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5

France and the American Drone Precedent

A Consequentialist Response to a Polemical Critique

JEAN-BAPTISTE JEANGÈNE VILMER

One of the manifestations of the current challenges that the traditional notion of sovereignty is facing is the increasing use of armed drones to conduct strikes in contested territories over which states do not have effective control: Waziristan, Yemen, Somalia, and Syria. Roughly eighty states—and even certain nonstate actors—have drones, but only a few currently have armed drones: Israel, the United States, the United Kingdom, Iran, China, Saudi Arabia, the United Arab Emirates, Nigeria, Pakistan, Iraq, and Turkey. But this landscape may quickly be changing. The armament of drones may seem to be a widespread and irreversible trend because of the numerous advantages drones offer—yet drones remain a subject of considerable debate. This is particularly true in France, where the controversial precedent set by the United States (discussed in part in chapter 4 by Fisk and Ramos) is at the center of public debates. As we think about the proliferation of armed drones, it is important to grasp the misconceptions about drones circulating in the public sphere and also to better understand the characteristics specific to armed drones. Reconsidering the misconceptions about drones will allow us to better evaluate whether drones can, indeed, navigate the tension between security, risk, and uncertainty with regard to the terrorist threat that Emery explores in chapter 9 of this volume.

As France contemplates arming its drones, this chapter asks the following question: What have we learned about the specific advantages of drones and their application in foreign affairs from the American precedent? In answering this question, the chapter assesses the legitimacy of armed drones as a means, and targeted killing as a policy, during the past two decades. The chapter is framed as a partial response to correct some of the misconceptions about drones found in Grégoire Chamayou's work *Théorie du drone* (*A Theory of the Drone*; originally published in 2013, and translated into English in 2015). Chamayou has been a critical voice at the center of debates in France surrounding drones; he maintains that drone operators are all "killers" and that the ethics of the drone is that of "executioners."[1] Parallel arguments in the United States have been driven by the antiwar activist Medea Benjamin, as cited by French, Sisk, and Bass in chapter 10 of this volume. Although the literature on drones in the United States is indeed rich, it is beyond the scope of this chapter to fully engage with it.[2] Rather, my examination seeks to incorporate relevant criticisms while meeting head-on the common misconceptions—epitomized by Chamayou's work—about armed drones that permeate the public sphere. Taking a consequentialist approach to evaluate drone strikes by the United States, my primary goal is to argue that, in contrast to Chamayou's claims that drones are part of a "death ethics" projecting Western imperial power, drones provide states with clear tactical and ethical advantages that can, if used properly, satisfy international humanitarian law (IHL) and counter real-world threats. While criticizing elements of the American precedent, I also defend the use of drones for targeted killing as a lesser evil compared with other legitimate alternatives. Challenging Fisk and Ramos's argument in chapter 4, I thus contest the view that the US precedent will necessarily be followed. To this end, I advocate more restrictive policy recommendations for the French to adopt in their future drone policies to address some of Chamayou's more legitimate concerns. A secondary goal of the chapter is to provide a window into some of the elements that shape the debate on the proliferation of armed drones, in France at least, and thus give insight into how the American precedent may (or may not) influence future drone use. Understanding these competing frameworks of the drone debate is particularly pressing given the threat France faces from ISIS, and the measures it might be willing to take in a world of contested and fragmented sovereignty.

CLEARING UP COMMON MISCONCEPTIONS ABOUT ARMED DRONES

The French philosopher Grégoire Chamayou, in his work *A Theory of the Drone*, is guilty of several misconceptions about drones that, if taken seriously,

skew the real concerns at stake in the debate about arming drones. As I have elaborated on elsewhere, Chamayou reduces the use of armed drones to a capitalistic weapon enabling Americans to export their imperialism and oppression, a move that succeeds more in placating the views of political activists than engaging the heart of the drone controversy.[3] In what follows, I take issue with four misconceptions that Chamayou puts forth about armed drones.

The first misconception is that what is presented to us as a drone problem is most of the time a problem with American-armed military drones used by the US Central Intelligence Agency (CIA) for targeted killing—that is, a problem with a policy that is of course debatable but to which "the drone" should not be reduced. This policy of targeted killing is questionable, morally as well as legally, but the end and the means must not be confused. It is of course possible to pursue the same end with other means—airplanes, missiles, helicopters, snipers, commandos, killers on foot, polonium 210, and so on. Conversely, it is also possible to use the same means for other ends; the use of drones for targeted killing is highly publicized because it is the most controversial, but quantitatively it remains very minor. There is a legitimate use for drones in situations of armed conflict, which is no more problematic than that of airplanes and helicopters. That the cockpit is not in the vehicle in the air but somewhere else on the ground does not constitute a relevant difference in most situations.

A second point of confusion to avoid is the one between drones and lethal autonomous weapon systems, commonly known in the media as "killer robots." These are weapons that, once activated, are able to independently—meaning without human interference or supervision—acquire and engage targets, adapting to a changing environment.[4] Contrary to widespread belief, the absence of humans *in* drones does not make them free of humans. For example, running four Reapers involves about 160 people on the ground. Chamayou argues that the human-free nature of drones provides a technological solution to the challenge politicians face in mobilizing support for war. With drones and robots fighting wars instead of citizens, politicians would not need to rally citizens to shed their blood, because they would have a risk-free army to do so.[5] I take issue with this point below—as does Emery in chapter 9 of this book, albeit with an alternative argument.

