Ethical Drones?

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The reliance on technical capabilities is not easily

criticized by ethicists, since the development

of these weapons is made *in the name* of ethics.

John Kaag and Whitley Kaufman[[1]](#endnote-1)

 Drones, more formally known as “unmanned aerial vehicles” (UAVs), are remotely controlled military aircraft that can be used for surveillance or attack. They are often controlled by operators thousands of miles from the site of the attack. Considerable controversy has arisen recently, much of it ethical, about the use of attack drones for the “targeted killings” of individuals outside the context of a conventional war, for example, as they are used in Pakistan. (By conventional war, I mean an armed conflict that at least starts as a struggle between two states.[[2]](#endnote-2)) Drones are ethically interesting, in part, because the case for drones is often made in moral terms.[[3]](#endnote-3) The paper will begin by following this recent controversy, focusing on the use of drones for targeted killings outside of a conventional war. Later in the paper, I will consider the ethical issues raised by drone use more generally.

The development of military technology often poses new and difficult moral problems, and drones are no exception.[[4]](#endnote-4) In investigating the ethics of new military technology, it is helpful to distinguish between two sorts of moral problems it may create. The first sort, *ordinary problems*, may be addressed or resolved by a modification in the way in which the technology is configured or the military activities involving it are conducted. The second sort, *extraordinary problems*, are problems so severe that they may require as a response not that the technology or its use be altered, but that the technology not be used at all. This is obviously a rough distinction, if only for the fact that there is no sharp line between engaging in an activity in a modified way and not engaging in it at all. Some of the moral problems raised by drones are ordinary, but some are extraordinary.

The United States, and the West in general, is in a global struggle with Islamic insurgents, a struggle often referred to in the US as the global war on terror (GWOT). Conventional wars, such as those in Iraq and Afghanistan, are part of the GWOT, but much of the GWOT, the more controversial parts, takes place outside of conventional war. I will use the term GWOT idiosyncratically to refer to those parts of this struggle that are outside of a conventional war. One question we need to consider is whether the GWOT, understood in this way, is a war at all. The GWOT is an asymmetric conflict. Asymmetric conflicts, in general, are those in which one of the sides has at a great relative advantage over the other (the other being at a corresponding disadvantage). There are many forms of asymmetry, but the kind I am concerned with is one in which one side has a great military advantage in terms of its technology and/or the size of its military forces.[[5]](#endnote-5)

This form of asymmetry characterizes most of the wars fought by the US and other Western powers in the past few decades. This is even more the case with the GWOT, where the asymmetry is extreme. Drones are, in fact, especially useful in fighting such asymmetric wars. Because of their surveillance capabilities, they are good at tracking and attacking individuals. Other advanced technologies, such as cruise missiles, are good at attacking hitting fixed targets, mainly infrastructure, but insurgent groups often have little in the way of infrastructure. Their ability to inflict harm resides in their personal, which is what drones are good at targeting. As the technology of drones has matured during the GWOT, the US has come to rely increasingly on them to fight its asymmetric battles. An increasing portion of US military aviation is devoted to drones. The cruise missile is a paradigmatic weapon of the cold war, while the drone is a paradigmatic weapon of the post-cold war world.

In the first section, to clear the ground a bit, I mention two strategic objections to drones, then in the second section present three moral benefits that supporters of drones claim for the technology. In the remainder of the paper, I present and develop five moral objections to drones; some of these apply to drones used for targeted killings and others apply also to drone use more generally. Finally, in the last section, I provide an overall assessment of the ethical status of drones.

1. Two Strategic Objections to Drones

 Two of the most commonly heard objections to drones are more strategic than moral. They are primarily prudential because they concern not what drones do to their victims, but what they do to the interests of their users. Each of these objections entails that the use of drones is counterproductive.

The first objection is that the use of drones by the US against Islamic insurgents is counterproductive because, as it is crudely put, drones produce more terrorists than they kill, due to the animosity they generate in local populations.[[6]](#endnote-6) Concerning the civilians killed by drones, “every one of these dead noncombatants represents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.”[[7]](#endnote-7) If defeat of the insurgents in Pakistan and elsewhere requires that their numbers be reduced and that the local populations be turned against them, drone attacks will not succeed.

 The second strategic objection is that the development and use of drones by the US is counterproductive because it encourages the development of military capabilities and attitudes among other states that are, in the long run, inimical to US interests. First, it will lead to the development and deployment of drones by other states, some of whom will be opponents of the US. As two journalists note: “With Russia and China watching, the United States has set an international precedent for sending drones over borders to kill enemies.”[[8]](#endnote-8) Moreover, the deployment of drones by other states, whether friendly to US interests or not, will lead to a harmful climate of military instability. In addition, the use of drones by the US for target killings is widely perceived in the rest of the world as a flouting of international law.[[9]](#endnote-9) I will discuss later the role of international law in the criticism of drone use, but the point here is that respect for international law depends on a sense of reciprocity among states, and the perception by the rest of the world that the greatest military power is ignoring international law will lead other states to do so as well, resulting in a sort of international lawlessness that harms the interests of everyone. The use of drones may make everyone worse off. We have seen this dynamic before in the development of nuclear weapons technology during the cold war.

To put it briefly, drone use creates “blowback” that does more harm than good to US security. These objections do have some moral import because, if the use of drones is counterproductive, it will be a great waste of lives and resources. Were the GWOT a war in the morally relevant sense, the moral objections to this waste would be represented by its failure to satisfy the *jus ad bellum* principle that a war is just only if it has a reasonable chance of success.[[10]](#endnote-10) But complex conceptual and empirical issues lie behind these objections, and I will not consider them further.

2. Three Moral Virtues of Drones

Supporters claim that drones are a morally valuable military technology, and three virtues of drones are often cited. First, drones have a greater capacity for precision, thus potentially reducing “collateral damage” and better adhering, when used in war, to the important *in bello* principles of discrimination and proportionality. Bradley Strawser claims that “UAV technology actually increases a pilot’s ability to discriminate.”[[11]](#endnote-11) Drone operators can observe a potential target for hours before deciding whether to attack, making them better able to avoid civilian casualties. Kenneth Anderson makes a similar point, claiming that drone use allows us to avoid the “proportionality trap,” a trade-off characteristic of military actions where attacks that provide greater military advantage also put civilians increasingly at risk and attacks providing more protection to civilians achieve less military advantage.[[12]](#endnote-12) Drones break this linkage, achieving increased military advantage while also providing greater protection for civilians. They are a win-win.

Second, the use of drones poses no risk to the pilots, allowing military operations to better realize the principle of force protection. Force protection is not generally recognized as an *in bello* principle, but, other things being equal, it certainly is morally preferable to reduce one’s own combatant casualties. Strawser also argues that drones have this virtue. He casts it in terms of what he calls the “principle of unnecessary risk,” according to which military leaders have a moral obligation when pursing a legitimate military goal to choose a means, if available and just, that does not pose a risk to their combatants.[[13]](#endnote-13) Strawser’s principle is a specification of the principle of force protection, which counsels reducing risk to one’s combatants, though not necessarily eliminating it. Strawser’s specification of the principle of force protection is the principle at its limits.

 Third, the use of drones may avoid the need to wage a full-scale war.[[14]](#endnote-14) This is related to the first virtue. Just as it would be preferable to use drones instead of troops for a particular mission in a conventional war, so it would be preferable to use drones instead of fighting a full-scale war involving boots on the ground, assuming these are exhaustive alternatives. Speaking of “force-short-of-war,” a category of military force in which he would presumably include drone use outside of a full-scale war, Michael Walzer notes that the use of such force avoids the “unpredictable and often catastrophic consequences” of war.[[15]](#endnote-15) If a state can avoid a need to go to war by using drones to obviate the threat it faces, it certainly is a moral benefit to have drone technology available for that purpose. One might think of the use of drones as a step that needs to be tried in order that a prospective war satisfy the *jus ad bellum* criterion of last resort.[[16]](#endnote-16)

These three moral claims about drones represent the idea that the use of drones is morally preferable to other methods to the same purpose, such as traditional air strikes or the use of combatants, whether in special operations of a full-scale war. First, air strikes are less precise and the use of combatants on the ground generally leads to a greater number of civilian casualties. “Many military experts support the government’s claim that using conventional airstrikes or troops on the ground to attack terrorist compounds would be likely to kill far more civilians than drones have.”[[17]](#endnote-17) Second, of course, boots on the ground, and to a lesser extent traditional airstrikes, puts one’s combatants at risk.

3. Six Moral Objections and Two Paradigms

I will consider six moral objections to the use of drones. While all of these objections apply to the policy of drone use in the GWOT for targeted killings, some also apply to the use of drones more generally.

1. Drone use for targeted killings occurs outside the context of war, which is morally objectionable.
2. Drone strikes cause an excessive number of civilians casualties and otherwise violate principles of *jus in bello*.
3. Drone use is a rejection of traditional military virtues and affords its victims no opportunity to surrender.
4. Drone use removes political constraints on war making, undermining democratic controls, and creating a risk of perpetual military violence.
5. Because of the extreme asymmetry in a one-sided drone war, the use of drones is fundamentally unfair.

As a preliminary to the discussion of these objections, note that there are two ways to morally assess harmful behavior and a government’s response to it: they may be considered acts of war, or crime and law enforcement. There is the paradigm of warring and the paradigm of policing, each represented by a different set of rules limiting the coercive and violent actions involved in the government’s response.[[18]](#endnote-18) The rules are moral as well as legal. Warring is governed morally by the part of just war theory concerning conduct in war, *jus in bello*, and legally by International Humanitarian Law (IHL). In contrast, policing is governed morally by respect for individual human rights and legally by International Human Rights Law (IHRL). The contrasting pairs of rules are significantly different, with the moral and legal focus on human rights being, in general, more restrictive. One relevant difference between them is that a human rights focus concerns the *conduct* of those against whom force may be used. Force can be used only against those who have committed some wrong. In contrast, *jus in bello* and IHL allow or prohibit force against individuals due to their *status*, specifically, whether they are combatants or civilians.[[19]](#endnote-19) A related difference is that, special circumstances aside, a human rights regime allows the taking of life only after there is a something like a judicial finding of guilt (regarding conduct), while a regime under *jus in bello* or IHL allows the taking of life merely on an individual determination of status (for example, as shown by the wearing of a uniform).

