

The Humanitarian Civilian: How the idea of distinction circulates within and beyond International Humanitarian Law

Rebecca Sutton

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Rebecca Sutton's *The Humanitarian Civilian* examines how the combatant-civilian distinction that provides protection to non-combatants in international humanitarian law (IHL) is perceived and applied in different contexts.¹ The work has an ongoing relevance given the number and complexity of conflicts throughout the world where distinction, in principle, should be applied daily.² The monograph is based on Sutton's own experience as a humanitarian actor working for a Non-Governmental Organisation (NGO) during conflict in South Sudan, where she witnessed first-hand how the civilian distinction is applied in practice.³

The Humanitarian Civilian questions the apparent rigidity of the civilian distinction by presenting an alternative picture. Sutton's overall argument is that the reality of distinction is an inherently blurred, perpetually disrupted concept that is not simply a binary of civilian and non-civilian status. Previous literature has followed a primarily doctrinal and normative approach which assessed the civilian-combatant distinction in law as a stable binary, and typically focused on compliance.⁴ However, Sutton goes beyond these considerations by examining how distinction in IHL is shaped and given meaning through state practice.⁵ Her work, therefore, presents a new approach to how the distinction is made between combatants and non-combatants during armed conflicts.

The Humanitarian Civilian is structured by chapters which answer the following specific questions: What is the distinction?, Who draws the line?, How is the line drawn?, and Where is the line drawn?⁶ Sutton then assesses

¹ Rebecca Sutton, *The Humanitarian Civilian* (Oxford University Press, 2021).

² United Nations, 'A New Era of Conflict and Violence', *United Nations*, (Article, 2021) <<https://www.un.org/en/un75/new-era-conflict-and-violence>>; International Committee of the Red Cross (ICRC), 'ICRC: Study shows more the conflicts, greater the danger for people' (News Release, 19 June 2018) <<https://www.icrc.org/en/document/icrc-more-conflicts-more-sides-conflict-equal-greater-danger-study>>.

³ Sutton (n 1) vii, 3.

⁴ Ibid 14, 29.

⁵ Ibid 14.

⁶ Ibid 28, 70, 110, 149.

the question of each chapter in relation to three 'spaces' where distinction is interpreted and applied. The first space, the 'Kinetic' realm, examines how distinction operates within armed conflict, particularly in South Sudan.⁷

The second space, the 'Pedagogical' realm, considers how distinction is taught to actors who will go on to apply it, focusing on civil-military training in Italy, Germany and Sweden.⁸ The third space, the 'Intellectual' realm, applies to the legal and academic aspects of distinction, where it is adjudicated, made into law and policies, and theorised, particularly in Geneva and the Hague.⁹

Sutton presents an original view of distinction by proposing three civilian 'figures' who complicate 'civilian' status. The first figure is titled 'civilian plus', this status affords 'pure' civilians, such as the humanitarian actor, with special status and extra protections.¹⁰ The second figure is the 'mere civilian', the ordinary civilian.¹¹ The third figure is the 'civilian minus', those who are perceived as 'tainted' with some qualities of a combatant yet still attract civilian protections.¹² Separating civilian status into these different layers serves to reinforce Sutton's overarching argument that distinction is not a simple binary.

The second chapter addresses the question 'What is the distinction?' by assessing how different actors understand distinction.¹³ This chapter does not aim to 'resolve' what distinction means, however, it fails to include a necessary, thorough explanation of the legal definition of distinction.¹⁴ Sutton demonstrates that in the operational context, in South Sudan, the difference between humanitarian actors and the UN peacekeeping mission was blurred, resulting in tensions between the two. This tension is applicable to integrated missions generally. Similarly, military and peacekeeping trainees have a confused sense of what distinction means. Both in trainers' teaching and trainee discussions, distinction is often voiced not as 'combatant and civilian' but 'military and civilian'.¹⁵ While this is different from the distinction

⁷ Ibid 19-21

⁸ Ibid 21-23

⁹ Ibid 23.

