CREATING SPACE: DRONES, JUST WAR, AND JUS AD VIM

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By

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CHAPTER ONE
DEFINING WAR AND THE JUST WAR DOCTRINE

Introduction

War is a unique event in human history that changes fundamentally held views about killing. There is an enormous disconnect between the paradigm that exists during peacetime compared to war. In times of peace, killing human beings willfully is outlawed as a crime except in some cases such as self-defense (Brooks 301). Likewise, states’ law enforcement agencies are prohibited from employing lethal force except in certain circumstances, including self-defense and the defense of others (Brooks 301). Moreover, when law enforcement authorities do kill innocent civilians because of their use of force against criminals, these deaths can, and sometimes are, treated as crimes for which authorities must be held accountable. If police officers knowingly kill innocent bystanders incidentally when using force against purported criminals, we don't tolerate those deaths as ‘collateral damage.’ In peacetime, the intentional destruction of property as well as curtailments on individual liberties are generally impermissible (Brooks 301).

In contrast, during war, these standards change dramatically. Actions that would likely be viewed as murder during times of peace are viewed as not only acceptable, but also heroic and patriotic. For instance, Brooks points out that, “In wartime, almost everything changes. Many actions that are considered both immoral and illegal in peacetime are permissible--even
praiseworthy--in wartime” (301). This shift in perspectives therefore makes war an exceptionally important event that fundamentally changes rules. Nevertheless, even during times of war, there are limits on who can be targeted and how they can be neutralized.

Although willful killing is allowed pursuant to armed conflict law, it is specifically restricted to enemy combatants and anyone else who is taking part in armed hostilities (Brooks 301). In the United States, Department of Defense Directive 5100.77, or the DoD Law of War Program, explicates the law pertaining to armed conflict (Powers). This law stipulates that all branches of the U.S. military are required to develop programs that ensure compliance with the law of armed conflict and provides mechanisms whereby any violations of the directive are identified and reported to higher authorities. In addition, the directive mandates training in the law of armed conflict within each branch to ensure its observance as well as requiring legal reviews for all new weaponry (Powers). The law of armed conflict was developed in response to the need to minimize destruction and human suffering without adversely affecting the ability to prosecute a war effectively (Powers). Clearly, this is a tall order and recent misadventures in the Middle East have proven time and again that even under the best circumstances, with the most sophisticated weapons systems, enormous collateral damage can still occur.

The Department of Defense directive on the law of armed conflict also covers some types of activities that might be considered excessive or even unlawful by some observers unless the purpose of these activities is fully understood. For example, Brooks reports that, “During a war, a combatant can lob a grenade into a building full of sleeping people, as long as he reasonably believes the sleeping people to be enemy soldiers” (301). In fact, even civilian deaths are permissible in those circumstances in which a combatant observes the basic principles of
distinction, proportionality, and military necessity when conducting military operations (Brooks 301).

Historically, the Just War literature has been crucial in restricting the sorts of activities states may execute during war. However, as technology rapidly advances, many have called into question the applicability of the classic war conventions, e.g. The Hague and Geneva Conventions, to the new sorts of conflicts in which we find ourselves embroiled. It is not clear whether no-fly zones, cyber-attacks, pin-point drone strikes, raids, extraordinary renditions, and other actions fall under the purview of war. The topic of this thesis is to explicate the just war tradition, explore the use of drones, and examine the possibility of a new conflict category: jus ad vim.

Jus ad vim, or justness of force short of war (FSW) appears a promising normative category in which to better understand the sorts of actions states such as the United States are engaged in today. But the goal is not to supplant the classic literature, which does quite well under conventional wars. Rather, it is better understood as an additional tool in the normative toolbox; one which might lead to tighter regulations of the relatively unbound drone programs in place now.

PART I: What Is War?

At the outset, it will prove useful to explore what war is, how it is defined, and why some definitions are more useful than others. Often, definitions of war convey political and philosophical connotations that have important implications for modern states. The extent to which a situation is characterized as being a war has an effect on (a) the application of humanitarian law of armed conflict, or jus in bello, (b) the non-hostile relations between
belligerents, such as diplomatic relations and treaties, (c) relations with third states, by application of the law of neutrality, and, (d) the belligerents' obligations towards the international community under the *jus ad bellum*, by effect of the Briand-Kellogg Pact and the United Nations (UN) Charter (Provost 249).

Cicero is perhaps one of the earliest thinkers to propose a definition of war. He claimed war to be a “contention of force” (“War”). Likewise, Grotius, a literal “Renaissance Man,” observed that “War is the state of contending parties” (“War”). These definitions will prove inadequate. If war is merely a contention of force, then it is the case that nearly any disagreement between human beings that includes the use of force can be broadly construed as war. For instance, sanctioned boxing matches or street fights are clearly not examples of war, and yet they may be included in such a definition. Obviously, a more precise definition of ‘war’ is needed.

Grotius comes closer, as war is typically construed as something between *parties*, not *individuals*. He also was one of the first to propose that interstate activity is, or ought to be, governed by mutual agreement and law, rather than violence. War is something between parties, but *what sorts of parties can engage in war* is an important consideration.

It remains unclear whether parties of principle, such as free-market capitalists and closed-market communists, fit the description required to satisfy this criterion for war. If they did, then even trade competition might count as war, yet most would hesitate to characterize the state of contention between even hostile trading partners as war (“War”). As McGrath points out, “The problem is that our traditional definition of ‘war’ is outdated, and so is our imagination of what war means” (37). In fact, the last time that the U.S. Congress officially declared a war was World War II (McGrath 37).
Since that time, even major conflicts such as Vietnam and interventions in the Middle East, have been referred to euphemistically as “congressional authorizations of military force” rather than “wars” (McGrath 38). Likewise, Provost notes that the concept of “international armed conflict” only emerged after World War II as a distinctly separate concept based on the adoption of the 1949 Geneva Conventions and the UN Charter (248). Prior to and throughout World War II, ‘war’ was defined as “a contention between two or more states through their armed forces for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases” (Provost 248).

Consequently, it was not until the mid-twentieth century that the concept of war was expanded to include actions such as civil wars. Actions that were previously considered to be short of war, such as reprisals during peacetime, were conflicts not regarded previously by the belligerents as being war, despite the presence of large-scale fighting between the military forces of two or more nation-states (Provost 248). The need for a precise definition for war has become even more pronounced in the past 65 years as the types and levels of force used by states and non-state actors have expanded (Provost 248). Diderot claimed war to be “A convulsive and violent disease of the body politic” (qtd. in Moseley). Clausewitz stated that “War is the continuation of politics by other means” (qtd. in Moseley). These definitions provide some additional insights into what sorts of parties can engage in war. Diderot's and Black’s Law Dictionary’s “body politic” is another way of saying “the state;” Clausewitz’s definition hints that only states are the sorts of parties that can engage in war (Moseley). Neither gives any indication as to what constitutes a state, although both mention the important insight that, fundamentally, war is about politics, or governance.

1 For more information regarding congressional use of force, please reference the War Powers Resolution of 1973
One proposed definition of a ‘state’ is that it is ‘an entity with the ability to enter into political agreements such as treaties’. A treaty is something that only a political entity, not a person, can negotiate and approve. When President Obama signs a treaty, it is not the President who is agreeing to a policy, but the United States. If it were merely the President who was agreeing to the treaty then, presumably, any American citizen would be free to act in such a way that foregoes consideration of the treaty.

In the same vein, Rousseau claims that “War is a relation between things, and not between persons” (qtd. in Moseley). Individual agents have attributes that states lack, but there are some activities that states can perform that are analogous to agents’ actions. States can provide healthcare, as can individuals. Individuals can love their parents, but states cannot. States are comparable to individuals in that they can “take actions”, but war is not something individual agents can initiate and engage.

The question of what constitutes a state is a lengthy digression, but some remarks are in order. First, it is important to keep distinct the concept of a nation and the concept of a state. A nation is an entity within which many people share some sort of cultural affiliation. A nation often thinks of itself as “a people.” These affiliations include language, ethnicity, history, values, fashion, food, and other cultural accouterments.

A state, in contrast, consists of peoples who share the same political machinery. In fact, this may be the only thing they share. Two examples that highlight the distinction between “state” and “nation” are the Soviet Bloc and the British Empire. India was part of the British State, but not the British nation. The Soviet Bloc was a confederation of many nations under the same political machinery. It is therefore possible to make distinctions between the British nation
and the British state and likewise with the Soviet Bloc (“War”). The British state wages war, not the British nation, although in many instances, these are one in the same (e.g. a nation-state).

In general, states are recognized by the international community as such. The relationship of recognition is like the recognition of a legitimate business by a state; the mafia, despite all its trappings of business, is not recognized as such. In this context, Black’s Law Dictionary defines a state as, “A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through this medium, an organized government, independent sovereignty and control over all persons and things within its boundaries” (1407).

Though war is generally regarded as between states, there are some exceptions. A notable exception to this is intrastate wars, including civil wars. States need not always be recognized by the entire international community to wage war either. The proto-states of the American South (during the U.S. Civil War), Palestine, and Taiwan were all perfectly capable of warring. The European Union (EU), for example, has been referred to as a proto-state, but any war-making would likely be performed by the EU members of the North Atlantic Treaty Organization (Dryzek 82).

The question of when an aspiring state becomes an actual state is a difficult one, and not one that can be answered here. Suffice it to say that an aspiring state, or proto-state, is capable of state-like activity. This includes at least rudimentary political machinery, recognition by at least some other states, and a close-knit nation that sees itself as distinct from the state that ostensibly governs it. A good example might be British Raj which, under Gandhi, aspired to become the state of India (Kaul).
The notion that only states can wage war is useful because it allows for clear distinctions of when war begins and when it ends. If persons could wage war, then it would be difficult, if not impossible, to determine when a war begins and when it ends. One person giving up the fight would not constitute war's end, as others may continue to pursue it. How many people would need to surrender, or refuse to fight, before a war among persons would be over? Regarding Cicero's definition, allowing for the parties that are at war to be individuals and not states gives no useful way to determine when an entity is at war and when it is not. Similarly, the idea that nonstate actors can wage war leads to the same concerns.

Thomas Hobbes was one of the first to note that war is more than mere violence, and argued that war also includes the threat of violence: “By war is meant a state of affairs, which may exist even while its operations are not continued” (qtd. in Moseley). This is an important insight. Hobbes mentions that war is like bad weather; bad weather is not just the rain, sleet, or snow, but also the threat thereof. Similarly, war often infects those affected by it with a morose foreboding; even when no actual violence is occurring, the threat of it causes a change in the behavior of the peoples affected. Quite often, most of the duration of war contains no violence whatsoever, or only sporadic conflict, as exemplified by the state of war that has existed between North and South Korea for more than 60 years. It is possible to include this insight into a working definition of war as well.

Given that war is an interaction between states, it is useful to identify those types of formal activities that mark the commencement of war such as political declarations or the cessation of war as achieved through treaties. Although these examples probably do not assign the utmost clarity regarding warfare, they provide some small amount of precision about war’s
endings and beginnings. A policy about whether war is in effect exists among state actors, something not present in conflicts between individual agents.

With the previous definitions of war considered and their limitations, it is possible to formulate the following formal definition of war:

\[ x \text{ is a war} = \text{df} x \text{ is an actual, widespread, and deliberate armed conflict between states or state-like entities, including any deliberate and explicit declaration that violence regarding policy or governance is imminent} \]

This definition of war stipulates that the armed conflict is actual (as opposed to potential) and widespread (as opposed to restricted and isolated instances). It is also important to note that the violence is not required to be ever-present to be considered actual, as Hobbes observed by saying that the threat of violence is ever-present during war. There must be some level of violence, however, or an explicit declaration thereof. India and Pakistan's current dispute over the Kashmir region is not warfare, as little to no actual violence has taken place (at least since the previous cessation). However, if one state were to invade and attack the other, such as Iraq’s invasion of Kuwait, then it could be legitimately classified as being war. It would also be war if one state made a declaration of war, thereby making explicit a deliberate and intentional desire to inflict harm through violent means.

Before continuing, it will prove useful to review the principles surrounding \textit{jus in bello} and \textit{jus ad bellum}. \textit{Ad bellum} refers to the justness of initiating war, while \textit{in bello} refers to the execution of such a war. It is important to keep these conceptually distinct, because it is possible to fight a just war unjustly, via unjust means, such as chemical weapons or genocide. It might not
be possible to fight an unjust war justly, but it is certainly possible to fight it in accordance with *in bello* principles.

In contemporary just war literature, there are up to seven recognized *ad bellum* principles (“War”; Moseley), and up to five *in bello* principles. Some philosophers, such as Jeff McMahan and Tom Hurka, attempt to collapse some principles into other principles. Others, such as Frowe, argue that this is misguided (Frowe 15). Because of the vast and disparate disagreements regarding the principles, only those that pertain most closely to the topic of this thesis shall be reviewed.

The first, and most important principle, is the principle of “just cause.” While there are differing accounts of what constitutes just cause, the contemporary versions emphasize that self and other defense are the most common. Most authors, if not all, agree that the violation of sovereignty is what merits lethal defense. However, “violation” can and has been variously defined. Walzer, for example, believes that when belligerents are clearly mobilizing for an attack, e.g. bombers are incoming, that this constitutes such a violation. Others are stricter, claiming that a violation has not happened until force has been employed. Still others claim that force may be taken to prevent human catastrophes, e.g. genocide, within a state (Walzer 74; Frowe 141; “Defensive” 53; McMahan 5).

The second principle is “legitimate authority.” Legitimate authority in war declarations is important for both moral and legal purposes. Without an authority, it is difficult to prosecute violations of the war convention, or to even know when a war begins and ends. As discussed previously, war is a relation between states and not individuals. However, philosophers have taken various positions on how to properly define “legitimate authority.” Most agree that
democratic states provide legitimacy, but it is unclear whether authoritarian regimes and nonstate actors possess this same authority. (Frowe 62, 186).

The third principle is the “probability of success.” Without a reasonable probability of success, then it is immoral to wage war, as the catastrophic and violent actions which happen in war will be for naught. Heads of state typically do not personally fight in war, and the harms that befall soldiers and civilians are serious. Thus, this principle might be best understood as one which makes it impermissible for leaders to hopelessly sacrifice citizens. When defeat is guaranteed, most agree that it is immoral to continue the resistance (Frowe 60).

The fourth principle is “last resort.” As war removes some of the constraints on violence, it is important to seek diplomatic or economic resolutions first. It is best to understand this principle as one which avoids war. Once war has been initiated, the victim need not open diplomatic relations or capitulate to end the war (Frowe 65).

The final principle is “proportionality.” This principle ties in, to some extent, with “just cause.” A war ought to be constrained in such a way as to only right previous wrongs (and perhaps punish the aggressor as a deterrent). There are several reasons why it is very difficult to say, with specificity, what constitutes a proportional response. For example, it is not clear whether the aggressors’ soldiers and civilians “count” as much as the defender’s. Second, there is an epistemic gap between what one thinks might happen, and what occurs. Wars are inherently unpredictable, and can spiral out of control. Third, it is difficult to concretely weigh the various goods and harms of war. How valuable is one’s airspace, borders, and ports in terms of human lives? For these and other reasons, it is best for (potential) victim states to make serious educated guesses to determine whether, prima facie, a violent response will be proportional (Frowe 56).
There are as few as two, or as many as five additional *in bello* principles, but only three will be needed for our purposes (“War”; Moseley).

The first is the principle of “discrimination (also called “distinction”).” Discrimination is the principle wherein it is impermissible to intentionally target noncombatants. Noncombatants are usually innocent bystanders and are thus not liable to harm (Frowe 108).\(^2\) Innocent civilians possess what McMahan terms “maximum immunity” in wartime (“The Just Distribution” 374).

