DEATH IN GAZA

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Guernica, Hamburg, Gaza

At dawn on Monday 26 April 1937, two Carmelite nuns were given a pair of heavy binoculars and told to scan the sky back and forth ‘through an arc of 180 degrees’. Behind them was a hand bell they were to ring if they saw anything unusual. Franco’s Army of Africa had, by this time, encircled the Basque town of Guernica and virtually all the remaining Republican soldiers were busy watching for troop movements and artillery shells on the ground. They had placed a machinegun on top of the Parliament House and felt confident that any advancing soldiers would be mown down instantly.

But the attack came from the air. The first bomb, emblematic of the coming age, missed its target (a bridge) and landed in the middle of the railway station plaza. Juan Silliaco, a local
fireman, witnessed the first deaths: ‘A group of women and children. They were lifted high into the air, maybe twenty feet or so, and they started to break up.’ In the bombing of Guernica, 1645 people were killed (the numbers are very similar to the number of deaths in Gaza between 27 December 2008 and 18 January 2009; the Global Policy Forum, meanwhile, estimated that 1000 civilians died every day as a result of the war in The Congo between 1998 and 2004).  

Several days later, the Nationalists captured Guernica. The report to Berlin from the German Condor Legion responsible for the bombing, described the attack as ‘the greatest success’.  

The two primary targets had been the main bridge and the armaments factory, the Astra-Unceta. They were, typically, untouched by the bombing. Indeed, as late as the mid-1990s, the Astra-Unceta was still manufacturing and exporting guns abroad. ETA killed the last family owner, Augusto Unceta, in 1977.  

There were other postscripts: the young German lieutenant assigned to monitor the mission from the hills above Guernica married a Basque woman and went on to become the commander in chief of the NATO Air Force in the Baltic. Meanwhile, Hugo Sperrle, the head of the Condor Legion and later a commander of the Luftwaffe over Britain, was tried and acquitted on war crimes charges at Nuremberg. An attempt to have the bombing of Guernica included in the list of charges failed because the attack had not taken place during World War II. But Sperrle, in any event, might have wondered how he could be charged with the crime of bombing civilians from the air in a city that had lost 90 per cent of its buildings in Allied air raids.  

And Guernica was bombed more than once. On 28 March
1975, four bombs exploded in Guernica. Rather then being delivered from the air, these bombs came from young ETA rebels with backpacks seeking to destabilise or avenge the activities of an oppressive regime. Guernica has been the scene of state terror from the air and non-state terror on the ground: a quintessentially modern combination.

When Picasso’s Guernica was housed at the Prado in Madrid, I walked through the rooms leading to the famous painting itself. These rooms contained sketches of the final work. Slowly, sometimes ineffectually, Picasso seemed to be struggling to depict the horrors of aerial bombardment. But the bombing of Guernica itself, as it turned out, was just a sketch of things to come.

On 14 September 1939, Neville Chamberlain, the British prime minister, stood up in the House of Commons and, in a discussion of aerial bombardment, said the following: ‘His Majesty’s Government will never resort to deliberate attack on women and children and other civilians for the purpose of mere terrorism.” He was wrong, on two counts. The RAF had already bombed terrified civilians from the air in colonial wars fought in Iraq, in Darfur, in Egypt and in Afghanistan.

But he was especially wrong about the future. Less than three years later, RAF bombers dropped 2396 tons of bombs on the old German city of Hamburg. These were a mixture of high-explosive bombs and incendiary devices. Hamburg was destroyed and, in one night, over 45,000 people were incinerated. That attack was ingenious and unprecedented. Ingenious because the incendiaries contained phosphorous and petroleum jelly which adhered to the human body and created fires that were impossible to put out with water, along with ordinary
explosives that were timed to go off at random moments after the raid – killing rescue workers or families searching in the rubble. RAF Bomber Command described this raid, Operation Gomorrah, as a ‘complete victory’.

Guernica and Hamburg are different in many ways. But, there is one unexpected difference. After Guernica, the German government insisted that its involvement be kept secret and Franco blamed the Republicans for using dynamite to destroy the town. Seven years later, at Hamburg, the sense of shame had disappeared, Neville Chamberlain’s reluctance seemed quaint, and Bomber Command was revelling in its killing of thousands of German citizens in the most ghastly of circumstances.

Palestinians in Gaza and Israelis in Sderot are familiar with the experience of bombs and shells dropping on them from the sky. Whether these bombs were intended for them or not probably makes little difference to the victims though it makes quite a bit of difference in assessing the legality and morality of bombing.

