

# The Paradox of Riskless Warfare

Paul W. Kahn

The fundamental moral fact about war is that the innocent are appropriate targets of physical violence—not, of course, *all* of the morally innocent. The morality of the battlefield distinguishes not between the innocent and the guilty, but between the *combatant* and the *noncombatant*. Combatants, however, cannot be equated with the morally guilty, since opposing combatants are likely to have equally valid claims to moral innocence. Neither has wronged the other, or anyone else. But each *is* licensed, legally and morally, to try to injure or kill the other. Each possesses this license because each acts in self-defense vis-à-vis the other. The reciprocal imposition of risk creates the space that allows injury to the morally innocent. Yet, every military force also has a compelling ethical obligation to minimize the risk of injury to its own forces. Each strives to create an asymmetrical situation in which the enemy suffers the risk of injury while its own forces remain safe. The paradox of riskless warfare arises when the pursuit of asymmetry undermines reciprocity. Without reciprocal imposition of risk, what is the moral basis for injuring the morally innocent?

In this essay, I argue that riskless warfare, which increasingly characterizes U.S. military policy, pushes up against the limits of the traditional moral justification of combat. If it passes those limits, as it arguably

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did in Kosovo, *warfare* must become *policing*. Policing is the application of force to the morally guilty. The moral difference between policing and warfare requires not just different rules of engagement but also different institutions to control the decision to use force. A national army is not, and cannot be, an international police force. Effective international policing requires a credible separation of the application of force from national political interests. A failure to adjust military institutions to the moral grounds of

combat will likely result in increasing attacks on our own civilian population.

## The Moral Character of Combatants

**1. Lack of autonomy.** War in the modern age has been fought largely by conscript armies. Conscript makes vivid the contemporary ethical context of soldiering: combatants typically take up the military burden because they have to. That compulsion is likely to rest on physical, political, and legal considerations. The soldier's ethos uses the language of political patriotism, of doing one's duty, of obeying the law, and—most importantly—of confronting uncontrollable circumstance. The combatant's primary concern is the survival of himself and his friends. An ethical demand of independent choice is placed on soldiers only when they have some control: they are not personally to commit war crimes.

Combatants are constrained by forces and circumstances that determine what they "must" do. They tend to be young, with little opportunity to develop an educated opinion. Belief in the justice of their cause is likely to be shaped by propaganda, not deliberation. In some cases—certainly in the case of child soldiers—the combatant is yet another victim of the regime in power, rather than a participant in that regime. Combatants are placed in a situation of mortal danger by political decisions over which they have little, if any, control and which they may not even understand. The only alternative to a combatant's own injury or death may be the successful injuring of another—one who is equally likely to be morally innocent. The morality of contemporary combat emphasizes the mutual moral degradation of combatants: they are not free agents. The role-morality of the combatant begins from a recognition of the suspension of the individual's free choice.

**2. The separation of political ends from the morality of combat.** Since combatants cannot ordinarily remove themselves from combat because of a moral disagreement with the ends for which they are deployed, their moral status is not the same as that of the political leadership. A combatant who complies with the rules of warfare has not done anything for

which he deserves punishment, regardless of which side he fights on. Thus, we didn't think that every German soldier committed a moral wrong for which he deserved to be punished at the end of World War II, even though we thought criminal punishment appropriate for the leadership. We didn't think that the soldiers of the Soviet Union shared in the moral guilt we attributed to much of the political leadership. This is a kind of implicit bargain the state strikes with the individual.

The terms "guilt" and "innocence" don't lose all sense on the battlefield. Rather, they refer to a separate moral code that specifies war crimes. After all, the fundamental reality of the battlefield is a kind of license to kill. That which is prohibited in ordinary life is the point from which moral deliberation begins on the battlefield. Nevertheless, the separation of the political ends of warfare from the morality of combat is always tenuous. The more we believe to be at stake in the outcome of a war, the less willing we are to maintain this distinction. If we thought, for example, that loss of the war would mean the slaughter of all the society's males, and the selling off of the women and children into slavery—the consequences of loss in classical times—we would not be willing to respect the distinction of *jus ad bellum* (principles concerning the just resort to war) from *jus in bello* (principles of just conduct in war). Moderation in political ends is a necessary condition of maintaining the distinct morality of the battlefield.