A third, related point is that despite having no human in the machine, this does not mean that the machine is inhumane. Unfortunately, many drone opponents use this homonymy sophism. The fact that in the machine there is no individual belonging to the human species does not mean that that machine cannot be the least likely to cause unnecessary harm. These are two different things, with no logical connection between them. This homonymy sophism also occurs in the British antidrone protesters' slogan: "We don't want to lose

our humanity." The humanity in question is humanitarian sentiment, and the contention is that drones threaten it because there is no human being in the cockpit. But there were humans in the Halifax and Lancaster bombers that attacked Hamburg in 1943 and Dresden in 1945, and also in the Tornado aircraft that bombed Iraq, Serbia, Afghanistan, and Libya during the past two decades; yet these British antidrone protesters do not conclude that these British planes were more "humane" on account of being manned.

Behind this homonymy sophism, and the fallacious conclusion that drones are necessarily inhumane because they are unmanned, is often the assertion that drones are necessarily inhumane because they kill. Yet unless one is a pacifist, one must accept the fact that killing is the inevitable essence of war. This assertion is based on a naive view of ethics as a doctrine of the good, whereas it is rather a doctrine of the lesser evil and sometimes characterized by moral disagreements with tragic consequences. Chamayou, for instance, asks: "How can one describe as 'humanitarian' procedures designed to annihilate human life?"[6] In fact, no one says that drones *are* humanitarian. Many—including myself—do say that they *can be more* humanitarian than other weapons. This is a very different statement, a relative position rather than an absolute one.

Chamayou cannot deny that there are degrees of humanitarianism in weapons unless he treats all of them as equal. Yet IHL distinguishes among them, forbidding some, permitting others, precisely on humanitarian grounds. If there were no such degrees of humanitarianism in different ways of killing, a principle like the prohibition of means of warfare of a nature to cause superfluous injury or unnecessary suffering—defined as "a harm greater than that unavoidable to achieve legitimate military objectives"—would never have come about.[7] Introduced in IHL as early as the nineteenth century, this principle serves to condemn weapons like expanding or explosive bullets, poison or poisoned weapons, biological and chemical weapons, antipersonnel land mines, and incendiary weapons. Assuming that Chamayou supports these humanitarian principles, he has no choice but to recognize that some weapons respect them more than others, and therefore that it is possible to say that one weapon is more humanitarian in comparison with another. To understand why drones are more humanitarian, we need to delve more into the specificities of drones.

A fourth common misconception relates to misunderstanding the technological advantages specific to drones (and criticizing them as if they brought some radically new element to warfare). In contrast to a common refrain among critics, it is false to assert that drones are different because they are able to kill at a distance without risk. The power to kill without fear of being killed, the absence of risk reciprocity, the violation of Michael Walzer's rule

that "you can't kill unless you are prepared to die"—these are not new to the era of drones.[8] Chamayou invokes the following scenario: Sheltered in a base of Nevada, the drone operator kills from afar (an insurgent, a civilian—can one be sure . . . ?), without being prepared to die himself. The drone thus embodies a dramatic change in the very nature of warfare—combat no longer relies on the concept of shared risk, but on radical asymmetry. What causes moral outrage among drone opponents is the belief that such a fight is "unfair."

But is this really a specificity of the drone? All this is not new. As animals, human beings have an instinct for self-preservation; and as tool-making animals (in Benjamin Franklin's expression), they have always used their ingenuity to protect themselves while killing others. Human capacity for killing at a distance dates back to the Paleolithic era, and always was an engine for the evolution of weaponry (javelins, catapults, bows and arrows, cannons, rifles, revolvers, artillery, machine guns, submarines, airplanes, missiles, drones, and computers).[9]

The first submarines provoked a similar reaction. Before World War I, Adm. Sir Arthur Wilson described them as "unfair, underhand, and damned un-British," and King George V tried to secure their abolition.[10] The French Navy admiral Raoul Castex described them as "invulnerable. For them, the war became a game, a sport, a kind of hunt in which, having dispensed and distributed murder, they needed to do nothing but enjoy the spectacle of the agony of their victims. They, meanwhile, would be sheltered from any attacks and, once back in port, they could busy themselves recounting their hunting prowess."[11] The parallel with the drone debate is striking. Aerial bombing, first from unmanned balloons (the Austrians against Venice in 1849), and then from planes (the Italians against the Ottoman province of Libya in 1911), increased asymmetry, and later made possible the mass killing of civilians at a distance (in Dresden, Tokyo, Hiroshima, and Nagasaki), causing the same outrage.

Therefore, the drone is not the only weapon operating at a distance, just the latest; and it does not change the nature of modern war, which has often been asymmetrical. The drone operator is not threatened by the Afghan insurgent he is killing, but neither is the B-2 pilot dropping his bombs from 8,000 meters, nor the crew of a destroyer launching a missile 1,500 kilometers from the coast, nor that of a submarine hundreds of meters underwater. Remember that in seventy-eight days of bombing and more than 38,000 missions, NATO suffered no loss over Kosovo in 1999. Invulnerability can be obtained with men in cockpits; it simply is much more expensive. The Kosovo intervention provoked the same moral indignation about "riskless warfare," and that had nothing to do with drones.[12]

