

The West Has Forgotten Why Collateral Damage Is Morally Justified

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Ultimately, the defeat of these terrorist groups is the primary ethical imperative. This will benefit not only Israel but also the Gazan civilians who suffer longer under their terrorist leaders and the continuous warfare that they breed. There is a moral cost to not acting decisively, and a strategic cost to forgetting the moral justification for killing in war.



Does the Western world have the moral fortitude to allow Israel to take the bloody but ethical steps to defeat Hamas? It doesn't seem like it. The reason is clear: the Western world has forgotten why killing in war is moral.

Western leaders have repeatedly condemned Hamas for its brutal October 7 attack on Israel that killed 1,200, wounded thousands more, and kidnapped more than 240. They further recognize that many Palestinian lives have been subsequently lost, since Hamas uses human shields while fighting from underground tunnels. Nonetheless, they continue to call for a "sustainable ceasefire" in light of growing civilian casualties in Gaza. The foreign ministers of Britain and Germany declared that Israel has the right "to eliminate the threat posed by Hamas." Yet they went on to say that "too many civilians have been killed." Similarly, the French foreign minister called for a "durable truce" because "too many civilians are being killed."

These sentiments echo the more systematic statement of Canada's prime minister, Justin Trudeau, who called for Israel to exercise "maximum restraint." He then added that "the world is witnessing this—the killing of women and children, of babies. This has to stop. The price of justice cannot be the continued suffering of all Palestinian civilians. . . . All innocent life is equal in worth—Israeli and Palestinian."

Even the leaders of the United States, which after its own experiences with asymmetric warfare in Iraq should be more sympathetic to Israel's dilemmas, are urging Israel to switch from full-scale warfare to more targeted raids by elite forces to kill Hamas leaders. Such intelligence-driven missions within population centers might be high-risk to Israeli soldiers yet would minimize Gazan civilian casualties.

Underlying these various critiques of Israel is the belief that despite its just cause, Israel cannot justify its continued warfare because there are simply "too many" civilian casualties. Such criticism suggests that the Western world has forgotten the moral justification for killing in warfare in general and collateral damage in particular. The deaths of noncombatants are regrettable and tragic, but they are not immoral. If the West has a chance to defeat terrorist groups that fight by no rules, it needs to quickly relearn the necessary moral calibrations that justify death in warfare.

“Terror Bombing” or “Tactical Bombing?”

Imagine two different scenarios, adapted from an actual incident that took place in 1999, during the NATO bombing campaign to stop ethnic cleansing in Yugoslavia. While there are many similar incidents, I focus on this episode because, in 1999, the West was willing to justify “humanitarian interventions” that resulted in the death of many noncombatants.

First: NATO forces, seeking to frighten Serbian citizens and fighters into submission, order their air forces to indiscriminately drop bombs on groups of people in the middle of the night. The pilots drop ten bombs on the village of Korisa. Eighty-seven civilians are killed, with another sixty wounded. A nearby Serbian command post, including an armored personnel carrier and ten pieces of artillery, is also destroyed.

Second: In its attempt to systematically destroy the Serbian military machine, NATO forces drop ten precision bombs on a Serbian command post and an armored personnel carrier, and ten pieces of artillery near the village of Korisa. Unknown to the commanders and invisible to the fighter pilots, a group of refugees is also in the vicinity, possibly being used as human shields by the Serbian fighters. Eighty-seven civilians are killed and sixty more are wounded.

What's the difference between these two scenarios? After all, the end result is the same: a legitimate military target is destroyed, eighty-seven noncombatants are killed, and dozens more are wounded. Yet the first event we would reasonably call immoral "terror bombing" while the second we would deem legitimate "tactical bombing." The difference is intent. In the first case, the terror bomber intends to kill anyone and everyone without distinction. In the second case, the bomber intends to destroy the legitimate military threat.

Intent matters. We would never, for example, justify killing an entire crowd of people to hold off one violent burglar. Yet ethicists and theologians have long understood that war operates under different ethical rules that somehow justify widespread killing. Indeed, it's impossible to defend warfare without some theory to explain why it is morally permissible to inevitably kill, even unintentionally, individuals who are not directly threatening you.

"The Doctrine of Double Effect" and Its Critics

Just war theory since Thomas Aquinas used "the doctrine of double effect" (DDE) to justify wartime killing. There are many variations to the doctrine, but most require the following:

1. **Intent:**

(a) *The military act is intended as an act of self-defense.*

(b) *The collateral damage is not intended.*

(c) *The collateral damage is not a means to the end of the act, i.e., one does not intend for the collateral damage to serve as a deterrent or provide some other benefit.*

2. *Precautionary Measures: Efforts are made to avoid or minimize collateral damage.*

3. *Proportionality: The collateral damage is proportionate to the importance of the mission.*

As one can quickly see, proper intent is crucial to this doctrine. The UN's international criminal tribunal that investigated the Korisa bombing emphasized this point: NATO forces did not *intend* to kill civilians, and they reasonably did not foresee so many noncombatants in the area. No charges were filed.