**3. The requirement of reciprocity.** The right of combatants to injure and kill each other is founded neither on judgments of their own moral guilt nor on judgments of the moral evil of the end for the sake of which their force is deployed. Rather, combatants are allowed to injure each other just as long as they stand in a relationship of mutual risk. The soldier who takes himself out of combat is no longer a legitimate target. The morality of the battlefield, accordingly, is a variation on the morality of individual self-defense. Injury beyond the point required for self-defense is disproportionate and, therefore, prohibited. Defending him-

self, the combatant advances the political objective for which force is deployed.

The soldier's privilege of self-defense is subject to a condition of reciprocity. Soldiers cannot defend themselves by threatening to injure noncombatants; they are not permitted civilian reprisals. Combatants cannot threaten the family of an enemy soldier, even if the threat would effectively induce surrender, and thus reduce the overall injuries caused by combat.

These limits do not distinguish the morally guilty from the morally innocent. All may be morally innocent; all are in a tragic and dangerous situation. Nor do such limits necessarily minimize the overall suffering in a war. On efficiency grounds alone, we can never dispose of the claim that ruthlessness in the pursuit of war is the most humane method of fighting, for it brings combat to a swift end. Surely we cannot look at the battlefields of the twentieth century and conclude that the morality of *jus in bello*—just conduct in war—has made wars less costly or more humane.

The rule of reciprocal self-defense cannot be justified by appeal to any of our ordinary moral intuitions: it fails the test of utility, and it also fails the test of deontological rules, since it does not support the moral autonomy and dignity of the individual. Rather, *the rule of reciprocal self-defense stands as its own first principle within a circumscribed context in which individuals act in politically compelled roles.*

If the fundamental principle of the morality of warfare is a right to exercise self-defense within

the conditions of mutual imposition of risk, then the emergence of asymmetrical warfare represents a deep challenge. A regime capable of targeting and destroying others with the push of a button, with no human intervention but only the operation of the ultimate high tech weapon, propels us well beyond the ethics of warfare. Such a deployment of force might be morally justified—it might be used to promote morally appropriate ends—but we cannot appeal to the morality of warfare to justify this mode of combat.

It would be a mistake to believe that we remain sufficiently far from this high-tech image that the problem



From: *Men: A Pictorial Archive from Nineteenth-Century Sources*, selected by Jim Herter (Dover Publications, 1980).

does not press upon us practically. Riskless warfare can be a product of technological innovation, but it is also a function of political decisions. In Kosovo, Western forces were reported to be operating under a policy that missions were not to be undertaken if there was a serious risk of casualties. The situation in Afghanistan is less clear. While the losses are few, an

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outsider at least has the impression of reciprocal risk. The political leadership took a different position from that in Kosovo, warning the public that in this case there would be casualties, that sacrifice would be required. There are, however, likely to be more, not fewer, Kosovos in our future.

### Asymmetrical Warfare as Police Action

In a previous essay, I identified a number of problems with riskless warfare. It is an image of warfare without the possibility of chivalry. In situations of humanitarian intervention, it expresses a disturbing inequality in the calculus by which we value different lives. It may take the destructive power of war outside of the boundaries of democratic legitimacy, because we are far more willing to delegate the power to use force without risk to the president than we are a power to commit the nation to the sacrifice of its citizens. It is likely to create international accusations of hypocrisy as we choose to intervene in some conflicts and not others, when all are equally a matter of money spent, not lives lost.

All of these are real practical and political problems, but they do not get to the heart of the moral conundrum. At the heart is a violation of the fundamental principle that establishes the internal morality of warfare: self-defense within conditions of reciprocal imposition of risk. Without the imposition of mutual risk, warfare is not war at all. What is it then? It most resembles police enforcement. The moral condition of policing, however, is that only the morally guilty should suffer physical injury. There may be exceptions to this rule, but there is no wholesale license to target the morally innocent.

