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People get killed in wars. Soldiers get killed, as do civilians—not only when they are deliberately targeted but also when they are trapped in a combat zone or happen to be in the immediate vicinity of a bunker or munitions factory under attack, or when they are used as cover by nonstate militants. They are bystanders who are simply standing too close. We mourn the soldiers who die in battle, but we are especially horrified by civilian deaths. That horror seems universal; we find it expressed in all the major civilizations and in almost every religious tradition. Catholic just war theory, which categorically rules out any deliberate attack on noncombatants, is sufficiently well-known. Less familiar but entirely similar are the Jewish and Muslim traditions. One of the clearest Jewish statements comes from the first-century Alexandrian philosopher Philo:

> When [the Jewish nation] takes up arms, it distinguishes between those whose life is one of hostility and the reverse. For to breathe slaughter against all, even those who have done very little or nothing amiss, shows what I should call a savage and brutal soul.[1]

A similar, and very early, Muslim tradition goes something like this:

> Umar wrote to the commanders to fight in the way of Allah and to fight only those who fight against them, and not to kill women or minors, nor to kill those who do not use a razor.[2]

Today, we call civilians "innocent" because they are not involved in the fighting or because they have, as Philo stated, "done very little" for the war effort. Even though they may be fervent supporters of the war, it is the doing that counts when we think about innocence. That word is especially applicable to the children in a particular population, who have done nothing at all. Children have an obvious, palpable, insurmountable innocence. The easiest way to impress upon society the awfulness of war is to show pictures of the children killed in its course.

Sometimes these pictures are used to persuade us to condemn a particular conflict, one that is currently under way—one that should be stopped, right now, because these children have been killed and many more like them remain at risk. Everyone has seen pictures like that, designed to influence the viewer. They were plentiful during the 2006 Lebanon war and more recently during the conflict in Gaza. Curiously, we are rarely shown pictures of dead or wounded children from Afghanistan, though the war against the Taliban is not entirely different from the wars against Hezbollah and Hamas; again, civilians have been killed. Those pictures make the best possible argument for stopping the fighting; nothing can be more persuasive.

Arguing Against Conflict

The difficulty with an argument against conflict is that it can be made against any conflict, whether it is a war of aggression or a war of self-defense, whether it is fought to conquer another people or to rescue them from conquest, whether its purpose is to defend an empire or stop a massacre. Children die in all these wars. The only exceptions are wars that consist entirely of tank battles in the remote desert or naval battles on the high seas, but there are not many conflicts like that. And some of the wars that are not as limited and precise as those are "just wars," which means that one side is fighting rightfully. From a moral standpoint, perhaps, this is a war that should be fought—because of the character of the enemy, whose success is a prospect more fearful than war itself. What if stopping the conflict now means victory for a conquering army; or the triumph of a government bent on mass murder; or the brutal repression of religious minorities; or the survival-in-strength of a militarist or terrorist force that fully intends to renew the fighting? Should we still be persuaded by the pictures?

It is because of its terrible cost in innocent life that war is abhorrent. That is why we are required to do what we can to avoid it, to find some other means of dealing with whatever it is that some military leader or politician tells us only war can resolve. We need to do what we can to find another way, but not every action that is possible is acceptable; we can always surrender, or appease the enemy, or postpone the fighting. One can imagine good arguments for appeasement and postponement; sometimes, perhaps, those may be the right thing to do. But sometimes, certainly, they are not. Sometimes, to put the issue exactly, doing those things will produce more dead children. Often, it is morally necessary to fight; and then it may also be necessary, this time in the sense of "inevitable," that civilians will die, and those who are fighting on the side of right will do some of the killing.