The DDE doctrine is also used in other ethical scenarios. For example, most ethicists, Jewish and non-Jewish alike, permit administering morphine to alleviate the suffering of terminally ill patients. We brand such treatment "end-of-life palliative care." Occasionally, the overall effect of the narcotics might hasten the patient's death; but each dose, gradually administered, is intended to alleviate pain and

will not necessarily shorten the patient's life. Purposely delivering a more toxic dose, however, is active euthanasia. The line between care and killing is quite thin in practice; as some researchers have noted, there's a "gray area" between pain relief and mercy killing.

Yet many ethicists accuse DDE advocates of mental gymnastics. They assert that the only difference between "terror bombing" and "tactical bombing" is how we choose to describe them. This is a matter of semantics; at the very least, each description is a matter of subjective interpretation.

Good intentions cannot mitigate results that are *foreseen*. On the battlefield, if I know that it is certain—or even highly likely—that noncombatants will be killed, I cannot pretend that their deaths are inadvertent. In light of this critique, some ethicists argue that much collateral damage simply cannot be justified. After all, why is the blood of the attacking soldiers redder than the blood of the noncombatants? These are innocent civilians who have done nothing to surrender their right to life.

In truth, classic Jewish law is quite sensitive to this initial critique of DDE. Here's a rough parallel to the classic case in rabbinic literature: Suppose one Saturday, a person wanted a deer's head to mount on the wall as a decorative trophy. To do so, however, he would need to slaughter a deer, an action that is prohibited on the Sabbath. When he kills the animal, his intent would be procuring a trophy

head. Yet the inevitable effect is that the deer is killed. As the Talmud rhetorically asks, "Can you cut off the head without killing it?" You are liable for violating Shabbat, even though you had no desire to kill the animal. This may be for one of two reasons: 1) The law stipulates that whatever you might say, your intent, in fact, was to kill the animal. 2) Alternatively, the law asserts that intent is fundamentally irrelevant. Since the result is unavoidable, we judge your actions simply based on the inevitable consequences. You killed and must be held liable.

Yet taken to its logical conclusion, this critique of DDE is a short step away from pacifism. For if a) the unintended but inevitable deaths from collateral damage cannot be justified because they violate inviolable individual rights, and b) all warfare involves such collateral damage, then c) warfare cannot be justified. More moderately, one might conclude, like ethicist Helen Frowe, that moral constraints on defensive forces might create occasions where collateral damage is not justifiable to the point that "it will be impermissible to defend oneself."

Yet such a conclusion is unfathomable to any ethical system, including Judaism, which places a premium on the moral obligation to defend oneself and one's people. Sophisticated multi-value ethical frameworks do not allow us to dismiss the primacy of self-defense. Thus, it becomes

imperative either to reformulate the DDE justification or to explain why saving one's people takes priority over the lives of enemy noncombatants.

“Double Intention” and Jeopardizing Troops to Avoid Collateral Damage

To preserve the DDE doctrine, the ethicist Michael Walzer contends that it's insufficient for soldiers not to intend to kill the noncombatants. They must also take proactive actions (“due care”) to avoid incidental civilian losses, even if it comes with accepting soldier casualties. The soldiers, in short, require “double intention”: to mentally intend to strike only the legitimate target and to display positive intention toward saving civilian lives. In practice, this means that soldiers must take risks for themselves to minimize the harm to enemy civilians. The human rights of the enemy civilians, like the rights of their own people, must be protected.

To understand the implications of Walzer's thesis, it helps to divide the potential casualties of warfare into four different quadrants.

Our Noncombatants	Enemy Noncombatants
Our Combatants	Enemy Combatants

The highest priority in protecting lives goes with “our noncombatants.” After all, the justification for going to war (and for endangering our combatants) is to provide defense for our citizens. Inversely, enemy combatants are the lowest on the rung, as they directly threaten us. Yet who takes priority between our combatants and enemy noncombatants? Noncombatants have personally done nothing to make them susceptible to attack. Yet our soldiers are our comrades. Should brothers take precedence over others?

