

Just War and Administrative Personnel in the Private Military Industry

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Abstract

I argue that, according to Just War Theory, those who work as administrative personnel in the private military industry can be permissibly harmed while at work by enemy combatants. That is, for better or worse, a Just War theorist should consider all those who work as administrative personnel in the private military industry either: (i) individuals who may be permissibly restrained with lethal force while at work, or (ii) individuals who may be harmed by permissible attacks against their workplace. In doing so, I also provide some critical analysis of the relevant Just War concepts.

Key Words

Private Military Industry, Just War, Non-Combatant Immunity

1. Introduction

The Private Military Industry (PMI) is often characterized as the modern model of privatized warfare. Private Military Companies (PMCs)—the firms which make up the PMI—offer services traditionally provided by national and international institutions of soldiering. That is, the PMI includes all those businesses whose primary activities pertain to the provision of national and international security services. The PMI, as it exists today, can trace its history to companies like Sandline and Executive Outcomes. These firms, and others like them, emerged towards the end of the twentieth century when the Cold War ended, as highly trained members of armed forces began to find themselves out of work in a changing world with a variety of developing conflicts. While the PMI first developed as a means of maintaining regional security, initially in places like Sierra Leone and Angola, the PMI has expanded drastically since September 11, 2001. Conflicts in places like Afghanistan and Iraq have enabled firms, like Blackwater, to develop into immense organizations which offer a greater range of services. States, NGOs, corporations, and other entities have all been clients of PMCs. The PMI now has the capacity to take on the roles of peacekeeping, and peacemaking, with or without the institutions that have traditionally undertaken such roles—just as

traditional militaries are naturally or essentially warlike, so too is the PMI.¹ (Kinsey 2006; c.f. Brooks 2000, O'Brien 2007)

But while the scope of the PMI is broad, we can distinguish different kinds of PMCs from one another based on the services that they provide. Some PMCs provide troops to fight alongside, or in replacement of, a client's forces. Other PMCs merely train and advise a client's forces. These firms impact a conflict directly by providing their clients with customized offensive capabilities that offer a strategic or operational advantage. In contrast, other firms limit their offered services to such things as the provision of armed guards to protect government and commercial installations or persons, risk assessment of insecure areas, and security measure recommendations for clients operating in volatile areas. However, as Faite (2004: 168-169) argues, even these PMCs may become direct participants in hostilities depending on how they would respond if that which they protect was attacked. This distinction between such varieties of firms is perhaps best conceptualized as falling along a spectrum, rather than as clear and rigid division. But while this distinction between different varieties of PMCs usefully illustrates the nature of the PMI, I gloss over it here as it isn't especially salient for our purposes—here we're interested in all PMI firms—and so I use PMCs to range over all PMI firms.²

Within the PMI, there is a distinction we can draw which is important for our discussion: we can, at least coarsely, distinguish individuals as being either 'in field' operatives or 'in office' administrative personnel in virtue of the roles they play. The actions performed by an operative, who might employ lethal force at her discretion while on the job, most closely mirror those of the traditional soldier; she is primarily a belligerent. Thus, we can say that:

An individual is a PMI operative if and only if she works for a PMC and plays the traditional role of a combatant.³

¹ Are PMCs merely an incarnation of mercenarism? I intentionally avoid this question as it is tangential for my purposes here. See Lynch and Walsh (2000) and Percy (2007) for a discussion of this issue.

² Sandline would be an appropriate example of the first, more aggressive or active, kind of firm while Backwater may be an example of the second, more passive, kind of firm. More rigorously, we might draw a division between PMCs and Private Security Companies (PSCs); the former provide more active or participatory services, while the latter are typically limited to more passive or reactive services. For an analysis of how the different kinds of firms that make up the PMI can be differentiated from one another see Singer (2003).

³ Here I mean *moral* combatant under Just War Theory, rather than *legal* combatant; the legal standing of PMI operatives has been a matter of dispute.

The typical PMI contractor will be a PMI operative. But not all PMCs necessarily employ PMI operatives. Some PMCs merely play a supportive role for traditional belligerents or PMI operatives of other PMCs. We can utilize this understanding of PMI operatives to characterize the ‘in office’ PMI administrative personnel:

An individual is a PMI administrative personnel if and only if she works for a PMC and is not a PMI operative.

Here, then, PMI administrative personnel will range over everyone from accountants to managers, assistants to file clerks, janitors to cooks, and so on. They are the staff working away from the battlespace who enable members of traditional armed forces, PMI operatives, or other belligerents, to play their role and operate in a hostile environment.

