



Shooting to Kill: The Ethics of Police and Military Use of Lethal Force

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Targeted Killing

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Abstract and Keywords

In this chapter, targeted killing is defined and distinguished from assassination and from extrajudicial killing. It is argued that targeted killing of combatants in theaters of war by the use of, for example, armed drones is morally permissible. It is further argued that while targeted killing of terrorists is morally impermissible in well-ordered jurisdictions—since the law enforcement model is applicable—it may be permissible under certain circumstances in disorderly states such as the FATA in Pakistan, given that the law enforcement model is unable to be applied. If so, it would need to be conducted in a manner that ensures that the lives of innocent civilians are not put at risk. Indeed, it is conceivable that it is permissible in well-ordered jurisdictions in which the authorities are refusing to enforce the law, such as was evidently the case with Osama bin Laden in Pakistan.

Keywords: targeted killing, assassination, extrajudicial killing, drones, terrorists, Osama bin Laden, FATA in Pakistan, law enforcement model, disorderly states, civilians

TARGETED KILLING IS a controversial practice. Indeed, it is sometimes referred to as extrajudicial killing, thereby implying it is unlawful. Moreover, targeted killing needs to be distinguished from assassination, a practice that is typically unlawful. Further, the contexts in which targeted killing takes place need to be distinguished, as do the nature of the targets. For example, targeted killing of civilians by police officers is both unlawful and morally impermissible. But what of targeted killing of combatants by combatants in a theater of war?

Surely this is both lawful and morally permissible. This chapter seeks to provide answers to these and related questions.

Two relatively recent events have placed the ethics of assassination and targeted killing at the fore: the killing of Osama bin Laden in Pakistan and the bombing by NATO forces of Colonel Gaddafi's compound in Tripoli in the context of the civil war in Libya. In May 2011, Osama bin Laden was killed by US Special Forces in Abbottabad, Pakistan. US officials said bin Laden resisted and was shot in the head; it has also emerged that he was unarmed. US officials also said that three other men were killed during the raid, one believed to be bin Laden's son and the other two his couriers; in addition, a woman was killed when she was used as a shield by a male combatant. There were no American casualties. Bin Laden's death came nearly ten years after al-Qaeda terrorists hijacked and crashed American passenger airplanes into the World Trade Center in New York and the Pentagon outside Washington, killing some three thousand people. Since Abbotabad is a medium-sized city, fairly close to Pakistan's capital, Islamabad, and home to a large **(p.238)** Pakistani military base, questions have been raised as to how bin Laden could have lived there undiscovered for so many years without alerting the Pakistan security agencies. Significantly, the US operation to kill bin Laden was evidently carried out without the knowledge of the Pakistani government.

What of the bombing of Colonel Gaddafi's compound in Tripoli? In February 2011, major political protests broke out in Libya against Gaddafi's government. Subsequently, these turned into a civil war in which evidently Gaddafi was responsible for the killing of unarmed civilians by Libyan forces loyal to him. In March 2011 the United Nations declared a no-fly zone in Libya and authorized air strikes by NATO forces to be undertaken for the purpose of protecting the civilian population of Libya. A NATO air strike in April in Tripoli apparently killed the youngest son of Gaddafi and three of his grandsons. US Defense Secretary Robert Gates said that NATO was not targeting Gaddafi specifically, but rather his command-and-control facilities—including a facility inside Gaddafi's sprawling Tripoli compound. However, it remains unclear whether or not NATO was attempting to kill Gaddafi; this is especially so given that Gaddafi was a key element of the Libyan government's armed forces command-and-control center. It is also unclear whether under UN resolution 1973 it is permissible for NATO forces to bomb command-and-control facilities in order to protect civilians; the wording of the resolution is vague, speaking as it does of using "all necessary measures to protect civilians." Certainly, it did not authorize Gaddafi's removal from power by military means. On the other hand, the destruction by NATO of Gaddafi's military forces in the course of NATO's efforts to protect the civilian population, if this is a correct account of what happened, did lead to Gaddafi's demise. I note that in addition to being responsible for civilian deaths in this conflict, Gaddafi had a long history of human rights violations to his name. Moreover, Gaddafi was responsible for the assassination of dozens of his

“enemies” around the world. In May 2011 the International Criminal Court issued a request for an arrest warrant against Gaddafi for “crimes against humanity.”

Having outlined the targeted killing of Osama bin Laden and the (possible) attempted targeted killing of Colonel Gaddafi by way of introducing my topic, I now turn directly to the ethics of assassination and targeted killing.

(p.239) 9.1 Assassination

Targeted killings and assassinations are closely related, but not identical, phenomena; moreover, neither has a precise and accepted definition.¹ Further, both are to be distinguished from extrajudicial killings. Extrajudicial killing is a legal or quasi-legal notion. First, it implies that the killings in question were carried out by state operatives (or by persons acting on behalf of the state), and that these actions were authorized (or at least sanctioned) by the nation-state (or its security agencies). Second, it entails that these killings were in violation of appropriate judicial procedures and, specifically, the procedure of a fair trial conducted by a properly constituted court of law.

