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## A Good Guy with a Drone: On the Ethics of Drone Warfare

### **Legal and Ethical Implications of Drone Warfare**

Michael J. Boyle (ed.)

Routledge, London and New York, 2017, x+130pp., ISBN: 978-0-367-13910-0

### **The Morality of Drone Warfare and the Politics of Regulation**

Marcus Schulzke

Palgrave Macmillan, London, 2017, ix+236pp., ISBN: 978-1-137-53379-1

To say that the past five years have seen a flurry of interest in the emergence of drones and autonomous weapons would be quite an understatement. The works under consideration here – Michael J. Boyle's edited volume *Legal and Ethical Implications of Drone Warfare* and Marcus Schulzke's *The Morality of Drone Warfare and the Politics of Regulation*, both published in 2017– represent exemplars of what could be termed a second generation in drone studies, moving away from the categorical adoptions (Strawser 2010) or rejections (Chamayou 2013) of armed drones. Boyle and his contributors as well as Schulzke believe that the significant ethical and legal questions lie in the use of drones, and not in the weapons systems themselves. Boyle (pp. 2-4) and Schulzke (p. 13) agree that drones do not pose radically novel ethical challenges but exacerbate concerns present in warfare more broadly: the crucial questions, therefore, concern either how they are used ethically or unethically (for Schulzke (p. 43)) or how they transform practices of war and understandings of ethics and law (for Boyle (p. 8)).

The question of the novelty of drone warfare and the relationship of drones to other weapons systems looms large in both books. While Schulzke seeks to downplay the significance of the emergence of remote-piloted weapons platforms, Boyle's volume seeks to

parse out what is transformed by drones and what is not. In so doing, Boyle's collection draws a much closer link between technological innovation and changes in practices of warfare, providing multiple compelling avenues for the continuation of the drone debate. Schulzke, meanwhile, emphasizing continuity with existing practices of warfare, seeks to reorient the debates surrounding the use of drones, highlighting how drones can improve on existing practices of warfare and provide a qualitative improvement in the reduction of the harms of war.

This essay proceeds in four stages. After providing brief separate summaries of the arguments of Boyle and Schulzke's books, I situate them in the debate between the ethics of weapons and the ethics of practices of war. Schulzke is firm in his conviction that the debate over the morality of drones themselves is moot, as weapons can be employed in a variety of ethical and unethical ways, while Boyle adopts a more nuanced position, tracing how drones can exacerbate tendencies towards more or less ethical use. I then conclude by probing the relation of the ethics of drones to wider strategic and political considerations, and how drones can push the boundaries of ethics in transformative ways.

Boyle's book, in addition to his own introductory chapter, comprises five other chapters on the relationship between drones and the evolution of norms and laws of warfare. The authors in this volume pay particular attention to the tensions between legal regimes brought about by drones accelerating already present trends and bringing norms to a clash (p. 3), although these 'new legal and ethical dilemmas [posed by] drones do not fundamentally undermine the applicability of traditional legal and ethical standards of armed conflict.' (p. 2) In fact, Boyle argues, the novelty lies not so much in the drones themselves, but in the legal interpretation underpinning the targeted killings program as an extension of anticipatory self-defence (p. 8).

The other chapters discuss the interaction between the development of technology and the evolution of legal norms, emphasizing, as Boyle does, continuity rather than upheaval. In

'Getting Drones Wrong', Stephanie Carvin questions the novelty of drones and argues that debates over drones represent a further iteration of debates first spurred by artillery targeting beyond visual range, concerning the rules governing warfare at a distance. Debates over drones, therefore, further the tension between military necessity – allowing states 'to actually wage war in an effective manner' (p. 26-27) – and humanity – doing so with the minimum level of destruction and death necessary. With drones, Carvin argues, 'the weapon itself is seldom the issue at hand' (p. 23): the challenge lies rather in their effects on the overall conduct of warfare.

Craig Martin as well as Daniel Brunstetter and Arturo Jimenez Bacardi address the tensions between International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Martin's chapter discusses the 'means-methods paradox' according to which the very faculties of drones which might seemingly allow it to seem more compliant with IHL may in fact lead to more systemic violations of IHL (p. 39). He notably examines how the decision-making process of drone operators may, in fact, lead to practices enabling systemic violations of principles of discrimination (pp. 54-59). In other words, violations in the 'methods' of warfare – the actual use of drones – may be attributable to the 'means' of warfare – the drone infrastructure itself (pp. 55; 62-63). Brunstetter and Jimenez address the legal and ethical debate between the United States and the human rights community concerning the applicable standards for drone strikes, claiming that, under pressure, the United States transitioned from a strategic-legal frame to a legal-normative discourse (p. 74). Brunstetter and Jimenez further argue that the tension between the conditional protections afforded by IHL (championed by the United States) and the right to life accorded under IHRL (supported by the human rights community) also brings into view a debate over the meaning of human rights and the range of harms – insecurity, psychological harms – which are not considered under IHL (p. 88).