While the existing literature has discussed ‘in field’ operatives, there are important issues which concern the administrative personnel—and many of these concerns have been largely ignored. After all, while PMI administrative personnel may work away from the battlespace, they are a crucial part to any PMC. The primary aim of this article is to help fill this gap—how should we regard PMI administrative personnel, according to the Just War theorist? The discussion in this article is limited to this question. Here I argue that, according to Just War Theory (JWT), we can make two claims about those who work for a PMC as administrative personnel. First, those administrative personnel who enable belligerents to take on the combatant role may be justly attacked with lethal force, but only while at work and only if non-lethal force cannot be used safely. This, I argue below, is justified as doing so will frustrate their ability to enable belligerents to fight. Second, because a PMC itself can be justly attacked, no wrong is committed if administrative personnel who merely make contributions to a combatant’s ability to live are harmed incidentally while at work. This is because they, by working for a PMC, have forfeited their non-combatant immunity. However harm to these non-combatants should be avoided, where possible. I argue that this is in accordance with the jus in bello framework; in particular, in accordance with the principle of discrimination—i.e. that combatants ought to discriminate between legitimate and illegitimate targets.⁴

⁴ How do we evaluate a potential target as legitimate or illegitimate? In the case of individuals, it is based on whether or not the target enjoys non-combatant immunity; if she does, she usually may not be attacked. In the case of structures and resources, it is impermissible to attack those that are merely civilian.

Before we can evaluate whether PMI administrative personnel may be justly attacked, we need to know more about non-combatant immunity and whether or not PMI administrative personnel have it. That is, before we can turn to our central question, we must first determine how PMI administrative personnel should be classified under JWT—should they be conceived of as non-combatants, combatants, or something else? In the following section I address this preliminary question and, in doing so, provide some critical analysis of the relevant Just War concepts. Then, in the subsequent section, I connect the dots between these discussions and argue that the natural extension of JWT is to say that everyone working as administrative personnel in the PMI can be permissibly harmed while on the job. In the final section I add further detail by pre-empting a few possible objections.

2. Non-Combatants and Non-Combatant Immunity

In this section I explicate the aspects of JWT which are salient for our purposes here. I also argue that the way in which we classify non-belligerents who participate in the enterprise of war needs to be redrawn and made more robust. This is necessary for reasons independent from the debates which concern PMI administrative personnel, but doing so here brings a high degree of cohesion to this article as the ambiguity in the framework needs to be addressed in order to be able to accurately discuss the role played by those who work as administrative personnel in the PMI, as well as others like them.

In JWT, non-combatancy is typically conceptualized in the following way:

An individual is a non-combatant if and only if she does not participate in the act or enterprise of harming others through warfare.

And most who qualify as non-combatants have non-combatant immunity: someone with non-combatant immunity cannot be the target of military activity or directly attacked. I say most, rather than all, because non-combatant immunity is not had absolutely by every non-combatant. There are two salient circumstances in which a non-combatant will lose her non-combatant immunity: those who refuse to leave the battlespace when given the means and opportunity (e.g. potential refugees), and those who contribute to the armed conflict without being belligerents (e.g. munitions workers). Let's look at the former first, then the latter.

Through their own actions, some non-combatants forfeit their non-combatant immunity. By that I mean some non-combatants can be permissibly harmed, but not directly attacked, because they cannot have a reasonable expectation of being out of harm's way. For instance, as Koontz (1997) argues, a non-combatant can forfeit her right to be free from harm through her own choices and actions without being involved in the enterprise of war in any relevant way—those who refuse to leave a battlespace when given the chance, for example potential refugees, are themselves responsible for any harm they suffer (c.f. Walzer 2006: 168-169).⁵ So while such an individual would remain a non-combatant, she would have forfeited her non-combatant immunity. But even though she lacks non-combatant immunity, it remains the case that there is no justification for her to be permissibly targeted since she does not need to be restrained. In short, some non-combatants may be harmed or killed through otherwise permissible military action, even though they are not participants in an armed conflict.

Now consider those who are involved in the enterprise of war, but aren't combatants—for instance, munitions workers. These individuals, in virtue of the nature of their contributions to the war effort, are at least indirectly involved in the act of harming others. But are they best understood as combatants or non-combatants? And if the latter, do they lack non-combatant immunity? To answer this, it is crucial to first understand how we are to assess the nature of someone's contribution to the war effort. Walzer (2006: 145-146) argues that those who play a supportive role retain their non-combatant immunity only if they aid the combatant qua human being.⁶ In contrast, if she instead aids the combatant qua combatant, we can say that she is involved in the war effort in a morally relevant way and she lacks non-combatant immunity. How are we to evaluate a contribution as being qua combatant or qua human? To aid a combatant qua combatant is to enable the combatant to act as a combatant, whereas to aid a combatant qua human is to provide the combatant with that which is essential for the combatant to live—this is something she would need even if she were a non-combatant. The munitions worker would be an example of someone who aids the combatant qua combatant, while the potato farmer who sells her stock to the army would be an example of someone who aids the combatant qua human—we all need sustenance to survive, but only the belligerent requires the weapons of war.

⁵ That said, belligerents do have an obligation to afford such non-combatants the opportunity to escape the fighting.