4. Drones and the “Global War on Terror”

Consider objections (1), that drone use for targeted killings occurs outside the context of conventional war, which is morally unacceptable. This is a claim about the paradigm under which drone use should be considered, that it should be considered as policing rather than warring. The GWOT is not a war.

Of course, the response to this objection is that the GWOT is in fact a war, a “war on terror,” fought on a global battlefield, so that any drone strike against combatants in this war is permissible.[[20]](#endnote-20) The government asserts that the GWOT is a war: “The United States is in an armed conflict with al-Qa’ida and its associated forces.”[[21]](#endnote-21) But the question is whether the GWOT is a war at all. The question of the justice of the war is a different and secondary question. The appropriate way to answer whether the GWOT is a war is to investigate whether it sufficiently resembles a standard case of war that the rules of the warring paradigm can be applied to it. The assumption here is that, unless the GWOT is sufficiently like a standard case of war, it is not a war in the morally relevant sense, that is, a conflict to which *jus in bello* applies.

The GWOT departs from the standard case of war to such an extent that it is implausible to claim that it is anything other than war in an analogical sense (as in the “war on crime”). A number of points support this. First, it is a self-proclaimed fight not primarily against an organization, as in the standard case of war, but against a tactic, that is, terror.[[22]](#endnote-22) Perhaps in response to this concern, the Obama administration has replaced “GWOT” with the phrase “armed conflict with al-Qaeda, the Taliban, and associated forces.”[[23]](#endnote-23) But the new phrase makes the point that the US sees itself as battling not a single organization or even a set of organizations, but, given the elasticity in the term “associated,” an open-ended list of organizations, effectively, all alleged practitioners of terror. As Steve Coll notes: “A war against a name is a war in name only.”[[24]](#endnote-24) Second, the GWOT, unlike a standard case of war, has no temporal and spatial bounds, as terror will never be completely eliminated and the struggle against it has no spatial boundaries, no fixed geographical location. In all these respects, the GWOT is war only in an analogical sense, only in the way that the “war on crime” is a war. Crime is not an organization, and it is without spatial or temporal bounds, as it occurs everywhere and presumably will never come to an end. Indeed, there is more than a comparison between terrorism and crime, as terrorism is a form of crime to which the policing paradigm should be applied.

One other difference between the GWOT and the standard case of war is that each relates differently to the notion of state sovereignty. The standard case of war in conceptualized in terms of sovereignty—it is fought to attack sovereignty or to defend sovereignty. But the GWOT, conceived as a global struggle, considers sovereignty only from a practical perspective. It sees itself as attacking terrorists wherever they are, which is always in some sovereign state, but the sovereignty of that state is immaterial to the justification for the strike.[[25]](#endnote-25) The US may seek permission from a state for a strike, but it does so merely as a practical matter to facilitate its activities, not because it has an obligation to do so, not because respect for sovereignty is part of the justification for the strike.

Drone strikes have occurred in conventional war zones, for example, in Afghanistan, Iraq, and Libya. But many drone strikes for targeted killings, over three hundred in the past ten years, have occurred elsewhere, in Pakistan, Yemen, and Somalia, where the US is not a belligerent in a conventional war.[[26]](#endnote-26) This difference is marked in US policy by the fact that, while drone strikes in recognized war zones are conducted by the Air Force, strikes outside recognized war zones are conducted by the Central Intelligence Agency, a civilian organization.[[27]](#endnote-27) A commentator notes “just how radical it is [that] for the first time in history, a civilian intelligence agency is using robots to carry out a military mission, selecting people for killing in a country where the United States is not officially at war.”[[28]](#endnote-28) It is odd that, while the US claims that the GWOT is a war, it assigns the operations of that war to a civilian organization. As Mary Ellen O’Connell notes: “Only members of the United States armed forces have the combatant’s privilege to use lethal force without facing prosecution. CIA operatives are not trained in the law of armed conflict.”[[29]](#endnote-29) Indeed, in this regard, the US policy faces a dilemma. Either a targeted killing by drone in Pakistan, say, is an act of war (as the US claims) or it is not. If it is an act of war, it is not morally acceptable because the rules of war require that acts of war be undertaken by military rather than civilian personnel. If it is not an act of war, then it is morally unacceptable because it falls under the policing rather the warring paradigm and does not show the proper respect for human rights.

In addition to these conceptual and moral objections to the claim that GWOT is a war in the proper sense, there are also objections coming from international law.[[30]](#endnote-30) These are developed by Philip Alston.[[31]](#endnote-31) He argues that according to IHL, there are two conditions that must be satisfied for hostilities to constitute an armed conflict (that is, a war). One is that an armed conflict is a struggle between sufficiently organized and structured “parties.” But “al-Qaeda and other alleged ‘associated’ groups are often only loosely linked, if at all,” so they “cannot constitute a ‘party’ as required by IHL—although they can be criminals.”[[32]](#endnote-32) The other condition is that “there must be a minimal threshold of intensity and duration” to the violence perpetrated by each party, and it is questionable whether the violence perpetrated by al-Qaeda and associates “rises to the level necessary for an armed conflict to exist.” Alston concludes: “Taken cumulatively, these factors make it problematic for the US to show that” it is at war with the “terrorists.”

Because the GWOT is not a war in the morally relevant sense, I refer to it simply as a use of *military violence*. GWOT-style targeted killings and war are distinct forms of military violence and should be morally judged on separate bases. Daniel Brunstetter and Megan Braun make this point:

Clearly, drone strikes are acts of violence, but is their use an act of war? In war zones, such as Afghanistan and Iraq their use suggest that they are acts of an ongoing war against insurgents. However, in such states as Yemen and Pakistan, with which the United States is not at war, they are acts of violence carried out against targeted individuals in noncombatant zones with the tacit consent of the state government.[[33]](#endnote-33)

Using an idea of Michael Walzer’s, these authors suggest that such acts can be regarded as acts of “force-short-of-war” and may be subsumed under the moral category *jus ad vim*, justice in the use of force, analogous to, but more permissive than, *jus ad bellum*.[[34]](#endnote-34) But it would be a mistake to see targeted killings by drone as in a moral category close to but not quite war. Walzer sees *jus ad vim* as applying to military actions taken by one state against another, and one reason that the GWOT is not a war is that the military violence is directed not against states but against individuals alleged to be members of a trans-national group.

The other part of the objection is that the use of drones for targeted killings outside of war is morally objectionable. Alston defines targeted killings as “the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.”[[35]](#endnote-35) He notes that targeted killing may occur inside or outside of war. While targeted killings in war may be acceptable, those outside of war are not. “Outside the context of armed conflict, the use of drones for targeted killing is almost never likely to be legal.”[[36]](#endnote-36) This because it falls under the policing paradigm and requires respect for human rights. O’Connell makes this point:

Drones are not lawful for use outside of combat zones. Outside such zones, police are the proper law enforcement agents and police are generally required to warn before using lethal force. Restricting drones to the battlefield is the most important single rule governing their use.[[37]](#endnote-37)

The victims of targeted killings are dispatched without any judicial determination of guilt for alleged harmful conduct. These strikes “must be governed by international human rights law.”[[38]](#endnote-38) If targeted killings by drone were considered under the warring paradigm, they might be justified by the status of the victims as combatants under *jus in bello* or IHL. But without war, just war theory can do no justificatory work. War may legitimate military violence, but outside the context of a war, military violence is simply violence, and lacking in moral justification. Terrorism is not warfare but crime, and its perpetrators should be treated as criminals, not combatants. This means that they cannot be subject to targeted killing. Under the human rights paradigm, these killings are extrajudicial and amount to assassination.

5. National Self-Defense

Defenders of drone strikes outside conventional wars have one other argument to justify these strikes. They claim that the strikes are an exercise of a right of national self-defense. For example, the US claims: “Targeting a member of an enemy force who poses an imminent threat of violent attack to the United States is not unlawful. It is a lawful act of self-defense.”[[39]](#endnote-39) This claim is interesting because it offers what is in effect a third way to justify drones strikes, an effort to deny that the paradigms of policing and warring are exhaustive. If targeted killings in places like Pakistan can be justified under neither IHL (because there is no war there) nor IHRL (because they are extrajudicial executions), maybe there is a third possible mode of justification. In this spirit, defenders of drones have appealed to a principle of national self-defense. This principle can be seen as a hybrid between the two paradigms. Like the warring paradigm, it permits the killing of individuals without judicial process, and like the policing paradigm, it is not inconsistent with human rights.

The national self-defense justification is based on a domestic analogy with individual self-defense, but the government’s understanding of it may be based on confusion between the just war categories of *jus ad bellum* and *jus in bello*.[[40]](#endnote-40) The initiation of war under *jus ad bellum* can be justified on the basis of national self-defense. But once war is underway and *jus in bello* becomes relevant, the killing of enemy combatants is justified not on the grounds of self-defense (which would be a matter of conduct), but simply because they are combatants (a matter of status). This confusion can be seen when the government justifies targeted killings as based on “the inherent right to national self-defense recognized in international law (see, e.g., U.N. Charter art. 51).” But Article 51 in a matter of *jus ad bellum* concerning the justification of going to war, not an *in bello* justification of killing individuals. If the national self-defense justification is to succeed, it must be seen as independent of an *in bello* justification, since the military struggle with the insurgents is not a war. Were it not independent, it would not be a third way. But there is some indication that the government perceives the two justifications as independent, as when it speaks of a drone strike as “a lethal operation against an enemy leader undertaken in national self-defense *or* during an armed conflict.”[[41]](#endnote-41)

In any case, the applicability of a principle of self-defense requires a showing of imminence and necessity. In domestic society, one can take the life of another in self-defense only if that person poses an immediate risk to one’s own life (imminence) that cannot be avoided in other ways (necessity). So understood, national self-defense fails as a justification for the targeted killings. The claim would have to be that the victims of targeted killings pose an imminent risk of attack against the US, which is implausible. Indeed, the government claims that it is justified in killing “an operational leader” who presents “an ‘imminent’ threat of violent attack against the United States.” But how does it understand such attacks as imminent? Defense against the insurgents “demands a broader concept of imminence” because the targets are “continually planning terror attacks” and there may be “only a limited window of opportunity” in which they can be attacked.[[42]](#endnote-42) But this an unacceptable expansion of the notion of imminence, so as completely to strip it of its role in providing a self-defense justification. It is like the purported justification for preventive war at the *ad bellum* level that because we expect some state to attack us in the indefinite future, we are justified in striking it now. David Cole notes that “the administration has reportedly defined ‘imminent’ capaciously, reasoning that because al-Qaeda and its affiliates want to strike us whenever they get the chance, they always pose an imminent threat,” but this “effectively eliminates the requirement altogether.”[[43]](#endnote-43)

Supporters of drones put considerable weight on the claim that the insurgents targeted by drones are planning attacks and unless these attacks are interrupted early on by drone strikes, there will be no further chance to intercede before the attacks occur. This is the basis for their claims that a self-defense justification for the strikes can work so long as imminence is understood in this broadened way.[[44]](#endnote-44) One can have sympathy with this argument, as it seems that there must be some military action that the US can take to thwart potential attacks. The idea of that here is some third way between the two paradigms is a popular one, taking different forms at the hands of different theorists. But this is not how the targeted killings program is actually conducted. The strikes have many more targets than could plausibly be engaged in direct plots against the US, and, as discussed below, the great majority of the targets are insurgent “foot soldiers” rather than leaders. In addition, there are no strikes in Europe (recall that much of the plotting for 9/11 was done in Germany). Finally, it is unlikely that US intelligence has a great deal of information on whatever serious on-going plots there are against the US, in which case most of the strikes are not justified by the imminence condition, even broadly understood. In fact it is probably this lack of intelligence that leads to such a large number of individuals being targeted: the US does not know much about who is plotting what, so it should go after as many insurgents as possible.

