

## **Foreword to *Killing by Remote Control***

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There is increasing enthusiasm in government circles for remotely controlled weapons. Such weapons are especially attractive in democracies when political leaders want to fight a war or attack enemies in remote locations but are constrained politically by the aversion of citizens to being killed or having their children killed for the sake of aims they think may not be worth the cost. The Obama administration is particularly enamored with these weapons, the use of which carries no risk of becoming encumbered with “detainees,” which have become a political liability in the wake of the Bush administration’s rebarbative policies of detention and torture.

What differentiates the newer models of remotely controlled weapons from traditional long-range precision-guided munitions is that they allow their operators to monitor the target area for lengthy periods before deciding whether, when, and where to strike. These are capacities that better enable the weapons operators to make morally informed decisions about the use of their weapons.

But remotely controlled weapons are associated in the popular imagination with targeted killing, especially of terrorist suspects outside of traditionally delimited combat zones. Yet they can be, and are, used in combat as well and have the same advantages in each of these roles: that is, they function without risk to their operator, can be highly discriminating in the targets they destroy, and can be used in places that are inaccessible to soldiers or prohibitively dangerous for their deployment. The objections to targeted killing are not, therefore, necessarily objections to remotely controlled weapons – though if targeted killing is objectionable then it is one objection to remotely controlled weapons that they make targeted killing safer and politically more palatable than it would otherwise be.

The distinction between using remotely controlled weapons in war and using them for targeted killing is not always easy to draw. There seems to be little difference morally between using a drone to kill members of the Taliban in remote areas of Afghanistan or Pakistan when they are not engaged in violent or coercive activities and using the same weapons in the same areas to kill members of al Qaeda, who are not combatants in a war but criminals

preparing to engage in terrorist action.<sup>1</sup> It can, indeed, be argued with considerable cogency that the use of remotely controlled weapons to kill Taliban fighters in their “safe havens” can be legally justified as the killing of enemy combatants in war, while their use to kill al Qaeda operatives in their havens can be legally justified as police action against dangerous criminals who cannot be arrested and tried at a reasonable cost, so that the requirement of arrest must be suspended, as it sometimes must be even in domestic law enforcement. Critics of this suggestion will say that the difference between targeted killing and cases in which the requirement of arrest must be suspended in domestic law enforcement lies in the imminence of the threat. In domestic cases, the requirement of arrest is suspended only when a criminal is on a rampage and is resisting arrest, posing a danger to the police and perhaps to innocent bystanders as well. But targeted killing is necessarily preventive: it is done when there is no imminent threat from the terrorist. If a terrorist posed an imminent threat, killing him would not count as targeted killing but simply as third-party defense of others, about which there is no legal controversy. But to have any plausibility, the imminence requirement must be understood as a proxy for considerations of probability or necessity. Usually threats that are not imminent are either below some threshold of probability or can likely be dealt with in some other way. But in the case of committed terrorists who are protected by the political and legal authorities where they live, targeted killing may be necessary for defense of the innocent in the same way it is in the case of a rampaging murderer.

*Killing by Remote Control* is a book about remotely controlled and preprogrammed weapons, not about targeted killing, though the latter obviously receives some discussion. What should we think about the use of remotely controlled or preprogrammed weapons in war?

Some writers, including the editor and some of the other contributors to this book, argue that in war the fact that remotely controlled weapons can be used without risk to the operator makes them unambiguously good in the hands of just combatants – that is, those who fight in a just war. I think this is right. But of course their possession and use cannot be restricted to those who will use them only in the pursuit of a just cause and only against those who are liable to attack. So just as their availability may diminish inhibitions against fighting in justified wars, especially wars of humanitarian intervention, it may also weaken deterrence of wrongful aggression. As a practical matter, then,

trade offs must be made between ensuring the safety of just combatants and preventing war and targeted killing from becoming safer for unjust aggressors.

