CHAPTER FIVE

Postheroic U.S. Warfare and the Moral Justification for Killing in War

Sebastian Kaempf

We had five hundred casualties a week when [the Nixon administration] came to office. America now is not willing to take casualties. Vietnam produced a whole new attitude.

HENRY KISSINGER, 1999

During the Gulf War, it was more dangerous to be a young man back in the United States, with all its car accidents and urban murders, than to serve in combat. Thus, almost three hundred soldiers had their lives saved by serving in Desert Shield and Desert Storm. The United States effectively saved American lives by going to war.

CHRIS H. GRAY

THIS CHAPTER INVESTIGATES the theoretical challenges that the advent of “risk-free” (casualty-averse and posthuman) American warfare poses to both the laws of war and the ethics of the use of force. It thereby focuses on the jus in bello question of when it is permissible for a soldier to kill another combatant in war rather than the more specific question of when it is permissible for the same soldier to kill a civilian. If the fundamental principle of the morality of warfare that legitimizes the killing of another soldier arises exclusively on the basis that such killing constitutes the right to exercise self-defense within the conditions of a mutual imposition of risk, then the emergence of asymmetrical risk-free warfare represents a deep challenge. This unprecedented challenge is posed by contemporary U.S. warfare: the United States is the first actor in recent
history who can kill without suffering the risk of dying in return. Such a sce-
nario (as it has unfolded since the 1990s, from the First Gulf War, through con-
licts in Kosovo, Afghanistan, and Iraq, to the recent intervention in Libya) pro-
pels us well beyond the principles underlying the laws and the ethics of warfare. 
The recent risk-free deployment of American military force might be justified 
politically, but it raises the more fundamental problem that we might no lon-
ger be able to appeal to the morality of warfare to justify this mode of combat. 

The chapter makes this argument by first establishing how reciprocity (the 
condition of a mutual imposition of risk) is the key conceptual condition upon 
which the moral and legal permission for killing in war rests. It then demon-
strates how reciprocity implicitly assumes a certain degree of symmetry 
between warring factions. Third, the chapter argues that in the case of con-
temporary U.S. warfare, conditions of asymmetry have emerged on such a his-
torically unprecedented scale that they have started to push beyond the condi-
tions of reciprocity. Paradoxically, this American drive toward risk-free warfare 
has coincided with a systematic attempt—on the part of contemporary U.S. 
warfare—to comply with the moral and legal provisions set by and codifi-
ced in Just War thinking and the Laws of War. Exploring this paradox, the chapter 
argues that while the United States has come to comply with Just War theory 
and the Laws of War, the removal of risk from its own mode of warfare (by 
undermining the principle of reciprocity) no longer allows the U.S. military to 
justify the killing of enemy combatant along existing moral and legal lines. The 
chapter concludes by outlining a constructive way for the Just War tradition to 
address this unprecedented challenge.

THE MORAL PERMISSION TO KILL IN WAR AND 
THE PRE-REQUIREMENT OF RECIPROCITY

In civil life, killing another human being is generally not sanctioned by law but 
instead is considered to be murder or manslaughter. By contrast, in times of war, 
killing another human being (who happens to be an enemy combatant) is indeed 
sanctioned by both the Just War tradition and International Humanitarian Law 
(IHL) as a legitimate act.¹ So the question arises as to why exactly soldiers are 
permitted to kill one another without such an act to be considered murder. 

The moral paradox about war is that the right for combatants to injure and 
kill one another is not based on the judgment of their personal moral guilt. 
They do not fight each other because they hate their adversaries or because
one has personally wronged the other. Instead, they find themselves confronting each other because they have been given orders by their political leaders to fight. They are in that sense no more than instruments of the state. Yet equally, the right of warriors to injure and kill one another is not founded on judgments of the moral evil of the state or the political authority on whose behalf they are fighting. While soldiers are held personally accountable for how they conduct themselves in war (jus in bello), they are not held responsible for the outbreak of the particular war in which they are fighting (jus ad bellum). Instead, they are assumed to be morally innocent, an assumption arising out of what Michael Walzer calls the “moral equality of soldiers.”

