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COLLATERAL DAMAGE AND THE PRINCIPLE OF DUE CARE

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This article focuses on the ethical implications of so-called 'collateral damage'. It develops a moral typology of collateral harm to innocents, which occurs as a side effect of military or quasi-military action. Distinguishing between accidental and incidental collateral damage, it introduces four categories of such damage: negligent, oblivious, knowing and reckless collateral damage. Objecting mainstream versions of the doctrine of double effect, the article argues that in order for any collateral damage to be morally permissible, violent agents must comply with high standards of care. In order for incidental harm to be permissible, an agent must take pains to avoid such harm even at higher cost to him- or herself. It is argued that accidentally but negligently caused collateral damage may be just as difficult to excuse as incidental harm. Only if high precautionary standards of care are met, can unintended harm to innocents – incidental or accidental – be permissible. In practice, such a strong commitment to avoiding harm to civilians may well lead us to question more generally and rethink more radically how violent conflicts ought to be fought, how military violence ought to be used and whether there are better ways of achieving those aims that we think are legitimate than those we are currently using.

KEY WORDS: Collateral damage, doctrine of double effect, Tony Coady, precautionary principle, due care

Preliminaries

In the course of nearly all violent campaigns civilians, non-combatants or so-called innocents are killed. I will use these terms for protected persons interchangeably in this article, even if they technically speaking are not identical. For my purposes here, they cover the same basic concerns. Assuming that violent campaigns for political objectives are in principle justifiable, the aim of this article is to inquire into the moral permissibility of their lethal side effects to innocents. When an intended violent act causes unintended harm as a side effect, this harm is frequently referred to as 'collateral damage', in particular in the context of military action. Such collateral damage, it is often suggested, is morally less problematic than intended harm. In this article, I will argue against this suggestion and show that collateral damage is rarely permissible.

At this point, it is important to mention that the term 'collateral damage' has been – justifiably – criticised for its euphemism and a certain belittlement (see e.g. Coady 2008: 133). Admittedly, it seems to palliate the suffering related to it, and makes one forget that what it actually refers to are humans, mostly innocents, who are being harmed or even killed in an armed conflict. However, for the sake of clarity I will use this term here nevertheless.

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How should instances of lethal harm to innocents be evaluated? According to conventional views on the morality of war, civilian casualties should be avoided, but if they cannot be avoided, they have to be proportionate to the immediate military gain. This view is also manifest in international law. According to the 1977 Protocol Additional to the Geneva Conventions (PAGC), indiscriminate attacks are prohibited. An attack is considered indiscriminate if, among other things, it 'may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated' (Article 51, §5(b) PAGC).

It is important to note that while the PAGC prohibits *indiscriminate* attacks on civilians, it does not prohibit attacks that harm civilians or innocents *per se*, but only those that cause disproportionate damage to civilians in relation to the immediate military gain. In this article, I will argue how the criterion of discrimination should be more closely linked to a principle of due care than to considerations of proportionality. I will show how collateral damage may be permissible only if a violent agent complies with such a principle of due care.

Types of Collateral Damage

Instances of collateral damage in the course of violent action often have the following form:

*X's violence, which is directed deliberately against Z, also kills innocent parties from Y.*¹

Let me furthermore distinguish four different varieties of our scenario:

1. X_1 knew with great certainty that his violence against Z would also affect innocent parties.
2. X_2 knew that his violence against Z would (very) likely affect innocent parties from Y .
3. X_3 did not know his violence against Z might also affect Y – but could have known this if he had done sufficient research.
4. X_4 simply could not know his violence against Z would also affect innocent parties from Y . (Schwenkenbecher 2012)

The four varieties of the initial scenario reflect four different *mens rea*, describing the agent's awareness of the consequences (and wrongness) of his or her action. Also, these scenarios reflect four different types of collateral damage. Above, we can distinguish the following *mens rea*:

1. *Knowingly* – the actor is substantially certain that a result will happen but acts anyway.
2. *Recklessly* – the actor is aware of a (high) risk of harm but acts anyway.
3. *Negligently* – the actor is unaware, but a reasonable person would have been aware of the high risk of harm.²
4. *Obliviously* – the actor is unaware of the risk and not to blame for his or her lack of awareness.

