Setting out to kill people is not generally permitted. Neither is setting out to wound them, take them prisoner, or destroy their shelters and vehicles. But these and other normally prohibited displays of violence are permitted within what is usually considered to be “civilized” war—if that idea is not a contradiction. Someone who did not understand that kinds of violent activities that are almost universally prohibited outside of war are selectively permitted inside war would not understand what civilized war is. A civilized war is not a war in which no one gets hurt—it is a war in which only certain types of people get hurt. It is utterly fundamental to the nature of war both that it is an enterprise that permits certain selective uses of violence that are completely forbidden in any other circumstances and that this permission has distinct limits.

Of course people regularly challenge particular formulations of the rules or norms that specify which uses of violence are permitted in a civilized war. Changes to the fundamental rules or norms of war not only can be radical but are guaranteed to be radical, because they redraw the line between the permissible and the impermissible. What the norms are, then, matters profoundly. Debates about them are not like debates about whether to require the wearing of white clothes when one plays tennis but like a debate about whether to give points for how far one hits the tennis ball rather than whether it lands inside the lines on the other side of the net. Norms determine who and what may permissibly be attacked, and what may and may not be done to people who are captured. The battle over norms is a crucial part of the overall war between civilization and savagery. How are we to understand the limits of contemporary war? One way is to see what kinds of targets are permitted as legitimate military targets and which targets are considered impermissible.

In recent years, members of the political and military establishment in the United States have challenged and sought to revise international norms of war as they apply to the prohibition on preventive war, to the definition of torture, and to the specification of legitimate targets or, in the terms of international law, “military objectives.” Here I shall assess political and legal efforts and arguments to broaden the definition of a “military objective” so that attacks on a wider range of targets are considered permissible. The changes are intended to widen the range of actions that are permitted in “civilized” war and thus to narrow the scope of what is prohibited.

PGMs and the Concept of a “Military Objective”

The militaries with the largest budgets in recent years have greatly increased their stocks of precision-guided munitions (PGMs). Many other things being equal, PGMs are more likely to hit their targets than so-called “dumb” munitions. Accordingly, military powers that use PGMs should find it easier to avoid “collateral” damage—or the destruction of innocents and non-combatants—of the sort usually considered impermissible in “civilized” war. Common sense suggests that as a military power acquires more PGMs it should become more comfortable with rules or norms concerning “collateral damage” developed in connection with “dumb” munitions. Common sense would suggest, in any event, that the acquisition of PGMs would not provide a reason for a military power to push for a looser, more permissive understanding of what counts as a legitimate military objective. So much the worse for common sense, because military theorists especially in the United States have drawn the opposite conclusion, namely, that the more precise the weapon,
the looser or more permissive the standard for targeting it should be.

Why, if one has more accurate weapons, would one want greater latitude about what to strike? The short answer is that PGMs have encouraged the theory that one can have bombing both ways: to put pressure on civilian populations but to kill fewer civilians. The idea of winning wars by putting pressure on civilian populations by indiscriminately bombing them is associated with Giulio Douhet (1869–1930), an Italian general, who advocated “total war.” The availability of PGMs allows a military, at least in theory, to pursue “total war” in the sense of putting pressure on civilian populations without bombing them and their personal property. The precision of these weapons creates the prospect that their use will result in far fewer direct deaths because they can hit the targets most likely to undermine the economy rather than the population itself. What we see is a new technology that one might have expected to make a norm easier to obey—a norm that restricts the range of acceptable targets—providing instead a rationale to expand the range of permissible targets into essential infrastructure. Smart bombs are expected to work better in winning wars while killing fewer people directly.

Do Bombs Work?

Why bomb off the battlefield at all? According to Douhet, wars can be won by bombing civilian populations indiscriminately and into submission. This doctrine has been widely refuted on historical grounds. As the British Bombing Survey Unit concluded, “In so far as the offensive against German towns was designed to break the morale of the German civilian population, it clearly failed.” In a definitive study of “punishment” or “morale” bombing, Bombing to Win: Air Power and Coercion in War (1996), Robert A. Pape observed that: “Over more than seventy-five years, the record of air power is replete with efforts to alter the behaviour of states by attacking or threatening to attack large numbers of civilians. The incontrovertible conclusion from these campaigns is that air attack does not cause citizens to turn against their government. Air power slaughtered British, German, and Japanese civilians in World War II; threatened Egyptian civilians in the 1970 ‘war of attrition’ with Israel; and depopulated large parts of Afghanistan in the 1980s. In each case, the citizenry remained loyal to its leaders. In fact, in the more than thirty major strategic air campaigns that have thus far been waged, air power has never driven the masses into the streets to demand anything.”