What, then, gives soldiers the moral and legal right to kill other soldiers? The answer found from within the various strands of the Just War tradition (be it the Christian/Western, Islamic, or African traditions) and ijil is very precise: combatants are permitted to kill one another precisely because they stand in a relationship of mutual risk. The acceptance of the reciprocal imposition of risk establishes the internal morality of the relationship between soldiers. Only this reciprocal condition morally and legally licenses the warrior to kill another warrior. Each warrior thereby possesses the license to kill because each acts in self-defense vis-à-vis the other. This requirement of reciprocity lies at the heart of the moral reality of war and constitutes the condition upon which the moral and legal right to kill in war is founded and what binds warriors together in a brotherhood of death.

In other words, the warrior’s moral privilege to kill another warrior (without the killing being interpreted as a crime or murder) is subject to a condition of reciprocity. This means, furthermore, that a warrior is not sanctioned to kill noncombatants (civilians and POWs alike) precisely because he or she cannot justify the killing of civilians as an act of self-defense. Because noncombatants, by definition, are unarmed, killing them (directly and deliberately) is considered to be murder and a war crime. It is only under conditions of the reciprocal imposition of risk that the soldier’s moral privilege to kill arises. Without the reciprocal imposition of risk, there is neither a moral nor a legal basis upon which to justify the injuring or killing in war.

Reciprocity of such risks implies the existence of some degree of symmetry between opposing adversaries. Symmetry implies that—to some degree—both adversaries enjoy similar military capabilities and face similar levels of vulnerabilities. Only under conditions of symmetry can the condition of reciprocity exist. Two qualifications are important at this stage: first, pure levels
of symmetry probably exist only in theory, not in practice. Military historians would argue that there has hardly ever been a war in history where pure levels of symmetry between opposing armed forces was a reality (though we might point to the duels between ancient Greek warriors or between hoplite phalanxes or to the stalemate on the western front during World War I). This might have something to do with the second qualification—namely, that due to the interactive dynamic that lies at the heart of the nature of war, each adversary naturally strives to create an asymmetrically advantageous situation in which the enemy suffers greater risks of injury and death while its own forces remain relatively safe.\textsuperscript{11} In essence, the interactive nature of war results in forces that avoid symmetries and aim at creating asymmetric advantages for themselves.\textsuperscript{12}

This means that, on the one hand, pure levels of symmetry might never actually exist. On the other hand, certain levels of asymmetry are always created as a result of the interactive nature of war. Yet, the fundamental moral (the Just War tradition) and legal (International Humanitarian Law) principles of war are founded on the assumption of relative symmetry: that on the overall strategic level, both adversaries actually kill in self-defense vis-à-vis their enemy.\textsuperscript{13}

If the fundamental principle of the morality of warfare is founded on the right to exercise self-defense within the conditions of a mutual imposition of risk, then the emergence of extreme forms of asymmetrical warfare represents a deep challenge. Extreme forms of asymmetry would arise when one adversary—on a strategic level—was able (through long-distance, highly sophisticated weapons technology, for instance) to kill the enemy’s military forces without suffering the risk of dying in return. Under such conditions of extreme asymmetry, an insurmountable imbalance of reciprocity between adversaries would be created. Such a scenario would undermine the principle of reciprocity and thereby push us well beyond the existing moral and legal foundations that justify killing in war. As the next section demonstrates, such a scenario has started to arise in the case contemporary U.S. warfare.