We could end the moral assessment of drone strikes in the GWOT right there with a clear negative judgment. The strikes are not justified because they are not part of a war and they cannot be justified under the human rights paradigm. Nor can they be justified as a form of national self-defense because the conditions for such defense are not satisfied. It is useful, however, to continue the discussion because there are moral objections to GWOT drone strikes other than their occurring outside of war or national self-defense.

6. Drone Use and *Jus in Bello*

To address objection (2), we need to set aside objection (1) and assume, hypothetically, that all drone strikes occur in the context of war. The reason is that objection (2) concerns how well drone strikes satisfy *jus in bello*. We need to assume for the sake of argument that the strikes occur in war, for otherwise *in bello* principles would be irrelevant to them.[[45]](#endnote-45) Outside of war, it is not *in bello* principles that apply, but the more restrictive human rights paradigm and IHRL, under which drone strikes, as extra-judicial killings, would be morally unacceptable. Defenders of drone use for targeted killings outside conventional wars should not think that make their case simply by arguing that the GWOT is a war because even if it were, it would still have to meet the *in bello* requirements.

Before examining objection (2), consider briefly what the *in bello* principles are. The three main principles of *jus* *in bello* are discrimination (or distinction), proportionality, and due care. Discrimination requires that civilians not be attacked, either deliberately or recklessly. But civilian casualties may be acceptable, if they are unintended (even though foreseen) and the principle of proportionality is satisfied. The principle of proportionality requires (under the doctrine of double effect) that the harm from unintended civilian casualties not be disproportionate to the military advantage secured by the military action in question.[[46]](#endnote-46) Finally, the principle of due care requires, beyond the demands of proportionality, that the amount of civilian harm from a military action be kept to a minimum, that the action be necessary to achieve a military objective (sometimes referred to as the principle of necessity), and that combatants be willing to take some extra risk on themselves to reduce the risk of civilian harm. Can drone use in the GWOT satisfy these conditions?

Objection (2) is that drone strikes have killed an excessive number of civilians and have otherwise violated *in bello* principles. This assertion seems to run counter to the claim that drone strikes reduce collateral damage and allow combatants to hew more closely to the principles of discrimination and proportionality. But, strictly speaking, there is no conflict. The claimed moral virtue is that drone strikes do this better than other means of attacking insurgents, but the objection is that, however well drone strikes may do in comparison with other means, they do not meet the accepted threshold established by the principles. The judgment that drones do better is a relative one, while the objection assesses drone strikes in terms of a fixed standard established by the *in bello* principles. The question raised by the objection is prior because, unless drone strikes satisfy the *in bello* principles, the fact that they are closer to satisfying these than other methods is beside the point.

What does the evidence suggest about whether the use of drones for targeted killings has been consistent with *in bello* principles? Reliable evidence is hard to come by. Drone policy is shrouded in official secrecy, especially the CIA’s program.[[47]](#endnote-47) In addition, drone strikes are conducted in areas that are generally inaccessible to the media, and those offering estimates of the casualties from the strikes often have biases. As a result, it is difficult to determine whether drone use accords with *jus* *in bello*. Estimates of civilian casualties have covered a broad range. For example, John Brennan, Obama’s top counterterrorism advisor, said in June 2011 that in the previous year of drone strikes “there hasn’t been a single collateral death,” although he later revised his statement to say that the government had “not found credible evidence of collateral deaths.”[[48]](#endnote-48) At the other extreme, Pakistani sources claim that over a three year period, drone strikes in that country killed only 14 terrorist leaders, while killing over 700 civilians, which is “50 civilians killed for every militant killed, a hit rate of two percent.”[[49]](#endnote-49) More credible figures covering strikes in Pakistan, Yemen, and Somalia over the past ten years show a range of civilians killed from 175 to 681. The average of these estimates is 401 civilians killed, or twelve percent of the total deaths.[[50]](#endnote-50)

Does this figure indicate whether the *in bello* principles have been satisfied? Assuming the civilian deaths were not deliberate or reckless, the answer would depend on proportionality, whether the harm of the unintended civilian deaths outweighs the military benefits of the strikes. But this question cannot be answered for strikes in the aggregate. Each strike would have to be judged on its own, and clearly there is insufficient information to make such judgments. But there are some indications that proportionality has not been satisfied, at least for many of the strikes. The military value of a drone strike lies in the importance of the combatants it kills. If those combatants are leaders, the strike would be of greater value in the war effort, meaning that the strike, given its collateral damage is more likely to satisfy proportionality. But the number of militant leaders who have been killed has been fairly low. According to *Living Under Drones*: “The number of high-level targets killed as a percentage of total casualties is extremely low—estimated at just 2%.”[[51]](#endnote-51) According to another estimate: “Only one out of every seven drone strikes killed a militant leader.”[[52]](#endnote-52) The strikes that did not kill a militant leader were probably of limited military value, which gives at least some weight to the contention that many of the strikes, given their civilian casualties, did not satisfy proportionality.

In addition, there is reason to reject the “proportionality trap” argument for drone use mentioned earlier. According to this argument, drones avoid the heretofore inevitable trade-off between the goals of protection of civilians (satisfying discrimination) and military effectiveness (including force protection): unlike other military technology, drones reliably achieve both goals simultaneously. But the inverse relationship survives, somewhat obscured, in the issue of the reliability of the intelligence on which decisions about the use of drones depends. Antoine Bousquet argues that “the precision targeting and reliability of intelligence are generally inversely related to the willingness to place assets in close proximity to potential targets.”[[53]](#endnote-53) Drone use can be discriminate only to the extent that the targeting information is reliable, and the targeting information provided by locals, often used in drone strikes, is not always reliable. Combatants on the ground can provide much better intelligence, but then they would be at risk. In their absence, the likelihood is much less that discrimination or proportionality would be satisfied.

But there are other reasons to think that drone strikes fail to satisfy the *in bello* criteria. We should not be too quick to assume that the strikes satisfy the principle of discrimination. First, there is an apparent policy of “double strikes” or “double taps,” which is striking a target a second time soon after an initial strike. *Living Under Drones* speaks of the “US practice of striking one area multiple times” resulting in the deaths of rescuers.[[54]](#endnote-54) According to the Bureau of Investigative Journalism, “the CIA drone campaign in Pakistan has killed dozens of civilians who had gone to help rescue victims or were attending funerals,” and that “at least 50 civilians were killed in follow-up strikes when they had gone to help victims.”[[55]](#endnote-55) This seems clearly to be a policy of deliberately attacking civilians.

 But there is another objection to the claim that drone strikes satisfy discrimination. US policy makes a distinction between “personality strikes” and “signature strikes.” Personality strikes (sometimes called “named strikes”) are directed toward identified individual, while signature strikes are directed toward unknown individuals who are behaving suspiciously. Signature strikes are “based on suspicious, ‘signature’ patterns of behavior.”[[56]](#endnote-56) In practice, this has meant groups of military-aged men are subject to attack if they are doing anything that insurgents might be doing. Recall that attackers act indiscriminately if they attack civilians either deliberately or recklessly, that is, in a way that disregards risks to civilians. For example, a combatant who tries to kill an escaping enemy combatant by firing into the crowd of civilians into which he has fled would be acting indiscriminately, not deliberately but recklessly. Signature attacks are reckless in their disregard for the welfare of civilians. A policy of signature strikes, by defining acceptable targets as it does, shows a reckless disregard for civilians, and so violates discrimination.

Signature strikes also cause problems for proportionality. They lead to more civilians being killed. Acting on mere suspicions will lead to more mistakes. As a result, a policy of signature strikes leads to an undercounting of civilian casualties. (This undercount may explain the very low estimate of civilian casualties on the part of the Obama administration.[[57]](#endnote-57)) Even if we assume that the additional civilian casualties were not intended, the more civilian casualties there are, the more likely it is that those casualties will prove disproportionate to the military value of the strikes. The undercount masks the extent to which the strikes fail to satisfy proportionality.[[58]](#endnote-58)

 It should be noted that defenders of the claim that drone strikes satisfy *jus in bello* point out that the number of civilian casualties from the strikes has declined over time.[[59]](#endnote-59) This would support the claim that drone strikes are improving their performance in relation to proportionality, perhaps sufficiently to satisfy this criterion for at least some of the strikes (again, aggregate totals are not helpful). But this improvement may not be real, or may be exaggerated, by the adoption of the policy of signature strikes and the undercounting of civilian casualties it leads to.

 Thus, there is strong reason to believe that drone policy violates two of the three *in bello* principles. What about due care? One criticism frequently heard is that drone strikes are not a last resort.[[60]](#endnote-60) For example, a criticism is that strikes are part of a policy of “kill or capture,” but the option chosen is invariably “kill.” In just war theory, last resort is an *ad bellum*, but the spirit behind it is captured in the *in bello* criterion of due care. Due care requires, among other things, that combatants minimize the harm they do, inflicting only that which is necessary for the military objective. In most cases this requires killing enemy combatants. But due care recommends capture over killing, when capture is feasible and unlikely to cause more civilian casualties. Under these conditions, surely capture would sometimes be the preferred option, but it is invariably rejected.

