

2011

## Book Review

Cindy Gierhart

*American University Washington College of Law*

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Military, War and Peace Commons](#)

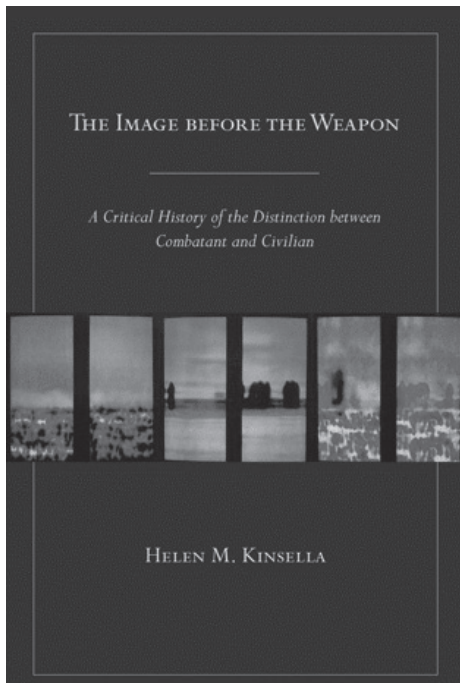
---

### Recommended Citation

Gierhart, Cindy. "Book Review." Human Rights Brief 19, no. 1 (2011): 51-52.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [fbrown@wcl.american.edu](mailto:fbrown@wcl.american.edu).

## BOOK REVIEW



**HELEN M. KINSELLA, *THE IMAGE BEFORE THE WEAPON: A CRITICAL HISTORY OF THE DISTINCTION BETWEEN COMBATANT AND CIVILIAN* (CORNELL UNIVERSITY PRESS, 2011)**

While a precise legal definition for a wartime “civilian” did not enter the international lexicon until the 1977 Protocols Additional to the Geneva Conventions, the principle of distinction between combatants and civilians has been recognized since the Middle Ages.<sup>1</sup> Yet the centuries have done little to produce a clear distinction. Today wars are fought on city streets, where one passerby could be igniting a bomb while another is lighting a cigarette. The line between combatant and civilian is anything but distinct.

In *The Image Before the Weapon*, Helen M. Kinsella tracks the history of the principle of distinction framed amid three discourses: gender, innocence, and civilization. The gender discourse is grounded in the traditional notion that women and children are to be spared in war, but Kinsella offers abundant examples where fighters and academics justified the killing of women and children on the grounds that they lost their “innocence” (by taking up arms) or were “uncivilized.” The innocence discourse surrounds the notion that those

who take up arms against enemy forces are no longer “innocents” and can be targeted. Kinsella illustrates how this discourse has expanded in practice to include those who merely agree with the fighters’ cause or even, by the mere fact of being born, carry the blood of “subversives.”<sup>2</sup> Finally, the discourse on civilization is one often found in colonization wars. When the West traveled to new lands and encountered native peoples, they considered it their duty and right to either convert the “savages” into civilized beings or slaughter them all—the only distinction being who was willing to convert.<sup>3</sup>

Kinsella structures her analysis chronologically, beginning with Biblical references to war and moving through the Crusades, colonization, the U.S. Civil War, the French-Algerian war, civil wars in Guatemala and El Salvador, and the present-day wars in Iraq and Afghanistan. The discourses of gender, innocence, and civilization can be found in all of these conflicts, but as Kinsella notes, they are not linear progressions, but rather threads that appear and disappear throughout history.<sup>4</sup>

Women and children have long been considered a category to be spared in war, but rarely, if ever, has this rule been absolute. Kinsella traces this history as far back as Moses, who, in Numbers, said only virgin women should be spared, so that the victors may keep them for themselves.<sup>5</sup> Augustine (fifth century) and Thomas Aquinas (thirteenth century) agreed that women, children, and trees should be spared in war for their usefulness—women for wives of the victors, children for labor, and trees for lumber.<sup>6</sup> Hugo Grotius (seventeenth century) believed women should be spared from war because they lack the ability to “devise wars” and, in that sense, are not guilty of partaking in war.<sup>7</sup>

