Human shields, human heresies

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Abstract

Neve Gordon and Nicola Perugini might well add the laws of war as another instance of Orwellian “doublethink” where the concept of human shields operates as if it were the GPS tracker directing you to a human target. The prohibition of human shields is framed as the iron dome sheltering vulnerable actors from attacking armies, but this book compellingly demonstrates that shelter is part of the arsenal of modern lawfare. Is IHL worth saving.

Keywords Humanitarian reason · Orwellian logics · IHL and coloniality · Human shields · Contradictions

“As Israeli airstrikes hit Gaza City for the sixth night running, Dr. Ayman Abul Ouf climbed the stairs of the apartment block that his family built four decades ago, calmer than he had seemed all day.... He returned to his third-floor apartment at half-past midnight, after a 16-hour day running the coronavirus team at Gaza’s biggest hospital. He could hear the bombs, but mainly from the television in his living room. ...In the room next door, his son Tawfiq, a high-school senior, was studying for a science exam. One floor below, Dr. Abul Ouf’s father, a scientist also named Tawfiq, was making a late-night meal. One floor above, his cousin’s daughter, Shaimaa, a dentistry student, was texting her fiancé.

Minutes later, they were all dead” (Kingsley et al., 2021).

“In its current round of bombing in the Gaza Strip, Israel has killed more than 200 Palestinians to date, about half of them women and minors under the age of 18. Hundreds of homes and other structures have been destroyed, electricity and water networks impaired and roads damaged, and tens of thousands have had to abandon their homes.

Despite these figures, Israel continues to claim all its actions are in keeping with international humanitarian law and that it is taking every possible measure to avoid harming civilians” (B’Tselem, 2021).

“The Ministry of Peace concerns itself with war, the Ministry of Truth with lies, the Ministry of Love with torture and the Ministry of Plenty with starvation”—so

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George Orwell describes the institutions of Oceania in 1984 (2012, 192). Neve Gordon and Nicola Perugini might well add the laws of war as another instance of Orwellian “doublethink” where the concept of human shields operates as if it were the GPS tracker directing you to a human target. Published in 2020 by the University of California Press, Gordon and Perugini’s book, *Human Shields: A History of People in the Line of Fire*, advances its argument by presenting a series of battlefield case studies in humanitarian doublethink: the Sri Lankan military attacking Tamil civilians, the Israeli military attacking Palestinian civilians, the American military attacking Afghan civilians and many more.

The protection of civilians is widely understood as the *raison d’être* of International Humanitarian Law (IHL). The prohibition on weaponizing civilians is enshrined in the Geneva Conventions, as well as Rule 97 in ICRC’s codification of customary IHL (ICRC). It is echoed in the Rome Statute, implicit in other domains of international law and policy such as international human rights, explicitly restated in military manuals all over the world and been prosecuted as a war crime in Nuremberg, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and other fora (ICRC). Does the statement and restatement of the prohibition of human shields protect civilians? What is the work of stating that human shields are prohibited?

Gordon and Perugini demonstrate convincingly that this prohibition on weaponizing civilians is itself weaponized. Their book is arranged as a series of case studies where the prohibition gets invoked by the army responsible for inflicting civilian casualties while framing those attacks as legitimate military action against a cynical and reckless enemy that uses human shields in violation of international law. In case after case, this weaponization of the prohibition renders the situation of vulnerable civilians even more precarious. Further, this invocation of the prohibition in the name of law and ethics is undertaken by the attacking army, which is often the most powerful actor on the battlefield. After all, as Orwell says, “Power is in tearing human minds to pieces and putting them together again in new shapes of your own choosing” (Orwell, 238).

IHL’s protection regime is undergirded by two principles: (1) the principle of distinction that distinguishes between combatants and civilians, and (2) the principle of proportionality that requires that legitimate military action be proportionate to legitimate military aims, which should include minimizing the loss of civilian life. Gordon and Perugini show the malleability of these principles in the hands of military lawyers defending armies that kill civilians while arguing that it is enemy forces that are using civilians as human shields and who have the moral and legal culpability for those civilian deaths. The projection of responsibility onto enemy forces, makes it much easier to pull the trigger or drop the bomb. In other words, the prohibition on human shields gets mobilized in the name of civilian protection to be in a better position to endanger more civilians while passing the ethical and legal responsibility onto enemy forces, or to the civilians themselves (“voluntary human shields”). Orwell’s diagnostic is keenly on target: “...the object of waging a war is always to be in a better position in which to wage another war” (Orwell, 167).