For very good reasons, this prospect is difficult to accept. There was too much killing in the twentieth century. One could learn any number of lessons from this fact, but the dominant lesson that has been learned is that we should avoid killing altogether, if there is any way to do that. Following World War I, a kind of pacifism, the pacifism of exhaustion and fear, spread throughout Western Europe, and since World War II a fierce aversion to war—indeed, to the use of any type of force—has played a prominent role in the politics of most European nations. In the United States, media coverage of recent conflicts brought their savagery into brutally clear focus. Even Hollywood, which once only provided movies about heroic soldiers fighting in sanitized battles, has turned to stark realism and now forces us to view the actual, unbearable carnage of war. We have learned to be skeptical of military glory.

A few years ago, I wrote an article about the "triumph" of just war theory—for when we argue about aggression, military intervention, or the conduct of battle, we regularly use the language of just war.[3] Critics insisted that this triumph did nothing more than provide new ways to justify war, and in the case of some government officials, that is exactly what it did. But the theory is more often used as it should be, to call for military action in a particular case and to reject military action in other cases. Many clerics, journalists, and professors, however, have invented a wholly different interpretation and use, making the theory more and more stringent, particularly with regard to civilian deaths. In fact, they have reinterpreted it to a point where it is pretty much impossible to find a war or conflict that can be justified. Historically, just war theory was meant to be an alternative to Christian pacifism; now, for some of its advocates, it is pacifism's functional equivalent—a kind of cover for people who are not prepared to admit that there are no wars they will support.

This aversion to war is especially strong on the left, which is why it is stronger in Europe than in the United States. That has not always been the case; leftist revolutionaries once turned all-too-easily into crusading warriors. The French gave us the first example of this phenomenon in the years following 1789; the Red Army marching on Warsaw in 1919 is perhaps the classic twentieth-century case. But traditional leftism is peace-loving, hostile not only to war but also to any preparation for war. It was in part leftist politics that determined the reluctance of France, England, and other European countries to rearm in the face of the Nazi threat. That last point is not much to the credit of the left, but the general aversion to war is. It is a good thing to stand against militarism; it is a good thing not to be eager to fight—so long as one understands that sometimes it is necessary to fight or to be prepared to fight, as it was in the 1930s.

Assessing Proportionality

If it is necessary to fight, then it is necessary to kill—which should be the most difficult act. How should we think about killing in war, once we accept its possible necessity? During the 2006 war in Lebanon, as well as in Afghanistan and Gaza, critical arguments regarding killing were primarily based on the concept of proportionality. Proportionality is a common idea that we know best from domestic law. It appears, for example, in the laws relating to intruders and thieves. It plays a critical role in our concept of self-defense: You cannot kill an intruder who obviously poses no threat to your own life. The response to domestic aggression needs to be proportionate to the danger. This is certainly not a doctrine that is easily applied in the actual circumstances of a hostile encounter. The distinction made in the Bible, in the book of Exodus, between daytime and nighttime intrusions is meant to provide a rule of thumb: Because darkness is more dangerous than light, there is no bloodguilt for killing a thief who comes in the night.[4] But this is obviously not a reliable guide. The doctrine is even harder to apply in the heat of battle, where the circumstances are often dark and where the proportionality doctrine extends, as it does not in the domestic case, to collateral damage. We can kill the thief only if he is immediately threatening; we can kill enemy soldiers even if they are far from the battlefield. We cannot kill the thief if doing so would put innocent bystanders at risk, but we can do exactly that in the case of enemy soldiers (this is the claim of just war theory) so long as the number of bystanders killed or injured is proportional—but proportional to what?

All the difficulties and dilemmas that arise once we cross the line into the world of war are evident here. Proportionality in wartime can be,

and for the most part has been, a darkly permissive principle. For example, when we are told that the number of civilian deaths (possibly a very high number) is "not disproportionate to" the value of military victory. But more recent uses of this doctrine have exactly the opposite purpose—to insist that this number of civilian deaths (possibly a very low number) is dispropor-tionate to any possible military achievement.