⁶ Note of clarification: my usage of “*qua*” here, and throughout this article, mirrors that found in Murphy (1973).

One might raise a concern here: isn't it the case that, to aid a combatant qua human is also to aid her qua combatant? We might be tempted to think this since the food, for instance, a soldier receives from the potato farmer enables that soldier fight—at least insofar as the malnourished belligerent is an ineffective belligerent. Does it follow that, then that the distinction drawn above collapses? No: what's crucial is that such contributions primarily aid the soldier merely in her capacity to live. The potato farmer is not doing anything particularly warlike. As Murphy (1973: 533) explains, the relevant fact is that the 'farmer's role bears a contingent connection to the war effort whereas the general's role bears a necessary connection to the war effort, i.e. his function, unlike the farmer's, is not logically separable from the waging of war.' As such, we can say that if someone aids a combatant qua human, the fact that there may be a sense in which it also enables the combatants to fight is not relevant. The actions of the munitions worker are like those of the general in a crucial way as they do bear a necessary connection to the war effort. The mere difference between the general and the munitions worker is that, unlike the general, the munitions worker is not directly engaged in the act of harming others.

Despite this, Walzer does not talk about munitions workers and the like as non-combatants. Instead, he discusses the extension of combatancy beyond belligerents, such that those who aid a combatant qua combatant are not non-combatants. This extension, he argues, occurs because of their warlike activities—they are not disassociated from the war effort like the paradigmatic non-combatant. Thus, those who aid a combatant qua combatant are 'partially assimilated' (2006: 146) into the class of combatants; but only partially, because they remain at least nominally civilians. However, the extent of this partial assimilation, or what it exactly amounts to, is not apparent. After all, these quasi-combatants are not armed men and they are never prepared to fight. Yet they can be permissibly targeted, but only while at work and not otherwise. So it remains unclear why they are best considered partially part of the class of combatants. Moreover, as I explain below, we can achieve a greater degree of clarity and precision in our discussions of such non-belligerents if we make a useful redescription of their standing in JWT. That is, if we revise our understanding of those who aid combatants in this way, we can better appreciate why some military action against them can be morally justified. And, crucially for our purposes here, doing so will also enable us to discuss those who work as administrative personnel for a PMC (as well as others like them).

2.1 *Special Non-Combatants: A Crucial Revision*

Walzer calls these quasi-combatants ‘munitions workers’ but a more general label is desirable since individuals working in similar capacities should be treated the same under JWT. So let’s call them special non-combatants:

An individual is a special non-combatant if and only if she participates in the enterprise of war, but does not directly participate in the act of harming in an armed conflict.

That is, individuals who aid combatants qua combatant are special non-combatants. Notice that through this redescription a crucial revision has been implicitly introduced: instead of conceptualizing them as combatants or quasi-combatants, they are to be considered part of the broader class of non-combatants. But even though special non-combatants and non-combatants simpliciter both fall under the overarching non-combatancy umbrella, special non-combatants are separable from non-combatants simpliciter in an important way—non-combatants simpliciter are not participants in the war in any salient sense. And it is this fact which explains why non-combatants simpliciter typically retain their non-combatant immunity, while special non-combatants do not.⁷ Moreover, here the class of combatants exclusively contains belligerents.

Reclassifying munitions workers and the like as special non-combatants, rather than as ‘partially assimilated quasi-combatants’, also has the following advantageous features. This construal better elucidates why these individuals do not retain their non-combatant immunity by emphasizing the way in which they participate in the war effort without being directly involved in the act of harming—special non-combatants are, like non-combatants simpliciter, not belligerents. And since we are no longer discussing such individuals as partially assimilated members of the class of combatants, the ambiguity which arose when they were regarded as such disappears—specifically the way ill-defined partial assimilation implies they’re more akin to combatants than non-combatants. While they do, through their actions, separate themselves in a meaningful way from non-combatants simpliciter, that is insufficient grounds for their inclusion in the class of combatants. After all, the role of the combatant is fundamentally different from the role of any non-combatant, including special non-combatants. This point is made clearest by contrasting the following three situations: (1) two combatants from opposing sides find each other in the

⁷ Again, typically but not always as a non-combatant *simpliciter* may, for instance, forfeit her non-combatant immunity through her own actions—e.g. by opting to remain in the battlespace.

battlespace; (2) a combatant finds an enemy combatant asleep; and, (3) a combatant finds a special non-combatant at work. In the first instance, in virtue of the moral equality of combatants (Walzer 2006: 34-41), both are permitted to use lethal force to restrain the other because the role of a combatant involves a persistent direct threat of harm.⁸ For the same reason, in the second instance, the alert combatant is permitted to use lethal force to restrain the sleeping combatant. Lethal force is permitted here, despite the absence of an immediate threat of harm, because the sleeping combatant would likely capitalize on some future opportunity to use lethal force against her enemy. However, in the third situation, the special non-combatant is never permitted to use lethal force against the combatant because it is not the role of a special non-combatant to restrain combatants.⁹ In short, the special non-combatant never poses an immediate or direct threat of harm to an enemy combatant—only a combatant can ever permissibly employ force. And it is because of this asymmetry between them that, when a combatant seeks to restrain a special non-combatant from continuing her participation in the enterprise of war, the combatant is morally required to use non-lethal options; she is permitted to use lethal means, but only if doing so is the only safe way for her to effectively pursue a legitimate military purpose. And we can say that special non-combatants can only be directly attacked while at work because, while asleep at home, they do not need to be restrained from completing the responsibilities which make them special non-combatants.

