

Drones and Dirty Hands

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The period known as the “War on Terror” has prompted a revival of interest in the problem of “dirty hands”: the idea that political actors frequently confront choices where they cannot fulfill their responsibilities to the public welfare without violating ordinary moral obligations to avoid violence, deception, and similar forms of wrongdoing (Walzer 1973). Several motifs from the dirty hands literature have migrated into public discourse: in particular, the image of the anguished public leader committed to protect the public’s safety but seemingly forced into distasteful acts of violence to achieve this noble end. This renewed interest is hardly surprising, given that the September 11th attacks led policymakers anxious to prevent another attack into a reconsideration of just the kinds of morally troubling tactics that the literature about dirty hands addresses. Popular news stories regularly characterize President Obama as personally wrestling with the insoluble moral dilemmas inherent in “the president’s attempt to apply the ‘just war’ theories of Christian philosophers to a brutal modern conflict,” yet ultimately resolving these conflicts in favor of the more aggressive course of action (Becker and Shane 2012).

It is easy to understand why the notion of dirty hands appeals to political actors concerned with polishing the president’s image. More surprising, however, some political theorists have begun adopting a similar interpretation of contemporary targeted killing policies. Notable in this regard is political theorist Stephen de Wijze (2009), who contends that a policy of using preventive (lethal) force against terrorist actors is (under specified but not uncommon circumstances) an instance of a dirty-handed moral dilemma (see also Kaag and Kreps 2014, 11-14). The identification of the practice of targeted killing with the problem of dirty hands carries far-reaching implications that are morally problematic and, we argue, reveal the dangers with such an approach.

In the first two sections of this chapter we argue that, while dirty hands situations exist as a persistent problem of political life, it is a mistake to classify current policies of targeted killing as an example of dirty hands. Instead, as we argue in the third section, if these policies are to be justified at all, they must meet the more exacting standards of either the just war ethic or the law enforcement ethic, in particular the requirement (with limited and defined exceptions) that noncombatants be immune from violence. In the fourth section, we review a proposal by Michael Walzer that a third, “in-between” ethic is needed to accommodate a gap between the circumstances under which the just war and law enforcement ethics apply, and conclude that it is unnecessary and potentially undermines existing traditions and law in place to restrain force. The chapter’s fifth section argues that the concept of dirty hands can prove insightful for moral analysis of some targeted killing scenarios, but that applying it to ongoing, established policies, rather than specific emergencies, opens the door to predictable appropriations of the concept to domains it was never intended to address. In the sixth section, we examine the ethical problems of accountability associated with using drones or unmanned aerial vehicles for targeted killing (we opt for the more commonly used term “drone”). In the conclusion, we suggest some implications from the case of targeted killing in assessing the relationship of the dirty hands literature to the ethics of war more generally.

Dirty Hands

In his article “Targeted Killing: A ‘Dirty Hands’ Analysis,” Stephen de Wijze argues that a policy of targeted killing “can indeed be justified” under certain circumstances, but nevertheless “also remains morally wrong and leaves a moral remainder that pollutes those who authorize, plan and execute it,” a status he classifies as a “dirty hands action” (de

Wijze 2009, 308). De Wijze's underlying motivation in advancing this argument appears to be laudable. By appropriating the language of dirty hands, with its implication of a residue of moral pollution, he denies that those participating in targeted killings can wholly escape moral blame. His adoption of the dirty hands framework permits him to argue that some dimension of targeted killing remains ineliminably wrong, and consequently that "a policy of [targeted killing] must be adopted only with the greatest reluctance and as rarely as possible" (de Wijze 2009, 318). Important aspects of de Wijze's use of the dirty hands framework do seem valid. Some features of the moral quandary faced by government officials result from "the immoral and evil acts (or projects)" of the terrorist organizations themselves: their unwillingness to engage in conventional struggle (precluding their easy identification as combatants) and targeting of innocent civilians in peaceful contexts (making the imminence of the threat posed difficult to ascertain) (de Wijze 2005, 456, 464; de Wijze 2009, 309-10). Yet his central claim, that the idea of dirty hands is an appropriate description for the ongoing *practice* of targeted killing, is problematic.

De Wijze's argument that the practice of targeted killing qualifies as an example of dirty hands does not explain the *specific* moral principles violated by the practice. Instead, his analysis focuses on the regret and moral anguish that those engaged in targeted killings should experience. While these factors are often by-products of dirty-handed choices, they are not by themselves constitutive of what gives such choices their distinctive moral ambiguity. If regret and anguish were the only distinguishing aspects of dirty hands, the morally legitimate use of lethal force for self-defense in war or law enforcement would qualify as a dirty-handed action whenever the individual carrying out the killing felt moral anguish afterward. There may be good reason to desire that soldiers and law enforcement

officers experience anguish over the use of lethal force, but classifying all who feel anguish as actors with dirty hands renders the concept overly broad and robs it of its specific explanatory power.

What makes the concept of dirty hands distinctive is its identification of a specific moral conflict between two real yet incompatible moral values or obligations, where no available action enables the agent to avoid violating a deeply held moral principle. In such circumstances, the necessity of choosing one of the available actions, and the correlative necessity of violating a contrary but still valid moral principle, generates what Bernard Williams termed a “remainder” of moral wrong incommensurable with, and therefore not wholly made up for by, the good vindicated by the choice (Williams 1973). Not all instances of moral conflict rise to this level of complexity. In some cases, moral conflict may exist without yielding a particular ethical remainder: the violation of the moral principle is present, but is internally justified by moral values commensurable with those being compromised. For instance, in seeking to pass the 13th Amendment to the Constitution abolishing slavery, Abraham Lincoln arranged for wavering Democrats to be promised government jobs and other favors in exchange for their votes, and concealed this fact from public view on the grounds that it might scuttle the Amendment. Despite the dubious nature of these actions, Lincoln could argue that the exclusionary impact of slavery (among its other harms) undermined democracy, and that the degree of *prima facie* corruption involved in his side deals were *internally justified*—fully made up for—by the same values they compromised (Parrish 2010, 70-71). In other words, such forms of moral conflict really constitute cases of *prima facie* obligations being over-ridden by competing moral considerations of greater force.