Other things being equal, the killing, and therefore the targeted killing, of another human being is morally wrong. (Naturally, other things might not be equal; the killing might be done in self-defense, for example.) However, extrajudicial killing has an additional, and morally problematic, feature: it is done in violation of appropriate judicial procedure. So targeted killing is not necessarily extrajudicial killing. Moreover, targeted killings are not necessarily unlawful in a more general sense. For example, targeted killing of the enemy’s military commanders in wartime is lawful. To this extent, providing an acceptable justification for targeted killings is a less demanding undertaking than providing one for extrajudicial killings.

What of assassinations? Roughly speaking, assassination is “the deliberate killing, without trial, of a political figure,”² and, we might add, “for political reasons.”³ So assassinations are freely performed, or uncoerced, intentional killings undertaken to serve a larger political purpose.⁴ Likewise, targeted killings (and, for that matter, extrajudicial killings) are freely performed, intentional killings undertaken in the service of a larger purpose. Moreover, assassinations can be conducted by nonstate **(p.240)** operatives who are not acting on behalf of any state⁵ (e.g., the assassination of John F. Kennedy by Lee Harvey Oswald). In this respect, as we have seen, assassinations are unlike extrajudicial killings. It is intuitively unclear whether the notion of a targeted killing is akin to the notion of assassination in this regard. Further, only particular uniquely identified individuals (so to speak) can be the objects of assassination. A homicidal maniac who is shooting at any and all government officials because he is opposed to the “system” is not engaged in a series of

assassination attempts. This is because this shooter does not have any particular uniquely identified individual person in mind.

Here we can distinguish between a named individual, such as Barack Obama, and the individual who happens to meet a definite description, such as the Admiral of the Fleet. However, the notion of a uniquely identified individual in this context is in need of further elaboration. Roughly speaking, two conditions need to be met for there to be an attempted assassination or targeted killing of a uniquely identified individual in the sense in question. First, there is (or is believed to be) one, and only one, person who meets a prior, complex, description, which includes, crucially, a description of the person's military or political significance (e.g., the Taliban commander in Khost province in eastern Afghanistan who has ordered various specific terrorist attacks). Second, some individual has been identified as the person who meets the description in question (presumably on the basis of some credible evidence), and this individual is the subject of a tracking operation. Naturally, there is the possibility of error because of, for example, unreliable informants who are seeking to settle scores with their enemies rather than further the cause of US counterterrorism.

Evidently, there is not only the possibility, but the actuality, of error in Afghanistan. The US military has on a number of occasions admitted such error. There are other cases that are disputed by the US military but which, nevertheless, look to be cases in which innocents may well have been targeted and killed. Thus in September 2010 in Takhar Province in Afghanistan, Zabet Amanullah and various others were killed by a US unmanned drone because Amanullah was believed by the US military to be the terrorist Muhammad Amin. However, it is claimed by others, including the Afghan Intelligence Network, that Amanullah is not Amin, and that Amin is still alive. It is further claimed that the others killed in **(p.241)** the drone attack were innocent election workers. This raises the moral issue of collateral damage from targeted killings and assassinations. It has been estimated that 40 percent of targeted killings undertaken by the Israelis, for example, have involved collateral damages (i.e., the unintended death of innocent civilians, including children).⁶ On the other hand, it is presumably the case—and is typically maintained by its advocates—that assassinations and targeted killings involve much less loss of innocent life than many, if not most, conventional methods of war, such as aerial bombing, and are, to this extent, morally preferable.

Additional conditions definitional of assassination might include the use of treachery. And, as noted above, assassinations can be conducted by persons who are not state operatives and not acting on behalf of the state, as well as by state operatives acting on behalf of the state (e.g., the assassination of foreign heads of government).

Assassination has a very long history.⁷ It has been a practice of political leaders gaining and retaining political power within a polity, such as the assassination of political rivals by Cesare Borgia (famously described in Machiavelli's *The Prince* in 1532). Assassination has taken place in the context of wars, including guerilla wars, such as the assassination by the Vietcong of South Vietnamese officials during the Vietnam War. It has been a tool of terrorist groups in peacetime. For example, in the nineteenth century, Russian revolutionaries endorsed assassination as an instrument of political change, which included the assassination of Alexander II in 1881.⁸ And assassination has also been practiced by individuals acting alone (e.g., the assassination of US president John Kennedy). Assassination of one's political enemies in the context of a well-ordered, liberal democratic state is murder and, given the potentially destabilizing effects, a very serious political crime. Accordingly, it cannot be tolerated; it is both unlawful in such nation-states and generally regarded as morally unjustifiable. However, the legality, and certainly the morality, of assassination in other contexts is less clear.⁹

