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ATTACK OF THE DRONES:
UNMANNED AERIAL VEHICLES
AND MORAL PROBLEMS

by

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ABSTRACT

The frequency of use of Unmanned Aerial Vehicles for combat by the United States has increased dramatically in recent years. Since this technology has comprised a significant portion of American counter-terror operations abroad and there are virtually no signs of this practice slowing or ceasing in the foreseeable future, it is necessary to closely examine the ethical implications of remote-control warfare. At first glance, arguments supporting the use of “drones” seem robust and sensible: in theory, they save American military lives. But upon further investigation, the use of drones in practice actually creates morally murky, problematic situations that could lead to great transgression of the laws of a just war. I argue that for all its apparent benefits, drone use thrusts modern warfare at large into an ethically unprecedented arena of vast asymmetry between opposing forces and what this means for the authorized use of force in wartime.
1. Introduction.

Significant controversy surrounds the use of unmanned aerial vehicles, or “drones”, by the United States. Remotely piloted vehicles are used in a number of campaigns and programs around the world, where they are utilized by both American military and intelligence organizations. The intent of this project is to analyze the moral controversy surrounding drone use by the United States. I intend to focus on the jus in bello issues raised by the use of unmanned aerial vehicles (hereafter “UAVs”).

For clarification, the term “drones” will refer to remotely piloted and unmanned, armed aerial vehicles, unless otherwise explicitly stated. ¹The aircraft in question include the MQ-1 “Predator” and MQ-9 “Reaper” drones, for example. These vehicles are often separated from their pilots by many hundreds or thousands of miles, and as such, represent a category change in weapons systems. Prior to the use of armed drones, no weapon has featured the same combination of capabilities, in terms of operator’s distance from target, flight time, armament, and reconnaissance capability.

Views on the proper use of drones vary widely. At the extremes, some theorists have argued that their use is morally impermissible while others claim that their use is in fact morally obligatory because they keep military personnel out of harm’s way. I argue that many of the characteristics that make drones revolutionary from a strategic perspective also make their use morally problematic, both intrinsically and regarding their practical consequences.

The nature and use of drones present two significant moral issues, in addition to the empirical question of whether or not their use is effective in achieving its intended

¹ It is these aircraft around which controversy has arisen, and not the smaller and more locally operated varieties which amount to little more than flying cameras in use by infantry forces.
goal. First, the practice of “Signature Strikes” that target individuals or groups of people who seem to act suspiciously or similarly to combatants is used with little transparency as to what specific behaviors validate a strike. As a result, it is difficult or perhaps impossible for civilian (i.e., Congressional) oversight to validate such strikes. In addition to this lack of clarity or definition of “bad guy behaviors,” it is well-established that the method of counting casualties after these strikes plays rather fast and loose with combatant status: all military-aged males killed by a strike are counted as enemy combatants killed, and not civilians. Guilt is presumed on the basis of gender, age, and location, which is especially problematic during a counterinsurgency.

Second, drone use represents an asymmetry that challenges the very understanding of combatant status altogether. The extreme distance from the battlefield from which these drones are piloted calls into question the combatant status of their pilots (and crew) in ways that the use of manned aircraft does not. This is particularly troubling from a moral perspective because it may be the case that drone pilots and their technology result in an unprivileged use of violence in comparison to the traditional combatant-versus-combatant arrangement. The reciprocal relationship that has vouchsafed the use of violence by combatants against one another is called into question as one side may now strike at the other with impunity.

Finally, a difference in capability as significant as the one that exists between forces which can field unmanned aerial vehicles and those which can not leaves many questions for the future of warfare. These deserve serious consideration if only for the fact that the next category change in weapon systems may render “traditional” warfare as antique a concept as we imagine Napoleonic warfare to be today. An increase in
frequency of drone use may lower the threshold for ‘last resort’ that has historically served to limit involvement in conflicts, if Congress and its constituency perceives the relative lack of American casualties as a win-win situation. It could also make large set piece battles such as Normandy in World War II or the Battle for Fallujah in Iraq an outdated modality, and drive enemy combatants to rely increasingly on terrorism, a perennial tactic of the outgunned. It may be the case that such a change, unchecked, could eliminate the just war model entirely.

2. The alleged obligation to use UAVs and Consequentialist objections.

Perhaps the most frequently cited defense of the use of UAVs is that they allow a force to accomplish its military objectives without placing the pilot at risk. Since the pilot of a UAV is removed from the battlefield where the aircraft operates, he is free from the physical dangers of flying a manned aircraft over that battlefield. Certainly, this is a major factor at play behind the support that unmanned aircraft have enjoyed during their operational lifetimes; not having to put men in harm’s way is something many can get behind. Furthermore, a quick glance at the history of the Russian invasion of Afghanistan will show that the skies over that particular battlefield can be quite dangerous for manned aircraft – especially helicopters – when the mujahideen on the ground have the right weapons in hand.

Taking the support of UAV technology further, Bradley Jay Strawser argues that the American military is morally obligated to utilize UAVs for offensive actions. In what he calls the “Principle of Unnecessary Risk,” (PUR), Strawser argues that an obligation is in place on military commanders and strategists to accomplish goals while incurring the
smallest amount of risk possible. Basically, those giving the orders have an obligation to minimize the potential for dis-utility. In Strawser’s words:

… I will contend that, as a technology that better protects (presumably) justified warriors, UAV use is ethically obligatory, not suspicious... it is wrong to command someone to take on unnecessary potentially lethal risks in an effort to carry out a just action for some good; any potentially lethal risk incurred must be justified by some strong countervailing reason” (Strawser, p. 343-4).

Strawser bases his argument for the Principle of Unnecessary Risk on the assumption that the military action in question must be undertaken for a just cause. For this discussion, I will assume that the example in question (the conflicts in Iraq and Afghanistan) meets this requirement and set aside the possible jus ad bello discussion that would otherwise follow. Strawser contends that the PUR obliges militaries to utilize UAV technology, because for their particular kind of operation – i.e., an air strike – they minimize the risk incurred by the combatant by removing the pilot from the area of operation itself. Since UAV technology minimizes risk in this way while not diminishing fighting capacity, Strawser concludes that the obligation to minimize risk overrides objections to its use.

The PUR is rooted in the moral obligation of those in charge to choose the lesser of two risks for those whom they supervise. Paraphrasing Strawser, it ‘merely’ demands that if there are two ways to accomplish a goal, that the less risky of the two methods be chosen and pursued. Applied to the ‘to UAV or not to UAV?’ question, Strawser’s
argument comes out decidedly in favor of the remotely-piloted aircraft, except for under any countervailing circumstance that requires putting troops in harm’s way.²

Another important clause of Strawser’s PUR is that it requires the less risky maneuver to be at least as effective as alternatives: “For any just action taken by a given military, if it is possible for the military to use UAV platforms in place of inhabited aerial vehicles without a significant loss of capability, then that military has an ethical obligation to do so” (p. 346). Combined with what Strawser said earlier about the PUR, the argument breaks down as follows:

1. It is morally wrong to pursue a plan of action that places human lives in more danger than is necessary to accomplish an objective.
2. UAVs very often allow capability similar to that of manned aircraft for carrying out military operations.
3. The pilot of the UAV, removed from the battlefield, is exposed to significantly less risk than the pilot of a manned aircraft carrying out the same action.
4. Therefore, in circumstances where (2) is true, then a given military that has the capability to use UAVs is obligated to do so in place of manned aircraft.