MOVING BEYOND RECIPROCITY: VIETNAM AND THE ELIMINATION OF RISK IN CONTEMPORARY U.S. WARFARE

Contemporary U.S. warfare has gained the technological capacity to apply overwhelming force globally without suffering the risk of reciprocal injury.\textsuperscript{14} From the 1991 Gulf War to the current intervention in Libya, the U.S. military has enjoyed such overwhelming and historically unprecedented technological
superiority that it has effectively gained the ability to wage wars without suffering (hardly) any risks to its own soldiers. For instance, “Operation Allied Force” over Kosovo in 1999 constituted the first war waged by the U.S. military that saw zero combat casualties (the only fatalities were caused by accidents or friendly fire). And while Kosovo might—thus far—have remained the exception, it constitutes merely the culmination of a much wider trend at work in U.S. warfare over the last twenty years: between the 1991 Gulf War and the 2003 overthrow of Saddam Hussein’s regime in Baghdad, not only were U.S. casualty figures extremely low (both in terms of absolute numbers as well as in historical comparison, ranging in the tens and hundreds rather than in the tens of thousands), but also the majority of U.S. fatalities in most of these conflicts were not caused by enemy fire but friendly fire and accidents (see table 5.1). This implies that the biggest threat to the lives of U.S. service personnel has come less from U.S. adversaries than from within U.S. warfare itself. The same period also saw more NGO workers killed than American soldiers. And during “Operation Enduring Freedom,” the American military succeeded in toppling the Taliban regime with a mere CIA operatives and Special Forces on the ground by the time the regime collapsed at the end of November 2001.

Those critiquing the factor of casualty aversion and risk-free American warfare tend to point to the wars in Afghanistan and Iraq as evidence of the U.S. military’s and public’s willingness to actually pay a high blood price. And while the overall casualty figures among U.S. military personnel in these wars (1,961 in Afghanistan and 4,422 in Iraq as of August 16, 2012) seem at first sight to support their argument of a move away from riskless warfare to an acceptance of higher number of casualties, those figures need to be put into perspective. First, the American military succeeded in overthrowing the regimes in both countries at virtually no risk: in Afghanistan, 40 soldiers lost their lives between October 7, 2001, and the end of March 2002 (8 of which were combat related). In Iraq, 139 U.S. soldiers died between March 19, 2003, and the president’s “Mission Accomplished Speech” on May 1, 2003 (31 of which were combat related). In both cases, therefore, the U.S. military was able to bring about the overthrow of regimes at virtually no threat from its adversaries. Second, while the casualty figures the U.S. military subsequently incurred in both Iraq and Afghanistan are significantly higher than any of those seen since 1991, they remain significantly low not only by historical comparison but also given the fact that these two major wars have been waged for eight and a half years and eleven years, respectively, at the time of writing.
<table>
<thead>
<tr>
<th>War</th>
<th>Overall casualties</th>
<th>Accidents &amp; friendly fire</th>
<th>Combat casualties</th>
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<tr>
<td>U.S. Civil War (1861–1865)</td>
<td>625,000</td>
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<tr>
<td>World War I (1914–1918)</td>
<td>53,402*</td>
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<tr>
<td>World War II (1941–1945)</td>
<td>291,557†</td>
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<td>Korean War (1950–1953)</td>
<td>53,686</td>
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<tr>
<td>Vietnam War (1955–1975)</td>
<td>47,424</td>
<td></td>
<td></td>
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<tr>
<td>Lebanon (1982–1984)</td>
<td>266†</td>
<td>9</td>
<td>257</td>
</tr>
<tr>
<td>Desert Storm (1991–1992)</td>
<td>382†</td>
<td>235‡</td>
<td>147</td>
</tr>
<tr>
<td>Bosnia (1995)</td>
<td>0**</td>
<td>2††</td>
<td>0</td>
</tr>
<tr>
<td>Kosovo (1999)</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Afghanistan—Phase I</td>
<td>40††</td>
<td>32</td>
<td>8</td>
</tr>
<tr>
<td>Afghanistan—Overall</td>
<td>1,961§§</td>
<td>328</td>
<td>1,633</td>
</tr>
<tr>
<td>Iraq—Phase I</td>
<td>139‖</td>
<td>108</td>
<td>31</td>
</tr>
<tr>
<td>Iraq—Overall</td>
<td>4,422§§</td>
<td>934</td>
<td>3,488</td>
</tr>
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</table>