The second is the principle of “military necessity.” Military actions taken during war are only permissible when they result in some advantage which aids the war effort, and these actions ought not to cause unnecessary harm. Previously, it was claimed that it was impermissible to target noncombatants. While true, this does not mean that noncombatants cannot be *permissibly harmed*. If it is necessary, for example, to destroy a munitions factory which might contain noncombatants, then it is permissible to do so (Frowe 110).\(^3\)

The third is, again “proportionality.” This proportionality differs from *ad bellum* proportionality, and is related to the principle of military necessity. Although it might be of military necessity to destroy the aforementioned factory, it might be disproportional to do so while people are inside. A more proportional action might target the facility while it is vacated. To put it succinctly, a state may only use force against necessary targets, and those targets ought to be exposed to the least lethal measure available (Frowe 112).

Having operationalized the concept of war, the next step is to analyze the different perspectives on the ethical aspects of a just war.

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\(^2\) Who counts as a combatant is discussed later in this chapter, and in Chapter 3.

\(^3\) The issue of necessity will be further examined later in this chapter.
PART II: Walzer’s Perspectives on War

In Walzer’s book, *Just and Unjust Wars*, he takes a rights-based view of morality in war, but allows for utility calculations constrained by the absolute rights of noncombatants. That is, it is sometimes acceptable to aim at an enemy combatant, knowing that noncombatants might be injured or killed in what has been termed the *doctrine of proportionality* and the *doctrine of double effect* (Walzer 146).

The utility calculations that Walzer is alluding to allow for rights-based ethical views to allow for foreseeable but unintended harm (235). Walzer believes that war, generally speaking, is not best prosecuted under utilitarian calculations. Specifically, he is concerned that utility calculations can be too easily made in self-interest by belligerents. However, there are times when utility calculations are unavoidable, yet Walzer admits that determining when and how they apply is difficult (perhaps impossible). Ultimately, utility calculations need to be made responsibly, and only in cases of emergency (such as the carpet bombing of munitions factories in Germany during WWII) (Walzer 258-268). Even in these times of emergency, proportionality still needs to be respected.

A classic example of a double effect situation arises in the hypothetical of providing life-saving healthcare to a pregnant agent, but results in the death of the fetus. If one believes that abortion is immoral, then one might still concede that abortions are acceptable to save the mother’s life. In this situation, the aim of the procedure is not to kill the baby; it is a foreseeable but unintended consequence (Foot 1).

Similarly, the doctrine of double effect distinguishes between morally permissible and non-permissible wartime activities. It states that civilian casualties are only acceptable when military targets are the prime target, and only in accordance with proportionality (Walzer 235).
For instance, Wells adds that, “The doctrine provides a useful technique for restraining even the ‘good side’ in war: in World War II, the tactical bombing of military objectives by the Allies was permissible by double effect; the terror bombing of Dresden was not” (235). The doctrine of proportionality is conventionally viewed in two different ways: (a) the reprisal for a violation of a law of war ought to be proportional to the offense, and (b) no act of war should cause havoc disproportional to the value of the gain to be achieved (Wells 145).

The most basic tension in war is the tension between, as Walzer puts it, “winning and fighting well” (225). In practical terms, this means that sometimes a state may be tempted to do whatever it takes to win, even if it violates international law. Other times, the international community does not prosecute lowly soldiers that obey the war convention, but whose cause is unjust. Walzer maintains that nonviolence is only possible with aggressors who share similar codes of morality with the invaded. Fundamentally, nonviolence appeals to the moral conscience and restraint of the occupying soldiers. If these soldiers have no restraint, then the civilian populace will either capitulate or be exterminated (Walzer 330).

In addition, Walzer also attempts to overcome those who are pragmatic ‘realists’ about war and international politics. The term ‘realist’ is used to designate those who believe that there is no morality or justice in war no matter how compelling the circumstances for it may appear. Per the realist, war is governed by necessity (varying according to the whims of existing political leaders), and necessity dictates the actions of the communities that are embroiled in conflict. Walzer rejects this claim by reference to the morally loaded words of conflict such as ‘atrocity,’ ‘massacre,’ ‘self-defense,’ and ‘cruelty.’ These terms carry moral weight when they are used, and because these terms are applicable to war, then there must be some moral dimensions of war that can be analyzed and discussed (Walzer 11-13).
Walzer claims that the term “necessity” has often been used inappropriately in war. He recounts part of Thucydides’ *History of the Peloponnesian War*, and examines a dialogue between the Athenian and Melian generals prior to the Melian slaughter to describe the necessities of the situation (5). The Athenian general speaks the famous line, “…They that have odds of power exact as much as they can, and the weak yield to such conditions as they can get” (qtd. in Walzer 5). Those that do not conquer, the Athenian general seems to claim, risk losing what they already have, as they would appear to be weak and open to attack, thereby creating the “necessity” for war as the only viable alternative. Therefore, by necessity, Athens must conquer and force Melos to submit. From this perspective, it is inappropriate to morally criticize what occurs in war just as it would be inappropriate to morally criticize a lion for devouring a gazelle.

Walzer asks his readers to consider what the term ‘necessity’ means in the above context, and how that term may have different connotations depending on perspective. For instance, Walzer maintains that ‘necessity’ can mean both ‘indispensable’ and ‘inevitable’ depending on the circumstances (5). To the Athenian general, it might have seemed necessary for the empire to conquer Melos and indispensable to slay all the men of military age to prevent revolt, but did it appear this way to the politicians and citizens of Athens? Surely, it did not appear this way to the rest of the world. The conqueror of Melos (or the fall of Athens lacking said conquer) was not inevitable, it was a set of probabilities. Probabilities in war carry risks, both strategically and morally, that can be debated and weighed (Walzer 8). The worry Walzer has is that the endorsement of the pragmatic realists’ position will allow belligerents to stipulate what is necessary in accordance with their own self-interest. War makes difficult decisions even harder, and we ought not lightly invoke “military necessity” during wartime activities when such necessity includes harming civilians.
The Athenian claim to necessity appears to fail on both the 'inevitable' and 'indispensable' accounts. Furthermore, the Athenian general believes his actions need to be justified, and this is evident by his defense that Melos would have done likewise had they had the power to do so. This undercuts the notion of necessity, as necessary actions need not be defended. During World War II, the Polish did not need to offer justification for resisting the Nazis: it was necessary and imminently obvious that their existence depended upon resistance.

Walzer claims that wars are judged from two viewpoints: its cause (*jus ad bellum*), and the manner of its execution (*jus in bello*) (21). The two judgments are logically independent from one another; a war with a just cause might be carried out unjustly (perhaps using biological weapons), and an unjust war might be fought without harming a single noncombatant or violating the war convention (Walzer 21). In addition, Walzer argues that war is a rule-governed activity, it is coercive, and in keeping with the definition above, it is a relation between political entities rather than individuals. These are important factors because they support what Walzer claims is the moral equality of combatants (or MEC). A state might start a criminal war of aggression, but they conscript innocent citizens to fight for the unjust cause. If individual soldiers are not conscripted, then there are usually other factors (such as social sanctions) that compel citizens to enlist voluntarily, albeit reluctantly. Thus, regular soldiers on all sides are not criminals and are equally blameless (Walzer 36-47).

When soldiers freely choose to fight one another as enemy combatants, their actions in the war are not crimes per Walzer. It seems to be the case, though, that even professional career soldiers often fight unwillingly. The majority would prefer to not fight because of personal risk and differing views concerning the legitimacy of the war. Therefore, it is morally problematic to treat them in certain ways, such as executing soldiers who have surrendered. When soldiers
without freedom fight, it is a crime, but it is not the crime of the soldiers. It may appear paradoxical to assert that aggressive war is a crime, but not of the soldiers fighting it. Walzer explains this as the differences in *jus ad bellum* and *jus in bello*. With respect to the former, it is the decisions of political leaders, not soldiers, to declare war (and thus no fault of the soldier). Soldiers only have control over *how they fight* in war. However, even this element is largely dictated by a state’s political leaders.

There are two sets of rules regulating soldiers’ equal rights to kill. The first designates when and how they may kill, and the second designates whom they may kill (Walzer 41). The first set of rules is fairly unimportant to the general morality of war. A rule prohibiting hollow-point rounds, which increase in diameter upon impact, might prevent needless suffering to soldiers who have already been put of combat by being struck, but it does little to fundamentally change the morality of war. After all, the soldiers in question are already vulnerable to lethal attack. It is the second set of rules that Walzer is more concerned with, as he believes these rules to strike closer to universal ethical principles (42).

The second set of rules indicates that war is only a legitimate activity if it occurs between combatants. Noncombatants are innocent and are therefore immune from attack by combatants. Unfortunately, the rules regarding who is liable to attack are incomplete and incongruous (for a more extensive discussion of ‘liability’ in war, see Part III, below). War is a social convention, and the rules governing war change as society changes. Walzer hopes to clarify and strengthen these rules.

The war convention, per Walzer, is the “set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct” (44). The exigencies of any war are complex, and so it
is difficult, if not impossible, to develop an enduring and universal war convention. Values, laws, technology, and geopolitical borders all change over time, and new generations apply new concepts to the war convention to the point where some have argued that the war convention is unnecessary, or even a roadblock to a speedy conclusion to war (Walzer 47).

From this perspective, it may seem difficult to understand why anyone would obey the war convention if flouting it can reduce suffering or expedite the ending of hostilities. One reason to obey the war convention is that we would like our enemies to obey it as well. Most countries do not enter a war if they believe it would be unjust. Justifications are always offered for going to war. If every country always believes they are morally and legally in the right and ignores the war convention to expedite victory, then there is an overarching risk of total war without any corresponding restraints.

Moreover, Walzer claims that aggression is the only crime a state can commit against another state. One of the reasons aggression is a crime is that it forces citizens to fight for their rights, and one should not have to face lethal force to secure basic rights (Walzer 51). He claims aggression is an interesting crime because it does not admit of degrees for those involved. A limited war is just as devastating to those involved as a total war. Irrespective of the response on the part of the invaded, Walzer’s six fundamental tenets of aggressive war are as follows:

1. “There exists an international society of independent states.

2. This international society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty.

3. Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.

4. Aggression justifies two kinds of violent response: a war of self-defense by the victim
and a war of law enforcement by the victim and any other member of international society.

5. Nothing but aggression can justify war.

6. Once the aggressor state has been militarily repulsed, it can also be punished” (Walzer 61-62)

The historical record confirms that wars of aggression are commonplace, but Walzer argues that potential wars (e.g., a state building military strength or positioning troops aggressively along a frontier border) exist along a continuum. At one end of the continuum, there exists something akin to a “reflex”; this reflex would be a preemptive response to an imminent attack that has not yet occurred (e.g., enemy bombers overhead that are about to deliver a payload). At the other end of the continuum are preventative wars, or wars in which a nation launches a first-strike attack to keep a potential threat from becoming an actual threat. As a hypothetical example of a reflex, one might consider what might have happened had the United States acted on the intelligence received the morning of December 7, 1941 concerning incoming Japanese aircraft attacking Pearl Harbor. In this case, a reflexive action, such as shooting down the incoming aircraft, would be completely warranted given the size of the attacking forces. An example of the other end of the continuum, a preventative war, could be the 2003 invasion of Iraq by the United States. Prior to this invasion, Saddam Hussein had issued no direct threat to harm the U.S., yet the U.S. still invaded to prevent Iraq from developing this ability.

As Walzer puts it, the mere augmentation of power cannot be a warrant for war. A state can only respond by force to a state which has issued a credible threat, and the mere augmentation of power is not tantamount to the issuance of a threat (77-79). The moral concerns about preventative war revolve around using force against an agent that has not displayed
malicious intent. In sum, a state can only fight a just war in those cases where another state specifically threatens it. In this regard, Walzer argues that, “A just war is one that is morally urgent to win, and a soldier who dies in a just war does not die in vain. Critical values are at stake: political independence, communal liberty, human life. Other means failing (an important qualification), wars to defend these values are justified” (79-80). As noted above, though, because values change over time, so too do the moral arguments in support of and against wars, including just wars. This issue is also examined at length by Jeff McMahan in his book, Killing in War, discussed below.

PART III: McMahan's Perspectives on War

Throughout history, war has been the catalyst that has compelled otherwise ordinary people to discard, at least for its duration, their longstanding beliefs about the immorality of killing their fellow human beings. In other words, during periods of war, people’s views about killing others are fundamentally transformed from disdain to glorification due (in large part) to decisions that are made by their political leaders. McMahan argues that this transformation of views about the morality of killing during times of war are misguided and flawed because people believe that different moral principles somehow apply in these circumstances (2). This view about a just war presupposes the morality of the decision to go to war and the need to suspend traditional views about the morality of killing.

As mentioned earlier, traditional just war theory is divided into two major components: the resort to war (jus ad bellum) and the way the war in prosecuted (jus in bello). These categories have often been shaped and used by society’s political leaders. The historical record

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4 This was one of the criticisms concerning the Bush Doctrine, which allowed for preventative wars and wars against nonstate actors
confirms that political leaders tend to characterize the resort to war as being morally justified for reasons that relate to the exigencies of the day. Likewise, the way wars have been prosecuted has also depended upon the perceived urgency of situation, with more extreme forms of warfare being tolerated when imminent threats were involved, e.g. the firebombing of Tokyo. Consequently, the morality of going to war can be a highly subjective analysis and depends on the respective views of the belligerents.

When nations go to war for reasons that are perceived as being morally just, they often retroactively excuse themselves if things turn out differently. McMahan notes that, “Our own societies are . . . perpetually in danger of fighting unjust wars” (3). The explanation for this is the concept shared with the Nazis, as well as most peoples throughout history. Namely, the idea that one is permitted to fight in a war that turns out to be unjust in hindsight. Without clear principles dictating how just wars are fought and initiated, there is a real possibility that war will always be initiated and waged largely out of self-interest.

An important point made by McMahan concerns what Walzer refers to as the “logical independence” of the *jus ad bellum* and *jus in bello* components (Walzer 21). This is the idea that just wars can be waged in impermissible ways and unjust wars can be waged in permissible ways. A legal doctrine corollary to this concept is cited by McMahan in support of this assertion: the most basic distinction in the war convention is the one separating the moral framework of *ad bellum* and *in bello*. While the pragmatism of such a distinction is clear, in that it allows for separate judgments regarding the conduct and motives to go to war (and avoids a post-war legal quagmire), it also allows individual soldiers to be absolved of blame, if they obey the convention, no matter their personal cause in bearing arms.
Consequently, even inherently flawed *jus ad bellum* justifications for going to war on the part of all belligerents means that all combatants are moral equals, per Walzer, provided they are also bound by *jus in bello* principles. This moral parity implies that soldiers are not blameworthy for the harms incurred merely from a war being prosecuted without a just cause. Rather, they are only held liable for violations of *jus in bello* (McMahan 83). Unlike ordinary combatants, though, political leaders are not allowed to use violence to prosecute an unjust war with impunity, and those that do are frequently held accountable to the international community for their actions.

Many soldiers willingly risk their lives because they sincerely believe that their cause is just and that they are fulfilling their sacred obligations as military agents of the state. When political leaders frame an unjust war as a morally just war, if McMahan's considerations are taken in to account, then these soldiers might have second thoughts. Their willingness to become part of a military machine that is waging an unjust war ought to waiver, as their leaders lack the authority to absolve them from their personal accountability. In this regard, McMahan makes the point that leaders do not have a “claim right” to command its citizens to participate in an unjust war (91).