So, I want to begin by recalling that the subject is the premature death of civilians and non-combatants in military operations. At one level, this could be an abstract examination of the laws of war and the law of war crimes. But these deaths (hence my title) are particular deaths in a particular place. Tonight, then, I want to give a lecture that could be subtitled: ‘How we talk when we talk about Israel and the Palestinians’. In other words, it is about some questions that stand behind us as we debate ‘war crimes’ or ‘terrorism’ in this immediate context. In particular, I want to discuss the following. First, why does this conflict play such a central role in our political culture? Second, what or where is history, what does history do
and what should history be doing when we debate Gaza? Third, what is expected of a lawyer invited to pronounce on the Hamas shelling of southern Israel or the Israeli attack on Gaza? Fourth, how do law, morality and strategy intersect in Gaza?

All of this leads to a brief discussion of bombing, in particular bombing from the air, i.e. the idea of killing large numbers of civilians on the ground in order to achieve a political end. How did we get used to this idea? What does it tell us about a legal regime that it, in some circumstances, permits so much killing? And what does it tell us about a legal regime that it might, on other occasions, not allow such killing when it is the only possible response a state might make to a grave existential threat?

And this, in turn, becomes an argument. The argument, boiled down to its essentials, is that killing civilians from the air is integral to war-making in a way that would have appalled many strategists and politicians in the nineteenth century and before, and that law is implicated in both constraining and facilitating this violence. But this killing is, often, not a strategic policy at all but either a form of communication (though I can't develop this here) or pathology shared by military elites and awestruck citizenries. This might explain why bombing seems so pointless or counterproductive as strategy and insane as a form of political engagement, and yet is so repeatedly employed as a military tactic.

So, let me begin with the first question: why is Israel different?
Israel and the Palestinians: A Special Relationship

I have spent large parts of my adult life examining and discussing controversial, apparently intractable, conflicts. About four years ago, I spent a week training young lawyers from the former Yugoslavia in a town called Palic near the Hungarian border. The idea was to bring together Bosniaks, Serbs and Croats from all around the region to discuss war crimes and international humanitarian law. Needless to say, with the Balkan Wars so fresh in everyone’s mind, I expected things to be contentious, perhaps even vitriolic. In fact, everyone got along well. We touched on potentially electrifying incidents: on Srebrenica, on Sarajevo, on Kosovo. There was disagreement, some of it sharp but all of it expressed in language that was respectful and moderate in tone. I relaxed. Then, on the final day, someone mentioned The Lebanon. The room exploded (to some extent, and for the first time, along ethnic lines). These young Yugoslavs reconciled – perhaps even at ease – in discussing war crimes in Bosnia, became apoplectic when talking about Israel and the Middle East.

And I have experienced this repeatedly. A course at the LSE on crimes against humanity proceeds without incident. Suddenly, we are discussing the West Bank or Adolf Eichmann and the air is thick with colourful language: ‘anti-Semitic’, ‘Israeli apologist’, ‘Jewish Police State’, ‘Arab terrorists’. I should say, too, that these phrases, largely employed in lieu of deep thinking, were rarely if ever used by a generation of Israeli and Palestinian students I had the pleasure of teaching and learning from in London. For them, I suspect, too much was at stake to indulge in these sorts of empty rhetorical gestures.
So, when Professor Gaita asked me to give the opening lecture in this series, my response was an uneasy affirmative. Why speak when, say, Edward Said and Amos Oz have already spoken? And, of course, Israel-Palestine, or Israel-Gaza, is a subject with almost religious power in our society. One can be wrong about Somalia or Aceh or Mexico but with Israel, mistakes are blasphemies not misjudgements. Why then, is Israel different? Why not a public lecture series on Guatemala (a genocide was conducted there in the 1980s without anyone taking much notice) or the Democratic Republic of the Congo (four million dead in six years in war between a state and non-state actor)? What is it that makes everyone a specialist on Israel-Palestine and a generalist on everything else?

We are certainly more attentive to the nuances of this conflict than some others. Something – a colonial reflex, a biblical atavism, a seventy-year-old wound, a form of identification – makes Europeans and Australians approach Israel differently, some holding it to higher standards, others uncritically applauding its every act of violence.

And we also approach the Palestinians differently. For my generation, the PLO, perhaps along with the Basque separatists operating in Guernica, were the first terrorists or the first self-determination movement or both. Theirs was romantic national struggle and atrocious terror at the same time. And they were everywhere but nowhere. A student came to me once, and said that she’d gone home to look for Palestine on the map, after class, but found it wasn’t there.