(p.242) During peacetime, the assassination of the political leaders of foreign states is unlawful under various treaties and conventions, such as the 1937 Convention for the Prevention and Punishment of Terrorism, the UN Charter, and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Moreover, it is a violation of the right to life enshrined in such documents as the International Covenant on Civil and Political Rights. The prohibition of assassination in international law was originally intended to protect heads of state—not leaders of terrorist movement. The point here is the possibly radically destabilizing political effects of killing a head of state, as opposed to (say) a senior military commander (assuming these to be two numerically different individuals). Thus George Bush Sr. refrained from killing or otherwise removing Saddam Hussein as the Iraqi head of state during the first Gulf War. At any rate, whereas in 1976 President Gerald Ford had signed an executive order banning assassination, the events of 9/11 led President George W. Bush in 2001 to authorize the CIA to carry out missions to kill Osama bin Laden. President Obama maintained that policy.

In theory at least, the targeted killing of bin Laden by the United States was not inconsistent with the prohibition on the assassination of heads of state; for bin Laden was not a head of state. For the same reason, it might be far more difficult to legally—as opposed to morally—justify killing Colonel Gaddafi, who was a head of state. From the fact that bin Laden was not a head of state it follows that he was not protected by those laws and treaties that prohibit the assassination of heads of state. But it does not follow from this that it was lawful to kill him. From a legal, and a widely held moral, perspective, the right to life is not an absolute right. Importantly for our discussion here, it is legally and morally permissible for combatants to use lethal force against enemy

combatants in the context of war. This raises the question of whether assassination in the context of a war is legally justifiable.

Evidently, assassination in war is normally unlawful.¹⁰ Under the norms of international humanitarian law, for example, killings are only lawful if those killed are combatants—but political actors are not necessarily combatants. On the other hand, Steven David (quoting military lawyer **(p.243)** Charles Dunlap) argues that neither US nor international law prohibits the killing of those directing armed forces in war.¹¹ Moreover, it has been argued that the principle of reciprocity has application in international law and might provide a legal justification for countermeasures such as tit-for-tat assassination.¹² Arguably, bin Laden was leading a campaign of violence against the United States and its allies; so he was, or was akin to, a military leader, and since military leaders are not legally protected from being killed in time of war, perhaps the targeted killing of bin Laden was lawful.

Let me now turn to the morality of assassination? Arguably the assassination of Hitler by Colonel Claus Schenk Graf von Stauffenberg and his co-conspirators in 1944 during the course of Second World War would have been morally justifiable, even if not legally allowed. For one thing, military and political leaders who direct the combatants under their command to commit atrocities, such as genocide, are morally responsible for these actions of their subordinates; pacifism aside, these leaders do not have a moral right not to be killed in these circumstances, any more than the combatants they command have any such right. For another thing, pragmatic arguments based on, for example, the untoward outcomes of “leaderless” defeated nations do not necessarily apply, and certainly not in the case of totalitarian regimes such as that of Nazi Germany or the Soviet Union under Stalin. On the other hand, the argument might apply that it would make no difference because the leader will be replaced by someone equally as bad. This was probably not so in the case of Hitler, but it might have been so in the case of Stalin, since Beria might well have taken over (depending on when Stalin was to have been assassinated).¹³ Moreover, even if assassinating leader A would lead to equally bad replacement leader B, it would not follow that leader A should not be killed, given the possibility of killing leader A and then killing leader B. Naturally, if there is an indefinitely long series of equally bad replacement leaders (C, D etc.), then the argument against killing the incumbent leader will not have been met. Further, a policy of killing a large number of political leaders in a given polity in order to, for example, render the polity ungovernable, **(p.244)** starts to look less like assassination and more like targeted killing (see below).¹⁴ This is because the notion of assassination seems more closely tied to fulfilling a political purpose by killing an individual person rather than by killing a set of individuals.

Here we need to be careful, since it is a standard military objective to inflict heavy casualties on an enemy force and, thereby, disable it. To do so is to achieve a military purpose (and, ultimately, a political purpose) by killing a set of individuals. However, this is not targeted killing; far from it. This raises the question of what conceptual space, if any, exists between assassination, on the one hand, and the killing of combatants in a theater of war, on the other. Specifically, what conceptual space is occupied by targeted killing of a long list of identified individuals—the sort of targeted killings being undertaken in the tribal areas of Pakistan (e.g., Quetta and North Waziristan) and in Afghanistan by US drone or UAV (unmanned aerial vehicles) attacks?

What of the morality of assassinating Colonel Gaddafi? From a retrospective moral perspective, killing the despot and human rights violator, Gaddafi, might be held to be an act of substantive justice. However, procedural justice, at least as it is conceived in criminal justice contexts, requires arrest based on prima facie evidence of wrongdoing and a fair trial. If so, procedural justice is likely to be denied at least until such time as Gaddafi is removed from power (and remains alive, as in fact did not happen). From a prospective moral perspective, were NATO forces to kill Gaddafi it would arguably be an act of killing in defense of others, since evidently he continued to constitute an immediate threat to the lives of unarmed Libyan civilians. Moreover, his removal from power might well have been thought to be likely to lead to a better state of affairs for the Libyan people. It was far from obvious that he would be replaced by someone equally as bad; indeed, the prospects for some form of democracy in a post-Gaddafi Libya might have seemed to be reasonably good. And perhaps the least costly way to achieve his removal—in terms of loss of human life—might have been by killing him. As it happens, Libya post-Gaddafi is in a state of civil war.