Some might counter that there is still a difference: The risk taken with a drone is not even infinitesimal (as it can be for pilots and crews in the combat zone) but absolutely nonexistent. Yet, this would still not be applicable solely to the drone, because the chief of staff, at his office in the capital, or those firing intercontinental ballistic missiles, are not taking more risk while making lethal decisions. War has always been safer for some. Moreover, as French, Sisk, and Bass show in chapter 10 of this volume, the risk is never zero for those who operate drones. It is not zero psychologically (studies have found that drone pilots experience mental health problems, in particular posttraumatic stress disorder, not less but at the same rate as manned aircraft pilots).[13] Nor is it negligible even physically, some drones being operated in situ. French surveillance drones were located in Bagram, Afghanistan, a base that has been attacked, and they are currently operated from Niamey, Niger—which could come under threat. The point is that for those on these bases, the risk is real. Moreover, those who speak of a nonexistent risk artificially isolate drones from a more complex system. Drones are not alone; they often support special ground forces, or allied forces (Pakistani and Yemeni, for example), not to mention the launch-and-recovery and technical teams in the zone of combat. Even at home, the US Air Force and CIA operators are at risk; if their identities were to become known, they would be potential targets for a terrorist attack. With drones now becoming airborne symbols of evil, crystallizing terrorists' desire for revenge, this domestic threat for drone operators is real. Therefore, not only is the absence of risk reciprocity not a new phenomenon and not specific to drones, but it is simplistic and false to speak of a "war without risk," as drone opponents often do.

The true specific advantage of the drone is its permanence in the sky—that is, its ability to loiter for long periods—and the intelligence this provides about whom to target. And if drones are armed, the ability to strike is part and parcel of this intelligence. The absence of humans on board permits a massive increase in airborne endurance; manned aircraft must refuel every 90 minutes or so and, due to pilot fatigue, cannot perform long missions (no more than 5 or 6 hours, in general). By comparison, the latest version of the Reaper equipped with additional fuel tanks can fly for 49 hours, and the Zephyr, a solar drone, for 54 hours. Pushing the limits of endurance is one of the areas of research for remotely piloted aircrafts (RPAs) of the future, with plans for solar RPAs and airships that could fly continuously for perhaps several years.

Persistence in flight is the primary operational gain and the true advantage specific to drones. Drones are thus creating the possibility of what some scholars have called "aerial occupation" by replacing the intermittent presence of aircraft with a permanent armed presence over certain zones.[14] Permanently present drones, equipped with sensors, produce actionable intelligence by observing closely what is on the ground for hours, days, or even weeks, which helps in identifying potential targets through an analysis of patterns of life, and seize what might be a narrow window of opportunity to strike a threat.

An unarmed drone depends on the availability of an aircraft to conduct the strike. But in the time period needed for the strike aircraft to arrive in the zone, the target could have moved into an environment where the risk of collateral damage is far higher. If you identified a target's vehicle in the desert, but then need to wait for a combat aircraft to be made available to deal with it, the vehicle could, by the time the aircraft arrives, have moved into town. So it is that the nonarmament of drones reduces choice as to timing and place, and at the same time increases the risk to civilian populations. It also increases the risks to soldiers on the ground. The British quickly realized that their armed drones acted as force multipliers and protectors.[15] Even the drones used today on humanitarian missions, such as that in the Democratic Republic of Congo (DRC) under the UN mandate since December 2014, might someday be usefully armed in an attempt to prevent the abuses that they record.[16]

But even if one gains an understanding of drones in this light, important moral questions about their use remain.

THE MORAL DEBATE: A CONSEQUENTIALIST ANSWER

There is a rich debate about the morality of drones, including about whether they lower the threshold for the use of force, whether they satisfy the *jus in bello* principles, and the extent to which they may undermine democratic accountability. To the extent that Chamayou participates in these debates, it is to completely reject the possibility of drones ever being a legitimate weapon. They are nothing more, to use his words, than "the weapon of an amnesic post-colonial violence."[17] In this section, I explore the legitimacy of drones by taking into account the effects on the ground. My argument is largely consequentialist: I think that the use of armed drones in some situations and under certain conditions produces better consequences not only for "us" (the intervening power) but also "them" (local civilians).

Concerning Civilian Casualties

No one disputes that drones cause civilian casualties, so-called collateral damage. It is inevitable—any weapon used in a civilian area will kill civilians. The debate is, rather, about the number of civilians killed, and more exactly about

their proportion. The various reports show an amazing gap in numbers, from 3 percent (of civilian casualties) to 90 percent.[18] Who is right?

The methodological problem of counting the dead is well documented.[19] Thus, we should be very cautious about how we manipulate numbers, and avoid basing any argument on the number of civilian casualties. But in any case, focusing on numbers is misleading.[20] The ethical argument in favor of drones is not that they are *not* causing civilian casualties, or *few*, but *less* than other weapons. There is no point in waving figures on the number of civilians killed, because they cannot prove that the drones are not, all things considered, the least lethal means of conducting the fight. My argument is not absolutist: I am not saying that drone strikes are intrinsically good. It is relative: I am saying they are a lesser evil.

Chamayou writes that "to evaluate it properly, the drones should be set alongside weapons currently available for the same tactical function. . . . If one avoids being misled by some external attribute, the right form of comparison involves not a similarity of forms but an equivalence of functions."[21] He is absolutely right about this. So what does Chamayou compare to the drone? What alternative should we prefer? He has two answers to this question.

His first answer is "troops on the ground," for which "drones are a very imperfect substitute."[22] He remarks that, "for liquidating Osama bin Laden, the choice was between a drone and a commando raid, not between a drone and a Dresden-like bombing of Abbottabad."[23] But in fact, the choice was between the drone, the commandos, aerial bombardment (by modern bombers, not Dresden-epoch ones), and Tomahawk missiles. And the decision was commandos, not to minimize collateral damage but in order to gather intelligence (a "treasure trove" of more than six thousand documents recovered from computers, hard drives, and USB flash drives), to confirm bin Laden's identity and death, and to remove his body (so the Bilal house would not become a shrine).[24]

It is clearly in the realm of ground operations that Chamayou judges drone strikes. For example, he compares them with the use of hand grenades and concludes that drones are imprecise because the lethal radius of their missiles is 15 to 20 meters, while that of a hand grenade is 3 meters.[25] Defenders of drones, conversely, compare them with the Tomahawk missile (which, in its standard version, has a lethal radius of about 30 meters) or to GBU 12 (laser-guided) bombs (with a lethal radius of about 90 meters). From this point of view, drone-fired missiles are much more precise.

