorization, of the critique of power, and the justification of a power that exposes itself to such a critique.

It is this "productive" aspect of moral and legal limitations on war that Helen Kinsella explores with great erudition and insight in her powerful and troubling book, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian*. Both international humanitarian law and the tradition of just war theory see themselves as resting on the principle of distinction: the categorical difference between combatants and civilians in an armed conflict (following Kinsella, I shall hereafter refer to the principle of distinction as "the principle"). As Michael Walzer, author of the modern classic *Just and Unjust Wars*, puts it, this principle sets "certain classes of people outside the permissible range of warfare, so that killing any of their members is not a legitimate act of war but a crime."<sup>3</sup>

Helen Kinsella makes a valuable contribution to these discussions by complicating the straightforward and self-evident character of this principle. Her argument is that the concept of the civilian, far from a self-evident category, is a complex and ambivalent construction, propped up by discourses of innocence, gender and civilization. Rather than simply reflecting universal principles of right and wrong, permissible and impermissible, Kinsella argues, "it is more accurate to say that the principle helps to create" these notions (194). Through a series of chronologically arranged case studies, which she describes as moments in a critical genealogy of the principle of distinction, Kinsella demonstrates how the concept of civilian was both produced by and, in turn, helped bolster distinctions and hierarchies surrounding ideals of active men versus passive women, civilization versus savagery, and deserving versus undeserving victims. In doing so, she shines an original and distinctive light on existing scholarly discussions of just war theory and humanitarianism, in which the basic concepts and categories of the discipline have too often been taken for granted and not evaluated as themselves imbued with relations of power, hierarchy and exclusion.

Kinsella refers to her inquiry as a genealogy, and the reference to Foucault seems appropriate, since his concept of discourse undergirds her approach. She explains that the task of genealogy is to

help us understand how fixed oppositions (here civilian versus combatant) mask the degree to which their meanings are, in fact, a result of an established rather than an inherent contrast. (6–7)

The idea is that the historical cases she examines demonstrate the role of discourses of gender, civilization and innocence in producing the distinction between civilian and combatant. Moreover, her approach intends to unmask the "hierarchical interdependence of the opposed terms," whereby the opposition becomes a means of authorizing hierarchical power relations (6–7). Thus, the principle has served different purposes at different times; it has been used as a way of demonstrating the superior "civilization" of the combatant; of subjugating women and restricting them from the political realm; and of denying certain "non-innocent" peoples the very rights of non-combatancy that the distinction purports to guarantee. The distinction is not above the fray of the battle but is a tool and instrument within it.

For instance, Kinsella's chapter on the formulation of the principle in the High to Late Middle Ages mounts a highly effective critique of the way contemporary just

war theorists have made use of these historical sources. She is particularly acute on the nostalgia of some recent scholars for medieval chivalric honor. Through close textual readings of scholars such as Augustine, Aquinas, Christine de Pisan and Honoré Bonet she demonstrates how discourses of gender, innocence and civilization functioned as means of formulating political projects, forms of subjection and transformation of social orders. She suggests that, by uncritically adopting these medieval conceptions of innocence, scholars such as Johnson and Walzer unreflectively take on “the arbitrary imposition of a conception of immunity of a particular civilization,” and misrecognize this conception as a universal, transcultural category (52).

Kinsella’s critique, therefore, deserves to be widely read and debated in the fields of just war theory, international humanitarian law, and many others. One question on which Kinsella remains almost entirely silent, however, is what kind of practices, principles, and understandings should replace the gendered, hierarchical conceptions of the distinction that she deconstructs. In one respect, this might be an unfair question to put to her, since she signals her intention to

resist the implicit orientation of examining the principle of distinction — its existence and its transgression — as simply the difference between an ought and an is that can be resolved through the right “design” or the right action of an “entrepreneur.” (191)

In another sense, however, insofar as Kinsella’s work is clearly (and admirably) animated by an ethical spirit of critique, the question of what, if any, arrangement of discourses would be preferable to those she deconstructs would seem to emerge directly from her enterprise.