McMahan maintains that the conventional view, which he does not endorse, is that the unique circumstances characteristic of wartime require extreme actions that would not be morally acceptable at any other time (Walzer 36). Under this view, it is possible to gain the moral high ground by legitimately depicting the enemy as a direct threat to a nation’s security. He cites the example of innocent civilians being attacked by unjust combatants in violation of the recognized principles of *jus in bello* as well as *jus ad bellum* wherein the innocent civilians arm themselves in defense. At that point, they become enemy combatants, thereby satisfying the
moral requirement for the attack and making the initial action justifiable (McMahan 14-15). Clearly, in McMahan’s view, this is untenable; self-defense from lethal harm ought not to allow one to be further harmed. However, it directly affects the criteria that are used to frame a war as just as well as to the extent, if any, to which unjust combatants can claim they were not accountable for their actions.

To clarify his position, McMahan discusses the distinctions between the notions of liability and desert. If someone is liable to be attacked, then one is not wronged when they are attacked. As an example, one might imagine a bomber delivering its payload upon a tank munitions factory and its laborers. It is not quite correct to say that the factory deserved to be attacked, because to deserve harm, the entity must have done unjustified harm. As McMahan puts it, liability is instrumental (8). The munitions factory, and perhaps its workers, are instrumental to winning the war. If, for example, it was known that the munitions factory was inoperable, then the instrumentality of attacking it might be called into question. Thus, necessity governs liability: if it is not necessary to destroy a munitions plant housing workers, then it is immoral to do so. Because McMahan denies the moral equality of combatants, he endorses a more permissive form of military necessity than Walzer. Unjust (non)combatants make themselves liable to harm, and just combatants are not liable. Therefore, it is preferable to expose just combatants to minimal risk, at the expense of exposing unjust ones to greater risk.

The harms resulting from liability are always bad. When the payload from the aforementioned bomber kills munitions workers, it is not a good thing that they were killed. It might be narrowly understood to be good for the war effort (or some such thing), but after the war is over, most observers would likely regret the unfortunate loss of life. On the other hand,
most people would agree that punishing and executing Nazi war criminals is good, and humanity should feel no regret for doing so.

Additionally, McMahan allows that it is sometimes acceptable to override the rights of individuals in emergency cases. It is often claimed that individual rights can sometimes be overridden by the political will of states irrespective of a state of war (McMahan 10). For example, Typhoid Mary was involuntarily confined by public health authorities although she had not committed a crime per se (Encyclopaedia Britannica), and the rights of habeas corpus have been suspended in the United States during a civil as well as a world war based on this utilitarian principle that the public good outweighs the rights of an individual (Lincoln). In cases where rights are overridden, McMahan claims that their rights are permissibly infringed upon, but that those whose rights are infringed deserve compensation, if possible (10).

PART IV: Reconciling the Opposing Views

McMahan argues against the separation that classic just war theorists, including Walzer, make regarding the differences between jus ad bellum and jus in bello. Specifically, McMahan argues against the idea that an unjust war can be justly fought. It is impossible for unjust combatants to be discriminatory, as just combatants (and noncombatants) are not liable to harm.

Walzer claims that wars between states are best understood as wars fought between collectives: A state is collectively responsible for the actions that take place in war. Therefore, soldiers are not to be held individually responsible for the (un)just wars that their state engages in (jus ad bellum), but they are responsible for their actions within that war (jus in bello). Additionally, Walzer claims that combatants on all sides, while obeying in bello principles, are moral equals.
McMahan, on the other hand, proposes an *individualist account* of collective action. *Individualists* argue that the rules dictating the behavior of states are identical (or very similar) to the rules governing individuals. What is allowable in the name of the group, regarding lethality, is not significantly morally different than what is allowable for individuals of that group. Thus, to know how a state may kill, it is essential to know what is permissible for individuals. Specifically, one ought to investigate what is permissible for individuals engaging in self-defense (Frowe 13; McMahan 83).

Before examining what is permissible in self-defense, it is essential to first examine two principles governing *jus in bello* behavior – the first being the justness of going to war, and the second being the justness of actions within a war. Both Walzer and McMahan agree that there is a forfeiture of moral rights by ordinary combatants in an unjust war. However, unlike Walzer, McMahan maintains that ordinary combatants, like political leaders, should be held morally accountable for their decision to participate in an unjust war, and the distinction between *jus in bello* and *jus ad bellum* should not be too sharply drawn. While it is reasonable to suggest that this argument may have little immediate relevance for the ordinary battlefield combatant who is fighting for survival rather than a given political ideology, it is also reasonable to suggest that these are important considerations because they directly relate to the individual decision to participate in a war from the outset.

There are several considerations regarding what is just conduct in war, but two of the more important ones are, the doctrine of proportionality and the requirement of discrimination. Proportionality has two senses in the context of prosecuting war. The first sense regards *ad bellum* proportionality. This sense dictates when it is proportional to declare war upon another state. To be proportional, the moral benefits of war must outweigh the costs. The second sense,
in bello proportionality, requires that any collateral damage be unintended, or be instrumental (of military necessity) in achieving some (just) military objective. If collateral damage is deemed necessary, then it must be proportionate. For example, it is unlikely that even in a total war situation, genocide would ever be of military necessity, and would thus always be disproportionate. Discrimination is primarily a matter of liability. In this regard, McMahan focuses on liability to explain that an individual is liable to harm if they are injurious or threatening (the Latin term for injurious is nocentes). Noncombatants are not injurious or threatening (or not nocentes), and therefore are not liable to harm. Thus, soldiers must avoid attacking noncombatants because they have not made themselves liable to harm (they are innocent) (McMahan 11).

Using analogy, McMahan employs the concept of discrimination to devastating effect. In self-defense, the attacker is threatening and thus liable to harm. If defenders wound or kill their attackers in self-defense, then they have committed no wrong because the attacker was liable to harm. Defenders are therefore innocent even if they were injurious in their self-defense. It would be absurd to claim that because defenders attacked their attackers, they are now liable to harm. Furthermore, it would be nonsensical to claim that they were moral equals regarding their rights to self-defense. In other words, aggressors are not entitled to defend themselves against those they have unjustly attacked.

As Helen Frowe points out, individualists take the view that the moral principles governing war are derivable from reflection on the moral principles governing the use of force between individuals, primarily through considerations of permissible self-defense (Frowe 31). While self-defense does require retreat under certain conditions, these conditions hardly ever arise in cases of national-defense. Moreover, Frowe points out that retreat is only required in
self-defense cases when the costs of doing so are not great. When retreat involves substantial costs, a potential victim is not required to bear them to avoid defensively harming their attacker. Moreover, in contrast to retreating in cases of personal attack, a nation's appeasement of aggression seems to necessarily involve incurring large costs, even if it does avoid bloodshed. Given these huge political and economic burdens, argues Frowe, a nation is not required to appease aggression. The self-defense requirement of retreat does not translate into the requirement of appeasement when applied to war (Frowe 41).

Unjust wars are crimes of aggression. By being aggressive, or threatening, soldiers in an unjust war have made themselves liable to attack. As it was absurd to claim that the agents engaging in self-defense have made themselves liable to attack, it would be equally absurd to claim that just combatants, defending against an aggressor, have made themselves liable to attack. The devastating consequence of this is that unjust combatants are, in principle, incapable of engaging in discrimination. If they are incapable of discrimination, then they cannot satisfy in bello principles. If they cannot satisfy in bello principles, then they cannot fight justly. If they cannot fight justly, then they are not the moral equals of those who do fight justly. Thus, there cannot be moral equality between just and unjust combatants.

Thus, McMahan undercuts one of the core concepts of Just War Theory: the moral equality of enemy combatants. The concept is a pragmatic one, intended to restrain the conduct of combatants by declaring that soldiers on any side of a conflict are moral equals. It is easy to see why this can be a good rule, for if all soldiers on one side of a conflict are condemned as unjust, then what reason is there any showing restraint at all? If it is already unjust to kill one enemy soldier, then it is unjust to gas ten thousand soldiers. It might be expedient, if one is already unjust, to do as much harm as possible to end the war quickly.
Given the enormous advances in military technology as well as civilian-based information technologies, the qualities of “shock and awe” have assumed new proportions and today, even “a mouse can roar” (Wibberly 5). Therefore, McMahan worries that this pragmatic consideration makes it too easy for countries to fight. In addition, McMahan maintains that the just war theory is deeply flawed. He claims that the war convention’s presupposition that political leaders can sign papers waiving the prohibition against killing others, no matter the cause, is immoral (McMahan vii).

This assertion calls into serious question the morality of serving in the armed forces in the first place, since it is a soldier’s mission to fight wars when called upon by political leaders. Conversely, people living in other countries enjoy a fundamental right to a peaceful existence unless they are personally participating in crimes of aggression. Taken together, these assertions mean that political leaders, as well as a country’s armed forces, are acting in an immoral fashion when they prosecute an unjust war. In other words, it is not just political leaders who are at fault for starting an unjust war; those leaders also need to raise an army from the population to fight their unjust wars; the moral culpability of such an unjust war lies with all who participated, not just the ringleaders.

By dispensing with the MEC, and endorsing a liability-based account of lethal harm, McMahan has created an entirely new set of problems. Under Walzer’s account, posing a threat is sufficient for harm. Under McMahan’s account, posing an *unjust* threat is the threshold for harm. If liability is what dictates justifiable harm, then many unjust combatants are not liable to lethal force. After all, there are many unjust combatants who will never see battle, and even those that do may have been conscripted or might intentionally avoid firing their weapons. More worryingly, many unjust *noncombatants* can be more liable for an unjust war than combatants.
themselves. As an example, consider a CEO of a company such as Boeing. Surely, by providing fleets of fighters, she is more liable to harm than some lowly private cleaning latrines in the combat zone. Thus, either many combatants (perhaps nearly all) are not liable to harm, or many noncombatants are liable to harm. The just combatant is therefore left in an epistemic moral quandary as to whom she may kill (“Duty, Obedience” 162).

PART V: Chapter Summary

In review, an important component of classic just war theory is the moral equality of combatants. A combatant, no matter what side of a war she is on, is the moral equal of any other combatant. The purpose of this notion is that it is hoped to restrict the conduct of war, as well as preserve as many noncombatants as possible. If one were a criminal merely by participating in an unjust war, this could open the door to an unjust army doing whatever it takes to win. After all, those combatants are already criminals for fighting and killing enemy soldiers.

However, this notion of combatant equality might also make it easier for individuals to participate in unjust wars. Moreover, a plausible case has not been made (by Walzer) that only political leaders, and not combatants, are morally blameworthy (McMahan 3). Finally, if the self-defense analogy is correct, then unjust combatants are incapable of discrimination because all their opponents are innocent.

The definition of and conceptualizations about war have changed in fundamental ways, but they all share commonalities concerning the use of force to achieve a desired political outcome. The moral distinctions that have been drawn between just and unjust wars and the way they are prosecuted remains an area of contention, but the distinctions between the morality involved in going to war advanced by Walzer and McMahan make it clear that the reasons for
going to war are as important as the way it is prosecuted. Walzer contends that there is moral parity amongst combatants, while McMahan claims that there is not. If McMahan is correct, then the clear distinctions between the normative categories of *jus ad bellum* and *jus in bello* become much murkier.
CHAPTER TWO

THE NATURE OF DRONE COMBAT: THE PROS AND CONS OF DRONES

Chapter Introduction

This chapter provides a background and overview of war and how it affects views concerning the use of force in relation to automated weapon systems, and a discussion concerning the history and current status of drones. Additionally, the chapter explores the arguments for and against the use of drones, and provides an analysis of the asymmetric warfare argument and the implications of drone use.

Weaponized drones are the current state-of-the-art end product of the evolution of ranged weapons, beginning with sticks and rocks that could be thrown at prey and other humans to avoid having to come into close contact with the target, thereby minimizing personal risk. Innovations in military technology over the ages have introduced additional refinements that produced even greater distances between combatants, such as slings and archery, with even more range being achieved by catapults, ballistae, and trebuchets (which were the nuclear weapons of their age). The age of chivalry that saw knights individually arrayed against other knights in one-on-one combat also witnessed the introduction of the English longbow that allowed lightly armored bowmen to kill these same knights indiscriminately from long distances.

Moreover, the introduction of gunpowder provided the ability for weapons to attack an enemy from even further away, ultimately over the horizon and finally around the globe (e.g.
cruise missiles) in ways that are analogous to the use of weaponized drones. The major difference between these older weapon systems and weaponized drones appears to be the ability of a superpower such as the United States to field these weapons at will. Contrast this advantage with the more limited ability of jihadists who continue to rely on human and vehicle-mounted suicide bombers to overcome these battlefield asymmetries; suicide bombings are a cost-effective alternative to weaponized drones such as the MQ-9 Reaper, each of which cost millions of dollars (Balle). If moral and legal frameworks regarding the use of such technology are underdeveloped, there is a risk wherein asymmetry creates further asymmetry (e.g. more drones and suicide attacks), to the detriment of noncombatants everywhere.

PART I: Background and Overview

Nearly every U.S. conflict since Vietnam has been an asymmetrical one. “Asymmetrical” means that combatants on one side have advantages that far outstrip the other side’s capabilities. These advantages may include training, technology, and manpower. The most obvious form of asymmetry on today’s battlefield is, undoubtedly, the drone. Citing the just war principle of proportionality, discussed in Chapter One, some critics have claimed that this asymmetry is unjust, unfair, or leads to disproportionate risks for noncombatants on one or both sides.

Drones in their modern configuration were first used for military reconnaissance in the early 1960s. These tools have since become weaponized and represent the latest innovation in America’s warfare strategy (Goldstein 337). Many analysts argue in support of drones because of their ability to project America’s military might without unduly risking the lives of troops. Since their widespread use in the Middle Eastern theater of operations, drones have become even more sophisticated and are also being deployed in limited civilian applications (Preble 24). In
response, the Federal Aviation Administration (FAA) has eased restrictions on civilian drone applications and is in the process of reevaluating expanded uses (Preble 24). The FAA requires civilians who use drones, including hobbyists, to register their devices, however (Federal Aviation Administration).

The use of weaponized drones today is based on nearly a century of experimentation, beginning during World War I when the U.S. Navy contracted with Elmer Ambrose to develop “air torpedoes”, or unmanned biplanes launched by catapult (using a dynamite charge). Air torpedoes were crude by modern standards, but they set the stage for modern drone weapons systems that can deliver devastation with purportedly pinpoint accuracy (Preble 24). Despite their poor performance, however, interest in weaponized unmanned aircraft remained strong throughout World War II. The then-newly formed U.S. Air Force experimented using human pilots to take aircraft up and then parachute to safety while the unmanned aircraft proceeded to its target (Preble 25).

Additionally, the cruise missile, developed in the early 1950s, was another unmanned aerial vehicle whose trajectory could be changed en route to its target, foreshadowing the drone technologies that are in use today (Preble 25). Despite these modest technological improvements, however, early versions of drones were unable to maintain a holding pattern and could not return to their point of origin autonomously or through human control (Preble 25). Research by the U.S. government continued throughout the latter half of the 20th century, though, and additional innovations in drone technologies enabled the deployment of modern drones by the late 1990s (Preble 25).

Despite growing domestic and international criticism, America’s drone program is proceeding largely unhindered. In response to the criticisms against drone usage and calls for
their partial or complete ban, numerous organizations have called for amending the Convention on Conventional Weapons (CCW) for this purpose (Franke 121). In fact, even some leading members of the U.S. defense community have proposed a cessation of weaponized drone use until many of the aforementioned issues have been resolved (Franke 121).