So the question is, which comparison is more relevant: the hand grenade in a ground operation, or the missiles and bombs in an air strike? In other words, what would replace drones if they did not exist, or if we were to stop using them tomorrow? Infantrymen armed with hand grenades? That is not very

likely, for reasons that Chamayou himself points to: aversion to losses—not to mention the political dimension and issues of sovereignty. Lacking drones, Americans would not have invaded Pakistan, Yemen, and Somalia. Instead, they would have fired missiles and dropped bombs, as they did before they had drones. Or they would have waited until the problem called for a larger-scale air campaign. And then it would be not "one drone strike every four days" to complain about but perhaps 10,484 strikes in seventy-eight days, as over Serbia in 1999—that is, more than 134 strikes per day.[26]

So it is pointless to say that the Hellfire missile is less precise than the hand grenade, because the alternative is not the hand grenade. Instead, it should be noted that Hellfire missiles are more precise than their real alternatives—that is, Tomahawk missiles or bombs dropped from planes.

But let us play Chamayou's game for a moment: If we did replace the drone by a ground operation, would that really be better for the civilians? Chamayou avoids saying this, and with good reason. His nostalgia for conventional war favors ground actions because they involve Clausewitzian duels to express authentic warrior virtues, the ethics "of courage and sacrifice" that drones would corrupt into the ethics of "self-preservation and more or less presumed cowardice."[27] This statement attributes to the drone a transformative role that it does not have (for the drone is a symptom of this older change), and more important, it equates self-preservation with cowardice. Quite paradoxically, Chamayou's model is "the Crusader, a figure who more than any other in European history was enamored with classical armament and a desire to kill at close range."[28]

Chamayou need only look to two recent examples that are difficult to ignore—Iraq and Afghanistan—to see how a poor ground strategy can be disastrous for the civilian population. In criticizing Obama's stealth strategy (the trio of drones, special forces, and cyber warfare), he fails to understand that this "smart power" is a reaction against Bush's "global war," and that its purpose is precisely to move beyond the era of large deployments, which are very harmful both for the occupier (in human, financial, and political costs) and for the occupied (despite the minor gains that Orend describes in chapter 13). This movement away from invasion to sporadic drone strikes reduces the level of violence for many concerned.

Chamayou's second answer to the question of the alternative to drones is very simple: nothing. He argues against the claim "that drone use is justified because it would create fewer collateral victims than other weapons that could have been used in its place. What this argument postulates is that those other means really would have been used—in other words, that the military action would have taken place anyway."[29] History already disproves that nothing

would have happened, as the United States did not wait for having drones to strike in the same places, only with other weapons. The only difference is that drones make it somewhat easier and are more accurate. Here, the preventive force norm that Fisk and Ramos point to in chapter 4 is a case in point.

But, for the sake of the argument, let us accept the hypothesis that without drones there would have been no American intervention in Pakistan, for instance. The question that Chamayou does not answer is, would that really have been better for the civilians? In fact, the American actions would not have been replaced by a gaping void, letting terrorism prosper in the region. They would have been replaced by operations that already complement them: actions by Pakistani forces.

For example, from the end of 2008 to the end of 2010, the Pakistan Air Force undertook more than 5,500 sorties and dropped 10,600 bombs on 4,600 targets in the northwest tribal areas.[30] These operations had many casualties. It is even likely that some of the casualties attributed to American drones were in fact casualties of Pakistani aircraft, for village witnesses blaming drones contain some incoherencies (drones do not fly "in pairs sometimes three together," and they do not make a "loud sound").[31]

Moreover, Pakistani forces conducted major ground offensives that caused large population displacements. The Second Battle of Swat (April 26–July 15, 2009) killed nearly 2,000 people and displaced 3.4 million. There is no evidence that drones have this perverse effect, but there is evidence that the Pakistan Army uses indiscriminate weapons in places where combatants and civilians mingle. It is also known for its abuses—thousands of extrajudicial executions, arbitrary detentions, the torture of men and children, and so on.[32]

Drone strikes should not be compared with "nothing," and not even with "peace," but rather, with the imprecise weapons and brutal methods of the Pakistan Army. Obviously peace is preferable to drone strikes, but if they were to stop tomorrow, peace would not descend on Waziristan, because the insurgents would still mount their attacks (as they had before the appearance of drones), and the Pakistani Taliban would still want to overturn the government; the only difference would be that Pakistani forces would redouble their efforts to conduct more anti-Taliban operations.

What the Amnesty International reports unintentionally demonstrate is that actually there are far fewer civilian casualties from American drones than from the armed groups that they are fighting against, or from the Pakistan Army, which is also conducting operations against those groups. However, by taking the absolutist position of denouncing everyone—the armed groups, the Pakistan Army, and the American drones—Amnesty International can express indignation about the civilian casualties of the drones, without noticing the

relationship to the others, because their point, like Chamayou's, is simply that *drones are wrong*.