The issue is not just an abstract one. It can be hard to appraise the stakes of Kinsella’s critique of someone like Michael Walzer without having a clear sense of what different outcomes, practices or prohibitions they would determine. At times, readers might wonder, from the point of view of rules and practices of war, what is the difference that makes a difference in Kinsella’s approach? For example, in the chapter on the civil wars of Guatemala and El Salvador, Kinsella develops an insightful argument about how the category of the civilian was premised on assumptions of apolitical neutrality, passivity, and vulnerability that mapped on to discourses of sexual and gender difference. She deftly shows how this distinction was permeated by geographical and political exceptions and, particularly in the case of Guatemala, overridden by the discourse of civilization. In that conflict, the status of civilian was often withheld altogether to Mayan populations. Thus, she notes, “insofar as the principle of distinction worked at all, sex and sex difference stabilized it. However it did not work very well” (165). While Guatemalan

President Ríos Montt “clearly recognized the importance of the principle of distinction to the international reputation of Guatemala, his intention to enforce it was secondary to winning the war” (170). The conclusion Kinsella draws from this is, rightly, that “the discourses of civilization generate and are complicit with the barbarism they are said to oppose” (170). Yet, the question arises that, insofar as Kinsella is critical of Ríos Montt’s normalization of massacres (which of course, she is), isn’t it in the name of the very distinction between civilian and combatant? When we recoil in disgust at Ríos Montt’s statements, isn’t it because of *hypocrisy* — the fact that he claims a moral legitimacy that he does not in fact merit? If so, then it would appear that the problem is not the civilian/combattant distinction as such, but the fact that it has been applied wrongly. The fact that the principle is employed in self-serving, hypocritical, weasel-worded, opportunistic ways is not *necessarily* evidence that the principle is itself *only* a tool of power; it is equally plausible that the principle has been misused, or violated. The critique of hypocrisy typically relies, even if sometimes obliquely, on the validity of the principle that is being simultaneously claimed and set aside.

Thus, when Kinsella points out the exceptions, attenuations and suspensions of the distinction accomplished through discourses of gender, civilization and innocence, one might imagine that she is calling for a better, more consistent and rigorous application of the distinction itself. Kinsella, however, resists this conclusion and suggests an alternate approach. As she puts it:

in situations of indeterminacy that mark the conduct of war [ . . . ] it is not sufficient to invoke the principle of distinction against the conduct of conflict without carefully attending to the ways that it draws from and, also, allows practices putatively antithetical to its purpose. (175)

At the same time, she stresses that attending to complexity does not amount to a call to reject the principle altogether:

The indeterminacy of the distinction between combatant and civilian does not translate into the impossibility or futility of determining the distinction; it heightens the significance of the domain of intelligibility in which these decisions are made and disputed. (175)

Such guarded formulations may leave some readers less than fully satisfied. If “determining the distinction” is both possible and useful, wouldn’t the task be to *lessen* rather than heighten “the significance of the domain of intelligibility?” Given Kinsella’s profound and sweeping critique, shouldn’t the task be to try to nail down and specify as tightly as possible a version of the

distinction that is *not* disfigured by hierarchical discourses of gender, civilization and innocence?

Kinsella, to her credit, anticipates and acknowledges such questions. She stresses that her argument is not that we should abolish or disregard the distinction altogether. Rather, we need to see the ways in which the principle “produces the subjects it ostensibly protects,” and therefore, we need to be attentive to the power relations and inequalities in which it is entangled (190). Citing Judith Butler, she asks “[w]hy is it that posing a question about a term is considered the same as effecting prohibition against its use” (187)? Her intent, in other words, is not to urge that we abolish the distinction altogether, but to problematize its self-evident status, to make us aware of the power relations and material interests that are inevitably present whenever it is invoked.