Strawser goes on to support and validate the PUR with the examples of hypothetical towns Prudentville and Recklessville, which both have the capability of using remotely-operated robots that allow their respective bomb squads to remove their

² An appropriate example of this exception would be the operation to kill or capture Osama bin Laden in May 2011: doing so remotely or in an airstrike would have prevented the United States from being able to measure the success of the operation with certainty. The necessity of knowing for certain whether or not bin Laden was killed by the operation, then, outweighed the necessity of not exposing ground troops to risk.
personnel from risk (p. 347). By failing to do so, Strawser claims that Recklessville violates the PUR and makes a blunder with strong consequences: Recklessville has done something *morally wrong* in putting bomb squad personnel in harm’s way when it didn’t have to (p. 347). The PUR values human life and seeks to minimize the danger thereto.

This principle seems sensible enough: if you are the decision-maker for a given military operation, then it obviously follows that you are going to minimize the risk to your soldiers, marines, and airmen wherever possible. Not only are they valuable military resources that can aid in the accomplishment of future objectives, but they are also human beings, with whose safety you have been entrusted in the theater of war. “Is there a safer way for my soldiers to accomplish objective X?” should be the question you ask yourself whenever you think you’ve decided on a battle plan.

In the case of the drones, for all ordinary purposes, the pilot is at zero risk during his remote operation of the aircraft. For example, Elisabeth Bumiller, writing for the New York Times, describes an Air Force Colonel piloting a Reaper\(^3\) drone over Afghanistan from an air base in Syracuse, New York (2012). From this distance, Col. Brenton is effectively infinitely safer than the soldiers and marines on the battlefield, for whom the drone that he pilots provides air support. In light of the PUR, then, Strawser would favor the drone being piloted from 7,000 miles away to an aircraft with humans inside, under

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\(^3\) The General Atomics MQ-9 “Reaper,” refers to an upgraded, armed version of the original MQ-1 “Predator” UAV. Regarding the choice of its nickname: “The name Reaper is one of the suggestions that came from our Airmen in the field. It’s fitting as it captures the lethal nature of this new weapon system,” General Moseley said.

The MQ-9 Reaper is the Air Force's first hunter-killer UAV. It is larger and more powerful than the MQ-1 Predator and is designed to go after time-sensitive targets with persistence and precision, and destroy or disable those targets with 500-pound bombs and Hellfire missiles. The Reaper represents a significant evolution in UAV technology and employment,” General Moseley said. “We’ve moved from using UAVs primarily in intelligence, surveillance and reconnaissance roles before Operation Iraqi Freedom, to a true hunter-killer role with the Reaper.” Retrieved from [http://www.af.mil/News/ArticleDisplay/tabid/223/Article/129780/reaper-moniker-given-to-mq-9-unmanned-aerial-vehicle.aspx](http://www.af.mil/News/ArticleDisplay/tabid/223/Article/129780/reaper-moniker-given-to-mq-9-unmanned-aerial-vehicle.aspx), published September 2006.
all but the most unique of circumstances. Zero risk is the best amount of risk to place one’s people in, after all. It seems to be a win-win situation: objective X is accomplished with no risk.

I believe that Strawser is generally correct in his formulation of the Principle of Unnecessary Risk. The obligation to minimize risk seems to carry the moral weight that he argues for, at least in theory. Where Strawser goes wrong, I believe, is in failing to properly consider the effects of drone use in a war against terrorists. In fact, I believe that there are significant countervailing reasons not to pursue using UAVs, both morally and in the strategic context of trying to wage an effective counterinsurgency and counterterror campaign. The requirements of waging this kind of asymmetrical warfare seem to present a paradox to military planners. On one hand, they have the overarching goal of the whole operation, the elimination of the insurgency, which prima facie seems like a clear objective in itself. On the other, accomplishments that lead toward achieving this objective seem to require them to do (and do well) the types of things that militaries aren’t typically built to do. They must win the support of the population among whom the insurgency lives and operates, which involves humanitarian efforts, extensive intelligence gathering, and often highly-politicized and sensitive military operations alongside a typically vastly inferior military force of the host nation.

This kind of warfare is an incredibly complex process, and Strawser’s PUR considers the consequences of a given action too narrowly. In the case of using UAVs, it seems that applying the PUR as the decision-making tool causes bad consequences not considered by Strawser. He correctly calculates that the pilot being removed from the battlefield removes him from the risks typically taken by pilots of manned aircraft, but he
does not consider the intricate web of causality that is precisely the thing which makes an insurgency so difficult to counter. I believe it is obviously the case that the pilot of a UAV is not subject to the risks involved with flying over the battlefield, and this is a good thing. However, the use of UAVs as a more overarching practice serves to inspire and fuel the insurgent cause, ultimately increasing risk to combatants elsewhere. If it turns out that this secondhand risk is greater than the total risk that would be incurred if manned aircraft were used instead of the UAVs, then the obligation to use UAVs that Strawser alleges is outweighed.

Further, the wording that Strawser uses is ambiguous enough to permit an objection on empirical grounds, which I argue will be strong enough to overturn what he calls an obligation: “...if it is possible for the military to use UAV platforms in place of inhabited aerial vehicles without a significant loss of capability, then that military has an ethical obligation to do so” (Strawser, p. 346; italics mine). Exactly what kind of loss of capability Strawser means here is uncertain, though he does mention that significant budgetary difficulties in fielding a fleet of unmanned aircraft, or an unmanned platform with a decreased ability to discriminate effectively among potential targets, for example (Strawser, p. 346-7), could dissolve the obligation.

It seems that the “loss of capability” Strawser mentions is open-ended enough that it could consist of simple counter-productivity, if the drone program was in fact demonstrated to be counterproductive. There has been extensive reporting on the effects of drone strikes and targeted killings, and the consensus is that while they have killed some insurgents, they have also inspired sympathetic civilians – including many males as young as pre-teens – to become insurgents themselves (Robertson, 2013). In response to
this difficulty, a special school that aims to de-radicalize young boys who are former militants has been established in the Swat Valley of Pakistan (Robertson, 2013). As Nic Robertson reported for CNN, what has radicalized the children in Pakistan

[It]s what turns teenagers the world over to crime: poverty, poor education, limited prospects and often lack of parental control (2013).

But these boys were inspired by an additional factor:

It is in this setting that the boys have made ready recruits for Taliban scouts who wean them on tales of the U.S. drone strikes that have killed scores of Pakistani women and children over the past few years (Robertson, 2013).