Against this attitude—seemingly noble but in fact supporting a policy that would maximize the misery of those living in the afflicted region—I would appeal to Raymond Aron's more realistic observation: "Politics is never a conflict between good and evil, but always a choice between the preferable and the detestable. It is always so, especially in foreign policy."[33] In the case at hand, this means that one cannot consider two evils equally reprehensible if removing the lesser one means strengthening the greater one; stopping the drone strikes would encourage the Pakistan Army to conduct more operations that would likely produce many more civilian casualties than are currently produced by American drones.

Other Consequences

There are additional issues with the consequentialist approach that are more difficult to resolve. For example, calculating their efficiency: Are drone strikes reducing the security threat or, on the contrary, increasing it? In other words, do drones really make the United States safer? This calculation uses four criteria.

The first criterion is the impact on al-Qaeda. On one hand, drones eliminate terrorists and therefore weaken certain networks. But not all of them are important. It is estimated that only 2 percent of victims are "high-level" targets. Even if immediately replaced, the loss of these leaders disorganizes the network and puts the new leaders on the run, creating additional stresses, and so on. Bin Laden's writings found after his death confirmed that he deplored the impact of drone strikes and recommended that leaders leave Waziristan and find safer havens. On the other hand, the correlation between drone strikes and the decline of al-Qaeda activity has not been proven. The link is not necessarily causal, because there are many other factors to incorporate. Moreover, the dispersal of al-Qaeda away from Waziristan to other regions, like the Sahel or the Middle East, is problematic and raises additional concerns.

Second is the impact on the civilian population: The negative impact of drones on the population is an effective tool for recruitment and motivation of the armed groups. Obama's drones, from this point of view, have the same perverse effect that Guantánamo had for Bush: They have become symbols of oppression. But we need to be careful here, and not simplify the problem; not all local populations are against drone strikes. It depends on the frequency of their use and government propaganda. Yemen and Pakistan are very different in this respect.[34]

Third, as Brunstetter notes in chapter 11, there is an impact on bilateral relations and the effectiveness of international law enforcement mechanisms: Drone strikes affected the cooperation between the United States and Pakistan, making antiterrorist cooperation more difficult and therefore less effective.

And the fourth criterion is the impact on international peace and security: The legality of these strikes is at best questionable when the targets are not related to the 9/11 attacks and do not pose an immediate threat to American security. Therefore, they are dangerous precedents that could be invoked by other powers in the future, especially if the benefits of drones—low cost, endurance, ability to penetrate enemy lines discreetly and safely—could encourage states to conduct armed operations that they would not have conducted otherwise. In other words, are drones a destabilizing factor in the international arena?

What happens, for example, when the Chinese use drones to strike Uyghurs in their own territory or in Kazakhstan, or when the Indians strike in Kashmir, the Russians in the Caucasus, the Turks in Kurdistan? Will they invoke the American precedent? Maybe. In chapter 4, Fisk and Ramos reference evidence that the US preventive force policy is already endorsed by countries, like India and Russia, that condemned the preventive force norm at the time of the 2003 Iraq War but now see it as being in line with their own interest. And yet, I find it hard to believe that countries like the ones cited above *need* the American precedent to justify any lethal actions whose legality and legitimacy are questionable. It is not as if they have never violated international humans rights law before. Iran, to take another example, did not wait for the American precedent to arm its drones; it was already using tactical drones, such as the Mahjer, to deliver unguided RPG munitions during the Iran/Iraq War in the 1980s.[35] Today, Iran is using its armed Shahed 129 drones to strike in Syria.[36] Iran, like Russia and China, does not need to invoke a normative framework to justify its actions. The US policy has not been an encouragement for them; it is very likely that, with or without it, they would have developed these capacities and practices anyway when it suited them. Besides, the fact that the British have armed Reapers has not led them to adopt the American strategy of targeted killing.

In short, it is very difficult to take into account all the consequences of drone use. However, this does not mean we should reject drones outright. Nor does it mean we should not try to better understand their impact. It is in the best interest of the American government to reevaluate its use of drones, doing its best to take into consideration in its utilitarian calculus these criteria. To this end, Emery's objections (in chapter 9 below) against any consequentialist calculation are strong; the difficulty is not to assess the morality of a particular strike, or even a drone warfare campaign in a given area, but rather to understand the long-term effects of such a practice, which are unpredictable. The "epistemic argument against consequentialism"—the ex ante impossibility to know the future, and the correlative post facto impossibility to assess counterfactuals—is probably the most common, although not least potent, objection to consequentialism.[37] I fully recognize this difficulty, but I simply do not see a better normative ethic approach—not even the just war tradition—to assess the morality of drone strikes. Deontologism is impracticable if we do not believe in the sanctity of certain principles, and virtue ethics, as shown below, is useful to explain certain resistance to drones, but it is certainly not sufficient to assess the legitimacy of drone warfare and/or targeted killing in general. Therefore, I consider consequentialism to be the least bad approach.

Drones and War without Virtue?

One of the most troublesome aspects of drone strikes, the moral malaise that is noticeable not only in the public debate but also in some military circles, is a concern with the kind of combatant we want to be. Chamayou, for example, suggests that drone warfare is not even war, that their use has totally changed the face of war. For him, drones are part of a global hunt for presumed terrorists, with the United States killing people whose identity they mostly do not know without taking any risk themselves. Here, it is worth noting that Chamayou totally ignores what the terrorists do, making it seem that drones are the only killers in the region. This is the great cleverness of his book; by erasing the reasons for drone strikes, he makes them illegitimate in the eyes of readers who no longer understand what the Americans are doing in Pakistan. Yet, it is rather sophistic to deplore the consequences without presenting the reasons. Chamayou laments that the means are asymmetrical, without observing that they are a response and that what is being responded to is also asymmetrical. Portraying the problem as "a hunter who moves forward and a prey that flees or hides" paints a false portrait of the relationship.[38] The target of the drone, who in principle is supposed to be a terrorist, is not chosen at random but precisely because of what he or she has done, is supposed to have done, or is potentially capable of doing to the hunter, who kills for self-protection.