Although there is continued support by a majority of citizens in Israel and America, the results of a survey by the Pew Research Center show that most people in 39 out of 44 other countries have reservations concerning the use of weaponized drones by the United States (Goldstein 70). The level of reservation differed from the strongest disapproval rating in Venezuela of 92% to a 67% disapproval rating in Germany (Goldstein 70). While it is reasonable to suggest that reasons for these reservations also differ from country to country and even individual to individual, the overarching criticism of weaponized drones is the fundamental unfairness of the technology on the battlefield. As Goldstein points out, “It is not that drones have allowed the killing of more people than prior technology did, but rather that they have made possible targeted killing conducted remotely--eliminating risk for the attacker but bringing up a host of new questions about war, morality, and killing” (70).

At present, there are several different drone programs in place. The first drone program is the responsibility of the U.S. armed forces and is used in those countries in which the U.S. has actively prosecuted wars, including Afghanistan and Iraq (“Remote-control Warfare” 7). Another drone program is operated by the CIA which is used to target Pakistani and Somali terrorists. The third is a program operated by the Department of Homeland Security for border patrol operations along the Canadian-U.S. border (“Remote-control Warfare” 7).

While many of the operations mentioned above are largely congruent with the general principles of armed conflict, it is clear that the application of just war principles involve
significant assumptions and subjectivity, issues that become even more pronounced when they are applied to the automated weapon systems used in the drone programs.

PART II: Arguments for the Use of Drones

There have been several positive arguments in support of America’s use of weaponized drones and their role in just war applications advanced by U.S. leaders in recent years grounded in just war theory. In 2009, for example, President Barack Obama cited the importance of just war principles in his acceptance speech for the Nobel Peace Prize. In this speech, the President stated:

“[O]ver time, as codes of law sought to control violence within groups, so did philosophers and clerics and statesmen seek to regulate the destructive power of war. The concept of a 'just war' emerged, suggesting that war is justified only when certain conditions were met: if it is waged as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence” (qtd. in Brunstetter & Braun 338).

It is noteworthy, though, that even as this speech was being delivered, U.S. Predator and Reaper drone strikes were taking place throughout the Middle East, including Yemen, Somalia, Pakistan, Iraq, and Afghanistan (Brunstetter & Braun 338).

The arguments for the use of drones are also based on their ability to effectively survey and attack enemy forces with little or no risk to their human operators. As the editors of The Christian Century point out, “With drones, operators sitting in front of computer monitors in Virginia and Nevada can target enemies halfway around the world. When their shift is done, drone operators retire to their suburban homes” (“Remote-control Warfare” 7). Besides being
remotely operated, there are some other advantages of using weaponized drones, including the following:

- The do not have the subsistence needs of the human body;
- They are designed for refueling in midair;
- Drones can remain aloft for days at a time;
- Their surveillance imagery is state of the art;
- They can be equipped with laser-guided missiles;
- They offer precise airpower in almost any environment and,
- Used effectively, they can target terrorists and insurgency groups across international borders, protecting soldiers from harm's way, and (in theory) minimizing the risk of civilian casualties (Brunstetter & Braun 330).

In addition, Franke adds yet two other advantages of using drones:

- The use of smaller missiles; and,
- The tactic to target combatants while they are in vehicles (Brunstetter & Braun 122).

Likewise, the ProCon organization also provides several moral and legal claims in support of the use of weaponized drones by the United States, including the following:

- Drones result in a safer homeland by dismantling international terrorist networks;
- Drone strikes inflict fewer civilian casualties, overall, than other weapons systems (U.S. Military Program, not CIA);
- Drones strikes keep soldiers safer;
- Drones are cost effective when compared with traditional ground and air offensives;
- Drone attacks often (but not always) comport with both US and international law;
- Drone strikes are, ostensibly, placed under a review process and congressional oversight;
- Drone strikes are typically executed with the consent of local governments, and empower local law enforcement and military against well-armed enemies;
- The US risks a technology gap if it fails to continue drone development and employment;
- Allegedly, drone operators face less risk for mental disorders than operators of standard aircraft and ground combatants;
- A preponderance of U.S. citizens support drone strikes (“Should the United States?”).

Indeed, the editors of The Christian Century suggest that the ability to project military capabilities into a theater of operations without risking friendly lives makes weaponized drones the best tool for use against radicalized terrorist groups. In this regard, the editors note that, “When it comes to attacking al-Qaeda, said CIA director Leon Panetta, drones are “the only game in town” (qtd. in “Remote-control Warfare” 7).

Moreover, proponents of drones argue that the U.S. not only has a legitimate right to use weaponized drones, but it has an ethical obligation to do so as well. For instance, writing in the Journal of Military Ethics, Bradley Strawser argues that drones are not only ethically permissible, but, in fact, ethically obligatory (344). This argument is based on what Strawser terms the “the principle of unnecessary risk (PUR)” (344). PUR holds that in the event X assigns an order to Y to achieve a desirable goal (“G”), then X assumes an obligation, ceteris paribus, to select the optimal approach to achieving G that does not expose Y to unnecessary risks, does not make the world a worse place, and is not violative of the demands of justice (Strawser 344). In other words, it is unjust to command someone to assume unnecessary lethal risk in order to achieve a just outcome; strong countervailing reasons must justify any lethal risk. Absent such reasons, exposing a just combatant to lethal risk is morally impermissible (Strawser 344).
Per Strawser, a proponent of armed drones, critics advance six main objections to the current calls for increased drone usage, or unmanned aerial vehicles (UAVs), to protect American lives as follows:

1. UAVs lead to autonomous weapons systems (which are unacceptable) (349);
2. UAVs lead to *jus in bello* violations (351);
3. UAVs lead to mental issues for the pilots (352);
4. Targeted killings are wrong (353);
5. UAVs create unjust asymmetry (355); and,
6. Drone use results in the reduction of the *jus ad bellum* threshold (i.e. war is too easy) (358)

The first claim asserts that drone research will lead to autonomous weapons, and that autonomous weapons are immoral. If true, then it follows that drone research is also immoral. Autonomous weapons would be an unprecedented and radically dangerous technology.

To the first objection, Strawser replies that even if this were true (that drones lead to autonomous systems), it has no bearing on the current issue, which is non-autonomous drones. The objection is an unsubstantiated slippery slope, in that there is no empirical evidence that automated weapons *must* lead to autonomous ones. It is surely possible to push for restrictions on the level of automation. This objection merely, but correctly, notes that we need to create limitations on how weapons research is conducted (Strawser 349).

The second claim asserts that although drones offer better protection to the just combatant, it does so at the cost of reduced discrimination capability. In other words, it is difficult to differentiate combatants from noncombatants while hovering thousands of feet above a target. If true, then drones violate core principles of the just war literature.
To the second objection, if drones do, in fact, lead to *in bello* violations, then it is not drones, *per se*, that are wrong, but their implementation. Discrimination is problematic in war, regardless of what device is used. Furthermore, we have good reason to believe the opposite, in that drones are more accurate as they allow us to see through sand, fire, snow, etc., which is very difficult to do from the ground and supersonic jets (Strawser 351).

The third claim is that drone pilots suffer from unique mental challenges not faced by other combatants. First, they are expected to kill at a distance, from a desk, and then to “clock-out” at the end of the day and interact with regular society. Secondly, the distance from the battlefield means that any mental trauma incurred might not be validated or recognized as significant (in comparison to more traditional fighters). In both cases, pilots are not getting the care they need because their distress is not properly recognized.

In response to the claim that drone pilots suffer PTSD, he responds by claiming we could move the pilots closer to the battlefield, if that would help. We could also offer more counseling. Additionally, we could create a longer and more detailed chain of command such that the order to strike has more moral plausibility. All sorts of combatants incur PTSD. How we treat it is important, but we should not remove a weapon from use merely because it may cause psychological harm (Strawser 352).

The fourth claim implicates drone strikes in targeted assassinations. According to critics, this runs contra to just war theory. Drones either make it too easy or too acceptable.

In response to the fourth claim, Strawser concedes that targeted killings might be wrong, but again, this doesn't only apply to drones. CIA snipers, for example, can be equally problematic. We have control over how we use drones, and we need not use them problematically if we are careful (Strawser 353).
The fifth claim rests upon the assumption that the technology makes war “unfair.” Drone pilots risk nothing, while opponents incur all the harms. This level of asymmetry is unjust.

To the claim that drones create unjust asymmetry, Strawser responds with a resounding “So what?” Strawser rejects the MEC (moral equality of combatants), and thus doesn't think that asymmetry is unjust if it serves the just combatant. Moreover, we crossed the asymmetry threshold long ago with the advent of fixed wing aircraft and other advanced armaments. Again, this is not a problem only for UAVs. Furthermore, this claim leads to a slippery slope in which a nation ought to not seek any advantage over the enemy, and might even intentionally reduce capability to achieve combat parity, putting more rather than fewer in harm’s way (Strawser 355).

The last claim asserts that drones simply make war too easy. The aforementioned asymmetry means countries need not risk much in committing to combat. This situation might lead to the weakening of the last resort principle, resorting in more unjust wars.

Finally, the claim that drones make war too easy is yet another slippery slope. Dispensing with weapons of convenience causes unnecessary risk to just combatants. We wouldn't give up bulletproof vests, simply because they increase the capability to wage unjust wars. This claim fails in the same way as the previous claim. Additionally, this claim is not only applicable to drones (Strawser 358).

In addition, weaponized drones have succeeded in killing several terrorist leaders in Yemen, including Anwar al-Awlaki, Samir Khan, and Ibrahim al-Asiri (Funk 311). These high-level propagandists and expert bomb-makers could not have been targeted easily otherwise (Funk 311). Likewise, Al-Qaeda’s second-in-command, Abu Yahya al-Libi, was killed by a

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5 Walzer’s MEC is the claim that regular soldiers on all sides are equally blameless. For review, see Ch. 1 pg. 17
Predator strike in Pakistan in 2012, resulting in what one analyst described as “a major blow” to the group (Dozier & Santana 1). In sum, there are several valid arguments in support of the use of drones on the battlefield, but there are also some compelling arguments against their use as discussed below.

**PART III: Arguments Against the Use of Drones**

Not surprisingly, the American use of weaponized drones has elicited loud and sustained criticism both at home and abroad (Goldstein 337). In this regard, Franke reports that the employment of UAVs in military operations is one of the most debated topics in the domestic and international media (122). Although the use of weaponized drones is not publicized by the U.S. military, the growing use of these weapons systems in Yemen, Somalia and Pakistan by the U.S. CIA and military have become the focus of increasing concern and criticism (Franke 122).

While drone programs have been both lauded and criticized, some authorities argue that the drone program operated by the CIA is especially problematic. For instance, the editors of *The Christian Century* add that, “The CIA program is the most troubling, since it operates outside the normal rules of military engagement. It is essentially a sophisticated program of political assassination -- a practice President Ford banned by executive order in 1976” (“Remote-control Warfare” 7).

Despite many tactical successes to date, the use of drones against terrorist organizations that routinely operate from civilian-held areas has been controversial. Although drone strikes have killed terrorist leaders and disrupted their operations, drones raise real concerns regarding the just war principle of distinction⁶ (“Remote-control Warfare” 8). Even though improved

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⁶ Soldiers operating under the principle of distinction cannot intentionally target noncombatants. For more information, see Ch. 1 pg. 13
technologies have made drones more accurate than in the past, unintended collateral damage against civilians still occurs.

One such controversial drone strike was the high-profile drone strike against a Doctors Without Borders hospital in October 2015 in northern Afghanistan that killed a total of 22 civilians, including 12 staff members, as well as destroying the hospital’s intensive care unit (Rubin 2). As a result of the attack, this humanitarian organization made the decision to terminate their operations and leave the country entirely, rather than endanger their staff (Rubin 2).

The harsh reality is that U.S. drone strikes have killed far more civilians than their intended targets. According to the editors of The Christian Century, thirty-two percent of those killed in drone attacks since 2004 have been civilians (“Remote-control Warfare” 8). Some estimates place the civilian death rate far higher still. An article in the New York Times suggested that 50 civilians are killed for every intended target by U.S. drone strikes (“Remote-controlled Warfare” 8).

From a just war perspective, risking the lives of a nation’s combatants is preferable to risking the lives of enemy noncombatants. As stated on page 12 of Chapter One, just noncombatants enjoy “maximum immunity,” as bestowed upon them by just war doctrine, meaning that it is always bad to harm them (although still permissible in contexts such as supreme emergencies). However, some argue that the risk calculations typically involved in military operations are brushed aside under drone warfare, because drone operators don’t risk their lives at all (“Remote-controlled Warfare” 8).

As discussed previously, there are at least two different U.S. drone programs under review here (military and CIA). These differences in implementation need to be kept in mind
when discussing the benefits and drawbacks of drone strikes. Given the rise in the use and lethality of drones, especially in regards to the CIA drone program (which takes place outside of traditional combat zones), critics have raised a number of concerns.

First, targeting enemy combatants when they are in countries that are not involved in a legally declared war action violates international law (Shank 19). International law prohibits a country from carrying out military attacks in or against the territory of countries with which it is not at war (Shank 19). This precept of international law has been repeatedly violated by the United States by conducting drone strikes against enemy combatants in other countries in the Middle East and Africa, most notably by the CIA drone program (Shank 19).

Second, the use of drones and weaponized drones, in particular, violates another country’s sovereignty. The UN Charter is specific concerning violations of national sovereignty by other states, and the argument can be made that U.S. attacks on targets in other countries violate this fundamental legal condition. For instance, Article 2(4) of the Charter “prohibits the threat or use of force and calls on all Members to respect the sovereignty, territorial integrity, and political independence of other States” (United Nations). To date, the Pakistani government has voiced its strongest objections against American CIA drone strikes in their country, characterizing them as a “clear violation of our sovereignty and a violation of international law” (qtd. in Shank 19).

Third, given the secrecy surrounding the use of drones, the U.S. intelligence community can act with virtual impunity in carrying out attacks against targets of their choice. Therefore, the argument can be made that the result of the CIA’s lack of transparency and accountability could be an unwarranted escalation in their use that would not require any justification before

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7 Please refer to the Appendix for statistics regarding U.S. military and CIA drone strikes
Congress. As Shank points out, “There is little transparency or accountability. CIA drones are remotely controlled, primarily from Air Force bases in the United States, with no clear accountability, and with the targeting sometimes based on dubious intelligence” (19).

Moreover, the use of drones by the United States raises the military bar for other countries too. Although just a handful of countries currently possess weaponized drones, more than 70 countries have drones they use for other purposes. The argument can be made that the progression to weaponized drones is not only logical, but also unavoidable if left unregulated in the war convention (Shank 19). By deploying weaponized drones, the U.S. is forcing the hand of other countries to respond, resulting in a new type of arms race that can have devastating consequences (Shank 19).

The use of weaponized drones creates what Shank terms “a perpetual state of war” (19). Because an arsenal of weaponized drones minimizes the need for a battle-ready army, conflicts in the future may escalate too readily into violent confrontations. The concept of “force protection,” which places the highest priority on preventing unnecessary harm to military forces, has traditionally made war the last resort option. Weaponized drones alter proportionality calculations and can bypass features of the last resort consideration (Shank 19).

The potential exists for the type of outcome that occurred in the aforementioned drone strike on the Doctors Without Borders hospital that was based on faulty intelligence (Ackerman 2). Unfortunately, this high-profile incident is just one of the latest in a long string of such mishaps that have claimed the lives of hundreds of innocent civilians, a figure that includes many children as well (Shank 19). Notwithstanding their sophisticated technologies, weaponized drones can and do miss their targets on a routine basis.
The use of weaponized drones creates what Shank terms “the concept of a global battlefield” (19), a concept that coalesced following the terrorist attacks of September 11, 2001. Characterizing the U.S.-led response to terrorism as a “global war on terror” instead of a legitimate law enforcement response to domestic and international criminal activities, has created an environment in which international boundaries have lost some of their geopolitical meaning. The potential for a vicious cycle of ever-increasing tensions and conflict may be realized, unless the international community adopts a clear legal (and moral) framework for these sorts of actions. As Shank points out, “In a borderless battlefield, ‘just war’ limits become meaningless and exit strategies impossible” (19).