In this way classifying such individuals as special non-combatants, instead of individuals who are ‘partially assimilated’ into the class of combatants, incorporates a higher degree of precision and helps maintain a clearer distinction between the very different roles combatants and non-combatants adopt. The phrase special non-combatant reflects the individual’s membership in the overarching group of non-combatants and explains why (and when) she lacks immunity—only at work, because while at work she contributes to the war effort. The phrase special non-combatant additionally enables us to distinguish her from both the combatants she aids and from her peers in, say, the potato fields.

⁸ The moral equality of combatants is the JWT tenet that combatants on both sides of a conflict do no wrong when employing lethal force to restrain enemy combatants. It is justified, according to JWT, because soldiers on both sides represent a persistent threat to one another, and it is shared by all combatants because of the separation of *jus ad bellum* and *jus in bello*. (That is, soldiers are not responsible for whether or not the war is just; the issue of whether or not the war is fought well by those who fight it is not bound with the issue of whether or not it is a just war.) See McMahan (2004) for a discussion of this point.

⁹ We can put this point another way: when a special non-combatant uses force against others, she ceases to be a special non-combatant—she makes herself a combatant.

At this stage, it's worth emphasizing that when I say special non-combatants lack non-combatant immunity, I merely mean enemy combatants do no wrong in attacking them directly as a means of restraining them from enabling belligerents from being able to play the combatant role. Non-combatant immunity is meant to be just that: a prohibition on attacking those with it. But, as noted above, special non-combatants are entitled to additional consideration in terms of how they may be attacked: with respect to special non-combatants, a combatant must use non-lethal force so long as it is safe to do so—but may use lethal force otherwise. This is because, as Walzer argues, they 'ought not to be attacked if their activities can be stopped, or their production seized or destroyed, in some other way and without significant risk.' (2006: 146) This expectation for combatants to utilize lethal force as a last resort against special non-combatants stems from the way in which combatants are not faced with the same direct threat of harm here as when confronting an enemy combatant. That said, because combatants are at war with an enemy state and not those fighting on behalf of it, targetability is ultimately based on who surpasses the relevant threshold. If someone is of a class beyond that threshold (e.g. combatants and special non-combatants), then she is as equally targetable as anyone in any other class beyond that threshold. So while combatants are morally required to aim only at legitimate targets, this requirement does not entail that they are obliged to target combatants in the first instance. That is, if there are two individuals who lack non-combatant immunity (e.g. a combatant and a special non-combatant), the special non-combatant's welfare should not be ascribed greater consideration than the combatant's welfare. Put differently: if a combatant can viably attack enemy combatants or special non-combatants in the pursuit of a legitimate military goal, they can justly target the special non-combatants first.

With that in mind, let's turn our attention to the PMI and analyse all those who work as non-belligerents therein. While the discussion of the PMI is recent, the discussion of munitions factories and their workers is much older. But there is a natural link between these discussions. As highlighted above, under JWT at least some of those who are employed by munitions factories and the like are special non-combatants—this is the case whether or not they are public or private enterprises. After all, the distinction between public and private institutions which contribute to the ability of belligerents to fight is not a morally salient one. What is relevant is that they enable belligerents to fight.

3. The Permissibility of Killing PMI Administrative Personnel

All PMI administrative personnel are either special non-combatants (who can be justly targeted while at work, with the aim of restraining them from completing their militaristic activities) or non-combatants simpliciter who can be permissibly killed while at their workplace (in virtue of having lost their non-combatant immunity while at work). I'll defend this claim in three steps: first, I'll address those whose work is most clearly essential to the PMC (e.g. CEOs), then I'll address those whose work may be considered—*prima facie*—peripheral to the operation of the PMC (e.g. file clerks), and finally I'll comment on those who work within a PMC, but whose contribution to the enterprise in such a way that we shouldn't say that they aid combatants qua combatant (e.g. janitorial staff).