One can easily see how agent X_1 acts knowingly, agent X_2 acts recklessly and agent X_3 acts negligently in the above described sense. X_4 is someone who *obliviously* causes collateral damage. He or she has no idea that Y might get killed by the violence directed against Z and could not have known so: that his or her attack on Z would affect Y was unforeseeable to X_4 . In contrast to the negligent actor, the oblivious X_4 may have investigated the possibilities of his or her violence affecting people outside group Z , did everything to avoid

this risk, and only committed the attack on Z when he or she was reasonably certain that no bystander would be affected.

We can also see that agents X_{1-4} are distinct in yet another way: while the former two (X_1 and X_2) did actually foresee the unintended side effects, the latter two (X_3 and X_4) did not. Hence we can describe the former two instances as incidental and the latter two as accidental collateral damage. While both are unintended, the former describes foreseen harm, while the latter refers to unforeseen harm (see Coady 2008: 133). This leaves us with the categories as depicted in Figure 1.³

We should nevertheless keep in mind that the different *mens rea* mentioned above only refer to the moral status of collateral damage, but not to the moral status of the original violent act. Any violent act must meet the requirement of discrimination and protection of the innocent. This requirement is not met if the act causes impermissible collateral damage. Impermissible collateral damage can make an otherwise justified violent campaign or strategy morally wrong.

So what is wrong with X's action? A pacifist may argue that employing violence is a *prima facie* wrong. He or she would maintain that even if a violent actor took all thinkable precautions against collaterally damaging innocents, he or she may still be blamed for any unwanted outcome and held accountable for the collateral damage because he or she has engaged in something morally wrong, namely employing violence, in the first place. I reject this argument, as it conflicts with my basic assumption that violence against persons may, under certain circumstances, be justified. If a violent act or campaign is justified, the violent agent is morally right in engaging in it.

A more promising line of argument would be one that focuses on the foreseeable consequences of actions and the agent's moral attitude towards these consequences. What is *prima facie* morally reproachable about the knowing and the reckless agents X_1 and X_2 is that they are (substantially) certain that their violent attack will affect Y, but they carry it out nonetheless, wilfully disrespecting Y's immunity from being attacked. Below, I will discuss whether their actions may still be permissible and I will argue that it is the lack of

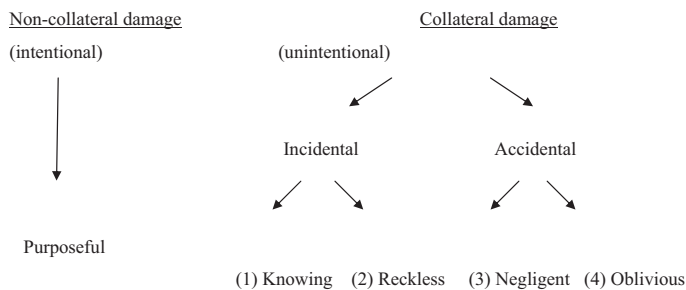


FIGURE 1

Types of Harm

Note: One might argue that acting recklessly should be considered a form of accidental damage, as the damage is not foreseen, but merely a certain probability of it is. However, I hold that as soon as an actor knows about the possibility of a certain outcome, he or she can no longer claim to have been unaware of this risk as the negligent actor can. In contrast to the latter, the former acts even though he or she knows that there is a risk. The reckless actor, when acting despite the risk of affecting innocents, makes a completely different decision from that of the ignorant negligent actor.

corresponding *standards of care* that make most such incidents morally reprehensible despite the side effects being unintended.