Still, what bothers many critics is the absence of reciprocity, the perception that it is "too easy." Can a "desk job" still be combat? And what happened to the martial virtues of honor and courage, among others?[39] The importance of virtue ethics when talking about drones is seen in the so-called drone-medal affair. When then–US defense secretary Leon Panetta announced the creation of an award for service members who remotely launch unmanned military

strikes or cyberattacks, and explained that such a distinction would rank higher than the Bronze Star and the Purple Heart, various associations of veterans immediately protested on the grounds that "there is a fundamental difference between those who fight remotely, or via computer, and those fighting against an enemy who is trying to kill them."[40] The Pentagon later suspended the new military medal. What this drone-medal affair reveals is that prestige and military values are still closely linked to the risk taken. That is why many consider drone strikes as acts of cowardice.

What can we answer to such a critique? To begin with, the absence of risk is neither new nor unique to drones, as we saw above. Moreover, such indignation today is based on an outdated premise. War is not conventional anymore—it is no longer a Clausewitzian frontal impact, it is not a duel, and should not be thought of as if it were one. Those who seem to miss the wars of old times where soldiers sacrificed themselves on the field of glory have a romantic conception of war that misses the point that we are now in a postheroic age.[41] In chapter 9 Emery makes one attempt at reconceptualizing these outdated premises and updating our conceptual understanding of risk with his neo-Clausewitzian model for the contemporary era.

All this to say that there is a gap between the perception of what war should be and the reality of what it has become. The perception is still based on the symmetrical model of conventional war (two armies on a battlefield). The reality is that war is irregular and asymmetric, now based on the avoidance of a frontal confrontation; most of the time, the enemy is not made up of traditional combatants in uniforms organized in battalions, but deterritorialized nonstate actors, part-time civilian bombers. In this respect, drone strikes are an asymmetric response to an asymmetric threat.

Even from a virtue ethics point of view, there is a conflict of virtues. Courage is not the only military virtue. Honor is another one, which can be demonstrated though respect for *jus in bello* principles (distinction, proportionality, necessity, and the prohibition against unnecessary suffering). As French, Sisk, and Bass show in chapter 10, drones do pose challenges for fighting honorably, but this does not make doing so impossible.

However, to take the question in a different direction, what if these two virtues are incompatible? Pakistani soldiers are braver than American drone operators when conducting their ground operations in Waziristan, because they risk their lives. But which of the two are the most honorable? Which better respects the principles of *jus in bello*? If using a drone is more discriminating and causes less collateral damage than a ground invasion, which virtue is more important—the courage of soldiers showing little honor, or the honor of soldiers showing little courage?[42]

Being a consequentialist, my criterion is the harm caused to individuals, not the respect of virtues as if they had intrinsic value; I do not care that a soldier or drone operator is seen as less courageous if the means with which he or she fights requires less risk but also leads to fewer civilian casualties than other means.

CONCLUSION

"Nuclear weapons explode the theory of just war," famously stated Michael Walzer.[43] Tomorrow, autonomy will potentially be a comparable revolution, challenging the applicability of the traditional criteria of just war theory. I do not see this happening with the issue of drones and targeted killing, which do not radically change the nature of warfare. Of course, they do raise questions about certain criteria, like the imminence of the threat (just cause and last resort), but that is hardly new. From this perspective, the issue of drones and targeted killing is part of the larger and much older debate about the prevention/preemption distinction (see Fisk and Ramos in chapter 4).

Provided that we do not confuse the thing with its use, it is quite possible to condemn the abuses of a permissive policy such as signature strikes without calling into question the general idea that, as Walzer argues, "drone warfare could take the form of targeted killing, and it could be justified under tough constraints."[44] This is what Walzer does when he criticizes the excessive use of drones and the abuses of signature strikes, but without throwing out the baby with the bathwater. Here, Brunstetter's *jus ad vim* project discussed in chapter 11 offers one way to think about how to provide ethical constraints for drone use outside the hot battlefield.

The distinction between outright rejection (Chamayou) and criticism (Walzer) is especially useful for a country like France, where a discreet debate is emerging over the possible weaponization of its Reaper, currently based in Niamey, Niger. Unarmed, they are used only for so-called ISR missions (i.e., intelligence preparation of the battlefield, supporting conventional and special operation troops during engagements, monitoring suspected jihadists, and finding or rescuing hostages). The objective of arming them would be to cover the entire kill chain (find, fix, track, target, engage, assess).

The priority for the future naturally needs to be demystifying the machine by explaining again and again what a drone is, and what it is for, and by countering antidrone propaganda, which is proliferating because of ignorance and paranoia. If the French did arm their drones, we would need to stress sufficiently well what separates us from the Americans to refute the confusion of ideas in the public mind, but without doing it too head-on so as not to damage

diplomatic relations. It would also be necessary to emphasize that when used in an armed conflict, these machines, which are piloted by genuine Air Force pilots, are subjected to the same rules of engagement and the same constraints as any other aircraft.