The ethos of international policing is the same as that of ordinary criminal law enforcement. Individuals are the targets of police actions because of what they have done, not because of who they are. It is no longer

enough to know that someone wears a military uniform to make him an appropriate target. Wearing a uniform is not the same as participation in a criminal conspiracy. It is no longer enough to act within the limits of proportionality; we need to protect the morally innocent. We can no longer speak of acceptable collateral damage; we need to obtain a strict correspondence between injury and guilt. If our high tech weapons, imagined or real, are not limited in their use to the destruction of the morally guilty, then asymmetrical applications of force may satisfy neither the conditions of warfare nor those of policing.

While one can demand of the police that they assume risks in order to protect the morally innocent, there is no moral demand upon the police of symmetrical risk: policing is better to the degree that the police can accomplish their ends without risk to themselves. A perfect technology of justice would achieve a perfect asymmetry: the morally guilty should suffer all the risk and all the injury. This would simultaneously be the ideal technology of policing and the end of warfare.

The motivation to convert traditional political conflicts into matters of law enforcement has not been driven only by the revolution in military technology. The introduction of juridical elements into international

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relations is one of the great movements of the late twentieth century, ranging across the new activism of the International Court of Justice, the ad hoc tribunals for the former Yugoslavia and Rwanda, and the emerging International Criminal Court. The more we think of international politics under the paradigm of criminal law, the more likely we are to think of the use of force under the paradigm of policing, including its preference for asymmetry. In this sense, asymmetrical warfare represents a sort of moral category confusion.

I don't mean to suggest that there is anything wrong with the movement from warfare to policing. Morally, this can only be seen as progress. The problem is the confusion of the traditional morality of the battlefield with the appropriate morality for contemporary, international policing. If the military is engaged in policing, then it needs to rethink its rules of engagement. When a criminal seizes a hostage, we don't destroy the house in which both are occupants. At least, we don't do so unless we believe there is a virtual certainty that the criminal will injure or kill others if we fail to act imme-

diately. Even then, we demand that every effort be made to protect the innocent hostage. But in many nations, conscripts are little more than hostages—morally speaking—of criminal regimes. We can fight them if we must, but we do not have a license to injure them because of someone else's (or some regime's) wrongdoing. If we cannot adequately discriminate between the morally guilty and the innocent, we may not be able to use force at all. To be sure, many other options remain open: e.g., sanctions, political and financial support of various interests, boycotts, and the pressure of world opinion.

### Asymmetry and the Distinction between Combatants and Noncombatants

So far I have argued that, absent the reciprocal imposition of risk, there is no warrant for attacking the morally innocent. To make this argument, I explored the source of the soldier's license to kill, but one can reach this same conclusion by beginning the inquiry from the perspective of the victim. What makes the enemy combatant a morally appropriate *target* for the application of force?

In situations of extreme asymmetry, the distinction between combatants and noncombatants loses its value for moral discrimination. This distinction is central to the ethics of warfare not because it separates the morally guilty from the innocent but because it delineates a domain of threat. If combatants are no longer a threat, however, then they are no more appropriate targets than noncombatants. Both may be the victims of a repressive regime. To identify combatants as appropriate targets under these circumstances is not morally different from identifying the winners of a macabre lottery as the appropriate targets.

To see this point more clearly, suppose that the United States decides that Saddam Hussein's regime is an appropriate target for the use of force. If American forces confront Iraqi forces on a battlefield, then the Iraqi forces are appropriate targets as long as they threaten injury. But if the American forces never show up, what makes these Iraqis appropriate targets? They pose no risk to the United States, and many, if not most, have not done anything wrong. To answer that they provide internal support for the regime does not distinguish Hussein's military forces from many other groups he needs to maintain power. Why not target his bankers or his oil resources? To insist that his army remains an appropriate target, one cannot rely on the ethics of warfare. We need a different set of moral principles that delineates the appropriate targets for what we might, in classic fashion, call uses of force "short of war."