But what about those cases in which X did not foresee the harmful consequences? Both X_3 and X_4 did not anticipate lethal harm to Y and hence their actions seem less morally reproachable than those of X_1 and X_2 . However, in the following section, I will argue that while we cannot hold anything against X_4 , the negligent agent X_3 has no excuse for his or her ignorance and the actions resulting from it. Even though X_3 cannot be blamed for failing to respect the victims' immunity directly, he or she can be blamed for not having investigated the likelihood of collateral damage and therewith for failing in his or her duty to avoid harm to innocents that he or she could and should have foreseen. As I will argue later, negligent harm may be morally just as condemnable as incidental harm to innocents.

I will now discuss the moral implications of incidental and accidental collateral damage in more detail. A substantial part of that discussion will engage with the doctrine of double effect (DDE). This doctrine is a powerful theory in philosophy that scholars frequently draw on to show that even cases of incidental collateral damage – foreseen harmful side effects – may be fully excused or permissible. Yet, the DDE arguably moves on uncertain argumentative grounds. In the following, I will briefly present the doctrine and point out what I take to be one of its major flaws. I will eventually argue that the doctrine – in its traditional form – is too permissive and does not account well enough for unforeseen but foreseeable collateral damage. It therefore fails to acknowledge fully the morally most relevant question with regard to unintended side effects: that of whether or not an agent employed high *standards of care*.

The Doctrine of Double Effect vs a Principle of Due Care

According to the DDE, incidental collateral damage may sometimes be permissible. The DDE is subject to ongoing controversy in moral philosophy (see e.g. Kamm 2000, 2005, 2006, Kamm & Harris 2000, McIntyre 2001, Steinhoff 2006, 2007: 33–61, Abbate 2014).⁴ My aim here is to outline the limits of the doctrine with regard to the moral status of incidental collateral damage. Thereafter I will look at accidental collateral damage.

The DDE usually comprises the following conditions for permissible unintended but foreseen harm:

1. The action at issue must not itself be morally bad, nor should any intended effect of it be morally bad.
2. The anticipated bad effect must be genuinely unintended and not merely secondarily intended (e.g. intended as a means to a further end).
3. The harm involved in the unintended outcome must not be disproportionate to the moral benefit aimed at in the act (Coady 2008: 137).⁵
4. Where there are other feasible ways of achieving the good end that do not involve the harmful side effects or involve fewer or less grave such effects, the agent should choose them even where the alternatives involve somewhat higher costs to the agent (143).

Let me now briefly comment on each of the conditions and explain them. Afterwards I will turn to the objections to the DDE.

The first condition determines that incidental collateral damage may only be acceptable if the intended action, as a result of which the collateral damage occurred, is

either morally neutral or good. This means that the violent campaign must be one that is (otherwise) morally justified (see also Orend 2006: 118).

According to the second condition, the anticipated bad effect must be genuinely unintended and not merely secondarily intended. One of the problems of the second condition of the DDE is that it invites what Coady (2008: 138) calls 'double-think'.⁶ By this he means that one might be tempted to declare non-desired effects of one's action unintentional, and thus permissible, thereby narrowing the meaning of the term 'intention' to the desired effects of an action. He illustrates his point with an example brought up by David Lewis (1989):

A political leader, call her Jones, who has suffered a nuclear attack on one of her cities, considers launching a nuclear attack on an enemy city as a response in order to dissuade the enemy commander-in-chief from further attacks. Lewis argues that she need not intend the massive civilian deaths and casualties that 'result' from her action. How so? Well, according to Lewis, Jones does not intend the deaths and casualties since she needs only to affect the reasoning of the enemy commander and so needs only the flight path of the missile and the flash of light as the city explodes to figure as premises in the reasoning the commander will engage in. The commander will reason from the detected flight and subsequent fireball to the conclusion that the city has been destroyed and be persuaded to desist from further attacks. ... So Jones intends the flight and flash, but the massacre is an unintended though foreseen consequence. (Coady 2008: 138)

Coady rightly argues that such argumentation is 'dotty', as we cannot sensibly say that Jones does not intend to destroy the city when she plans to launch a missile there. Just because she does not desire the destructive effect does not mean that she does not intend it. Coady (2008: 139) holds that '[t]he DDE requires that we think in commonsense ways about what people intend and foresee'.