† Ibid.
§ Ibid.; “America’s Wars.”
| “US Military Operations.”
This technology-driven mode of warfare, which is fundamentally structured around the avoidance of casualties among U.S. military personnel, has started to push beyond reciprocity. From the perspective of U.S. decision makers, this is not a coincidence but rather the intended result stemming from the reforms undertaken as a direct consequence of the Vietnam War. It was due to the disastrous experience in Vietnam that the U.S. mode of warfare was deliberately reformed in ways that aimed at overcoming the risk of dying for U.S. soldiers through the use of overwhelming and superior technology. In other words, following the Vietnam War the deliberate decision was taken to move beyond reciprocity by creating unprecedented asymmetries in military capabilities and vulnerabilities that have started to come to the fore since the 1990s. To help readers understand the scale and scope of this trend, the following pages demonstrate how the outcome of the Vietnam War triggered a set of reforms that ultimately aimed at minimizing the combat risks for U.S. soldiers and at thereby removing reciprocity from U.S. warfare.

Vietnam constituted a fundamental watershed. The nation that had entered the war in Indochina was different from the one that left it. The war had changed the mental and spiritual landscape of America. In the Civil War, World Wars I and II, and the Korean War, America had been prepared to expend vast numbers of lives, yet casualty aversion had not been the central issue. In Vietnam, however, it became the central issue.

When the conflict developed in unexpected ways, the true nature of the larger ideational purpose of America itself was increasingly doubted. Widely held national myths such as innocence were challenged and the belief in exceptionalism fundamentally shaken. Vietnam became, according to Arnold R. Isaacs, “the era’s most powerful symbol of damaged ideals and the loss of trust, unity, shared myths and common values.” On the deepest ideational level, it was waged not only on a distant battlefield but also in the unchartered depth of the American psyche and soul. It disrupted America’s story, its own explanation of the past and vision of the future. “Vietnam,” as Richard Nixon observed, “tarnished our ideals, weakened our spirit and crippled our will.” Ideational foundations like containment, the domino theory, and the spreading of liberty, which had not only mobilized the nation in the past but had also legitimized sacrifice, were demolished.

Historical sociologists explain this disruption with the past more generally through the rise of reflexive or liquid postmodernity. The modern age, according to thinkers such as Ulrich Beck, Anthony Giddens, and Zygmunt
Bauman, forced societies to undergo a dual process of dis-embedding and re-embedding.\textsuperscript{25} Modernity dis-embedded religious absolutes in order to re-embed them into the secular religions of nationalism and ideology. By the 1970s, however, this dual process was starting to be disrupted and replaced by the emergence of risk society where processes of dis-embedding were no longer followed by processes of re-embedding.\textsuperscript{26} This, according to Bauman, meant that societies started moving from the era of pre-allocated reference groups into the epoch in which the destination of individuals has remained undetermined.\textsuperscript{27} Postmodernity no longer furnished any beds for re-embedding the dis-embedded individuals. As a result, the modern ideational foundations that had mobilized the American people were giving way to postmodern individualization.\textsuperscript{28}

This means that the transformation of the U.S. heroism in Vietnam coincided with the rise of America as a postmodern society structured around the avoidance and management of risks.\textsuperscript{29} Distributional conflicts over “goods” such as jobs, social security, and income (which dictated the traditional agenda of modern politics) have given way to distributional conflicts over “bads”—that is, the risks created by threats to individual life, health, and well-being.\textsuperscript{30} By transforming from a modern into a postmodern society, the United States has become increasingly risk averse. American politics and the way politicians have conducted war have been about the control and prevention of such risks.\textsuperscript{31} These societal changes in conjunction with the transformation of heroism translated into an unwillingness to sacrifice, thereby increasingly turning the United States from an inherently heroic society into what Edward N. Luttwak called a “post-heroic society.”\textsuperscript{32} Reflecting the emergence of risk society, casualty aversion has become institutionalized in the way in which the United States has waged wars ever since.\textsuperscript{33}

