ABSTRACT. Recent work on the ethics of war has struggled to simultaneously justify two central tenets of international law: the Permission to kill enemy combatants, and the Prohibition on targeting enemy noncombatants. Recently, just war theorists have turned to collectivist considerations as a way out of this problem. In this paper, I reject the argument that all and only unjust combatants are liable to be killed in virtue of their complicity in the wrongful war fought by their side, and that noncombatants are not permissible targets because they are not complicit. I then argue that just combatants have some reason to direct force against unjust combatants rather than unjust noncombatants, because they should respect the reasonable self-determining decisions of other political communities, when those communities settle on the distribution of a negative surplus of cost for which they are collectively but not individually responsible. These collectivist reasons will not fully justify the Permission and the Prohibition, but they can contribute to that justification.

I. INTRODUCTION

Wars are fought by political entities, through a highly specialised institutional division of labour that enables individuals to accomplish together lethal results unattainable if they were acting apart. Wars inspire passionate loyalty to one’s own collective, and abhorrence of the adversary. They are at the heart of most nation-building projects. War is the paradigmatic collectivist and collectivising venture.

In this paper, I consider three approaches to the collectivist nature of war. In particular, I ask how collectivist reasons might provide moral foundations for two legal norms which lie at the heart of the law of armed conflict. First, the permission to kill ineffective enemy
combatants; second, the prohibition on targeting noncombatants. I will call these simply the Permission and the Prohibition respectively.

First, some clarifications: by combatants, I mean members of the armed forces of a party at war and non-members who directly participate in hostilities; noncombatants are not combatants. By ineffective enemy combatants, I mean those who are not responsible for significant contributions to threats posed by their side (including those who actually hinder its progress). Since I doubt whether any moral argument could justify a general legal permission to kill combatants contributing to a just war, I will focus on the permission to kill ineffective unjust combatants. And since it is easy to explain the permission on targeting just noncombatants, I will focus on the prohibition against targeting unjust noncombatants (that is, non-combatants on the unjust side).

Why consider these two norms together? Because it is exceedingly difficult to account for plausible intuitions about one without raising serious problems for the other. Most arguments that license killing ineffective unjust combatants will also license killing unjust noncombatants. We cannot easily sustain both the Permission and the Prohibition.

Enter collectivist moral reasons. Some philosophers think that these reasons can explain both why we may kill ineffective unjust combatants and why we may not target unjust noncombatants. On their view, even ineffective unjust combatants are complicit in the unjust war fought by their side, and are liable to be killed (they lack a right not to be killed) on that basis. Unjust noncombatants are not so complicit, so retain their everyday right to life.

1 Of course, these legal norms might lack any intrinsic justification, but instead be defended on instrumental grounds. For scepticism about the implied empirical case, see Lazar, Sparing Civilians (Oxford: Oxford University Press, 2015): chapter 2.

2 The definition of combatant status in international law is more complicated, and is used in two ways. The first, which is my focus here, is in determining who is and is not a legitimate target in war. There are exemptions for members of the armed forces who occupy special roles, for example medics and chaplains, which I disregard in this paper. But the laws of war not only assign liabilities to combatants (that is, make them permissible targets), they also assign privileges, for example the right to use lethal force and the rights of prisoners of war. Being a combatant in my sense is not sufficient for enjoying those combatant privileges – other criteria must be satisfied, such as carrying arms openly and wearing uniforms. Since I focus on neither special roles nor combatant privileges, my simpler definition should suffice.