Indeed, “The U.N. Special Rapporteur on drones, British lawyer Ben Emmerson, recently visited Pakistan and told [Robertson]: ‘The consequence of drone strikes has been to radicalize an entirely new generation’” (Robertson, 2013). Though this is not a new sentiment: Ohio Representative Dennis Kucinich was quoted in 2010 as saying that drone strikes in Pakistan result in “blowback, where we actually lose friends, where we help inspire anti-American sentiments and fanaticism and radicalism” (Johnson, 2010). He added, “Just as an occupation fuels an insurgency, these drones build feelings and resistance against the United States and help gain support for those elements who wish to do America harm” (Johnson, 2010).
Elsewhere, the Huffington Post reported in early 2013 on the ongoing questions surrounding the secondary and tertiary effects of the American drone campaign:

Evidence gathered by reporters and investigators in North Waziristan and other sites of drone strikes is that the anger, fear and resentment the strikes leave behind among civilians seems to outweigh any potential military benefit. Such devastating strikes, which kill with no warning, ‘are hated on a visceral level,’ retired general and Afghan war commander Stanley McChrystal said recently. ‘The resentment created by American use of unmanned strikes,’ he added, ‘is much greater than the average American appreciates.’

‘The argument that several folks have raised is that when you kill a terrorist, even if you kill no women and children... you’re still gonna enraged the population, depending on how it’s done,’ said Gross (Wood, 2013).

This hatred that General McChrystal mentioned has origins in centuries-old norms for justice and retribution in the region. The Pashtun honor code, the *Pashtunwali*, is based on the importance of maintaining honor and reputation, according to Thomas Barfield (p. 59). Since the majority of Taliban members are ethnic Pashtuns, this cultural honor system has had a unique impact on the war in Afghanistan. It has been the historical trend that when the Pashtuns “entered into battle, they were renowned as fierce fighters
because individuals would rather die than shame themselves in front of their kin by running away. Life would not be worth living afterward if they did” (Barfield, p. 59). To someone from this cultural tradition which highly values ‘showing face’ and personal courage, the nation who operates its aircraft from half a world away must seem especially cowardly.

If we place ourselves in the situation of a Pashtun man who lost family members in a drone strike, we can then understand that for him, there is an additional level of impetus beyond his ‘mere’ personal loss. For this man to ‘run away from’ or fail to respond to this tragedy would bring a level of shame and disgrace upon him on top of his obvious emotional upset.

There is evidence of this point of view in other mideast theaters as well:

...[H]e talked about how the unmanned drones somehow made him “even more angry” than the manned F-16s.

Khouri’s explanation of how those on the ground viewed unmanned systems in the Lebanon war was very much like the reactions of the insurgents in Iraq. Rather than creating just fear, fright, and depression, such systems were also unintentionally sending messages of weakness, and even vulnerability. As he concluded, ‘The average person sees it as just another sign of coldhearted, cruel Israelis and Americans, who are also cowards because they send out machines to fight us,... that they don’t want to fight us like real men, but are afraid to fight. So we just have to kill a few of their soldiers to defeat them’ (Singer, p. 309).
If the blowback from the use of drones is as significant as implied by these remarks, and is also significant in a way that the response to strikes by manned aircraft is not, then it is clear that this psychological factor represents a loss of capability that is unique to unmanned platforms. In fact, it has become clear since the introduction of UAVs to the battlefield, that cultural differences between the operators and the forces against which they are used mean that the drones’ targets find their use to be uniquely cowardly.

This represents a problem inherent in the nature of drone technology which is perhaps strong enough to render null and void the obligation that Strawser alleges as well as the objective benefits – that is, the removal of a pilot from a dangerous battlefield. In light of this, it is also possible that the net risk to American forces and interests at large is greater when drones are the airpower, versus when manned aircraft are utilized. Given the previous example multiplied by the number of estimated civilian casualties (whatever that may be), we can easily see how this unique cultural climate can and does contribute to a prolonged insurgency.

There is also much controversy surrounding the extent of civilian casualties caused by these strikes, particularly in the case of ‘signature strikes.’

“Signature strikes,” explained Heller, make up the overwhelming majority of drone attacks carried out by the United states. These strikes target individuals whose identities are unknown, but who exhibit certain patterns of behavior or defining characteristics associated with terrorist activity. In contrast, “personality” strikes target specific, known individuals, such as
the strike that killed American-born Anwar al-Awlaki in Yemen in October 2011 (McInerny, 2013).

These “signature strikes” tend to lead to unnecessary civilian casualties because of murky or scant evidence of combatant status and observed behaviors that makes accurately discriminating between actual combatants and innocent civilians difficult, if not impossible.

If it were possible to synthesize a set of commandments to govern conduct within a just war, the first would probably be “Thou shalt not kill non-combatants.” This distinction between combatant forces and non-combatants may be the single most important *jus in bello* requirement imposed upon a conflict by just war standards. It prevents a principled conflict from slipping into mere vengeance, it constrains the conflict to political grounds and avoids genocide, and it reminds the parties that the goal is strategic, political victory, and not the utter extermination of the enemy nation.

In a classical conflict between nations, the distinction between combatants and non-combatants is clear. Combatants are the people (typically men) with uniforms or livery indicating their allegiance to a cause or organization (governmental or non-governmental) and who take up arms in the name of this allegiance to a cause or a nation. It is their duty to wage war on behalf of this cause or nation. Non-combatants are those not involved in the waging of hostilities. While the terms ‘non-combatant’ and ‘civilian’

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4 The question of exactly what level of participation in the war effort constitutes moral responsibility for the conflict is a difficult one that arises from the fact that the non-combatant population of a nation both (1) generally supports their military forces morally or materially – whether by providing emotional or political support, or by producing weapons of war for their forces; and (2) does not take up arms itself, and therefore does not make itself a legitimate object of attack in the classical sense. As we will see later, in cases of extreme asymmetry between opposing military forces, the restrictions typically placed on civilians as legitimate targets may loosen; in a democracy active constituents, members
are often used interchangeably, the fact of the matter is that they are related yet different. In his discussion of the concepts of combatant and civilian statuses, Kevin Jon Heller cites the International Committee of the Red Cross (ICRC), which makes careful distinctions between civilian status and non-combatants (Heller, 2012, p. 5-6; Melzer, 2009, p. 27-36). For the purposes of this discussion, I will defer to the ICRC definition and take ‘civilian’ to mean a person who is not directly participating in hostilities:

For the purposes of the principle of distinction in non-international armed conflict, all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. In non-international armed conflict, organized armed groups constitute the armed forces of a non-State party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities (“continuous combat function”) (Melzer, 2009, p. 27).

The just war, then, is one that respects the lack of involvement in hostilities on the part of the civilian population. Further, killing in war is only morally permissible because of the mutual assumption of risk by both sets of combatants (Kahn 2002, p. 2). Civilians are morally innocent with respect to the conflict because they do not choose to participate directly in hostilities.
In light of the moral difficulties posed by the Vietnam War and its juxtaposition of conventional military-versus-guerrilla combatants, Thomas Nagel spoke out against the ‘conventional wisdom’ for strategic and moral reasoning with a strong deontological position. In brief, Nagel asserted “the view that certain acts cannot be justified no matter what the consequences. Among those acts is murder – the deliberate killing of the harmless: civilians, prisoners of war, and medical personnel” (Nagel, 1971, p. 56). He proposes this absolute restriction as a limit on utilitarian reasoning, which can condone significant moral evils in the search for the best possible outcome. Instead, Nagel’s absolute restriction focuses on the initial action, rather than the consequence: that murder must not be done in the first place.