The upshot of this discussion is that although assassination is unlawful, it is, conceivably, at least in some extreme cases (e.g., that of Hitler, if not Gaddafi), morally justifiable (from the prospective, if not the retrospective, perspective). Does it follow from this that the law ought to reflect **(p.245)** morality? That is, should the law be adjusted to admit of exceptions? If so, perhaps the law and morality should always be strictly in accord when it comes to the practice of assassination. Let us now consider the possibility that assassination might be morally justifiable (or at least morally excusable) in some extreme circumstances, but that, nevertheless, it ought not to be lawful. This kind of claim is sometimes made in the context of a discussion of the so-called problem of dirty hands. Here it is important to first note some conceptual differences between the concept of dirty hands and the concept of noble cause corruption. The idea of dirty hands is that political leaders, and perhaps the members of some other occupations, such as soldiers and police officers, necessarily perform actions that infringe central or important principles of common morality, and that this is because of some inherent feature of these occupations. Such dirty

actions include lying, betrayal, and especially the use of violence, including assassination.

The first point to be made here is that it is far from clear that such acts are necessarily acts of corruption, and hence necessarily acts of noble cause corruption. (Noble cause corruption is corruption in the service of a good end, such as the police fabricating evidence against a known drug dealer in order to ensure his conviction.) In particular, it is not clear that all such acts undermine to any degree institutional processes, roles, or ends. (This is compatible with such acts having a corrupting effect on the moral character of the persons who perform them, albeit not on those traits of their moral character necessary for the discharging of their institutional role responsibilities as, say, politicians, police, or soldiers.)

The second and related point is that some putatively dirty actions are indeed definitive of political roles, as they are of police and military roles. For example, it is evidently a defining feature of police work that it uses harmful and normally immoral methods, such as deceit and violence, in the service of the protection of (among other things) human rights.¹⁵ Clearly, a similar definition is required for the role of soldier. And since political leaders necessarily exercise power and—among other things—lead and direct police and soldiers, they too will participate in dirty actions in this sense. However, such use of deceit, violence, and so on, can be, and typically is, morally justified in terms of the publicly sanctioned, legally enshrined, ethical principles underlying police and military use of harmful and normally immoral methods, including the use of deadly **(p.246)** force. In short, some putatively dirty actions are publicly endorsed, morally legitimate, defining practices of what most people take to be morally legitimate institutions, such as government and police and military institutions. However, the advocates of dirty hands intend to draw attention to a phenomenon above and beyond such publicly endorsed, legally enshrined, and morally legitimate practices. But what is this alleged phenomenon? According to Michael Walzer,¹⁶ politicians necessarily get their hands dirty, and in his influential article on the topic, he offers examples such as the political leader who must order the torture of a high-ranking terrorist if he is to discover the whereabouts of bombs planted by the latter and set to go off, killing innocent people. These examples consist of scenarios in which politicians are not acting in accordance with publicly endorsed, legally enshrined, morally legitimate practices; indeed, they are infringing moral and legal requirements. However, the torture scenario is hardly an example of what politicians in liberal democracies routinely face; indeed, it is evident that even in the context of the “war on terrorism” such cases only arise very occasionally, if at all.

There might in fact be *some* political contexts in which central or important moral principles do need to be infringed on a routine basis, albeit for a limited time period. Such contexts might include ones in which fundamental political

institutions had collapsed or were under threat of collapse. Consider the case of the Colombian drug baron Pablo Escobar.¹⁷ Escobar was apparently executed in 1993 by police after he was cornered at the end of a large-scale manhunt. However, Escobar was no ordinary criminal. He headed the largest cocaine cartel in Colombia, accounting for up to 80 percent of the multibillion-dollar export of Colombian cocaine to the United States. Such was the scale of Escobar's operation, and the ruthlessness by which he maintained it, that by the time of his death he was responsible for the deaths of literally hundreds of people, including many innocent civilians, foreign citizens, police officers, judges, lawyers, government ministers, presidential candidates, and newspaper editors. Indeed, the Colombian state, with the technical, military, and intelligence support of the United States, was fighting a *de facto* war against Escobar, and fighting for its very survival. Accordingly, it might be argued that **(p.247)** Escobar's execution was a politically motivated act, and that Escobar was both a criminal and, by virtue of his explicit attacks on the political system, a political figure. That is, Escobar's execution was an assassination on our definition of assassination.