 The assumption by policy makers that drone strikes satisfy *jus* *in bello* may in part reflect their assumption that the demonstrably greater accuracy of drones by itself solves the moral problems that the use of military technology creates. John Kaag and Whitley Kaufman note that with drone technology, “we risk confusing technical capabilities and normative judgments by assuming that precision weaponry facilitates ethical decision-making,” and we tend to “assume that technological advancement is identical with moral advancement.”[[61]](#endnote-61) The technology itself may lead to a laxity in moral thinking.[[62]](#endnote-62) Brunstetter and Braun refer to this view as “the drone myth.”[[63]](#endnote-63) Note that the following two statements tend to be conflated: “(1) UAVs reduce or eliminate collateral damage to innocent populations, and (2) UAVs limit the injury and death of individuals who are not the specific target of an attack.”[[64]](#endnote-64) Accuracy does not insure discrimination. Accuracy may facilitate the satisfaction of *in bello* restraints, but does not itself guarantee it.

 Finally, an additional feature of drone strikes leads to the powerful *in bello* objection that their use is a form of terrorism. Consider the following observations from *Living with Drones*:

Drones hover twenty-four hours a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women and children, giving rise to anxiety and psychological trauma among civilian communities. Those living under drones have to fact the constant worry that a deadly strike may be fired at any moment, and the knowledge that they are powerless to protect themselves.[[65]](#endnote-65)

Reportedly, the local citizens can often hear the drones hovering, adding to their fear. Christopher Kutz notes that the drone program in Pakistan does damage to local political activity and civil society more generally because people are reluctant to meet in groups.[[66]](#endnote-66) The citizens of this region are terrorized, and this counts against the policy’s satisfying proportionality, in that it is harm to civilians.

But is this terrorism? The generally accepted definition of terrorism is that it is the killing of civilians in an effort to terrorize a population in order to achieve political advantage. The question is one of intentionality. Is the policy one of intentionally seeking to create the terror it does create? At minimum it is a policy of knowingly creating terror, which is at least a second cousin to terrorism as formally defined. But it is not implausible to imagine that the policy makers expect that the terror will induce the local citizens to drive the insurgents from their midst and that they see this as an advantage of the policy. This would be sufficient to constitute intentionality, making the policy one of terrorism in the precise sense.

 According to the first two moral objections, then, drone policy in the GWOT is morally problematic in several respects. There is a plausible case that the policy is not justified because the targeted killings have occurred outside the context of war, in which case they would be governed by IHRL, under which they would be prohibited.[[67]](#endnote-67) And even were it appropriate to regard the GWOT as a war, there is a strong argument that drone policy violates *in bello* principles.

The objections considered so far largely concern how drones are now used. They do not go to the claim that drones themselves, in whatever way they are used, may be morally problematic. Thus, in my terminology, the moral problems of drones raised so far are ordinary problems. They could be addressed simply by changing how drones are used, for example, by their being used only in conventional war.[[68]](#endnote-68) But the remaining objections may not be so easily avoided. They go the moral heart of drone use.

7. Drones and Military Virtue

In considering the last three objections, we move from discussing drone use under the GWOT or its equivalent to considering drone use in a broader context, considering not only GWOT-style targeted-killing, but also a likely future of conventional wars fought largely (or even exclusively) by drones. Peter W. Singer notes, “We must now accept that technologies that remove humans from the battlefield . . . are becoming the new normal in war.”[[69]](#endnote-69) In the likely future, most US military aircraft will be drones. Drones will include not only the prop-driven attack planes currently used, but jets, vehicles launched from aircraft carriers, and other forms as well. In terms of procurement decisions, this is the way the US military is heading.[[70]](#endnote-70) This opens the possibility of asymmetric conventional wars fought (on one side) by drones with little or no support from ground forces.[[71]](#endnote-71) I will refer to such conflicts as wars of *extreme asymmetry*. Wars of extreme asymmetry pose only a small risk to the stronger side’s combatants. When the risk in such wars falls to zero, or close to zero, we may refer to them as *riskless wars.*[[72]](#endnote-72)

We have a preview of what this would be like in the 1999 Kosovo War fought by NATO against Serbia. Occurring before the era of drones, the Kosovo War was fought exclusively by manned aircraft with no troops on the ground. Serbia was forced by the NATO bombing campaign to relinquish its hold over its province of Kosovo. The war was fought with no NATO casualties—the planes flew too high for Serbian anti-aircraft weapons to intercept them. In this respect, the Kosovo War was like a possible future drone war, an extreme asymmetric, riskless war fought by a technologically superior power with no risk to its own military personnel.

Consider now objection (3), that drone use is a rejection of traditional military virtues and that it affords its victims no opportunity to surrender. These are two separate, though related claims. The first claim is that drone warfare does not provide opportunities for its warriors to express military virtue, that it is an unchivalrous and dishonorable way to fight. Because the drone operators are at a console thousands of miles away from their strikes, they do not have an opportunity to exercise the traditional military virtues of courage and heroism. Indeed, to the warriors, it may seem as if they are playing a videogame. The Pakistanis who live under the drones reportedly disdainfully refer to drone use a cowardly form of warfare.[[73]](#endnote-73) One could imagine them shaking their fists at the sky and proclaiming the Urdu equivalent of “Why don’t you come out and fight like a man.” It is hard to know how much moral weight to give this criticism, but it does raise a concern about fairness, an issue taken up under objection (5).

 The second part of the objection may have greater moral substance. As a retired military officer puts it: “To me, the weakness in the drone activity is that if there’s no one on the ground, and the person puts his hands out, he can’t surrender . . . What makes it worse with a Predator is you’re actually watching it. You know when he puts his hands up.”[[74]](#endnote-74) It is not a merely a form of chivalry to allow your opponent to surrender. The requirement is written into international law as part of Protocol I of the Geneva Convention.[[75]](#endnote-75) It is another way in which the GWOT would violate IHL. The government claim that the GWOT is a war implicitly recognizes a right of surrender because this right is part of IHL. Indeed, Department of Justice White Paper acknowledges that the U.S. “would also be required to accept a surrender if it were feasible to do so.”[[76]](#endnote-76) The problem is that a policy of targeted killings by drones makes the infeasibility of accepting surrender not simply occasional, but inherent in the policy itself.

8. Drones and Political Constraint

 Objection (4) is that drone use removes political constraints on military violence, undermining democratic controls and creating a risk of its perpetual exercise. Drones make it much easier for a government to engage in war or military violence by lessening its domestic political costs. This objection has implications in terms of just war theory. For example, the easier it is to engage in war, the less likely it is that the *ad bellum* criterion of last resort will be satisfied. But the objection takes us beyond just war theory proper into the more general realm of political ethics, for it has implications about how we govern ourselves in matters of war and peace.

 A state’s resort to military violence exists in a sort of natural political ecology, a balance between inducements to go to war and constraints against going to war, understanding these as ethical as well as non-ethical. This balance serves more or less well to keep warfare in check, while insuring that war is available as an instrument of policy in cases where it is necessary. The constraints are especially important because the inducements for a powerful state to go to war to promote its interests are often quite strong, especially in a situation of great military asymmetry. One of the greatest domestic political constraints is the extent to which leaders expect that war will meet domestic political resistance. Paul Kahn notes: “The pursuit of national interests through military means is restrained by the expectation of loss.”[[77]](#endnote-77) Recent history of US wars beginning with Vietnam shows that one of the most important factors in turning the public against a war is the number of combatants killed or seriously injured, the so-called “body bag syndrome.” Drones remove this constraint. Singer notes that drones are “a technology that removes the last political barriers to war.”[[78]](#endnote-78)

 This dynamic was seen in the Kosovo War, where there was a general perception among NATO leaders that only a riskless war would be politically feasible. Though the war could have been fought more effectively, better achieving its humanitarian aims, by the use of troops on the ground, this was precluded by (the leaders’ perception of) the unwillingness of the publics in the NATO states to tolerate the losses that would have ensued.

 In addition, cost of a policy of military violence by drones is minimized not only by the public’s disinterest, but also by the fact that drones are much less expensive than the troops or manned aircraft they replace. Drone use “promises ‘war on the cheap’, cheap both in blood and in treasure,” note Kaag and Kaufman.[[79]](#endnote-79) “To a degree unprecedented in history,” Murtaza Hussain observes, “the advent of drone warfare has given the government a free hand to wage war without public constraint and with minimal oversight.”[[80]](#endnote-80) But the low casualties are on the side of the technological superior power alone. Kreps and Kaag note: “Collateral damage to Iraqi or Afghan civilians does not constitute a substantial cost for the U.S. domestic populace.”[[81]](#endnote-81)

 Due to reduced domestic political resistance, drones reduce the threshold for applying military violence, and this has implications for the frequency of such episodes. Kreps and Kaag observe: “By reducing the risks and costs of war, the use of UAVs and precision weapons may actually encourage more bellicosity and longer wars.”[[82]](#endnote-82) The possibility arises of episodes of perpetual wars (or on-going military violence), either a single war going on indefinitely or a continuing series of them. Because more frequent or longer episodes of military violence are not, in general, a good thing, drones make war *too* easy. The concern that the GWOT itself could become perpetual is heightened by the military strategy involved. The terrorists are an opponent, like criminals in the “war on crime,” who will never be defeated. There is no end game, no realizable goal that would signal the conclusion of the military violence. Targeted killing by drones is a tactic (as it is in the conventional war in Afghanistan) that is perversely in the GWOT being treated as a strategy. Not only do drones provide the means for perpetual GWOT-style military violence, but there is no natural stopping point.[[83]](#endnote-83)

 If drone policy reduces political constraints on military violence, this means, in a democracy, that the democratic process is being undermined by a lack of public debate and discussion on such an important topic. Michael Ignatieff asks rhetorically: “If military action is cost-free, what democratic restraints will remain on the resort to force?”[[84]](#endnote-84) Mayer notes that the embrace of the drone policy “has occurred with remarkably little public discussion, given that it represents a radically new and geographical unbounded use of state-sanctioned lethal force.”[[85]](#endnote-85) Kahn observes that riskless war “may take the destructive power of war outside of the boundaries of democratic legitimacy.”[[86]](#endnote-86) The public is disengaged not only because there are no body bags coming home, but, not to sell the public short, also due to government secrecy, the “efforts by the government to shield its targeted killings program from democratic accountability.”[[87]](#endnote-87) The government has a reason to keep the program from the public eye, given the political resistance it might encounter, and the secrecy compounds the lack of public interest in the program due to the minimal impact it has on interests on the domestic audience.

