

Article

Un/Intended Acts: Killing Without Limit

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Abstract

Recent history has afforded the global spectacle of lethal conflict in which immense numbers of civilians have with apparent impunity been killed as unintended but foreseeable targets of military action. While the ethics of just war and international humanitarian law (IHL) present rubrics of proportionality to evaluate and limit civilian liability, these remain vulnerable to misinterpretation as well as their abuse in potential genocide. Mass civilian death, in clear excess of these limits, thus requires criminal assessment as meeting the conditions for genocide by virtue of intent, thereby informing its theorization as a thanatology—that is, as a logic of lethality determining an actual biopolitics. This paper analyzes these determinations in their relations to their normative goals: understood, first, with respect to the failure of a human universalism and, second, the theorization of the Freudian unconscious as an analytical means to account for the psychogenesis of genocide as such. Genocidal intent is thus conceived as an unconscious volitional complex that *as* ‘unintended but foreseeable’ defies both the legal–moral means to contain it and the ability to account univocally for its origin as a crime.

Keywords: civilian killing; ethics of just war; Gaza; moral rationalism; thanatology; biopolitics; genocide and intention; human universalism; the Freudian unconscious; psychoanalysis

1. Introduction

By November 2025, an estimated one hundred and fifty thousand civilians had been killed in the Sudanese Civil War, raging during the previous two years. Over fourteen thousand five hundred Ukrainian civilians had been killed in the Russo-Ukrainian war. In Gaza, over seventy thousand Palestinian civilians were dead, of whom at least eighteen thousand five hundred were children (tens of thousands more were seriously wounded). Credible reports, including those from *The Lancet* medical journal, claimed that the authorized numbers of Gazan casualties were significantly underestimated¹. Multiple sources now put them at over one hundred thousand civilian deaths, including every member of entire families; perhaps the true number will never be known.

Yet, as the eminent moral philosopher Jeff McMahan notes in his 2009 text *Killing in War* [1], “According to both the received theory of the just war and the law of war, the only people that combatants have a right to kill are enemy combatants.” [1] (p. 4). This principle restates the *requirement of discrimination* of that law whereby wartime civilians must not be intentionally harmed; by the same token, a failure to observe it can be equated to a war crime or crime against humanity, or even to a deliberate act of terrorism. What we are to make of the spectacle that sees such numbers of civilians killed in the course of war raises questions not only around the ethical norms of state-sanctioned killing but also of the international humanitarian law (IHL) and philosophical disciplines that seek to rationalize



Academic Editor: Marcin J. Schroeder

Received: 25 August 2026

Revised: 9 October 2026

Accepted: 12 October 2026

Published: 15 October 2026

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its legal and moral status. If such norms of civilian liability seek on the one hand to protect non-combatants and on the other to limit mortalities where protection has failed, how is it they can be so easily transgressed to the point of potential genocide?

In what follows, I turn in Section 2 to those norms, vis-à-vis historical cases of mass killing, as well as the present case of Gaza and then in Section 3 to elements of the ethics of just war, focusing on some of McMahan's own normative claims, to broadly contextualize how both the norms and ethics of unintended but foreseeable killing might be conceptually vulnerable to enabling the abuse evident in cases of mass civilian death. And while I focus on some of the empirical conditions of the Israeli military campaign in Gaza, this is largely to illustrate how that tragic crisis, still unresolved, reflects equivocations disclosed in the preceding discussion. The putative justification for mass killing as the exercise of military justice amounts at best to an 'ethics of containment' rather than one of the genuine prevention of harm.

Given that vulnerability to moral abuse and lethal excess, I turn in Section 4 to consider, similarly, how the criminological determination of genocidal *intent* negotiates the subjective dimension of its traditional requirement for a 'special' or ulterior aim to destroy a group in whole or in part. As a 'surplus' mental impetus structurally tied to lethal excess, what is put in question in the commission of genocide is the status of 'humanity': that which has failed to be protected, not only of the target group but metonymically the human as such. This claim is developed with respect to the failure of a robust human universalism that, given its manifest presence in global ethical frameworks of values, rights, and obligations, might in theory ameliorate the worst abuses. This possibility, however, remains steadfastly disregarded not only by direct perpetrators but also, morally, the global witness at large, which tends to a dualistic structuration (as does a philosopher like McMahan) and identification, rather than a focus on a third, universal term.

The evident fragility of human universalism suggests that other imperatives are more profoundly at stake in genocidal contestation—a question addressed in Section 5. To consciously break the moral taboo against genocide is necessarily to incriminate its agents in the most abject of crimes—something all the more pointed in the Jewish Israeli case, where a collective moral conscience is predicated on the ideal of its never being repeated. If genocide has been intended by its agents, it cannot have been by a psychologically straightforward route and must entail some degree of occlusion. I accordingly consider how the Freudian conception of the unconscious might account for the failure of an 'ethics of containment' in the face of genocide—understanding genocide not simply as an expression of intent but more particularly its equivocation. In sum, I engage the general analytic of moral-judicial rationality, in all these described forms, that seeks to responsibly regulate acts that can, at worst, lead to genocide (and if so, to litigate it), in order to theorize the psychoanalytics of its implication in another kind of excess: that of the unconscious. This raises questions, in conclusion, about genocidal intent itself.

2. The Mortal Economy: Death by Numbers

Large-scale civilian mortality in war is of course not unprecedented. The Holocaust of World War II is often considered the most extreme modern case, numerically and morally, of the killing of civilians carried out in the course of war. However, we can also consider the Eastern Front of that war to recall that the losses of roughly eighteen million Soviet and annexed civilian lives, including an estimated nine million children, during the same period exceeded those of both combatant adversaries combined (roughly five million on the Axis side and ten million on the side of the Red Army) and the roughly six million Jews murdered in eastern Europe by the Axis powers. Chinese civilian deaths in East Asia, during the same period of the war, too, amounted to between ten and twenty million.

Civilian losses in Germany and Japan during the same war, infamously due to the Allied bombing raids of their cities as non-military targets, in each case amounted to the hundreds of thousands, hence significantly less, however morally spectacular, than civilian losses elsewhere during the war, especially in Eastern Europe². McMahan, in commenting on the Japanese losses of August 1945 (up to one hundred thousand in the initial blast) notes that

the law of war [...] prohibited at the time [...] the intentional killing of civilians for the purpose of coercing their government to surrender. And all plausible moral theories, including even the most radical forms of consequentialism, prohibit the intentional killing of *that many* innocent people in virtually all practically possible circumstances. [1] (p. 129, italics original).