So, let me continue on a hopeful note. Maybe, Israel-Palestine can teach us that there are nuances, that politics has to be the art of manoeuvring between two apparently
incommensurable political goals. That history counts. That words like ‘terrorism’ (applied by some Israelis to virtually all Palestinian resistance) and ‘genocidal’ (the term used by the Arab League Report on Gaza to describe aspects of the Israeli attack) might not be that useful as shorthand for describing activity in the political realm, and that violence and terror are not naturally occurring acts but human creations capable of being ended by humans.

And this is a plea to relinquish three ways of thinking about Gaza. In the first, people throw up their hands and say, ‘Well, they hate each other. What can you do?’ This is nihilistic, lazy, and inaccurate. The second involves a pre-emptive pessimism: ‘what a disaster. This is a point of no return.’ But the apparent point of no return has been reached so often. I remember back in the late 1980s people saying that it couldn't get worse. After all, Palestinians were throwing stones at the Israel Defense Forces (IDF) in Gaza and the West Bank in 1987. Looking back, we can see that these moments of disaster and no return were actually openings into different political future had different choices been made. And third, most difficult to give up, is the thinking of loyalists who can see only the violence wrought by one side or the other.

History

But there is a history of violence on both sides, of course. I want to now turn to my second topic: the uses of history. We are so used to dismissing history from our public discourse that it seems strange to think about a political circumstance in which
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history is so present. When we talk about Korea, we discuss the development of nuclear weapons but never the fact that the US dropped 386,000 tons of bombs and 32,357 tons of napalm on North Korea during the 1950s. Could that bombing have something to do with North Korean paranoia today? When we talk about The Sudan, we talk about war crimes in Darfur but rarely the fact that oil was first extracted from The Sudan by Chevron in 1978 or that Darfur might be partly a proxy war over oil or that the Sudanese government at one point was receiving one million dollars a day in oil revenues and spending one million a day on arms. Could oil have something to do with the surge in ethnic violence in the Sudan? Could it be that every time we drive to the Mornington Peninsula a little bit of our income goes to support the war in Darfur?

With Israel and the Palestinians, we have a different problem. There is too much history. Or we have national histories that seem blind to the possible co-existence of other national histories. This blindness is acute in the Middle East where it is not uncommon for Arabs and, to a lesser extent, Palestinians, to deny the existence of Israel or Jewish claims to land, and for Israelis to suggest that the Palestinians are not a people at all but just a disparate assortment of refugee Arabs. But when we argue about Gaza, we immediately, to quote from the title of a recent book by Robert Kagan, ‘return to history’. There are, at least, three historical frames that define this conflict.

First, we have the *longue durée* of the Palestinian mandate or the Arab–Israeli Wars or the biblical settlement of Judea and Samaria. Palestinians point to the repeated violence of Israeli dispossessions in the West Bank or their forced removal from Haifa in 1948 or the massacres at Sabra and Chatila as a way of
establishing and re-establishing their national identity. To put Gaza into context, Israelis point to different aspects of the same history: the Arab attack on Jewish settlers in 1948, the abandoned promises of Balfour, the ancient link with the land, the Yom Kippur War, Arafat’s missed opportunities. As a preliminary matter we might want to ask: how important or decisive are these historical events? But there is a further question. Are they even relevant? For Benny Morris, the Israeli historian, there is a historical realism, almost Darwinism, about Palestinian refugees. ‘People move and are moved, they are displaced; now get over it’, seems to be the message. And Palestinians sometimes make the same point about the Holocaust. Yes, it was terrible but the terribleness of it is unrelated to their current predicament. This time it is Israel that is told to ‘get over it’.

Second, there are the intermediate histories: Jenin, The Lebanon, the Oslo Accords and so on. I cannot discuss these here.

Third, there is the immediate historical context. This may or may not, depending on the position advanced, include the presence or absence of a pro-Jewish lobby in Washington, DC, the threat or not of suicide attacks on Tel Aviv, the building of settlements on the West Bank, the continuing lack of recognition of Israel by surrounding Arab states, the military superiority of Israel over its immediate neighbours. And in Gaza, much of this relates to Sharon’s withdrawal from Gaza, the Israeli blockade of Gaza, Hamas shelling of Israel and the tunnelling from Egypt, and the dismal conditions of life and death in Gaza (something acknowledged last year in Cairo by a US President).