 An argument against objection (4) is raised by Kenneth Anderson.[[88]](#endnote-88) He casts the objection that the use of drones makes war or military violence too easy as a claim about the *efficient level* of the likelihood of war. To say that war is too easy is to claim that there is a proper level of likelihood of war’s occurrence, the efficient level, and that the use of drones would drive the likelihood up, exceeding the efficient level. He asks what kind of evidence could be adduced for such a claim and argues, moreover, that the claim is incoherent, in effect, because it makes no sense to posit a *proper* likelihood of a war’s occurrence without asking whether the wars in question would be just or unjust. A certain likelihood of war may be too high if it results in too many *unjust* wars, but not high enough if it results in too few *just* wars. Kosovo is an example of the sort of war that would likely not have been fought without a technology making war riskless. But Kosovo was a case of humanitarian intervention, and many would argue that it was a just war, one that should have been fought. Anderson makes the point about humanitarian intervention in part to confound (or tweak) the liberal, understood as someone who rejects drones but endorses humanitarian intervention. What if an instance of humanitarian intervention would not have been fought were it not fought with drones? Isn’t it a good thing to make humanitarian intervention easier? Better to fight them with drones than not to fight them at all.

If drones would make war easier, then some wars that would be fought with drones would not be fought otherwise. Call this category the *drone-only* *wars*. The claim that drones make war too easy is then the claim that it is overall not morally preferable that the drone-only wars be fought. As I understand Anderson, this is the claim he challenges. He argues either that it would be overall preferable to fight the drone-only wars or, more weakly, that we cannot say that it would not be preferable to fight drone-only wars. To challenge this argument, it needs to be shown that it is not overall preferable that drone-only wars be fought. In terms of just war theory, this amounts, roughly, to showing that drone-only wars are more likely to be unjust than just. In addition, it must be shown that this is the case even if some of the drone-only wars are humanitarian interventions.

But these things can be shown. First, in any situation where the fundamental sovereignty interests of a state are challenged, situations in which a defensive military response would be just, the resulting war would not be an example of a drone-only war, for a state under such a challenge would likely fight in any way it had available, with drones or without. This would support the view that drone-only wars tend to be unjust wars. One reason for this is that wars fought exclusively by drones are likely to be fought by great military powers against lesser powers, and great powers tend to see their interests in promoting a hegemonic world order, often through unjust wars.

But what about humanitarian interventions? It is a good thing to fight a justified humanitarian intervention, but these wars are more likely to be drone-only wars because the state fighting them is less likely to see its fundamental interests as at stake. (Think of the absence of humanitarian intervention in the case of Rwanda.) Christopher Kutz, in an apparent endorsement of Anderson’s point, argues that military actions of “other-defense,” that is, humanitarian interventions, does not require that the combatants in this war be exposed to risk.[[89]](#endnote-89) To this view, I think, there are two responses. First, not all wars claimed to be humanitarian are just wars. Some wars fought by powerful states are disingenuously given a humanitarian rationale or are overall unjust despite having a humanitarian rationale (as with the 2003 Iraq War). (A humanitarian intervention, like any war, is unjust in case it fails to satisfy the criteria of *jus ad bellum*.) Nor can a state’s belief that its war is humanitarian guarantee that it is so. Second, justified humanitarian interventions fought exclusively by drones are less likely to succeed in their humanitarian purpose. Again, Kosovo is an example. It is generally acknowledged that more Kosovars would have been saved from Serb forces had NATO fought the war with troops on the ground. Overall, the value of restraining powerful states from fighting drone-only wars outweighs the risk that some of these would be just wars.

A stronger point may be made about riskless humanitarian intervention: it may be an incoherent notion. “Riskless war in pursuit of human rights is,” Kahn argues, “a moral contradiction.”[[90]](#endnote-90) This is because the moral message of riskless humanitarian war is that the lives of combatants of the intervening state “are of greater value than the lives of those who might benefit from these interventions,” which creates “an incompatibility between the morality of the ends, which are universal, and the morality of the means,” which favor one group over another.”[[91]](#endnote-91) Bousquet argues that we should treat “the civilians on behalf of whom we are intervening as we would our own civilians and with that demanding the same willingness to accept sacrifice that a society expects from its armed forces in its own defence.”[[92]](#endnote-92)

9. Drones and Wars of Extreme Asymmetry

Objection (5) is a representation of the criticism that the use of drones is somehow unfair. This criticism is appropriate in the case of wars of extreme asymmetry. The general form of the objection is that wars of extreme asymmetry or risklessness are morally problematic independent of whether they are just in terms of either *jus ad bellum* or *jus in bello*. Kahn argues that the judging a war fair or unfair is a different moral assessment than judging it just or unjust, that these are separate forms of moral assessment.[[93]](#endnote-93) When drones are the primary technology used in a war, the war is unfair in this way. (The objection of unfairness applies not only to conventional wars, but also to GWOT-style campaigns of military violence, though I will speak mainly of wars in what follows.)

What is the moral force behind this idea of unfairness? In the case of wars of extreme asymmetry, and more so in the cases of riskless wars, there is a lack of reciprocity of risk between the combatants on each side: those on one side are invulnerable to attack by those on the other side, or nearly so. A characteristic feature of war since its inception has been a reciprocity of risk, the reciprocity that combatants on both sides are liable to be killed. Riskless war destroys this reciprocity.[[94]](#endnote-94) (Reciprocity of risk does not require equality of risk, that the two sides be evenly matched.) It is not simply an interesting fact that drones create the prospects of war or extreme asymmetry; drones are morally problematic because such wars are morally problematic.[[95]](#endnote-95) War cannot be justified in the absence of this reciprocity. Michael Ignatieff notes: “The tacit contract of combat throughout the ages has always assumed a basic equality of moral risk: kill or be killed. . . .But this contract is void when one side begins killing with impunity.”[[96]](#endnote-96) Kahn observes that “combatants are allowed to injure each other just as long as they stand in a relationship of mutual risk.”[[97]](#endnote-97) The objection is vividly expressed by Michael Walzer in a comment on NATO’s riskless war in Kosovo: “I fully accept the obligation of democratically elected leaders to safeguard the lives of their own people, all of them. But this is not a possible moral position. *You can’t kill unless you are prepared to die*.”[[98]](#endnote-98)

 The objection is based on the understanding that the rules of *jus in bello* apply equally to the combatants on each side, whether or not that side is fighting a just war. (Recently, some just war theorists have contested this “traditionalist” claim, and their views will be considered shortly.) The equal application of the rules is referred to as the *moral equality of combatants*.[[99]](#endnote-99) Combatants on each side are equal in that they are permitted to kill the other side’s combatants and also liable as combatants to be killed by them. A combatant can kill (an enemy combatant) without moral blame only because he or she is also liable to be killed. Kahn refers to this as a state of “reciprocal self-defense.”[[100]](#endnote-100) Combatants are equal both in the permission they have to kill and in the liability they have to be killed. The permission and the liability go together. If one is lacking, so is the other. In a riskless war, combatants on the stronger side are not liable to be killed, so it follows that they are not permitted to kill. Riskless war is morally unacceptable.

 This seems paradoxical in several respects. For one, there is a conflict between these claims and the permissibility of force protection. A state should do everything it can to protect its combatants from attack. The logical extension of this principle is that states are permitted, if they are able, to provide absolute protection. (This is the argument of Bradley Strawser rehearsed earlier.) But, due to the failure of reciprocity of risk, absolute protection nullifies the permission.[[101]](#endnote-101) In an asymmetric war, the asymmetry is often used by the stronger side to better protect its own forces. In riskless war force protection has been taken to the limit, negating the reciprocity and making the use of military violence impermissible.

 Another paradoxical feature is brought out by the contrast between the paradigms of warring and policing. In policing, the police and criminals stand in a relation moral inequality. The police are allowed to use force against criminals (consistent with respect for human rights), but the criminals are not allowed to use force against the police. The permissibility of force by the police is not dependent, as it is in war, on the permissibility of force by criminals because in a just state the police are in the right and the criminals are in the wrong. Now warring is like policing in that one side is just and the other unjust. The paradox is that given this similarity, warring should follow policing in viewing the participants (police and criminals) as lacking moral equality. Indeed, this brings out the counterintuitive nature of warring. If combatants are fighting on the just side, like the police they should not have to be at risk in order to justify their permission to use force against their opponents. In this respect, riskless war makes war seem like policing, so that it “represents a sort of moral category mistake.”[[102]](#endnote-102) The idea of the moral equality of combatants, which prohibits riskless war, implies that a state cannot fight war fairly unless its combatants are at risk.

 But maybe we should remove the paradox and regard warring is a form of policing, substituting “our moral intuitions about police forces for those about armies at war.”[[103]](#endnote-103) This is what some revisionist theorists of just war have proposed.[[104]](#endnote-104) There is, in their view, no moral equality on the battlefield, and war is no different in this respect from policing. Instead of reciprocity of risk, the moral implication of war is one-sided risk. Combatants on the just side have permission to kill combatants on the unjust side, but not the reverse. Combatants are not moral equals, just as the police and the criminals are not. There is no moral requirement for reciprocity of risk in war because combatants in unjust wars do not have permission to kill combatants in just wars. Invulnerability to attack on the just side would not be a moral problem, but would be the morally preferable state in warring as well as policing.

But even if revisionism is true, this does not nullify the unfairness objection. Revisionists would argue that, though it is permissible for just combatants (those fighting a just war) to be invulnerable to attack, it is impermissible for unjust combatants to be invulnerable. But there is no guarantee that all of a state’s wars will be just, even if it believes they are. In a military conflict, usually both sides believe justice is on their side, but at least one of them is wrong. So, if a state were to have the capacity for riskless war, that capacity might be exercised in an unjust war. Even if a state committed itself to using this capacity only in wars it believed to be just (which in practice is highly unlikely), its belief in the justice of its wars may be mistaken.[[105]](#endnote-105) So, because a state’s capacity for riskless war might be used in an unjust war, and because, according to the revisionists, it would be unfair were it to be so used, such a capacity is morally problematic for the revisionists, as it is for the traditionalists.