Identifying in the bombings of Japan a clear case of an intention to lethal excess, McMahan does not elaborate on the sense of exception implied by the adverb *virtually*, qualifying his general claim: are there conceivable rare cases in which *that many* innocent people could be permissibly killed? And because it is taken for granted, by just war theory and IHL alike, that war often involves the unintended loss of civilian life, surely—as McMahan claims of *intended* acts—those losses too must exceed moral toleration³. ‘Excess’ death would by definition transgress that point, demanding that we determine just when it occurs⁴. It would seem obvious that the unintended killing of civilians should be minimal compared to the numbers of those intentionally killed, but in practice, any such expectation is conditioned by military goals that render the former ontologically indeterminate: as *foreseeably likely* to be killed, even if not intentionally. Because they might *not* be killed, they are neither victims proper nor, having been only accidentally killed, salient to the *ratio* of moral permissibility.

The question of the legal limit to unintended civilian mortality in war is, however, approached by means of the *principle of proportionality* that governs the ethics and law of legally sanctioned combat, recognized in IHL in the four Geneva Conventions of 1949 but especially in Article 51(5)(b) of the 1977 Additional Protocol I. The principle prohibits military attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof that would be excessive in relation to the concrete and direct military advantage anticipated [2]. With this formulation, the question of civilian liability appears answered, with respect to the legal, and ideally just, waging of war: civilian losses must remain ‘proportional’ to whatever military gain can be expected to potentially entail them. These conditions also more broadly assume that the military actions embodying them are either morally just (in terms of *jus ad bellum*) or fall within the range of acts of war obeying internationally ratified rules (in terms of *jus in bello*). McMahan invokes the familiar case of the value to be gained for a just combatant in bombing:

one of the enemy’s more important military facilities. He knows that in doing so he will inevitably kill some innocent civilians who live nearby, but he also knows that the number of deaths he will cause is proportionate [...] in relation to the importance of destroying the facility. [1] (p. 173).

There is little moral question that, in war, the goal of harm minimization demands that military judgements must be made as required, ideally to the benefit of both military and civilian populations, and that the principle of proportionality entails a comparative judgement between potential human injury in relation to a presumptive military utility. This means that unthreatening or otherwise innocent individuals are quantitatively measured, as part of a cost–benefit relation, against other material conditions (such as tactical advantage) for the normative force of the proportionality principle to be sustained. That is, human

and non-human objects are rendered axiologically commensurable in order to determine cases of their *inequivalence*: as McMahan suggests, the value of ‘some innocent civilians’ in being not greater than ‘the importance of destroying the facility’ morally allows the former to be killed.

And this in turn allows for a conception of ‘life’ whereby the respective quotients of living and non-living value are assumed to be commensurate in a way that is necessarily underdetermined. One of the relevant civilians *could* be an unknown but superlative mathematical genius; the ‘military facility’ *could* be a military warehouse storing obsolete spare parts (the possibilities could of course be ramified, relative to still more persons and conditions). However, the commission of the strike would render both facts unknown and irrelevant, so that it would be neither a mistake nor an accident, and neither fact prevents it anyway. Moreover, the proportionality principle requires estimating, indeed by *foreseeing*, both ‘excess’ mortality and military ‘benefit’ before the fact. The discrepancy between human and material value is not only ontological but challenges a moral and epistemic acumen rare enough in most human agents that they must increasingly rely on artificial ones.

Yet with the entry of AI-based decision support systems (AI-DSS) and other targeting technology into military deliberations, the margin for human and machine error is magnified. Álvarez (2024) [3] draws attention to how “deficient training data will often lead to biases, brittleness, hallucinations, misalignments, privacy risks and loss of control, which paired with the technology’s unpredictability, pose sundry problems for their use in target identification, selection and engagement.” She concludes that, given these and manifold other aspects of AI automation, “Even if it was possible to corroborate an alleged low margin of error, in terms of reliability and/or predictability, AI’s capacity to provide targets at an unprecedented rate, would still result in thousands of civilian lives at risk.” [3]. Bo & Dorsey (2024) [4] are still more trenchant in claiming that “In a scenario where [...] strategic and operational objectives are not defined around sparing civilians to the greatest extent possible but rather on generating as many targets as possible, it is difficult to see how these systems contribute to compliance with the law. In fact, even if AI-DSS are meant to be used as ‘human in the loop’ systems [...] the speed and scale of production or nomination of targets coupled with complexity of data processing may make human judgment impossible or, de facto, meaningless.” [4]⁵.

It is obviously true that states can engage in acts of war unjustly and illegally (witness Russia in 2022) as well as disproportionately. In the Israeli military campaign in Gaza from 2023 to 2026, if Israel was not obviously guilty of the former, it soon evidently was of the latter. I will not detail here the infamous recorded statements, made by elected politicians and military officials both prior to and during the campaign, of the intention to exterminate large parts of the Gazan population and which formed part of the grounds for a charge against Israel of the commission of genocide first brought to the International Court of Justice in December 2023—a charge upheld as valid in January of the following year. These statements, however, clearly provided the social sanction for the commission of extreme violence in Gaza and crucially included the often-untenable rhetoric employed by political actors echoing Israeli leaders throughout the liberal-democratic world.

The distinction between morally and legally sanctioned acts of war and their contraries in unjustified attacks typically demarcate in the popular moral imagination the legitimate lethality of the state from the illicit lethality of war crimes or terrorism: conveniently distinguished, in the case of Gaza, between the lethal acts of the Israeli Defense Force (IDF) and of Hamas, respectively⁶. For this reason, throughout the course of its Gaza campaign, the IDF and its many advocates could claim that its military actions fell within the range of those rules and hence that its campaign was defensible as an extension of its *jus ad bellum*

justification as national self-defense; governments the world over could and did reiterate the same claims. The IDF could thereby also try to claim that its *unintended* destruction of civilian life was, however regrettable, proportional to the military advantage to be gained in its war against Hamas and, indeed, that Hamas itself was to blame for that destruction in its despicable use of human shields.

Israeli accounts also claimed, throughout the campaign, that the ratio of combatant to civilian deaths in Gaza was not excessive by historical standards⁷; others (including in Israel's own left-wing media) asserted the opposite. Despite the statistical appeals of both sides during the conflict, a quantitative casuistry could unsurprisingly be made to confirm, at least earlier in the conflict, one or another foregone conclusion. Given that many arguments assumed a modern historical estimate of the loss of civilian to combatant life (the civilian casualty ratio) as 1:1, whereby roughly half of mortalities from war are typically civilian deaths⁸, a low civilian casualty ratio in Gaza is hard to reckon with the IDF's own leaked record, which, contrary to its publicly advertised one, indicated that, as of mid-2025, combatant deaths in Gaza, coming to roughly nine thousand, were dwarfed by civilian deaths of up to fifty-three thousand: a ratio of roughly 1:6. As the carnage wore on, this estimate too was doubted as adequate to the true number of civilian casualties, and no doubt further forensic disclosures will continue to modify these claims.

