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LECTURES

The Asymmetry Trap

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I am very grateful for this chance to talk to you today. During these last months, I have been talking mostly with confused, anxious diaspora Jews. I have had a hard time working on this lecture when I will be speaking to people who know a lot more than I do about this war. What I will say is the product of someone worrying from a distance, aiming at cool-headed analysis, but probably not getting there. As you know, just-war theory, not international law, is my guide: morality, not legality. So how does the theory work in this strange war? What does it require of the combatants?

I want to talk today about the 'asymmetry trap', a moral and political trap, which chiefly involves issues of *jus in bello*, of justice in the conduct of war. But let me begin with a brief discussion of asymmetric warfare more generally. Consider what has become the most common kind of war in the last 75 years; Russia/Ukraine is the big exception, and there have been a few others; still, from the British in Malaya to the Americans in Afghanistan, we see asymmetry again and again: war between the high-tech army of a sovereign state and the low-tech (or lower tech – an important qualification) militia of an insurgent group.

The common features of these wars are, first, the insurgents fight from civilian cover and, second, the high-tech army does most of the killing – and then loses or fails to win the war, which turns out to be a political as well as a military conflict.

You know the obvious examples:

- the French in Algeria: the French lost;
- the Americans in Vietnam and Afghanistan: we clearly lost; and in Iraq: we didn't win;
- the Israelis in Lebanon and, a number of times before October 7, in Gaza: too many cases of not winning.

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So I need to look closely at each of the key features of asymmetry: first, 'the insurgents fight from civilian cover'. The civilians are sometimes cooperative, helping to provide the cover, which may, or maybe not, turn them into combatants. But mostly the civilians are coerced; even if they are sympathetic to the insurgency, they would much rather that the insurgents not fight from their village or their urban neighbourhood. In Vietnam, the Viet Cong were brutal to villagers who opposed them, but in the end they won the battle for 'hearts and minds' – probably because of the character of the Saigon government (incompetent and corrupt) and the conduct of its army (brutal) and of the American army (not much less brutal). Hamas certainly did not have anything like consent when it embedded every part of its military organisation in the heart of Gaza's cities. The Gaza Strip is small and densely populated, but that cannot justify storing rockets in schools and mosques, or firing missiles from school yards and hospital parking lots. These are violations of *jus in bello*, crimes I think also in international law – they don't turn civilians into combatants, but they do set up the asymmetry trap.

Now let's look at the second feature of asymmetry: 'the high-tech army does most of the killing' – the war in Gaza is the obvious and necessary example.

I am not going to say much about October 7: it was a military operation designed, with exceptional cruelty (and the cruelty was part of the design), to start a war – or, more specifically, to provoke a very strong response, which it did. In Israel, there were calls for revenge, which would certainly make for a bad war. I like the biblical line: 'Vengeance is mine, saith the Lord.' That seems to me morally definitive, whether or not you believe in the Lord: revenge is not for human beings, certainly not in war; it invites violations of the moral rules. So what is the right military response?

I take it for granted that a military response was necessary; I cannot picture what it would mean, after October 7, to turn the other cheek or how it could possibly make sense to propose, as some people did, an immediate ceasefire and a negotiation with Hamas. From Israel's side, the war was a war of self-defence, the classic just war. Maybe it has also become a holy war, a war of religious zealots, Islamists and messianic Zionists, most clearly perhaps on the West Bank. Thanks to the Spanish Dominicans in the sixteenth and early seventeenth centuries, just war theory rules out religious wars: a war for religious purposes, wrote Francisco de Vitoria, is unjust. So I will focus on Israel's just war; not whether to fight but how to fight is the question we need to address.

But wait. Suppose you knew the number of civilians who would die in the coming war. Might that number be disproportionate to the value of defeating Hamas, excessive by just-war standards, making it wrong to fight? I ask that question only to suggest the uselessness of proportionality arguments. I will come back to this.