In its attempt to reinvent itself and to retrieve legitimacy for the use of force following the Indochina War, the U.S. military devised a new doctrine, acquired sophisticated new weapons systems, and made large-scale changes to organizations and tactics (as evidenced by the introduction of an all-volunteer force in 1973, the “Total Force” policy, the new AirLand Battle doctrine and the Weinberger Doctrine in the early 1980s, the so-called Revolution in Military Affairs in the 1990s, and what is known today as netcentric warfare). The driving force behind these post-Vietnam reforms that led to the contemporary U.S. approach to warfare was to bring the use of force in line with what was perceived as a casualty-averse public. Advanced technology was used to reduce American
exposure to the risks of combat while heralding lesser risks to enemy noncombatants. It aimed at producing a new grammar of killing in which the spilling of American blood became de-emphasized.34

This journey of renewal developed over the period of a decade, and its cumulative effects were fully unveiled for the first time during Operation Desert Storm.35 Operation Desert Storm was the first American war in which, from the beginning, securing the goal of high levels of casualty aversion was a key operational objective.36 The formulation of war aims and the conduct of military operations were governed by the fear among American leaders that the loss of too many American military lives (and Iraqi civilian lives) would erode public and congressional support for the war.37 To the extent that American military and political decision makers were haunted by the memories of Vietnam and were preoccupied with avoiding a repetition of the same mistakes, the 1991 war was fought not only to overthrow Saddam Hussein’s aggression against Kuwait but also to conquer and overcome America’s troubling memories of Vietnam.38

The Gulf War, according to George Herring, “was more about Vietnam than Kuwait for a political and military leadership that sought vindication, to prove that they had learnt from their failures in Vietnam.”39 Close adherence to and internalization of the Weinberger Doctrine (which conceived public support as being conditional upon a minimum number of U.S. casualties) ensured that the ghost of Vietnam would not cast its shadow over the Gulf War. Starting from the buildup to the war, President George H. W. Bush and his administration set out to mobilize public support with a conscious and explicit campaign to free the country from the legacy of Vietnam. The president had repeatedly stated that Iraq would not be “another Vietnam” and that the paralysis this war had caused would be overcome.

The successful performance by the U.S. military in winning quickly and with a minimum of casualties certainly vindicated the reforms undertaken in response to Vietnam in the 1970s and 1980s. President Bush emphasized this point in his victory speech on March 1, 1991, when he triumphantly declared the Vietnam Syndrome to be kicked once and for all: “The spectre of Vietnam has been buried forever in the sands of the Arabian Peninsula.”40 Senior military officers also situated Desert Storm in this larger story of redemption. “This war didn’t take one hundred hours to win,” Major General Barry McCaffrey stated, “it took fifteen years.”41 These and other statements from American officials implied that the historical judgment that had lingered ever since the defeat in the jungles of Vietnam had been overturned.42
Yet, by complying to the letter with the Weinberger Doctrine, the United States was far from kicking the Vietnam Syndrome. On the contrary, the American military had succeeded in reinventing warfare in a way that has made it acceptable to the U.S. public, politicians, and the military. It thereby helped restore the respect and prestige of the armed forces within American society and provided a longed-for opportunity for redemption. The U.S. conduct of war post-Vietnam therefore embodied rather than defeated the Vietnam Syndrome.\textsuperscript{43}

Beginning with the 1991 Gulf War, the potential death of U.S. military personnel has been instrumentalized as a risk to be avoided, which is profoundly at odds with the principle of reciprocity underpinning the Just War tradition and the Laws of War. America’s postmodern society, which is structured around the avoidance of risk in every aspect of social life, has started to wage its wars in ways that aimed at minimizing precisely these risks.\textsuperscript{44} In this new postmodern warfare, most servicemen and women are no longer soldiers in a conventional sense. Instead, they have become machine- and technology-assisted agents, trained for and fighting a particular mission by virtual reality and computer simulation.\textsuperscript{45} Such virtual wars, Andrew J. Bacevich writes, are “not conducted by specially empowered and culturally distinctive ‘warriors’ but by computer-wielding technicians.”\textsuperscript{46} Trained in and assisted by such technology, they are no longer required to feel courage, to experience fear, to face combat risks, or to show the type of endurance that was regarded as the defining marker of soldiering.\textsuperscript{47}

