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978-1-107-01907-2 - The Ethics of Insurgency: A Critical Guide to Just Guerrilla Warfare

Michael L. Gross

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The Ethics of Insurgency

As insurgencies rage, a burning question remains: How should insurgents fight technologically superior state armies? Commentators rarely ask this question because the catchphrase “we fight by the rules, but they don’t” is nearly axiomatic. But truly, are all forms of guerrilla warfare equally reprehensible? Can we think cogently about *just* guerrilla warfare? May guerrilla tactics such as laying improvised explosive devices (IED), assassinating informers, using human shields, seizing prisoners of war, conducting cyber strikes against civilians, manipulating the media, looting resources, or using nonviolence to provoke violence prove acceptable under the changing norms of contemporary warfare? The short answer is “yes,” but modern guerrilla warfare requires a great deal of qualification, explanation, and argumentation before it joins the repertoire of acceptable military behavior. Not all insurgents fight justly, but guerrilla tactics and strategies are also not always the heinous practices that state powers often portray them to be.

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A Critical Guide to Just Guerrilla Warfare

MICHAEL L. GROSS

University of Haifa



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From Ada to Ayala

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Preface

Writing about war, I often mistype the word “casualties,” leaving me to wonder what is casual or causal about the harm befalling combatants and noncombatants. Similarly, as a student of armed conflict, I often wonder what is civil about civilians or civil war. Casual suggests the chance or accidental nature of wartime injuries and deaths. Causal, on the other hand, directs our attention away from chance and toward a discernible sequence of events that result in injury or death. Civil connotes a measure of respect for normative behavior and, therefore, responsibility on the part of all participants, including soldiers, civilians, and bystanders, for the goings on in wartime.

Responsibility and liability do not change much whether one considers war from the perspective of states or insurgents. In many ways, therefore, *The Ethics of Insurgency* is a sequel to *Moral Dilemmas of Modern War*. Both books question the moral and legal limits imposed on state and non-state actors in modern warfare. In *Moral Dilemmas* I asked how states may fight successfully against guerrillas who employ terrorism and fight from within civilian populations. My answer, I thought, was rather modest. I did not advocate dogmatic adherence to existing law, nor did I advocate jettisoning the law in its entirety. Rather, I hoped that the ethical principles that protect the basic rights of combatants and noncombatants could guide me as I threaded my way through the demands of ethics and the exigencies of modern battle. The result was to lend qualified support to targeted killing and various nonlethal weapons and to lower the bar on harming civilians who provided significant support to their side’s war-fighting efforts.

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The response was spirited. Some reviewers condemned any attempt that they thought might weaken the law and erode the already meager protections that noncombatants enjoy. Many others, however, were happy for any effort to give state armies some additional maneuvering room to battle insurgents. This played well to a certain “realist” and maybe hawkish community. But it also came with many caveats about just war that the hawks ignored. While the history of international humanitarian law (IHL) and the law of armed conflict (LOAC) is sufficiently dynamic to make room for change, however belated, attempts to fiddle with the existing rules of war must always be taken with care and only in the context of just war: wars of self-defense, self-determination, or humanitarian intervention. This caveat is important because the slippery slope is always present. During a workshop with military and law enforcement officers, I once discussed the constraints that the rules of engagement pose for NATO. It was not long before officers from less enlightened domains – Nigeria, China, and Zimbabwe – jumped up and complained about the restrictions that the law of war imposes. When I tried to point out that it was a long and inadmissible jump from fighting Al Qaeda to suppressing internal dissent, they admonished me for my hypocrisy: “We are fighting terror too,” they staunchly declared.

Addressing the rules of war that states must follow is only half the project because the very same concerns bedevil guerrilla warfare. Guerrillas and insurgents, too, want to know how they can fight against superior state armies, and I try to provide an answer guided by the moral principles that protect the rights of combatants and noncombatants. The result is to think about *just* guerrilla war and here, too, I am inclined to offer qualified support for human shields, rockets and missiles, hostage taking, cyber-warfare, media manipulation, and efforts to disable civilians who take an active role in armed conflict. Now, the same hawkish community that liked the first project is unlikely to be happy. This brings me back to NATO officers who complain loudly about how unfair things are: “We,” they declare, “have to obey the law of war while guerrillas and terrorists flout it openly.” But broaching the same subject to, say, a group of Palestinian Israeli lawyers only brings derision. For them, the law of war is also discriminatory and obstructionist, but in quite the opposite way that states perceive. LOAC, they say, only condemns guerrilla tactics while leaving plenty of room for strong state armies to do whatever they want.