Now we have to talk explicitly about the asymmetry trap: it isn't possible to fight an embedded insurgency without killing innocent people – and probably a lot of innocent people. And, as an American colonel said in Afghanistan in 2010, '[t]he more people we kill the more certain it is that we will lose the war'. That is the trap. Now, what the American Colonel said is more obviously true when you are fighting in a foreign country, hoping to win 'hearts and minds' – in that case, killing the people whose hearts and minds you hope to win is definitely a losing strategy. Vietnam

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is the classic example. But asymmetric war is always a political struggle, if not for local then for global hearts and minds. Even in places like Gaza, in the past and again today, Israel is not fighting for local hearts and minds. For months now, it has obviously been losing the battle for global hearts and minds. However the military war is going/has gone, Israel is losing the political war. So how to fight?

Before I address that question, this isn't a standard asymmetric war, for Hamas is not only embedded in the cities above; it is also entrenched in a city below, a remarkably extensive and fortified city. I don't believe there has ever been a war – I've been searching through military history – fought against an underground city. Insurgents throughout history have fought from caves and even from tunnels connecting caves, as archaeologists have recently told us Bar Kochba fought against the Romans many, many centuries ago. In modern times, soldiers and civilians have sheltered in dugouts, cellars and subways. The Viet Cong back in the 1960s created a network of tunnels, chiefly to move its fighters around, sometimes to hide them or rest them, but these were primitive compared to what Hamas has created; they were without electricity or effective ventilation. The American 'tunnel rats', as they were called, who went down into the tunnels, had to be short and very skinny. By contrast, the Hamas tunnels can accommodate trucks and include extensive command and communication centres as well as comfortable apartments for the insurgency's leaders. These insurgents can build weapons, store weapons, shelter thousands of fighters and hold hostages, deep underground.

All this affects the way in which the war has to be fought – and makes my previous statement that the war cannot be fought without killing civilians much more ominous. Those 2,000-pound bombs, which the Americans supplied and the Israelis used, the use of which was so much criticised, those bombs were aimed at the tunnels, designed to explode underground, but they did terrible damage above ground (and not enough damage to the tunnels). And it is partly because of the city below that urban areas above have had to be fought for again and again, and civilians killed again and again, as Hamas fighters, hiding below, emerged into neighbourhoods that the IDF thought it had cleared. So, in these circumstances, the asymmetry trap is harder to deal with, and much more deadly.

Again, how to fight? Minimise civilian casualties, of course, and I do mean to try to say something coherent about how to do that on the battlefield – but first a few words about sieges, again because of Gaza. Sieges conventionally and historically are a way of fighting without fighting. You surround a city, cut off the supplies, and sit and wait. That much is accepted in international law, I believe. The judges in Nuremberg in 1945 said that you can also shoot at people trying to leave, so as to keep the pressure on the food supply – I doubt that that is still allowed in international law; I think it was always against the moral understandings of *jus in bello*. Anyway, the city's inhabitants get hungry and fearful; they bring pressure on the city's rulers to surrender, and the rulers surrender – again and again in the history of war. But that only works if there is a moral and political connection between the inhabitants of the city and the rulers of the city. If the rulers are religious zealots, as in Jerusalem in the year 70, there will not be a surrender. Similarly, in Gaza today, where the zealots are in control, there is no moral connection between the people and the rulers – Hamas has no interest in the well-being of the people it rules; indeed, it is more interested in their martyrdom.

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That is why the 'complete siege' proclaimed by angry Israeli officials immediately after October 7 was a military mistake and a moral wrong. It was never going to produce a Hamas surrender, and I find it hard to believe that Israeli officials expected it to produce a Hamas surrender given our understanding of Hamas. So I'm not sure this could be called an example of 'weaponising famine', because you use weapons for a purpose and there was no purpose in the complete siege; except that the civilian toll in Gaza brought with it a political and a moral toll for Israel.