It seems to me that these histories did a fair bit of work in legitimising acts of violence that precipitated or constituted the
Gaza War. From both the official Israeli and Palestinian side (and I recognise there are many sides within sides), recent history, in particular, worked as justification and formed part of some legal arguments I want to sketch. For Israel, there was the argument that the war in Gaza was a justified response to the firing of rockets into Israel. Note that this might work as a strategic argument (it might be regarded as an effective way to end the rocket attacks), a moral argument (this is a clear case of self-defence) or a legal argument. Note, too, that this legal argument answers, at best, only one of two legal questions. The decision to use force on Gaza may have been justified as self-defence but this self-defence argument does not serve to justify the conduct of the war.

In the latter case, the principle of distinction gives rise to a requirement that attacks on the enemy not be indiscriminate. In other words, there must be the possibility, at least, of the attackers distinguishing between military and civilian personnel in the attack. Attacks that don’t discriminate – or can’t by their very nature – are illegal.

Note, though, that this does not mean that civilians cannot be killed in war. And here the principle of proportionality comes into play. Providing one is intending in good faith to kill larger numbers of soldiers, it is perfectly lawful to kill children, babies, unarmed men and women in war. Or, to put this in the technical language of law, the military advantage anticipated by any attack must not be outweighed by incidental civilian casualties. Incidental is the key word here. It is not the case that civilian losses must be ‘accidental’; they can be predictable/ anticipated providing they are not excessive in relation to the military advantage expected. So, foreseeable but unintended deaths are acceptable.
It is this alleged lack of proportion, and failure to distinguish civilian from military targets detected in some IDF attacks, that has led many observers to argue that Israel has committed war crimes in Gaza. It seems clear, for example, that the destruction of whole dwellings containing Hamas political leaders and members of the extended family fall foul of the requirement of proportionality.

The Goldstone Report, of course, focused on this aspect of the Operation Cast Lead finding that attacks on the Palestinian Legislative Council building and other civilian structures were grave breaches of Geneva Conventions because they failed to properly distinguish civilian from military targets or failed to establish that attacked buildings were military targets in the first place.5

The Palestinian argument might be similarly structured. The combined effect of the Israeli blockade of Gaza and the building of new Israeli towns, suburbs, roads, and barriers on the West Bank is to destroy the possibilities of Palestinian nationhood and condemn Palestinians to miserable lives. Thus, the rocket attacks are legitimate acts of self-defence. This argument might work at the strategic level (violence is necessary to stop the settlements) or the moral level (the rocket attacks are a reasonable response to the attempted extinguishment of political self-determination) and it might work to permit violence against the Israeli state (as legal self-defence or the use of force in support of a legitimate self-determination claim). But, again, it cannot work to justify this particular type of inherently indiscriminate violence (if Hamas fired precision rockets at, say, IDF military bases the
situation would be quite different). The Palestinian attacks on Israeli villages in the south of Israel fall foul of the laws of war because the weaponry used by Hamas is, by its very nature, incapable of distinguishing between civilians and military personnel.

As a general matter, it may be that the positions of the two parties are sharpened because there is a perception that the very survival of a political community is at stake. In this sense, then, Gaza is different from Iraq or Afghanistan or Vietnam. In none of these cases was the very existence of a state or people in question. This makes the legal questions more charged. Whatever we think of the merits of their claims the Palestinian and Israeli nations feel their future existence to be in doubt.

On the other hand it may also be the case that history can help us identify possible solutions or ask different questions. The problems might be anterior, after all. Could it be that fewer or no rockets would fall on southern Israel if Israel ceased its policy of slicing and dicing the West Bank with settlements and roads? We don’t know because this, unlike war, hasn’t been tried. Is the IDF being placed in the impossible position of fighting desperate and inconclusive wars because of impoverished political judgments made elsewhere?

Equally, might it be the case that Israeli military action would cease or be less brutal if Hamas made a greater effort to recognise the existence of the Israeli state or if suicide bombing was renounced as policy? The Hamas refusal to unequivocally recognise the existence of Israel, in particular, makes every war existential.
Firing rockets into Israel does not seem to be helping Palestinians achieve their political goals. But equally, attacking Gaza is very unlikely to abate the rocket attacks. As usual, political solutions seem more auspicious. During the ceasefire, after all, only eight or so rockets fell on Israeli territory. But, again, bellicose solutions were deemed more attractive and, naturally, the rocket attacks increased in number after the attack.

What Do We Want from Lawyers?