This kind of response will undoubtedly leave open, rather than resolve, a number of key questions about how, taking the measure of Kinsella’s critique, the principle of distinction can be better conceptualized, both in theory and in practice. Unsettling assumptions, opening questions and provoking future debates, of course, is precisely what we should expect from groundbreaking, innovative critical histories such as this one.

#### NOTES

1. Jo Becker and Scott Shane, “Secret ‘kill list’ proves a test of Obama’s principles and will,” *New York Times*, May 29, 2012.

2. David Luban, “What Would Augustine Do?” *Boston Review*, June 6, 2012.

3. Michael Walzer, *Just and Unjust Wars* (New York: Basic, 2006), 42.

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### ***Lessons in Secular Criticism.* By Stathis Gourgouris (Bronx, NY: Fordham University Press, 2013)**

*Lessons in Secular Criticism* is a dense and thought-provoking book, based on Stathis Gourgouris’s 2012 public lectures in Australia: “Thinking Out Loud: The Sydney Lectures in Philosophy and Society.” In six chapters the author discusses and builds on Edward Said’s notion of secular criticism, responding with an unqualified “yes” to the question whether social and political critique is an essentially secular enterprise. Gourgouris touches on a wide array of topics such as the rationalist atheism of Richard Dawkins, the importance of the concept of tragedy for an atheist perspective on life, pious Muslim women in the work of Saba Mah-

mood and ideas of modernity in the work of Talal Asad and Charles Taylor, but also the Occupy Movement, the Arab Spring and the economic crisis in Europe, which he says is a political crisis and a battle for the future of direct democracy against unbridled capitalism. The book is a work in progress and the author is genuinely thinking out loud.

On a general level, Gourgouris defends secular critique and rejects the currently fashionable concept of postsecularism. He does this by a rather uncompromising criticism of heteronomy versus autonomy in a central chapter entitled “Confronting Heteronomy” (Chapter 3). According to Gourgouris, the “repression of self-alteration and the displacement of one’s own alterity onto an external figure are the essential components of heteronomy” (p. 92). In Chapter 2, “Detranscendentalizing the Secular,” he suggests an alternative to Charles Taylor’s account of alterity: “an alterity that is internal, an immanence that may produce transcendence but is not authorized by transcendence” (p. 43). His ultimate goal is to “take away from the religious the agency of determining what is secular” (p. 62).

Gourgouris defends a political (rather than an exclusively individualist) ideal of autonomy in contrast to its twin concept of heteronomy. Heteronomy must be confronted because it is aligned with monotheist thinking which is described by definition as in opposition to democratic thinking (p. 130). Gourgouris’ monotheist is powerful and to be feared, and reminds one of the Ayatollah Khomeini, who stated explicitly that Islam does not need adjectives such as democratic. But, as Gourgouris himself acknowledged in a seminar in Utrecht (March 2014, Centre for the Humanities), the empirical reality of monotheism is much more complicated and should not be reduced to alliances with political theocracy. Missing in the discussion of heteronomy, for example, is a reference to Levinas, who — contrary to popular belief — was sympathetic to the Kantian notion of autonomy, which does not exclude the fact of the other for the sake of the fact of reason but rather intertwines these two sides of the same coin. Indeed, something similar is faintly visible in Gourgouris’ thinking out loud when he writes:

No doubt, as necessary as the distinction is, the line between what is internalized and what is external heteronomy is always blurred, since no external heteronomy can ever be totally achieved without some last instance of internalization. (p. 93)

The defense of secular critique leads Gourgouris into a confrontation with the anthropology of Islam as developed in the works by Saba Mahmood and Talal Asad. The latter equate the general terms secularism with liberalism, and then liberalism with modernity, and then modernity with imperialism, but also simultaneously

identify secularism with Christianity. Such broad generalizations damage the project of secular criticism, writes Gourgouris, and lead to an awkward alliance between Mahmood and Asad and Christian anti-secular attitudes in the USA. Their professed anti-imperialism also results in an all too comfortable position for conservative religious figures in the Middle East. Gourgouris, however, does not go so far as to claim that Mahmood or Asad actually support the Christian right or theocratic regimes (in fact, Asad has explicitly distanced himself from the very idea of an Islamic state). His main point is that these San Francisco and New York-based scholars flirt dangerously with religious conservatism.