The civilian casualty ratio, however, is not correlative to the principle of proportionality. It is not the case that ten thousand dead combatants entailing the unintended deaths of up to ten thousand civilians would be regrettable but not morally heinous because it would not exceed the recent historical average of lethal harm to civilians. We now know that the disclosures of IDF whistle-blowers themselves confirm that calculations of 'collateral damage' (known by the abbreviated euphemism *naza* from the Hebrew *nezek agavi*) were, mediated by AI-DSS, deliberately scaled towards high numbers of civilian casualties in domestic, non-military places of execution: typically, the private homes of whole families, during the night, while they were sleeping⁹. Abraham (2024) [6] details how "Another source said that they had personally authorized the bombing of "hundreds" of private homes of alleged junior operatives marked by Lavender [the IDF's AI-powered database and target generation software], with many of these attacks killing civilians and entire families as 'collateral damage.'" [6].

Yet this appeared to be a norm of tolerable civilian deaths that those defending Israel invoked for the IDF's campaign—one that they rejected could be understood in either legal or moral senses as entailing war crimes, let alone a genocide, despite its having obviously and radically exceeded both the civilian casualty ratio and any measure of proportionality. Moreover, these appeals were not entirely specious, inasmuch as the absolute numbers of Gazan dead do not rate as unique in the prosecution of twenty-first century war; did not in the first year of the war, and even beyond it, provoke overt moral outrage in political or media responses; and were apparently reckoned in public discourse as a dire but unavoidable fact of war, or even of life, like plane or vehicle accidents, or, perhaps, a pandemic—something, in other words, we have little choice but to accept when it happens and mitigate as best as we are able. If Israel was clearly at fault, so too was much of the hitherto civilized world.

3. The Moral Economy: The Limiting of Harm

The determination of 'excess' between civilian lives killed and military advantage is not a precise science, and even when proportionate refers only to any given military action, rather than what should globally limit them overall. A war could extend in time to include tolerable civilian losses that are indefinitely extended as well—witness both Gaza and Ukraine, where civilian casualties mount monthly without a question of global limits ever

appearing to be breached. But these considerations barely featured in the epistemic freefall to which, for more than two years, polarized moral agents were impelled in defending Israel's claims for state protection or defending the Palestinian right to life. Few could claim an absolute limit to the effects of lethal action beyond the 'eradication' of Hamas or, worse but perhaps more honestly, a surmise around when the Gazan people had suffered enough as retribution for the actions of a comparative few on 7 October. When the number of their dead amounted to thirty, or even forty, thousand, for many pundits and politicians, their 'losses' were not yet excessive. The collective gaze was benumbed, perhaps mesmerized, by the climbing count or doubted its accuracy or shrugged it off as a tragic fact of war. The question of an absolute and enforceable limit to civilian killing appeared, to all intents and purposes, undecidable and remains so, if the just pursuit of national self-defense requires that a state continue to rout its immediate region of potential terrorists.

The two-month ceasefire of early 2025 presented the possibility of a permanent end to hostilities but not one motivated by a recognition of excess civilian deaths; many among Israel's sponsors proved only too ready to condone further killing if its demands were not met. For up to two years, very few among the global political, business, or intellectual leadership class, with varying degrees of implication in the destruction, were able to bring an indubitable judgement of excessive harm to bear; the cautions of the UN Secretary General and Special Rapporteur for the Occupied Palestinian Territories were routinely ignored by those whose prompt action might have ameliorated the worst effects of the campaign. For many, that remains the case; for a minority, disproportionality was already in evidence in the first month of the conflict; for fewer still (including some Jewish genocide scholars), it already amounted to evidence for genocidal intent.

Despite civilian deaths being mooted, by some eminent politicians, as 'too high' at different stages of the Gaza conflict¹⁰, by the time their number reached by mid-2025 an estimated sixty thousand, the destruction meted upon civilian life appeared by a large consensus to have outweighed the military gains the IDF had achieved in its campaign. However, 'sixty-thousand' clearly does not name a limit to tolerable or permissible civilian deaths; it is relative to the political and other conditions unique to it, which differ from other relevant cases. Asymmetries of prejudice, including of racism and political bias, condition judgements of excess as well. For example, it is uncontroversial to believe that no liberal-democratic government would have tolerated the slaughter of up to twenty-thousand Israeli children. Any robust account of the causes of the Gaza genocide would of course have to reckon with the broader context of colonialist structural violence and precarity visited upon subjugated populations to protect the 'national security' of the colonizer and immiserate the economic and other autonomy of the colonized.

In these conditions, the necropolitics theorized by Achille Mbembe and others as a covert (and less covert) evisceration of movements toward sovereign freedom has in Gaza metastasized, the latest in an abject catalogue of the abuses of subject peoples by colonial powers, both liberal-democratic Western and also those internal to postcolonial states themselves. Because my concern here is to understand mass killing with respect to its rational adjudication as a function of intention, I cannot pursue the analysis of those manifold causes here. This is also because sociopolitical-historical inequity and other local conditions are not in themselves able to account for the seemingly aporetic relation to the limits of killing, though their analysis might well account for why such conflict is untenably prolonged (those in Vietnam, the Democratic Republic of Congo, Afghanistan, Iraq, Sudan, Myanmar, Ukraine, and Gaza, all being prime cases in point).

We have seen that any determination of disproportion between a military act and its lethal effects on civilian populations is thought to be possible by measuring the relation of means to ends, given the wide range of pragmatic and normative variables that enter

into that calculation. The principle of proportionality gains its sense on the ground that a distinction between the excessive and non-excessive willed death of innocents is morally decisive, a would-be red line between the normative and the reprehensible. The dimension of harm is not equivalent to the dimension of wrong, though the ethics of containment that seeks to minimize harm to innocents in lethal conflict does determine the criminal infringement of disproportionate harm precisely *as* a moral wrong and therefore to be avoided. Is this thanatological norm a moral chimaera? At its root, it assumes that civilians (that is, anyone at all except a Pope or President or other holder of official office) can be legitimately sacrificed to a cause they have not themselves waged or, very often, ever wanted to wage. Intentionally or unintentionally killing civilians, in any other case, is classed as murder or manslaughter, but in legal war, such victims become strictly disposable. Any calculation of permissible collateral damage will entail any number of epistemic and moral imponderables that can never in situ be factored into their determination: a tragic state of affairs that is just ‘a fact of war’ and which facts, more insidiously, provide the preconditions for cases of excess death and, at its moral extremity, genocide to occur. When military tactics can legitimately conceptualize innocent life in terms that rationally require its elimination at the thin edge of harm, this remains no less true at the much wider one.