Clearly, Escobar's execution was unlawful. Moreover, it is plausible that such executions should never be made lawful. What of the morality of the execution? The first point to be made here is that even if such dirty methods are morally justified, it is in the context of an argument to the effect that their use was necessary in order to re-establish political and other institutions in which the use of such dirty methods would presumably not be permitted. Accordingly, such scenarios do not demonstrate that the use of dirty methods is a necessary feature of political leadership, and certainly not in the context of a well-ordered liberal democracy at peace.

The above situation is one of emergency, however it is *institutional* emergency that is in question. It is not a one-off, terrorist attack that threatens lives but not institutions. Nor is it the kind of extreme emergency posed by totalitarian states such as Nazi Germany under Hitler and which (allegedly, but doubtfully, given their strategic ineffectiveness) justified the use of such "dirty hands" tactics as the aerial bombing during World War II by Allied forces of civilian areas in German cities such as Dresden.¹⁸

So even if one wanted to support all or some of the methods used by the Colombian authorities, one would not be entitled to generalize to other states of emergency in which there is no threat to institutions *per se*. Moreover, there are reasons to think that many relevant dirty methods, such as execution and the use of criminals to combat criminals, are in fact counterproductive. For example, the use of other criminal groups (such as competing drug lords) against Escobar tended to empower those groups. Further, such methods, although dirty, are not as dirty as can be. In particular, methods such as execution of drug lords are directed at morally culpable persons, as opposed to innocent persons. At the

dirty end of the spectrum of dirty methods that might be used in politics are those methods that involve the intentional harming of innocent persons.

While the killing of Gaddafi should not be assimilated to the killing of Escobar, there are some similarities. For Gaddafi had been accused of **(p.248)** “hollowing out” Libyan institutions, albeit from his position as head of state (unlike Escobar, who operated from outside the government). Accordingly, an additional justification for the targeted killing of Gaddafi—additional to the above-mentioned “justice” and “defense of others” justifications—might be the imperative to protect, or perhaps rebuild, Libyan institutions, notably institutions of governance.

9.2 Definitions: Terrorism, Targeted Killing

Roughly speaking, terrorism is a political and/or military strategy that

1. consists in deliberately performing violent actions of killing, maiming, torturing or otherwise seriously harming, or threatening to seriously harm innocent civilians;
2. is a means of terrorizing, individually or collectively, the members of some social or political group in order to achieve political purposes (possibly indirectly via achieving a military purpose);
3. relies on the killings—or other serious harms inflicted—receiving a high degree of publicity, at least to the extent necessary to engender widespread fear in the target political or social group.

Elsewhere¹⁹ I have offered a more nuanced definition of terrorism that involved an indirect strategy for demarcating terrorist actions from other violent acts; namely, one that involves a list of well-established violent crimes (that are crimes and morally justifiably so) that (1) meet the above conditions for being acts of terrorism, notably that they are politically motivated (whereas most violent crimes are not); and (2) distinguish, as in law, between terrorism in civil society and terrorism in war. This strategy yields two sets of violent crimes describable as acts of terrorism; namely, terrorism-as-crime (ordinary violent crimes that are also acts of terrorism), and terrorism-as-war-crime (war crimes that are also acts of terrorism). More generally, this strategy comports with the familiar dual framework for categorizing terrorist actions and campaigns; namely, terrorism-as-crime and terrorism-as-war.²⁰ Naturally, we can distinguish **(p.249)** between a war fought against a terrorist group (terrorism-as-war) and ad hoc terrorist actions within a war that is not otherwise appropriately framed as terrorism-as-war because neither side is a terrorist organization per se.

I take it that the terrorism-as-crime model—as opposed to the terrorism-as-war model—is the preferred and, therefore, default framework for a liberal democratic state when it is suffering lethal attacks from a terrorist organization. More precisely, the terrorism-as-war framework should be applied only under the following general conditions²¹: (1) the terrorism-as-crime framework cannot

adequately contain serious and ongoing terrorist attacks; (2) the application of the terrorism-as-war framework is likely to be able adequately to contain the terrorist attacks; (3) the application of the terrorism-as-war framework is proportionate to the terrorist threat; (4) the terrorism-as-war framework is applied only to an extent, (e.g., with respect to a specific theater of war, but not necessarily to all areas that have suffered, or might suffer, a terrorist attack), and over a period of time, that is necessary; (5) all things considered, the application of the terrorism-as-war framework will have good consequences in terms of security, and better overall consequences (e.g., in terms of lives lost, freedoms curtailed, economic impact, institutional damage) than the available alternatives.

Accordingly, it is only when the liberal democratic state cannot adequately contain the terrorist activity of a specific terrorist organization that the terrorism-as-war model might need to be applied, as in a theater of war involving ongoing, large-scale terrorist attacks and military counterstrikes by government security forces. The Israeli-Hezbollah conflict during 2006²² is arguably an instance of this.²³ Moreover, even if the terrorism-as-war model is to be applied in a given theater of war, it would not follow that it should be applied outside that theater of war. Thus, even if it is desirable and necessary to apply the terrorism-as-war model to the armed conflict between al-Qaeda combatants and US forces in Afghanistan seeking to destroy al-Qaeda military bases and personnel, **(p.250)** it would not follow that it was desirable or necessary to apply it to al-Qaeda operatives functioning in the US homeland.