Perhaps surprisingly, there are some who argue that the elimination of risk even to just combatants is morally problematic. Michael Walzer, in an essay on the Kosovo intervention written in 1999, claims boldly, and in italics, that “*You can’t kill unless you are prepared to die.*”<sup>2</sup> He follows this declaration by saying that the leaders of NATO “cannot launch a campaign aimed to kill Serbian soldiers, and sure to kill others too, unless they are prepared to risk the lives of their own soldiers. ... They cannot claim, [and] we cannot accept, that those lives are expendable, and these not.”<sup>3</sup> I am uncertain how to interpret this passage, as it is uncharacteristically obscure. Whose are “those lives?” If the phrase includes the lives of Serbian soldiers, then Walzer’s claim challenges the permissibility of using remotely controlled weapons on the ground that their use somehow implies the unacceptable judgment that the targets of such weapons are expendable while the operators are not. Yet something akin to that judgment is made by every combatant who tries to kill enemy combatants in war. Perhaps what Walzer means is only that it is not permissible for combatants to fight in a way that minimizes the risk to themselves by shifting the risks to civilians instead. If this is all he means, then he is largely right, though there are two qualifications. First, it is possible that some civilians are liable to suffer certain harms as a side effect of military action. It might, for example, have been permissible for NATO combatants knowingly to harm certain Serbian civilians as a side effect rather than expose themselves to certain risks if they had known that those civilians were collaborators with the Serbian soldiers in Kosovo. Second, it is also possible that the civilian beneficiaries of humanitarian intervention can permissibly be made to share some of the risks with the combatants who intervene on their behalf. Still, if all that Walzer is claiming is that combatants must take certain risks if that is necessary for them to avoid harming or killing civilian bystanders, then nothing he says impugns the permissibility of using remotely controlled weapons.

The case against remotely controlled weapons is clearer in the writings of Yale law professor Paul Kahn, who argues that “riskless warfare” threatens to undermine the moral justification for killing in war even in its application to just combatants. What Kahn takes to be the moral justification for killing in war is closely related, though not identical, to the one defended in Walzer’s *Just and Unjust Wars*, according to which the “right not to be attacked...is lost by those who bear arms...because they pose a danger to other people.”<sup>4</sup> Kahn

first claims, as Walzer does, that combatants have no control over which wars they are commanded to fight in or whether to fight when they are commanded to do so. They lack free choice in these matters and are thus morally innocent. But how, he asks, can it be permissible to kill them if they are morally innocent? His answer is that there is a “distinct morality of the battlefield” in which “the fundamental principle of the morality of warfare is a right to exercise self-defense within the conditions of mutual imposition of risk.”<sup>5</sup> When all combatants are morally innocent, “the rule of reciprocal self-defense” permits combatants on each side to defend themselves from attack by combatants on the other. The goals for which they fight are irrelevant to the moral justification for the harming and killing they do in combat, and the contribution their action makes to the achievement of those goals is morally incidental: “Defending himself, the combatant advances the political objectives for which force is deployed.”<sup>6</sup> Provided that it remains within the limits imposed by the principles of *jus in bello*, the harming and killing that a combatant does on the battlefield is morally justified on the ground that it is instrumental to his own defense or to the defense of his fellow combatants.

But if this is the justification for killing in war, a war fought entirely with remotely controlled weapons seems a moral impossibility, no matter how important its just cause might be. For the operators of the weapons would not be under threat and hence could not use the weapons in self-defense. But perhaps one can claim that if the operators of the remotely controlled weapons are citizens of a state that is the victim of armed aggression, they are necessarily under some sort of threat, so that if the threat they face as individuals is sufficiently serious to make killing a proportionate response, they can be justified in using their weapons against the aggressors. This response is, however, limited to wars of national self-defense. It does not apply to wars of collective defense or to humanitarian intervention, in which the intervening combatants are antecedently under no threat at all. It seems, therefore, that Kahn’s morality of warfare rules out humanitarian intervention, not just with remotely controlled weapons but with weapons of any type. For “the soldier’s privilege of self-defense” cannot justify the initial harming and killing of soldiers in the state that is the target of the intervention when neither the soldier nor any of his comrades is threatened by them. Perhaps Kahn’s view implies that intervening soldiers must wait until they come under attack before they may use force to stop the perpetration of atrocities. If so, those committing the atrocities could deprive the interveners of a justification for the use of force by simply ignoring them.

Kahn claims that intervention can be justifiable, provided that there is “*a prior and continuing symmetrical application of force*” by the parties in whose conflict the intervention occurs.<sup>7</sup> But this seems to rule out intervention to stop a campaign of genocide against an entirely defenseless and unresisting civilian population. It seems inescapable, then, that a view that rules out “riskless warfare” because it justifies killing in war only as the exercise of individual rights of self-defense by combatants on the battlefield, thereby making the aims of their war irrelevant to the justification of their action, cannot be the correct account of the morality of warfare. This critique of riskless warfare thus leaves the moral case for the use of remotely controlled weapons by just combatants unscathed.

Advocates of “unmanned” weapons claim that they are not just less risky but also more discriminating, in that they have, or can have, sensors that can detect such things as concealed weapons that ordinary combatants cannot, and are not subject to the distorting effects on judgment of such passions as rage or the desire for vengeance.<sup>8</sup> But this claim does not apply to remotely controlled weapons because these weapons must be fired by a human operator. The weapon may have sophisticated sensors, but the judgment about the status of the target remains with the operator, who may misinterpret the data or act irrationally.