And if the notion of the unavoidable but proportional collateral effects of justified killing in war sustains a symbolic imaginary of legal justice, any doubting of the imaginary undermines the stability of a ‘rules-based order’ that is supposed to unite all law-abiding nations and their citizens. The primary value that emerges unscathed from the extended violence required to sustain it is a frangible notion of justice, rather than the human life that alone gives sense to it: in order to preserve universal human flourishing, justice requires that human life be destroyed wherever it threatens, however indirectly, the preservation of justice. For an ethicist like McMahan, even a minimal civilian responsibility for ‘unjust threat’ entails a potential liability to intended lethal harm—something that many presumed was true of civilians in Gaza, from November 2023, suspected of being Hamas sympathizers. He writes,

even the constraint concerning the degree of a person’s responsibility can, in certain cases, be highly permissive. In particular, that the degree of a person’s responsibility for an unjust threat is very low does not entail that he cannot be liable to defensive killing—that is, it does not entail that killing him must be disproportionate to his potential liability. The problem is that liability is not like desert in being determined only by what one has done; one’s liability to harm is also a function of the harms that others will suffer, and for which one will bear some responsibility, if one is not harmed. [1] (p. 227; cf. also 234).

For McMahan, this most minimal moral responsibility provides a permissible limit-case for the *intentional but just* taking of civilian life, alongside unintended “collateral” but proportionate civilian losses. It could be invoked to justify the killing of those, such as children, who might become radicalized extremists at some time in the future (perhaps in retribution for their murdered family members): because they too could cause unjust harm in the future, they might be liable to just execution now. McMahan’s conclusion in the final sentence of *Killing in War* that “absolute civilian immunity is false as a moral doctrine” (p. 235) betrays the same dogmatism it apparently refutes—as well as, perhaps, ulterior forms of rationalization of which it remains unaware.

McMahan’s theory rests profoundly on the broader questions of how what is just and what is not just, and for whom, are to be determined. It assumes that the complex question of the relational status of just demands, where both sides might have equally compelling grounds, both agent-neutral and -relative, can be straightforwardly resolved into bivalent

terms whereby one side is deemed just, the other not. If neither side can (by definition) be neither one nor the other, this leaves the third limb of the tetralemma floating as well. However, few lethal conflicts fit easily into bivalent schemata; by judicious reckoning, both Hamas' and Israel's actions could be found to be both just in some respects, unjust in others, and each terribly misguided in practice¹¹. In particular, the determination of justness purely with respect to discrete acts is arbitrary when the broader historical injustice of occupation is elided from them. Failing the bivalent division of mutual (if not equal) lethal harms into categorically just and unjust antagonists, the structure falls apart: on it rests the logic of the norms derived thereby¹².

Similarly, while the idea of absolute civilian immunity from lethal harm might be only regulative, it cannot be false as a moral doctrine for the simple reason that it could reasonably entail that a civilian being to some degree morally responsible (in the sense McMahan requires for their liability to lethal attack) is *not* a sufficient reason to kill them, especially as part of a military offensive. That is, moral responsibility, or even culpability, does not warrant lethal liability without a severe distortion of the societal and legal division between two classes of moral actors in which the one is sanctioned by the state to act lethally on its behalf and the other emphatically is not; if not, the entire class of political leaders would be the first civilians liable for lethal attack (in McMahan's terms) rather than those who might have put them into power. It is one thing for McMahan to challenge norms around combatant moral responsibility for 'unjust' killing; it is another to enjoin that with challenging norms around civilian liability to 'just' killing. Indeed, it is at the least ironic: by McMahan's lights, it is illegal for a civilian to kill a fellow civilian (even with good reason) but not for a combatant (who has possibly killed often) to kill a civilian who has himself not killed anyone! And surely what matters morally, including for McMahan, is not the justice alone of lethal acts but the fact that, in its name, life is taken all too blithely. Outside of war, moral implication in unjust violence warrants the appropriate levels of civil litigation and potential punishment, not an automatic death sentence—as the Nuremberg Trials from 1945 to '49 demonstrated, among many other civil litigations in the aftermath of war.

Though believing that Israel had just cause to defend its national security following the events of 7 October 2023, McMahan has publicly condemned its military policy in Gaza as failing to meet the conditions for both *jus ad bellum* as well as *jus in bello* proportionality in the prosecution of its campaign, as well as upheld the view that "there is a general and quite strong constraint against harming civilians in war." [7] (p. 392). He does, however, sustain the earlier claim of there being exceptions, such that "I actually believe that this [all civilians being innocent in the relevant sense] is false and that some civilians may be liable to small harms and that a small number of others may be liable to serious harms." (ibid.). This means that some civilians can, for McMahan, be permissibly killed (presumably through carefully targeted assassination with no collateral lethal effects, failing which it would be unjustly killing innocents) were Israel's war, counterfactually, to be just. His earlier (2009) formulation could thus still be reasonably interpreted in the way I have done here by those seeking to find *in a just war* the minimal civilian moral responsibility required for the morally permissible assassination of those bearing it.

Indeed, the view of morally permissible civilian liability to intentional *or* unintentional lethal harm in a just war produces the morally Kafkaesque outcome of those victims retaining no theoretical appeal to moral or legal reason—the doctrine of absolute civilian immunity being, in McMahan's view, categorically false. Those civilians (all of them no doubt staunch civil defenders of Palestinian liberty and sovereign self-determination) would be in the position of Giorgio Agamben's deracinated *homo sacer*—banished, this time, not outside the city walls but rather kept inside them, where a moral no-man's land

disposes of them with much greater expedience. To what degree, extended to the civilian body as a whole, has this been intended? If, in the words of the Palestinian legal scholar Nimer Sultany, “the military logic of defeating an enemy in war has been crossed into the genocidal logic of elimination” [8] (p. 1), has the threshold he invokes been premeditated from the beginning? Sultany, with those seeking to indict Israel for war crimes, could demonstrate a range of evidence for genocidal intent. But how has it happened, and to what end? If such losses are not obviously sacrificial, they are not offered up to God but to some other universal principle. However, what kind, exactly?

4. Universally Human: Un/Conscious Interventions

In the foregoing, I have argued that, despite explicit aims to minimize civilian harm in war, features of both the law and ethics of just war enable the formal vulnerability of innocent, and considerably less innocent, civilians to lethal harm via the mechanisms of proportional liability and minimal responsibility for an unjust threat, both entailing their permissible extermination. In identifying epistemic and normative equivocation in these mechanisms, I have suggested that their putative rationality appears rather to invite morally irrational norms into the philosophical adjudication of lethal harm meted upon civilians in wartime, such that they at best amount to an ‘ethics of containment’ rather than the robust form of civilian protection that is, after all, their aim. In both cases of proportional killing—including its technoscientific mediation by AI surveillance and targeting systems—and moral responsibility entailing the morally permissible extermination of civilians, a likely margin of error blurs the boundary between licit and illicit lethality, as well as the societal division between legally and illegally constituted lethality in military and civilian domains, respectively.