Of those who work for these firms, certain individuals—such as managers and the CEO—are clearly essential to its operation. Without them, PMI operatives (or the belligerents of clients) would not be able, or able as easily, to participate in an armed conflict. In short, because PMCs are organizations which are principally aimed at enabling belligerents to fight, certain staff members—in virtue of the role they play within the firm—will be essential to its ability to operate as a PMC. (Note that there's an important role/occupant distinction here: The role of, say, the manager is essential to the operation of the PMC. So whoever fills that role—whoever the occupant happens to be—is a special non-combatant, without non-combatant immunity while at work. The role is essential, but not necessarily the particular individual. However, we can say that the PMC has, by hiring that particular individual, deemed the occupant to be the person best suited to that role.) Such staff members are special non-combatants because they determine if, how, and in what regard their PMC participates in any given armed conflict; theirs is a role designed to ensure the PMC operates as a PMC successfully. While, on an individualistic level, these essential PMI administrative personnel might not directly aid any given combatant qua combatant, their work collectively enables belligerents to fight. So just as the classic munitions worker is a special non-combatant according to the Just War theorist, the nature of PMCs as PMCs and the definition of a special non-combatant entails that these essential PMI administrative personnel are special non-combatants as well.

As for those whose work may be peripheral to the operation of a PMC—such as file clerks—they are also special non-combatants. Some might consider this counter-intuitive. But why might we suspect that, *prima facie*, they are not special non-combatants? Perhaps because their work does not involve anything fundamentally warlike, as it is separable from the PMCs mission statement or

purpose; we might think that they could perform the same role at, say, an insurance company. This suggests, so the thinking goes, that their contribution to the PMC is not of the form that they should be considered to aid combatants qua combatant. So why should we nevertheless consider their contributions to the operation of the PMC to be of the sort that aids combatants qua combatant? To exclude such personnel in virtue of the above consideration would be too hasty since the occupant of such a position plays a role in the business of her employing firm which is itself doing something distinctly warlike. This is the morally salient fact about her role. The particular duties a file clerk, for instance, performs in the course of her work for a PMC are irrelevant. The *prima facie* consideration outlined above myopically focuses on the behaviour she performs, but the same could be said about certain parties working in a tank factory. Instead, what is relevant is that while at work she contributes to the operations of her employing PMC. Her contributions to the business, no matter what form they take, play a role in its ability to efficiently complete its responsibilities—she is a member of an organization which collectively enables belligerents to participate in a conflict. This disposition of her PMC to aid combatants qua combatant is inseparable from her role and the work she performs. As such, she is identifiable as a special non-combatant. What I mean by this is merely that the nature of a PMC—its nature as a PMC—entails that all those whose work furthers the business aims of the firm aid combatants qua combatant because their work collectively enables belligerents to act as belligerents. In other words, the fact that the file clerk works for a PMC—rather than, say, an insurance company—entails that her work aids combatants qua combatant. We can recognize this if we compare someone working as one such administrative personnel in a PMC to a labourer in a tank factory. Say the sole duty of this labourer is to transport boxes of bolts around the plant—call her position ‘boltperson’. Like the file clerk, nothing the boltperson does is particularly warlike. She could be performing (near identical) duties in a car factory. But there’s no relevant sense in which her tasks aid a combatant qua human. What she does is required for the completion of the militaristic activity of that tank factory. Ultimately, the duties of a boltperson and a file clerk both add to their organizations ability to aid combatants qua combatant. The crucial feature is that a boltperson is working in a tank factory rather than a car factory, and that the file clerk is working for a PMC and not an insurance company. This fact about them identifies their involvement in the enterprise of war and explains why they are special non-combatants. Because a boltperson is a special non-combatant, so too is a PMI file clerk—as is every other PMI administrative personnel, no matter where she falls within the company hierarchy.

Some might press the point, though, that the activities performed by a file clerk are not essential for the conduct of a PMC—that the firm could get by without that file clerk—so the contributions her firm makes to combatants are not tied to her in a morally salient way. And, therefore, we shouldn't ascribe her the same status as those, like the CEO, whose work is essential to the conduct of the PMC. However it is unreasonable to assume that PMCs are inefficient businesses. Were her job inessential, she wouldn't be working there in that capacity. The firm considers the file clerk to be indispensable, and so should we. But even if this response is unpersuasive, alternative responses to this objection are available: if her particular role isn't indispensable, it remains something which contributes to the efficiency and success of the firm. Without the file clerk the PMC would not be able to conduct its business as well as it does. By that I mean, her participation in the business enables it to provide the aid to combatants in a quicker and more efficient manner; the PMC is better at completing its militaristic tasks in virtue of the services provided by such allegedly inessential administrative personnel. In short, the PMC is a better war machine because of the work performed by such administrative personnel. And so, because they contribute in such a way to the PMC, it is appropriate to consider them special non-combatants. From this, we can see that the way in which a special non-combatant might aid a combatant qua combatant can manifest through a business act. The CEO and file clerk, for instance, contribute to a combatant's ability to fight without aiding that combatant qua human. It's in virtue of this feature of the role played by such administrative personnel, coupled with the fact that they work at a PMC, that they should be considered to aid a combatant in her role as a combatant. This is not new or exclusive to the PMI: the same can be said of administrative staff working in munitions factories during, for instance, the Second World War.