Rather than enhancing the national security of the United States, the use of weaponized drones against terrorists can create unintended resistance which diminishes security. For instance, Shank emphasizes drone strikes might be al Qaeda's best recruiting tool, as drone attacks incense local populations and are a factor in instigating violent reprisals against the U.S. (19). Given that the United States’ use of drones has resulted in the deaths of many civilians, including children, it is clear that drones are a major source of resentment and anger that is being exploited by terrorist organizations.

Finally, there is a cost criticism. Comparable to using $250,000 “smart bombs” to destroy a $5,000 truck, pragmatic-minded critics maintain that the use of weaponized drones against terrorists in other countries does not provide sufficient return on investment to justify their continued use. Per *Defense Industry Daily*, even bought in bulk, one hellfire missile costs roughly $150,000 U.S. and one Reaper drone costs $42,000,000 U.S. (*Defense*).  

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8 The cost argument is very difficult to assess because much of military spending is not available to the public. Moreover, one would have to compare the costs of alternatives as well.
Shank concludes that, “In sum, drone warfare-conducted by pilots thousands of miles away, disregarding national borders, unregulated by law, and lacking accountability by transparency or oversight is a neither a just nor moral way for the U.S. to respond to terrorist threats” (19). Clearly, just as there are many arguments in support of America’s use of weaponized drones, there are also some compelling arguments against their use. This debate boils down to the fundamental issue of what practices constitute a just war approach on the 21st century battlefield.

By using weaponized drones, the U.S. creates an asymmetrical environment in which it is unfairly able to use expensive military technologies against combatants that lack this capacity. The use of weaponized drones by the U.S. causes increasing concern from critics across the globe (“Remote-control Warfare” 7). The collateral damage routinely exacted on civilian populations provides radicalized elements in targeted populations with visceral evidence of their claims to the United States being a foreign devil that is waging war on their religion (“Remote-control Warfare” 7). In this regard, David Kilcullen and Andrew Exum, former advisers to General Petraeus in Iraq and General McChrystal in Afghanistan, respectively, report, “Everyone [sic] 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” (qtd. in “Remote-control Warfare” 7).

These observations hint that the associated negative blowback from the populations of targeted countries might outstrip the tactical military successes of weaponized drones. As the editors of The Christian Century conclude, “Drone warfare no doubt strengthens militants' resolve to secure weapons of mass destruction to use against the U.S. The use of drones may well come back to bite us” (“Remote-control Warfare” 7). The potential for the use of
weaponized drones to “bite us” can assume several forms. For instance, Sanders cautions that weaponized drones will motivate nation-states as well as non-state actors to develop countermeasures or alternative unconventional tactics to retaliate, resulting in a vicious cycle of asymmetry (Sanders 141).

It is also important to note that while other alternatives may carry some risks, the exigencies of wartime mandate that some level of risk is acceptable. For instance, returning to Strawser’s PUR (principle of unnecessary risk), Galliott notes that, “Strawser’s principle holds that only the least risky alternative must be selected. It does not demand the avoidance of all risk” (44). Strawser takes PUR to be uncontroversial; however, it is also important to determine with some precision what “risk” actually is. The risk to combatants may be lowered to such a degree that enemy combatants choose to engage the foe elsewhere, for example, by attacking noncombatants. This could include targeting drone operators’ families, or using human shields.

Nevertheless, in what Strawser terms “a principle of unnecessary waste of scarce resources (PUWSR),” the use of weaponized drones just makes good military sense because they provide a viable, cost-effective, and less risky alternative to other options that would place friendly combatant lives in jeopardy unnecessarily. If taken to its logical conclusion, the PUWSR argument would also mean that the conventional tenet of proportionality in the just war tradition becomes less intelligible.

*In bello* proportionality requires that aggressors be met with proper force. As an example, it would be disproportionate to burn down an entire village because one villager was a resistance fighter. The problem with Strawser’s principles is that he seems to be unaware of certain risks involved in drone strikes. Referring to the appendix, one can see that the civilian casualties from CIA drone programs are much higher than those drones used by the military. It is difficult to
state with certainty why this is the case, but it would be prudent to wonder if this disparity stems from the lack of humans involved. Under the military program, drone strikes take place in well-defined battlespaces such as Afghanistan and Iraq. The CIA program, on the other hand, often takes place outside of such contexts, such as Pakistan and Yemen. It is plausible to believe that the number of friendly troops in the area significantly increases the reliability of intelligence reports, thus resulting in less unintended harm. If it is true that human intelligence is the deciding factor in noncombatant deaths, then Strawser’s claim that drones are *ethically obligatory* looks less appealing. He goes as far as to claim not only are just combatants to be protected from any “unnecessary” bodily harm, but that we ought to purchase far fewer traditional aircraft in favor of more drones, in accordance with his PUWSR.

Moreover, CIA drone programs often have used *disproportionate* force. There have been numerous accounts of so-called “secondary strikes” wherein the drone launches its second missile, minutes after the first. This behavior is unacceptable in land warfare, but it is less clear regarding drone strikes. The Geneva Convention is explicit in prohibiting attacks on wounded combatants, but the more we rely on drones, the fewer options we have in dealing with these sorts of situations (Geneva Conventions).

In both of Strawser’s principles, there is some vagary about what, exactly, counts as “unnecessary.” Below, I discuss a different principle which I think better comports with how proportionality is classically understood. Without more explication from Strawser, what counts as “proportional” when one side risks next to nothing, while the other risks life and limb, is unclear.

Furthermore, if Strawser does not properly consider the external risks associated with drones, then contra Strawser’s PUR, it might be the case that we need to spend more on security
to protect the noncombatants that enemies seek to target in retaliation. This, in turn, will affect how he justifies his PUWSR concept, because he claims that alternatives to drones waste scarce resources, without realizing drones have external costs. The calculations Strawser uses to justify drones are egregiously simplistic. Given drones today, they are “successful” precisely because we have such asymmetric situations that the proportionality aspect of just war theory is disregarded.

Undermining a fundamental tenet of just war theory clearly represents a clean break from the traditional just war doctrine. Perhaps Strawser’s PUR can be salvaged if tweaked to a “principle of justified risk (PJR).” Some believe that the U.S.-led invasion of Iraq led to a concentration of insurgent force in the region. In a way, this can be seen as useful in that it served to pull these fighters out of other areas where they might cause mischief. If that is the case, it appears that there is a certain level of risk that a combatant might need to bear to protect noncombatants. We might say that whatever level of risk results in the most efficient reduction in noncombatants deaths is obligatory under PJR. Moreover, as stated previously, combatants provide valuable human intelligence which results in more proportionate responses. However, it is an empirical question as to whether a combatant assuming a certain level of risk is useful in “pulling the enemy away” from noncombatant targets.

Regardless, it is doubtful that Strawser would knowingly endorse a principle that minimizes risks to soldiers in favor of increasing risk to civilians. On the topic of the NATO-led Kosovo Campaign, Strawser claimed that it was the duty of the just warfighter to take additional risks upon herself if it resulted in better shielding innocents from harm (351). In the Kosovo campaign, pilots were ordered to conduct missions at 15,000 feet or higher, as the primary goal was force protection rather than noncombatant discrimination. However, flying at lower altitudes
would have allowed the pilots to better discriminate their targets. This is a clear invocation of the doctrine of combatant priority discussed earlier in the chapter. While not inherently problematic, this doctrine fails to clearly explicate how dearly combatant priority should be held.

Despite the aforementioned assertion from Strawser, regarding the morality of drone use, he seems to have missed an important consequent of his position. The principle of unnecessary risk (PUR) ought to explicitly state that reducing risk to combatants at the expense of an increased risk to noncombatants is unacceptable. Once this is acknowledged, his argument, which claims drones are morally obligatory, is less convincing.

PART IV: Further Considerations; Stand and Fight, or Protect Just Combatants?

The national and international media coverage of weaponized drone use by America has highlighted some of the hazards related to their use (Goldstein 71). Indeed, some analysts argue that drones might even be used against American citizens. For instance, an opinion article by Page noted that the potential exists for the U.S. president to order drone strikes against American journalists working abroad if the circumstances warranted such an action. Citing growing concerns over media leaks of classified information that might jeopardize American troops abroad, Page reports that, “The broad sweep of our government's counterterrorism policy on targeted killings by unmanned drones, coupled with the Justice Department's new aggressiveness against media leaks, makes me wonder whether we [journalists] should watch our step” (11).

The results of an online panel concerning the question of whether it was appropriate to target American journalists working abroad who were preparing to reveal classified information that could result in a terrorist attack or represent a threat to American civilians and military
personnel with drone attacks showed that there were mixed views among the panelists, which included Walzer and McMahan. From Walzer’s perspective, American journalists could not be legitimately targeted for drone strikes under these circumstances because they do not represent a direct threat to the security of the U.S. (Davidson).

McMahan disagreed with this view and argued that under these circumstances, American journalists did in fact represent a legitimate threat and could be targeted for drone strikes if this was the only method available to save innocent lives (Page 11). Notwithstanding McMahan’s qualification that these types of circumstances would be exceedingly unlikely, the argument highlights the growing differences in perspectives concerning the use of weaponized drones (Davidson). While McMahan’s rejection of the MEC makes some sense, it is worrisome that journalists could be deemed “unjust noncombatants,” thus making them liable to lethal risk.

It should be noted that U.S. law stipulates that drone strikes can target American citizens abroad if they are considered high-level enemy operatives that pose a direct threat to national security (Funk 311). This observation is especially salient given the asymmetrical forces that are arrayed against the U.S. and its allies, as well as the dogma that drives jihadists in the first place. For example, Osama bin Laden signed a document that stated that killing innocent civilians was an acceptable practice if they paid taxes to support enemy regimes (Baldauf 6). Taken to its extreme, this line of reasoning would place civilians at risk of becoming targets if they shared a piece of bread or glass of water with a nation-state’s combatants, thereby providing them with support and allowing them to continue to fight. While clearly a difference of degree, the claim that some journalists might unintentionally aid the enemy, and thus could be targeted, shares many similarities with bin Laden’s claim.
On the other side, the opinions of the populations that are targeted by drones also bear scrutiny. The growing body of research concerning the ethics of drone warfare has largely been concerned with the tactical successes of weaponized drones and the corresponding strategic problems that are associated with their use (Goldstein 70). Irrespective of the tactical successes that have been achieved, in a world where manliness and machismo still count for much, militants can claim that America does not want to legitimately “stand up and fight.” The tactics of drone warfare add further hate-filled fuel – and potential legitimacy-- to jihadists’ anti-U.S. rhetoric. As Goldstein puts it, “My contention is that there is an assumption, often explicitly voiced, that by using drones, the United States is in fact fighting in a cowardly fashion” (70).

Remote-controlled warfare in which combatants may never even see each other directly is, per some analysts, being perceived by radicalized militants as taking unfair advantage (Goldstein 70). For instance, Goldstein notes that violence in war is considered appropriate or honorable when personal confrontation is involved, and when enemies share equivalent risks. It appears that a significant change has occurred between contemporary technological warfare, exemplified by the use of armed drones, and the classical conception of honor and courage in war (Goldstein 70).

In sum, this argument holds that the use of weaponized drones represents an advance of military technology that is perceived by some as being “a symbol of America's cultural disintegration” -- a canary of social decline in the U.S. (Goldstein 70). This argument, however, turns on the question of whether the use of weapons that minimize danger to friendly combatants while maximizing the damage caused to enemy combatants is consistent with the historic views about how wars should be fought.
Taken together, the “stand-up-and-fight” argument being advanced by ISIS and like-minded critics of America’s use of weaponized drones flies in the face of the historical record where armed forces have used whatever technologies were available to increase the distance between themselves and their foes on the battlefield. The argument that weaponized drones create unjust asymmetry ignores the fact that enemy combatants routinely employ tactics such as vehicle-mounted suicide bombs (including the aircraft used on 9/11). These tactics provide them with an unjust asymmetric tactical advantage, due to their perceived lack of concern about the loss of their own soldiers and any collateral damage they may cause, raising concerns about what actions constitute unjust asymmetry.

In this environment, characterizing one side’s use of one type of military technology such as UAVs as unjust while ignoring the use of more primitive but equally deadly approaches such as vehicle-mounted suicide bombs by the enemy, is misplaced and hypocritical. While it is important to note that two wrongs don’t make a right, it is not clear what alternatives we have against enemies who care nothing for their own lives or those of others. Accepting the validity of the arguments levelled against Strawser at face value and suspending or cancelling the use of weaponized drones against America’s enemies would create unnecessary risk to America’s armed forces.

Not surprisingly, the principles of armed conflict have created significant controversy among both civilian and military observers because the U.S. and other signatories to relevant Geneva Conventions are required to abide by them, while they are ignored with virtual impunity by many of the aggressors encountered by the American military in recent years (“The Just Distribution” 343). For example, per McMahan, there are many who have insisted that the U.S. and others have become too focused on avoiding civilian harms, to the detriment of their own
combatants and mission success (343). Many of these criticisms were largely in response to General Stanley McChrystal’s July 6, 2009 tactical directive stating that the U.S. cannot win based on the number of fighters killed, but only by first separating insurgents from innocent bystanders (McChrystal).

In a combat theater in which it can be difficult, or even impossible, to distinguish insurgents from “the people,” though, some pundits viewed this directive skeptically. For example, a *New York Times* editorial criticizing General McChrystal’s restrictions on air strikes in Afghanistan claimed, “the pendulum has swung too far in favor of avoiding the death of innocents at all cost. General McChrystal’s directive was well intentioned, but the lofty ideal at its heart is a lie, and an immoral one at that, because it pretends that war can be fair or humane” (Dadkah).

Several other like-minded individuals believe that, while the United States must prosecute a war in a moral fashion, it has a basic right and obligation to ensure that its military forces receive the priority protections these restrictions otherwise impose (“The Just Distribution” 343). McMahan advises that these types of observers believe states are permitted, or perhaps required, to give some priority to the safety of their combatants; this bias may be acceptable even in the face of increased enemy civilian harms. Alternatively, these same commentators might claim that combatants ought to give their own lives greater priority, to some degree, than civilians living in the area. This viewpoint is often cashed out in what is called the *doctrine of combatant priority* (“The Just Distribution” 343).

The doctrine of combatant priority involves a fundamental trade-off between increased protections for military combatants and the corresponding number of acceptable civilian casualties from a just war perspective. This issue forms the basis for much of the debate over the
prosecution of war in an era when only political decisions prevent the use of nuclear weapons and total war against enemy combatants. According to McMahan, the type of choice in just wars of national self-defense is often not between exposing soldiers to greater risk or harming innocents as a side effect of risk mitigation, but between exposing soldiers to greater risk or allowing more innocents to be harmed or killed by enemy forces (343).

This doctrine therefore calibrates the extent to which increased civilian casualties, caused by belligerents, are considered an acceptable price to pay for this priority (“The Just Distribution” 343). These issues have become especially salient in the Middle Eastern theater where radicalized insurgents routinely operate from bases located in civilian areas (Roggio). In these cases, distinguishing enemy combatants from noncombatants (who may also engage in insurgent activities from time to time) creates significant constraints on tactical decision making by battlefield commanders. Moreover, weighing the relative importance of protecting a country’s own military forces and the civilian populace in military theaters of operations is also affected by the fact that defenders are motivated by a variety of reasons to fight that may intentionally or unintentionally implicate noncombatants (“The Just Distribution” 360).