This way of proceeding presupposes that the distinction between well-ordered civil societies and theaters of war can adequately be drawn. The concept of war is, of course, somewhat vague; the point at which a violent attack, or set or attacks, on one armed force by another armed force constitutes a war is indeterminate. Moreover, the concept of war is especially vague in its application to armed conflict between nation-states and nonstate actors. Nevertheless, I assume that a liberal democratic nation-state can engage in wars with nonstate actors (e.g., a civil war, a revolutionary war, or a war against an armed, organized, belligerent, external, nonstate entity). For example, I take it that the United States is at war with ISIS in Iraq and Syria.²⁴ On the other hand, as noted above, from the fact that two states (or a state and a nonstate actor) are at war, it does not follow that all or any of their respective territories are theaters of war (i.e., are battlefields).²⁵ Moreover, areas with a high density of civilian populations with no means of escape from those areas morally ought not to be turned into battlefields, as happened in the case of the bombing of civilian populations in German cities such as Dresden during World War II.²⁶ Here **(p. 251)** there are analogies between the lethal use of drones in Afghanistan and Pakistan. Importantly, some of the areas in which there is a lethal use of drones are not theaters of war and ought not to be transformed into such. On the other hand, presumably in some of these areas that are not theaters of war, it is

possible *on some occasions* to engage in targeted killing, whether by drones, snipers, or other means, in a manner that does not put the lives of innocent bystanders at serious risk. I assume that wars waged by liberal democratic states can be either external or internal wars. India, for example, has been fighting an internal war in Kashmir against a variety of terrorist and separatist groups. In this conflict, India has at times deployed hundreds of thousands of military and police personnel, and tens of thousands of civilians, soldiers, police, insurgents, and terrorists have lost their lives.²⁷

There are various problems posed by terrorism for the duality of the terrorism-as-crime framework and the terrorism-as-war framework that I have discussed in detail elsewhere.²⁸ For our purposes here, it is important to invoke the following threefold distinction between contexts: (1) well-ordered jurisdictions, or jurisdictions in which there is law and order and, in particular, there is effective enforcement of the laws against terrorism; (2) disorderly jurisdictions, or jurisdictions in which there is a degree of law and order—they are not simply theaters of war—but the authorities are unable to enforce adequately laws against terrorists;²⁹ (3) theaters of war (whether in the context of a declared or undeclared³⁰ war between states, or a declared or undeclared war between a state and a nonstate actor).

Finally, on this account, while a terrorist is not necessarily a combatant, the members of terrorist organizations that have armed forces engaged in armed conflicts may nevertheless be combatants (e.g., if they are members of such an armed force engaged in armed conflict and are currently deployed in a theater of war). If so, then these terrorists can **(p.252)** reasonably be referred to as terrorist-combatants, problematic legal connotations notwithstanding.³¹

Targeted killing has been variously defined.³² Here I provide, in summarized form, a definition set forth and defended in detail elsewhere.³³ By definition, targeted killing is the premeditated, freely performed, intentional killing of a uniquely identified individual person.³⁴ Moreover, at the time of the killing the person in question does not pose an imminent threat to life or limb. Further, the killing takes place in the overall context of an armed conflict in which both the targeter and the person targeted are participants. The protagonists in the armed conflicts in question are the armed forces of political entities (see below).

In relation to this definition, I make the following points, which are made elsewhere but are also necessary to make here for purposes of clarification. First, unlike the shooting by combatants, including by snipers, of enemy combatants in a theater of war, the targets in targeted killing are uniquely identified; they are not simply anonymous enemy combatants identified by their uniform. A uniquely identified individual in this sense is someone about whom there is prior detailed information in respect of his or her role in the armed conflict, and someone who can be reliably identified as such at the time of their

killing. Second, unlike in the standard cases of justified use of deadly force by police officers in law enforcement contexts, the targets in targeted killing do not pose an imminent threat at the time of their killing. For example, Osama bin Laden was killed in his domicile during the night, Mahmoud al-Mabhouh was killed in a hotel room in neutral Dubai, and so on.³⁵ **(p.253)** Third, unlike assassinations,³⁶ such as that of President Kennedy, targeted killings take place in the overall context of armed conflict. Fourth, I note that armed conflicts include conventional wars, nonconventional (so-called) wars of liberation, and armed conflicts involving terrorist groups.³⁷ Fifth, the potentially large-scale killing of individuals who merely exhibit a pattern of suspicious behavior is not targeted killing in this sense. Thus the use of drones by the United States to inflict relatively heavy casualties on the Taliban and al-Qaeda in Afghanistan and FATA is not targeted killing, notwithstanding the US government's use of terms such as "targeted killing" and "surgical strike" in relation to their use of drones.³⁸ I return to this issue in detail below. Sixth, and finally, I note that my definitional restriction on targeted killings that they take place only in contexts of armed conflict is nonarbitrary. The killings that are of interest to us in this paper take place in the context of armed conflicts, such as that between the United States and al-Qaeda, and that between Israel and Hamas. Moreover, to remove this restriction would muddy the moral waters and bring into play phenomena that are importantly morally different, such as one-off assassinations of political leaders by malevolent "lone-wolf" individuals with idiosyncratic political motives.