At the end of the first week of the Lebanon war, Kofi Annan, then-Secretary-General of the United Nations (UN), made a curious and reveal-ing statement to the UN Security Council.[5] He began by carefully saying that Israel had a right to defend itself; it had, after all, been attacked, and so it was fighting a just war. But he insisted that its response had been "disproportionate" and "excessive," so Israel was not fighting justly. An-nan never provided a measure for proportionality or gave any indication of what number of dead civilians would not have been disproportionate and excessive—presumably the number in his mind was very low. Then, ten days later, he acknowledged that Hezbollah was firing rockets into northern Israel "from positions apparently located in the midst of the civilian popula-tion."[6] After several more days had passed, he dropped the "apparently." So Hezbollah was itself putting large numbers of civilians at risk. Did Annan consider those numbers to be disproportionate and excessive? He did not say. His politic position—that Israel had a right to fight, but only within the limits of an undefined proportionality—demonstrates the dilemma of justice in war very clearly, but not very helpfully. What is the appropriate measure? And once we know the answer to that question, how many deaths would it allow? What number of civilian deaths is "not disproportionate to" the value of destroying, say, a Hezbollah base in Lebanon, a Taliban base in Afghanistan, or a Hamas missile launching site? These are frightening questions, and the people who talk about proportionality (mostly they talk about disproportionality) rarely make any serious attempt to answer them. I will not pretend that I know the answers. There probably is no precise an-swer. Still, we have to worry about the questions.

According to the doctrine of reprisals, as it appears in just war the-ory and international law—this may be what Secretary-General Annan was thinking of when he first spoke—the measure is precise. In the case of the Hezbollah raid on Israeli territory, eight Israeli soldiers were killed and two captured, so the proper response should have been to kill eight Hezbol-lah militants and capture two; any greater number would seem to violate the proportionality rule. Then the captives could have been exchanged, two for two (which is the way exchanges should be conducted, given the equal worth of human beings), and the dead buried. That would have been the end

of the story. In the future, Hezbollah would be deterred by the knowledge that its violence would be exactly matched by the Israelis. But the possibility remains that it might not be deterred at all. The political leadership and the military organization responsible for the original raid would still be intact, essentially undamaged, ready to strike again, perhaps with even greater force—and the strictly symmetrical response might be of little deterrent value. Perhaps the correct measure for a proportionality argument should be the value of destroying or significantly reducing the enemy's capacity to repeat or expand the attacks. But once we leave behind the moral arithmetic of eight and two, how do we calculate, or conjure up, the correct numbers?

All these computations leave out of the equation the rocket barrage on Galilee that preceded the original raid in 2006 and the arsenal of rocketry that Hezbollah had accumulated, which had no clear purpose or place in internal Lebanese politics. Might the appropriate measure be the value of reducing the arsenal—or, in the Gaza case, of preventing the smuggling of the next generation of rockets? And since these rockets are intended for use against Israeli cities and population centers, as demonstrated by previous firings, the measure might be the value of protecting large numbers of civilians against future indiscriminate attacks. What number of civilian deaths in Lebanon (or Gaza) would the proportionality argument then permit? Too many, indeed, much too many, which should lead us to worry about the basic structure of the argument. If we accept the proposition that sometimes it is necessary to fight, then one must also accept the proposition that sometimes the stakes are high (else there would be no necessity), and then proportionality would not serve as an effective limit. If one denies that the stakes are high, then proportionality is very effective; it makes the fighting pretty much impossible. There might be some middle-ground between those two contending positions, but it would be very hard to determine.

The proportionality argument works better on a smaller scale, in more local settings, where the issue is not the value of winning the war but the value of hitting a particular target. For example, there is a Hamas rocket launcher and a team of men operating it on a city street; they have just fired a rocket at Ashkelon (in Israeli territory). They can, in fact, be targeted and hit by an Israeli missile battery conducting counterfire, but the attack would endanger a number of nearby civilians. What number of civilians is "not disproportionate to" the military value of destroying the launcher and its operatives? In cases like this, there must be limits: A hundred civilian deaths seem clearly excessive; so do 50 and 30. But what if the response would only result in 15, 13, or five civilian deaths? What about 20 civilians at risk with a probability of 30 percent that they will be killed? How about a probability of

20 or ten percent? Once again, we find these questions frightening; one can only imagine hard answers to such questions, but will they be confident answers? It seems to me there are other questions that must be answered first.