Above I ignored a certain kind of PMI administrative personnel: those who work for a PMC and, whose job it is to aid others qua human. Here I have in mind, for instance, custodial or catering staff. The work they do, whether directly for belligerents or for PMI administrative personnel working in the office, is the provision of services which we ultimately all need—i.e. no matter who gains from their work, it is ultimately the case that such workers aids them qua human. And so, in virtue of this feature of their work, they should be excluded from the class of special non-combatants. This is the case even if, like the farmer, the work performed by the occupants of these roles contributes to the efficiency of the PMC. That is, they should be considered non-combatants simpliciter. So while the CEO or file clerk may be permissibly attacked in an effort to restrain them and prevent them from contributing to the enterprise of war, janitors and caterers

retain their non-combatant immunity and may not be directly attacked. However, it doesn't follow that they cannot be permissibly killed or harmed while on the job. That is, while they cannot be directly attacked, it remains the case that there are instances where enemy combatants do no wrong even if these PMI administrative personnel are harmed incidentally by otherwise permissible military activity. This is the case because, while at work, those working as janitors and caterers for a PMC cannot have a reasonable expectation of being out of harm's way. Such individuals are akin to the non-combatants discussed at the outset of the preceding section who refuse to leave the battlespace; they are themselves responsible for any harm they suffer since they put themselves in, or merely remain in, danger. Recall that non-combatants simpliciter can forfeit their non-combatant immunity in ways other than by becoming a special non-combatant. That is, such a person can forfeit her right to be free from harm through her own choices and actions without being involved in the enterprise of war in any relevant way. And, as noted earlier, while non-combatants simpliciter who have forfeited their right to be free from harm through their own choices and actions cannot be targeted, since they do not need to be restrained, combatants do no wrong if such non-combatants are incidentally harmed in attacks against legitimate targets because these non-combatants have put themselves in harm's way. The farmer, for instance, who chooses to remain in her field—knowing full well that it is or will be a likely battlefield—forfeits her non-combatant immunity. So, too, for the janitor who goes to work at a tank factory or PMC. This is not to say that combatants have 'carte blanche' with respect to these non-combatants—regard for them must still feature in military decision making. But because those who work for a PMC as, for instance, janitors and caterers are non-combatants simpliciter who have lost their non-combatant immunity while at work, combatants have greater latitude with respect to these non-combatants than others.

This, of course, hinges on the premise that PMCs are dangerous locales—that the PMC office is itself a reasonable military objective. This shouldn't be controversial: PMCs are institutions which are not non-harming.¹⁰ Like core political and bureaucratic institutions, e.g. a state's department of defence, PMC offices are legitimate targets because they house objects and data crucial to its ability

¹⁰ Section 8.1.1 in *The Commander's Handbook on the Law of Naval Operations* (1995) of the US Navy, Marine, and Coast Guard seems to support this:

Only military objectives may be attacked. Military objectives are combatants and those objects which, by their nature, location, purpose, or use, effectively contribute to the enemy's war-fighting or war-sustaining capability and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of attack.

While this may be subject to interpretation, Stephens and Lewis (2005: 64-66) argue that it should be interpreted broadly.

to contribute to the war. The same cannot be said of other civilian enterprises, and this fact separates PMCs in a morally salient way from them. As such, under JWT, the 'bricks and mortar' structures of a PMC is permissibly targetable. After all, more than just persons can be targeted during a conflict—combatants are not at war with enemy combatants. Instead, they are at war with the entity on behalf of which those enemy combatants are fighting. So, that which may be permissibly attacked extends from public institutions to certain private ones, i.e. those which contribute to the war. Ultimately, there's no basis to think that the distinction between private and public institutions is relevant here. A tank factory, for instance, can be bombed because it houses objects that are instrumental to the war effort (complete and partially complete tanks), irrespective of whether it is publicly or privately owned. The same holds for core political and bureaucratic centres—while they are aspects of the state, this is not their salient feature for the present discussion. And the same, then, holds for PMCs—while they are not aspects of the state, this is not a salient feature for the present discussion.

So PMC offices are dangerous places because they are legitimate military targets. This is relevant for those working therein: since the janitorial staff at a tank factory could not have an expectation of safety while at work, no PMI administrative personnel should have a reasonable expectation of safety while at work either—regardless of the role they play. Thus, we can say that an attack against a PMC can be justifiable even if non-combatants simpliciter are harmed incidentally in the process as they have opted to put themselves in harm's way by working in a dangerous place. The parallel here is with the refugee who refuses to leave the battlespace when given the opportunity. Through their own actions, they have forfeited their non-combatant immunity without contributing to the war in a salient way. In short, enemy combatants do no wrong if they harm any of those working as PMI administrative personnel while at work. Appropriate caveats apply, of course. Combatants must pursue non-lethal means where possible, as well as means and methods which would minimize the harm suffered by those working as PMI administrative personnel.