Dirty-handed actions, however, go further than this. They signify a real difference in kind between the competing moral values at stake—an inability to resolve the conflict by appeal to a common moral standard. In the true dirty hands situation, whatever one does, there is a morally significant remainder to be accounted for: the moral principle violated is incommensurable with the competing moral principle that motivates the violation, such that the wrong caused by the one cannot be made up for by the good of the other. This degree of moral conflict may not rise to the level of a truly tragic dilemma involving such brutal alternatives that there exists no discernable best action (as we arguably find in Sartre’s dilemma of the soldier who must either forsake the resistance or abandon his ailing mother) (Sartre 2007). But even when we can say with reasonable assurance that our choice is the best possible one given the circumstances, there remains, where dirty hands exist, a real wrong for which we are accountable.

The problem with de Wijze’s analysis of targeted killing is vagueness: he does not specify precisely which aspects of moral conflict make it an instance of dirty hands. He distinguishes targeted killing from forms of political assassination (aimed at civilian leaders to promote regime change or other political gains), and instead defines targeted killing as the killing of individuals who: (1) pose an “imminent threat”; (2) have “a proven record of actively planning and/or executing terrorist attacks against civilians” as well as a perceptible intention to continue to do so; and (3) present officials with “no realistic possibility of preventing such attacks by nonlethal methods and bringing the perpetrators before a proper court of law” (de Wijze 2009, 307-08). These broad criteria encompass a host of actions that seem to be distinct from each other in morally significant ways. For example, a law enforcement officer who kills a terrorist driving a vehicle laden with

explosives toward a crowded building of civilians meets each of de Wijze's separate criteria: it is the killing of an individual posing an imminent threat, with a clear intent to harm civilians, where nonlethal means are not feasible for stopping the threat. Yet we recognize this case as a paradigm example of the legitimate use of force within a domestic law enforcement context. This example differs importantly from de Wijze's sustained case study in his article, the Israeli military's targeted killing of Hamas leader Salah Shehade, which resulted in 14 civilian fatalities (de Wijze 2009, 310-17). According to de Wijze, any targeted killing meeting his criteria defining this practice should count as an instance of dirty hands. But as these two examples show, key morally relevant features of a targeted killing—such as whether it results in noncombatant casualties—offer a basis for differentiating between alternative categories of targeted killings: some legitimate, some morally questionable, and some morally blameworthy. By ignoring key features for evaluating these distinct cases, de Wijze mistakenly collapses many varieties of this practice under the general category of dirty-handed dilemmas.

Emergency Ethics

In contrast to de Wijze's approach, we believe the best way to understand the concept of dirty hands is as a dilemma that characteristically arises in emergency situations that are difficult to foresee and plan for. A promising place to explore this connection is the thought of Michael Walzer, since he has repeatedly addressed (with varying degrees of directness) the relationship between dirty hands and emergency ethics. In his influential treatment of just war theory, *Just and Unjust Wars*, Walzer does not appeal directly to the idea of dirty hands, but approaches closest to it in his chapter on "Supreme Emergency." Walzer argues that situations combining an imminent threat with enormously consequential stakes—no

mere danger, but catastrophe “of an unusual and horrifying kind”—may create a situation of “supreme emergency” in which “one might well be required to override the rights of innocent people and shatter the war convention” (2000, 259). Walzer illustrates the kind of scenario he has in mind by reference to Britain’s decision to bomb German cities in 1940, when Britain teetered on the edge of defeat at the hands of the Nazis, fulfilling both the criteria of imminence (defeat was at hand) and outsized consequences (not just defeat, but surrendering to the inhumanity of the Nazi system). He contrasts this situation, where the emergency does seem genuinely supreme, with Britain’s decisions to bomb German cities later in the war (when British defeat was no longer a realistic possibility) and the American decision to bomb Hiroshima and Nagasaki (where a negotiated peace might have been had if the Allies had not demanded unconditional surrender by Japan). In a later essay “Emergency Ethics,” Walzer explicitly identifies a supreme emergency in war as a specific instance of the problem of dirty hands (2004).

Some commentators, notably C.A.J. Coady, have puzzled over an apparent shift in Walzer’s thinking on dirty hands, noting that his original characterization in “Political Action” included such seemingly mundane cases as campaign finance corruption, which could never approach the degree of justificatory burden he establishes for a supreme emergency. Coady notes that in “Political Action” Walzer’s argument “seemed much closer to a utilitarianism of extremity with the extreme being nowhere near the limit set by supreme emergency,” since even in his most dramatic illustration, the ticking-bomb case, the stakes, while high, amounted to the lives of at most a few hundred innocents, not the survival of a free way of life (2008, 84-85; see also 2014). In “Emergency Ethics,” however, Walzer repeatedly invokes the image of dirty hands in describing the moral status

of the person who authorizes mass murder of noncombatants in a supreme emergency (2004, 37, 45-46, 48). Coady suggests this represents a change in Walzer's view, substantially narrowing the scope and raising the stakes for when dirty hands justifications are valid.

We believe this alleged shift is better explained by interpreting Walzer's supreme emergency as an instance of dirty hands, but not the only instance. Bombing cities is one possible kind of dirty-handed action, presumably at the farthest extreme of justificatory burden, with bribing a local boss to win an election being another instance closer to our regular experience. Walzer does suggest different thresholds for invoking dirty hands in each of these cases, but not because his view about the broad category has shifted. It is more likely that the differing thresholds reflect a divergence in the harm contemplated (one needs a better justification for bombing a city than for a bribe). Admittedly, Walzer contributes to the ambiguity, in particular his statement that "dirty hands aren't permissible (or necessary) when anything less than the ongoingness of the community is at stake, or when the danger that we face is anything less than communal death" (2004, 46). On closer examination, however, Walzer's actual point appears to be that the form of the problem of dirty hands *that typically arises in cases of war*—namely, violating the just war protections for noncombatants—requires a higher threshold to be reached. This claim is fully consistent with the possibility (indeed, likelihood) that a lower standard is required for the commission of lesser evils.

Thus Walzer's considered view appears to be that the deliberate killing of noncombatants as a direct instrumental means to one's end (as opposed to a foreseen but not directly intended side-effect) requires the highest conceivable standard of

justification—a supreme emergency. This standard is higher than other varieties of dirty hands, such as bribery or torture (though Walzer still requires a compelling justification in these cases, too). For the remaining cases, we have what Walzer calls “the war convention”—that is, the traditional rules of *jus in bello*,¹ including the requirement of proportional force and the principle of noncombatant immunity. Drawing this distinction between dirty hands broadly understood and emergency ethics more narrowly construed allows us to note the crucial point of contrast between Walzer’s view of dirty hands and de Wijze’s: Walzer explicitly rules out the idea that the dramatic action demanded by an emergency could ever become the normal state of affairs, or that a dirty-handed action could ever become an ongoing *policy*.