Today’s battlefields are the terrain of the human (e.g., Gregory, 2011). This is true in several senses. The physical terrains of battles are terrains with the most

density of humans; most people are killed in cities. Moreover, the terrain is also one of human intimacies—from Afghanistan to Gaza, people are often killed in their homes. As Eyal Weizman observed, “Cities are always about the links between buildings in the street, networks, and infrastructure. When war happens in the city, people die in buildings, the majority in their own homes” (Weizman, 2014). The battlefield is also the terrain of the human in the sense that the killing goes to the heart of the notion of humanity, it attacks its very claim to universality and exposes the deeply inhumane hierarchies that travel through humanitarian reason (Fassin, 2011). It is these hierarchies that encourage and incentivize the volunteer human shield whose body is valued higher, and therefore, is more likely to deter attack than a body that is attacked because it is seen as disposable, or even deliberately marked for elimination. It is not only that the human is stratified and hierarchized prior to human shield regimes, but that these regimes also help constitute those distinctions and hierarchies. Different humans are differently vulnerable, and the distribution and redistribution of human vulnerability are part of the ends of modern warfare, but also of peace activism.

These are not new developments as Gordon and Perugini attest in their discussion, for instance, of America in Vietnam and Italy in Ethiopia. Indeed, if we attend to the colonial provenance of IHL, we notice that at the very moment when the sanctity of the human was celebrated in the colonial metropole, the wars of colonization translated the civilian/combatant distinction into the colonizer/colonized distinction in ways that rendered the colonized world perennially vulnerable (Gordon & Perugini, 2017). Similarly, the principle of proportionality was interpolated through the colonial mission in ways that rendered the colonized human perennially disposable and (not unlike counterterrorism discourse today) the military aims of the colonizer were ever-expansive. In sum, the contradictions of valuing the human are central to the human shields regime. “Doublethink” Orwell reminds us, “means the power of holding two contradictory beliefs in one’s mind simultaneously, and accepting both of them.”

Yet, and perhaps most important, these contradictions have to be a subterranean aspect of IHL to carry the moral and legal power of humanitarian reason; the contradictions of IHL’s relationship to ‘the human’ cannot be foregrounded. Again, Orwell: “If you want to keep a secret, you must also hide it from yourself.” How then do people resist? Is refusing the secret of these contradictions by acknowledging and naming the problem part of the solution? Consider, for instance, the 1977 protocols to the Geneva Conventions; advocates saw these protocols as an effort to decolonize IHL by recognizing the legitimacy of liberation movements and their right to resist colonial, occupying and apartheid powers. In recognizing the legitimacy of anti-colonial struggle, the 1977 protocols are also presented as legitimizing IHL itself by resolving IHL’s contradictions and redeeming the work accomplished by the distinction between civilian and combatant. Yet that also includes the background assumption of a passive citizenry even in contexts where the domain of the political is anti-colonial struggle. Thus to some extent, the efforts to revisit and reform IHL such as the 1977 protocols to the Geneva Conventions have sought to institute reforms while playing along with the ‘secret’ of the incoherence and ideological work of the distinction. The protocols double down on the idea that

‘protection’ and ‘proportionality’ provide stable ground for shelter, just as they have entrenched and further elaborated on the distinctions between national and international warfare, and between civilian and combatant actors on the one hand, and civilian and military objectives on the other. Arguably, the struggle of the colonized to overcome the contradictions internal to IHL helped maintain the open secrets embedded in those distinctions by framing reform within the terms of the problematic nomenclature of IHL.

However, we cannot reduce the 1977 protocol to the limits of the terms it inherited. At its most radically aspirational, the 1977 protocols also introduced the subversive notion that international law recognizes the legitimacy of militant anti-colonial resistance. Concomitantly, the protocols refuse to legitimize the idea that violence is the monopoly of a governing state when that state is a colonial power; it suggests that an army of occupation is an army that transforms the occupied terrain into an international battlefield by its very presence. Thus “armed conflicts in which people are fighting against colonial domination, alien occupation or racist regimes” are, by definition, international conflicts; thus they warrant the heightened international scrutiny and civilian protection accorded to international armed conflict. While we might argue that international law’s promises of the human were never intended for the colonized, the 1977 additional protocols’ recognition of the legitimacy of liberation movements and their right to resist colonial and apartheid powers is part of an ongoing struggle by the colonized to redistribute human vulnerability and redraft those promissory notes. Paraphrasing Patricia Williams, we might say “To say that the colonized never fully believed in international law’s promise of the human is true. Yet it is also true that the colonized believed in them so much and so hard that they gave them life where there was none before.” [Patricia William was speaking of Black Americans and rights discourse as celebrated in liberal constitutionalism: “To say that blacks never fully believed in rights is true. Yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before” (Williams, 2011)].

Tensions (such as those discussed earlier) at the heart of the 1977 protocols are a reminder that the achievements of the 1977 protocols should be valued without necessarily subscribing to a progress narrative about the trajectory of IHL. Our last line cannot be that “we loved IHL” (Famously, the dystopic last line of Winston, Orwell’s protagonist in 1984, is “He loved big brother” [Orwell, 266]). If we needed a reminder that progress is not the name of the historical arc of the human in international law, then the May 2021 events in historic Palestine serve as precisely that reminder. Israel repeatedly bombed residential apartment buildings, schools and hospitals in Gaza. Invoking the prohibition of human shields, Israel argued that they were targeting the enemy that happened to be operating in a world that included residential apartment buildings, schools and hospitals. In other words, the logic of Israeli military discourse on human shields is that if any actor in Gaza were fighting a national liberation struggle, the legal principle of human shields requires that that fight take place outside of Gaza, outside a city of residential apartment buildings, schools and hospitals. One can make parallel arguments about Mosul, Kandahar, Aleppo, and other places and spaces that are battlegrounds where civilians are under attack from powerful armies claiming legitimate military action. The power of this

book is precise to show the inhumanity embedded in the legal principle that is said to uphold the sanctity of the human.