As I offer these views, I am forced to ask what do we want of law and lawyers? And this is my third subject. There are, I imagine, several roles I might play in the context of a series of lectures like this. Let's call these the technician, the adjudicator and the humanitarian. As a technician of international law, I might be required, expected or mandated to offer expertise on the question of killing and bombing, on the meaning of proportionality or permissible death. These questions tend to broaden out, too, into larger jurisdictional puzzles about law and war. What is the relevant legal regime to the applied in this case? Is this an international armed conflict, an occupation or a non-international armed conflict? Does it matter that Israel is not a signatory to protocols or that Hamas isn’t a state (the answer, by the way, is that it doesn’t matter as much as people seem to think). These questions are important but this expert role can be a discomfiting one when the moral and political issues are so complex.

Perhaps, then, from the lawyer, we expect not technique but sober adjudication. There are good arguments on both
sides (shells are fired indiscriminately on civilian populations in Sderot; Gaza has been subject to a violent air and ground assault) and bad arguments on both sides (Israel is a faultless beacon of democracy and decency; Israel is a rapacious and illegal Zionist entity). A legal judgement is required then, and lawyers or judges are ideally positioned to offer such judgements. Amidst a swirl of politicised and moralistic interventions and rhetorical engagements, the lawyer rises to her feet and provides a reckoning or final accounting. We cut our way through a thicket of self-interest, special pleading and sentimentalism to reach a decision. But this doesn’t sound right either. As Judith Shklar reminded us years ago, law is simply a choice we make about how to argue; it is the translation of our political differences into the language of law. In any event, law is structured around the very conflicts it is intended to provide a resolution to. The law, its accommodations both seductive and dangerous, seems to offer something for everyone. And, in any event, there may be compelling strategic or humanitarian reasons to disobey the law.

Finally, a lawyer might be invited as the voice of humanitarianism against brutality, decency against barbarism and the people against the state: speaking law to power. She arrives with a language of war crimes, human rights violations and crimes against humanity to be applied to the relevant conflict. The intelligent layperson is dimly aware that there is something wrong with killing children, the lawyer can then arrive with a repertoire of sonorous phrases and alchemise instinct into jurisprudence. How much more satisfying it is to describe something as a war crime than to simply declare it wrong or horrifying. The latter is mere melodrama or opinion, the former grave judgement.
But there is another sort of lawyering that is concerned to ground itself in the context and not fly above it. One that recognises that the ethical questions around the Israeli attack might work out quite differently from the legal ones.

My view on the mixed ethical-legal questions might go something like this (though evidential problems hover above these pronouncements): the political strategy of attacking Gaza was developed with either insufficient regard or a disregard (possibly reckless) for the consequences of that attack on Palestinian civilians in a heavily urbanised area. Some tactics of the IDF, it seems clear, breached the laws of war in Gaza and there may have been egregious breaches of international criminal law (e.g. individual acts of wilful killing by IDF soldiers) though the latter would have to be proved in a court of law.

On the other hand, and here I take issue with the recent Arab League report on Gaza, I am deeply uncomfortable with the idea that the IDF (or individual soldiers) committed genocide and, from an ethical perspective I would not be inclined to characterise IDF tactics as utterly callous or evil. The fact that the IDF issued warnings, entered into communication with the UN over targeting and took some care in evacuating civilians does not comport with a view of this operation as morally base and uniformly criminal. This, if you like, was not Dresden 1944 or London 1941 or the Democratic Republic of the Congo or Guatemala where the point was to kill as many civilians as possible.

These legal-ethical questions could be viewed from an ends and means perspective. Is it permissible to do something morally
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atrocious or legally wrongful in order to produce overall good results. This is a clash between absolutist and utilitarian forms of legal and moral reasoning, as Thomas Nagel reminds us. The law of war is a negotiation around this. It is absolutist in some respects. Intentional torture or rape is never acceptable. On the other hand, ends dominate discussions of killing from the air. If the end in view is the destruction of military capacity, then unintended but foreseeable ‘torture’ is permitted. The knowledge that a bombing raid one has planned will surely result in a child being doused in gasoline jelly and burned alive (tortured to death, one might say) does not render the raid unlawful (or, by many lights, immoral).

And in these cases, the language of law (proportion, necessity) is supplemented by the language of regret. So, that one way to compare a terrorist with a virtuous warrior is that the terrorist kills children with glee and a virtuous warrior does so with regret. How does it feel, we might ask, when a daughter dies a regrettable death?