The very nature of Walzer’s concept of supreme emergency implicitly confines its applicability to a temporally limited context. “Even in wars where the stakes are very high,” Walzer cautions, “they may not be so high at every moment in the course of the war as to bring the supreme-emergency argument into play. Each moment is a moment-in-itself; we make judgments again and again, not once for each war” (2004, 46). Most importantly, this caveat means that emergency ethics (the form of dirty hands associated with taking human life) cannot ever be permitted to become rationalized, bureaucratized, made a matter of habit: “We must resist the routinization of emergency, reminding ourselves again and again that the threats we force others to live with, and live with ourselves, are immoral

¹ *Jus in bello* refers to the system of ethical requirements pertaining to the conduct of war (such as proportionality and non-combatant immunity), distinguished from the ethical requirements of *jus ad bellum* pertaining to the decision to go to war (such as just cause and last resort). See Walzer 2000, 21-50.

threats.... This is the essential feature of emergency ethics: that we recognize at the same time the evil we oppose and the evil we do, and that we set ourselves, so far as possible, against both” (2004, 49). Dirty hands is thus the wrong terminology to use to describe an ongoing policy that provides for the intentional taking of life under specified and predictably recurring conditions. Rather, that is what the principles governing the use of force in law enforcement and just war are for: to mark out the limits within which the necessary evil of killing can and cannot be *justifiably* pursued.

Walzer clearly intends his conception of dirty hands (and the related topic of emergency ethics) as a distinct category from the ordinary actions a soldier or domestic law enforcement officer takes in accordance with the conventions governing force in the spheres of war and peace, respectively. This distinction does not imply that there is no relation between dirty hands and the violence associated with war or law enforcement. War in particular, writ large, may at bottom constitute a kind of dirty-handed dilemma, an awful necessity posed by the nature of violence and public order.² Similarly, the overall choice to enter into a specific war, particularly a non-defensive war, might frequently meet many of the criteria for a dirty-handed dilemma. But within the context of a specific war, if the rules of conduct associated with war have any meaning at all, they claim to mark out territory within which soldiers may follow their directives with moral safety, knowing that actions taken in accord with both their spirit and letter will be internally justifiable moral actions (see Parrish 2010, 70-71).

² A view along these lines seems to be present in Augustine’s just war theory, and more recent echoes are perceptible in Max Weber’s political theory. See Parrish 2007, 95-101, and Weber 1958, 122-28.

Just War and Law Enforcement

The previous sections point out the problem with applying the concept of dirty hands too easily to an area such as war for which there is already a well-developed body of ethical theory to assess its practices. The concept of dirty hands describes moral conflict at the margins, where we experience friction between spheres of value in unexpected and uncooperative ways. Just war theory, however, expects moral conflict in its midst. It *begins* with a recurring experience of moral conflict, the kind arising in war, and purports to map out the terrain so that soldiers and commanders may each follow a path with relative ethical safety. Perhaps just war theory is wrong to assume that such a mapping is possible (McMahan 2009), but this is undoubtedly what the theory supposes itself to be doing.

In this sense, just war theory describes the ethical dimension of a *practice*—soldiering and commanding in war—that is of ongoing relevance to a regrettable sphere of human life. In the domestic context, a similar practice exists—law enforcement—and it too is guided by an ethical theory. We will call these theories the *just war ethic* (JWE) and *law enforcement ethic* (LEE), respectively. For both these areas, the ethical theories in question offer themselves as a basis for guiding the practices they circumscribe along morally permissible paths. If the practice itself is morally justified and the ethic properly describes the normative permissions and prohibitions that apply *systematically* within the practice, then the practitioner—the soldier, the police officer—may refer directly to the practice’s ethic with confidence, without needing in ordinary circumstances to go beyond it. As John Rawls argues in his essay “Two Concepts of Rules,” prescriptions that arise *within* a morally justified practice can claim a kind of day-to-day insulation from the broader “all-things-considered” judgments that grander ethical theories—such as consequentialism and

deontology—invite (Rawls 1955). We can critique the practice itself from whatever theoretical vantage point we find most compelling. We can also question which practice applies, or ought to apply, to our present circumstance. What we cannot do, on Rawls's view, is critique the applicability of the rules from a standpoint located within the practice itself. We may debate what just war theory should prescribe in circumstances of war and whether this really is a circumstance of war. But *as* soldiers, we do what the code of soldiers prescribes.

In the case of targeted killing via drones, the two ethics, the JWE and LEE, both offer themselves as potential guides. The JWE, as enshrined in international humanitarian law, requires that military actions respect the following principles: (1) only combatants are legitimate intended targets in military operations; (2) there must be reasonable certainty in distinguishing between combatants and noncombatants when carrying out attacks against combatants; (3) the force used against combatants must be proportional to the threat; and (4) the military advantage gained from an attack must outweigh any unintended harm that the attack inflicts on civilians (Melzer 2008a and 2008b, 243-419; Walzer 2000, 127-222). This ethic does not place an outright prohibition on knowingly causing noncombatant casualties, but emphasizes basic protections for noncombatants and seeks to minimize harm to them.

The LEE, as reflected in international human rights law, serves as an alternative moral framework for evaluating drone strikes outside traditional combat contexts. In contrast to the JWE, the LEE puts forward the following more stringent criteria governing the use of force: (1) only imminent threats to life permit the use of lethal force; (2) there must be certain identification of a threat before using force against him or her; (3) lethal

force is justified only when nonlethal measures are not feasible for stopping a threat; and (4) any use of force must avoid the foreseeable risk of civilian casualties.³ The LEE prioritizes guaranteeing due process and the presumption of innocence to those suspected of wrongdoing over swift action against them. Therefore this ethic greatly restrains the use of lethal force, permitting it only in instances where it is absolutely necessary to stop an imminent threat to life (Melzer 2008b, 85-239).

Some drone strikes constitute relatively easy cases, where it is clear which ethic applies to them. Contemporary militaries now employ armed drones in conventional warfare. In a conventional war, a military is justified in using drones against targets that do not present an imminent threat, as long as these operations adhere to the principles of the JWE. Drones may be a new technology, but there is nothing inherently unjust about the way they kill enemy combatants. The same criteria used to evaluate other military operations—such as a cruise missile strike—apply to drone strikes in conflict zones (Alston 2010, 24; Strawser 2010, 356-58).