There are three possible responses to this argument. First, combatants are appropriate targets because ulti-

## Liberal Pluralism

### The Implications of Value Pluralism for Political Theory and Practice

William A. Galston

Isaiah Berlin first advanced the moral theory of value pluralism in the 1950s and it subsequently was developed by a number of distinguished scholars, including Galston. In *Liberal Pluralism*, Galston defends a version of value pluralism for political theory and practice. Against the contentions of John Gray and others, Galston argues that value pluralism undergirds a kind of liberal politics that gives great weight to the ability of individuals and groups to live their lives in accordance with their deepest beliefs about what gives meaning and purpose to life. This account of liberal pluralism is shown to have important implications for political deliberation and decision-making, for the design of public institutions, and for the division of legitimate authority among government, religious institutions, civil society, parents and families, and individuals.

Liberal pluralism leads to a vision of a good society in which political institutions are active in a limited sphere and in which, within broad limits, families and civil associations may organize and conduct themselves in ways that are not congruent with the principles that govern the public sphere.

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mately *they have consented* to their position, which is one of threatening to use force in support of the regime. Second, although there may not be moral grounds for distinguishing combatants from others, *prudential arguments* support the distinction. Third, although combatants may not threaten an asymmetrically powerful intervener, they nevertheless *threaten others* whom we are entitled to use force to protect. I will treat these arguments in turn.

**1. Are combatants appropriate targets because they have consented to their position?** As many narratives from Afghanistan are beginning to reveal, it is unrealistic to believe that a morally robust idea of consent operates within authoritarian societies. These are stories of men rounded up and sent to the front, often with little training and rarely with any choice. More important, to rely on consent to identify the legitimate targets for harm is an unjustifiable attempt to extend the moral guilt of the political leadership to the ordinary combatant. If consent is the ground for distinguishing legitimate from illegitimate targets, it is because consent represents a kind of active support of, or participation in, the regime's moral guilt. The regime's active supporters and beneficiaries, however, are not likely to correspond to the traditional category of combatants.

Of course, destroying a regime's army may be a way of destabilizing a regime, but so is destroying elements

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of its civilian infrastructure or any other significant group of its population. It is no longer the ethics of warfare that legitimates the choice of these targets but the moral value of the end in view.

**2. Are these prudential grounds for maintaining the distinction between combatants and others?** My arguments so far have proceeded from first principles. For both individuals and nations, however, prudence may sometimes require less principled behavior. Nevertheless, much the same conclusion can be reached from an argument that explores the practical consequences of the application of riskless force.

One consequence of an asymmetrical capacity to apply force can be a self-imposed effort strictly to adhere to the legal limits on targets. Those limits can function as a source of self-constraint. They can also offer an invitation to escalation in the face of frustration, as we saw with the steady expansion of targets in the Kosovo campaign. The list of legal targets can be

very long. Scrupulous adherence to lawful targets by an asymmetric power is unlikely to support a perception of legitimacy. In the absence of reciprocal risk, what had traditionally been seen as fair is likely to be seen as morally arbitrary and, if arbitrary, then an act of victimization of the powerless.

Further, conditions of asymmetry are unstable because they compel innovation by the disadvantaged side. Military tactics can be changed in hopes of neutralizing the advantage; for example, guerrilla warfare is one response to technological advantage. Equally possible is the infliction of reciprocal injury on a morally innocent, civilian population. Asymmetry may become an invitation to popular resistance and to terrorism. It is no accident that Saddam Hussein has been developing weapons of mass destruction since his defeat in the Gulf War. His strategy is to create symmetrical risk. If he cannot do this on the battlefield, he will do it elsewhere. The same motivations are powering

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the Intifada. If the Palestinians cannot hope realistically to create a reciprocal risk for the Israeli military, they will direct the risk of injury at civilians. And, of course, the character of the attack on September 11 was itself a response to the asymmetry in conventional forces. For the asymmetrically powerful to insist on the maintenance of the combatant/noncombatant distinction has the appearance of self-serving moralizing.