The two final chapters by David Whetham and by Caroline Kennedy and James Rogers, consider the use of drones to enforce protections in peacekeeping missions. While Whetham

argues that the surveillance role of drones allows them to deter violations of human rights (p. 100), Kennedy and Rogers make a much more compelling case for the use of armed drones to multiply peacekeeping capabilities (p. 117). However, while they convincingly argue that drones can reduce requirements for ground troops in peacekeeping missions, they discuss very cursorily how armed drones could actually prevent mass atrocities, a point to which I return below.

While Boyle and his contributors cautiously explore continuity and novelty in the legal and ethical frameworks surrounding the use of drones in warfare, Schulzke takes a quite more radical approach, rejecting any notion of drone exceptionalism and arguing for perfect continuity in the ethical assessment of warfare. Except for a few rare types of weapons which could under no circumstances be used morally – mainly weapons of mass destruction – Schulzke argues that weapons in themselves are morally neutral, and that the only assessment of the ethics of weapons lies in their use. Establishing the concept of the latent potential of weapons systems, Schulzke states that the range of potential uses of drones enables them to be employed in a variety of roles, both ethical and unethical. Somewhat more controversially, while affirming that drones do not require any form of fundamental reassessment of just war theory, Schulzke maintains that drones possess the potential to wage war more morally than human beings.

Schulzke's discussion, therefore, is highly decontextualized and abstract, with minimal references to actual uses of drones. While Boyle and his contributors consider the interplay between drone technologies and practices – and therefore maintain the possibility of considering drones as leading to systemic violations of IHL based on their empirical use – Schulzke asserts that to demonstrate that drones are morally defensible weapons, he merely needs to show that they have the potential to be used in compliance with just war theory;

however, he goes further in arguing that drones present moral advantages which make them better than comparable weapons (p. 117, 222). Proceeding through the principles of *jus ad bellum* and *jus in bello*, this book therefore argues that drones, used within well-established limits, can raise ethical thresholds for the use of violence, strengthen rules of engagement, and ultimately lead to fewer deaths. In comparison to other means of warfare, Schulzke argues, drones can be more discriminatory, more proportionate, and overall less destructive, thereby establishing their moral worth.

Throughout, Schulzke argues largely by refutation, drawing on a large number of critiques of drones to establish the value of his approach separating the weapon from practices of war, which would be problematic for all forms of warfare, not merely drone warfare. In so doing, however, he narrows the scope of his study: despite two chapters on the *jus ad bellum* (one on the ethical challenges of drones, and one on the potential regulation of drone use to strengthen ethical compliance), Schulzke's vision is one where the availability of weapons systems bears no influence on the decision to use military force. He therefore rejects outright any argument to the effect that drones may encourage the use of military force, or that their secrecy may lead to more extensive uses of force. To the extent that these may constitute valid concerns, they can be remedied by a strengthening of ethical norms against aggression, by an emphasis on the need for a just cause, and by norms on domestic and international transparency, and therefore do not pose a particular challenge to drones themselves.

Neither of the books under consideration argues that drones are, in themselves, inherently and irredeemably immoral. As mentioned above, for Schulzke, drones are 'defensible weapons platforms', which can be deemed ethical only in their use or misuse (p. 12). Furthermore, because any weapon (except for WMDs) can be used for either ethical or unethical conduct, any evidence of negligence causing excessive collateral damage, or even of deliberate war crimes through drones cannot be used as evidence of their problematic morality.

Drones do, however, change moral calculation by enabling further ethical conduct. By removing combatants by the battlefield and thus removing the justification for self-defence, by lowering the costs of restraint – i.e. by reducing the risk that spared enemies might attack friendly forces – and by allowing the positive identification of targets through loitering and advanced visual capabilities, Schulzke states that drones present the ability to strengthen rules of engagement and tolerate little to no risk of collateral damage (p. 117).

In so arguing, however, Schulzke finds himself in a double bind. First, as Martin notes, these capabilities can hardly be described as moral 'advantages' (p. 173) outside of their use in practice. Thus, Martin argues, the 'paradox' may well be that these seeming benefits of drones will simultaneously lead to more pervasive legal violations (p. 39). Furthermore, as Megan Braun and Brunstetter note, a high proportion of targeted killing strikes lead to civilian deaths, more so than with other weapons systems (Braun and Brunstetter, cited by Brunstetter and Jimenez, p. 83). Short of considering the practices in which these drones are used, therefore, Schulzke's moral advantages remain little more than hypothetical. Furthermore, as Derek Gregory has demonstrated – and Martin mentions (p. 54) – visual acuity does not equal understanding of a situation and distance does not equal detachment, leading potentially to violations of principles of just war (Gregory 2018; see also Williams 2015).

Secondly, Schulzke establishes these moral advantages of drones by distinguishing the developments that can be attributed to the weapons platform and those which can be attributed to wider trends in warfare. As such, he argues, a reduction in casualties would be attributable to weapons (drones) presenting a greater potential for discrimination and for both *ad bellum* and *in bello* proportionality. To borrow Carvin's words, drones in Schulzke's account may present the perfect solution to the dilemma of balancing military necessity and humanity. It might be worth wondering, however, whether the use of drones indeed constitutes an overcoming of the tension between force protection and the protection of civilians (pp. 122-

125), or rather its enactment: a military which decides to intervene with drones has made a choice to privilege troop protection over the presence of ground troops. Such a decision has ethical and strategic implications, and would precede Schulzke's evaluation of the ethical compliance of drones. Furthermore, while Schulzke is correct in arguing that drone operators are not at personal risk while piloting their drones, Schulzke is silent on the potential use of drones to overwatch and protect allied forces or civilians (see p. 125-128) which, as Gregory shows, can fundamentally skew judgment (Gregory 2018).