But I have as yet only gestured towards broader psychosocial implications attending the lethal extermination of civilians. In approaching the question of the psychogenesis of genocide and thus its intentional origin, we can first consider the relevant grounds for determining intent as developed in the criminological context of IHL before extending that focus towards its depth-psychological provenance below. The juridical question at issue here is to what degree that intention could be transparent to its agent with respect to a determinate goal and in such a way that, absent that knowledge, it could not be truly intended. The traditional judicial concern (in at least one of its aspects) is thus to demonstrate that the goal has no basis and so cannot be successfully attributed to its agent and hence punished without its prior recognition as a reflexively ascertained and thus self-conscious volition¹³. The burden of proof is challenging but not in principle inaccessible to the proper kind of scrutiny and can rely on both material and circumstantial evidence even where the self-attribution of intent is likely to be compromised¹⁴.

The judge and jurist Kai Ambos provides an account of the ‘intent to destroy’ whereby genocide is a crime that entails “a general intent as to the underlying acts, and an ulterior intent with regard to the ultimate aim of the destruction of the group.” [11] (p. 833). He writes:

The genocide offence has *two separate mental elements*, namely a general one that could be called ‘general intent’ or *dolus*, and an additional ‘intent to destroy’. A general intent normally relates to all objective elements of the offence definition (*actus reus*) and has now been defined in international criminal law by Article 30 of the Statute of the International Criminal Court (ICC) as basically encompassing a volitional (intent) and/or cognitive or intellectual (knowledge) element [...]. The perpetrator must [...] know that his actions target one of the protected groups [...]. In contrast, the ‘intent to destroy’ constitutes an additional subjective requirement that complements general intent and goes beyond the objective

elements of the offence definition. One should therefore speak more precisely of an ulterior intent (“surplus” of intent) characterized by an extended—with regard to the *actus reus*—mental element or a transcending internal tendency. Indeed genocide, thus understood, is a crime of ulterior intent or a goal-oriented crime. In practical terms, this means that the genocidaire may intend more than he is realistically able to accomplish. [11] (pp. 834–835; italics in original).

While aligned to the discriminatory bases of persecution as a crime against humanity, as a particularly egregious and inhumane case of persecution, one consequence of what Ambos calls the ‘double mental element’ of genocidal intent is that “the ulterior intent distinguishes genocide from persecution and all other crimes against humanity and contributes to its particular wrongfulness and seriousness.” [11] (p. 836). With moral extremity goes an opacity around both its sense and extension: “while genocide may then be qualified as a special intent crime, this does not answer the question as to the concrete meaning and degree of this intent.” (ibid.). As Ambos details, the special intent (*dolus specialis*) identified in a range of genocidal cases is not exclusive of, for example, subnormal volitional or psychological borderline conditions, or socioeconomic or political motives, that might otherwise appear to circumstantially modify its attribution to agents who consciously register and intend the effects of their lethal actions. The special intent is, however, exclusive of intentions that do *not* take a group, in whole or in part, as its object—this distinguishing, among other things, the intention and commission of genocide from either war crimes or crimes against humanity, or discrete homicidal acts, however large in extent, from the specific will to annihilate a collective.

As Ambos notes, this sense of intent cannot be wholly determined by objective indices and as subjective ‘transcends’ them, and so with other theorists argues instead for a combined structure- and knowledge-based approach that distinguishes between perpetrators’ roles in order to more accurately reflect a realistic attribution of intent. This would require a close examination of the intent to destroy only of the “top- and mid-level perpetrators” (p. 833) exclusively recommended by Ambos, rather than of those “low-level perpetrators [for whom] knowledge of the genocidal context should suffice” (ibid.). In the case of Gaza, these were of course the IDF personnel responsible for carrying out the remote drone strikes that they were fully cognizant were often killing hundreds of civilians at a time (see Gray 2024 [5] and Abraham 2024 [6]). By evidence of their testimony given in the film *Naza* (as well as that disclosed earlier in Abraham 2024 [6]), the general ‘knowledge’ requirement for genocidal intent is clear (see pp. 846–847); determining the special intent is more ambiguous and no doubt differs between individuals in both their objective roles and degrees of responsibility in the military apparatus.

Central here is Ambos’ claim of special intent as a “surplus” that, being properly ‘mental’ and ‘internal’, could itself hardly be demonstrated, let alone judicially proven, save by its perceptible effects, including an asymptotic inability to reach completion. The question of special intent runs into an epistemic opacity that, as much philosophically as criminologically, represents an aporia regarding both the full apprehension of intent as well as what is ultimately put at risk in the psychogenesis of genocide. This is that the susceptibility to excess of the lethal extermination of civilians threatens the moral status of ‘the human’ as such: as, in fact, the unspoken victim of that excess, brought to thematic salience by the event of genocide but by no means sufficiently enough to serve as a universal basis for its obviation. Where antagonists to lethal excess (tacitly or directly) repudiate their mutual humanity, lethal intention is itself subject to a repression of the full recognition of the other *as* human. And though the dehumanization of the other is commonly taken to be an overt cause of genocide, it is also implicated, less obviously, in why genocide, as a repudiation of *the human*, must be in its origins

intentionally opaque: to will to exterminate the other entails a reflexively unconscious abuse, in the denial of both other and self *as* human, that problematizes the judicial attribution of intent. No agent of genocide would admit to an equal will to self-abuse and is almost certainly consciously ignorant of it.

We are familiar with the universal human rights which, by definition, understand humanity as the largest unit of moral concern. We know that they purport to secure absolute constraints on harm through the mechanisms of the UDHR, Geneva Conventions, and other auxiliary bodies, such as the Responsibility to Protect. By these rights, all humans, everywhere, simply by being human, are granted an inviolable moral dignity. Recent popular philosophy, too (see the work of A.C. Grayling, Markus Gabriel, or Omri Boehm, among many others), has seen renewed calls for a humanistic universalism, along the familiar lines of secular rationality that informed (or indeed formed) much of the post-war global order. For Boehm, a Jewish-Israeli citizen, this would hypothetically take the form, in Israel, of a “binational federation” in which dignity and moral equality, rather than identity, are foundational—a standard aspiration for any self-respecting secular state. Yet, as he concedes, the human universal remains practically remote for its individual members and groups of those members, who live primarily in and as their given ethnic, religious, cultural, political, and other group identifications.

Nonetheless, the identity of and between the persecuted could unite otherwise disparate victims in a novel “*fraternité*—quite literally the unconditional solidarity that forms among persecuted groups through attachment to their own identity.” [12]. In this case, disparate victims find a larger identity in the universal class of ‘victim’. On the other hand, the brotherhood of alienation is simultaneously an estrangement from a positive identity that is for Boehm ‘radically’ universal in the sense of possessing a rationalist, neo-Kantian necessity. Invoking Hannah Arendt’s doubt that the recovered honor of mutual victimhood can rise above a subjective pride, Boehm seeks in ‘humanity’ instead a global moral responsibility:

Arendt doesn’t doubt that such bonding of the persecuted is often necessary and produces true greatness, but she insists that, by reducing humanity to the identity of the “persecuted and the enslaved,” it constitutes a retreat into privacy. A logic of *universal* brotherhood depends on what we have in common with others, not on difference from them. Moreover, the solidarity of the persecuted cannot extend beyond the persecuted group—to those who are in [a] position to take universal responsibility, in love of the world. (*ibid.*, italics original.).