As a result, American warfare has achieved lethal perfection with a degree of impunity that is unprecedented. Waged increasingly by computer technicians and high-altitude specialists, it is becoming increasingly abstract, distanced, and virtual. New networked computer systems, simulations, and precision-guided weapons systems have created an experience of war that no longer requires heroism and therefore can be experienced virtually without the need to accept the risks of dying.\textsuperscript{48}

Victor D. Hanson interpreted this lack of heroism in today’s U.S. warfare as the ending of the warrior tradition of ancient Greece. Greek warriors despised the archers and javelin throwers of the Persian armies for their lack of heroism as they could kill effectively from a distance but with little risk to themselves. Avoiding close infantry battle, something that was disdained by the ancient Greeks, had become one of the central tenets of U.S. military campaigns since the early 1990s. During the Gulf War, for instance, relying on weeks of massive
aerial bombardment and precision-guided missile technology before a mere four days of ground campaign brought an end to the war, the United States avoided fighting at close quarters and instead waged war from afar with little risk to its own soldiers.49 Like the Persians, Hanson concluded, the Americans “suffered from that most dangerous tendency in war: a wish to kill but not to die in the process.”50 Due to its technological might, the United States military has come close to realizing this wish, for it now has the capacity to apply force without suffering the risk of reciprocal injury.51 At the heart of the postmodern U.S. warfare that evolved since the end of Cold War, James Der Derian writes, “is the technical capability and ethical imperative to threaten and, if necessary, actualize violence from a distance—with no or minimum casualties.”52 The internal logic of this brave new risk-free war was illustrated nicely by one particular statistic, according to which it was more dangerous to be a young man back in the United States with all its automobile accidents and urban murders than to actively serve as a soldier in the liberation of Kuwait. According to Charles Law of the University of California, Berkeley, almost three hundred U.S. soldiers had their lives saved by their service in the war.53 So, whereas risk taking in the past was an illustration of bravery, the hallmark of a soldier’s true nature, by the end of the Cold War it had become a measure of irresponsibility for American decision makers and the average citizen.

Taking this postheroic trend even further, American leadership has started replacing soldiers in battle with machines and robots.54 The current use of predator drones in Pakistan, Yemen, Somalia, or Libya might be indicative here, but it only provides us with a temporary impression of the wider specter of posthuman warfare in which the Pentagon has invested for over fifteen years. Again, the key driving force behind the rapidly expanding army of robots on land, air, and sea is the effort to reduce American deaths and injuries. According to Thomas Killion, the army’s deputy assistant secretary for research and technology, the U.S. forces “want unmanned systems to go where we don’t want to risk our precious soldiers.”55 In 2004 the army had 150 combat robots; in 2005 the number had grown to 2,400 and grown again to 4,000 by the end of 2006. Before 9/11, the U.S. military had around 200 drones in its arsenal. Ten years later, that number had risen to over 7,000, accounting for 31 percent of all American fighter planes.56 By 2010, the U.S. Air Force for the first time was training more drone pilots than fighter pilots.57 In 2006, the Defense Department’s Quadrennial Defense Review declared that in the near future, 45 percent of the air force’s future long-range bombers will be able to operate without
humans on board. And it is estimated that by 2015, 33 percent of the army’s ground combat vehicles are supposed to be unmanned.58

All this does is to indicate that post-Vietnam trends toward minimizing the combat risks of U.S. military personnel seem likely to continue, if not even accelerate in the near future. But even at its current level, such extreme forms of asymmetry have already arisen that allow the American military to kill the enemy’s military forces without suffering the risk of dying in return. As a result of such extreme conditions of asymmetry, an insurmountable imbalance of reciprocity between adversaries is created. What makes U.S. warfare such a particular challenge therefore to the Just War tradition and the Laws of War is that its own mode of warfare has started to undermine the principle of reciprocity to such an extent that it pushes U.S. warfare well beyond the moral and legal foundations that justify killing in war.