By contrast, though, innocent civilians do not have a corresponding basis for participating in the defense of others and sharing the costs of that defense (“The Just Distribution” 360). In fact, innocent civilians enjoy “maximum immunity” in times of war because they do not have any specific obligation to share in the costs of their defense, and they are exempted from being specifically targeted by military actions against them (“The Just Distribution” 374). This contrasts with other types of civilians, who might support or be complicit in the insurgency in some capacity.
This maximum immunity means it is only justifiable to harm innocent civilians, even as an unintended consequence, when there is a military necessity. In this regard, McMahan claims that just wars of humanitarian intervention include many different sorts of civilians. Examples include just civilians (those supporting just combatants), neutral civilians, and some unjust civilians, who are the beneficiaries and moral supporters of unjust combatants (“The Just Distribution” 375). This breakdown of the actors involved in modern military actions holds significance for the use of unmanned weaponized aerial vehicles, as one of the most touted benefits of drones is to linger on the battlefields for days at a time, thus supposedly enhancing surveillance and discrimination.

PART V: Chapter Summary

During wartime, views about killing people change; actions that would otherwise be regarded as murder during peacetime are considered heroic and patriotic during wartime. However, the exigencies of wartime demand that only certain entities can be legitimately targeted. Nonetheless, there is an enormous amount of latitude in what are acceptable levels of risk for combatants.

Some of the more compelling arguments in support of drone use were shown to include the following claims:

- Their relatively low cost compared to other weapons systems or engaging in ground warfare
- Their potential precision in targeting high-level terrorist leaders in otherwise-inaccessible locations
- Their potential ability to limit civilian casualties
• Their ability to remain aloft for days at a time
• Their ability to keep just combatants out of harm’s way
• Their ability to limit the scope and scale of military actions.

Conversely, critics of drones charge that these weapons:
• Operate outside the normal rules of military engagement
• Raise questions concerning the legitimacy of targeting civilians in other countries
• Despite the purported precision, still kill large numbers of civilians, more in fact than the individuals who were targeted.
• Will lead to an escalation in their use by other countries and the creation of what has been termed “a perpetual state of war” and “global battlefield.”
• Rather than enhancing national security, have become a powerful recruiting tool for terrorist organizations.

Although some analysts argue that the use of drones is in accord with U.S. and international law, critics charge that their use violates international law irrespective of what U.S. laws are in place.

Given the steady stream of successes that have been achieved with UAVs to date, though, it is reasonable to suggest that irrespective of the arguments against their use, weaponized drones will continue to find a place in America’s arsenal in the global war on terrorism. Their use is unlikely to diminish, at least until another conventional weapon that is even more deadly can be invented.

While Strawser’s contention that drones are morally obligatory is suspect, it is plausible that the use of drones is morally permissible in some instances. The arguments between proponents and critics highlight the need for a new moral framework which better assesses the
pitfalls of drone use. This moral framework, termed *jus ad vim*, is discussed in the following chapter.
CHAPTER THREE
CREATING SPACE IN CONTEMPORARY COMBAT: *JUS AD VIM* AND JUST WAR

Chapter Introduction

In order to develop a coherent conception of what *jus ad vim* is, we need to be able to articulate how force-short-of-war (or FSW) differs from war. FSW are actions which ostensibly fall into the *jus ad vim* framework. While, strictly speaking, *jus ad vim* and FSW are different (whereas *jus ad vim* is the normative framework and FSW the actions nominally within that framework), there is little harm in using them interchangeably. A failure to properly delineate FSW will lead to a reduction of FSW to, at best, a special case of war. This chapter explains what *jus ad vim* is, explicates the differences between FSW and war, and explores how this new category might be applied.

PART I: Background and Overview

There has been a growing interest in the appropriateness and legitimacy of using FSW actions against both state and non-state actors in the global war on terrorism. For instance, in his preface to the 2006 edition of *Just and Unjust Wars*, Walzer distinguishes between so-called “measures short of war” (e.g., no-fly zones, pinpoint air/missile strikes, and CIA operations) and “actual warfare” which is characterized by conventional “boots on the grounds” military or large-scale bombing operations (Walzer XIV).
Although measures short of war may rise to the level of acts of war, Walzer argues that “[I]t is common sense to recognize that they are very different from war.” Certainly, both conventional military operations and FSW involve “the use of force”, but FSW interventions are less massive in scope and lack the unpredictable and catastrophic consequences of full-scale attacks used in conventional war (Walzer XIV).

These fundamental differences between FSW and conventional warfare also introduce the need for an ethical framework in which to evaluate them. Walzer introduces “just use of force” or *jus ad vim*. It is reasonable to suggest that the use of *jus ad vim* measures has made state action more palatable to the American public as well as to national policymakers because it offers several attractive options and benefits. For instance, Brunstetter and Braun note that, comparatively, FSW actions present less risk to one’s troops, have a more predictable outcome, and mitigate the risk of civilian casualties (338). Additionally, these actions have reduced economic and military costs. These considerations make FSW actions easier to justify than war (Brunstetter & Braun 338).

There is a general consensus among just war theorists that when a nation is faced with an imminent threat, it has a fundamental right to strike first (Starr 3). There is less agreement, however, concerning preventive war in those cases where the opportunity exists to resolve the conflict through negotiations and other options that include FSW measures (Starr 3). In fact, preventative wars are nearly universally condemned as acts of aggression (Walzer XV).10

Much of the discourse over FSW during the past 50 years has been influenced by the transition of the isolationist U.S. to the world’s leading superpower following the end of World

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9 This first strike allowance is also in accord with International Law. See the United Nations Charter, Article 51 and the Council of Foreign Relations Memorandum concerning Article 51 for more information.

10 Likely much to the chagrin of George W. Bush. For more information, please reference the “Bush Doctrine.”
War II. The author of the famous “long telegram” from Moscow and the U.S. Ambassador to the Soviet Union, George Kennan, outlined America’s containment policy for the Cold War era in a series of speeches concerning FSW in 1946 through 1947 (Sarkesian & Connor 296). In this series of speeches, Kennan made it clear that the United States was no longer able to rely on negotiations to resolve ideological conflicts but rather must accept the reality of needing FSW (Sarkesian & Conner 296). At the time, the purpose of FSW was to replace diplomatic adjudication with a national security policy that would ensure the “promulgation of power” in response to “a mutual and unceasing effort of the two great powers to exert pressure on one another for the attainment of their ends” (Sarkesian & Connor 296).

Kennan also provided an overview of various FSW approaches that included policy and military force, as well as psychological and economic interventions (Sarkesian & Connor 296). To obviate the enormous risks and costs that are associated with waging war, Kennan also established two conditions in which FSW could be used as follows:

1. **The United States must preserve a preponderance of strength in the world.** Kennan spoke not only of military strength and brilliant diplomacy, but also of the moral and political fiber of U.S. society. He shunned rhetorical bluster and empty threats, but believed that to be effective, national strength required a “readiness to use war any time if we are pushed beyond certain limits” (qtd. in Sarkesian and Connor 296).

2. **FSW measures must be employed in service of a grand strategy:** FSW measures are unlikely to be in accordance with *jus ad vim* if said force is not used in a thoughtful manner. Per Kennan, “The United States must select measures and use them, not hit-or-miss as the moment may seem to demand, but in accordance with a pattern of grand
strategy no less concrete and no less consistent than that which governs our actions in war (qtd. in Sarkesian & Connor 296).”

Despite these cautionary conditions established by Kennan, the United States used FSW measures fairly haphazardly throughout Cold War era (Sarkesian & Connor 296). Notwithstanding some of these failures, the containment policy using FSW outlined by Kennan was effective in preventing the United States from going to war with its former World War II ally. A monolithic Soviet threat was the basis for much of the U.S. use of FSW throughout the Cold War, but this changed following the collapse of the Soviet Union in 1991.

During the Cold War, it was at least possible that FSW measures might result in a return to the negotiating table, but transnational terrorists are often not interested in such things. The strategies employed against a superpower with a nuclear arsenal look quite different compared to the strategies used against nonstate actors. While Kennan’s two points above were obviously made with U.S. interests in mind, we can generalize these statements to state that a) no country need tolerate terrorism, and b) all countries ought to be thoughtful in how they use force to deal with such threats.

In an era when increasingly sophisticated military weaponry can deliver massive air strikes from any corner of the world, the need for clear distinctions between FSW and conventional warfare have become paramount. This is especially due to the fact that use of FSW does not necessarily mean these measures are “morally legitimate” or “do not have potentially nefarious consequences” (Brunstetter & Braun 338). As Brunstetter and Braun emphasize, “Just war scholars, however, often do not differentiate between force and war, but rather talk about bellum justum as if all uses of force implied the same moral challenges” (338). As a result, there has been a preponderance of scholarship concerning FSW interventions that apply the jus ad
bellum perspective, but analysts such as Brunstetter and Braun question whether this assumption is warranted. In particular, the question remains whether jus ad bellum offers a useful moral framework for evaluating the types of FSW actions that are becoming increasingly commonplace in the world today.

Analysts such as Brunstetter and Braun have called into question the applicability of conventional just war theory to FSW. There can be serious limitations of ad bellum principles in evaluating emerging conflicts in the international sphere. The proliferation of terror and the rise of precision weaponry, along with increasingly sophisticated cyber-attacks, are putting pressure on the long-cherished sovereignty norm (the violation of which is the typical just cause). The use of FSW actions, such as drones, are beginning to look more attractive for use in failed or failing states. (Brunstetter & Braun 338). It is important to note, though, that Brunstetter and Braun are not suggesting that the just war baby be thrown out with the jus ad vim bathwater. Rather, they are suggesting that just war theory alone lacks the robustness needed to evaluate the appropriateness of FSW measures. For example, Brunstetter and Braun note that, “The jus ad bellum framework does not offer sufficient leverage for assessing the jus ad vim actions that have become the hallmarks of the Obama administration’s approach to combating terrorism” (338).

PART II: Drones, Just War, and International Law

In support of the aforementioned assertion, Brunstetter and Braun recommend tweaking just war theory to accommodate recent trends on the global stage. In this regard, Brunstetter and Braun argue that the normative category of jus ad vim is instantiated via recalibration of the classic principles, and with the addition of a new principle—the probability of escalation (to
war). This new category results in the avoidance of war or, at least, in a smoother and less unpredictable transition from diplomatic measures to war (Brunstetter & Braun 338). However, these analysts also caution that the increased use of FSW measures can be taken advantage of or may create a mindset among policymakers that results in violence being a first response, rather than a last resort.

Taken together, it is clear that the increasing popularity of military-based FSW alternatives has also given rise to increased scrutiny of the rationale in support of their use in light of other effective measures such as diplomacy or economic sanctions. This increased scrutiny has also called into question the application of conventional just war theory to a changed global environment that contains both non-state actors as well as coalescing/proto states such as ISIL, Boko Haram, and Hezbollah.¹¹ It would seem apparent to some observers that the opportunity now exists to prosecute a conventional war ¹² against these actors but it is likely that other observers would argue that mere jihadist saber-rattling does not rise to the level of imminent threat that is required to initiate an all-out preventive war. Furthermore, it is difficult, if not impossible, to enforce diplomatic or economic sanctions against such entities. The recent attacks in San Bernardino, Paris, and Brussels make it clear that these actors are not restricted to a single or few geographic areas but are rather peppered throughout Europe and America (as well as Asia and Africa), whether they are sponsored or simply inspired by extremist rhetoric.

Advocates of preventive war in lieu of FSW measures disregard the changed environment in which burgeoning organizations such as ISIL have emerged. Traditional international laws regarding sovereignty have been called into question as geopolitical borders have become more

¹¹ The question of statehood regarding ISIL is an interesting one, but not one discussed here.
¹² In accordance with the definition of war given in chapter 1, it is not possible to declare war against a nonstate actor. However, this does not mean that states have not tried to do so.
porous, and the potential for nearly failing or failed states to become safe havens for terrorist organizations adds even more fuel to this debate. As Kels points out, critics of FSW measures misapprehend the legal underpinnings of the fight against al Qaeda. Terrorist networks seek safe haven under weak or sympathetic governments, and use that territory as a staging ground to threaten the citizens of other states. This behavior obfuscates the sought-after clarity of interstate conflicts and civil wars—the frameworks upon which the international laws of war are built (Kels B03).

The fundamental right of nations to defend themselves and protect their sovereignty is set forth in Article 51 of the UN Charter (last updated October 2009). While Article 51 guarantees nations the right to defend themselves, the rise of terrorist organizations can make this difficult or impossible. These nonstate actors are capable of launching attacks on targets in other countries using “human drones” in the form of suicide bombers, and cybercriminals enjoy refuge from victim nation-states. This has created a situation in which national sovereignty has lost some of its former significance and created a corresponding need for new perspectives. Exercising self-defense against these attacks necessarily involves breaching the sovereignty of the state that is harboring them when said state is incompetent or complicit.

Despite these constraints on the application of just war theory to this dynamic global situation, there are no “one-size-fits-all” solutions that are available which can be applied with equal effectiveness in every scenario. In this regard, Kels concludes that, “The answer is not, as some commentators would have it, for accountable nations either to throw up their hands in

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13 “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security” (United Nations, chap. VII).
despair or to launch a full-scale invasion. The former would be derelict, the latter disproportionate” (Kels B03). Given that proportionality is one of the defining characteristics of a just war, it makes sense that the use of FSW measures represents the only viable response to other attacks that fall short of the quantum level of all-out war.

In sum, the state actors could elect to do nothing (“throw up their hands in despair”), prosecute an all-out conventional war (“launch a full-scale invasion”) or, more reasonably, apply FSW measures that are intended to address the threat irrespective of the sovereignty issues that are involved. This latter approach is deemed appropriate, notwithstanding the provisions of Article 51 of the UN Charter, because the concept of sovereignty also carries a corresponding obligation (United Nations). Rather than doing nothing or launching a full-scale conventional war, the use of FSW measures is congruent with the observation by Kels that state actors can invoke a corollary of the self-defense principle. Namely, that states can employ force against nonstate actors harbored within another state that is either unwilling or unable to do so itself. This position rests upon the idea that respect for sovereignty is subject to the responsibility of sovereignty. In other words, a state that is truly sovereign has certain obligations to its citizens and the international community: sovereign states must do their utmost to pursue both national and international criminals (Kels B03).

This corollary also means that the overarching goals of those such as the United States must be considered to determine whether FSW measures, such as drone strikes, should be permitted in lieu of other alternatives. From a strictly U.S.-based legal perspective, the use of drones has received affirmation from the U.S. State Department based on lengthy historic precedents, going back to at least 1989 (Kels B03). There is also international precedent regarding sovereignty violations. In 1837, for example, the United Kingdom scuttled the SS
Caroline on U.S. territory because the vessel had been used by North American supporters in the U.S. and Canada to fight the British government (Kels B03). There are more ancient precedents as well; in the 5th century, St. Augustine wrote that a just war could be initiated against a nation that had failed to punish a wrong perpetrated by its citizens (Kels B03).

These precedents, though, do not allow one country to violate another country’s sovereignty without following international law and standards, even if violating sovereignty is done for a good cause. These laws oblige states to conduct military maneuvers in accordance with the standards applicable to military force. Although the law of armed conflict is intended to restrict or prevent many of the horrors of war, it is still quite permissive in comparison to the practices governing day-to-day life (such as law enforcement operations) (Kels B03). Even though it is more permissive, the *jus ad bellum* rights to defend do not obviate the overarching *jus in bello* limitations on violations of sovereignty. For instance, Kels notes that, “In a nutshell, the law [of armed conflict] requires armed forces to distinguish between military and civilian targets and only attack the former, while balancing the unintended consequences to the latter (collateral damage) against the legitimate value of the mission” (Kels B03). FSW actions, in accordance with *jus ad vim*, aim to further limit the permissiveness encased within the *ad bellum* structure. Regardless, without the “grand strategy” mentioned previously, both *ad vim* and *ad bellum* incursions have the potential to unexpectedly increase in scope.