What I have tried to offer here is a way of approaching law as a field of a language for thinking through questions of strategy, history and popular instinct around war, and in particular, the war in Gaza. I want to end with an examination of the iron law of war; namely that there has been a shift in risk from military personnel to civilians in wars fought since the Great War. This shift is a precise reversal of the trajectory of international humanitarian law, which has been dedicated in the same century, to affirming and reinforcing the immunity of civilians from direct attack in war.
Wars are fought, often, against the citizenry of the enemy. This is either because in radically asymmetrical conditions, military targets are too well protected and civilians become soft targets, or because, in the same conditions, the military capacity of weaker forces is interspersed or hidden in the midst of civilian populations. Thus, Israelis kill Palestinian civilians because this is the only way to attack Palestinian fighters, and Palestinians kill Israeli civilians because this is the only way to attack the Israeli state. And in each case, the attacker is engaging in a form of communication.

The Iron Law of War

A conventional account of law and war in the twentieth century might go something like this. There have been frequent, bloody conflicts throughout the preceding century. The horrors have multiplied in number, deepened in intensity. But the news is not all bad because the international legal order has advanced at the same time. There are highly elaborated legal norms available for application to every conceivable war or atrocity. There are international criminal courts indicting heads of state on charges of having committed crimes against humanity. There are treaties outlawing torture, apartheid, terrorism and so on, and there lawyers stand next to soldiers and planners as they make targeting decisions and fire smart weapons at military targets.

A less conventional account might go something like this: law has participated in the problem of atrocity and civilian death.

My conclusion, based on a reading of literature on bombing in the twentieth and twenty-first century, is that there has been
a war going on since September 1909. It is a war fought by various military elites against civilians all over the world. It has been largely a war fought by technologically superior Western forces against groups regarded as primitive or alien or uncivilised. But this has by no means been exclusively the case. The Allied bombing of Germany and Japan in World War II and the German attacks on London and Coventry are also part of this picture. And, of course, from a legal perspective, no one was prosecuted at Nuremberg for carpet or area bombing civilians. It is also the case that, on the whole, citizens of Western states have been blithe about this war.

Again, there are exceptions. Over 50 per cent of British citizens were against the bombing of German population centres during World War II (the proportion against was higher in Coventry). And there have been protests against almost all of these operations. In Israel, there are many who have protested, argued against and condemned the killing of civilians in Lebanon and in Gaza over the years. Just as there are Palestinians who condemn suicide and rocket attacks.

On the whole though, we have become collectively disengaged from the aerial wars fought on our behalf and our unprecedented capacity to wreak havoc with our weaponry. After all the tonnage of bombs dropped on people from Laos to Iraq, we continue to be amazed that anyone would want to hurt us.

Guernica may be iconic, then, but it is not representative. Indeed, we now have trouble thinking of much aerial bombing as illegal or criminal. The terrible irony of Picasso’s image is that it shocked the world into making aerial bombardment lawful. By the end of World War II, British, American
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and German bombers had inflicted a thousand Guernicas on civilians.

I say this to explain two forms of indignation: the indignation of Palestinians whose own acts of terror are condemned as if this history did not exist. And the indignation of Israelis who wonder why their ground and air assaults are treated as if they invented the idea of a war on a mixed civilian-military population.

Finally, it may be that law and language have contributed to this. Not only is the pilot distanced from his immolated victims, not only are we disengaged from the political and material consequences of our acts, but we also have a whole language of exculpation. Some of this has been discredited over the past few years. Can anyone say 'collateral damage' with a straight face any more? But some of it has not. What if the laws of war simply allow too much?

We can say this much. No politician could stand up today, as Neville Chamberlain did seventy years ago and declare that bombing civilians from the air per se is illegal. He couldn't do so because (a) it isn't and (b) bombing civilians from the air is standard military policy today. The incidental and proportionate killing of civilians is lawful.

Hamas and the IDF are engaged in wars in which it is safer, in some circumstances, to be a soldier than a civilian. The IDF has killed more civilians by far than have Palestinian groups over the years. On the other hand, it is probably true that, proportionately, Israeli killings have been more plausibly lawful than their Palestinian equivalents (though there have been many, many unlawful killings).

Ultimately, Palestinian and Israeli citizens are the victims of
a war in which there is a horrible emerging symmetry. Anterior political misjudgements, strategic folly and the pathology of killing in contemporary conflict have condemned both sides to war-making that is often illegal and yet also appears to each side as politically and morally necessary.