There is greater moral ambiguity, however, when drone strikes against suspected terrorists occur in areas that are not conventional conflict zones—such as Pakistan, Yemen, and Somalia—since the JWE’s more permissive rules for armed attacks would not ordinarily apply to these areas. The U.S. has authorized over 500 strikes in these regions

³ One exception to the prohibition on foreseeable civilian casualties under the LEE is those rare cases when civilians find themselves trapped by a criminal’s a threat—such as a hijacked airplane headed toward a populated area—where stopping the threat regrettably entails the deaths of civilians within it.

since 2002, as the targeted killing of suspected terrorists by drones has become an entrenched practice of U.S. foreign policy (Bureau of Investigative Journalism 2015). How we morally assess the U.S. program of targeted drone strikes hinges on whether the JWE or LEE should guide these operations.

The U.S. has made clear its position: the policy of targeted killings falls under the JWE and is consistent with international humanitarian law. According to both the Bush and Obama Administrations, the U.S. is engaged in an ongoing non-international armed conflict⁴ against al-Qaeda and its affiliates. Congress's 2001 Authorization for the Use of Military Force provides legal legitimacy for these ongoing strikes against suspected terrorists and extends beyond the battlefields of recognized war zones (Iraq and Afghanistan) to the more ambiguous cases of zones experiencing periodic conflict (Pakistan, Yemen, and Somalia) (Brennan 2011; Department of Justice 2013; Holder 2012; Koh 2010; Obama 2013). Many in the international community, however, express skepticism toward the administration's legal rationale for its program of targeted killings. In particular, critics find the U.S. government's expansive interpretation of its current conflict with al-Qaeda—a conflict without geographic or obvious temporal limits—to be unprecedented and dangerous (Brumfield and Morgenstein 2013).

If the LEE should govern targeted killings by the U.S. outside of traditional conflict zones, these strikes clearly lack legitimacy. Under the LEE, targeted killing is justified only

⁴ The U.S. uses the term “non-international armed conflict” to specify that it is not at war with another state (what would be an *international* conflict), but rather at war with a non-state actor.

in those rare cases when lethal force is necessary to incapacitate an imminent threat to life, and never as a punitive response (Alston 2010, 11; Melzer 2008b, 423). U.S. targeted killings by drone often fall short of the LEE’s imminent threat criterion. The U.S. has sought to circumvent this limitation by adopting a definition of imminence that undermines its basic meaning. As a leaked Department of Justice legal memo shows, under U.S. policy “the condition that an operational leader present an ‘imminent’ threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future” (Department of Justice 2013, 7). A pattern of planning attacks is sufficient to qualify an individual as an imminent threat, not active participation in a specific future plot.

There are similar shortcomings in the application of the LEE’s certainty standard. In addition to “personality strikes”—drone strikes against named terrorist suspects—the CIA carries out “signature strikes” against individuals based on their pattern of behavior, though the targets’ identity is unknown (Klaidman 2012, 40-41). Since U.S. officials do not even know the identities of the targets of signature strikes, this practice clearly violates the LEE’s requirement that officials identify a target with high certainty before authorizing a strike.

In addition, the very nature of drone strikes—killing at a distance by machine—often puts in jeopardy any hope of meeting the LEE’s requirement to use nonlethal measures in stopping a threat and only opt for lethal measures as a last resort. General James Cartwright, former vice-chair of the Joint Chiefs of Staff, points out that a suspected terrorist facing a drone strike has little opportunity to surrender when there is no one on the ground in conjunction with a drone (McKelvey 2012). Defenders of U.S. drone policy

argue that strikes only occur in areas where it is impossible for troops to seize suspected terrorists. Yet the risk associated with putting boots on the ground, along with the controversy inherent in incarcerating and trying suspected terrorists on U.S. soil, creates strong political incentives to choose drone strikes as a first rather than last resort (Klaidman 2012, 117-43).

Finally and importantly, the CIA drone program violates the LEE's—and arguably also the JWE's—noncombatant protection standard by authorizing strikes that entail likely civilian casualties. One example occurred in North Waziristan in Pakistan on March 17, 2011, when missiles hit a large gathering for a *jirga*, a tribal assembly for resolving disputes. Under the LEE, the presence of militants at this gathering in no way justifies the strike, given the large number—between 19 and 41—of foreseeable civilian casualties. Also, so called “double tap” strikes—a follow up strike in the same location as an initial strike—often kill civilians, especially first responders and mourners who rush to the scene of a strike (International Human Rights and Conflict Resolution Clinic and Global Justice Clinic 2012, 57-62, 74). For all four of the LEE's criteria, then, evidence suggests that the U.S. drone policy regularly violates these standards and even the less stringent JWE standards on occasion.

Walzer's “In-Between Zones”

Michael Walzer in recent writings offers an alternative approach to the problem of targeted killing outside traditional combat zones that avoids some of the difficulties of de Wijze's position but raises other concerns. For Walzer, targeted killings are justified in some instances, but at the same time he finds troubling the lack of restraints on the current U.S.

drone program. In particular, Walzer points out that the U.S. drone program as currently practiced regularly violates the just war principle of proportionality (Walzer 2013)—a concern obscured by the U.S. practice of counting all military-age males killed in a strike as militants unless explicit evidence proves their innocence (Becker and Shane 2012). But Walzer’s criticism goes beyond concerns that current U.S. drone policy is not living up to the principles of just war theory, suggesting instead that, for targeted killings outside of conflict zones, the JWE is not the proper perspective for evaluating these strikes. He does not object to the term “war on terror,” but argues that in such a war governments normally should follow the rules governing law enforcement:

Though the risks are larger in the “war” against terror than they are in the “war” against crime, I believe that the first of these can be conducted—certainly we should try to conduct it—within the moral and constitutional constraints that [hold in a zone of peace]. The details of the constraints have to be negotiated, of course, and they are negotiated through ordinary democratic processes. And it is entirely legitimate that sometimes they will be less restrictive with regard to what the police can do and sometimes more so. But the basic principles of morality and constitutionalism should be defended, even in hard times. (2007, 481)

Here Walzer gestures at a legal and moral framework for evaluating antiterrorism activities such as targeted killings that closely follows the LEE in many respects but could deviate from it in particular instances.