¹⁰ Ibid 15-16.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid 28.

¹⁴ Ibid 24.

¹⁵ Ibid 49-53.

conceived of in Additional Protocol I to Geneva Conventions of 1949 and some military documents, this ‘slippage’ is also seen in public communications and soft-law.¹⁶ Sutton makes a strong argument that this confusion appears to be due to the inherent lack of clarity in the legal principle.¹⁷

The third chapter examines the question, ‘Who draws the line?’. Sutton illustrates that distinction is often affected by perceptions. Actors believe they must appear to be ‘civilian’ in order to be awarded civilian protection, regardless of the fact that they are legally afforded it. Through anecdotal examples of various actors’ opinions regarding distinction, Sutton illustrates that the influence of perception changes how the line of distinction is drawn. Military actors will try to convince humanitarian actors to work alongside them, which confuses and adjusts the clear lines that humanitarian actors attempt to maintain between themselves, as protected civilians, and the military, as combatants. The use of examples and anecdotal evidence makes Sutton’s conclusion both more convincing and easier to understand.

The fourth chapter considers the question, ‘How is the line drawn?’. Sutton examines the use of signs and symbols by humanitarian actors to clearly mark their protected civilian status which can be compromised by other international actors. Yet, these markers may have less relevance when ‘civilian-ness’ is identified more through qualities of harmlessness, innocence and non-participation in hostilities.¹⁸ It is here that Sutton reintroduces her three figures of the civilian outlined at the monograph’s outset, and argues that these three civilian figures complicate the notion of a clearly distinct binary. Yet, this novel argument regarding civilian figures is harder to understand given that Sutton does not provide a deep explanation of the legal interpretation of civilian in IHL. Sutton, however, does look in some detail at the interpretation of ‘civilian’ in particular cases of the International Criminal Tribunal for the Former Yugoslavia which provides some foundation to her notion of the civilian figure.

The fifth chapter assesses the question, ‘Where is the line drawn?’. Proceeding from the previous chapter’s conclusion, Sutton examines the proposed civilian figures. She suggests that humanitarian actors attempt to present themselves as ‘civilian plus’, attracting special protections beyond an ordinary civilian due to the nature of their work. In her concluding chapter,

¹⁶ Ibid 24, 64.

¹⁷ Ibid 206.

¹⁸ Ibid 25, 110, 133-7, 145.

Sutton opposes this ‘civilian plus’ figure.¹⁹ Her argument that this proposition may further splinter the divisions already present within the continuum of distinction is convincing. Furthermore, it holds true that the ‘civilian plus’ figure is potentially dangerous as it suggests that some civilians are more important and worthy of protection than others, thereby endangering those who are not afforded this status.

While Sutton outlines the key concepts summarised above early in the monograph, in some parts of the text, the ‘realms’ and ‘figures’ further muddle Sutton’s arguments, which are occasionally lost in terminology and are sometimes difficult to follow. However, although the structure of Sutton’s monograph is at times confusing, it is clearly written with extensive evidence and examples that give weight to her claims. This is particularly important given that Sutton is proposing an original version of distinction as a perpetually disrupted principle.

Sutton notes at the outset that her work is not a study of compliance. However, her arguments, particularly regarding the adjustment of distinction lines between military and humanitarian actors and the effects of perception, would have benefited from evidence regarding whether this actually impacts civilian protections. As a result, Sutton’s strongest arguments are those which focus on the idea of distinction, rather than its use in the operational context. Further, while she places focus on South Sudan given her experience in the field there, her assessment of the ‘Kinetic’ realm would have been strengthened by examining other conflict zones and the interpretation of distinction in multiple places.

Overall, however, the text presents an insightful, new perspective that shows the reality of distinction as an inherently flawed yet useful concept. Sutton’s examination of the different spaces where distinction is applied and her rejection of the ‘civilian-plus figure’ are important contributions to the literature on IHL. Her work may be the first that details the true, disrupted nature of distinction in both theory and practice.

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¹⁹ Ibid 194-200.

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