 But we can delve deeper into the source of the moral objection to unfairness in wars of extreme asymmetry or risklessness. In our anarchic global system with no central authority capable to adjudicating conflicts among states (or groups) or enforcing the results of such adjudication, each state is on its own and must, as the international relations theorists say, rely on self-help. If one state seeks redress of grievances against another, whatever appeal it can make to outside parties (like the United Nations) may well be insufficient to resolve the dispute. Fairness in such a system requires that each party have an option as a last resort to take up arms to resolve disputes that cannot be otherwise resolved. David Rodin notes:

The true significance of the fairness objection then is this: if (as the just war theory assumes) war is a morally appropriate remedy to redress certain kinds of injustice, then fairness ought to dictate that it be a remedy open to the weak as well as the strong. Indeed, it is precisely the weak who have most need of the protection provided by the norm of self-defense.[[106]](#endnote-106)

It is morally problematic, if a group without other recourse is unable or very unlikely to be able successfully to vindicate its perceived rights through force of arms. We cannot assume that the weaker party will always be fighting on the unjust side. On the contrary, history seems to suggest that the stronger, often hegemonic power is frequently fighting on the unjust side. This is characteristic of wars fought by the US.

 Consider Aquinas’s argument for the *ad bellum* criterion of legitimate authority. The reason, he argues, that lesser authorities within a state have no right to declare war is that they have an alternative, which is to appeal to the state’s ruler for redress of their grievances.[[107]](#endnote-107) The leader has a right to declare war because in the anarchical international system there is no one to whom such an appeal can be made. But such a right would be merely notional, not a right at all, if the state had little or no possibility of success in its military efforts.

 There is another implication of extreme asymmetry in war. In an historical process described well by Michael Walzer, the permissions given to combatants by the rules of *jus in bello* have gradually expanded over time by the efforts of weaker states or insurgent groups in asymmetrical wars to gain some kind of relative advantage in relation to their powerful opponents, to complement the stronger states advantage in sheer military power with an advantage of their own.[[108]](#endnote-108) For example, the Colonialists in the American Revolution sought an advantage over the militarily superior English forces by the guerrilla tactics of their day, shooting at advancing lines of Redcoats from behind cover rather than meeting their line with one of their own, which would have put them at a great military disadvantage. We could refer to this phenomenon as “rule creep.” Heretofore, rule creep has been confined largely to expanding the permissible ways in which combatants can be attacked. But the prospects of wars of extreme asymmetry set a limit to expansion in this mode. If combatants are invulnerable, they cannot be challenged at all. The only feasible way that the weaker state can challenge the stronger state is by breaching the combatant/noncombatant distinction and attacking civilians. This has been the path of insurgents who have taken up terrorism.[[109]](#endnote-109)

 Commentators have also criticized the argument that warfare requires reciprocal risk on the ground that the demand for such reciprocity is merely aesthetic, a throwback to the old, long dead ideal of war as an arena for the display of physical courage by combatants.[[110]](#endnote-110) This would make the reciprocity objection a version of objection (3), that the use of drones is a rejection of traditional military virtues, and it would cast the objection as being like the moral objections offered to earlier advances in military technology (and corresponding instances of rule creep). But I think that this criticism simply fails to recognize the moral significance of this particular revolution in military affairs, the extreme asymmetry, even risklessness, of wars made possible by robotic military technology in the hands of great military powers. Earlier revolutions (with the exception of nuclear weapons) did not have this profound moral impact on institutions of war. War is always changing in response to new technology and socio-political developments, but this development is fundamentally different from earlier ones. A basic limit is at risk of being breached. Drone technology is pushing us into a policing paradigm that current military institutions and the nature of international relations cannot sustain.

10. Conclusion

 In the conclusion, I begin by addressing the three alleged moral virtues of drones, discussed earlier, and seek to provide an overall moral assessment of drones. Then I make some tentative comments on what morality may require us to do about drones in the light of the moral assessment. Recall that the three moral virtues claimed for drones are: (1) drones better satisfy the *in bello* principle of discrimination; (2) drone use allows combatants to avoid risk, providing the highest degree of force protection; and (3) drone use provides a means to avoid full-scale wars.

 In regard to the first virtue, we have seen that there are good grounds to conclude that drones, as actually used, satisfy neither discrimination nor the other principles of *jus in bello*. This point is made most dramatically by the claim that current drone use is a form of terrorism, though, I think, there is sufficient reason to deny the first virtue even in the absence of this claim. Regarding the second virtue, maximal force protection, which drone use could provide, is not a moral virtue, but rather morally problematic, at least in cases of extreme asymmetry, where drones are relied on to the exclusion of most or all of a state’s combatants. Finally, the third virtue depends on the claim that the alternatives of drone use and full-scale war are exhaustive, but this is not the case. Drones may often be used in circumstances where full-scale war would not be undertaken in their absence. This is the category of drone-only war discussed earlier. Nor are drone-only wars likely to be infrequent. Great powers with the capacity for wars of extreme asymmetry against weak states are likely to fight some unjust wars for hegemonic advantage.[[111]](#endnote-111) Given the causality aversion of their publics, these wars are likely to be drone-only. But, more to the point, in the likely future in which drones and other robotic technology dominate the arsenals of the US, conventional wars fought by the US (against weak powers) will be fought largely by drones, so the line between use of drones and conventional war will largely evaporate.

 If the arguments presented above are sound, then drone use is morally unacceptable, at least in two general sorts of situations: when they are used either in a GWOT-style conflict or in a conventional war of extreme asymmetry. This does not cover all potential uses of drones, for example, their use as a tactic in a much broader conventional war. But it seems plausible that the unacceptable uses would, so to speak, crowd out the acceptable uses and become the dominant forms of drone usage. The move in this direction would be irresistible for a great power able to fight wars of extreme asymmetry. This seems to be the way that technology and international relations are tending. Drones and other robotic systems are becoming a larger part of the US military arsenal, suggesting that future conventional wars fought by the US are likely to be wars of extreme asymmetry, and the continuing power imbalance between the US and the many smaller states will make GWOT-style use of drones a continuing prospect. In the future, drones are more likely to be used in unacceptable ways than in acceptable ways.

The conclusion is that drones present, in terms of the difficulties they have satisfying the principles of *jus in bello* and their tendency to make possible riskless war, what I referred to earlier as extraordinary moral problems. Ordinary moral problems can be resolved by tweaking the technology or altering how it is used, but extraordinary moral problems are difficult to resolve in this way. Their solution may require that the technology be abandoned. The first two objections reveal the ordinary moral problems that drone use gives rise to. These problems could be largely avoided by using drones in a different way. But the last three objections reveal that drone use has moral problems that are extraordinary, problems effectively inherent in the technology, problems that are not subject to easy correction by attempts to limit their use to acceptable forms.

What practical and feasible policy recommendations follow from our conclusions about drone technology? First, any solution must be systemic. The problems cannot be corrected unilaterally, by requiring, say, that military commanders deliberately expose their combatants to unnecessary risk in order to avoid a situation of extreme asymmetry. Kahn notes: “Military forces cannot be asked to assume unnecessary risks. . . . Indeed, it would be immoral for the military leadership not to try to minimize the risk of injury to its own forces.”[[112]](#endnote-112) The imperative for force protection must be able to operate for each side within an overall scheme that attempts to deal with the moral problems that drones raise.

 Consider a comparison between drones and other military technologies that pose extraordinary moral problems. The prime examples are weapons of mass destruction (WMD). Some have drawn comparisons between drone technology and nuclear weapons. David Remnick notes: “We are in the same position now, with drones, that we were with nuclear weapons in 1945. For the moment we are the only ones with this technology that is going to change the morality, psychology, and strategic thinking of warfare for years to come.”[[113]](#endnote-113) This brings out some similarities between the two technologies, especially the fact that both were initially in the possession of the US alone, as well as the resulting concern by the US to keep them out of the hands of other states. But in other ways, especially in their physical impact, the technologies could not be more different.[[114]](#endnote-114) The same holds for a comparison of drones and the other two forms of WMD, chemical and biological weapons.

 But these comparisons allow me to explain more clearly what an extraordinary moral problem is. Such a problem exists for a technology not when it is impossible to use it in a morally acceptable way, but when, were it used, it is very likely to end up being used in a morally unacceptable way. WMD can all be used in morally acceptable “counterforce” ways. Nuclear and chemical weapons could be used against isolated military targets with little or no civilian damage. This could presumably also be the case with biological weapons, if the pathogens in question were designed not to be infectious. The reason there is concern to ban them, in the light of the *in bello* principles of discrimination and proportionality, is the recognition that if they existed, they would not be limited to the morally acceptable uses, either because these uses are less effective militarily or due to the likelihood of escalation to morally unacceptable uses.[[115]](#endnote-115) This is also the case with drones. While they can be used in morally acceptable ways (such as tactically in a larger conventional war), usage is unlikely to remain so limited. The tendency to use them for GWOT-style military violence or in wars of extreme asymmetry would be irresistible.

 This explains the move to ban weapons that present extraordinary moral problems. An effort to ban such weapons is morally more urgent for WMDs for drones because of the greater destructiveness of WMD, but the moral need for a ban is present for drones as well. A more apt comparison, in terms of destructive capabilities, would be between drone technology and the technologies of anti-personnel landmines and cluster munitions. Each of these technologies can be used in morally acceptable ways. Anti-personnel mines can be used in areas of combat where civilians are not present and can be configured to deactivate by the time that civilians are likely to repopulate those areas. Cluster munitions could be used when only combatants are present and could be configured so that all of the bomblets explode on impact. But the strong likelihood is that their use would not be limited to these morally acceptable forms, and they thus pose extraordinary moral problems. In recognition of this, they have been banned under international law, by the 1997 Ottawa Treaty banning anti-personnel landmines and the 2008 Convention on Cluster Munitions.

 But a similar convention on drones is quite unlikely. First, drones are such an integral part of US military capacity and planning that there is little chance the US would give them up. Second, several other powers are well on their way to having a full-fledged drone program of their own. Third, any convention would apply only to attack drones, leaving surveillance drones unaffected, but the line between the two would be difficult to police. The only way we are likely to resolve the extraordinary moral problems posed by drones is to hasten the future toward which they push us, a future in which warring has been replaced by policing and where anti-criminal force is exercised by a legitimate global authority. That such a future is unlikely, and indeed has serious moral problems of its own, will leave drones and other robotic military technology as a continuing moral problem.