This principle has been codified into international law in various doctrines, statutes, and conventions. Typically in these instances, the term ‘war crime’ has been used to describe killings, attacks, or actions that do not respect this key distinction. For example, the Rome Statute of the International Criminal Court includes among its’ definition of war crimes acts prohibited by the Geneva Conventions of 1949 such as inhumane treatment of prisoners and civilians, as well as

... serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives (ICRC 1998, Art. 8, 2.b i-ii).

From this particular statute and other longstanding conventions within the just war theory tradition, there is a clear recognition by traditional military forces and national actors that the civilian population and property of the enemy nation are off-limits in wartime. While attacking these targets may carry strategic benefit or deal a significant blow to enemy morale, the morality and justice of wartime conduct both demand that they remain free from harm to the extent that such harm can be avoided.

From the standpoint of international law as articulated by the ICRC, the principle of distinction between civilians and combatants must be observed in such a way that presumes civilian status unless an individual proves otherwise. If determination of combatant-or-civilian status is based on the previously mentioned “continuous combat function” requirement, then only those who are making a sustained and constant effort to directly participate in hostilities qualify as members of organized armed groups of a non-state character, and fall on the legitimate target side of the principle of distinction (Melzer 2009, p. 16-17; Heller 2012, p. 5-6). Civilians who do not meet this criterion, and only directly participate in hostilities on a temporary basis lose combatant status and privilege after “the duration of each specific act amounting to direct participation in hostilities (Melzer 2009, p. 17).

This is admittedly a very strong reading of civilian versus combatant status. Nevertheless, a looser requirement could fail to reflect the reality of the situation on the ground. For example, because counterinsurgency is waged among civilians, some civilian
casualties are likely to occur no matter how careful the counterinsurgent force is. In light of this, cultural or societal norms in the area of the counterinsurgency campaign may require a reprisal on the part of the family of the injured – they may be required to “show face” or regain lost honor by using violence against those responsible for their family’s loss. This nuance is important since such a person would be a temporary combatant, and not continuously contributing to the insurgent cause, even if for a short while he has the same ‘enemy’ as the insurgent. This strong reading of combatant status prevents the counterinsurgent from promoting a vicious cycle of violence against people who aren’t his real enemy. The presumption of civilian status is a critical guarantor that lethal force is not abused. While international law is not necessarily indicative of the presence of a moral absolute, this case – the prohibition against killing civilians – carries significant moral and legal weight. This “continuous combat function” stipulation serves to delineate between those who should truly occupy “enemy” status (the targets of military strategy and authorizations for the use of force) and those who temporarily or circumstantially act with violence; whose behavior would be better described as criminal than as subject to the laws of war and the use of force those laws warrant. Simply, the “continuous combat function” rule results in erring on the side of caution.

Among the advantages that drones boast over manned aircraft, perhaps the most useful to discriminating between combatants and civilians is their ability to remain in a given area for an extended period of time\(^5\), observing a scene, monitoring suspects on the ground, and gathering evidence that helps determine whether said suspects are in fact combatants or not. In the past, this capability did not exist. In his essay “War and

\(^5\) The ‘original’ UAV to see major use, the MQ-1 Predator, has an endurance of twenty-four hours of flight time. Retrieved from http://www.deagel.com/Unmanned-Combat-Air-Vehicles/MQ-1-Predator_a000517002.aspx
Massacre,” Nagel alludes to the relatively indiscriminate nature of air strikes in the Vietnam era while discussing the problems inherent in the Doctrine of Double Effect, namely, that “If one makes no attempt to discriminate between guerrillas and civilians, as is impossible in an aerial attack on a small village, then one cannot regard as a mere side-effect the deaths of those in the group that one would not have bothered to kill if more selective means had been available” (1971, p. 59). Thus it seems that a tool such as the UAV would be the perfect choice to carry out targeted, precise strikes that even the most conservative interpretation of the principle of distinction would condone. Combined with advanced intelligence gathering technology and human intelligence and informant networks on the ground, it seems that the American military has a potentially very precise tool for attacking combatants while minimizing risk to its own military personnel in the process. If there is a win-win situation in war, it would seem that using the all-seeing drones to make precise strikes is it.

Hypothetically, then, the technological capabilities of drones should seek to mitigate any potential distinction issues that may arise in waging a counterinsurgency. Were there any questions upon identification of an individual deemed suspect, the aircraft could simply loiter high above the area relatively unnoticed, with the suspect none the wiser; proof as to whether or not the suspect is someone the counterinsurgent has been looking for, or is in fact a previously unidentified ‘bad guy’ can be gleaned from merely staking him out. This precision and identification seems perfect for the principled counterinsurgent.

However, this is not an accurate description of current military practice. In fact, a great many of the strikes carried out by American drone pilots in Pakistan and Yemen are
instead ‘signature strikes,’ which, as previously mentioned, attack previously unknown targets after some behavioral criteria have been met. Perhaps the most morally significant question to be asked in this case would be which behaviors or ‘signatures’ can support someone being deemed a combatant, especially if they are not a previously-known and identified alleged terrorist. In addition to the almost total lack of congressional oversight, “the material, including identification of the targets, justification for the strikes, estimates of potential civilian casualties and assessments of the impact on the local community, are vetted by lawyers and officials at the Pentagon and White House – in secret” (Wood, 2013). In public, President Obama has defended the use of drones in this way: “‘Our criteria for using [drones] is very tight and very strict,’ Obama insisted in August [2012]. In an interview with CNN, Obama explained that any proposed strike has to comply with U.S. and international law, and the target must be a real threat who cannot be captured” (Wood, 2013).

By contrast, in his “One Hell of a Killing Machine: Signature Strikes and International Law,” Heller describes a particularly troublesome case:

On February 4, 2002, a Predator drone operated by the CIA spotted three men standing in Zawhar Kili, an abandoned mujahedeen complex located near the city of Khost in Afghanistan’s Paktia province. One of the men was tall; the others were supposedly acting reverently toward him. Convinced that the men were legitimate targets – and hoping that the tall man was Osama bin Laden – the CIA fired a Hellfire missile from the Predator, killing all three instantly. Bin Laden was not the tall man, and
journalists later determined that none of the men were even affiliated with al-Qaeda or the Taliban. They were simply innocent civilians in the wrong place at the wrong time (Heller, 2012).

Assuming this account of events is accurate, this is a clear failure to direct hostilities so as to distinguish between combatants and non-combatants. Merely ‘acting reverently’ toward a tall person – and the CIA would later learn that this particular “tall man” was a full six inches shorter than bin Laden\(^6\) – was enough to cause them to be labeled as “legitimate targets.” This identification seems not to be the careful consideration of combatant status that would ease our concerns about the program. Instead of questions of combatant status being carefully scrutinized, it appears that “moral reasoning has become more slippery of late, as the American government has implied that all military aged males in a strike area are legitimate targets: a ‘guilt by association’ designation” (Kaag and Kreps, 2012).