(p.254) As argued in earlier chapters, the principles of necessity and proportionality are far more permissive in military conflict than in law enforcement contexts. For example, the use of lethal force by a military combatant is not necessarily in defense of an *imminent* threat to that combatant, his fellow combatants in that encounter, or, for that matter, any other individual person present at that time and place. Thus it is morally permissible in military conflict, but not in law enforcement, to use the tactic of ambush, whereby enemy soldiers are attacked and killed without warning and notwithstanding the fact that they do not constitute an imminent threat to anyone at that time and place.³⁹ At the risk of overstating the point, in a theater of war there is a presumption in favor of using lethal force against enemy combatants, if it serves a military purpose, whereas, as we saw above, in law enforcement there is a presumption in favor of arresting offenders.

The implications of this for targeted killing are clear. If armed force A is acting in justified collective self-defense against armed force B, then it may well be morally permissible—in accordance with the principles of military necessity and proportionality—for members of A to engage in the targeted killing of members of B, such as the killing of B's commanders. Such action might well be morally

justified self-defense at the collective level(s) in the context of ongoing armed conflict even though, at the individual level,

1. the aim is to kill (rather than capture or arrest);
2. there is no imminent deadly threat from the target to any individual (e.g., target is asleep or unarmed); and
3. it is not necessary for personal self-defense or defense of other individual person in that place at that time to kill the target (e.g., an attempt to poison Hitler when he was eating his food).

Indeed, consistent with the above-mentioned description of military necessity, it may well be morally permissible to engage in such targeted killing, notwithstanding that even at the collective level it is not *strictly* necessary to do so in order to further the immediate, medium, or long-term military goals in question.

(p.255) 9.3 The Morality of Targeted Killing of Terrorists

Given this description of targeted killing in the context of armed conflict—and the earlier definitions of targeted killing and of terrorism—let me now turn to the moral considerations in play in the use of targeted killing by the security forces of liberal democratic states in counterterrorism operations. The targeted killing in question takes place in either (1) a theater of war, albeit war against a nonstate actor; (2) a jurisdictional setting in which there is not effective enforcement of the law in relation to terrorists perpetrating ongoing, serious terrorist attacks against the liberal democratic state in question; (3) a well-ordered, liberal democratic state in peacetime or, indeed, in wartime if the territory in question is enjoying effective law enforcement against terrorism.⁴⁰

In relation to type 2 jurisdictional settings, we can distinguish two kinds of cases. There are those settings that are more or less well-ordered, but in which the authorities are nevertheless unable or unwilling to successfully enforce the law against the terrorists in question. The killing of Osama bin Laden in Abbottabad in Pakistan by US Special Forces illustrates this kind of case. I discuss this issue in section 9.4 below. The other kind of type 2 jurisdictional setting is one that is not well-ordered. The FATA in Pakistan is a case in point. The FATA are nominally under the authority of Pakistan, but in fact Pakistani law enforcement agencies have not been able to effectively exercise their authority. Moreover, Pakistan security agencies have evidently engaged in military—as opposed to law enforcement—operations in these areas, creating at times *de facto* theaters of war.⁴¹ Of particular importance to us here, Pakistani security agencies have been unable to dislodge al-Qaeda from its bases in these areas. Hence the United States has resorted to military action—apparently with the tacit consent of the Pakistan government—and the extensive lethal use of drones in particular.⁴² I discuss the US drone attack in the FATA below.

Let us briefly consider type 3 settings. As I have argued elsewhere,⁴³ other things being equal, targeted killing cannot be morally justified in **(p.256)** such contexts. For in these settings the law enforcement option is available, and, as argued above, the law enforcement option is the default option when it comes to combating terrorism. This is not to say that moral dilemmas in relation to the use of lethal force might not arise for police engaged in counterterrorist operations against suicide bombers in particular. As discussed in Chapter 5, for example, in 2005 Jean Charles de Menezes—an innocent Brazilian student—was shot dead by members of a UK counterterrorism squad in a London underground station.⁴⁴ This was a case of mistaken identity in which the police falsely believed Menezes was a suicide bomber about to trigger a bomb. The dilemma arose because the normally available option of arresting Menezes was highly problematic. What if he triggered the bomb, killing dozens of innocent commuters, as soon as he realized he was about to be arrested? Importantly, this was not a case of targeted killing, since the threat or, at least, believed threat was imminent. The point to be stressed here is that police use of lethal force, even against suicide bombers, in well-ordered liberal democratic states is rightly constrained by the above-mentioned principles of necessity and imminent threat to life constitutive of the law enforcement model.⁴⁵