Walzer’s answer is no. The goal of limited warfare is to protect individual rights by distinguishing between combatants and noncombatants. The latter, even if they are members of the enemy country, have done nothing to surrender their right to life. By contrast, soldiers have lost “their title to life and liberty” because they are fighters. They make themselves vulnerable to danger. We might speak of them as “our boys and girls on the battlefield,” but their job remains to protect civilian lives, friend and foe alike, even if this means they must take some considerable risks. As such, whatever risks soldiers are willing to take for their compatriot citizens must also be taken to protect enemy civilians. Soldiers, in short, must jeopardize their own lives and safety to avoid enemy collateral damage.

The grave implications of this alleged obligation were made clear during the IDF's Operation Cast Lead in Gaza in 2008. Walzer and an Israeli philosopher, Avishai Margalit, openly called for Israeli soldiers—and all troops engaging in asymmetric warfare, whether in Iraq, Afghanistan, or elsewhere—to take greater risks to avoid collateral damage. As they wrote in the *New York Review of Books*,

When soldiers in Afghanistan, or Sri Lanka, or Gaza take fire from the rooftop of a building, they should not pull back and call for artillery or air strikes that may destroy most or all of the people in or near the building; they should try to get close enough to the building to find out who is inside or to aim directly at the fighters on the roof.

If soldiers aren't willing to protect enemy civilians, they further warned, then complaints about enemy abuse of civilians—whether through terror attacks or the use of human shields—will ring hollow.

In fact, on numerous occasions in 2008 and in other military incursions in that decade, it seems that the IDF did take such extraordinary steps to avoid civilian casualties. This usually entailed sending combat soldiers into homes or buildings instead of calling in airstrikes or throwing grenades into a room or courtyard with unidentified occupants. These measures saved Palestinian lives, but at

a cost, sometimes fatal, to Israeli soldiers. Israel's ambassador to the UN took satisfaction in this moral stance in contrast with that of their terrorist enemies:

For Israel, every civilian death—Israeli or Palestinian—is a tragedy. In responding to terrorist attacks that show no respect for human life—either Israeli or Palestinian—Israel takes steps to protect both. It takes every possible measure to limit civilian casualties—even where these measures endanger the lives of our soldiers or the effectiveness of their operations.

Yet was it morally correct for the IDF to exceedingly endanger its soldiers or compromise their effectiveness in protecting Palestinian civilians?

The answer is an emphatic no. Let's understand why.

Brother over Other: Force Protection as a Superior Moral Value

Walzer's approach is well-intentioned but misguided. It repeats the same error made by many contemporary ethicists: prioritizing individual human rights to override other values. In this particular example, Walzer errs in two critical ways: 1) neglecting the obligation to protect one's own citizens, combatants and noncombatants alike, from attacks on them; and 2) neglecting the associative duties

that a country owes to its own brethren, including its own soldiers. To understand the point, let's focus again on the common dilemma Walzer and Margalit reference:

Violating international law, Hamas launches mortars from the neighborhood toward a town in Israel. The IDF commander has two options: seek aerial support to bombard suspicious houses in the neighborhood, or order his subordinates to take the neighborhood house by house.

The advantage of the first option, using aerial support, is that it provides not only greater soldier safety, i.e., protection from risk of capture, injury, or death, but also velocity. Israel should stop the mortar attacks as soon as possible; otherwise, its civilians will continue to suffer. By failing to immediately halt these attacks with aerial fire, Israel would be prioritizing enemy citizens over its own citizens.

Israel's citizenry, moreover, might not tolerate high "body-bag counts" from house-to-house combat and demand to end it prematurely. Indeed, over the past few decades, heads of leading democracies like Britain, France, and the United States have changed their military plans because of waning popular support following troop casualties. Morale among soldiers, moreover, regularly decreases when the troops feel their lives are being overly jeopardized. As one

Israeli soldier lamented, “We’re like pizza delivery boys who have to come right to the door of the terrorists’ houses.” This is clearly a problem.

The decision to place soldiers at greater risk might also endanger the efficacy of the entire defensive mission. For this reason, countries like Australia, Canada, and New Zealand signed the Additional Protocols to the Geneva Convention (AP/1) treaty while insisting that “force protection,” i.e., actions taken toward protecting troops, must be taken into account when weighing the proportionality of a given action. (The U.S. and Israel never signed AP/1, in part because of these concerns.)

NATO, in fact, relied primarily on aerial strikes during its intervention in Yugoslavia while flying its planes at higher altitudes to avoid anti-aircraft fire. This protected the lives of soldiers and gained popular support at home, but it probably increased collateral damage, including incidents like the one in Korisa described earlier. The decision to “fly high” received much condemnation from philosophers, but citizens and soldiers lauded it.