Heller has gathered a list of fourteen signature behaviors (based on drone strikes that were reported and the rationale of each) that are apparently used to determine if a drone attack is allowed under the principle of distinction. Here, they are broken down by whether each is always, possibly, or never legally adequate under International Humanitarian Law:

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<tr>
<th>Always legally adequate</th>
<th>Possibly legally adequate</th>
<th>Never legally adequate</th>
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<tbody>
<tr>
<td>2. Transporting weapons</td>
<td>traveling towards conflict</td>
<td>in area of known</td>
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<tr>
<td>3. Handling explosives</td>
<td>2. Operating an Al-Qaeda</td>
<td>terrorist activity</td>
</tr>
<tr>
<td>4. Al-Qaeda compound</td>
<td>training camp</td>
<td>2. Consorting with</td>
</tr>
<tr>
<td>5. Al-Qaeda training camp</td>
<td>3. Training to join Al-Qaeda</td>
<td>known militants</td>
</tr>
<tr>
<td></td>
<td>4. Facilitators</td>
<td>3. Armed men traveling</td>
</tr>
<tr>
<td></td>
<td></td>
<td>in trucks in AQAP*-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>controlled area</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Suspicious camp in</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Al-Qaeda controlled area</td>
</tr>
</tbody>
</table>

*Al-Qaeda in the Arabian Peninsula: the local affiliate that the United States has targeted with drone strikes in Yemen.

(2012, p. 8-18)

The first two columns of the table give what we would expect as legitimate or plausibly legitimate targets: people planning attacks, an Al-Qaeda training camp, groups of armed men moving towards a conflict. The third column lists ‘targets’ that could possibly pan out to be legitimate, but at the time of the strike have not proven their status with respect to the conflict at hand. The first of these signatures that Heller labels as ‘never legally adequate’ under International Humanitarian Law, being a ‘military-aged male’ in an area of known terrorist activity, is particularly legally and morally problematic. The moral concern, as stated earlier, rises when it seems likely that lethal force has been used against an undeserving target; the gravity of taking a human life warrants the utmost in careful deliberation before the go-ahead can be given. As Heller explains, this signature is problematic because the membership of a person in an organized armed group can not be determined from their age and proximity to known terrorists. This membership requires an observed “continuous combat function,” as cited before (Melzer, 2009; Heller, 2012, p. 11). In other words, unless certainty exists that the person is a “full-time
bad guy,” the remaining doubt means that the person must be assumed to be a civilian. Anecdotally, it is very easy to conceive of a situation where someone would find themselves in an area of known terrorist activity, especially during a counterinsurgency – such as a café where terrorists often meet with one another – while that particular individual remains innocent. Thus, for the American government to claim that $X$ number of militants were killed in a drone strike based on tallying up the number of ‘military-aged’ male bodies they find strewn about a strike area is for it to both make a gravely immoral shortcut and to fail at upholding the principle of distinction.

In the same vein as Nagel’s absolute prohibition against attacking civilians and as testament to the seriousness of Non-combatant Immunity (NCI), Chris Mayer even goes as far as to argue that NCI is robust enough to prevent civilians from being targeted with nonlethal weapons. As he argues,

Non-combatant immunity not only prohibits physical harm, but it prohibits treating non-combatants as if they possessed some sort of military status. By definition, non-combatants have done nothing that makes them participants in the war, which means that there is no justifiable reason for military forces to attack them. They are involved in the war because enemy forces have crossed their country’s border; their status, however, is not the same as those who fight on their behalf (Mayer 2007, p. 225-226).

This strong, rights-based understanding of non-combatant immunity is right in line with the ICRC-endorsed presumption of civilian status. Indeed, NCI is so compelling that even
the use of a non-lethal weapon “to remove non-combatants from the path of unintended harm is a violation of NCI; you are still using a weapon against non-combatants for a military purpose” and, further: “attacking and causing harm to non-combatants to save them from an unintended greater harm, even when using non-lethal weapons, is still a violation of NCI” (Mayer 2007, p. 226 & 227). The supreme requirement here is that civilians be treated differently from combatants.

So while at first glance drones seem like they were built with the principle of distinction in mind, their use in practice has not made proper use of their capabilities. The problematic criteria in use for determining whether or not an individual is a legitimate target carry great potential for abuse. Calculating enemy forces killed by the number of ‘military-aged males’ in the blast area could lead to wildly inflated estimates and, in turn, an inflated measure of success in the war effort. It is easy to imagine how this could lead to widespread continued support for the use of drones as a strategy unto itself, when in reality innocents are (probably) being killed. It also seems that the signature strike practice in general could be very susceptible to confirmation bias, where beliefs or suspicions are confirmed without sufficient evidence. For example, plenty of folks would likely “consort with known militants” (from the table above under ‘never legally adequate’), perhaps even on a daily basis, but it is unclear at what point this consorting would amount to direct participation, and also unclear as to how a drone observer would make this distinction. Furthermore, the concept of guilt by association is shaky to begin with, but becomes an irresponsible shortcut when matters of assigning combatant status to determine the use of lethal force is at stake. While Strawser’s argument attempts to
appeal to common-sense consequentialism, a more careful rendering of the ‘utilitarian calculus’ in the case of drones reveals many more drawbacks than he has accounted for.

3. Problems resulting from extreme asymmetry.

The significant difference in capability between forces that have Unmanned Aerial Vehicles at their disposal and those who do not presents a scenario that threatens the current paradigm of just conduct in warfare altogether, where combatants of a “continuous combat function” assume risk and noncombatants do not. This asymmetry has the potential to dramatically alter the levels of risk that the actors involved in an open conflict assume for themselves when they commence hostilities. As previously stated, perhaps the most attractive aspect of having UAVs in one’s arsenal is that they can limit the risk to military personnel. Most notably, they can remove a human pilot from danger or provide an offensive strike option that keeps soldiers from having to engage an enemy in close combat. In terms of both political and human costs, it could be said that UAVs present a ‘cheaper’ option for militaries that are able to implement them.

This point of view, however, that one should seek to limit the harm that they incur while waging war, is in some ways contrary to the very notion of a “just war.” A micro-scale example may help to illustrate this. While differing in origins and rules from just war theory, the practice of dueling to defend or regain one’s honor is another good example of a principled conflict. Dueling features limited (or restricted) violence with the purpose of accomplishing a specific objective. Dueling as a practice was based on several factors, such as the courage and willingness to incur bodily harm and the fairness required for the contest to be considered valid. This included both agreed-upon rules,

24
such as fair notice or scheduling of hostilities – that is, no ambuses – and equal outfitting for the confrontation, such as a set of identical dueling pistols. Similarly to just war theory, the rules of a duel existed to constrain violence to the appropriate parties and methods. A dramatic imbalance or asymmetry between two parties that are in a state of open conflict with each other would be problematic under the rules of a duel, and as such could also violate perennial *jus ad bellum* requirements, especially those of proportionality and last resort.