After that, we have the issue of targeted killing. First, France would in any case be more discreet and parsimonious in using its armed drones, for the simple reason that it would have very few of them (12 Reapers, while the US Air Force had 346 in 2016). Apart from that, I recommend that France adopt a more restrictive approach to targeted killing, limited to *personality strikes against high-value targets, a very restricted list of leaders of terrorist organizations we are fighting who pose an immediate and demonstrable threat to national security, and when the state in which they are situated does not have the will or the capability to eliminate the threat.* This is very different from the CIA's signature-strike program that has fueled much of the criticism over drones. But drones in general should not be reduced to this controversial policy.

Next, we have to consider the measures needed to satisfy the democratic requirement for transparency and responsibility. This means communicating either before a strike on the processes and standards of targeting (who decides what, how, and according to what criteria) or after a strike has occurred (the identity of the person and the cause of the strike—that is, what constituted the immediate threat, and why it was not possible to capture the person or neutralize him or her in any other way). In a letter to the US federal prosecutor, three members of the Senate Select Committee on Intelligence made a distinction between the list of strategies to combat terrorism (the playbook), of which several sections should stay secret, and the list of rules (the rule book) that the government follows in such situations, which should always be available to the American public.[45]

We might also imagine setting up systems for monitoring. Two types are possible: The first, on the lines of the US Foreign Intelligence Surveillance Act, would authorize strikes before they take place, except in urgent situations, which would be analyzed afterward—in either case, the deliberations would be classified.[46] The second would possibly be along the lines of the Israeli model, which has been operating for several years; by request of the Supreme Court, a thorough poststrike inquiry into a targeted killing would be conducted by an independent body.

The problem with these measures, of course, is that they could affect military effectiveness. The more the process and norms are precise and known, the more the adversary is able to bypass them and restrict our action. Because of this, there is great value in "strategic ambiguity," which means not being clear about one's position. Conversely, excessive ambiguity, a lack of information,

risks arousing suspicion and even hostility with regard to an ill-understood policy. The British have grasped this and recommend keeping the public informed as much as possible.[47] The challenge, then, is to make available certain information in order to increase transparency and a feeling of legitimacy, without at the same time affecting national interests. Reveal enough to reassure, but not enough to handicap operations.

NOTES

1. E.g., see his contributions, featured by Alexandra Schwarzbrod, "La guerre devient un télétravail pour employés de bureau," *Liberation*, May 19, 2013, www.liberation.fr/planete/2013/05/19/la-guerre-devient-un-teletravail-pour-employes-de-bureau_904153; Grégoire Chamayou, *France Inter*, July 4, 2013, www.franceinter.fr/emission-linvite-du-57-gregoire-chamayou; Grégoire Chamayou, "Drone et kamikaze, jeu de miroirs," *Le Monde*, April 2013, www.monde-diplomatique.fr/2013/04/chamayou/49004; and Grégoire Chamayou, *A Theory of the Drone* (New York: New Press, 2015), 313, 95, 226.

2. See, e.g., Daniel R. Brunstetter and Megan Braun, "The Implications of Drones on the Just War Tradition," *Ethics & International Affairs* 25, no. 3 (2011): 337–58; Bradley Jay Strawser, ed., *Killing by Remote Control: The Ethics of Unmanned Military* (Oxford: Oxford University Press, 2013); Claire Finkelstein, Jens David Ohlin, and Andrew Altmen, eds., *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford: Oxford University Press, 2012); Christian Enemark, *Armed Drones and the Ethics of War: Military Virtue in a Post-Heroic Age* (New York: Routledge, 2014); Rosa Brooks, "Drones and the International Rule of Law," *Ethics & International Affairs* 28. no. 1 (2014): 83–103; and Kerstin Fisk and Jennifer M. Ramos, eds., *Preventive Force: Drones, Targeted Killing, and the Transformation of Contemporary Warfare* (New York: New York University Press, 2016).

3. See Jean-Baptiste Jeangène Vilmer, "An Ideology of the Drone," trans. John Zvesper, *Books and Ideas*, www.booksandideas.net/An-Ideology-of-the-Drone.html.

4. Jean-Baptiste Jeangène Vilmer, "Terminator Ethics: Should We Ban 'Killer Robots?'" *Ethics & International Affairs*, Online Exclusive, March 23, 2015, www.ethicsandinternationalaffairs.org/2015/terminator-ethics-ban-killer-robots/; and "Autonomous Weapon Diplomacy: The Geneva Debates," *Ethics & International Affairs*, Online Exclusive, September 27, 2016, www.ethicsandinternationalaffairs.org/2016/autonomous-weapon-diplomacy-geneva-debates/.

5. Chamayou, *Theory of the Drone*, 185–94.

6. Ibid., 135.

7. International Court of Justice, *Nuclear Weapons* case, Advisory Opinion, § 238.

8. Michael Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2004), 101. See also P. Robinson, "'Ready to Kill but Not to Die': NATO Strategy in Kosovo," *International Journal* 54 (1999): 672–73.

9. Steven E. Churchill and Jill A. Rhodes, "The Evolution of the Human Capacity for 'Killing at a Distance': The Human Fossil Evidence for the Evolution of Projectile Weaponry," in *The Evolution of Hominin Diets*, ed. Jean Jacques Hublin and Michael P. Richards (New York: Springer, 2009), 201–10.

10. A. V. Lowe, "Comments on Howard S. Levie's Paper: Submarine Warfare—with Emphasis on the 1936 London Protocol," in *The Law of Naval Warfare: Targeting Enemy Merchant Shipping*, ed. Richard J. Grunawalt (Newport, RI: Naval War College, 1993), 72.

11. Raoul Castex, *Synthèse de la guerre sous-marine* (Paris: Challemel, 1920), 121, quoted by Chamayou, *Theory of the Drone*, 91.