New generations of preprogrammed robotic weapons will, however, be equipped with features that, according to their proponents, will enable them to discriminate between combatants and noncombatants more reliably than ordinary combatants can in the stress and fog of combat. Yet there are reasons to doubt the proponents’ claims. If the weapons were better able than soldiers to recognize certain markers of combatants, enemy soldiers could simply dispose of those markers. Doing that in the face of human combatants of course involves the risk that the combatants will simply give up trying to discriminate between combatants and noncombatants and begin to kill indiscriminately. But weapons that are preprogrammed not to fire on people whom they identify as noncombatants would simply not fire on anyone. To become useful again, they would have to be reprogrammed and would no longer be discriminating in the way their advocates claim. A naïve response to this problem would be that the weapons could be programmed to attack only those bearing arms. One is invited to imagine the use of a weapon of that sort in a society such as the contemporary United States, where it seems that every other civilian now carries a concealed weapon.

The ability to distinguish between combatants and noncombatants will remain morally and legally important no matter what the correct view of *in bello* morality is. But it is less important if the traditional theory of the just war is mistaken in asserting that this distinction coincides with the distinction between legitimate and illegitimate targets. Some revisionist critics of the traditional theory have argued that the relevant moral distinction is not between combatants and noncombatants but between those who pose a just or justified threat and those who pose an unjustified threat, or a threat of wrongful harm. Even preprogrammed or semi-autonomous weapons cannot distinguish between unjust and just wars or therefore between those who are responsible for a threat of wrongful harm and those who are not. If the revisionists are right, these weapons cannot distinguish between morally legitimate and illegitimate targets. For there are no sensors that can detect moral liability to attack.

Among the most significant concerns about weapons that do not require continuous control by an operator is that if there were enough of them, they could enable a relatively small number of people to initiate and conduct a war without the cooperation or consent of others. Much of the work the revisionist just war theorists have done has sought to discredit the traditional view that soldiers who fight for an unjust cause do no wrong provided that they obey certain neutral rules governing the conduct of war. It seems likely that this traditional view has been instrumental in persuading many soldiers to put their qualms of conscience aside when they have been commanded to fight in a war they believed to be unjust. Thus, the work of these revisionist theorists has a practical as well as a theoretical aim, which is to enlist the consciences of ordinary soldiers in the effort to prevent the initiation or continuation of unjust wars, which until recently could not be fought without the involvement of a great many people who needed to be convinced that what they were doing was not immoral. This situation changed with the advent of nuclear weapons and other weapons of mass destruction, but the use of such weapons is fraught with so much uncertainty and risk even for those who would use them that the temptation to fight a war with them has, since their first use by the United States, never been very great. But the existence of preprogrammed weapons that, after a decision by political leaders to initiate a war, could launch themselves, choose their own targets in the light of emerging information, and attack those targets in comparatively discriminating ways could enable a government to fight an unjust war while bypassing the problem of convincing soldiers that it was just. To the extent that preprogrammed or semi-

autonomous robotic weapons will make this possible, their development will subvert the practical project of the revisionist theorists of limiting unjust wars by appealing to the consciences of those who would fight them.

I have briefly reviewed only a few of the moral issues raised by both the advent of remotely controlled and preprogrammed weapons and the prospect of even more sophisticated semi-autonomous weapons. Many other such issues are raised and discussed in this timely and important book, which I hope will serve as a catalyst for serious debates not only in moral philosophy but also, and more importantly, among philosophers, political and legal theorists, policy analysts, and the public at large.

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## Notes

- <sup>1</sup> For a defense of the claim that as Qaeda terrorists are not combatants, see Jeff McMahan, “Targeted Killing: Murder, Combat, or Law Enforcement?”, in Andrew Altman, Claire Finkelstein, and Jens David Ohlin, eds., *Targeted Killings: Law and Morality in an Asymmetrical World* (New York: Oxford University Press, 2012).
- <sup>2</sup> Michael Walzer, “Kosovo,” in his *Arguing About War* (New Haven: Yale University Press, 2004), p. 101. (Italics in the original.)
- <sup>3</sup> *Ibid.*, pp. 101-102.
- <sup>4</sup> Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 145.
- <sup>5</sup> Paul W. Kahn, “The Paradox of Riskless Warfare,” *Philosophy and Public Policy Quarterly* 22 (2002): 2-8, p. 3.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> Italics in the original.
- <sup>8</sup> “Unmanned weapon” is an unfortunate term because it suggests that women do not operate weapons and perhaps because “unmanned” also calls to mind the alternative meaning, “emasculated.” But it is useful because it covers remotely controlled, preprogrammed, and semi-autonomous weapons.