However, universal responsibility, an active mode that arguably characterizes the will to universal human rights we have considered, does not in itself entail universal identity (a comparatively passive mode), and it is the former that is the stated aim, for example, of many secular-enlightened as well as religious identities—from Immanuel Kant to H.H. the 14th Dalai Lama—that in themselves might not represent universalism *per se* (after all, those figures represent quite specific, and perhaps in some ways incongruent, programs for universal human flourishing). For universalism qua humanity to function when it is most needed, as in a threat of genocide, it needs above all to surmount the apparent dualism objectively determining the moral division of labor in any grave conflict: between those who primarily wage lethal grievance, and so are responsible for it, and those who largely suffer it (a view symmetrically taken by each side irrespective of its substantial content).

In sum, the moral will that demands that parties to grave conflict recognize the mutual humanity of their adversary, and so in theory provides a possible access to de-escalation, invariably fails to prevail when most needed to avert the abyss of genocide. This failure is not limited to hardline identitarians, crypto- and open fascists, or far-right nationalists, who

by definition march to a singular drum. While deploring the mass erasure of innocents, the same kind of ‘inattentional blindness’¹⁵ to the universal affects even the most impartial of human rights defenders when the limit-value of humanity is metonymized into ‘victim of unjust oppression’—a recognition crucial for redressing the grievances of an oppressed people but no less resistant to the ‘radical universalism’ a thinker like Boehm seeks to promulgate.

It is easy to lose sight of how odd this omission is: at no point during more than two years of horror in Gaza did a majority global witness openly register an exceptional state of abuse, which ipso facto should demand an end to hostilities, *irrespective of political affiliation*. Quite the opposite: judgement could be readily made of the overt aggressor but never of *an entire context* of radical moral transgression. In the midst of the worst abuses, millions sought by their own lights to navigate towards the best side of the fight, riven between an absolute divide. We easily understand moral duality, the binary of ‘us versus them’, but never its dissolution. No one, protesting in a thousand marches, flies the adversarial flags together: this would be inappropriate, even strange or taboo, in even relatively non-aligned nations. To occupy an authentic middle-ground is impossible because it entirely fails to mark the stakes that appear to make the dispute a morally vital one. Should the stakes be removed in an access to the universal, the very meaning of conflict would seem to be vacated. It would be naïve, unworldly, beside the point: the scope of moral concern extends only as far as the unjustly abused victim—of which each side to the conflict could construe their own members—but no further. Boehm’s vision of a binational Jewish–Palestinian state appears more quixotic than ever.

Geopolitical crises that lead to war typically pass because one party has capitulated or both have limped into compromise but rarely or never because all parties have mutually recognized the intrinsic futility in which they are engaged. The will to a ‘universal humanity’ fails not in terms of aspiration, valorized in theory, but rather its political embodiment. However, while global rights bodies recognize and ratify the scope of ethics to humanity as such, individuals rarely identify as ‘human’ in a robust sense because little in their social inculcation instantiates humanity as such. Natural disaster, perhaps alone, provides an exception: in an earthquake or tsunami, our ‘enemy’ is not ourselves but ‘blind nature’, and we go to the other’s aid despite the things that otherwise divide us. And there are those rare heroic gestures—the bystander who runs to protect terror victims—that, under fire, risk all for all.

Such crises recur because, in our distinct but partial constellations, we do not identify *as* the human kind that would never wish upon itself (we suppose, and failing a will to collective suicide) repeated acts of egregious self-mutilation. But would we, in fact, if we were all to each other merely human, all-too-human? Assuming a self-preservation of the species, a psychoanalytics of Thanatos could claim, is perhaps naïve. There is no reason why a universal will to annihilation should not operate unconsciously, despite the rationalized measures of proportionate legal killing we have considered above. There is a lot of historical evidence, as we have noted, for why it might be real.

5. The Psychoanalytic Endgame

For Sigmund Freud, writing in 1920, the very possibility of a human universalism could at best only be a function of libidinal biology. He characterized this as “the effort[s] of Eros to combine organic substances into ever larger unities”, which alone could “provide a substitute for this ‘instinct [*Trieb*] towards perfection’ whose existence”, he notes glancingly in *Beyond the Pleasure Principle*, “we cannot admit.” [13] (p. 315)¹⁶. The “ethical sublimation” of which Freud writes in that essay is a hard-won product of the repression of unconscious instincts “with no prospect of bringing the process to a conclusion or of being

able to reach the goal." (ibid.). And, indeed, as noted, we see repeatedly the failure of an embodied universalism when it is most needed to avert moral catastrophe.

Writing to Einstein, twelve years later, of war, Freud notes that "As a result of a little speculation, we have come to suppose that this [destructive] instinct is at work in every living creature" [14] (p. 18) and two years earlier, at the conclusion of *Civilization and its Discontents*, muses that "The fateful question for the human species seems to me to be whether and to what extent their cultural development will succeed in mastering the disturbance of their communal life by the human instinct of aggression and self-destruction." [15] (p. 149). He has already more broadly asserted that

When, however, we look at the relation between the process of human civilization and the developmental or educative process of individual human beings, we shall conclude without much hesitation that the two are very similar in nature, if not the very same process applied to different kinds of object. [15] (p. 140).

Freud hovers between analogy and homology in identifying the intrinsic violence of the individual and its species: it is empirically not the case that every individual enacts the same developmental processes evident in human history, particularly in terms of a propensity to lethal offense. Nor is Freud's own theoretical edifice immune from the heteronomy of its potential dissolution. Jacqueline Rose, commenting on Freud's words to Einstein, suggests that "the death drive, and hence the truth of war, operates, it has often been pointed out, as the speculative vanishing point of psychoanalytic theory, and even, more boldly, of the whole of scientific thought" [14] (p. 18), a quasi-mythological feature of knowledge that Freud goes on to attribute to physics and psychoanalysis alike. If so, the implicit function of the death drive would surely extend to Einstein's own unwitting role in the genesis of the weapon of mass annihilation par excellence: what epochal human goal could have better qualified as foreseeable but unintended?

For Rose (building on Clausewitz among a range of historical sources), the appeal to a theoretically transparent thanatology (of the kind we have investigated in the foregoing) is undermined by the unconscious will to death itself, the knowledge of its limits thereby compromised at the root. If so, the rationality of moral philosophy, as an effort to regulate it, would be no less riven by the unreason of the unconscious. The shibboleth of 'foreseeable but unintended' killing is in this light disingenuous: if my intended action knowingly entails a high probability of a foreseen effect, then my action must include an indirect intention to cause it, even if it is not certain. If that intention is not wholly conscious, it is not completely repressed either, and we should note Freud, in his 1915 war-time paper *Repression* wishing to "make it clear that it is not even correct to suppose that repression withholds from the conscious [mind] *all* the derivations of what was primally suppressed" [13] (p. 149; italics in original)—in this case, the instinct for destruction itself. And indeed, those committing atrocities believe, downstream from their irrational origin, that they act from a right to self-protection: empirically, it is a fact that a real threat must be defeated.