(Alternatively, one could appeal to the Doctrine of Double-Effect here. The Doctrine of Double-Effect could be invoked to argue something like this: a combatant is justified in taking some particular course of action, so long as it will have a good effect despite known (but unintended) ill effects. Here the good effect may be to achieve some appropriate military goal, while the ill effects may be the deaths of non-combatants with non-combatant immunity. So even if one

maintains that some PMI administrative personnel are non-combatants simpliciter with immunity, they can still be killed collaterally by military attacks against PMI firms.¹¹)

4. Objections and Replies

Let me round off this discussion by briefly addressing a few possible outstanding concerns.

Some might object: What about the postman? Is the letter carrier who delivers mail to a PMC also in danger? After all, a letter carrier seems to contribute to the efficiency of a PMC in a similar sort of way as the file clerk. Is she targetable? (*Mutatis Mutandis* for others which enable a PMC to operate smoothly—e.g. the office supply company which supplies its paper, the electric company which supplies its power, etc.) In reply, we're motivated to draw a line here as the overarching goal of JWT is to minimize the horrors of war. And we should say that this is a plausible place to draw that line because the role played by these individuals is primarily outside of the PMC—they don't work directly for the PMC, even if they contribute in a round-about way to the efficiency of the PMC. It may be helpful to make a feudal analogy to explain why we're justified to draw the line here: the letter carrier is primarily a government worker 'aligned' with a different entity than the PMC. Is the government (or office supply company, or electric company, etc.) engaged in hostilities against the same entity as the PMC? If not, then we should consider them non-combatants simpliciter with non-combatant immunity.

And what of shareholders? Those that invest in a PMC enable it to be, or provide, the instruments of war. And a PMC, like any business, is meant to operate in accordance with the desires of its investors. We might say its managers are duty bound to do whatever will maximize profits and provide the greatest return on investment. Does it follow that shareholders are, like administrative personnel, in danger as well? This concern may well be tangential to this discussion since, from the outset, my objective was clear—to determine whether the administrative personnel

¹¹ However while some might find this line plausible, others do not. What reservations might we have against the Doctrine of Double Effect? For one, it is not entirely clear how we should determine when, if ever, the desired standard has been met. Moreover, the Doctrine of Double Effect requires that we reject the notion that a combatant intended the deadly foreseeable consequences of her actions merely because she did not desire them; we might plausibly think, instead, that she *did* intend to bring about the effects of her actions, she just did not intend that they happen to those non-combatants with immunity. Additionally, *contra* the Doctrine of Double Effect, we are typically considered to be responsible for such clearly foreseeable consequences and a reasonable person might hold that this responsibility is not dissolved in light of some more important end (i.e. the desired effects of the attack). Those brief concerns aside, numerous authors also find the Doctrine of Double Effect flawed and object to it on various other grounds. For more robust arguments against the Doctrine of Double-Effect, see McIntyre (2001) and Hull (2000).

working at PMCs can be permissibly harmed while at work. However, some might regard this worry about investors as a *reductio ad absurdum* against my position: if what I argue above is correct, it entails that the shareholders of a PMI are also justly in jeopardy and, surely, this is unreasonable. But why should we think shareholders do not put themselves in harm's way by investing in a PMC? Most plausibly because shareholders are like taxpayers—insofar as shareholders (like taxpayers) are typically sufficiently far removed from the operation of the PMC (or their state) and they typically have very little control over how the PMC conducts itself (or their state). JWT regards non-combatants simpliciter who are taxpayers as individuals who retain their non-combatant immunity, and so, the argument goes, it should regard shareholders similarly.¹² However this line is untenable—we should say investors share the same standing as administrative personnel. This is because the taxpayer analogy is not a good one as shareholders are not sufficiently like taxpayers. There is at least one strong disanalogy between these cases: while everyone is everywhere forced to pay taxes, no one is forced to invest in a PMC. And as long as they're invested in the PMC, their resources continue to enable belligerents working for the PMC to play the combatant role. In this way, the act of the investor is a persistent one. Any such investor, then, proves essential to the PMC—either with respect to its creation or to its ability to find capital—and their contribution is not fundamentally different than the contribution provided by key administrative personnel.

5. Conclusion

I'll end by making a few remarks on potential consequences of what I argue.