In 1998 the U.S. Air Force issued Doctrine Document 2-1.2, Strategic Attack, which included a key passage that recognized the inability of air power to achieve military results by breaking civilian morale. “Despite attempts to achieve psychological collapse of an adversary through population attack—most notably by the German and British strategic air campaigns of World War II—the ability of airpower to achieve victory through direct psychological impact alone (without resort to WMD) has not been substantiated.” According to this report, prolonged strategic air campaigns against targets chosen to deplete “morale,” on the contrary, may “serve to stiffen national resolve and neutralize the desired psychological impact.” This happened in the Battle of Britain during World War II and Operation Rolling Thunder in Vietnam. This document rejects the strategy presented by Douhet. It notes that “a demoralizing psychological impact can be an elusive objective.”

This passage from the 1998 Air Force document is perfectly true, and quite wise. When Doctrine Document 2-1.2 was reprinted in 2003, the entire passage just quoted had disappeared from it. Why? What led the Air Force to believe that bombing civilian targets would win wars? The availability of PGMs created in military theorists and authorities the hope that smart bombs could work to demoralize civilian populations where dumb bombs failed.

A Subtle Change in Doctrine

To see the subtle change in doctrine the availability of PGMs created, one must look carefully at official doctrinal texts. The Naval War College issued The Commander’s Handbook on the Law of Naval Operations (1995), along with its Annotated Supplement (1999), which affirms a doctrine now familiar in several U.S. military publications. According to this standard, a permissible target includes any target that could “effectively contribute to the enemy’s war-fighting or war-sustaining capability.” In 2006, Michael N. Schmitt, a prominent military scholar, described The Commander’s Handbook and its Annotated Supplement as “the most recent and authoritative American LOIAC [Law of International Armed Conflict] manual.” The “manual,” as we shall see, changes in important ways the previous internationally accepted doctrine concerning permitted targets.

The relevant passage [Paragraph 8.1.1 defining military objectives] states: “Military objectives are combatants and those objects which, by their nature, location, purpose, or use, effectively contribute to the enemy’s
war-fighting or war-sustaining capability and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker . . . ” (emphasis added). But this is not in fact the definition of a military objective found in international law or, notably, in U.S. Army Field Manual 27-10, The Law of Land Warfare, in effect since 1956. The analogous portion of the standard definition says: “Military objectives are limited to those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker . . . ”

If you study the texts, you will see the crucial differences in language. The version of the definition of “military objective” in the Annotated Supplement contains two enormous departures from international law that expansively loosen the definition. First, “contribution to . . . action” has been replaced by “contribute to . . . capability.” Far more objects contribute to a nation’s capability for military action than are contributing during any given period to action. Second, and even more significant, “war-fighting or war-sustaining” has been substituted for “military.” The Annotated Supplement states: “contribute to . . . war-fighting or war-sustaining capability” where the standard international law has: “effective contribution to military action.” So what the Annotated Supplement claims may be bombed is not only what effectively contributes to military action but also anything that could contribute effectively to sustaining a military action. This looks as if it includes most of a society’s economy and certainly its essential infrastructure,

effectively support and sustain the enemy’s war-fighting capability may also be attacked.” The note accompanying the last sentence also begins with the declaration that “the United States considers this a statement of customary law” and cites as its primary authority a letter written by the General Counsel of the Department of Defense on September 22, 1972. In flat contradiction to the Annotated Supplement, the most authoritative statement of customary law available today uses precisely the terms of 1977 Geneva Protocol I, Art. 52:2: “Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action . . . ”