As Paul Kahn explains in “The Paradox of Riskless Warfare,” the use of violence in principled conflict is licensed by “the reciprocal imposition of risk” of the parties involved (2002, p. 2). He argues that under normal circumstances, combatants and non-combatants are not properly understood in the context of a moral-guilt-versus-moral-innocence dichotomy, but that combatants are morally innocent and allowed to utilize violence against their enemies because they are actually acting in self-defense with respect to the other combatant (2002, p. 2). Kahn’s understanding of combatants as morally innocent is accurate. As he explains, “… we didn’t think that every German soldier committed a moral wrong for which he deserved to be punished at the end of World War II, even though we thought criminal punishment appropriate for the leadership” (2002, p. 3). So while the combatants have not committed any crimes, *per se*, by killing their enemies, they only maintain their innocent status so long as they are defending themselves – as long as they are assuming risk themselves.

The dilemma of which Kahn writes comes from the fact that although the assumption of risk is precisely what allows a combatant to function in a war zone (without assuming moral guilt or qualifying as a murderer), the military force involved
also has a “compelling ethical obligation to minimize the risk of injury to its own forces” (2002, p. 2). This obligation is the same one Strawser mentions. However, Strawser argues that the obligation to minimize risk is strong enough to also oblige the use of UAVs which remove combatants from the immediate dangers of the battlefield. Kahn would disagree:

If the fundamental principle of the morality of warfare is a right to exercise self-defense within the conditions of mutual imposition of risk, then the emergence of asymmetrical warfare represents a deep challenge. A regime capable of targeting and destroying others with the push of a button, with no human intervention but only the operation of the ultimate high tech weapon, propels us well beyond the ethics of warfare (2002, p. 3).

These two obligations actually serve as bookends on a continuum of self-imposed risk that define an acceptable range of levels of risk to which one must expose oneself in order to earn the moral protections of combatant status. This can be illustrated as follows, for any given wartime objective sought by presumably just combatants:

![Figure 1-1: Continuum of Risk](image)
Assume the line represents an increasing amount of risk, from left to right. The endpoint entails (hypothetical) absolute zero risk of being killed in combat, point $a$ represents the minimum amount of risk required to earn combatant status, and point $b$ represents an unnecessary level of risk for a combatant to incur in the accomplishment of a given objective. At point $a$, the individual has done the necessary things to earn combatant status. More than merely exposing himself to danger, he has taken up arms and assumed a continuous combat function. He is a combatant because combat is his job.

Consider the infantryman, the most numerous military unit throughout history: it is his objective to enter close combat with the enemy. He has carried arms and implements to assist him in this task openly, has self-identified as part of a national military or other actor, is authorized to use deadly force, and is compensated by the authority for which he fights.

At $b$, the combatant has been exposed to an unnecessary level of risk – more than is required to achieve their objective. Perhaps he has been ordered not to carry anti-armor weapons when his objective is known to be fortified with armor, or perhaps some difficult political landscape has prevented his chain of command from supplying him with other supports that would make his objective less dangerous, if he had them. An absurd example of starting their mission at point $b$ would be if their command had issued the combatants only combat knives and ordered them to assault a position.

Strawser’s PUR only requires that the actual level of risk that combatants self-impose be as small as necessary – no unnecessary risks. Reading this in light of Kahn’s understanding of assuming at least combatant-level risk means that the actual risk
incurred (let us call it \( R \)) be at least as much risk as \( a \), and as close to \( a \) as possible. So the position of \( R \) in Figure 1-2 is favorable to one where the distance between \( a \) and \( R \) is greater:

![Figure 1-2: Continuum of Risk with \( R \), actual risk, indicated.](image)

As stated earlier, I believe that Strawser’s PUR holds up for most combatants, so long as the risk incurred by a given combatant is at least amount \( a \) on the continuum above. It would be immoral for a leader to subject their combatants to risks greater than necessary because the additional risk would serve no purpose. Such an assumption of superfluous risk would make one’s own objective more difficult and dangerous than necessary. Where Strawser’s argument goes wrong, however, is it strives to reduce risk to combatants without regard to the fact that they need to be incurring risk, by definition, to be combatants. This is Kahn’s point as well.

When the amount of risk incurred by a combatant diminishes so much that they are no longer reasonably at risk of harm from the conflict that they are participating in, then they can no longer be said to have truly ‘earned’ their combatant status. With respect to remotely-piloted UAVs, this is often the case. The pilots (and for that matter, the supporting personnel: mechanics, intelligence personnel, air traffic controllers, and others) of drones are often extremely distant from the battlefield which they impact by
operating the UAV. Thus, Strawser’s argument that the difference between UAV and manned aircraft is one of degree, and not of kind, is false:

I argue that remotely controlled weapons systems are merely an extension of a long historical trajectory of removing a warrior even farther from his foe for the warrior’s better protection. UAVs are only a difference in degree down this path; there is nothing about their remote use that puts them in a different ethical category (2010, p. 343).

The combat methods used in the “long historical trajectory” to which Strawser is alluding are in fact different in kind from UAVs. Now, while it is true that there has been a trend toward the development of increasingly longer-range weapons over time, this range and remote-ness is an order of magnitude larger. We can imagine, for instance, the surprise and terror of the first of the samurai – religiously-devoted swordsmen who assigned great honor to close combat – to be attacked by enemies with firearms. A soldier with a firearm would be an entirely different kind of warrior (and the discrepancy between them would raise serious questions of morality, courage, and honor).

It seems that Strawser believes UAVs are merely a longer-range weapon than prior iterations, and the warrior is simply farther away from the “business end” of the weapon. I believe that in arguing this, Strawser has greatly oversimplified the asymmetry created by the UAV weapon system. While it is true that the action that fires a missile is the same between a manned aircraft and a drone – the press of a button – the fact that one
case involves a human flying over a battlefield while the other does not is what makes them both different in kind and dissimilar from an ethical perspective.

As established earlier, a crucial requirement for an individual to earn combatant status is the assumption of risk. Considering the difference at stake, it becomes much more clear when viewed in terms of the potential consequences of combat. If a manned aircraft is shot down, there are two potential, relevant outcomes: 1. the aircraft is destroyed to such an extent that the pilot is killed instantly, or, 2. the aircraft is damaged and the pilot ejects, and lands, probably in enemy territory. Either way, there is a risk and potential for loss greater than the mere destruction of the aircraft. The pilot, a human, is either killed or is endangered by the situation that arises from ejecting from his aircraft, respectively. A pilot shot down over enemy territory would surely agree that the drone pilot has a different kind of job entirely.

This understanding of the difference between manned and unmanned aircraft – a difference in kind, and not degree – is precisely the distinction that Jai C. Galliott makes. In response to Strawser’s claim that the difference between manned and unmanned aircraft is one of degree (2010, p. 343), Galliott says,

It can be argued that uninhabited aerial vehicles do, in fact, introduce a new or at least more concerning level of asymmetry. In the example involving the F-22 attacking a tribal warrior, a pilot remains in the air; therefore the tribal warrior still has a human to target, regardless of how futile his efforts may be. By contrast, the introduction of uninhabited
platforms removes most, if not all, warfighters from the field... (2012, p. 60).