But if Freud is right, they can only do so (far more than merely believe it) because a more or less rational consensus has made the means publicly available for the emergence of the instinct—here, legitimately 'destroying Hamas' as a placeholder for less conscious purposes. On this view, a dual motivation is in operation, overt and covert, their relations opaque. The scale of intention is not purely binary (it obtains or does not obtain), in the way that might ideally serve legal adjudication; because intention is in the first instance psychological, the evidence for its less-conscious gradations is hidden even where objective statement might appear to give the game away. The architects of Auschwitz could not simply baldly expose the fact of what they were doing and did everything they could to disguise or hide the evidence. Was this only to deceive the enemy? The necessary deception

went deeper than practical need: public exposure of any kind would have meant bringing the pathological will to genocide to full consciousness and so betray *the only means* to its realization.

The full extent of intention cannot be explicitly conscious if what is achieved through the total destruction of the enemy is a form of self-preservation, which, for Freud, serves only the interests of the ego-instincts: this would mean taking self-identity rather than that of the despised other as the final purpose of their annihilation. In *Beyond the Pleasure Principle*, Freud understands both instincts (of self-preservation and those serving self-existence) as aligned with the unconscious sexual instinct—that is, as libidinal and life-affirming, if now in a narcissistic rather than other-oriented (possessive) form. The ego-instincts—the will to dominant selfhood—thus harness an unconscious drive, courtesy of the super-ego’s core foundation in the unconscious, to destroy whatever does not serve their self-centric interests. This mutually reinforcing relation between ego and super-ego also explains the overt, at times self-parodic, high righteousness typically underwriting such destruction, its obdurately excessive immunity to doubt—the same self-certainty that marks ethno-nationalist identity in its defense of an absolute right to exist and that denies that right to others.

Moreover, sadism, so closely related to the narcissistic self and its punitive super-ego, could hardly fail to feature in the psychogenesis of genocide, as Freud’s remarks on the externalized function of the destructive instinct (in the same essay) suggest:

the sadistic instinct, whose aim it is to injure the object [...] is in fact a death-instinct which, under the influence of the narcissistic libido, has been forced away from the ego and has consequently only emerged in relation to the object. [13] (p. 327).

Freud notoriously sexualizes the origin of sadism with respect to the stages of the ‘pre-genital’ object-cathexis—those infantile stages of the psychosexual process that ideally allow for the emergence of post-Oedipal sexual maturity. Originally “a component in the sexual instinct” (ibid.) but whose proper aim is to injure the libidinally invested human other, sadistic aggression is mobilized by the narcissistic agent to humiliate the other—but in such a way that must remain disavowed if the ego-ideal and its inflated conscience is not to block the loosening of the repression and so foil the full emergence of unconscious wishes. Hence, repression functions not purely to occlude the libidinal wish to destroy but to enable some tolerated form of it to be expressed. If not, genocidal intent as such would never pass the censor of conscious evaluation. Only a disavowed form of the will to destroy can allow it to bear its alien fruit in acts of excess, exacted upon those who represent not merely a given consensual enemy but also the very pretext for a human universalism only intuited as possible because it too can be rejected—and so itself repressed.

The Freudian death-drive, or whatever primal demand it names, may not be the sole cause of genocide or its demand always opaque to its protagonists. Historically, there were surely those for whom intention as action became at a certain point more or less seamless—the Nazis, Khmer Rouge, and periodic Soviet purges, among others, stand out in this sense. On the individual level, the pathological serial killer has clearly broken down the normal repressive apparatus dividing the unconscious and conscious will, which have wholly joined forces in a way impossible for others. Nonetheless, the presumption to morally and rationally calibrate mass slaughter betrays a dissimulation, as if unilateral mass killing is not a relation with anything more than a ‘permissible’ means to prosecute ‘just’ homicide. Given a green light of rational defensibility, the will to genocide can and does remain consciously denied but not purely as denial—as the *knowing* repudiation of a sure motivation. It can only wholly and with a sincere mind deny the accusation brought

by others of its unabashed intention to commit genocide because it does not in fact purely intend to do so.

In his short essay *Negation* (*Die Verneinung*, of 1925), Freud writes that

The content of a repressed image or idea can make its way into consciousness, on condition that it is negated. Negation is a way of taking cognizance of what is repressed; indeed it is already a lifting of the repression, though not, of course, an acceptance of what is repressed. We can see how in this the intellectual function is separated from the affective process. With the help of negation only one consequence of the process of repression is undone—the fact, namely, of the ideational content of what is repressed not reaching consciousness. The outcome of this is a kind of intellectual acceptance of the repressed, while at the same time what is essential to the repression persists. [13] (pp. 437–438).

Freud's characterization of negation as enabling an attenuation of repression in one sense simultaneous with its maintenance in another, a psychic compromise between cognitive acceptance and its substantial rejection, is plausibly true of the subsequent rather than seminal stages of, for example, an authentically genocidal motivation. However, before such a partial acceptance, via negation, becomes possible, the intention itself must already be formed, and *this* cannot itself be conscious as a primary causal operator: the default repression of a deeply instinctual motivation would in that case necessarily have ceased to function, in which case, the theorization of unconscious repression is unsustainable. Rather, the intention *per se* must in the first instance remain unconscious and, to that degree, not even intentional. Freud's most fundamental insight about the human psyche requires that the primary formations of the unconscious do not and cannot become conscious willy-nilly: they demand in effectively all cases a secondary process of adaptation to the demands, needs, or strictures of the ego, as no less the stricter standards of the super-ego and its often ideological imperatives.

To be able to deny or to negate a repressed intention requires already knowing what is denied, and this is precisely what, in its nascent form, has not been determined inasmuch as being unconscious it cannot be. Lacan, for his part, speaks of the relation of the conscious to the unconscious in terms of a "pre-ontological" gap, whereby "Discontinuity, then, is the essential form in which the unconscious first appears to us as a phenomenon—discontinuity, in which something is manifested as a vacillation." [16] (p. 25). Here, vacillation is not between self-conscious agency and its objects ('will I or won't I') but between the conscious subject and its own—and other—being: it experiences a reflexive rift or rupture, an "Impediment, failure, split." (*ibid.*).

For Lacan, "the unconscious is always manifested as that which vacillates in a split in the subject, from which emerges a discovery that Freud compares with desire [or wish. . .]" [16] (p. 28). Between knowing and not-knowing, the genocidal mind, at least at its inception, is not and cannot be so self-certain about its own primal wish, for a reason: authentic self-disclosure would entail a robust refusal of bad faith, of being false to genuine motivation, something that mind cannot do or it could not engage psychologically its own wish. Authenticity demands a (subsequent) reckoning with psychological reality—and so the beginning of sanity, the very purpose of the psychoanalytic intervention. However, it stands to reason that this is not possible at the ontological root of unconscious inception.