Responsibility First

This leads us to the crux of the argument: In the context of the judgment of justice in warfare, responsibility comes before proportionality. When we know who the responsible agents are and what their responsibilities may be, the answers to questions about proportionality become less difficult—and sometimes, perhaps, the questions need not be answered at all.

I will illustrate this argument with an example from World War II and then return to the contemporary cases. In early 1943, the Allies discovered that the Germans were operating a heavy-water plant in Vemork, Norway, an operation vital to the Nazis' effort to produce an atomic bomb. It seemed—realistically enough—critically important to destroy this plant. The plant was, unfortunately, located in the center of a small Norwegian town and could not be attacked from the air without endangering Norwegian civilians. The Germans had not deliberately built the plant there; that just happened to be where it was. The proportionality argument would readily justify an air attack; indeed, if every civilian in the town were killed, the toll would not have been "disproportionate to" the value of stopping the Nazis from acquiring atomic weapons. But the Allies felt that it was their responsibility to avoid civilian deaths, and so they decided to send commandos to destroy the plant. The first commando raid failed, with the loss of 34 British soldiers; a second attempt succeeded—to everyone's amazement, without loss. The responsibility argument is a bit easier in this example, since the inhabitants of Vemork were friendly civilians; still, it is important that responsibility, in the eyes of Allied decisionmakers, clearly trumped proportionality. Later in the war, heavy-water production at the plant was restarted and security tightened. Following debates in London, the decision was made to bomb the plant; 22 civilians were killed. It is doubtful that the Allies paid reparations to the families of the civilians killed, which would have been the responsible thing to do. But what is most impressive about this example is the acceptance of responsibility that led 34 soldiers to give their lives in an effort to avoid the air-raid.

Consider again the case of the rocket launcher on a Lebanese or Gaza city street. This is not a hypothetical case; there were photos of Hezbollah and Hamas rocket launchers positioned in front of apartment buildings during these conflicts. A report from Human Rights Watch following the 2006

war, based on interviews with Lebanese civilians, argued that most Hezbollah rockets were not fired from such positions.[7] Kofi Annan's report to the Security Council, based on information supplied by UN observers in the field, suggests that many rockets were in fact fired from these locations.[8] Without firsthand knowledge, I cannot join this debate. The Gaza example is much clearer; Hamas definitely was firing from heavily populated areas. In any case, the examples are theoretically useful regardless of how the debate is resolved. So—the city street location was deliberately chosen to make any response to the rocket attacks morally difficult or, even better from the Hezbollah or Hamas viewpoint, to make certain the response would be condemned around the world. Civilians were placed at risk; some were almost certain to be killed in any counterattack. These civilians were not literally human shields; they were not being held in front of men firing at Israeli soldiers, but they were being used in a similar manner. The primary responsibility for their deaths then falls on the Hezbollah or Hamas militants who were using them. But should we not then insist that those militants undertake the necessary proportionality argument? What number of civilians-at-risk is "not disproportionate to" the value of firing rockets into Israeli cities? But the question cannot be asked. Firing rockets at cities (rather than at military targets) is a war crime; it has no "value" that can be measured against any number of civilians-at-risk. In this case, the responsibility argument displaces the proportionality argument.

The displacement is less radical from the other side. The Israelis also have responsibilities vis-a-vis civilians-at-risk (as the Norwegian case suggests). They must do everything they can, including putting their own soldiers at risk, to hit the rocket launcher and its operators while avoiding any nearby apartment buildings. But what if, after firing the rockets, the Hezbollah or Hamas operatives drag the launcher into the basement of one of those buildings, where they store it, along with a supply of rockets for future attacks? Assume that Israeli soldiers cannot get to the building or can only get to it at great peril to themselves and to civilians along the way; their counterattack will have to be carried out by air. It is at this time that intelligence becomes critically important. Those responsible for selecting the target need to do the best they can to discover how many civilians are in the building, and then apply the proportionality rule. If the number is "not disproportionate to" the value of destroying the launcher and the rockets, they may bomb the building. If the number is too large, however, they are morally prohibited from attacking—and if for some reason they decide to attack, the Israelis cannot escape responsibility for the resulting civilian deaths. Both sides would then share responsibility for the deaths. So, in this

