

Targeted Killing, Drone Warfare, and the Chimera of Optimizing the Resort to Force

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One peculiar aspect of the targeted killing using drone warfare debate is that it appears to set up a conflict between the two traditional categories in the ethics of war - contested, to be sure, but still of enormous ethical and legal weight - *jus in bello* and *jus ad bellum*. The category of *jus in bello* addresses targeted killing using drone warfare as a call for more discriminating technologies that put civilians at less risk and more narrow targeting of those believed to pose particularized risks (at least insofar as this is about targeted killing, rather than simply drones as another air weapon system in general combat). Which is to say that *jus in bello* has a particular concern with "targeted killing."

By contrast, the category of *jus ad bellum* has a particular concern with "unmanned drones." Drone-based targeting has the effect of raising the propensity to resort to force, because it is easy to do without personal risk to one's combatant personnel. A feature of unmanned systems is that the technology, it might be said, reduces the personal risks of combat and so reduces the political disincentives to it on the part of states, and indeed, potentially reduces a state's disincentive against resort to force below some efficient or optimal level: the world would overall be a better place if US soldiers were at greater personal risk by having to undertake such operations in person.

There are several factual possibilities here. One is that the (assumed) benefits of discrimination in targeting using drone warfare are independent of the fact that the system reduces personnel risk. That is probably not the case, however; at least part of the greater discrimination arises, according to my discussions with operations and legal personnel, from the very fact of not having people at risk on the ground having to make immediate decisions. Second, then, it might be the case that the benefits of greater discrimination *jus in bello* are at least partly in conflict with the assumption made above that the unmanned system might create an inefficient disincentive against the resort to force.

I propose to argue, however, that the claimed *jus ad bellum* "inefficient disincentive" is not a coherent notion, and that although the meme has spread rather widely within the journalistic and academic legal communities, it is an inapt taking of a concept of a general welfare criterion that does not apply, at least not with this kind of specificity, in armed conflict. Moreover, I want to use this as a basis for justifying the affect and attitude - anger, in a word - that American national security personnel feel with regard to the remote and frankly "angelic" invocation of such a criterion, as though "sides" in war do not matter in some general calculation of efficient violence. (It should be noted also that this is one quite special instance of the larger problem of proportionality in the laws of war, and the difficulty of setting civilian harm against military necessity.)

I want to be clear just how limited the claim is. Although framed as a problem about targeted killing through drone warfare that sets *jus in bello* against *jus ad bellum* concerns, it is finally an argument that the *jus ad bellum* claim within the two-claim position in this case is inapt.