Notes

1. John Kaag and Whitley Kaufman, “Military Frameworks: Technological Know-how and the Legitimization of Warfare,” *Cambridge Review of International Affairs* 22, no. 4 (December 2009), pp. 585-606, at p. 594. [↑](#endnote-ref-1)
2. A conventional war may begin as a struggle between two states and then devolve into a struggle between a state and an insurgency, as was the case in Iraq and Afghanistan. Drones can also be used in a conventional war, often for targeted killings, and they can be used for purposes other than targeted killings. On these distinctions, see Kenneth Anderson, “Efficiency *in Bello* and *ad Bellum*: Targeted Killings Through Drone Warfare,” available at <http://ssrn.com/abstract-1212124>, accessed 1/30/13. [↑](#endnote-ref-2)
3. I will use the terms ethics and morality (and cognates) interchangeably. [↑](#endnote-ref-3)
4. I will not consider here the moral issues raised by truly autonomous drones, which would not be under human control and which are allegedly under development. [↑](#endnote-ref-4)
5. The term asymmetric war is sometimes used in a more limited way, for example, to refer to the tactical asymmetry of insurgent groups fighting an established military power in the light of their ability to employ unconventional tactics such as guerrilla warfare or terrorism. See David Rodin, “The Ethics of Asymmetric War,” in Richard Sorabji and David Rodin (eds.), *The Ethics of War* (Hants, UK: Ashgate, 2006), pp. 153-168, at p. 154. [↑](#endnote-ref-5)
6. There is some empirical evidence that drone use does increase the number of insurgents. See Micah Zenko, “Reforming U.S. Drone Strike Policies,” Council on Foreign Relations Special Report #65 (January 2013), <http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736>, accessed 2/1/13. [↑](#endnote-ref-6)
7. David Kilcullen and Andrew McDonald Exum, “Death From Above, Outrage Down Below,” *New York Times*, May 17, 2009. [↑](#endnote-ref-7)
8. Jo Becker and Scott Shane, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,” *New York Times*, May 29, 2012. [↑](#endnote-ref-8)
9. Steven Ratner, “Predator and Prey: Seizing and Killing Suspected Terrorists Abroad,” *Journal of Political Philosophy* 15, no. 3 (November 2007), pp. 251-275. [↑](#endnote-ref-9)
10. David Luban, “What Would Augustine Do?” *Boston Review*, 6/7/12, <http://www.bostonreview.net/BR37.3/david_luban_obama_drones_just_war_theory.php>, accessesed 2/4/13. [↑](#endnote-ref-10)
11. Bradley Jay Strawser, “Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles,” *Journal of Military Ethics* 9, no. 4 (2010), pp. 342-368, at p. 351. [↑](#endnote-ref-11)
12. Anderson, “Efficiency,” p. 13. [↑](#endnote-ref-12)
13. Strawser, “Moral Predators,” p. 344. [↑](#endnote-ref-13)
14. Daniel Brunstetter and Megan Braun, “The Implication of Drones on the Just War Tradition,” *Ethics and International Affairs* 25, no. 3 (2011), pp. 337-358, at p. 343. [↑](#endnote-ref-14)
15. Michael Walzer, *Just and Unjust Wars*, fourth ed. (NY: Basic Books, 2006), p. xiv. [↑](#endnote-ref-15)
16. Brunstetter and Braun, “The Implication of Drones,” p. 346. The authors, however, raise doubts about such an understanding of drone use. [↑](#endnote-ref-16)
17. Scott Shane, “Report Cites High Civilian Toll in Pakistan Drone Strikes,” *New York Times*, September 25, 2012. [↑](#endnote-ref-17)
18. Steven Ratner, “Predator and Prey,” pp. 255-57. [↑](#endnote-ref-18)
19. Andrew Altman, “Introduction,” *Targeted Killings: Law and Morality in an Asymmetric World*, ed. Claire Finkelstein, Jens Ohlin, and Andrew Altman (Oxford University Press, 2012), pp. 6, 10. [↑](#endnote-ref-19)
20. See Anderson, “Efficiency,” p. 16. [↑](#endnote-ref-20)
21. *Department of Justice White Paper: Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa’ida or an Associated Force*, available at <http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf>, accessed 2/7/13. [↑](#endnote-ref-21)
22. Alex Bellamy, “Is the War on Terror Just?” *International Relations* 19, no. 3 (2005), pp. 275-296, at p. 286. [↑](#endnote-ref-22)
23. Mary Ellen O’Connell, “Lawful Use of Combat Drones,” testimony before the House of Representatives subcommittee on National Security and Foreign Affairs, April 28, 2010, <http://www.fas.org/irp/congress/2010_hr/042810oconnell.pdf>, accessed 16/1/13. [↑](#endnote-ref-23)
24. Steve Coll, “Name Calling,” *The New Yorker*, March 4, 2013, <http://www.newyorker.com/talk/comment/2013/03/04/130304taco_talk_coll>, accessed 2/27/13. [↑](#endnote-ref-24)
25. William Saletan, “Editors for Predators,” *Slate* (Feb. 8, 2013), <http://www.slate.com/articles/news_and_politics/frame_game/2013/02/drones_law_and_imminent_attacks_how_the_u_s_redefines_legal_terms_to_justify.html>, accessed 2/25/13. [↑](#endnote-ref-25)
26. Micah Zenko, cited Mitch Potter, “Drone Warfare, *Toronto Star*, Feb. 2, 2013. Of those 300 strikes, 95% have been in Pakistan. [↑](#endnote-ref-26)
27. Jane Mayer, “The Predator War,” *The New Yorker*, October 26, 2009. [↑](#endnote-ref-27)
28. “Times Topics: Predator Drones and Unmanned Aerial Vehicles (UAVs),” *New York Times*, [http://topics.nytimes.com/top/reference/timestopics/subjects/u/ unmanned\_aerial\_vehicles/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/u/unmanned_aerial_vehicles/index.html), accessed 16/1/13. [↑](#endnote-ref-28)
29. O’Connell, “Lawful Use.” In dissent, however, Philip Aston, United Nations Special Rapporteur concerned with targeted killings, avers that International Humanitarian Law does not prohibit non-military personnel from engaging in conflict. “Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Execution: Study on Targeted Killings,” United Nations Human Rights Council, [http://www2.ohchr.org/english/ bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf](http://www2.ohchr.org/english/%20bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf), accessed 18/1/2013, paragraphs 70-71. [↑](#endnote-ref-29)
30. I introduce here and later considerations from international law as a way of expanding and reinforcing the moral considerations, which are my chief concern. International law, specifically international humanitarian law, largely tracks *jus in bello*, and in some cases it provides a more detailed workings out of the *in bello* principles. I consider here what international law has to say about what constitutes a war (“armed conflict”). [↑](#endnote-ref-30)
31. Altston was the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The quotations in this paragraph are taken from his “Report on Targeted Killings,” UN Human Rights Council, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>, accessed February 15, 2013, paragraphs 52, 53, 55. [↑](#endnote-ref-31)
32. See also Craig Martin, “Going Medieval: Targeted Killing, Self-Defense and the jus Ad Bellum Regime,” in Finkelstein et al., *Targeted Killings*, pp. 223-252, at p. 229. [↑](#endnote-ref-32)
33. Brunstetter and Braun, “The Implication of Drones,” p. 344. [↑](#endnote-ref-33)
34. Michael Walzer, *Just and Unjust War*, fourth edition (New York: Basic Books, 2006), p. xv, [↑](#endnote-ref-34)
35. Alston, “Report,” paragraph 1. [↑](#endnote-ref-35)
36. Alston, “Report,” paragraph 85. [↑](#endnote-ref-36)
37. O’Connell, “Lawful Use.” [↑](#endnote-ref-37)
38. Steven Ratner, “Predator and Prey,” p. 259. He discusses the two paradigms on pp. 255-57. [↑](#endnote-ref-38)
39. *Department of Justice White Paper*. [↑](#endnote-ref-39)
40. Greg McNeal, “Six Key Points Regarding the DOJ Targeted Killing White Paper,” *Forbes* (Feb. 5, 2013), <http://www.forbes.com/sites/gregorymcneal/2013/02/05/six-key-points-regarding-the-doj-targeted-killing-white-paper/>, accessed 2/14/13. [↑](#endnote-ref-40)
41. Taking the “or” as exclusive. *Department of Justice White Paper*; emphasis added. See also Martin, “Going Medieval,” pp. 225-26. [↑](#endnote-ref-41)
42. *Department of Justice White Paper.* [↑](#endnote-ref-42)
43. David Cole, “Obama and Terror: the Hovering Questions,” *The New York Review of Books*, July 12, 2012, and David Cole, “How We Made Killing Easy,” NYR Blog (2/6/13), <http://www.nybooks.com/blogs/nyrblog/2013/feb/06/drones-killing-made-easy/>, accessed 2/14/13. [↑](#endnote-ref-43)
44. See, for example, Fernando Teson, “Targeted Killing in War and Peace: A Philosophical Analysis,” in Claire Finkelstein, Jens Ohlin, and Andrew Altman (eds.), *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University Press, 2012), pp. 403-432, at pp. 427-428. [↑](#endnote-ref-44)
45. See Martin, “Going Medieval,” p. 230. [↑](#endnote-ref-45)
46. This formulation of proportionality contrasts with one that specifies that the civilian harm must not be disproportionate to the *good* that the military action achieves. The formulation makes it possible that both sides in a conflict can adhere to the principle, since one side (at least) is fighting an unjust war and so cannot achieve any good through military victory. Some just war theorists have in recent years challenged this traditional understanding of proportionality, and of just war theory more generally. See, for example, Tom Hurka, “Proportionality,” *Philosophy and Public Affairs* 33, no. 1 (2005), pp. 34-66. I discuss this “revisionist” approach to just war theory later. [↑](#endnote-ref-46)
47. Mayer, “Predator War.” [↑](#endnote-ref-47)
48. Scott Shane, “C.I.A. Is Disputed on Civilian Toll in Drone Strikes,” *New York Times*, August 11, 2011. [↑](#endnote-ref-48)
49. Kilcullen and Exum, “Death from Above.” [↑](#endnote-ref-49)