In response to these types of incursions, the term “war creep” was coined based on the private sector’s version of “mission creep” wherein an original assignment becomes conflated with other goals that ultimately expand the mission beyond its original scope and intentions. When countries pursue terrorists or other criminal elements beyond its own borders, the potential for war creep becomes especially pronounced; as Kels emphasizes, “Human rights advocates fret
that an inevitable war-creep in the pursuit of terrorists will convert the entire world into a combat zone” (Kels B03).

There are other factors involved in this analysis that must also be considered before an accurate assessment of the permissibility of the use of FSW can be made, including the potential disruption of the international rule of law. While their use might be regarded as permissible, the question remains concerning whether these FSW technologies are achieving the desired outcomes. Besides the potential for war creep, then, the use of FSW measures transcends the conventional perspectives, rules, and laws that have historically governed military actions. Indeed, according to Lauritzen, “While the legal norms governing armed conflicts and the use of force look clear on paper, the changing nature of modern conflicts and security threats has rendered them almost incoherent in practice. Basic categories such as 'battlefield,' ‘combatant,' and 'hostilities' no longer have a clear or stable meaning. And when this happens, the rule of law is threatened” (Lauritzen).

Rethinking the normative frameworks required to assess combat is necessary in light of the quickly evolving nature of contemporary combat. Hints of such change can be found in President Obama’s speech at the National Defense University. As a response to critics, Obama attempted to defend targeted killings carried out by drones. Essentially, the goal of the administration was to combine law enforcement operations with military operational tactics. The goal of this new model was to capture and interrogate terrorist. However, where this wasn’t feasible, he claimed that the commander in chief possessed the legal authority to use deadly force (Lauritzen).

Obama articulated the defense of such deadly authority (drone assassinations) by advocating a commitment to ethical standards, and a legal right to self-defense:
“This new [drone] technology, raises profound questions—about who is targeted, and why; about civilian casualties, and the risk of creating new enemies… [and] about accountability and morality…America's… claim of self-defense cannot be the end of the discussion. To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance… [Drone technology] also demands the discipline to constrain that power—or risk abusing it” (qtd. in Lauritzen).

He goes on to say that the U.S. would act only “against terrorists who pose a continuing and imminent threat to the American people…and before any strike is taken, there must be near certainty that no civilians will be killed or injured” (qtd. in Lauritzen).

This distinction between wise and legal decisions highlights the conflict between classical and modern interpretations of the just-war tradition. The idea that there is a moral dimension to the exercise of political power, above the responsibility of national defense, is deeply entrenched in classical just war theory. Contemporary invocations of the just-war tradition often assess the use of force to protect bystanders within the context of one state defending its citizens against unjust aggression by another state. However, classical just-war tradition stated that leaders had the responsibility to seek peace and justice (Lauritzen).

The President has articulated something like the classical notion in arguing for targeted killings via drone. In his speech, Obama claimed that where foreign governments cannot or will not stop nonstate actors from killing innocent civilians, the United States will consider the use of drones and targeted killing legitimate. The President, if he is truly seeking peace and justice, has classical just-war tradition on his side in this case (Lauritzen).
In modern times, the just-war tradition has come to be employed in a largely legalistic way. Rather than “wise statecraft” and the promotion of “peace and order,” just-war practitioners came to view only violence itself as the greatest danger to states and people, rather than the absence of order. Thus, force has come to be viewed as rarely justified, and often only in cases of self-defense\(^{14}\), a position in keeping with contemporary international law (Lauritzen).

Despite the apparent confluence of just war tradition and international law, there are good reasons not to fully fold just-war tradition into international law. For example, Laurie Blank, a scholar of international law, notes a tendency amongst those assessing conflicts like Gaza to tally up the innocent casualties on both sides and to declare significant asymmetries as evidence of war crimes. However, Blank claims that, “[W]idely different numbers of civilian casualties between two sides in a conflict says nothing about the proportionality of particular attacks on specific targets” (qtd. in Lauritzen) Rather, proportionality is about deciding whether bystander casualties will be excessive compared to the military advantage gained. “Conflating asymmetry and proportionality is both inaccurate and harmful to the law of war's core purposes...They are simply wholly different concepts: one a factual game of numbers and one a comprehensive legal analysis” (qtd. in Lauritzen).

Frances Kamm, professor of Philosophy and Public Policy at Harvard's Kennedy School of Government, claims that, “[Proportionality is] about whether the harm that will be caused by military action is proportionate to the goal of the war or an individual military action” (qtd. in Lauritzen). Kamm claims that merely comparing numbers of dead is not enough to assess proportionality. The proportionality standard does not determine what is proportionate or

\(^{14}\) As mentioned previously, the Bush Doctrine expanded the use of force to “perceived threats.” Thus, the “just” use of force has expanded, but only time will tell if it has expanded in the appropriate way.
disproportionate; making that judgment takes us beyond the legal framework and into the normative (Lauritzen).

But even if targeted killing is in comport with international law\(^{15}\), it must still survive normative assessments. In terms of *jus in bello*, Obama claims his administration is committed to meeting the requirements of necessity, discrimination, and proportionality, and that drone strikes are the most discriminating and proportionate weapons available. However, there are reasons for concern. The problem is that drone warfare, at least as the United States has deployed it, threatens to erode rather than support order and stability. While drone strikes may offer more precision than other weapons and thus can reduce the devastation of military engagements, they also expand the fight in time and space, and they create a surveillance environment that is indiscriminate and terrifying. Zeroing in on the deaths caused by a missile strike can cause us to overlook the suffering of those living under constant surveillance and threat (Lauritzen).

Because drone strikes have been cloaked in secrecy and conducted in remote regions of the world minimally accessible to watchdogs, there is a distinct lack in understanding their effects. The assessments that do include firsthand accounts suggest that drone warfare does not only threaten terrorists, but significantly upends the lives of noncombatants. “Living Under Drones,” a publication produced jointly from the International Human Rights and Conflict Resolution Clinic at Stanford Law School and the Global Justice Clinic at New York University School of Law, quotes New York Times journalist David Rohde’s account as a Taliban prisoner. “The drones were terrifying,” Rohde wrote. “From the ground, it is impossible to determine who

\(^{15}\) The use of force across territorial boundaries is acceptable under any of three conditions: the recipient state consents to it; the UN has authorized it; or the state using it is defending itself against armed attack or an imminent threat. Although the Obama administration's full legal justification for its use of targeted killing has not been made public, officials have provided enough detail about the policy to suggest that they have attempted to meet these conditions (Lauritzen).
or what they are tracking as they circle overhead. The buzz of a distant propeller is a constant reminder of imminent death” (qtd. in Lauritzen). Rohde called the experience of living under drones “Hell on Earth.” Both “Living Under Drones” and “The Civilian Impact of Drones,” a report jointly produced by the Human Rights Clinic at Columbia Law School and the Center for Civilians in Conflict, suggest that we ought to be sensitive to the cultural, economic, and psychological harm that may befall civilians (Lauritzen). The implications of basing contemporary discussions of the ethics of warfare on Aquinas's insistence that the justification for using force is not rooted in the right of self-defense, but rather in the sovereign's responsibility to secure both peace and order are vast and, potentially, quite dangerous.

Peace and order are vagaries which, almost surely, will be defined differently by different governments. Israel and Palestine likely have very different conceptions of how peace and order are to be instantiated. Again, there are strong reasons for not incorporating this understanding of just war into international war conventions. However, *jus ad vim* might be able to properly embody these ideas. Under direction from entities such as the UN, *ad vim* looks very promising. We need to be careful in allowing *ad vim* actions to be carried out unilaterally; the potential for abuse is quite real.

As examples of the potential for abuse, the Obama administration has declared that any “combat-age male” in an area of terrorist activity can be deemed a terrorist, and drones' Hellfire missiles are fired on weddings and funerals (Pierson B-5). “Secondary” strikes are carried out on first responders who rush to aid those injured in an initial drone strike. Encouragingly, however, the commander in chief has pledged additional restraint in conducting drone strikes. Drone weaponry would only be used in response to “imminent danger,” where capture of a terrorist
suspect was highly unlikely, and where the possibility of civilian deaths approached zero.\textsuperscript{16}

Drone fatalities in Pakistan have been on the wane since 2011, with no drone strikes at all in Pakistan for the past three months. This seems like good news, so it is unclear, why the administration refuses to release drone strike statistics (Pierson). While it is well and good that the Obama administration seems determined to change drone strike criteria, it would be naïve to expect all nations which might try to use drones to be high-minded about it.

With many technological advances, new ethical issues arise. Supporters of drones, for example, argue that they are more accurate and cause less collateral damage; opponents say that by removing risk to personnel, they make it too easy to attack and increase the likelihood of war. Each new technology has its own limits and weaknesses, especially those of their human users, as when crews aim at the wrong targets or doze when they should be alert. Technology never operates independently of either human finiteness or our mixture of good and evil. Changes in the situation do influence many disagreements among just-war thinkers—issues about the use of their criteria for justifiable war.

**PART III: \textit{Jus Ad Vim, Its Challenges, and Its Applicability}**

Some philosophers, such as Helen Frowe, argue that the project of constructing the normative category of \textit{jus ad vim} is unnecessary or even counter-productive (“On the Redundancy” 117). The final project of this thesis is three-fold. First, there is a need for some sort of robust and internationally recognized restrictions on what sort of FSW operations can be executed. Second, it can be shown that \textit{jus ad vim} is both different from and complimentary to

\textsuperscript{16} Encouragingly, the Council on Foreign Relations reports that U.S. drone strikes have dropped from 92 strikes that killed up to 532 people in 2012 to 55 strikes that killed 271 people last year (Pierson, 2014).
war. Third, it is the case that the \textit{ad vim} category can be successfully constructed and implemented normatively, legally, and pragmatically.

First, I would like to begin by restating the definition of war, set out in Chapter One:

\[ x \text{ is a war } = \text{df } x \text{ is an actual, widespread, and deliberate armed conflict between states or state-like entities, including any deliberate and explicit declaration that violence regarding policy or governance is imminent } \]

Next, it will prove useful to revisit the just war principles and compare them to possible \textit{jus ad vim} principles:

\textbf{Just wars must have a just cause.} Typically, a just cause is grounded in self and other defense. Some theorists also allow for humanitarian intervention to serve as a just cause, e.g. preventing genocide. In \textit{jus ad vim}, the just cause threshold will be lower. Whereas a just cause for war is often a fairly large scale, state-sponsored attack, just cause for \textit{ad vim} action might be cyber-attacks, kidnappings, and bombings.

\textbf{Just wars must be a last resort.} All foreseeably successful non-violent options must be examined before war can be initiated. This last resort criterion is not applicable to \textit{ad vim}, because \textit{ad vim} is specifically designed to take place prior to war, precluding it being a last resort. However, there are other last resort measures which can be built into particular \textit{ad vim} actions.

\textbf{Wars are only just if issued by a legitimate authority.} Although necessary, it is not sufficient to have a just cause. Lacking proper authority, it is impossible to enforce the normativity of the war convention, also referred to as \textit{jus in bello}, under which just wars take place. This is unchanged in \textit{jus ad vim}. 

Just wars must have a plausible chance of success. “Alamo-style last stands” are not justifiable because they hopelessly place both combatants and noncombatants at risk of lethal harm. In *jus ad vim*, it is possible to conceive of this requirement as a stricter, negative one. Namely, it must be the case that there is no reasonable chance of failure. This requirement is intended to be complimentary with the *jus ad vim* criterion of “probability of escalation,” discussed below.

Just wars must be proportional both in their overall scope and within each engagement. This is called *ad bellum proportionality* and *in bello proportionality* respectively. For example, a nuclear war is not likely to be proportionate, and neither is an engagement within that war which results in civilian massacres.

The way proportionality is calculated in *ad vim* will be different. There are two sorts of proportionality: *ad bellum* and *in bello*. The former is used to determine whether war is justifiable at all. The latter is used to determine if a certain action is justifiable. The methods of a just war must discriminate between combatants and non-combatants. Just wars allow for the deaths of non-combatants in the event that a military objective, which has been deemed essential to the war-effort, cannot be achieved without this loss of life.

The justifiable use of *ad vim* actions will be wider than those of war, but the costs ought to be narrower. In other words, the permissibility of *ad vim* action will require a lower threshold than *jus ad bellum*, but the constraints on unintended but foreseeable consequences will be greater. Under *ad vim*, it might be prudent to establish that it is unacceptable for noncombatants to be killed. The narrow scope of *ad vim* actions, coupled with the differing last resort constraints and flexible proportionality must be tampered by a very strict discrimination policy.
Finally, *jus ad vim* adds an additional principle: the probability of escalation to war. It is, in a way, created to supplant the last resort criterion in the just war literature (although *ad vim* does not dispense with the notion completely). Before executing any *ad vim* action, the proper authorities must make a careful analysis of the possible repercussions. If it is plausible that the *ad vim* action will instigate a nation to war, then the action needs to be considered as under the purview of classic *ad bellum* requirements.

Now that the principles have been revisited and contrasted, let’s consider some objections to *jus ad vim*. Helen Frowe argues that all violence has the potential for escalation, and thus the criterion proposed under *ad vim* is either useless or counterproductive. It is conceivable that belligerents will intentionally structure their actions in such a way so that it is impossible to initiate *ad vim* action without a plausible probability of escalation to war. If so, then the *ad vim* framework might do more harm than good (“On the Redundancy” 121).

As an example, consider a hypothetical case involving the terrorist organization Boko Haram. Boko Haram has kidnapped hundreds of Nigerian girls, and the Nigerian government has desperately been trying to locate and recover them. Say Boko Haram is consistently keeping these girls around all their fighters, precluding *ad vim* actions such as drone strikes under duress of initiating a war with Nigeria. Within *ad vim* frameworks, Frowe might argue, nonstate actors will be encouraged to engage in similar behavior as Boko Haram to prevent drone strikes on their locations. If true, then *ad vim* frameworks might encourage more violence on the part of these belligerents.

However, creating a *jus ad vim* framework could actually result in better and more proportional responses to the behavior that non-state entities like Boko Haram might perform. It is conceivable that, with tight restrictions on discrimination and collateral damage, *jus ad vim*
could result in a scaling back of the lethal technology which drones now carry. It could force nations to consider how they might employ drones outside of the current binary of pure surveillance and total lethality.

For example, under the current war convention, it is illegal to use any sort of chemical weapon, including tear gas (Palmer). The conventional reasoning is that chemical attacks are “force multipliers,” allowing devastating follow-up attacks. Under an ad vim framework, it might be possible to use these sorts of weapons to incapacitate belligerents we might otherwise kill. Whereas it seems sensible to ban these sorts of force multipliers in war, the opposite is true in FSW.

*Jus ad vim* is needed because war is becoming less common, more expensive, and more destructive. Small scale lethal strikes are becoming the norm. There are many reasons for this change, but I believe two of the major reasons stem from both a utilitarian and economic calculus concerning overall suffering: the widespread and long-term devastation of war is discarded in favor of localized and relatively short periods of violence via FSW actions.

One large reservation regarding the temptation to consider *ad vim* as either a special case of war, or as merely a different form of war is that it expands the moral exceptionability of war, thus making war less exceptional and more mundane. If FSW operations are here to stay, then it is not only the case that creating an *ad vim* framework makes the slope to war less slippery (by adding additional options prior to war), but that refusing to do so might actually make war more likely. Once the criteria for just war are met, then many of the constraints regarding violence are correspondingly relaxed, such as the permissibility of unintended civilian harm.