When Walzer specifically discusses the practice of targeted killings of suspected terrorists (2006; 2007; 2013), he never sets out a systematic framework for evaluating targeted killings outside of a war zone. Walzer at times expresses wariness about the potential hazards of developing a new framework distinct from either the LEE or JWE (2007, 483). But together his recommendations appear to suggest that conditions in areas such as Pakistan and Yemen do require applying a novel moral and legal framework that synthesizes these two existing ethics governing the legitimate use of force.

To reconstruct Walzer's proposal, we begin by examining what he believes is an instance of a justified targeted killing. He approvingly cites a strike against al-Qaeda militants in the desert of Yemen in 2002.⁵ This strike, according to Walzer, occurred in a context that does not fit neatly into either a war zone or a zone of peace: "Yemen lies somewhere between Afghanistan and Philadelphia. It is not a zone of war where armies fight, and it is not a zone of peace where the police do their work. The state's writ does not run in the desert of South Yemen" (2007, 481). Walzer appeals to the fact that certain presumptive features underlying the LEE do not apply to "in-between zones" such as Yemen. For instance, in the strike Walzer cites, the Yemeni government had previously tried to capture the militants, and it was only when these efforts failed that the U.S. resorted

⁵ In separate articles, Walzer gives slightly different details to describe what appears to be the same strike (2006, 10; 2007, 480). Walzer likely is referencing the first U.S. targeted killing by a drone outside a declared war zone, in which a CIA drone killed six people traveling by car in the desert in Yemen on November 3, 2002. Among the dead was al-Qaeda leader Ali Qaed Senyan al-Harithi (Melzer 2008b, 439).

to a targeted killing (2007, 481).⁶ When police work fails to stop those actively engaged in terrorist activities, Walzer implies, Special Forces are justified in adopting measures more in line with just war principles (2007, 483).

The example from Yemen shows that, under Walzer's proposed ethic for in-between zones, targets need not constitute an imminent threat to justify a strike. Walzer cites no evidence that the targets in Yemen posed an imminent threat in the sense that we normally understand "imminent"—"close at hand in its incidence; coming on shortly" (*Oxford English Dictionary*). The targets' suspected involvement in terrorist activities could qualify them as imminent threats according to the Department of Justice's understanding of the term, which explicitly does not "require ... clear evidence that a specific attack ... will take place in the immediate future" (Department of Justice 2013). But this definition, by dropping the requirement of immediacy, takes us far afield from traditional understandings of imminence. If Walzer were to retain the requirement that threats must be truly imminent to justify strikes in the in-between zones, he would have to point to a specific immediate attack disrupted by the strike in Yemen. Instead, he justifies the strike on the grounds that attempts to capture the targets proved infeasible. Walzer also suggests relaxing, within these in-between zones, the LEE's strict requirement for nonlethal force whenever feasible—especially in cases where pursuing nonlethal options would put Special Forces in greater danger.

⁶ For the purpose of reconstructing Walzer's position, we do not question his account of the facts of the 2002 CIA strike in Yemen. It is important to point out, however, that the example is messier than Walzer implies. This strike, carried out without consulting domestic law enforcement, killed a U.S. citizen, Kemal Darwish (Woods 2012).

Though Walzer suggests some targeting criteria for the in-between zones similar to those governing the use of force in war, he emphasizes that protections for noncombatants in these zones remain similar to those applying in a zone of peace. Specifically, Walzer proposes two limits on the practice of targeted killing for in-between zones that are more demanding than what the JWE requires. First, he states, we must attain a higher standard of certainty than required under the JWE: to perform a targeted killing in an in-between zone, we must “be as sure as we can be, without judge or jury, that the people we are aiming at are really Al Qaeda militants or, more generally, that they are engaged in planning and carrying out terrorist attacks.” Second, Walzer claims, the noncombatant protection requirement is also strengthened: “We have to be as sure as we can be that we are able to hit the targeted person without killing innocent people in his (or her) vicinity” (2006, 11). To stop an imminent threat in an in-between zone, Walzer reluctantly concedes that noncombatant casualties may be permissible, but cautions that crossing this line easily can lead to brutality that cannot be justified (2007, 483-84).

Thus, Walzer sets forth targeting criteria for in-between zones that combine principles from the JWE and LEE. With respect to (1) legitimate targets, only individuals actively engaged in terror activities count as legitimate targets in the in-between zones (a standard closer to the JWE requirements since the target does not need to be an *imminent* threat). With respect to (2) certainty, there must be certain identification of a threat before using force against him or her (corresponding to the LEE requirement). Regarding (3) the permissible degree of force, the force used against suspected terrorists must be proportional to the threat (the requirement under the JWE). Finally, in terms of (4) risk to non-combatants, any use of force must avoid the foreseeable risk of civilian casualties, except

in emergencies (a slightly relaxed variation on the LEE standard). Table 11.1 shows how Walzer’s in-between zone proposal compares with the requirements of the JWE and LEE.

Table 11.1 Comparison of the Criteria Governing the Use of Force

	<i>Just War (War Zone)</i>	<i>Law Enforcement (Zone of Peace)</i>	<i>Walzer’s Proposal (In-Between Zone)</i>
<i>Legitimate Targets</i>	Combatants	Imminent threats only	Individuals actively engaged in terrorist activities but not necessarily imminent threats
<i>Certainty</i>	Reasonable certainty in distinguishing combatants from noncombatants	Certain ID of Threat	Certain ID of Threat
<i>Degree of Force</i>	Proportionality	Always nonlethal measures, except when not feasible	Proportionality
<i>Risk to Noncombatant</i>	Principle of double effect limits the acceptable risk of non-combatant casualties	Avoid the foreseeable risk of noncombatant casualties	Avoid the foreseeable risk of noncombatant casualties (except in emergencies)

Note: Shading denotes which criteria in Walzer’s proposal correspond with the just war ethic and which correspond with the law enforcement ethic.

On its surface, Walzer’s proposal appears to offer a sensible compromise. For in-between zones where U.S. drone strikes are common, Walzer recommends that we “maneuver between our conception of combat and our conception of police work, between international conflict and domestic crime, between zones of war and peace” (2006, 12). This compromise, however, proves to be more far-reaching than it seems. In offering this compromise, Walzer does not merely critique U.S. officials for incorrectly applying

existing principles governing the use of force. He further suggests that the principles of the JWE and LEE are inadequate to provide guidance on the proper use of force against suspected terrorists. In other words, concern over the U.S. practice of targeted killings stems partly from the need to define a new practice altogether—the use of force in the in-between zones—with its own distinct rules. There is no category in international humanitarian law or international human rights law corresponding to the in-between zones that Walzer discusses. International law prohibits the targeted killing of a non-imminent threat outside of a war zone, for example, whereas Walzer’s proposal permits such action in certain instances. Walzer’s compromise, then, requires carving out a new theoretical category.