The innocence discourse can be found in modern international humanitarian law instruments. The International Committee of the Red Cross (ICRC) Commentaries on the Geneva Conventions define *civilians* as those who “do not bear arms,” are “outside the fighting,” and “take no active part in the hostilities.”<sup>8</sup> Kinsella refers to these

people as “innocents,” or those who are not “guilty” of fighting. Yet, Kinsella notes, the innocence discourse has been used in far broader terms. In the U.S. Civil War, Union soldiers were instructed not to kill Confederate women, yet they frequently did.<sup>9</sup> The North justified their actions by saying the women had metaphorically joined the fighting by freely voicing their commitment to the South.<sup>10</sup> Northern men were shocked by the anger and disgust of Southern women for Union soldiers, who likened them to “flagrant prostitutes.”<sup>11</sup> As Kinsella eloquently stated, “No longer acting their sex, warring against them was allowed.”<sup>12</sup> Children, too, were regularly killed in El Salvador and Guatemala. Kinsella asks, what were they guilty of? Guatemalan army officers said it was necessary to kill entire families because families were the very foundation of guerrilla forces.<sup>13</sup> Salvadorian paramilitary forces said the children were “sick with communism” and therefore required death.<sup>14</sup>

Kinsella presents the civilization discourse amid the backdrop of the wars of colonization. Spanish conquistadors would spare natives if they accepted the king and queen of Spain as their sovereign and converted to Christianity.<sup>15</sup> However, if they chose to remain as “savages,” they would be killed.<sup>16</sup> The Mayans in Guatemala in the 1980s were given a similar option: come down from the mountains and give up your identity as Maya, or be slaughtered.<sup>17</sup> Interestingly, the term “civilian” (used in the sense of one spared during war) was first defined in the eighteenth century as “one of the covenanted European servants of the East India Company, not in military employ.”<sup>18</sup> Therefore, at its inception, the term “civilian” was intrinsically linked to the “civilized.”

Kinsella concludes by cautioning scholars and governments alike not to presume that combatants and civilians can be or are easily divided into distinct categories. While there will never be a clear distinction that may apply in every circumstance, Kinsella says, the act of seeking a distinction in itself promotes compliance.<sup>19</sup> Grounding oneself in the discourses pre-

sented in *The Image Before the Weapon* will help “stabilize the distinction.”<sup>20</sup>

While the book is clearly identified as a “history” of the principle of distinction, it would have been interesting to see Kinsella relate her three discourses a little more to the current wars in Iraq, Afghanistan, and elsewhere. The reader is left wondering: Are the discourses still just as vibrant in

today’s wars? Are some discourses more prevalent than others? For example, surely with the rising number of women in combat around the world, the discourse on gender is likely to fade over time. To be fair, however, Kinsella did adequately warn her readers: this is a book about the “History of the Distinction Between Combatant and Civilian.” Overall, Kinsella’s strength is in her vast historical knowledge and being

able to incorporate that knowledge into new ways of thinking about a principle as old as war itself.

*Cindy Gierhart, a J.D. candidate at the American University Washington College of Law, reviewed The Image Before the Weapon: A Critical History of the Distinction Between Combatant and Civilian for the Human Rights Brief.*

## Endnotes: Book Review

<sup>1</sup> HELEN M. KINSELLA, *THE IMAGE BEFORE THE WEAPON: A CRITICAL HISTORY OF THE DISTINCTION BETWEEN COMBATANT AND CIVILIAN*, 26, 142 (Cornell University Press, 2011).

<sup>2</sup> *Id.* at 90, 169.

<sup>3</sup> *Id.* at 166.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> *Id.* at 31.

<sup>6</sup> *Id.* at 36.

<sup>7</sup> *Id.* at 77.

<sup>8</sup> *Id.* at 121–22.

<sup>9</sup> *Id.* at 90.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 92.

<sup>13</sup> *Id.* at 171.

<sup>14</sup> *Id.* at 169.

<sup>15</sup> *Id.* at 58.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 167.

<sup>18</sup> *Id.* at 29.

<sup>19</sup> *Id.* at 190.

<sup>20</sup> *Id.* at 188.