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Now it might be that both projects are pointless. By making concessions to states and insurgents, it may be that the rule of law will garner no respect and eventually fall by the wayside. But that argument is a little like preaching abstinence to teenagers when the right answer is to go out and buy them a bigger bed. Buying a bigger bed for belligerents means reexamining the ground between what the law forbids and what moral principles permit, thereby allowing aggrieved parties the space they need to pursue just cause with greater chances of success.

In this endeavor, I am grateful to many colleagues – Yitzhak Benbaji, Daphna Canetti, Cecile Fabre, George Lucas, Ben Mor, Cian O’Driscoll, and Paul Schulte – who took the time to read and offer critical comments on many parts of this manuscript. I am especially indebted to Tamar Miesels who set things aside not only to read the entire manuscript but also to confront me vigorously with objections on the many matters on which we disagreed. The book is certainly better for it. Students from my graduate seminars, particularly Ameer Fakhorey, Nora Kopping, and David Reis, were extremely helpful as they struggled with some of the unorthodox arguments in this book and offered incisive suggestions. My thanks to the Israel Science Foundation for providing funds for part of this research and to the University of Haifa for the opportunity to take leave and spend a semester in Beijing. China, as one might imagine, is not the easiest place to study war and ethics. Many Internet sites are blocked, the people are reticent, and ethnic tensions boil beneath the surface. Tibet, for instance, is an especially sad place, and the casual visitor is struck by how deeply the people miss their Dalai Lama. It will be enormously interesting to see what happens when he is gone and Tibetans have to confront the Chinese alone. There must be better options than self-immolation.

Back in the Middle East there *are* other options: missiles, human shields, public diplomacy, and cyber-warfare, just to name a few. In July 2014, just as this book landed on my desk for final editing, war once again erupted in Gaza. The summer also found me teaching a graduate seminar on Thucydides and, as jets buzzed overhead, I spent my days toggling between the local news, my manuscript, and the *Peloponnesian War*. To say this was surreal is an understatement. While *The Ethics of Insurgency* can only offer a modest assessment of how guerrillas might fight, Thucydides furnishes trenchant and enduring lessons for states. One stands out. Speaking to the Athenians after a disastrous plague decimates their city,

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Pericles is frighteningly candid as he encourages his compatriots to persevere. “To recede,” he says, “is no longer possible. For what you hold is, to speak somewhat plainly, a tyranny; to take it perhaps was wrong, but to let it go unsafe.” Throughout their very long war the Athenians wrestled with justice, expediency, and no small measure of aggrandizement. As of this writing, I don’t know how the current conflict will end, but the fate of Athens is well known and ignored at significant peril.

Abbreviations

API	Additional Protocol I, 1977
APII	Additional Protocol II, 1977
EPLF	Eritrean People’s Liberation Front
FALANTIL	Forças Armadas de Libertação Nacional de Timor-Leste (Armed Forces for the National Liberation of East Timor)
FRETILIN	Frente Revolucionária de Timor-Leste Independente (Revolutionary Front for an Independent East Timor)
GAM	Gerakan Aceh Merdeka (Free Aceh Movement)
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IO	Information Operations
ISAF	International Security Assistance Force (Afghanistan)
KLA	Kosovo Liberation Army
LDK	Lidhja Demokratike e Kosovës (Democratic League of Kosovo)
LOAC	Law of Armed Conflict
LTTE	Liberation Tigers of Tamil Eelam (Tamil Tigers)
NGO	Nongovernmental Organization
PHR	Physicians for Human Rights
PKK	Partiya Karkerên Kurdistan (Kurdistan Workers’ Party)
PLO	Palestine Liberation Organization
POW	Prisoner of War

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SPLA	Sudan Peoples’ Liberation Army
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
WHO	World Health Organization

Selected Contemporary Guerrilla Wars