First, what of the relationships between PMCs and states? First and foremost, states—by allowing PMCs to be based within them—may become morally involved in a conflict in which they are not directly participating. This becomes clear when we examine the following possible case: say PMC X was formed and is based in state A; let's also say that states B and C are engaged in an armed conflict with one another and that B hires X to aid in their war of aggression against of C. (So we can say that B is the hiring state while C is the host state wherein the conflict takes place.) Here A, by allowing the office of X to be situated within A, is at least tacitly defending that which the combatants of C can permissibly attack in their defensive war. That is, were C to attack the

¹² For a dissenting argument, see Primoratz (2002: 232-238). He argues that those in a democratic state who voted to support the war do lose their non-combatant immunity. Parallels of his arguments could be made to explain why PMC shareholders forfeit their immunity.

offices of X that are in A (the physical space or, surgically, only those working therein), that attack would—at least intuitively!—be considered an attack against A. Even though such an attack may be justified, by being an attack within the territory of A it seems to also be an impermissible attack given the prima facie neutrality of A. Furthermore, if B were otherwise unable to wage a war, by allowing X to operate, A has—again, at least intuitively—indirectly fostered the ability of B to wage their unjust war of aggression. How do we resolve this tension? We could deny the neutrality of A on the basis that it has allowed an entity which engages in warfare to operate from A. That is, in virtue of the fact that A allows X to be based within A, A consents to the conduct of that firm and we cannot plausibly separate the moral responsibility of the conduct of A and the conduct of some entity A has enabled to operate. However, this presupposes that states are morally responsible for the actions of at least some corporations (some may consider this more problematic than others). Alternatively, we could say that PMCs are uniquely distinct entities such that moral acts by them, or directed at them, are separable from those of, or at, A. That is, an attack against the physical location of a PMC and its employees ought not to be considered an attack against its home state.¹³ But this is, at a minimum, counterintuitive. After all, a crater in the central business district of a major city, the former location of a PMC office, seems like appropriate justification for that state to respond as if that attack was an attack against the sovereignty of the state itself. These remarks amount to prima facie considerations with regard to the relationship between a PMC and other entities; a more detailed discussion would be too much of a tangent from my aims here. I raise these issues only to note that these considerations—in addition to what I argue in this article—should influence a state's willingness to allow PMCs to be based in it. The contribution I offer in this article provides the initial groundwork necessary to tackle these further concerns. I argued that according to JWT some PMI administrative personnel (e.g. directors, file clerks) are what I call special non-combatants—non-combatants who lack non-combatant immunity and may be permissibly directly attacked with the intent of restraining them, but only while at work and with lethal force only if non-lethal means cannot be used safely. Moreover, because a PMC can itself be directly attacked, no wrong is committed if, for instance, janitors and caterers are harmed incidentally while at work as they have forfeited their non-combatant immunity by electing to work in a dangerous place—even though they remain non-combatants simpliciter. That said, harm to these non-combatants should be avoided, whenever possible.

¹³ Unless, perhaps, the home state is also the client of the PMC.

Second, one might conclude from what I argue that this is reason to dismiss JWT. That is, the suggestion that it regards PMI administrative personnel as individuals who can be justly harmed at work is a *reductio ad absurdum* against JWT—i.e. that JWT doesn't get the normative status of PMI administrative personnel right. But my aim was merely to clarify the position of the Just War theorist with respect to PMI administrative personnel. And I would expect those sympathetic to JWT would regard what I've said here as a plausible treatment of modern privatized warfare, even if others may regard it as a problem borne by JWT. I would argue that this discussion remains useful as it enables us to better understand the issues involved.

And finally, what implications does what I say here have for the Law of Armed Conflict (International Humanitarian Law)? Before commenting on this, an important point is in order. The discussion in this article is solely a discussion of the ethics of global conflict. While the law and JWT might have overlapping aims, the one is not reducible to the other. But it may nevertheless be useful (or interesting) to connect this discussion with its potential legal implications. So, how radically would the conclusions drawn here affect the Law of Armed Conflict? The Law of Armed Conflict seeks to provide a legal basis to limit the horrors of war. Its primary purpose, we might say, is to protect those who are not participants in a conflict. If this is an apt characterization of the laws' purpose, we may conclude that the implications from this discussion are merely clarificatory: I argue above that those who work within the PMI—but who don't act as belligerents—participate in a conflict in such a way that the elements which provide protection to non-combatants in JWT do not apply to them. In this way, the implications for the law may very well merely be the necessity to clarify who counts as those that are deserving of its protection. For instance, insofar as the Law of Armed Conflict dictates that belligerents must direct attacks only at military objectives, and in doing so discriminate against civilians and their objects, we might suspect that belligerents who act in accordance with the Law of Armed Conflict are permitted to attack PMCs. After all, PMCs which participate in an armed conflict become military targets in virtue of their participation in the conflict (just as the munitions factory, whether private or public, is a plausible military target). Any PMC which enables belligerents to fight is necessarily militaristic, and attacking such PMCs would frustrate the ability of those belligerents to fight. The cloak of privatization or incorporation does not diminish that fact. Perhaps, if anything, the implication here is that the definition of 'civilian' found in the Law of Armed Conflict—roughly, any person not belonging to the armed forces—is in need of revision as PMI administrative personnel are both civilians and participants in hostilities.

But this should be unsurprising to those familiar with the legal disputes surrounding the PMI and mercenaries—this, as well as related issues, are well discussed elsewhere in the literature.¹⁴

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¹⁴ See, for instance, Faite (2004), Schmitt (2005), Gillard (2006), and Schaller (2007).

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