Just as it is practically intolerable to suffer an asymmetrical use of force, it is intolerable to suffer an asymmetrical risk to a civilian population. There is likely to be a cycle of escalation, as each side responds to the other's infliction of risk upon noncombatants. The bombing of London was followed by the bombing of Berlin. If it became clear, for example, that Iraq was responsible for the release of anthrax in this country, would the American response respect the line separating combatants from noncombatants? The Israelis allegedly threatened Iraq with just such a retaliation when they perceived a threat of attack by chemical weapons during the Gulf War. It is hard to believe that any country would act differently.

This means that the asymmetrical capacities of Western—and particularly U.S. forces—themselves create the conditions for increasing use of terrorism. This, in turn, creates a cycle of destruction outside of the boundaries of the battlefield, with its reliance on the distinction of combatants from noncombatants.

There is no easy, practical answer to this problem. Military forces cannot be asked to assume unnecessary risks. Every army wants to fight in such a way as to impose a maximum threat to the enemy and a minimum threat to itself. Indeed, it would be immoral for the military leadership not to try to minimize the risk of injury to its own forces. That the moral grounds of warfare may shift at the point at which this ideal approaches reality is not an obvious matter of concern for the internal process of military deliberation. Breaking the cycle requires a transition from combat to policing. There must be a general perception that force is used only against the morally guilty and there must be agreement on who are the morally guilty. This is why contemporary deployments of force tend to end with public, criminal trials.

In both its classical and colonialist forms, asymmetrical power has brought with it an ambition for empire. The capacity to realize ends through the application of force without suffering the risk of reciprocal injury is

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simultaneously a tactical prize and an intolerable political situation. No state will trust other states with this power. Equally, no people should trust their political leadership with this power. The pursuit of national interests through military means is restrained by the expectation of loss. If that expectation disappears, what are the sources of constraint? Even when legitimate objectives are pursued, the fact that they are the political project of a hegemonic power delegitimizes the application of force in the eyes of both those who suffer the intervention and those who are not directly involved. Riskless warfare may be a prescription for short-term success and long-term disaster.

Riskless warfare will be perceived as hegemonic interference unless it is perceived as legitimate policing. But the latter perception depends on institutional developments. Good intentions are not enough. Human rights claims will be seen as only a form of neocolonialism if advanced through a national military with the capacity risklessly to deploy force. Yet we are only just beginning to develop institutions of international law that could imaginably have a power of policing. Until we do so, we are likely to remain in this paradoxical situation in which the military's capacity for riskless application of force makes our own lives substantially riskier.

**3. Does the combatants' threat to others distinguish them from noncombatants?** While the United States

may be able to use force without risk, others—on the ground—are likely to suffer injuries from the combatants against whom we are intervening. Future uses of force are likely to look like interventions in situations of gross violations of human rights. Those violations constitute the moral ground of the combatants' traditional right to deploy force.

This argument suggests that the moral issue here is not different in kind from traditional arguments of "collective self-defense" when one party aids another in a military conflict. It is morally appropriate for one state to come to the aid of another that has suffered an armed attack. Morally, and increasingly legally, the same rule applies when a people has been attacked by its own government. Typically, interventions in the past have involved supply of material resources—particularly weapons. The deployment of asymmetrical force is simply another variation on this sort of aid. Intervention is morally justifiable so long as the side on whose behalf one intervenes faces a reciprocal risk from the target. The recipient of aid is the principal; the state that intervenes is only the agent.

This argument, while powerful, suggests real limits on intervention. First, the asymmetrical application of force morally depends on a prior and continuing symmetrical application of force. To target the morally innocent requires an argument of self-defense by those with whom the asymmetric power chooses to ally itself. Second, *the conflict that grounds the intervention must have its own integrity*. It cannot simply be a situation constructed by Western interests—or even by local parties—to create subsequent grounds for an asymmetrical intervention. Third, *asymmetric intervention places*

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*considerable pressure on arguments concerning the just resort to war* because the moral grounds for intervention receive no support from any internal dynamic of combatant self-defense.