But I doubt the morality of sieges generally – as I argued long ago – having been taught the maxim of the Jewish philosopher Maimonides, who wrote that in siege warfare you can only surround a city on three sides, so as to allow people to leave, which means that you cannot surround a city. You have to let people escape. Now the IDF organised the flight of civilians from the immediate battleground, first in the North, and now apparently in the South – but not from the besieged city, which was/is the whole of Gaza. Hence, the trapped refugees – the men, women and children – huddled in half-destroyed buildings, in tens of thousands of tents. Israel was, I believe, obligated to provide essential services for these people – people fleeing south on Israel's instruction and now fleeing again on Israel's instruction – and to make sure that humanitarian agencies on the ground were able to help, and that hospitals throughout the Strip could continue to function even as Hamas fighters were forced out of them or out of the tunnels underneath them. It took too long for Israel to acknowledge the suffering that the 'siege' was causing – that is, it took too long to acknowledge the asymmetry trap. Some say it took so long because Israelis generally, after October 7, were indifferent to suffering in Gaza, concerned only with their own grief. Maybe. But I suspect there were also failures of strategic vision.

This brings me to the air and ground war: again, how do you fight an enemy deeply embedded in the civilian population? Carefully, very carefully. The key charges against Israeli warmaking this time around are, first, that the bombing wasn't careful – based too much, in the first months of the war, on outdated intelligence, without sufficient information coming from people on the ground; and, second, that the standards applied in selecting targets were relaxed compared to the legal and moral standards that were enforced in earlier campaigns in Gaza and Lebanon. It is interesting, I think, that the people making these comparisons did not have a good word to say about the earlier standards at the time. In any case, the argument does suggest that there are still standards being applied – there is nothing like carpet bombing going on.

Sitting in New York, I can't judge those charges, though a lot of people around me are rushing to judgement. Watching the results of the bombing campaigns on American television, as we all did and do, it certainly looked as if the charges or something like them were right. But those reports came from within Gaza, from journalists probably sympathetic to Hamas or subject to Hamas censorship. We saw rubble, but were never told – and I watch American television news every night – we were never told what was, or had been, under the rubble, which might justify or at least explain the bombing.

Let me turn now to another, related, issue. Fighting on the ground is less destructive than bombing from the air, but it involves greater risks for soldiers; and, similarly, collecting intelligence for the air war on the ground by spies, or scouts, or special forces also involves great risks – and this poses a critical moral question for

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warmaking in general but especially for asymmetric warfare. How much risk can we ask 'our' soldiers, whatever entity 'our' refers to, to take in order to reduce the risks that they are imposing on enemy civilians – civilians who are being used as cover for the enemy's military operations? That question is hotly debated in the US army (especially after General McCrystal issued his rules of engagement in Afghanistan in 2010, I think it was, and many American soldiers complained that the rules made fighting too dangerous, though they also reduced the number of civilians we were killing in Afghanistan) and the question is also debated in Israel, in the IDF.

I have argued, with an Israeli colleague – in *Ha'aretz* actually and then later in the *New York Review of Books* – that some risk must be accepted; it is morally required that soldiers accept some risk to minimise the risks to the civilian population, but we weren't able to say how much risk – 25? 57? We were criticised by some academic colleagues in Israel, who argued that IDF soldiers were simply conscripted civilians, whose lives did not have, could not have, diminished value, to be put at risk for the sake of other civilians. But we were also supported, I'm glad to say, by professional IDF officers (as I have been supported in these arguments with reference to the United States by professionals in the American army).

Now, assume that some risk is accepted. I have talked with a small number of soldiers who fought in Gaza this time around, and who insist that risks were taken, that they took risks to avoid killing civilians – but they also said that a lot depended on the officer in charge on the ground, and that different units fought differently: some better, some less well (which is what I have also heard about American soldiers in Afghanistan).

Assume that risks are accepted. The war is fought carefully and, still, many civilians are killed. 'The high-tech army does most of the killing'. When is 'most' morally too much? The idea of proportionality is commonly invoked here; the number of civilians killed in Gaza was called disproportionate early on – virtually on the first day of the bombing – and it has been called disproportionate continually since, in order to condemn the conduct of the war in *jus in bello* terms and moral terms, and I suppose also in legal terms. I have been sceptical of proportionality arguments since I started writing about war in the 1970s. There is some kind of semi-mathematical claim here: the number killed must be proportional to the value of the military objective. But what is the value of the military objective? The value is too easily inflated, as it was by American apologists for the war in Vietnam in the 1960s: after all, capturing this hill or destroying this building is not important in itself but rather for the contribution it makes to winning the battle or the campaign, and the battle or campaign may be crucial for winning the war, and the war may be crucial for the defeat of a brutal, unprovoked aggression. So how do you measure proportionality? It is too easy to manipulate the numbers. (Consider this calculation: it is very important to destroy the tunnels, but we really don't know much about the tunnels. So we use big bombs, hoping that they will have significant effects below ground, knowing that they will also kill people above ground, figuring ... Well, how, really, do you figure?)