The IDF’s decision in 2008 to send soldiers to fight house-to-house, moreover, fails to consider that those soldiers are also citizens. They are “civilians in uniform” sent on behalf of the state. Yes, we send them to fight to protect their fellow citizens. This makes them liable to attack by the enemy, but that does not mean that the state that sent them can neglect their security. On the contrary, the state

that sent them to fight must constantly justify why it is endangering them. The state bears *special duties* toward its citizens and agents alike. Force protection, in other words, is a deep moral obligation. There is no compelling reason why the state should jeopardize soldiers' lives to save the terrorist's neighbor.

The lead author of the IDF's first code of ethics, Professor Asa Kasher, and the former head of the IDF Military Intelligence Directorate, General Amos Yadlin, have repeatedly emphasized this point, including in a pointed exchange with Walzer and Margalit. Israeli forces, they argued, should try to separate enemy noncombatants from fighters. After that, "not only is the state no longer obligated to endanger the lives of its own soldiers to attempt to further such a separation, it is forbidden from doing so."

They further argued, compellingly but with great controversy, that the IDF Code of Ethics demanded only that soldiers do "all that they can" to avoid harming noncombatants. This does not include risking their lives and those of their comrades. A very distinguished group of Israeli philosophers lined up to disagree. Yet Kasher correctly held his ground. When push comes to shove, brother trumps other.

This doesn't mean that we allow the army to protect its soldiers by carpet bombing the enemy nation and indiscriminately killing. That strategy may (or may not) stop

the mortar fire, but it would treat the enemy civilians as disposable means to achieving the end of protecting our own. Moreover, it would negate our attempt to balance the values of communal defense and loyalty with respecting the inherent dignity of all humans.

Yet at some point, these values can conflict. Choices must be made. At this stage, we should prioritize the safety of our brethren at the expense of increased enemy collateral damage. Not because we appreciate the divine image of all human beings any less, but because we value our filial responsibilities even more.

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War as a Collective Enterprise

Ultimately, it is this factor of communal allegiance, our special duty to protect our own, that dictates that we make the necessary moves to provide defense, even at the expense of enemy noncombatants. This factor has been undervalued by the human-rights approach of Walzer,

Frowe, and others who overly focus on one value: individual human rights. We should not forget the individual costs of battle. Yet ultimately, war remains primarily a collective enterprise.

Warfare is not a battle between individuals or groups of people, but rather, collective entities. It profoundly challenges an ethical system built on individual rights because it divests people of their individual identity and brands them as a part of a collective. Soldiers are not random fighters but representatives of a country. They are meant to kill, or be killed, on behalf of their nation. Citizens of each country are a part of these collectives. Some will patriotically support the cause. Others may even enthusiastically join the war effort, thereby shedding their status as noncombatants. Many, on the other hand, will oppose the war or, at the very least, steer clear of the combat. Nonetheless, it is impossible to fully escape our moral identification with the nation in which we reside and the decisions made by its leaders. Our fate, physical and moral, is tied to our people, for better and for worse.

War is one of the best ways in which our collective consciousness emerges. No one in Texas or Oregon was attacked on September 11. Nonetheless, Texans and Oregonians will say "We were attacked on 9/11." Similarly, we admire those who are willing to fight on our behalf and even die for the national cause, even though we never personally met those soldiers. "They made the ultimate

sacrifice for all of us," many will collectively lament. Some will be scared by this identity; others will take pride in it. Yet we recognize that we do not live on an island.

Our collective moral identification may also be seen from the shame and responsibility people regularly feel for the ethical sins of our fellow countrymen. Even today, decades after World War II, many Germans and Japanese feel a sense of guilt for the sins of their ancestors, just as many Americans feel a moral stain from the Jim Crow days. As citizens who identify with this moral community, we feel responsible for the failed values that characterize our society.

Jews, too, feel a sense of pride or shame for the actions of their compatriots, even if they had nothing to do with those people. This is deeply evidenced by the strong reactions that many Diaspora Jews have toward Israeli military actions. Whether this is pride from the Six-Day War or angst from errant missile strikes in Lebanon or Gaza, Jews around the world feel that the IDF represents them. In the deepest sense, this is the implication of *kiddush Hashem* or *hîllul Hashem*, the rabbinic concept of sanctifying or desecrating the reputation of God. The actions of the Jewish nation somehow reflect on Jews across the world.

In fact, rebel groups and other non-state actors feed on this strong sense of collective identity. To succeed, they require the masses to identify with their cause. Terrorist

groups, like Hamas in Gaza and Hezbollah in Lebanon, regularly claim to represent the people and depend on popular support and resilience for their unconventional warfare. They rely on the masses identifying with their cause.