example proportionality is having some impact, even though I cannot specify the exact numbers. Anyone who thinks this is an exact science needs to be reminded that the calculations are necessarily rough and the numbers always contestable. Often, in the aftermath of an attack, one side or the other will make a persuasive proportionality argument; sometimes both sides will make equally unpersuasive arguments.

But if the number of likely civilian deaths is always disproportionate to the value of destroying the rocket launcher and its operatives, or the cache of rockets, so that Israel would be prohibited from responding in any fashion to the rocket attacks, then the prohibition associated with counterattacking collapses. Now even "disproportionate" counterattacks are justified and, assuming the Israelis exercise the necessary care, responsibility for civilian deaths falls solely on Hezbollah and Hamas. It is a central principle of just war theory that the self-defense of a people or a country cannot be made morally impossible, and so the more successful Hezbollah and Hamas are in hiding among civilians, the less useful the proportionality argument is—or, to be more precise, the less limiting it is. The more civilians are used as shields, the greater the danger to which they are exposed, and responsibility for that exposure falls on the people who are using them. We now recognize that this is a common strategy utilized by nonstate fighters. It does not really matter, from a moral standpoint, whether the civilians agree to be used by these fighters or resent the position into which they are forced. In Lebanon and Gaza, it is obvious that some civilians fell into both categories. That is probably also the case in Afghanistan.

"Necessary carefulness" is still an important limitation, but it has to do with responsibility, not proportionality. Ethicists and philosophers have argued this position for a long time in accordance with the doctrine of "double effect," which provides a systematic account of both responsibility and proportionality. It holds that when the intended target of a military attack is, say, an army base or a tank factory, injury to nearby civilians, even if it is certain to occur, is morally acceptable so long as the injury is not intended, is not one of the goals of the attack, and is "not disproportionate to" the value of destroying the target. If the injury is unintentional and proportional, the attackers are not morally responsible for it. That is the standard version of double effect, but I think that it makes things too easy for the attackers; all they have to do is "not intend" to harm the civilians, even though they know they will cause injury or death. Instead, there must be a second intention to match the second, collateral effect. First, the soldiers carrying out the attack must intend to hit the target; and second, they must not intend to kill civilians. It is this second intention that must be manifest

in the planning and conduct of the attack; the attacking force is morally required to take positive measures to avoid or minimize injury to civilians in the target area. Indeed, it is morally necessary to take such measures, that is, to be careful in the strongest sense, even if it appears likely that the number of deaths caused by the attack would not be "disproportionate to" whatever the relevant measure might be. The attacking force must protect civilians as best they can—period. That is their moral responsibility.

Consider now the official Israeli defense of the bombing of an apartment building in the Lebanese town of Qana in which 29 civilians, many of them children, were killed (once again, one can find similar examples in other conflicts, Afghanistan for example, where air attacks on the Taliban have resulted in civilian deaths). "The strike against the building was carried out in accordance with the policy of the General Command. The policy determines that Israel Defense Force members are permitted to open fire against suspicious structures within villages whose inhabitants have been warned, and likewise upon structures in proximity to locations from which rockets have been launched toward the state of Israel."[9] This is clearly a bad policy—and not only because "proximity" is much too vague and permissive a term. Warning the inhabitants of a village that they may be attacked and should therefore abandon their homes is a good thing to do, but it does not free the attacking force from the requirement to make reasonable efforts to see that the people have in fact left. Any attack on "suspicious structures" without such efforts is clearly wrong, whether 29 civilians die, or 12, or none at all (if none at all die, the attackers are the beneficiaries of what philosophers call "moral luck," but they would still be criticized not for what they did, but for what they should have done but did not). As the American Army learned from the attempt to create "free-fire zones" in Vietnam, some civilians never leave despite repeated warnings—because they are old or sick, or taking care of relatives, or afraid that their homes will be looted, or because they have to bring in the harvest, or care for domestic animals. It is probably never right to make fire "free."