I prefer to talk about responsibility – and that brings me back to the asymmetry trap. So, I'll say again: by embedding itself in the civilian population, Hamas has made it impossible for Israel to fight without killing civilians. Assuming that Israel is right to fight, we have to hold Hamas responsible for all deaths that are unavoidable in the war that Hamas has designed. And Israel is responsible for deaths that

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it could have, should have, avoided in the war that Hamas designed. The only way that we can assess this latter responsibility is by looking closely at the war that Israel has fought/is fighting. Repeating things I have already said, Israel's obligations are threefold: first, to aim carefully at military targets, doing whatever can be done to minimise damage to the civilian cover, to civilians in general; second, to accept risks for soldiers on the ground (though I can't say what risks), again to minimise civilian casualties; and, third, to make sure that the resources necessary for the survival of displaced civilians are available – from Israel itself as well as from the humanitarian agencies of global civil society. I want to say, I wish I were able to say with certainty that Israel has done better, if not well enough – nobody does well enough – on the first two of these obligations, but I also have to say not well enough on the last one (until American pressure produced a change of policy). But, again, I am not close enough to attempt anything more than very provisional judgements. In any case, what we know is that the IDF has not done well enough and possibly could not have done well enough to avoid global censure – too many Gazans dead or homeless, too many shattered neighbourhoods, too much rubble. The TV videos are hard to watch.

And I haven't said anything about the 'detention' camps where, according to the reports I have seen, captured Gazan men and women are treated cruelly, not at all like prisoners of war – I am not sure what their status is under international law; I would argue that they are effectively, morally, POWs and certainly they are men with rights. And I haven't said enough, except a few words at the beginning, about what is happening on the West Bank. The settler thugs are not soldiers and you don't need just-war theory to condemn what they are doing – though I think just-war theory does condemn what they are doing since they are doing it, to some degree, with police complicity under the cover that war provides. This has nothing to do with the asymmetry trap – it is ordinary criminality, religiously motivated.

Let me end with a small-scale example of the trap, and a few questions. Hamas has fired rockets into Israel, according to reports I've seen, from the tent city that the UN established near the border with Egypt – a safe zone proclaimed by Israel months ago. And, according to one report from Gaza, Israel fired back, aiming at the launching site but killing civilians who were supposed to be safe. For that Israel was sharply criticised – and maybe the criticism is right: better not to respond in such a case; better to keep the safe zone safe. But the critical story has to begin with Hamas: with Hamas firing rockets from among civilians, deliberately putting them at risk. Now, of course, Hamas benefits from the civilians who are killed when Israel responds. The full story is rarely told; at least, I don't hear it told here in the United States.

I have been asking: how do you fight an enemy embedded in the civilian population? But maybe there's another question, a harder question. Is it possible to win against such an enemy? I mean, to win morally? The Sri Lanken army proved that you can win immorally: they defeated the Tamil insurgency by destroying its civilian cover, killing very large numbers of civilians – far more than Israel in Gaza. The world wasn't watching – or didn't care. Israel has moral commitments, rules of engagement, and the world is always watching. Can *jus in bello* make it impossible to fight this war? That cannot be right. The moral rules cannot make it morally wrong to fight a just war. But the asymmetry trap does put a heavy burden on the high-tech army, a burden that must be accepted – but the watching public also needs to

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recognise and understand the asymmetry trap. Moral philosophers, legal scholars, political theorists, like you and me, we can help a little by explaining to anyone who will listen, by seizing every opportunity to describe the character of the asymmetry trap, and to insist on the right distribution of responsibility for civilian suffering – full accountability for designing the trap as well as for fighting the war. Thank you.

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