THE CRUX / THE PUZZLE

The sheer dimension and novelty of this particular challenge posed by contemporary U.S. warfare comes to light through historical comparison. Similarly extreme levels of military asymmetry could last be found during colonial wars in the age of European empire. Equipped with superior weapons technology, colonial powers were able to conquer (and—for a long time—control) indigenous peoples in a risk-free manner.59

One of the most powerful examples can be found in the infamous Battle of Omdurman (in today’s Sudan) in 1898 when the British Imperial Army under the command of General Horatio Kitchener was attacked by the indigenous Madhist forces. Even though Kitchener’s forces were vastly outnumbered, the combined effects of British military discipline and the newly developed Maxim machine gun resulted in what Winston Churchill, a youthful participant, called “the most signal triumph ever gained by the arms of science over barbarians.”60 In the course of the battle, eleven thousand Sudanese forces were killed and another sixteen thousand wounded (and subsequently slaughtered), while Kitchener’s forces suffered a mere forty-eight deaths.61 It was a battle without reciprocity as the imperial forces could kill their indigenous adversaries without (barely) facing the risk of dying in return. Omdurman symbolized the vast asymmetric military predominance that had allowed Europeans to dramatically expand their territorial empires in the nineteenth and early twentieth centuries.
Historically, therefore, the lack of reciprocity found in contemporary U.S. warfare is not dissimilar to the one enjoyed by European imperial armies. Yet, the key difference between these two epochs lies in the moral and legal implications. In the age of colonialism and European empire, Just War criteria and their nascent legal codifications applied only to wars between fellow white and Christian Europeans (so-called civilized nations) but did not extend to wars against non-European “savages” and “barbarians.” This particularistic nature of the moral and early legal codes of warfare at the time was based on the distinction between Bellum Civile and Bellum Romanum. The former codified the normative restraints on the use of force in order to maintain a high level of discrimination in war. In contrast, Bellum Romanum was a type of “warfare in which no holds were barred and all those designated as enemies, whether bearing arms or not, would be indiscriminately slaughtered.” This type of warfare was inherently indiscriminate.

The reason why Bellum Romanum rather than Bellum Civile was practiced against non-Europeans was located in a limited notion of humanity. Those living inside the respective historical conception of humanity were regarded as human beings and therefore subjected to the principles of Bellum Civile. Those living outside the conception of humanity were seen as subhumans to whom neither moral nor legal standards and judgments applied. Lying outside the confines of Just War thinking and the Laws of War, “savages” and “barbarians” were consequently subjected to the principle of Bellum Romanum. The limits and boundaries of humanity were the fault lines between Bellum Civile and Bellum Romanum. This means that in the wars of European empire against non-Europeans, as at the Battle of Omdurman, no moral or ethical issues arose over the lack of reciprocity. In other words, from within Just War thinking, the question of how one could justify the killing of enemy soldiers in the absence of any reciprocity of risks never arose.

This issue, however, arises today precisely because of two historically significant developments. First, in the course of the twentieth century, the principles of Just War thinking as well as the Laws of War have become universalized and therefore lost their particularistic nature. And second, the United States, which for most of its history had conducted wars along the Bellum Romanum and Bellum Civile divide, has—over the past few decades following the Vietnam War—revamped its mode of warfare to systematically comply with those very same universalized moral and legal standards. This has resulted in a paradoxical
situation where contemporary U.S. warfare has come to comply with the Just War tradition and the Laws of War and has justified its own combat behavior along these legal and moral lines, while at the same time developing a mode of warfare that undermines the very same foundation (reciprocity as a condition for legitimate killing) upon which those moral and ethical principles rest. This means that the current U.S. mode of war has started to violate the fundamental principle that establishes the internal morality of warfare (and that also constitutes the basis of IHRL): self-defense within conditions of reciprocal impositions of risk. If asymmetric warfare increasingly enables the U.S. military to kill without facing the risk of death in return, then the U.S. military can no longer draw on existing moral and legal frameworks to justify the killing of enemy soldiers. In what ways, then, can this unprecedented challenge posed by the emergence of risk-free U.S. warfare be resolved?