Piling on Errors or Aberrations

In fact, the Annotated Supplement misreads the 1972 Pentagon General Counsel’s letter, and that 1972 letter, in turn, had misread one of its own primary sources, the 1954 Hague Convention. It is worth noting each of these doubling errors. The 1972 letter does indeed advocate, in an entirely negatively phrased sentence, some understanding of military objectives that would be more permissive than the definition that was actually five years later incorporated into the 1977 Geneva Protocol I: “Attempts to limit the effects of attacks in an unrealistic manner, by definition or otherwise, solely to the essential war-making potential of enemy States have not been successful” [in the sense of being adopted as State practice]. Although it was somewhat confusing to write of “effects of attacks” rather than of attacks and their objectives, by declaring it to be unrealistic to attempt to limit effects of attacks “solely to the essential war-making potential of enemy States,” the Pentagon Counsel’s 1972 letter clearly intends to embrace as acceptable targets objects beyond what the 1977 Geneva Protocol I would later describe as “objects which . . . make an effective contribution to military action.” In this very general sense, the letter supports the proposal of the Annotated Supplement to allow a wider range of objects to be targeted. But because of the letter’s negative phrasing—-attempts to limit solely to the essential war-making potential are unrealistic—nothing in particular follows about what would be “realistic.” And certainly there is no specific support for the extremely wide range of objects that the Annotated Supplement proposes classifying as military objectives when it advocates including “economic targets . . . that indirectly . . . support and sustain . . . capability.” The specific proposal in the Annotated Supplement goes well beyond anything explicit or implied in the Counsel’s letter, which never mentions objects only indirectly contributing to war-making.

The Counsel’s letter, in its turn, misreads the 1954 Hague Convention, which is supposed to be one of its

So what the Annotated Supplement claims may be bombed is not only what effectively contributes to military action but also anything that could contribute effectively to sustaining a military action.

including most of what “punishment” or “morale” bombing would want to target, apart from civilians themselves. As distinguished legal authority Frits Kalshoven pointed out as early as 1991, “To add ‘war-sustaining effort’ is going too far, however, as this might easily be interpreted to encompass virtually every activity in the enemy country.”

Nevertheless, a footnote to the sentence quoted from paragraph 8.1.1 declares that “this definition is accepted by the United States as declarative of the customary rule,” and refers forward to a note accompanying the following even more permissive statement: “Economic targets of the enemy that indirectly but
main sources. The letter claims that customary international law has what sounds like some kind of balancing test for what counts as a military objective: “The test applicable from the customary international law, restated in the Hague Cultural Property Convention, is that the war-making potential of such facilities to a party to the conflict may outweigh their importance to the civilian economy and deny them immunity from attack.” The 1954 Hague Convention is, however, not discussing how to decide when an object deserves immunity as a civilian object and when it may instead be considered a military objective. It is discussing when cultural property of great value may be granted special protection if it is situated near an admitted “important military objective.” No discussion is offered about how to decide what is an important military objective; that question is treated as settled. The question is: given an important military objective, what can be done about protecting cultural objects of great value nearby? The basic answer in 1954 Hague Convention, Art. 8, para. 1, is that the objects may be placed under special protection “provided that they (a) are situated at an adequate distance from any large industrial centre or from any important military objective . . . ” Para. 5 then goes on to discuss how even cultural property that “is situated near an important military objective . . . may nevertheless be placed under special protection . . . ” All this is completely irrelevant to the issue on which the Pentagon Legal Counsel cites it, namely, how to determine whether an object should count as military when it might be considered civilian or might be considered military.

The year 2003 saw not only a new edition of Strategic Attack, but also an important document from the General Counsel in the Office of the Secretary in the Department of Defense, that is, from the top civilians. The Military Commission Instructions, as this document is known, provides the rules to govern the Guantanamo prison camps. Somewhat oddly, given that the Instructions were mainly for dealing with prisoners, Instruction No. 2, para. 5D (April 30, 2003), volunteered a definition of a military objective, specifically, the new permissive definition earlier proposed in Annotated Supplement: “‘Military objectives’ are those potential targets during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the opposing force’s war-fighting or war-sustaining capability.” Thus, the 2003 version of the definition of “military objective” from the Office of General Counsel in the Defense Department contains precisely the same two enormous departures from international law as the Annotated Supplement.

Already in 2002 in Joint Publication 3-60, Joint Doctrine for Targeting (January 17, 2002), had come the following: “Civilian populations and objects as such
may not be intentionally targeted for attack. Civilian objects consist of all civilian property and activities other than those used to support or sustain the adversary’s war-fighting capability.” So, exactly as claimed in the Military Commission Instructions a year later, anything that sustains or supports the capability of fighting a war fails to be a civilian object and thereby comes to be a military objective; again, this sounds like most of the economy. And all recent editions of the Army JAG School’s Operational Law Handbook—2006, 2007, and 2008—give the following capacious and liberal account of economic objects that qualify as military objectives: (1) power; (2) industry (war-supporting manufacturing/export/import); (3) transportation. If one can attack export industry, import industry, and other manufacturing that “supports” war, it is difficult to think of much that is left other than the corner convenience store.