Thus, he writes that Mahmood's association of the imperialist chronicles of the Rand Corporation with Muslim reformists such as Nasr Abu Zayd and Abdolkarim Soroush is "startling" (p. 48). He draws attention to the way in which Mahmood has quite uncharitably analyzed the works of Abu Zayd and Soroush as being part and parcel of Western imperialism, merely on the basis of their claim that the Qur'an should be historicized and interpreted accordingly. While other scholars have endeavored to apply Mahmood's objections to these Muslim reformists in a more nuanced way, Gourgouris' explicit critiques of such writings is a much needed intervention. This is because he takes into account the religious intolerance, persecution and exile that people like Nasr Abu Zayd have had to endure, not to speak of ordinary non-religious citizens in the Middle East. His aim is not to dwell on one or two particularly unfortunate texts but to highlight a style of thinking that misrecognizes the enduring value of secular criticism.

Following Wendy Brown, Mahmood and others, Gourgouris agrees that secularism (not to be confused with secular criticism) is involved in the "history of colonialist and imperialist domination" (p. 34). However, his argument here is underdeveloped. One could ask, for instance, what the status of an anti-imperialist hero such as Nehru would be in this train of thought. When the first prime minister of an independent India was asked about his most difficult achievements in life, he responded that it was to create a "just state by just means" and "creating a secular state in a religious country."<sup>1</sup> Gourgouris' discussion of secularism and anti-imperialism would benefit from the important contemporary Indian debates on the topic, which — putting it mildly — complicate sweeping statements on secularism and its presumed relations to the western world.

But even if we stick to Europe, Gourgouris' ideal of secular criticism has to be set in relation to empir-

ical accounts of varieties of secularism in Europe. For this, a clear distinction between secularism and secular criticism would have been helpful, but this, too, is not well-developed in his book. Secularism is simply defined rather cryptically as an "institutional term that represents a range of projects in the exercise of power" (p. 29). The democratic ideal guiding his notion of secular criticism is similarly in need of further development. At one point, the reader is informed that "direct democracy" (p. 155) is the only kind of democracy. But what does that entail in practice, for instance when a mosque in the Netherlands wants to amplify the call for prayer and meets local resistance? What appears to be needed here is not a post-secular reconciliation of the competing viewpoints held by the conflicting parties but a constitution that forces local bureaucrats in both conservative and progressive parties to accept and even facilitate the public presence of Islam. Against Hamid Dabashi, Gourgouris' colleague at Columbia University, who collapses the distinction between secularism and colonialism (in his recent book *Being a Muslim in the World*), I would argue that political or perhaps constitutional secularism is crucially important to protect the rights, among others, of religious minorities against aggressively secularist or otherwise biased majorities. Gourgouris' advocacy of direct democracy does not seem to support such constitutional secularism. Unlike Switzerland, in which there is a considerable degree of direct democracy, the people of the Netherlands cannot directly vote or rally to ban minarets. Surely this is a good thing? In my view, direct democracy should be tamed by constitutional constraints. In sum, Gourgouris' distinction between secularism and secular criticism requires further clarification, together with clarification of the democratic ideal guiding the latter. Furthermore, it needs to be tested on the practical institutional level of actual interactions between religions and the state in order to see which criticisms of state power are valid and for what reasons.

#### NOTE

1. Ramachandra Guha, *India After Gandhi* (New York: HarperCollins, 2007), 233.

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