The third condition requires that the harm involved in the unintended outcome be proportionate to the moral benefit of the act. Clearly, even if *X* is justified in killing *Z*, he or she may not kill an indeterminate number of *Ys* as a side effect of his or her attack. But where do we draw the line? The question of proportionality cannot be answered easily. However, there are cases in which disproportion is fairly obvious, and others that require a closer look.⁷

The fourth requirement establishes that where there are other feasible ways of achieving the good end that do not involve the harmful side effects, or involve fewer or less grave such effects, the agent should choose them even where the alternatives involve somewhat higher costs to the agent. Coady (2008: 143) holds that this aspect of the DDE is easily overlooked. Criteria 1–3 appear to be insufficient to guarantee that only the smallest possible damage be allowed for. Therefore, Coady considers this fourth condition of the DDE necessary. The condition demands that an attack that will bring about incidental collateral damage may only ever be permissible if the agent has previously made sufficient effort to minimise the effect on innocents, even at higher cost to him- or herself: 'Other ways of achieving the military objective without the high risk of injury or death to non-combatants should be the first priority' (144). Michael Walzer has come up with a similar point and Coady explicitly refers to him:

What we have to look for in such cases is some sign of a positive commitment to save civilian lives. Not merely to apply the proportionality rule and kill no more civilians than is

militarily necessary – that rule applies to soldiers as well; no one can be killed for trivial purposes. Civilians have a right to something more. And if saving civilian lives means risking soldiers' lives, the risk must be accepted. But there is a limit to the risks that we require. ... It is best, I think, to say that civilians have a right that "due care" be taken. (Walzer 2000: 155–156)

This fourth condition of the DDE requires the violent actor to partly shoulder the costs of minimising collateral damage. This means that if, instead of foreseeably killing a certain number of innocent civilians as a side effect of launching an attack on military targets, there is a way to kill less or none while achieving the same outcome, the violent actor should choose the latter alternative even if this is more costly to him or her, that is, even if that means foreseeably to risk the lives of soldiers. While Coady considers this harm-minimising principle the fourth condition of the DDE, to Walzer it constitutes an amendment of the DDE's second condition. According to the latter, any violent agent ought to have a *double intention*: 'First, that the good be achieved; second, that the foreseeable evil be reduced as far as possible' (Walzer 2000: 155). This includes a 'positive commitment to save civilian lives' (156). Coady's and Walzer's suggestions to amend the DDE are essentially the same: both consider the DDE to be too permissive when it comes to harming civilians and hence they demand that a violent agent apply the principle of due care. I will henceforward refer to this amendment as the fourth condition of the DDE.

Still, it is not quite clear yet how far a soldier's positive commitment to save civilian lives ought to go and how much of a risk he or she ought to shoulder in order to protect civilians from harm. In order to know what it means to fulfil the fourth criterion of the DDE we must look at it in more detail still. As previously stated, probabilities should play a role in the moral evaluation of collateral damage. Only the fourth DDE criterion allows for nuances regarding probabilities. Remember that a violent agent acts knowingly if he or she is substantially certain that collateral damage will occur and acts recklessly if he or she is aware of a risk of harm. If the fourth criterion is understood as a demand to apply high standards of care and if it is also sensitive to probabilities, then it implies that with an increasing probability of collateral damage, justifying unintended casualties should become more difficult too. This means that the more likely the collateral damage to innocents, the higher the costs a violent agent can be expected to shoulder when choosing alternative ways to achieving his or her objectives in order to avoid these casualties. According to the fourth condition of the DDE, then, these costs are directly proportionate to the probability of collateral damage.