In a similar manner, the use of cluster bombs against villages is wrong, whatever the proportionality argument says about the predicted or actual number of deaths—because these bombs, used in a village rather than on the battlefield, cannot be utilized with any degree of precision; they are inherently indiscriminate, and discrimination is a moral duty. It is the responsibility of every soldier not to impose these types of risks on the civilian population. Cluster bombs leave behind large numbers of unexploded bomblets, which continue to kill and maim long after the battle or war is over. They are indiscriminate in time as well as in space.

Why is it that in any discussion of civilian deaths, in conflicts like those in Lebanon, Afghanistan, or Gaza, the proportionality argument is normally given priority over the responsibility argument? There are probably two reasons for this priority. First, given our (natural) aversion to civilian deaths, it makes for an easy critique. Any number of deaths can plausibly be called "disproportionate to . . . ." The phrase implies some kind of military or political measure, but in actuality the measure is our aversion, which makes disproportionality into a simple and compelling antiwar argument. But, once again, this is an argument that can be applied in any conflict, without regard to its justice or injustice.

The second reason is more complex. Proportionality without responsibility makes it possible for critics to condemn the military force that causes civilian deaths, whether or not it is responsible for them. When nonstate organizations fight against state-organized armies, responsibility may lie on either side, probably on both sides, but it is almost always the army that will cause the greater number of deaths. Proportionality arguments are, therefore, favorable to the nonstate actor, while responsibility arguments are necessarily discriminating. Consider how the idea of responsibility guides our judgments of military action by America in Vietnam, NATO in Kosovo, and Israel in Lebanon.

Responsibility

In Vietnam, Viet Cong guerrillas fought from within peasant villages, often exposing the inhabitants to American fire. I argued at the time that when Americans fired back, assuming that they aimed as best they could at the guerrillas, it was the Viet Cong who were responsible for the resulting civilian deaths.[10] By way of contrast, in the cases of the "free-fire zones," America was responsible, as we were for any indiscriminate bombing of villages. Responsibility was the crucial issue; indeed, it is hard to remember proportionality arguments playing any role in the antiwar movement, except in the case of the famous *reductio ad absurdum*: "We had to destroy the village in order to save it."

In the Kosovo war, the Serbs claimed that NATO's bombing of Belgrade caused a disproportionate number of civilian casualties, but given what had already happened in Bosnia, and given what the stakes were in Kosovo, that claim did not seem all that plausible; no one paid much attention to it. With regard to Kosovo itself, however, the crucial arguments were only about responsibility. NATO insisted that Serbian forces were exclusively responsible for the murder and expulsion of civilians, but a number

of the critics of NATO argued that the refusal to send in ground forces early in the conflict meant that NATO also had some (lesser) responsibility for the carnage. Had NATO conducted an early ground invasion, its high-tech army might have killed a number of innocent people, but in all probability they would have saved many more—a stark example of a hard, but necessary, moral decision.

In the Lebanon war, the Israeli army caused the majority of the civilian deaths, but some (possibly many) of the villages it attacked were being used by Hezbollah as bases for rocket attacks on Israeli cities. So the greater part of the responsibility for civilian deaths in those villages lay with Hezbollah—as did the greater part of the responsibility for the war itself given that the hostilities began with a rocket barrage into Israeli territory and a Hezbollah raid across the international frontier. Israel is to be held accountable for the deaths caused by unjustifiable bombings and artillery attacks, like the Qana raid or the employment of cluster bombs in the latter days of the war. But (again) it should not be the proportionality argument that guides our judgment regarding those deaths; they were wrong whether or not they were disproportionate. Whether in Vietnam, Kosovo, or Lebanon, it is always the balance of responsibility that is morally determinative.