Making War Safe for PGMs

It is clear that in the United States, at least, accounts of what qualifies as a military objective are becoming looser and departing farther from international law. These permissive revisions are emerging from the top civilians in the Pentagon, the Air Force, the Navy, the Army JAG School in Charlottesville, and the services jointly. Although one might have thought that this rewriting of international law was aimed at making the law more congenial to an “effects-based” understanding of targeting, including notions about infrastructure constituting critical nodes of a system and so on, a truly remarkable passage in the 2007 edition of Joint Publication 3-60, Joint Targeting, shows that current doctrine represents at least in part a daring attempt to return to morale-bombing. “Civilian populations and civilian/protected objects, as a rule, may not be intentionally targeted, although there are exceptions to this rule.” Civilian objects consist of all civilian property and activities other than those used to support or sustain the adversary’s war-fighting capability. Acts of violence solely intended to spread terror among the civilian population are prohibited” (emphasis added).

This chilling passage not only twice emphasizes that there are allegedly exceptions to the prohibition on intentionally targeting civilian objects even so narrowly defined as the U.S. has been proposing for over a decade, but it also goes out of its way to volunteer that targeting “solely” for the purpose of terror is prohibited, implicitly but unmistakably inviting the thought that if you can find some other pretext, you may engage in targeting that has the possibly beneficial side-effect of terrorizing the civilian population. And the 2007 edition of Strategic Attack supplies precisely the pretext wanted in order, as Joint Targeting suggests, to “spread terror among the civilian population.” It states, “Strikes against dual-use assets like electrical power, in addition to having system-wide denial effects, may prove effective in coercing regimes in which popular unrest is an issue.” That “dual-use” infrastructure is a military objective can be a pretext for depriving civilians of essential services where civilian deprivation is the primary purpose.

The old dream of provoking popular uprisings by causing civilian misery survives at least among the theorists of the Air Force.

The U.S. management of the UN sanctions against Iraq in the 1990s suggests how loose an interpretation the U.S. government is prepared to give to “dual-use.” As philosopher Joy Gordon has recently argued, “Invoking ‘dual-use,’ the United States unilaterally blocked goods including child vaccines, water tankers during a period of drought, cloth, the generator needed to run a sewage treatment plant, radios for ambulances—any goods that could even conceivably be used by the military, for any possible purpose.” The old dream of provoking popular uprisings by causing civilian misery survives at least among the theorists of the Air Force.

At least some in the U.S. military believe that it is within the bounds of “civilized” war to terrorize civilians indirectly, not directly, by using precision-guided weapons. The reason is that PGMs are limited in the amount of killing they do directly – they can get at infrastructure without killing a great many people immediately. One does not kill civilians with “dumb” munitions, as in World War II and the Korean War; instead, one makes them miserable with PGMs that destroy their infrastructure. Strategic Attack (2007) explains the logic with astounding explicitness: “SA [Strategic attack] of valid military objectives can have the coercive effect of creating unrest among an enemy population and/or weakening the enemy’s infrastructure. These mechanisms are aimed at impacting the enemy’s popular will or perception. In the past, these mechanisms have involved directly targeting civilian populations to increase disaffection and pressure the adversary leadership to accept the demands of the coercer. However, the legality and morality of directly attacking an enemy’s civilian populace is against international law concerning the conduct of war. The US remains committed to these laws and principles that support them. Additionally, historical evidence suggests that strategies directed against an enemy’s population seldom succeed. Now, however, with the advent of precision weaponry, the US is capable of carefully
regulating the destructive effects of SA [strategic attack] thereby minimizing collateral damage. This capability enables the US to use these coercive mechanisms in a way that complies with the laws of armed conflict.

One main target, then, is what is referred to as “the enemy’s popular will,” that is, the morale of the civilian population. But it is against international law, and historically has not been effective, to target the civilians directly, which was the old-fashioned way to try to break morale. So one targets, not the civilians themselves, but military objectives like electrical power, using PGMs, but this is nevertheless partly “aimed at impacting the enemy’s popular will or perception.” In other words, one can without intentionally killing civilians intentionally make them miserable enough to generate “unrest.”