50. Zenko, “Reforming US Drone Strike Policies,” pp. 12-13. [↑](#endnote-ref-50)
51. International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU Law School, *Living Under Drones: Death, Injury, and Trauma to Civilians from Us Drone Practices in Pakistan*, 2012, <http://livingunderdrones.org>, accessed 11/5/12, p. vii. [↑](#endnote-ref-51)
52. Peter Bergen and Katherine Tiedemann, “The Year of the Drone,” New America Foundation, February 24, 2010. [↑](#endnote-ref-52)
53. Antoine Bosquet, “Riskless in Libya: The Ethical Peril of Zero-Casualty Warfare.” <http://thedisorderofthings.com/2011/06/27/riskless-in-libya/>, accessed 2/25/13. [↑](#endnote-ref-53)
54. “*Living Under Drones*,” p. vii. [↑](#endnote-ref-54)
55. Quoted in Glenn Greenwald, “US Drone Strikes Target Rescuers in Pakistan,” *The Guardian* (August 20, 2012), <http://www.guardian.co.uk/commentisfree/2012/aug/20/us-drones-strikes-target-rescuers-pakistan>, accessed 8/21/12. [↑](#endnote-ref-55)
56. Jonathan Masters, “Targeted Killings,” Council on Foreign Relations, <http://www.cfr.org/counterterrorism/targeted-killings/p9627>, accessed 11/18/12. [↑](#endnote-ref-56)
57. Becker and Shane, “Secret ‘Kill List’.” [↑](#endnote-ref-57)
58. David Luban (in “What Would Augustine Do?”) has referred to such undercounting as “a disgraceful moral cheat.” [↑](#endnote-ref-58)
59. Anderson, “Efficiency in Bello and ad Bellum,” p. 1. The annual numbers summarized from various studies by Micah Zenko (“Reforming U.S. Drone Strike Policies,” p. 13) support this assertion [↑](#endnote-ref-59)
60. See, for example, Brunstetter, “Can We Wage a Just Drone War?” [↑](#endnote-ref-60)
61. Kaag and Kaufman, “Military Frameworks,” pp. 586, 587. [↑](#endnote-ref-61)
62. John Kaag and Sarah Kreps, “The Moral Hazard of Drones,” *New York Times*, July 22, 2012. [↑](#endnote-ref-62)
63. Brunstetter and Braun, “The Implications of Drones,” p. 339. [↑](#endnote-ref-63)
64. Sarah Kreps and John Kaag, “The Use of Unmanned Aerial Vehicles in Contemporary Conflict: A Legal and Ethical Analysis,” *Polity* (2012), [http://ssrn.com/abstract=2023202](http://ssrn.com/abstract%3D2023202), accessed 1/15/13. [↑](#endnote-ref-64)
65. *Living Under Drones*, p. vii. [↑](#endnote-ref-65)
66. Christopher Kutz, “Drones, Democracy, and the Future of War,” unpublished MS. [↑](#endnote-ref-66)
67. There is little or nothing in the paper about the procedural objections to US drone policy, the lack of transparency, the fact that the policy is conducted exclusively by the executive branch, and so forth. These factors would be of special concern were we investigating further the policy considered under IHRL. [↑](#endnote-ref-67)
68. Zenko, “Reforming U.S. Drone Strike Policies,” has a list of recommendations that would go part way toward a set of adequate reforms. [↑](#endnote-ref-68)
69. Peter W Singer, “Do Drones Undermine Democracy?” *New York Times*, January 21, 2012. [↑](#endnote-ref-69)
70. David Axe, “Pentagon Looks to Double Its Unmanned Air Force,” *Wired* (May 31, 2011), <http://www.wired.com/dangerroom/2011/05/double-unmanned-air-force/>, accessed 2/14/13. Eric Niller, “New Navy Fighter Drone Promises Pilotless Future,” *NBC News*, <http://www.nbcnews.com/technology/futureoftech/new-navy-fighter-drone-promises-pilotless-future-919904>, accessed 2/14/13. [↑](#endnote-ref-70)
71. These wars would be unlike the conventional wars in Iraq and Afghanistan, which were fought only partly by drones. [↑](#endnote-ref-71)
72. The term “riskless war” is used by Paul Kahn, “War and Sacrifice in Kosovo,” *Report from the Institute for Philosophy and Public Policy* 19, no. 2-3 (spring-summer, 1999), pp. 1-6. [↑](#endnote-ref-72)
73. Peter W. Singer, “The Ethics of Killer Applications: Why Is It So Hard to Talk About Morality When It Comes to New Military Technology,” *Journal of Military Ethics* 9, no. 4 (2010), pp. 299-312, at p. 306. Interestingly, drone pilots suffer from levels of stress and PTSD at a rate comparable to pilots of manned aircraft, despite their distance from the fighting. “Distance from Carnage Doesn’t Prevent PTSD for Drone Pilots,” *New York Times*, February 25, 2011. [↑](#endnote-ref-73)
74. General James Cartwright, quoted in Steve Coll, “Kill or Capture,” *The New Yorker*, August 2, 2012. [↑](#endnote-ref-74)
75. Murtaza Hussain, “Is Drone War Moral?” *Salon*, August 6, 2012, <http://www.salon.com/2012/08/06/is_drone_war_moral/>, accessed 11/12/12. [↑](#endnote-ref-75)
76. *Department of Justice White Paper*, p 9. [↑](#endnote-ref-76)
77. Paul Kahn, “The Paradox of Riskless War,” *Philosophy and Public Affairs Quarterly* 22, no. 3 (Summer 2002), pp. 2-8, at p. 7. [↑](#endnote-ref-77)
78. Singer, “Do Drones Undermine Democracy?” [↑](#endnote-ref-78)
79. Kaag and Kaufman, “Military Frameworks,” p. 604. [↑](#endnote-ref-79)
80. Hussain, “Is Drone War Moral?” [↑](#endnote-ref-80)
81. Kreps and Kaag, “The Use of Unmanned Aerial Vehicles,” p. 23. [↑](#endnote-ref-81)
82. Kreps and Kaag, “The Use of Unmanned Aerial Vehicles,” p. 23. [↑](#endnote-ref-82)
83. Drones promise to lower the threshold for military violence of either the GWOT sort or conventional war. These two categories are confused by President Obama in his 2013 Inaugural Address: “We, the people, still believe that enduring security and lasting peace do not require perpetual war.” His military policy has been to emphasize the GWOT in place of the seemingly endless conventional wars in Iraq and Afghanistan. The implication of the quotation is his drone policy allows the US to avoid perpetual wars, but this is to deny the claim that is the basis on which his administration seeks to justify the drone strikes, namely, that the GWOT is a war. See David Sirota, “Actually Obama does support perpetual war,” *Salon*, January 25, 2013, <http://www.salon.com/2013/01/25/actually_obama_does_advocate_perpetual_war/>, accessed Feb. 12, 2013. [↑](#endnote-ref-83)
84. Michael Ignatieff, *Virtual War: Kosovo and Beyond* (New York: Viking, 2000), p. 179. [↑](#endnote-ref-84)
85. Mayer, “The Predator War.” [↑](#endnote-ref-85)
86. Kahn, “The Paradox of Riskless War,” p. 4. [↑](#endnote-ref-86)
87. James Cavallaro, “Times Topics.” [↑](#endnote-ref-87)
88. Anderson, “Efficiency *in Bello* and *ad Bellum*.” [↑](#endnote-ref-88)
89. Kutz, “Drones, Democracy, and the Future of War.” [↑](#endnote-ref-89)
90. Kahn, “War and Sacrifice in Kosovo.” [↑](#endnote-ref-90)
91. Kahn, “War and Sacrifice in Kosovo.” [↑](#endnote-ref-91)
92. Bosquet, “Riskless in Libya.” [↑](#endnote-ref-92)
93. Kahn, “The Paradox of Riskless War,” p. 8. See also, Rodin, “The Ethics of Asymmetric War,” pp. 158-59. [↑](#endnote-ref-93)
94. The failure of reciprocity in question here is distinct from the failure of reciprocity in war when one side obeys the rules of *jus in bello* and the other side does not. [↑](#endnote-ref-94)
95. Kahn, “War and Sacrifice in Kosovo,” p. 1 [↑](#endnote-ref-95)
96. Ignatieff, *Virtual War*, p. 161. [↑](#endnote-ref-96)
97. Kahn, “The Paradox of Riskless War,” p. 3. [↑](#endnote-ref-97)
98. Michael Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2004), p. 101, emphasis on original. [↑](#endnote-ref-98)
99. Michael Walzer, *Just and Unjust Wars*, pp. [↑](#endnote-ref-99)
100. Kahn, “The Paradox of Riskless War,” p. 3. [↑](#endnote-ref-100)
101. It is important to note that the issue is not the complete protection of one or another combatant, but complete protection for all the combatants on one side; reciprocity of risk operates at the level of the war, not at the level of the individual combatant.) [↑](#endnote-ref-101)
102. Kahn, “Paradox of Riskless War,” p. 4. [↑](#endnote-ref-102)
103. Kahn, “War and Sacrifice in Kosovo,” p. 3. [↑](#endnote-ref-103)
104. See, for example, Jeff McMahan, *Killing in War* (Oxford, UK: Oxford University Press, 2009) [↑](#endnote-ref-104)
105. Christopher Kutz refers to epistemic reciprocity, the idea that neither side in a conflict has a privileged view on whether its war is just. Kutz, “Drones, Democracy, and the Future of War.” [↑](#endnote-ref-105)
106. Rodin, “The Ethics of Asymmetric War,” p. 159. [↑](#endnote-ref-106)
107. Aquinas, [*Summa Theologica*](http://www.newadvent.org/summa/index.html), [Second Part of the Second Part](http://www.newadvent.org/summa/3.htm), Question 40 [↑](#endnote-ref-107)
108. Walzer, *Just and Unjust Wars*. [↑](#endnote-ref-108)
109. See, for example, Kahn, “Paradox of Riskless War,” p. 6. An exception to terrorist tactics by al Qaeda insurgents was the attack on the US Cole. [↑](#endnote-ref-109)
110. See, for example, Strawser, “Moral Predators,” p. 357, and Christopher Kutz, “Drones, Democracy, and the Future of War.” [↑](#endnote-ref-110)
111. Daniel Brunstetter and Megan Braun, “From Jus ad Bellum to Jus ad Vim: Recalibrating Our Understanding of the Moral Use of Force,” *Ethics and International Affairs* 27, no. 1 (2013), pp. 87-106, at p. 92. [↑](#endnote-ref-111)
112. Kahn, “Paradox of Riskless War,” p. 7. [↑](#endnote-ref-112)
113. David Remnick, quoted in David Carr, “Debating Drones, in the Open,” *New York Times*, February 10, 2013. [↑](#endnote-ref-113)
114. There is, of course, a certain irony in finding a comparison between the most indiscriminate technology and the technology claimed to be the most discriminate. [↑](#endnote-ref-114)
115. Nuclear weapons have been only partially banned through the Nuclear Non-Proliferation Treaty, but they represent a special case. [↑](#endnote-ref-115)