12. Paul W. Kahn, "The Paradox of Riskless Warfare," *Philosophy and Public Policy Quarterly* 22, no. 3 (2002): 2–8.

13. Jean L. Otto and Bryant J. Webber, "Mental Health Diagnoses and Counseling among Pilots of Remotely Piloted Aircraft in the United States Air Force," *Medical Surveillance Monthly Report* (US Armed Forces Health Surveillance Center) 20, no. 3 (March 2013): 3–8; and Wayne Chappelle, Tanya Goodman, Laura Reardon, and William Thompson, "An Analysis of Post-Traumatic Stress Symptoms in United States Air Force Drone Operators," *Journal of Anxiety Disorders* 28, no. 5 (2014): 480–87.

14. John R. Emery and Daniel Brunstetter, "Drones as Aerial Occupation," *Peace Review* 27, no. 4 (2015): 424–43.

15. Birmingham Policy Commission, "The Security Impact of Drones: Challenges and Opportunities for the UK," October 2014, www.birmingham.ac.uk/Documents/research/policycommission/remote-warfare/final-report-october-2014.pdf.

16. For a more in-depth discussion of the case of the DRC and the UN's use of drones, see, on the pro side, David Whetham, "Drones to Protect," *International Journal of Human Rights* 19, no. 2 (2015): 199–210; and on the contra side, John R. Emery, "The Promises and Pitfalls of Humanitarian Drones," *Ethics & International Affairs* 30, no. 2 (2016): 1–13.

17. Chamayou, *Theory of the Drone*, 59.

18. The Pakistani government said in 2013 that only 3 percent of the 2,227 people killed in US drone strikes since 2008 were civilians, a figure strikingly lower than its previous estimations; Pakistani minister of defense, interviewed at the US Senate, 98th session, October 30, 2013, www.senate.gov.pk/uploads/documents/questions/1383111609_934.pdf. The New America Foundation estimate is between 8 and 11 percent for 2004–February 2016 in Pakistan (http://securitydata.newamerica.net/drones/pakistan-analysis.html); the Bureau of Investigative Journalism between 17 and 24 percent for the same period and country (www.thebureauinvestigates.com/category/projects/drones/drones-graphs/). *The Intercept* finds that "during one five-month period of the operation, according to the documents, nearly 90 percent of the people killed in air strikes were not the intended targets" (https://theintercept.com/drone-papers/the-assassination-complex/). On the discrepancies, see Chris Woods, "Understanding the Gulf between Public and US Government Estimates of Civilian Casualties in Covert Drone Strikes," in *Drones and the Future of Armed Conflict: Ethical, Legal and Strategic Implications*, ed. David Cortright, Rachel Fairhurst, and Kristen Wall (Chicago: University of Chicago Press, 2015), 180–98.

19. Human Rights Clinic, Columbia Law School, "Counting Drone Strike Deaths," October 2012.

20. Compare: Megan Braun and Daniel R. Brunstetter, "Rethinking the Criterion for Assessing CIA-Targeted Killings: Drones, Proportionality and *Jus Ad Vim*," *Journal of Military Ethics* 12, no. 4 (2013): 304–24; and Avery Plaw and Carlos R. Colon, "Correcting the Record: Civilians, Proportionality, and the *Jus ad Vim*," in *Legitimacy and Drones: Investigating the Legality, Morality, and Efficacy of UCAVs*, ed. Steven J. Barela (Farnham, UK: Ashgate, 2015), 163–89.

21. Chamayou, *Theory of the Drone*, 141.

22. Ibid., 190.

23. Ibid., 141.

24. However, the avoidance of collateral damage was a factor that Obama used to justify the form of the raid to the American public in his very first and dramatic address that Sunday evening in May 2011.

25. Chamayou, *Theory of the Drone*, 141–42.

26. Grégoire Chamayou, "Drones: Comment des milliers de personnes sont exécutées en dehors de tout cadre légal" (interview), *Basta!* October 16, 2013, www.bastamag.net/Drones-comment-des-milliers-de.

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29. Chamayou, *Theory of the Drone*, 189.

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32. Amnesty International, "The Hands of Cruelty," December 2012.

33. Raymond Aron, *The Committed Observer: Interviews with Jean-Louis Missika and Dominique Wolton* (Chicago: Regnery Gateway, 1983), 246.

34. C. Christine Fair, Karl Kaltenthaler, and William J. Miller, "You Say Pakistanis All Hate the Drone War? Prove It," *The Atlantic*, January 23, 2013, www.theatlantic.com/international/archive/2013/01/you-say-pakistanis-all-hate-the-drone-war-prove-it/267447/.

35. See, e.g., this video shot in 1984: www.youtube.com/watch?v=uADrXnAHT1Y.

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38. Chamayou, *Theory of the Drone*, 52.

39. Robert Sparrow, "War without Virtue?" in *Killing by Remote Control*, ed. Strawser, 84–105.

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Post-Heroic Warfare? (New York: Palgrave Macmillan, 2014); and Christian Enemark, *Armed Drones and the Ethics of War: Military Virtue in a Post-Heroic Age* (New York: Routledge, 2014).

42. For a more in-depth discussion of and an alternative view of the place of honor in drone warfare, see French, Sisk, and Bass, chapter 10 of this volume.

43. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 282.

44. Michael Walzer, "Targeted Killing and Drone Warfare," *Dissent*, January 11, 2013, www.dissentmagazine.org/online_articles/targeted-killing-and-drone-warfare.

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PART II

Who Should Do the Fighting—and Who, Consequently, Bears the Risk of Dying?