The defenders of Israel, after 7 October, claim they did no more than protect its citizens from further atrocity—a justification that cannot be gainsaid. However, with a good reason for retribution, we have seen that reason can be exploited to satisfy another, more or less covert, purpose. Sultany's threshold was crossed, but just where, amid the destruction in Gaza, did it happen? I have argued that it was not credible *before* it began. Plausible deniability can almost indefinitely sustain even sincere credulity, so

that what warrants committing genocide for the genocidaire is the conviction that genocide is not being committed; authentic access to the contrary would quickly reinstate the prohibition.

For those for whom the prohibition against mass killing remains firmly in place, however, such mass death has all the features of madness: who, they ask, could countenance, let alone justify, it? For those in its thrall (including those disengaged witnesses deeply identified with its agents), it means the triumph of *life*, as a primal guarantor of the future—for the self, over the threat to its existence, and for its social identifier in the group. For that reward of supremacy, it does not matter that no one ever defeats death, no matter what side they are on. That is part of the delusion of omnipotence—that identity, itself unliving, lives on forever. But the unconscious, as Freud often emphasized, does not care for reason and its expectations of others—it is only we, as self-conscious moral agents, who believe we do.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: No new data were created or analyzed in this study. Data sharing is not applicable to this article.

Conflicts of Interest: The author declares no conflict of interest.

Notes

- ¹ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(24\)02678-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(24)02678-3/fulltext) (accessed on 11 October 2026)
- ² The Korean War that soon followed in 1950, however, resulted in losses of up to three million civilian lives, representing a percentage of civilian casualties higher than those of the Second World War and Vietnam War—itsself infamously representing a moral nadir of civilian abuse and culminating in the ‘year zero’ of up to two million unnatural deaths in the Cambodian genocide.
- ³ Moral toleration is not equivalent to moral permissibility, if we assume the latter to indicate a normative, as opposed to a contingently psychological, concept. I will use the term moral toleration as a less normatively inflected notion for what could, more formally, contribute to a limit-concept of moral permissibility. The general effect of the distinction will be to suggest that while some acts can be informally construed as tolerable, this usually doesn’t translate into formal permissibility (even though the latter can indirectly take moral cover behind the former).
- ⁴ The question of the permissible limits of the intended killing of combatants is of course argued in Just War theory, and with no less moral salience. McMahan’s central project however is to reject the moral equality of combatants and argue that only unjust combatants are morally liable to be killed and must be held responsible for killing just combatants (see McMahan 2009, [1] 34 & passim). I’m thus not engaging McMahan’s theory here as representative of Just War theory, but because of its distinctive view of civilian liability to lethal harm where civilians are implicated in an unjust threat, including futurally projected ones.
- ⁵ Cf. Chris Hables Gray (2024) [5] who suggests that “an irrational enthusiasm for new military technologies, especially AI” [5] (p. 167) in Israeli innovation enable unprecedented levels of full-spectrum domination. The IDF AI targeting system Gospel is “designed to increase the number of potential targets. It draws on surveillance data (drones, light sats, ground cameras, body cams), intercepted communications, observed movements, human analysis and probably social media” (p. 170) but, Gray concludes, “the program is not militarily effective but rather is supposed to provide political cover for targeting that is in violation of International Law.” (ibid.)
- ⁶ For Just War theorists, such as Michael Walzer and Samuel Schefflin, acts of terrorism are a possible recourse as much for state as for non-state actors, where citizens of both home and foreign states remain vulnerable to attack by both. Neither basis, however, makes any such act less morally deplorable than another.
- ⁷ https://www.timesofisrael.com/liveblog_entry/netanyahu-lashes-foreign-press-for-false-reporting-regarding-gaza-humanitarian-situation/ (accessed on 11 October 2026)
- ⁸ https://en.wikipedia.org/wiki/Civilian_casualty_ratio (accessed on 11 October 2026)
- ⁹ The documentary feature film Naza (2026, dir. Yuval Abarham & Rachel Szor) presents spoken testimony of the IDF soldiers and other operatives who carried out remote-controlled bombing-raids by drone or provided AI-generated lists of targets for manned air-strikes from the comfort of IDF headquarters in Tel Aviv, knowingly killing many dozens of civilians on the basis of a single Hamas target.

- 10 For example, by U.S. Secretary of State Anthony Blinken in January 2024: <https://www.aljazeera.com/news/2024/1/9/blinken-tells-israel-to-avoid-further-civilian-harm-in-gaza> (accessed on 11 October 2026)
- 11 Although McMahan's firm conviction that a Gandhian-style nonviolent resistance on the part of Palestinians up to October 2023 would have resulted in their having "had their own state many decades ago" seems remarkably implausible; see McMahan 2024 [7], p. 388.
- 12 For example, McMahan writes, "On this view [of civilian liability to lesser harms in the case of sharing responsibility for their leaders waging unjust war], most Gazan civilians are liable to some proportion of the harm they might suffer as a side effect, thus making it more likely that the total harm they might suffer is justified, since the remainder that must be justified in some other way is a lesser harm." (2024, pp. 392–393) If this moral casuistry (while not representing McMahan's own more restrictive view) could in theory speak to the Israeli authorities who are the most natural holders of a view of civilian liability to lesser harms, it is immaterial with respect to those innocent civilians who have been met with a 2000-pound bomb dropped on their apartment complex as part of a justified strategy to kill the 'unjust' enemy. After all, as McMahan himself notes (p. 393), Gazan civilians are (or were) made up of 47.3% children, which means that 'most Gazan civilians' suffering side-effects substantially include them, none of whom could be understood to be morally responsible for their leaders' choices and so rendering only a limited portion of most Gazan civilians—those eligible to vote who actually voted for Hamas in 2006—liable on this view to lesser harms.
- 13 See however O'Keefe (2024) [9] for the juridical evaluation of the genocidal intent of a state.
- 14 See Powderly (2026) [10] for the role and practical operation of inferential reasoning in determinations of fact, and the general applicability of the only reasonable inference test when establishing facts on the basis of circumstantial evidence in the criminal evaluation of genocidal intent.
- 15 A term of psychology identifying the perceptual illusion of failing to consciously register a visual cue that has in fact been perceived. By analogy, it operates here as that moral understanding that while comprehended as a background condition is in practice obscured in lieu of other proximal purposes.
- 16 The Strachey edition of Freud typically employs the English 'instinct' for both the German *Trieb* (drive) and *Instinkt* despite their semantic difference, an equivocation sought to be rectified in the more recent Penguin Freud edition (ed. A. Phillips). All citations from the Strachey edition will, with this caveat, maintain the original.

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