When the United States chooses intervention, it assumes the moral obligation to make the *right* choice. "Right," here, means more than "supportive of our own political interests." Why and when does the United States have a right to decide the outcome of other peoples' wars? In situations of genuine political dispute, a potential intervener has no such right.

While riskless intervention in support of the victims of gross violations of fundamental human rights is permissible as a form of collective self-defense, this

argument is not independent of the sorts of claims considered in the last section. There remains the problem of external perception: why should the rest of the world see intervention by U.S. forces as anything other than a political decision to dictate who will be the winner in a local conflict? Intervention is perceived as neocolonialism in support of that group most likely to advance Western interests. Such perceptions extend the risk to our own civilian population. Internationalization of decisions to use force, within increasingly juridified institutions, is the only possible response to this perception.

### Conclusion

My argument can be represented with a highly simplified example. Imagine a confrontation between a champion heavyweight and an untrained lightweight. Suppose the heavyweight proposes that the way to solve their disagreements is to have a fight within the traditional rules of the ring. Because of the asymmetry, most people would find this proposal self-serving rather than fair. Now suppose that the lightweight challenges another lightweight. To this, the heavyweight responds by demanding cessation of the challenge, and he backs that demand with a threat of his own intervention. We would not necessarily object to this form of intervention, but we would ask whether the heavyweight is intervening on the *right* side. If the dispute between the two lightweights is genuine, why should the side against whom intervention is threatened agree that this is an appropriate way to end the dispute? From his point of view, we are just back at the first situation of asymmetrical force.

This example suggests that a shift in moral concern occurs in the two situations. In the first case, we question the *asymmetry itself*, while in the second, we question *the uses for which* force is being deployed. Our intuitions about a “fair fight” carry weight independently of our intuitions about the purpose for which force is deployed. But the stylized account also suggests that these two perspectives cannot remain separate: asymmetry places a particular burden on any decision to use force. As the asymmetry increases, so does our need to find the grounds for a common belief in the legitimacy of the deployment.

Viewed abstractly, this example is precisely the Hobbesian story of the origin of the state: there is a need to concede a monopoly on the legitimate use of force to a single heavyweight, who then retains the responsibility, as well as the capacity, to resolve private disputes. In the international arenas, the United States increasingly finds itself with monopoly power. The problem of practical ethics lies in the difference between these two situations: the United States is the heavyweight, but it does not have the legitimacy of the sovereign.

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Sources: At the end of World War II, only twenty-two high-level Nazi officials were indicted at Nuremberg for planning a war of aggression, crimes against humanity and war crimes. Outside of Nuremberg, about 5,000 German soldiers were charged with particular war crimes. Readers interested in the content of the combatants’ moral obligations under contemporary humanitarian law should refer to the Statute of the International Criminal Court, Art. 6–8. Concerning the point that the soldier who removes himself from combat is no longer a legitimate target, see Hague Convention IV (1907), Annex of Regulations, Art. 23.; Statute of the International Criminal Court, Art. 8, sec. 2(b)(vi). My earlier discussion of some problems of riskless warfare can be found in Paul W. Kahn, “War and Sacrifice in Kosovo,” *Report from the Institute for Philosophy and Public Policy*, vol. 19, no. 2/3 (Spring/Summer 1999). On the expansion of the target list during the air war in Kosovo, see Michael Ignatieff, *Virtual War: Kosovo and Beyond* (Chatto & Windus, 2001). That we might have reason to worry about the moral integrity of an intervention in Iraq is suggested by recent talk of “creating” a Northern-Alliance type operation in Iraq as a predicate to U.S. action. See, e.g., Inter Press Service, Dec. 2, 2001, “Iraq Veers Back into Washington’s Crosshairs,” by Jim Lobe, *The Independent* (London), April 8, 2002, (quoting Tony Blair).