In most contemporary armed conflicts, harm to civilians is highly likely if not certain to occur. However, in the context of individual manoeuvres or attacks, violent agents can usually make choices between different ways of achieving an immediate military aim. Some of these choices will involve more harm to civilians than others. Often the choice will be between a militarily optimal alternative and other, militarily suboptimal alternatives (Lee 2004: 239). And many times some of the militarily suboptimal alternatives will involve less harm to civilians than others and less than the militarily optimal alternative. Steven Lee notes that a 'militarily suboptimal alternative is more militarily costly than the militarily optimal alternative, and combatant risk is one of the chief forms of military cost' (240). Clearly, if *X* has more than one option to carry out a particular manoeuvre against *Z*, and if all available options are similarly effective and have roughly the same cost but are not

equally harmful against third party *Y*, then *X* should choose the alternative that is least harmful to *Y*.

Yet the crucial question for understanding the stringency of the fourth condition seems to be what constitutes an acceptable relation between increased cost to combatants and decreased risk to civilians. Authors seem to agree that there is no ready-made answer to this question, but that it would depend on the circumstances (Lee 2004: 241, Walzer 2000: 156) and that a number of aspects should play a role in deliberating about it. According to Walzer (2000: 156), these aspects are 'the nature of the target, the urgency of the moment, the available technology'. To Lee (2004: 246), in evaluating alternative military strategies or tactics it is important to consider – apart from the risk to combatants and civilians involved – the likelihood of those alternatives achieving the military objective and 'the extent to which the achievement of the objective would further the cause of victory in the war'.

While I cannot discuss these aspects here, I think they make one thing very clear: the requirement to adhere to a principle of due care raises the bar for violent actors who argue that a particular attack or manoeuvre could not have been carried out at a different time or in a different manner with less harm to civilians. There will be obvious cases in which an alternative constitutes a disproportionate increase of risk to combatants compared to the decrease in risk to civilians and where the military objective is potentially jeopardised. But there will be many other cases that are not so clear-cut. In those cases, a violent agent will need to demonstrate how an attack that risks many civilian lives is acceptable if balanced against the importance of the particular aim to the overall military objective, taking into account the likelihood of that attack to achieve its immediate aim, and considering the risk to combatants that alternatives pose. Most actors employing armed force do not make sufficient effort to avoid collateral damage, let alone consider bearing higher costs in order to avoid harm to innocents. This is a general problem of contemporary military conflicts. In contemporary warfare, the idea of remote precision weaponry banks on the impression that collateral damage is minimised and only military targets are hit, but this is not always the case. Remote weaponry recurrently misses its legitimate targets.⁸ Furthermore, the enormous distances between operators of remote weaponry and those whom they attack arguably leads the former to a mistaken impression of war without atrocities, and a growing detachment from their targets. So instead of actually minimising collateral damage, such new technologies can possibly create the illusion of a 'clean' war and thereby lower the threshold for the decision to resort to war.⁹ While it is true that military agents are often under extreme pressure and must often make fast decisions on the basis of insufficient information, as a general rule the more they are in a position to carefully and precisely plan and carry out attacks the more they must make an effort, even if costly, to avoid harm to non-combatants.

To sum up, above all, actors using armed force have to comply with a principle of due care, that is they have a strong obligation to avoid non-combatant casualties.¹⁰ In order for incidental collateral damage to be permissible nonetheless, X_1 and X_2 would in fact need to show that the military alternatives to a particular attack, strategy or tactic were unfeasible in terms of the risk to combatants and the dangers imminent in failing to achieve the immediate military aim. Furthermore, the risk that they need to shoulder in order to avoid their violence affecting innocent parties increases with the likelihood of those side effects.

But what about accidental collateral damage? So far, I have shown that from a moral point of view, it is essential that violent agents comply with a principle of due care. Above I indicated that negligently caused collateral damage may be just as condemnable as incidentally caused collateral damage. An agent's ignorance of the consequences of his or her action does not excuse him or her from wrongdoing as he or she has a moral obligation to find out about possible collateral effects. Coady argues:

People who do not intend the deaths of others but who do not take reasonable steps to guard against accident or mistake are morally culpable, even if the culpability will often be of a different order from that borne by those who set out to kill and maim. Accidental deaths, injuries and damage are to be avoided if they can be. (Coady 2008: 135)

According to Coady, people have a moral duty towards those they are putting at risk. Accidental collateral damage, it can then be said, may only be permissible if reasonable precautionary measures have been taken in order to avoid harm to innocent bystanders. Whoever employs instrumental violence must ensure that this violence remains within its designated limits and that it only affects the persons or property it ought to affect. This may be a negligible task when it comes to attacking someone with a knife, for instance, as this is less likely to hurt bystanders. The case is different, however, for bomb attacks, which may easily harm persons other than the intended targets.

