

In my view, there is one crucial problem with this line of normative reasoning: the normative equating of the ‘war on terror’ with conventional warfare. Namely, concepts such as ‘collateral damage’, which rest on an ultimately utilitarian, or ‘instrumentalist’ justification, make sense within theories of conventional warfare precisely because modern conventional wars (leaving aside pre-modern examples such as the Thirty Years’ War) are *temporally limited phenomena* (they last a few years, or maybe even a decade, but they are essentially *short* and *intense*). Because of their short and intense nature, one can argue that conventional wars must tolerate phenomena such as ‘collateral damage’, for two reasons: first, if the actions that bring about ‘collateral damage’ are strategically essential missions, they contribute to a particular conventional war’s being *even shorter*, i.e. they contribute to its imminent ending; and, second: it can reasonably be expected that instances of ‘collateral damage’ in a given conventional war will be *few*, limited in number – in other words, they can be treated as an inevitable ‘aberration’ from standard warfare.

However, the ‘war on terror’ is, in my view, a categorially different phenomenon from conventional warfare. As we are approaching its 20<sup>th</sup> anniversary, it seems quite clear that this ‘war’ cannot be treated as a ‘limited’ phenomenon in temporal terms – that is, as a ‘war’ within which there is any clear understanding, let alone realistic prospect, of what it means to ‘win’ it, or ‘bring it to completion’. When reflecting on the two decades of the war on terror and the ‘progress’ achieved so far, I believe we can reasonably conclude that its internal logic renders it a temporally ‘open’ phenomenon – we can hypothetically envisage a ‘victory’, but there is no clear prospect of the latter in the empirical world, or any clear understanding of the best possible ‘strategy’ for winning it. In that respect, the concept of ‘collateral damage’ is fundamentally undermined in its normative logic, i.e. it is rendered meaningless: namely, both the premise that collateral damage is justifiable because the operations that produce it are essential for a swift and decisive ‘victory’ in war, and the premise that instances of collateral damage will be ‘few’, limited in number, are no longer tenable in the context of the ‘war on terror’. On the contrary, we can reasonably assume that no single military action (drone strike, for example) will be ‘essential’ for winning the war, and that the instances of ‘collateral damage’ will, as time goes by, become innumerable – in other words, they will become a *regularity*; their normative feature of being essentially an ‘aberration’ will no longer exist. For these reasons, I contend that the concept of ‘collateral damage’ cannot be used to justify civilian casualties of drone strikes and, more broadly, that drone strikes cannot be justified as ‘essential’ to winning the ‘war on terror’, as the latter cannot be defined as a ‘war’ in any conventional sense of the term.

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My question and preliminary comment on Tamar Meisels’ text in a certain way follow in the vein of Marjan Ivković’s comments. First, I would offer two suggestions from Michael Walzer’s work that might potentially help in reconstructing and strengthening Tamar Meisels’ argument for the use of drones. The first can

be found at the end of Walzer's "Targeted Killing and Drone Warfare" from 2013 (*Dissent*) where he brings up something "very simple:" "Imagine a world, which we will soon be living in, where everybody has drones." The second suggestion, in a new way perfectly maximalist, refers to Walzer's intention that drones become something more than they are or could be – for all to have them and for them to become "the only game in town" or a "powerful illusion." Specifically, that something useful could truly be done with them and that they have the "possibility of winning wars or defeating insurgencies from the air" (Walzer 2016: 18).

If we accept that in our cities or countries there are persons or perhaps small groups that will not participate in "democratic" or "patriotic games," who are therefore ready to randomly destroy already constituted groups or portions of a city – Meisels mentions "unlawful or irregular combatants" (Meisels 2017: 6, 26–27), and a hundred years ago, Husserl spoke of a kind of "pseudo-citizen" – and if they were all named with a quasi-Kantian phrase "unjust enemies," then a right to war against them would be infinite ("*jus belli contra hostem injustum est infinitum*"; Kant 2016: 1372), the "illusion of victory," of which Walzer speaks, would be entirely trivial and negligible. If "a drone strike against X would not be an assassination, or an extrajudicial execution, or a deprivation of life without due process of law, as prohibited by the Fifth Amendment" (Nagel 2016), then the collection of these actions in continuity could represent the unconditional condition for the improvement of common life in the city, in cities, in the world at large. Introducing the "unjust enemy," and Kant speaks about my (or our) "right to his goods, person and life; to use them as means to my ends," is an introduction into an entirely different understanding of war and victory in war. Kant's defensive instrument (let us call it Kant's even though he borrows it from other jurists), which in places and certain contexts looks truly terrifying, can be reconstructed and recognized in various pseudo legal institutions such as *herem*, *homo sacer* or piracy. The single phrase and status of "unjust enemy" implies the open right to be pursued, recognized, and destroyed. It seems to me that the origin of Walzer's first suggestion is at this point: the problem is not that everyone has a toy that flies over the city, but that everyone has the right to use them in a specific way, to dole out justice and kill. Since the city is filled with weapons available, for example in America, to everyone (an equally worrisome fact), my attention would rather be directed above all to the clear manifestation of one who disposes of drones and completely transparently performs certain actions. I would advocate, for example, that only certain states – for example the member states of the Security Council of the UN – be allowed the right to use drones and conduct with them certain controlled and transparent actions. Further, all actions conducted would have to be announced and would have to have even the thinnest veil of secrecy removed. Transparency of action would reduce random victims. The one conducting violence must be manifestly responsible for it. Otherwise, drone actions have a religious character (conducted by one who appears no longer); citizens are hostages, targets of unjust enemies, forced to suffer violence for which centers of power have not taken responsibility. Most importantly, however, citizens have a reduced right to public gathering or grouping in city space. Would this transparency in conducting drone action maintain their efficiency?