Admittedly, the two ethical traditions governing the use of force are not set in stone: like any practices, their rules and norms have changed over time.⁷ Indeed, Avery Plaw and João Reis in this volume make the case that international norms regarding targeting killing currently may be undergoing a transformation. The temptation for creating a third category is understandable, since disanalogies between the domestic context and the more conflict-ridden territories Walzer refers to are not negligible. Domestic terrorism occurs in a context where the rule of law is strong, which fosters an environment favorable for law enforcement working to stop terrorist activities. The planning, preparation, and execution of global terrorism, however, often take place in distant locations where the reach of domestic law enforcement is weak. Success in countering international terrorism therefore depends on the ability of domestic law enforcement agencies to cooperate with their

⁷ For example, originally the rules of warfare required submarines to surface before they could attack, but these rules have since been abandoned (Yoder 1996, 51-52).

counterparts overseas, who may be ineffective or unwilling to assist. When law enforcement finds itself powerless to act in such instances, this challenge might be thought to justify relaxing the restrictions imposed by the LEE and adopting the alternate criteria suggested by Walzer for in-between zones.

Yet it is important to balance this perceived need for a new “in-between ethic” with a sober understanding of the implications of adopting it. Walzer’s proposal would weaken the (theoretical) protections against force enjoyed by civilians and suspects in areas that, under the current dichotomous framework, generally are characterized as non-conflict zones. Perhaps a partial step toward the JWE is better than holding onto the LEE when it proves impotent to deliver its promises of security. Daniel Brunstetter and John Emery in this volume propose such a partial step, which places specific restraints on the use of force that go beyond Walzer’s account of in-between zones. But it is important to remember that, even as the JWE places constraints on the devastating force brought to bear by war, within these constraints its effects on human beings remain no less devastating. For this reason, any conceptual step toward expanding the zone of war is to be accepted only with considerable caution.

The key step in Walzer’s argument comes in drawing the conclusion that, when law enforcement’s efforts are stymied, the LEE’s moral force no longer holds, opening the door to systematically permitting lethal force as a response to foreign terrorism in contexts where it would ordinarily be forbidden. The problems with this conclusion can be seen by considering an analogy with domestic terrorism. In the domestic context, where the LEE clearly applies, there is a strict prohibition against police exercising lethal force as a punitive response to someone suspected of terrorism. In the absence of an identifiable

imminent threat, the use of lethal force by the police strikes us as unwarranted. Even if police have an opportunity to exact punitive measures directly against a suspect, we instead require them to follow the law, take the suspect into custody, and let the judicial process take its course. This conclusion still holds in cases where we have doubts that the justice system can be trusted to succeed in its objectives. For instance, suppose all the evidence points to the guilt of a suspected domestic terrorist, yet it is known that she is likely to get off on a technicality or never be brought to trial because certain witnesses are too fearful to testify. This scenario is not far-fetched, especially given the history of domestic terrorist groups like the Ku Klux Klan that used violence and intimidation to operate with impunity in the Jim Crow era, when acts of domestic terrorism (e.g., lynchings) occurred with far greater frequency than today (Equal Justice Initiative 2015). Despite such failures in the justice system, we remain wary of discarding the LEE to allow lethal force to punish past actions, due to its risk of further escalating violence.

For these reasons, we resist Walzer's implication that in-between zones require a new ethic distinct from the LEE or JWE (see Daphne Eviatar's chapter in this volume, which takes a similar position). Certainly, there is undeniable value in Walzer's analysis of these cases, for it brings into focus a set of challenges arising outside traditional war zones that may pose peculiar moral quandaries for those committed to following the prescriptions of the LEE and JWE. Where terrorism makes peace precarious, the impetus is greatest to resort to lethal force in situations that fall short of satisfying the criteria demanded by the LEE. The danger in choosing this path, however, lies in its broader impact on communities and noncombatants. Systematically relaxing the restraints on the use of force against suspected terrorists puts not only these suspects at greater risk, but also the communities of

innocent men, women, and children where they reside. In fact, such an approach to in-between zones has the effect of empowering terrorists to bring conditions approaching war wherever they go, even areas where, though the rule of law may be less than ideal, many of the characteristics of domestic stability and peace still obtain.

It is precisely this consequence of the U.S.'s choice to define its counterterrorism efforts against al-Qaeda and its affiliates as a war without geographic limits that raises concerns. As Steven Ratner argues, by understanding this conflict as a *global* war that extends wherever al-Qaeda is found, the U.S. pursues a policy that makes in-between zones both more vulnerable and more prevalent (2007, 272). Indeed, these areas have suffered the most under the CIA covert drone program and, unsurprisingly, strikes in these areas have proven the most controversial (International Human Rights and Conflict Resolution Clinic and Global Justice Clinic 2012). Walzer's proposal does seek to place limits on the CIA program that are currently absent. But the implications of his proposal still tend to weaken noncombatant protections in ways that are difficult to justify categorically, given the strong resemblance that in-between zones continue to share with non-war zones.

Across a variety of contexts, there should be a strong presumption to hold onto the protections of the LEE. The mere presence of a dangerous individual domestically does not compel us to abandon the LEE, nor should this dynamic alone lead to a different conclusion for a far away land. The principles of *jus ad bellum* articulate demanding criteria that must be met before ever bringing war into a community (Johnson 1999, 27-70; Walzer 2000, 51-124; Yoder 1996, 71-80, 147-56). In particular, the principle of proportionality demands that any analysis of the expected harms and benefits of going to war cannot give privileged consideration to one's fellow civilians, but must give equal

weight to foreign civilians whom the war could harm.⁸ Due to the often-disastrous effects of war on civilians and the tendency of violence to escalate, the proportionality requirement sets a high bar to justify war. Furthermore, even if this bar is met, it is a mistake to claim that, for entities as diverse and amorphous as terrorist organizations, a nation can make a broad proclamation of war against them once and then pursue war wherever these organizations are found. This perspective casts away important restraints on war and invites an expansive conflict. Decisions regarding war must be sensitive to conditions on the ground and made separately for distinct locales, on a case-by-case basis. Any attempt to systematically discard the LEE wherever the challenge of terrorism arises misses this critical point.