The operators of UAVs are often thousands of miles away from where their aircraft is flying. It is worth noting that this distance is almost five times the operational range of a Tomahawk cruise missile (which is also unmanned), and slightly less than the range (without refueling) of the long-range B-2 Spirit Bomber, a manned aircraft, for comparison. At this extreme distance from his target, the difference in the amount of risk assumed by a manned aircraft pilot in the execution of his mission versus that of an unmanned aircraft pilot executing his mission is incredibly vast. In fact, this difference in range makes that of other indirect fire weapons such as artillery or mortars seem minuscule in comparison – these systems have ranges within single-digit mileage. Furthermore, artillery and mortars require combatants on the ground to operate, and these soldiers are vulnerable to counterattack.

I would argue these weapons are so different that we would not even consider drone operators and manned aircraft pilots to have the same kind of job. The sticking point, as Galliott observes, is the concern with respect to the amount of risk incurred by the respective pilots, and thus, by extension, their combatant status. This is clearly a different category of removal from battlefield dangers entirely; this is not merely using a gun when your enemy uses a sword, or using a sophisticated aircraft when your enemy points a machine gun at the planes overhead. The fact of the matter here is “that the

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warfighters operating the uninhabited weapons are beyond the range of response to the opposing side’s weaponry” (2012, p. 60). They can, in effect, strike with impunity, which is what brings their very status as combatants into question. Even if the ends being pursued are just, they are being accomplished in an unjust way because an agent without the requisite combatant status is being utilized to accomplish them. In spite of the fact that the drone operator is politically “authorized” by his nation (under our assumption that *jus ad bell*o requirements were met), he is not morally authorized by *jus in bello* requirements.

As Bumiller notes, the risk incurred to drone operators – and their very way of life – stands in stark contrast to that of the pilot or the artilleryman, or the infantryman:

Colonel Brenton acknowledges the peculiar new disconnect of fighting a telewar with a joystick and a throttle from his padded seat in American suburbia.

When he was deployed in Iraq, “you land and there’s no more weapons on your F-16, people have an idea of what you were just involved with.” Now he steps out of a dark room of video screens, his adrenaline still surging after squeezing the trigger, and commutes home past fast-food restaurants and convenience stores to help with homework – but always alone with what he has done (Bumiller, 2012).
Violence and lethal force, in a just war, are intended to be limited and discriminate – and must not be directed at inappropriate subjects. The very fact that authorizes combatants to use violence, and endorses their combatant status, is that they have assumed the risk of being targeted for violence in much the same way as their opponents have, that is, they bear arms openly and are legitimate targets in a principled conflict. As Kahn says, they stand in a relationship of reciprocal self-defense vis-a-vis one another. If they do not actually incur the risk of injury, yet still bring violence to their “enemy” then they have changed their status with respect to the cycle of reciprocal self-defense.

If it is the case that they do not qualify for combatant status, then the question of exactly what status the drone operators do hold in the combatant vs. non-combatant understanding must be addressed. While fully defining this status and that place it would have in the traditional combatant/noncombatant dichotomy is beyond the scope of this paper, it seems at least possible to conceive of an argument in light of Kahn and Heller that for large-scale actors (such as national militaries) who expose some of their forces to risk and shield others, the obligation to incur risk has been met by the nation at large. Such an argument could carry weight with respect to an open conflict, but I think would probably fail to line up with a “no boots on the ground” or “drones only” conflict, such as the ongoing CIA drone strikes in Pakistan, Yemen, and Somalia. The requisite risk would not have been incurred in such a scenario to endorse the use of force. Furthermore, if the onus to incur risk was to exist at the national level and not a more local level, then our understanding of surrender and prisoner of war status would also have to change. A particular unit’s surrender means that it has chosen to lay down arms and occupy prisoner
status in the face of annihilation, while others of the same nation continue to fight. But if individual units or even individual soldiers were no longer responsible for making the “to fight or not” decision, then the very definition of who counts as a legitimate combatant would have to be entirely altered.

In addition, the distance from the battlefield where drone operators execute their duties is troublesome for another reason: because of its close proximity to American civilian centers. As Bumiller’s and Colonel Brenton’s statements indicate, the advent of UAV technology has removed the warfighter from the battlefield; he can effectively wage war without fear for his safety. But the problem about such a dramatic gap in risk incurred by both the drone operator and his enemy is such that the enemy may be unable to make an effective response within the normal rules for just conduct in war. For the CIA drone program in Pakistan, Yemen, and Somalia, this is especially the case: American ground forces are not there in harm’s way, and there exists a profound asymmetry in the amount of risk incurred by each side.

As Suzy Killmister argues, “By taking soldiers out of the line of fire, remote weaponry risks drawing the line of fire into the general community” (Killmister 2008, p. 122). Given that there is no combatant in the area for the other side to respond to, they are left with a limited range of options. Killmister goes on to say

any conflict that involves gross power imbalances is going to result in a similar dilemma for the weaker state – if surrender is to be avoided, self-defense must be undertaken. If that defense cannot take place on the battlefield, alternative forms of retaliation must be considered. If there are
no forms of retaliation available within the confines of *jus in bello*, the state will be forced to either commit a moral transgression or surrender (2008, p. 122).

The moral transgression that Killmister refers to is terrorism, and Galliot hints at this as well: “…an asymmetric attack will, in many cases, restrict an opponent’s retaliatory options to an extent that drives them to utilize deplorable means they would not otherwise seek to use, thus rendering an asymmetric attack unjust from the outset” (Galliott, 2012, p. 60).

If the asymmetry in capability between the two states reaches a certain point, Killmister argues, then the less capable state is left with two options: committing terrorism (“drawing the line of fire into the community”), or surrender. This dramatic asymmetry in power creates the following tragic situation: if a state has more advanced weaponry and uses it, then states that do not have this same capacity will not have a just course of action by which to defend themselves. Here, the upset of the balance that results from the reciprocal relationship of self-defense Kahn describes is seen: there is no combatant for the less advanced side to fight back against, merely a drone. State X, with drones, and State Y, without drones, would be involved in a conflict where only one side was in a position to incur risk. Killmister argues that in these circumstances, State Y would be forced to override civilian immunity and target the population of State X (2008, p. 124). By removing its human military forces from combat, State X would have changed the set of its own population responsible for the use of force and the targets that State Y would be morally authorized to use force against would include,
‘civilian combatants’ in State X. These would be citizens who were responsible for the aggression of State X, without necessarily being physically involved in the attack. This would include political leaders, military strategists, weapons developers, and media and pressure group figures instrumental to the instigations of the war. This would be the only just response open to a state under attack from remote weaponry that was not willing to surrender (Killmister 2008, p. 123).

It seems the resulting dilemma means that State Y must either surrender or target the civilians of State X. In other words, it must admit defeat simply because it possesses less-advanced weaponry or be forced to respond by breaking a strict (if not universal) moral requirement. In this extreme though plausible example, significant asymmetry in capability between sides has entirely unravelled the choreography of principled, politically-oriented violence that is a ‘just war.’