Drones, for Schulzke, are not responsible for the wider character of war: 'Drones are not the cause of the US military's controversial style of targeted killing or its geographically unrestrained counterterrorism/counterinsurgency operations. Rather, they are one symptom of the American strategy of waging the War on Terror by any means available.' (p. 57) The point is well taken that drones do not, in themselves, create the necessity for their use. It is equally correct that drones are part of an array of tactics – special forces raids, conventional aerial bombing, cruise missile strikes – and that a rejection of drone strikes would not mean an end to targeted killing (p. 58). However, in separating these two elements, Schulzke brackets off a crucial question, namely whether the availability of drones creates pressures for their use. Boyle, in comparison, openly inquires whether the ubiquity of drones may lead to the normalization of targeted killing, and whether the proliferation of technology may lead to a proliferation of norms enabling drone use (p. 16). Carvin, as well as Brunstetter and Jimenez, note how technological innovations can create pressures leading to changes in laws of war and human rights (Carvin, p. 26; Brunstetter and Jimenez, p. 88). Schulzke seeks to present drones as morally advantageous weapons by dismissing cursorily any suggestion that drones may impact the wider character of war and the norms governing it. Would the United States have pursued a strategy of targeted killing without drones? Would they have opted, as Schulzke

suggests, for a more destructive strategy (p. 177)? At any rate, such questions deserve careful consideration, not summary dismissal.

Schulzke, therefore, falls prey to what Elke Schwarz criticises as the biopoliticization of ethics of violence, that is, the transformation of ethics from a judgment to a code that can be applied blindly, in a calculating fashion, leading to 'narrowed horizons for ethical debate' (Schwarz 2018: 172). Ethics, therefore, in Schwarz's account, is transformed by violent technologies from an inquiry into whether it is right to kill into a technological endeavour to kill more effectively (Schwarz 2018: 191; 198). It is particularly jarring that Schulzke asserts the heightened ability of drones for proportionality (both *ad bellum* and *in bello*) while excluding the question of whether drones can achieve a given objective (p. 189). Carvin argues that 'good inquiry about drones will focus on overall strategy', including 'second- and third-order effects' (p. 33). Indeed, what Carvin highlights here is that it is impossible to discuss the proportionality of military actions effectively without a consideration of their role vis-à-vis strategic objectives (and whether any tactical action furthers this strategic objective). In other words, if targeted killings can be shown to be effective in increasing security and defeating the given enemy, then considerations of how to pursue this strategy better become relevant, and Schulzke's discussion becomes highly pertinent. If, however, targeted killings do not, in fact, further the pursuit of strategic objectives, then discussions of whether drones allow for more discriminatory killing become moot, as the requisite level of proportionality (both *in bello* and *ad bellum*) may never be established.

Boyle's contributors are generally much more careful in charting the co-development of technical means, legal and ethical norms, and practices. The two chapters on the use of drones in humanitarian intervention suggest novel ways in which drones' capabilities can be used in furtherance of strategic objectives, both through deterrence and through coercion. At times, however, once again, the discussion remains quite idealized. Kennedy and Rogers agree

with Schulzke that drones are not inherently immoral and that, if used to protect of civilians and human rights within a humanitarian intervention or peacekeeping framework, armed drones can be 'in an opportune position to intervene' (p. 117). Whether such intervention – which Kennedy and Rogers suggest would mostly consist in stopping threatening rebel forces (p. 119) – would be feasible and effective in the absence of a ground presence remains a crucial question that needs to be further examined in order to ascertain the potential of drones for ethical armed action.

Thus, while fellow travellers on part of the journey, agreeing on the necessity to avoid ascribing moral value to a weapons platform itself, Schulzke and Boyle nevertheless end up in somewhat opposed camps. While Schulzke, arguing for the moral potential of drones, advocates for the deontological regulation of drones, Boyle's contributors, following Carvin, tend to approach the ethical and legal governance of drones through a rather teleological perspective. It is impossible, for Boyle and his contributors, to separate the narrow ethical assessment of a drone strike from the wider context of their use in warfare. Nevertheless, both works should be commended for suggesting new frameworks for the ethics of warfare. Above all, Schulzke's concept of the latent potential of weapons systems opens new horizons for the study and regulation of weaponry which may, additionally, allow for the bridging of the gap between non autonomous, semi-autonomous, and fully autonomous weapons systems (as Schulzke briefly considers in Chapter 6). The six chapters in Boyle's volume, meanwhile, must be commended for providing a plurality of perspectives on related legal and ethical questions, pointing to a holistic contextual framework for the study of contemporary warfare and weapons.

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