One might argue that it is legitimate for Hezbollah to use popular support for its guerrilla warfare. This, after all, is what rebel groups do. The flip side, however, is that they must assume moral responsibility for civilian losses when they fight in their midst. As even Walzer himself wrote, regarding both Lebanon and Gaza, "When Palestinian militants launch rocket attacks from civilian areas, they are themselves responsible—and no one else is—for the civilian deaths caused by Israeli counterfire. . . . Civilians will suffer so long as no one on the Palestinian side (or the Lebanese side) takes action to stop the rocket attacks."

Yet Walzer mistakenly continues to require Israeli soldiers to endanger themselves to avoid collateral damage. Ultimately, it is the responsibility of the Palestinian or Lebanese people to stop terrorists from endangering their own people, just as Israeli soldiers should prioritize protecting their own brethren, citizens, and comrades in arms.

To be clear, supporting a rebel cause—or failing to prevent rebels from shooting near your home—doesn't necessarily mean that one loses noncombatant status. We should never target such people. Moreover, many may not

support Hezbollah or other guerrilla groups. They might not be blameworthy for being trapped within urban warfare. Yet neither are their attackers for unintentionally killing them, especially when they forewarned them to flee from the bombs of their attack and the fate of their people.

Shared Fate, Not Collective Punishment

Of course, a sense of responsibility or guilt doesn't make one deserving of criminal punishment. The Germans committed genocide, but only specific individuals were placed on trial at Nuremberg. The post-World War II trials, as the legal scholar George Fletcher has shown, were a remarkable transition point in international justice. For the first time, individuals, as opposed to nations, were held responsible for crimes against the law of nations. This is notable because atrocities like genocide and other crimes against humanity are committed by many people acting in the aggregate, leaders and citizens together.

There is much to commend in this post-World War II transition. Punishing countries as a whole may lead to widespread resentment and hamper national rehabilitation. This was the lesson learned from German anger following World War I. After World War II, by contrast, Japan and Germany reformed into exemplary countries while their previous leaders were tried, killed, or exiled. Leaders, after all, deserve greater blame given their central role in the chain of command. In any case, later

generations of that nation do not need to bear the punishments for the actions of their predecessors. Children should not be punished for the sins of their fathers. This is what the prophet Ezekiel (18:20) taught: “The person who sins—he alone shall die.” Similarly, noncombatants should not be punished, let alone targeted, for the mistakes of their leaders or compatriots. This is why targeting noncombatants is such a horrible sin, and why the indiscriminate terror of the PLO, Al-Qaeda, and others repulses us.

Yet human nature ensures that children do suffer (or benefit) from the decisions of their parents, just as any political order guarantees that citizens face the repercussions of their leaders’ decisions. This, too, was a teaching of Ezekiel, who prophesied the destruction of Jerusalem’s First Temple in 586 BCE: “Thus says the Lord—Behold, I am against you, and will draw my sword out its sheath, and will cut off from you the righteous and the wicked” (Ezekiel 21:8). Jerusalem’s citizens, sinners and saints alike, will starve from the siege, and then die at the hand of the sword. All share the same fate. Such is the reality of the human experience.

Ezekiel lays much blame for the Israelites’ deserving punishment on the moral failings of their leaders. More directly, however, it was the political failings of their leaders that sealed the fate of all their people. The Judean kings could have heeded the call of the prophet Jeremiah

and surrendered to King Nebuchadnezzar; they decided otherwise, and everyone endured the consequences. The political solidarity of a nation compels them to share the same fate. Even when only soldiers are targeted, noncombatants will die alongside them.

None of this means that one should target enemy noncombatants. The realities and obligations of our shared collective fate, however, dictate that one prioritize one's own soldiers and citizens while worrying less about those who share another people's destiny.

These two primary factors—our obligation to protect our own citizens and our filial duties to our brethren—come together when addressing the dilemma of involuntary human shields. If, at the end of the day, an army won't attack certain legitimate targets because of collateral damage, then the terrorist group will use human shields to prevent their defeat. It's hard to achieve a decisive victory when you cannot—or will not allow yourself—to destroy the enemy. Yes, guided missiles and other advanced technologies allow for greater precise targeting.

Nonetheless, in the fog of war, it is impossible to achieve "immaculate warfare," especially when the defenders are daring you to kill their human shields.

Ultimately, the defeat of these terrorist groups is the primary ethical imperative. This will benefit not only Israel but also the Gazan civilians who suffer longer under their terrorist leaders and the continuous warfare that they

breed. There is a moral cost to not acting decisively, and a strategic cost to forgetting the moral justification for killing in war.

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