As Gordon and Perugini note, one of the most significant precedents for the spatial arguments about human shielding came in the context of the last phase of the war in Sri Lanka in 2009 where close to 300,000 civilians were trapped in a ‘no fire zone’ that became, in effect, the all fire zone. Within a matter of weeks, not only was the LTTE defeated but also 30,000 civilians were killed; if you were in the wrong place at the wrong time, you became collateral damage in a victory that ended the war. Notably, the expansive spatial arguments regarding human shields were advanced not only by the Sri Lankan military but by Human Rights Watch, International Crisis Group, and many individuals and organizations that enter the conversation with human rights and humanitarian concerns as their calling card. In tandem with the spatial argument is a proportionality calculation that rewards scorched earth policies of battle-ending victories—it seems that if carpet bombing results in the end of a war, the arithmetic of civilian lives lost adds up, in such a calculation, to equal ‘proportionate’. Indeed, we might conclude that in fact, this was a war waged by the Ministry of Peace (Orwell, 192).

What then does this book tell us about the future of international humanitarian law? The prohibition of human shields is framed as the iron dome sheltering vulnerable actors from attacking armies, but this book demonstrates that that shelter is part of the arsenal of modern lawfare. Framed as the legal regime designed to regulate warfare, this book demonstrates that again and again, in context after context, IHL operates instead as yet another terrain of battle. It shows damningly that the architecture of civilian protection that IHL erects is the Trojan horse that exacerbates civilian vulnerabilities. Against that backdrop, perhaps the best way to understand the work of this remarkable book is that it too is intervening in that battle. Rather than maintain IHL illusions about neutral observers regulating distant wars, this book is jumping into the fray to render the weaponizing of the prohibition on human shields less effective. If that prohibition eased the legal and ethical pathways of attacking armies enabling an ever-expanding conception of legitimate military action, this book throws obstacles onto that path to undermine the illusions and delusions of legitimacy. If the prohibition of human shields claims to be an iron dome sheltering vulnerable actors from attacking armies, then this book leads us to the commonsense conclusion that what presents as a shelter is in fact a sword. “The heresy of heresies is common sense” (Orwell, 71).

Although the book was published before the events of May 2021, Gordon and Perugini offer a prescient discussion of the direction in which human shields discourse may travel in Gaza. They argue that as human shields discourse becomes ever more expansive, everyone becomes a legitimate target and the civilian disappears in the theater of war. Indeed, that was precisely the argument that Israel used in clearing the ground for the deaths in the residential neighborhoods of Gaza that we cited in the opening of this intervention (Kingsley et al., 2021). As Gordon and Perugini predicted, IHL was invoked to justify the killing of Dr. Ayman Abul Ouf and others as legitimate targets – they were human shields, not civilians.

However, the May 2021 events also raise challenging and complex questions for Gordon and Perugini about the relevance of IHL—is IHL so much a servant of

attacking armies and powerful states to make it irredeemable? Would we ever want to legitimize the notion that we should see a conflict within the terms of IHL? Is it a field that is always already colonized by racialized notions of the human and saber-rattling wielders of lawfare, or is there some principle of civilian protection in IHL that we want to hold on to? If we shift our gaze from Gaza to Jerusalem, we note that the proximate precipitating incident for the escalation of the violence of May 2021 was the eviction of Palestinian families in the Sheikh Jarrah neighborhood. From the perspective of Israel and its defenders, it is not that these Palestinian civilians are not protected by IHL, but that IHL is irrelevant since this is a ‘domestic real estate dispute’ For instance, Prof. Avi Bell says that what was really at stake was ‘several properties with tenants whose leases have expired and, in a few cases, squatters with no tenancy rights at all, against owner-landlords who have successfully won court orders evicting the squatters and overstaying tenants’ (Bell, 2021) From this perspective, the conflict does not take us to the domain of international humanitarian law and complicated arguments about who is or is not a legitimate target because it is in the much more mundane territory of domestic property law. How would Gordon and Perugini respond to this argument about IHL irrelevance? Would they join with those who counter Israel and its defenders to argue that what happened in Jerusalem should in fact be understood within the terms of IHL and the architecture of civilian protection that it provides, including IHL’s prohibition of ethnic cleansing amongst other crimes. Notwithstanding this books’ fulsome critique of IHL discourse as exacerbating the vulnerability of civilians, is there moral and legal profit in returning to the domain of IHL in the name of civilian protection? In other words, is IHL worth saving?

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