CONSTRUCTIVE WAYS FOR JUST WAR THEORY TO ADDRESS THIS CHALLENGE

This final section offers various ways in which this particular challenge can be addressed by Just War theory. If existing levels of extreme asymmetry push beyond reciprocity to such an extent that they no longer permit the current U.S. mode of warfare to draw on moral principles to justify killing in war, then two possible solutions emerge.

The first solution would require a deliberate reversal of the casualty-averse approach to war by increasing the risks faced by U.S. soldiers. Such a rebalancing of risks would reintroduce the fundamental principle of reciprocity that provides the moral precondition upon which Just War theory (and the Laws of War) permit the killing of enemy combatants. Given the nature of the transformation of U.S. warfare post-Vietnam, the larger American inclination toward employing technological solutions to overcome problems of combat risks, and the general fear among U.S. decision makers that public support for U.S. wars is conditional upon zero or very few U.S. casualties, such a policy change seems unlikely. Yet, with the current mode of warfare hitting an impasse in Iraq and the subsequent introduction of the “surge manual” (which emphasizes the need for higher combat risks—the “human factor”—in order to win “hearts and minds” in counter-insurgency operations), we might be witnessing the beginning of precisely such a trend that gradually would reintroduce higher degrees of reciprocity into U.S. warfare in the future. It needs to be pointed out, however, that the surge manual’s
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attempt to increase the combat risks of U.S. soldiers has neither been driven by deontological moral values nor by a recognition of the lack of available moral justifications of killing, but rather as a way to avoid losing the Iraq War. The conceptually challenging questions arising for the Just War tradition are about the threshold of reciprocity: How much asymmetry is permissible for a particular mode of warfare to remain within the confines of existing moral norms? Exactly how much rebalancing of risks would U.S. warfare need to undergo to fall back into the confines of Just War thinking? And is there a moral obligation for military forces to create symmetries in order to allow them to wage war?

Second, if such a rebalancing of combat risks were not to occur and instead the U.S. military were to continue to pursue along the lines of wider casualty-averse trends, then justifying the killing of enemy combatants could not be justified by existing moral and legal conventions. Instead, the U.S. military would have to wage wars without killing. This could be done by either exclusively employing nonlethal weapons or by engaging in policing activities rather than actual warfighting. The former destroys properties and debilitates weapons systems rather than killing human beings, while the latter prioritizes the arrest of enemies over killing them. Whether either of these two options is feasible militarily and therefore in the interest of U.S. decision makers is at worst questionable and at best open for debate.

This is why, finally, the Just War tradition needs to take seriously the unprecedented challenge posed by contemporary U.S. warfare. As this chapter has tried to show, the emergence of asymmetrical risk-free warfare in the case of the U.S. military for the first time has propelled us beyond the theoretical confines of the fundamental principles upon which our moral jus in bello judgments are based. Will U.S. warfare fall back in line with the principles of reciprocity, or will Just War theory need to rethink its own moral foundations from the ground up?

Notes


30. Ibid.


42. For a listing of various public statements, see Gray, *Postmodern War*, 46; Bacevich, *New American Militarism*, 33–35.


45. See also similar issues raised in chapter 6 of this volume by Brent Steele and Eric Heinze.


52. Der Derian, Virtuous War, xiv–xv (emphasis in original).

53. Law, cited in Gray, Postmodern War, 37.


58. Coker, Waging War without Warriors; Singer, Wired for War.


65. Ibid.
71. Kahn, “Paradox of Riskless Warfare.”