Furthermore, *jus ad vim* allows us to reconceptualize how we use force against friendly or neutral states harboring belligerents. It allows for cooperation between states against nonstate
belligerents in ways that *jus ad bellum* has not yet explicated. Traditionally, it would be an act of war to carry out violent operations while violating another state’s sovereignty. But *jus ad vim* can allow for these sorts of actions when states fail to fulfill their security obligations within their sphere of influence. The benefits of *ad vim* are most clear when it is the international community (such as the UN) carrying out these sorts of actions. For that to happen, however, states must be willing to relax sovereignty norms (a difficult task, to say the least). However, even without international cooperation, creating *jus ad vim* frameworks can, at minimum, help states better understand exactly how to implement force when war is not desirable or feasible.

Additionally, *jus ad vim* would allow for greater mixing between the seemingly diametrically opposed views of McMahan and Walzer. As discussed in Chapter One, Walzer believes that soldiers on all sides are moral equals, if they obey the war convention. McMahan, on the other hand, believes that individual soldiers need to be held morally accountable for their participation in a (un)just war. I have already mentioned that the proportionality and discrimination constraints in *ad bellum* need to be made more restrictive in *ad vim* actions, but there is also the possibility of creating much higher standards of personal accountability for the individuals engaged in these sorts of operations.

As a rough example, the personal responsibility of a low-level soldier engaged in convoy security during Operation Iraqi Freedom was relatively small. The accidental, though foreseeable, consequences of engaging in a firefight in a densely-populated city would rarely amount to punitive action towards the soldier. But the responsibility placed upon commandos raiding bin Laden’s compound is much higher. Most would agree that these commandos would bear great personal responsibility if they had increased the scope of the operation or had accidentally killed civilians while carrying out said operation. The commanders dictating these
actions would also bear greater responsibility for ensuring the safety of innocents during these sorts of actions. Additionally, FSW actions typically employ less individuals, thus making easier the task of assigning blame for wrongs committed.

Moreover, *jus ad vim* can allow for a level of granularity that is simply impossible for the war convention. Necessarily, the war convention needs to be easily understood and general, so that all countries can readily comprehend what is and is not allowed during fast-paced and often chaotic battle spaces. Rather than trying to messily expand the convention to include more types of actions, it would be better to have a different convention, or even multiple conventions, that includes all the sorts of force that states employ which are not often recognized as war.

The applicability of *jus ad vim* is quite promising. As a hypothetical, consider the situation in Syria. The situation there is quite complex, but there are specific areas that will prove useful to focus upon. Disparate groups of rebel factions have been fighting the Assad regime since 2011. The Assad regime is supported by Russia, both of which have allegedly carried out devastating attacks against both rebels and civilians, possibly including chemical attacks (Syria).

The U.S. is hesitant to put “boots on the ground,” after a few recent misadventures in the Middle East. War, as such, appears to be off the table. However, there are other options which the international community can and has implemented.

First, the U.S. has sent special operations forces to train select rebel groups. Second, the U.S. has also provided arms to such groups. Third, the U.S. has considered instituting a no-fly zone, and has performed both drone and aircraft strikes on select targets. Nominally, none of these actions are tantamount to war, as classically understood (Syria).

However, these actions are quite easy to understand under a *jus ad vim* framework. First, consider the principle of “probability of escalation.” In Syria, this concern is two-fold. First, the
U.S. doesn’t want to antagonize Assad into a declaration of war, and the U.S. also doesn’t want to instigate Russia into a war. Under *jus ad vim*, the proper authorities, likely the President and his advisers, have an obligation to avoid using measures which might provoke either Assad or Russia into an all-out war with the U.S. Furthermore, it is not clear that the U.S. has a proper just cause to invoke such a war. However, it is abundantly clear that, given the severe human rights abuses, something ought to be done (Syria).

Second, consider the “last resort” criterion. Under *ad bellum*, this means exhausting all plausible nonviolent measures before declaring war. Under *ad vim*, it means that there needs to be some sort of safeguards and hierarchies built into the FSW measures being used. For example, a proper *jus ad vim* “last resort” criterion in a situation such as Syria will include fairly benign measures which become less benign as threats become more severe and previous measures fail.

As a first measure, the U.S. might attempt to engage in political discussions to establish ceasefires. When that fails, the U.S. may consider dropping aid into areas with widespread civilian harms. If that proves unsuccessful, special operations forces might be sent to train resistance fighters, to prevent some of the humanitarian catastrophes taking place. When that measure fails, the U.S. might begin providing arms to select rebel groups which have proven themselves to be capable of restraint. Failing that, the U.S. might begin performing drone strikes on select targets in the region, or instituting no-fly zones, all the while taking extreme care to avoid any civilian casualties.

If measures continue to fail at this point, the U.S. might need to seriously consider the principle of “probability of escalation.” As measures become more violent and widespread, the potential for instigating a war becomes correspondingly higher. The U.S. might then need to switch to an *ad bellum* framework, as it assesses whether or not to “send in the troops.”
What I have provided here is a rough sketch of how *ad vim* actions might be instantiated. Some might argue that these measures themselves constitute war, but I think there is historical precedent wherein it is clear that war has not yet occurred. As an example, consider the Lend-Lease Act wherein the U.S. provided arms and materials to the British to help prevent the success of the Nazi regime. Intuitively, that behavior did not itself constitute war, a notion which is further reinforced by the fact that the U.S. entered the conflict with an explicit declaration of war, and a quantum of force, some years later.

As it stands, it is at least plausible that *jus ad vim* carves out a significant distinction from traditional just war theory (or JWT). The *ad vim* framework, while incredibly recent, appears to be promising in regards to regulating the conduct of FSW operations. Given the increasing reliance upon these measures, it is paramount that either the classical conventions, such as the Geneva and Hague conventions, are updated, or that we create new normative frameworks to understand the rapidly changing nature of international conflict.

**PART IV: Additional Concerns**

Although it might be possible to reconceptualize JWT to better accommodate terrorism and other violent nonstate actors, to do so might also correspondingly blur many of the clear distinctions that it can make within conventional warfare. As an example, consider how JWT can practically determine who is or is not a combatant. Under the traditional structure, one might claim that a combatant is uniformed, armed, or both. However, it is increasingly common for certain nonstate actors to be in plain clothes.

Additionally, how we define the concept of “armed” will vary wildly in *ad vim* scenarios. It is not clear, either practically or conceptually, whether a nonstate actor with the capability to
voice-activate or phone activate an improvised explosive device is armed. While many would want to say such an actor is armed, it is easy to see how re-defining the concept under JWT could prove problematic. After all, if it only requires a phone to be considered “armed,” then the term loses much of its meaning, and allows the possibility of greater harms towards undeserving innocents. It is better to continue applying JWT to conventional war and to have a separate theory to address the sorts of actions that employ less widespread and destructive means against ill-defined enemies.

One might respond by saying this is merely evidence that the traditional conventions are proving obsolete, which is an indictment of the dated doctrine more than anything else. It is an inadequate set of guidelines in that it has been unable to accommodate changes in warfare. Moreover, this raises the possibility of dispensing with the classic conventions in favor of new ones better able to accommodate the sorts of conflicts which are commonplace today.

It is true that the classic just war literature, as well as much of The Hague Convention and Geneva Conventions, are not as readily applicable in many contemporary conflicts. However, I do not think it would be wise to dispense with the classic doctrines, because they are very good at regulating what they were designed to regulate: conventional warfare. While we have not seen anything on the scale of World War II in seventy years, it is still quite possible that there might be such conflicts in the future. These conventions have been developed over the last 150 years to prevent some of the worst catastrophes these sorts of conflicts create.

Some might wonder whether the entire ad vim category is dependent on the successful defense of certain FSW measures which are, in themselves, violent. It is easy to wonder whether certain actions, such as drone strikes, can be incorporated into the traditional categories.
However, there are other sorts of activities that I think fit less easily into the *jus ad bellum* framework.

For example, consider the nature of cyber-attacks. While there are a variety of different ways they manifest, not all of them are clearly violent. Some attacks come from state actors, while others come from nonstate actors. Some might amount to “snooping around” on a database, while others might be as catastrophic as shutting down utilities, causing a nuclear meltdown, or influencing a presidential election.

In keeping with the definition of “war” provided previously, some of these attacks are tantamount to war, while others are not. Moreover, the sovereignty question, an important consideration under self-defense and just cause, is quite unclear in the digital realm. While outside the topic of this thesis, I believe that *jus ad vim* could prove quite useful in better understanding the sorts of responses which might be warranted in relation to cyber-attacks.

Therefore, while it might be possible for some critics, such as Frowe, to plausibly argue that certain *ad vim* actions can be incorporated into the just war literature, it is the case that other sorts of actions resist such attempts. It is easy to see why *jus ad vim* can be a useful, and complimentary, tool to the *jus ad bellum* framework.

**PART V: Chapter Summary**

While the ever-changing nature of battle requires continual updates to the just war literature, it is less clear whether the classic conception of *jus ad bellum* is equipped to properly accommodate certain FSW measures. Emerging technologies such as drones and the internet call for urgent regulations which, hitherto, remain largely unmet by JWT. Recent activities, such as state-sponsored cyber-attacks and the crisis in Syria cry out for sensible resolutions and policies which the recently coined *jus ad vim* framework can provide. Further explication, under both the
individual (McMahan) and collectivist (Walzer) accounts, will be needed to better understand how *jus ad vim* should be instantiated.

Classic JWT does a very good job at regulating what it was designed to: conventional warfare. However, this enormous body of literature is tied up in legal frameworks which are very difficult, and potentially disastrous, to renegotiate. Many of the war treaties, such as the ban on chemical weapons, were designed with conventional warfare in mind. Rehashing such treaties, which would require agreements from 193 different nations, with different agendas, is no small task.

However, *jus ad vim* offers a clean slate with which to explore some of these issues. Imagine, for instance, how some of the worst atrocities, such as the Rwandan genocide, might have been avoided or contained, if international actors had the authority to use non-lethal chemical attacks launched by pilotless drones. *Jus ad vim* has the potential to make the world a safer, more responsible place. But without it, it is very possible that drone strikes will continue to be authorized, unabated, by self-interested state actors.
WORKS CITED


APPENDIX
APPENDIX

The use of weaponized drones has expanded significantly since their first reported use against al Qaeda targets in Yemen in 2002 (Holt 20). Moreover, of the 3,000-plus casualties reported from drone strikes in Somalia, Yemen, and Pakistan since 2004, almost one-third have been civilians and of these, about one-in-five have been children (Holt 20). Some additional indication of recent trends in drone usage and corresponding casualty rates can be discerned from Figure 1 and Tables 1 and 2 below.

Figure 1. Drone strike casualty rates: 2009-2014

Table 1: Recorded US drone strikes to date

<table>
<thead>
<tr>
<th></th>
<th>Pakistan (June 2004 to date)</th>
<th>Yemen (Nov 2002 to date)*</th>
<th>Somalia (Jan 2007 to date)*</th>
<th>Afghanistan (Jan 2015 to date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>US drone strikes</td>
<td>421</td>
<td>107-127</td>
<td>15-19</td>
<td>48</td>
</tr>
<tr>
<td>Total reported killed</td>
<td>2,476-3,989</td>
<td>492-725</td>
<td>25-108</td>
<td>420-619</td>
</tr>
<tr>
<td>Civilians reported</td>
<td>423-965</td>
<td>65-101</td>
<td>0-5</td>
<td>14-42</td>
</tr>
<tr>
<td>Children reported</td>
<td>172-207</td>
<td>8-9</td>
<td>0</td>
<td>0-18</td>
</tr>
<tr>
<td>Reported injured</td>
<td>1,158-1,738</td>
<td>94-223</td>
<td>2-7</td>
<td>24-28</td>
</tr>
</tbody>
</table>
Table 2: Recorded US air and cruise missile strikes to date

<table>
<thead>
<tr>
<th></th>
<th>Pakistan</th>
<th>Yemen</th>
<th>Somalia</th>
<th>Afghanistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>(June 2004 to date)</td>
<td>N/A</td>
<td>15-72</td>
<td>8-11</td>
<td>35</td>
</tr>
<tr>
<td></td>
<td>(Nov 2002 to date)*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>US air &amp; cruise missile strikes</td>
<td>N/A</td>
<td>156-365</td>
<td>40-141</td>
<td>79-104</td>
</tr>
<tr>
<td>Total reported killed</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civilians reported killed</td>
<td>N/A</td>
<td>68-99</td>
<td>7-47</td>
<td>0-30</td>
</tr>
<tr>
<td>Children reported killed</td>
<td>N/A</td>
<td>26-28</td>
<td>0-2</td>
<td>0</td>
</tr>
<tr>
<td>People reported injured</td>
<td>N/A</td>
<td>15-102</td>
<td>11-21</td>
<td>5-6</td>
</tr>
</tbody>
</table>

*The Bureau’s estimates are based predominantly on open sources information like media reports. Sometimes it is not possible to reconcile details in different reports. This is why ranges are used for these records of casualties and, in the case of Yemen and Somalia, strike tallies.

It should be noted, though, that the United States is not the only country that uses drones. For example, China, France, Great Britain, Italy, Iran, Israel, Russia, South Korea, and Turkey have all deployed drones for certain applications such as surveillance. The U.S., Israel, and the UK are the only ones that have used weaponized drones to date (Brunstetter & Braun 337). The three main types of weaponized drones currently fielded by the U.S. and their respective capabilities are the MQ-1B Predator, the MQ-1C Gray Eagle, and the MQ-9 Reaper. They are described in Table 3 below.
<table>
<thead>
<tr>
<th>Drone Type</th>
<th>Description</th>
<th>Capabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>MQ-1B Predator</td>
<td>This drone is used for close-air-support, air interdiction, and intelligence, surveillance, and reconnaissance missions.</td>
<td>This drone features as common sensor payload that can carry up to 450 pounds (i.e., two AGM-114 Hellfire missiles), has a maximum speed of 135 mph as well as a multi-spectral targeting system that includes electro-optical/infrared video cameras and laser designators.</td>
</tr>
<tr>
<td>MQ-9 Reaper</td>
<td>This drone is also a multi-mission drone that is used for intelligence, surveillance, and reconnaissance missions as well as tactical strikes. This is the largest and most powerful drone fielded by the U.S.</td>
<td>This drone can carry a payload of almost two tons (3,850 pounds or up to four AGM-114 Hellfire missiles or Paveway II Laser-Guided Bombs and Joint Direct Attack Munitions) at more than 275 mph. The drone features a multi-spectral targeting system with visual sensors for targeting, an array of cameras, a multi-mode maritime surveillance radar, a signals intelligence support measures system, and a communications relay.</td>
</tr>
</tbody>
</table>

Representative examples of these three drones are depicted in Figures 2 through 4 below.

Figure 2. MQ-1B Predator

Source: http://www.designation-systems.net/dusrm/app2/mq-1l.jpg

Figure 3. MQ-1C Gray Eagle

Some indication of the trends in the use of UAVs by the U.S. can be discerned from the total spending, procurement costs, and research testing development and evaluation (RTD&E) expenses for UAVS in recent years. In Fiscal Year (FY) 2012, the U.S. spent around $1 billion total for UAVs, with about $820 million of this figure being spent on procurement costs and the remainder on RTD&E versus just under $400 million in FY2016 with costs divided about equally between procurement and RTD&E (Defense Industry Daily). This means that even as the CIA-sponsored drone attacks continue, military use has declined as the American troop levels in the Middle East have been drawn down as shown in Figure 5 below.
Figure 5. US Drone Strikes in Pakistan, 2004 – 2013

Source: http://drones.procon.org/files/1-drones-images/drone-strikes-large.jpg

Given this enormous investment in technology, though, it is reasonable to posit that the U.S. and other nations will expand their use of drones in general, making the potential for further deployment in weaponized configurations even more likely.