A classic example of how the proportionality-without-responsibility argument works is apparent in the anger over the ratio of deaths in the recent Gaza war—100 to one, Gazan to Israeli, according to figures accepted by *The New York Times*.[11] Now, if those deaths were all soldiers (fighters or militants) on either side, a ratio like that would simply be a sign of military victory, the deaths regrettable but probably not immoral. It is, again, the civilian deaths that should bother us, and we worry about the radical asymmetries that are likely in state and nonstate wars. These are conflicts where the likelihood is that many, if not the majority, of the victims will be civilian. Gaza is only one example. The ratio is probably less dramatic in places such as Afghanistan, but still similar. The recent fighting in Sri Lanka provides another example of radical asymmetry.

But to take this asymmetry as proof of a crime is not a serious moral engagement with these wars. When nonstate fighters and militants hide among civilians, they may well bear a greater responsibility for civilian deaths. And the questions that we have to ask of the state's soldiers are also related to responsibility—they are the same questions soldiers should ask about their own actions. How diligent have they been in gathering intelligence regarding civilians in the target area? How careful have they been in ensuring they are aiming at a military target? What risks have they accepted in an effort to minimize the risks imposed on civilians? We are not letting

soldiers "off easy" when we challenge them with such questions. These are hard questions. But if the soldiers can respond in a positive and morally correct manner, the ratio of wartime deaths will not be an indictment of their performance.

Indeed, the indictment is then a misshapen critical argument. We can see it being made in Gaza, Afghanistan, and, perhaps, in Sri Lanka. Criticism is important for both sides in these conflicts, but it is also important that we get the criticism right, and to do that we need to insist that the responsibility argument always comes first. This primacy is commonly recognized in the case of *jus ad bellum*, where we ask: Who started this war? But it is equally as important in the judgments we make about the conduct of war: Who put these civilians at risk?

Let me return to the beginning of my argument. People get killed in wars; soldiers get killed, civilians too, and we need to understand who is responsible for those deaths. If we are able to accomplish that, and if we assign responsibility clearly and firmly, so our judgments have political consequences (in public opinion, United Nations resolutions, intellectual debates, and ultimately in diplomatic initiatives and policy decisions), we will have done as much as we can to minimize the number of civilian deaths. We will also have confronted and acknowledged the painful truth that many of those deaths, terrible as each one may be, have been brought about by soldiers fighting justly.

NOTES

1. Philo, *The Special Laws*, 4:224-5.

2. Ella Landau-Tasseron, *"Non-Combatants" in Muslim Legal Thought* (Washington: Hudson Institute, Center on Islam, Democracy, and the Future of the Muslim World, 2006), 21.

3. Michael Walzer, "The Triumph of Just War Theory (and the Dangers of Success)," *Social Research*, 69 (Winter 2002).

4. Exodus 22:2-3.

5. United Nations, "Secretary-General's Briefing to the Security Council on the Situation in the Middle East," 20 July 2006, http://www.un.org/apps/sg/sgstats.asp?nid=2142.

6. United Nations, "Secretary-General Urges Security Council to Condemn Israeli Attack on Qana, Call for Immediate Cessation of Hostilities, in Statement to Emergency Meeting," 30 July 2006, http://www.un.org/News/Press/docs/2006/sgsm10580.doc.htm.

7. Human Rights Watch, *Fatal Strikes: Israel's Indiscriminate Attacks Against Civilians in Lebanon* (New York: Human Rights Watch, 2006).

8. United Nations, "Secretary-General's Briefing to the Security Council on the Situation in the Middle East."

9. Quoted (and criticized) in Noam Zohar, "Qana and the Purity of Arms," *Yedioth Aharonoth*, 8 August 2006 (in Hebrew).

10. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

11. Steven Erlanger, "Weighing Crimes and Ethics in the Fog of Urban Warfare," *The New York Times*, 17 January 2009, A1.