What Killmister’s paper does not address, however, is the extent to which this example changes if State Y is not in fact a nation, but a non-governmental actor. She only says that the conflict must not be one of humanitarian intervention, and that State Y must have the right of self-defense, which depends on whether or not it is acting on behalf of its people (2008, p. 124). The morally pressing question that this raises is whether or not the CIA drone program in Pakistan, Yemen, and Somalia is an example of a dilemma like the one that Killmister describes. While any one of these three could hypothetically be the State Y to the USA’s State X, issues surrounding the legitimacy of these nations’
official governments as well as the authority claimed by militant extremist organizations in each of them mean that this question should be taken very seriously.

If Killmister is right that “a state only retains the right of self-defense if it is acting on behalf of its people: the right belongs to the community and not to the political structure within which it is situated” (2008, p. 124), then we are faced with the possibility that our situation does constitute one of extreme and unjust asymmetry. That is, if the extremist organizations truly do represent the interests of the people they claim to – they receive popular support, et cetera – then a drones-only action against them would create apparently impermissible levels of asymmetry. Following Killmister’s logic to conclusion, this asymmetry could possibly open the door to a troubling paradox: morally legitimate attacks on civilians. This issue is relevant for current cases such as efforts against organizations which govern and claim legitimacy, such as the Taliban, which ostensibly must have some level of local support based on their continued survival and operation. Furthermore, it is even more troubling if we consider a political organization such as Hezbollah based in Lebanon, which enjoys significant public support because of its large role in Lebanese political and civilian society.9

It is worth noting that the use of drones is not categorically immoral. They occupy a different status from weapons or systems deemed mala in se (“evil in themselves”) in the modern age, such as chemical or biological weapons. Certainly, there are uses for this technology which do not run into the issues that I have discussed here. It seems as though any unarmed, non-offensive roles for drones would be morally permissible, considering

9 From IRIN, a project of the United Nations Office for the Coordination of Humanitarian Affairs: “Hezbollah not only has armed and political wings – it also boasts an extensive social development programme. The group currently operates at least four hospitals, 12 clinics, 12 schools and two agricultural centres that provide farmers with technical assistance and training. It also has an environmental department and an extensive social assistance programme. Medical care is also cheaper than in most of the country’s private hospitals and free for Hezbollah members.” (Retrieved from http://www.irinnews.org/report/26242/lebanon-the-many-hands-and-faces-of-hezbollah)
the stipulations that: first, use of the drones does not reduce capability to distinguish targets from non-targets; and second, that the use of unmanned aircraft does not create a situation of vast asymmetry where enemy combatants have no combatants to themselves engage. These stipulations seem to work at least *prima facie*, because a drone which fires no missiles thereby kills no civilians, and *not* creating a vastly asymmetrical situation also removes the possibility that drones will inspire radicalization or force insurgents to utilize terror as a weapon in the absence of legitimate targets. With these stipulations in mind, it seems that the use of drones for reconnaissance or surveillance purposes in wartime is permissible.

But are there any armed, offensive applications for unmanned aircraft that can work successfully under these restrictions and prove strategically useful? The close air support (CAS) role of UAVs appears promising because it takes advantage of the UAVs’ capabilities and skirts the ‘lack of combatant’ issue. If a UAV is used to assist infantry which is in combat against an enemy force, then the enemy force is still able to attack combatants – it is quite a different arrangement than the scenario of a Signature Strike and seems likely to present fewer opportunities for difficulties discriminating between potential targets. Unlike “reverent behavior” toward a “tall man” that resulted in civilian deaths in a signature strike described previously, drones have the potential to be quite useful when infantry or air controllers on the ground can confirm exactly who is doing “bad guy stuff.” Accordingly, it seems like drone use that does not entirely eliminate risk to the force that utilizes them is morally permissible, and does not disrupt the cycle of reciprocal self-defense and assumption of risk that defines combatant status from a just war standpoint.
4. Conclusion

It is clear that the use of drones in a wide variety of applications is increasing at a dramatic rate, and it also seems that perhaps for the time being, American reliance on them for military applications has outrun the bounds of the ethical framework in which principled combatants have traditionally waged war. While there are obvious benefits to using unmanned aerial vehicles in place of manned aircraft, the situation that results is different in kind than one where a manned aircraft undertakes the same combat role. There are differences in the combatant status of the participants between these two cases, and to the relationship that the two combatants exist in with respect to one another, for the drone vs. human and manned aircraft vs. human scenarios.

Perhaps the most often-cited reason for utilizing unmanned aircraft to pursue and attack enemies in the twenty-first century has been the fact that removing American pilots from the skies keeps them out of harm’s way. Aside from the obvious, this has the added benefit of decreasing the political fallout elected officials incur by supporting American involvement abroad: many American politicians and their constituents remember hearing about the mujahideen shooting down Soviet helicopters with Stinger missiles during the USSR’s invasion of Afghanistan, and presumably even more remember seeing the wreckage of American helicopters in Mogadishu during the ‘Black Hawk Down’ event of 1993. In a world where captured pilots and soldiers face the prospect of very bloody ends for the world to see on jihadist YouTube pages, the choice to use remotely-piloted aircraft seems an obvious one for politicians. Drone warfare presents a real and significant threat to the balance between victory and cost, however,
and the new status quo reveals much about our attitudes toward our enemies and the
almost antiseptic war that we hear about in our news media. The drone program enjoys
overwhelming bipartisan support in the United States. It seems the majority opinion on
the home front is that war is only worth opposing if our troops are in danger. The
troublesome fact in this case is that if all other military personnel were to leave
Afghanistan and the drones continued to operate there and into Pakistan, the civilian (that
is, Congressional) oversight of this use of force would likely not question its necessity as
thoroughly as if American personnel were deployed. When we consider that the drones in
question have technical specifications which make them far more ideal for loitering over
a combat zone than manned aircraft, it seems even more obvious that drones are the
perfect tool for the task at hand. Given this, it’s not hard to imagine a world where
countless drones operate around the globe and entire military forces eventually transition
to unmanned – or further down the road, autonomous – platforms like the robot armies
of Star Wars or Terminator fame.

However, the fact about a just war which keeps it from being unwarranted violence and aggression is that it comes with a high cost. In order to earn the right to bring violence to the enemy, one must allow himself to be the target of violence from the enemy as well. As Kahn argued, the notion that just combatants exist in a relationship of reciprocal self-defense with one another is essential to limiting violence to the appropriate recipients in wartime. This is why we inherently find sucker punches to be poor form and cowardly, and it is why guerrilla tactics have frustrated disciplined, ‘regular’ troops for centuries. The reality of war is that it does not merely create a
situation where sacrifice may occur. It requires that sacrifice \emph{does} occur in order to keep the conflict in check.

In less abstract terms, the empirical efficacy of drones is in question as well. Whether their use has crippled terrorist networks as intended, or it has inspired the next generation of threats against America and its allies remains to be seen. We do know that there is strong evidence to support the claim that the use of drones has radicalized many new insurgents. This calls into question the practicality of using drones altogether (or at least for purposes of attack) since there is strong evidence that drone technology creates a set of its own unique challenges that manned aircraft do not.
Sources:


