

## Rights Waivers in Common Defense

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*Abstract: In the traditional view of the ethics of war, combatants (i.e., soldiers, sailors, airmen, and direct participants in hostilities) on opposing sides of an armed conflict forfeit their rights against being harmed to each other. Recent literature casts considerable doubt on the idea that combatants fighting for a just side (i.e., just combatants) forfeit or waive any of their rights to combatants fighting for an unjust side. The idea that a US soldier in WWII forfeited or waived his right against being killed by a Nazi soldier is highly implausible. However, it is more plausible that combatants fighting for a just side waive some of their rights against being harmed to the people that they swear an oath to protect. According to this view, combatants do not waive their right to be harmed by the civilians that they swear to protect; rather, combatants waive some of their rights against an equal distribution of the harms inflicted in the process of protecting the collective. In plain English, combatants waive their right against an equal share of security from threats to the collective. In this essay, I will argue that rights waiver can, in fact, ground the concept of non-combatant immunity, but that it is a weaker concept on non-combatant immunity than the one articulated in International Humanitarian Law (IHL). IHL makes no distinction between non-combatants based on nationality or security institutions. In IHL, all non-combatants receive equal treatment. On my view, this cannot reflect moral obligations grounded in combatants' rights waivers, because combatants' duties to protect members of their own collective is considerably more robust than their duty to protect foreigners. It does not follow from this that just combatants' rights waivers do not ground any concept of non-combatant immunity, because non-combatants do not forfeit rights the same way unjust combatants do. Therefore, just combatant must treat foreign non-combatants the same way they would treat members of their own unit. This includes distributing risk equally between foreign non-combatants and members of their own unit.*