One causes the civilians misery indirectly—indirection is the key. Therefore—and this is the step in reasoning that I am filling in—since one must operate indirectly, the more civilian objects that can count as military objectives, the better. Hence, the decade-long campaign to make the understanding of military objectives more permissive.

**Conclusion**

I have tried to solve any mystery about why a power with weapons that are more and more accurate would nevertheless campaign to make the targeting norm more permissive. Common sense might have suggested that with the introduction of PGMs it would not be necessary to loosen the definition of military objective, but that rests on the assumption that the PGMs are to be used strictly for military targets. Their other, more ambitious purpose, however, is civilian punishment: some of this is “morale” bombing for bonus terror beyond any denial effects, if the Air Force’s Strategic Attack (2007) is to be followed. In order to inflict enough punishment on civilians to make a military difference it seems to be thought that the more of the social infrastructure one can destroy, the better. For that purpose one wants as much of the social infrastructure as possible to count as a military objective. So one needs to loosen the norm currently embodied in international law so that one can target infrastructure well beyond what would now be considered under generally shared interpretations of international law to count as military objectives. At the same time, with the use of PGMs, one can argue that one seeks to spare the lives of civilians. Making the law more permissive and making the munitions more precise go hand-in-hand because the aims now include not only denial but punishment indirectly achieved without morally horrific loss of life.

The more permissive doctrine encounters two problems, one factual and one normative. The factual problem, as already indicated, is that the entire strategy rests on the discredited myth that miserable civilians will become less loyal to their own government and troops. The most ludicrous element of the passage quoted above from Strategic Attack (2007) is the repeated vague references to “mechanisms”—there are no mechanisms! This was Papé’s main finding in Bombing to Win: “The supposed causal chain—civilian hardship produces public anger which forms political opposition against the government—does not stand up. One reason it does not is that a key assumption behind this argument—that economic deprivation causes popular unrest—is false.” No mechanism connects civilian misery to civilian disloyalty, because they are not connected in reality, only in the fantasies of air-power advocates. Bomb-inflicted misery does not lead to war-ending disloyalty. The terrorists have not figured this out, and the air-power fanatics have not figured it out. So, civilians on all sides continue to suffer pointlessly.

The normative problem is that once “the enemy’s popular will,” meaning civilian morale, becomes a military objective, much of the purpose of distinguishing military objectives from civilian objects has been defeated. The purpose of separating civilian objects from military objectives is to shelter civilian life to some degree from the fighting, to allow some vestiges of normal civil society to continue through the war and be available at the other end of the conflict for the combatants, victorious or defeated, to come home to and make a life again. But even if civilians themselves may not be targeted, targeting the “popular will” means adding to the deprivations and misery of civilians as much as one can in hope that “popular unrest” will speed the end of the war. But one of the unchallenged principles of legal interpretation is that any interpretation of a law that blocks the fulfilment of the purpose of the law is a mistaken interpretation. So any interpretation of the distinction between military objective and civilian object that permits the unrestrained creation of civilian misery in the vain hope of civilian disaffection is a patently mistaken interpretation and ought to be removed from U.S. military manuals.

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The Poverty of Economic Reasoning about Climate Change

Mark Sagoff

A *New Yorker* cartoon illustrates the intergenerational aspect of climate change. It shows an Eskimo mother, father, and young child as they wave a tearful farewell to an old man, presumably a grandparent, whom they have placed on an ice floe. The family itself stands on a floating piece of ice. Which generation is responsible for the plight of which?

I want to argue that the intergenerational aspect of climate change makes economic reasoning about it more problematic than one might think. Economic analysis depends on the idea of trade or exchange. It is hard to see, therefore, how it applies to our relations to people in the further future. We cannot bargain with them or they with us. Since they do not yet exist, they cannot have property rights. If ability to pay is a prerequisite of willingness to pay (WTP), moreover, then future generations cannot be willing—because they are not able—to pay us anything. We have exhausted all possible “benefits of trade” with them.

I shall argue that the passivity of future generations—their inability to exercise market or political power—makes economic analysis irrelevant not just to justifying the goals of climate policy but also to designing instruments to achieve those goals. Economists often recommend that an international authority “cap” global greenhouse gas (GHG) emissions but allow firms to trade “allowances” under that cap. I shall argue that such a regime cannot succeed because gen-