I have argued thus far that the DDE in its traditional form must be amended, or at least be interpreted more strictly, so that it sets high standards of due care and entails a positive commitment to saving civilian lives and avoiding incidental harm as much as possible. However, even an amended DDE would lack an answer to the question of how to evaluate accidental harm to civilians: it does not account for the impermissibility of unintentional *and unforeseen* harm.

This is an argument against the DDE's scope: the doctrine covers only incidental harm, not accidental harm; foreseen harm, but not foreseeable harm. In failing to account for accidental damage it fails to account for all morally relevant aspects of causing harm unintentionally (see also Rodin 2004: 765).

However, not all accidental damage is equally morally wrong. There is a significant moral difference between negligent and obliviously caused accidental damage. When acting negligently, an agent does not know that a particular collateral damage will occur, because he or she did not appropriately examine the risk: he or she fails to comply with the principle of due care.

Obliviously caused accidental collateral damage is different. The oblivious agent, in contrast to the negligent agent, could not have foreseen the unintended side effects as they were extremely unlikely. Yet even obliviously caused collateral damage may only be permissible if the agent has taken some precautions to minimise harm to innocents. The cost he or she is required take on in order to avoid unintended harm to civilians is proportionate to the foreseeable risk to civilians.

Conclusion

This article has questioned the moral significance of the distinction between foreseen (incidental) and unforeseen (accidental) damage. Accidental lethal harm, if negligently caused, may be as impermissible as incidental damage. The DDE, as traditionally used and interpreted, fails to account for this. A principle that *does* account for both incidental and

accidental harm is the principle of due care that puts more emphasis on a strong moral imperative to *avoid* harm to innocents or non-combatants. It therefore better reflects what is relevant for the assessment of – incidental or accidental – collateral damage in war: whether an agent engaged in risky activities acted according to high standards of care or not. Neither does the lack of intention to harm make a decisive moral difference to its permissibility (as the traditional DDE suggests), nor is the proportionality of collateral harm to military gain sufficient for permitting it.

What do the previous elaborations imply for agents engaged in violent – military or other – conflict? At least, they imply that violent actors must actively investigate and pursue alternative tactics that are more likely to spare civilian lives even if these involve higher costs to them, and even if the harm could be argued to be proportional to the (legitimate) ends sought. In order to act in accordance with moral principles, agents in a violent conflict may well have to go beyond the restrictions of international law as specified in the PAGC. This has implications for the tactics and certainly for the kind of weapons that can be employed. Any kind of weapon that harms indiscriminately or with little accuracy may never be used.

But an explicit commitment to avoiding harm to civilians may well go beyond that. Really, any weapons that harm from a distance – that is a distance at which judgments about risks to civilians are compromised – are inherently prone to violate non-combatant immunity and produce unintended harmful effects. This obviously includes unmanned aerial vehicles (UAV) in military attacks,¹¹ but it may also extend to much more conventional means, namely, bombing targets from the air, or arguably even shelling and firing over large distances.

The number of non-combatants killed in contemporary military conflicts is worryingly high and often more civilians are killed than combatants. And the proportion of civilian casualties in war does not appear to decrease despite an ever-growing need to justify these casualties as well as increasingly high standards for military operations. In this context, the bottom line of the argument brought forward in this paper might be more far-reaching than first thought: we might have to question more generally and rethink more radically how violent conflicts ought to be fought, how military violence ought to be used and whether there are better ways of achieving those aims that we consider legitimate given that our current methods are proving to be grossly at odds with some of our most fundamental moral convictions. It is arguable that recent weapons technology pull us in the wrong direction: remote weaponry, unmanned drones and the like have the effect of protecting our soldiers' lives while putting the lives of our opponents' civilians at more risk. If we are truly committed to sparing innocent lives, the parameters of military engagement will need to change.