The LEE places more stringent restrictions on targeted killings and the use of force generally than the JWE, but it is not impotent in the face of terror and possesses resources for addressing it. Within Walzer's in-between zones, we observe that it is more likely that the third condition for a targeted killing—*infeasibility of nonlethal measures*—will be met than in standard domestic contexts because law enforcement is weak in such areas. Yet this observation by itself does not imply a weakening of the LEE's normative force. On the contrary, the LEE still holds for in-between zones and officials retain a *prima facie* obligation to pursue nonlethal responses whenever such measures have a reasonable prospect of success. The implication of the purported distinction between zones of peace and in-between zones is in reality much more modest: if justified targeted killings of suspected terrorists become somewhat more plausible for in-between zones, that is only

⁸ A spokesman for the U.S. Conference of Catholic Bishops makes exactly this point when questioning the legitimacy of the current U.S. program of targeted killing (Pates 2013).

because the lack of effective law enforcement in these areas may tend to make capture and other nonlethal responses to *imminent* terrorist threats less feasible.

Potential Dirty Hands Dilemmas Raised by Drones and Terrorism

Our approach, therefore, begins by adopting the standpoint of the relevant ethic (JWE or LEE, depending on the context) as a starting point, and only then engage in adaptations of its strictures based on specific features of the situation at hand. Here the traditional concept of dirty hands again becomes relevant, particularly in emergencies where the morally obligatory features of the applicable ethic might potentially be overridden by competing consequentialist considerations. In this section, we focus on examples of what we take to be actual dirty-handed dilemmas, in order to highlight the truly hard cases that could arise when considering the targeted killing of a suspected terrorist. These examples offer a sharp contrast to the systematic abuses that often result from categorical exemptions to the LEE or JWE.

The complexity of terrorism makes it impossible to put forth a comprehensive list of potential dirty-handed actions related to the practice of targeted killings outside traditional combat zones. Nevertheless, below we review four brief hypothetical scenarios set in one of Walzer's in-between zones. In each example, one of the standard criteria for a targeted killing under what would normally be the default ethic outside traditional combat zones (the LEE) is not met. By eliminating one of the ordinarily required conditions of the

LEE while leaving the other three intact, we can observe the moral stakes in each scenario more systematically.⁹

Example 1: Condition Requiring Presence of an Imminent Threat is Not Met

A certain terrorist suspect is a charismatic leader with a history of enlisting new recruits and inspiring attacks against civilians—trends expected to continue as long as he remains in his leadership role. Nevertheless, there is no evidence that the terrorist suspect is currently participating in a specific plot endangering civilian lives. Capturing the leader through traditional law enforcement methods has proven impossible, which tempts officials to authorize a targeted strike against the leader based on his past actions and likelihood of similar future actions. Clearly, a strike in such a situation runs afoul of the criteria set forth by the LEE, which requires an imminent threat, not past actions, to justify a targeted killing. But because of the terrorist suspect's unique authority, some officials argue that they need to put aside the imminent threat requirement in this instance. Killing this

⁹ Some counterterrorism actions share features of the hypothetical scenarios outlined, and in particular there are potential parallels between the first scenario and the killing of Osama bin Laden. Nevertheless, we deliberately use hypothetical dirty hands dilemmas, rather than real life examples, due to the secrecy surrounding most targeted killings by drones. Since key, morally relevant details often are missing in these cases, using them as examples presents difficulties for illustrating the dirty hands dilemma. We thus rely on hypothetical examples to show with greater precision different manifestations of the dirty hands dilemma that targeted killings can take.

individual will significantly damage the terrorist organization's capabilities and limit its ability to carry out future attacks.

Example 2: Condition Requiring Certainty of Target's Identity is Not Met

An obscure terrorist group succeeds in carrying out several devastating attacks on civilians, and fear grips the country that more attacks are coming. The attacks catch intelligence officials off guard. Because officials do not have a long history of tracking this group, they lack in-depth knowledge of its members and operations. Officials succeed in piecing together parts of this terrorist network, but significant gaps in their knowledge remain. Based on chatter they have heard, intelligence officials believe with a high degree of certainty that more attacks are planned. Yet intelligence officials are less certain about the identity of the network's leaders and who should be priority targets in efforts to stop another attack. Given this imperfect information, any strikes would carry the significant risk of killing individuals unaffiliated with the terrorist network or who occupy relatively minor roles within it. Officials must decide whether the imminence and scale of the threat warrants relaxing the certainty requirement in this instance.

Example 3: Condition Requiring the Necessity of Lethal Force is Not Met

Intelligence officials learn that a terrorist cell in a remote region is close to making operational a potentially devastating plot directed at civilians in a large city. The country where this terrorist cell resides wants to stop them just as much as the U.S. In fact, the U.S. has participated with this country on joint operations to capture other suspected terrorists in its network. But the two countries have carried out these operations with varying degrees of success. Some operations have resulted in the successful capture of terrorist suspects. Other

operations, however, have been bloody and cost both countries lives. Moreover, the success of this terrorist group in repelling external forces has helped its legend grow and brought in more recruits. Attempting to capture members of this terrorist cell through nonlethal means is an option, but based on past experiences some officials argue that targeted strikes are necessary to ensure that the plot is stopped, as well as to reduce projected military casualties and to preclude costly prestige and recruitment gains by the terrorist group.

Example 4: Condition Prohibiting Foreseen Civilian Casualties is Not Met

For weeks, officials have been carrying out surveillance on a terrorist suspect. Officials have established that he is planning a chemical weapons attack in a populated area. Due to various factors, capturing the suspect proves impossible in his current location. The attack is imminent, so officials want to move forward with a strike. Members of the suspect's family are always near him, however. Those observing the suspect have tried to find an opportunity to strike when other family members are not in the immediate vicinity, but such an opportunity has yet to arise. Officials have to make a decision: carry out the targeted killing, which almost certainly will cause the death of noncombatant family members of the terrorist suspect, or allow the terrorist plot to proceed, which could result in high numbers of civilian casualties.