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NOTES

1. The formulation of this scenario is borrowed from Meggle (2005: 168) and I have used it previously (Schwenkenbecher 2012: ch. 6). In contrast to Meggle, I will focus on the problem of killing, that is lethal collateral damage, only.
2. The US American Law Institute's Model Penal Code (see §2.02 of the American Law Institute's Model Penal Code: http://www1.law.umkc.edu/suni/CrimLaw/MPC_Provisions/model_penal_code_default_rules.htm), for instance, distinguishes between four different *mens rea*: purposely, knowingly, recklessly and negligently. The first category, however, is not an instance of unintended harm and thus not relevant for the argument presented here.
3. I have developed these categories previously (Schwenkenbecher 2012: ch. 6).
4. One of the most important objections against the DDE and its theoretical foundations will not be rehearsed here. The doctrine establishes a categorical distinction between intended and foreseen harm, which is of great moral consequence as, according to the DDE, the foreseen killing of innocents may be permissible while the intended killing of innocents under the same circumstances would not be. Hence, the distinction between intention and foresight must carry a lot of moral weight. Various scholars believe that it carries, in fact, too much weight, and that the intention of the agent in performing an action could not make such a significant difference to the moral evaluation of this action (see Scanlon & Dancy 2000, Thomson 1991). Another objection accepts the significant distinction between intention and foresight, 'but not the particular distinction between intending to bring about harm instrumentally and bringing about harm incidentally as a foreseen side effect that is supposed to serve as the normatively neutral ground of DE [Double Effect]' (McIntyre 2001: 220).
5. There exist various versions of the DDE. I refer to the account by Tony Coady who is an adherent of the doctrine.
6. This reference to George Orwell's 1984 was originally used in this context by Elizabeth Anscombe (1970: 50) in her article 'War and Murder'.
7. For a more detailed debate of proportionality, see for instance McMahan (2009).
8. See for instance a report by Human Rights Watch (2009) on the use of drones in the Israel–Palestine conflict. Also, the use of drones by the USA in Pakistan has given rise to a lot of controversy, in particular with regards to the ratio of civilian deaths vs terrorist deaths: see Bergen and Tiedemann (2010) and Kilcullen and Exum (2009). The former argued:

the 114 reported drone strikes in northwest Pakistan from 2004 to the present have killed between 830 and 1,210 individuals, of whom around 550 to 850 were described as militants in reliable press accounts, about two-thirds of the total on average. Thus, the true civilian fatality rate since 2004 according to our analysis is approximately 32 percent (Bergen and Tiedemann 2010).

9. The ethical challenges of remote weaponry have been examined for instance by Suzy Killmister (2008). In 2010, *Journal of Military Ethics* dedicated a special issue to the status of emerging military technologies, including an Executive Summary and Command Brief

from the 2010 McCain Conference on 'New Warriors/New Weapons: The Ethical Ramifications of Emerging Military Technologies'. The summary identifies a number of ethical concerns with unmanned systems, such as a worry that these 'may inadvertently lower the threshold for resorting to war, thereby undermining compliance with the traditional "just war" requirement that war only be declared as a last resort' (Lucas 2010: 427). In the document doubts are expressed 'about the abilities of autonomous systems both to discern between legitimate and illegitimate targets..., and to subsequently apply the requisite legal and moral principles of military necessity and proportionality' (427).

10. This obligation will have to be weighed against obligations of military commanders to protect the lives of their soldiers. But, unlike Cheryl Abbate (2014, in this issue), I think that the former can well outweigh the latter, given that non-combatants ought to be immune from attack.
11. See Bergen and Tiedemann (2010) for a discussion of UAV use in contemporary conflicts.

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