Whether a targeted killing in any of the above scenarios would be justified depends on the precise nature of the threat and the harm caused by forgoing a strike when not all the necessary conditions are met. Arguably the list of plausible cases of dirty hands could include examples when two or more conditions of the controlling ethic do not obtain, but as more conditions are not met, the required justification for permitting the legitimate use of

lethal force becomes increasingly more demanding. For all dilemmas of dirty hands, the moral burden of proof rests with those employing violence to show that emergency circumstances compelled them to break the rules that normally bind them. The public has good reason to be skeptical of a dirty hands justification for a targeted killing, given how often governments offer dubious *post hoc* justifications for violations of moral rules. In any evaluation of dirty hands situations, it is critical to remember that by their nature such dilemmas ordinarily arise in emergency contexts. If advocates of a policy repeatedly have to resort to dirty hands arguments to defend implementation of it, that is a strong *prima facie* reason to suspect the policy. Dirty hands justifications may sometimes succeed in preserving the legitimacy of actions that normally would constitute ethical violations, but such justifications never can redeem an ongoing policy that routinely disregards basic moral principles.

Drones and Accountability

In Walzer's original essay on dirty hands, he emphasizes the dangers of political actors stepping outside established moral frameworks to justify their actions. When a political actor breaks a moral rule, the worry is that she will become increasingly accustomed to wrongdoing. If nothing checks this behavior, the political actor may embrace the mindset that, in service of the greater good, she can break moral rules with impunity. Because of this concern, Walzer suggests that political leaders who dirty their hands should face punishment. Walzer himself recognizes the challenges of implementing this proposal, but it conveys the idea that we must hold accountable leaders who dirty their hands for the public good (1973, 80-81). An ethical leader embraces this aspect of the dirty hands situation: she recognizes the legitimacy and binding nature of her moral and legal responsibilities, even

as outside factors force her to regrettably forsake them. By contrast, a political system that lacks specific mechanisms for accountability invites political actors to permanently claim and abuse emergency powers. That worry is particularly acute in the case of targeted killings. It is a short journey between the practice of targeted killings and government assuming the power to assassinate at will. It therefore is wise to be wary of attempts to legitimize an expansive program of targeted killings.

Political incentives, however, encourage expanding rather than limiting the U.S. practice of targeting killings. Current U.S. drone policy plays well in the court of domestic public opinion (unsurprisingly, U.S. drone strikes are less popular abroad) (Pew 2014). Equally important, this military technology allows the U.S. to wage war against suspected terrorists while avoiding what usually is an inevitable consequence of war—casualties among one’s own soldiers. The actual human costs of drone strikes are easier for the media and public to ignore. From the perspective of electoral politics, then, there is little reason for politicians to curb drone strikes: successful strikes advance politicians’ ambitions, while inaccurate strikes carry little risk of backlash.¹⁰

Is it possible to restrict targeted killings outside of war only to cases that pose an imminent threat to human life? Admittedly, we are only a few years into the experiment of using drone technology for targeted killings, but thus far the evidence casts strong doubts

¹⁰ Illustrating this point is the reported obsession with drone strikes of Rahm Emanuel as Obama’s chief of staff. Anxious to learn of and publicize successful strikes, Emanuel recognized the political upsides of the drone program for the president (Klaidman 2012, 121-22).

on government's ability to use this power in a way that avoids the excesses to which it is prone. Protocols for the current U.S. drone program are not even public. For the foreseeable future, no plausible scenario exists whereby the strikes themselves might be subject to any form of retrospective public review.¹¹ This lack of accountability has led to an expanded U.S. policy of targeted strikes that frequently kills and maims noncombatants and instills an atmosphere of fear in areas where strikes are most common. One Pakistani man, who lost his legs in a drone strike, poignantly describes the human toll of current U.S. policy: "Everyone is scared all the time. When we're sitting together to have a meeting, we're scared there might be a strike. When you can hear the drone circling in the sky, you think it might strike you" (International Human Rights and Conflict Resolution Clinic and Global Justice Clinic 2012, 81; see also Al-Muslimi 2013). The severe trauma experienced in communities impacted by drone strikes makes clear the urgent need to significantly limit the scope of this policy. In the absence of dramatic reforms, the inevitable conclusion seems to be that the capabilities drones provide are too tempting to insulate from systematic abuse. If that is the case, the most prudent step, suggested by Stephan Sonnenberg in this volume, may be a broad policy restricting the use of drones for targeted killings to genuine combat zones.

¹¹ The U.S. Senate rejected a modest proposal to require the President to make public each year the number of people killed and injured in U.S. targeted killing operations (Mazzetti 2014).

Conclusion

Ethical analysis invites us to use our imaginations. It tends to draw our attention away from ordinary experience and toward the frontier of the unknown, to fix our gaze on situational outliers and eccentric hypothetical scenarios. In doing so, ethical analysis attunes us to recognize complexities in our moral experience that we might otherwise overlook. The politician dirtying her hands is such a case. But it is important when exploring these frontiers that we do not forget the distance we have traveled to arrive at them; that we do not import the ethic of the frontier to a context where it does not apply. As we have seen, targeted killing in the context of counterterrorism may present genuine dirty hands dilemmas. But this possibility in particular instances is insufficient to justify a *policy* that regularly violates fundamental moral and legal principles. It is hard not to reach the conclusion that dirty hands justifications for the U.S. drone program often serve as *post hoc* rationalizations for policies of dubious ethical standing.

Terrorism poses a special problem for ethical analysis because it seeks to import some of the conditions of guerilla or concealed warfare into otherwise peaceful contexts. The appropriate ethic for responding to terrorism where we encounter it directly is the ethic of war: but we rarely confront it directly, for it conceals itself. Its obscene purpose is to subdue us to a life of flinching at the mere shadows of its terrors. If it induces us to lash out indiscriminately in response, to transpose the ethic of war to times and places of peace, all the better: that will admirably suit its end. And all the while, if it ever catches us unprepared, it gains the chance to start the whole dreadful cycle once more.

How to respond to terrorism is a matter of genuine ethical difficulty, and the notion of dirty hands captures its family resemblance with other familiar moral challenges that pervade public life. But we must not let these genuine challenges eradicate the ethical progress we have made. The codes of conduct restricting violence in the enforcement of law and in war reflect an ethical frontier never too far away, especially in counterterrorism efforts that often blur the lines between zones of war and peace. But even if terrorism is war made more insidious through concealment, it is still no *more* than war. If we know the ethic appropriate to war, terrorism cannot give us reasons to enact a policy that systematically goes *beyond* that frontier ethic. Indeed, it will frequently require us to take one or more steps back from that ethic of extremes, to rely on the ethic of law enforcement, until such time as war itself is indisputably at hand.

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