What, finally, of type 1 settings? It is surely apparent from the discussion in section 9.2 above that the targeted killing of known combatants or their leaders in theaters of war is morally permissible, at least in principle. Arguably, the armed conflict that provides the overall context in which such killings takes place needs to be morally justified—perhaps by recourse to some appropriately revised version of the *jus ad bellum* of just war theory applicable to such conflicts. Indeed, I have argued as much elsewhere.⁴⁶

Further, it may well be that the principles of *jus in bello* need to be complied with if such targeted killing is to be morally justified. But there does not seem to be any in-principle reason why the principles of necessity, proportionality, and discrimination could not be complied with. Indeed, it would be a good deal easier for targeted killings in theaters of war to comply with the principles of discrimination and proportionality than for nontargeted killings to do so—a point often made by supporters of targeted killing. Targeted killings, other things being equal, are more discriminating **(p.257)** than nontargeted killings, and, for the same reason, they are less likely to require justification on the grounds of proportionality, there being less loss of innocent life. Naturally, it is important to ensure that lethal actions being called targeted killings by those performing them are *in fact* targeted killings. Israeli aerial bombing of buildings in Gaza known to house children as well as members of Hamas is not targeted killing. As for the principle of necessity, again compliance is eminently possible, at least in principle. Surely the killing of “high value” terrorist leaders in a theater of war might well be justified on grounds of military necessity.

Notwithstanding the above arguments of mine in favor, at least in principle, of the moral permissibility of targeted killings in theaters of war in the overall context of ongoing armed conflict between liberal democracies and nonstate terrorist groups, various other considerations have been offered against such targeted killings. Since I have dealt with these elsewhere,⁴⁷ I will be quite brief in my treatment of them here.

Targeted killings are sometimes referred to as extrajudicial killings. Here the assumption is not only that they are unlawful, but that, being unlawful, they are morally impermissible.⁴⁸ No doubt *some* targeted killings are unlawful in some jurisdictions and, moreover, morally ought to be unlawful, notably those that take place in well-ordered jurisdictions. Since I discuss such type 2 settings below, I set this possibility aside here. The question to be answered at this point is different; it is whether or not targeted killing in theaters of war morally ought to be lawful. The answer is evidently not only that targeted killing in theaters of war ought to be lawful, but that in fact it is.⁴⁹

That said, the killing of terrorists in theaters of war does give rise to moral problems not necessarily present in killing conventional combatants in such theaters. One important problem arises from the difficulty of distinguishing terrorist combatants from innocent civilians.⁵⁰ However, **(p.258)** in the case of targeted killing, as opposed to, say, combatants responding with lethal force to a current terrorist attack in a firefight in a civilian area, there has been a prior investigative process that has resulted in a description of the role of the target in the terrorist organization and a unique identifying description of the target. Moreover, the target is to be killed only if he or she can be reliably identified as such at the time of the killing. Further, the targeted killing is discriminating—only the target is to be killed. It follows, therefore, that, at least in principle, the problem of distinguishing terrorists from innocent civilians is substantially reduced by the tactic of targeted killing. This is, of course, not to say that some investigations are not sloppy, that mistaken identity does not happen, or that all targeted killings are as discriminating as they ought to be. Far from it. For example, there is evidence of faulty intelligence in relation to the targeted killing of Taliban leaders in Afghanistan by NATO forces.⁵¹ But it is to say that the tactic of targeted killing, insofar as it lives up to its own standards, is not morally impermissible—and, therefore, ought not to be legally impermissible—on the general grounds of the difficulty of distinguishing terrorists from innocent civilians.

Further arguments against targeted killing rely on appeals to various practical and essentially consequentialist considerations, such as ineffectiveness. For example, it can be argued that the targeted killing of some terrorists might not reduce terrorist attacks, since others take their place. However, these kinds of arguments rely on the truth of empirical claims that might turn out to be false

under certain circumstances. Accordingly, they do not show that targeted killing is necessarily morally unjustified.

I conclude that the targeted killing of terrorists is, in principle, morally permissible. This is consistent, of course, with the actual policies and practices of targeted killing on the part of, for example, the United States and Israel in specific contexts being morally impermissible. Let me now turn to the two sorts of hard cases mentioned above.

9.4 Targeted Killing of Osama bin Laden

As mentioned above, Osama bin Laden was killed by US Special Forces outside a theater of war in a well-ordered, urban setting in Abbottabad, Pakistan, in 2011. While Pakistan was, and remains, an ally of the United **(p.259)** States, for some reason it was not enforcing its own laws in respect of bin Laden. This presented the United States with a dilemma. On the one hand, bin Laden was a terrorist responsible, directly or indirectly, for murdering thousands of US citizens. On the other hand, it would be a violation of Pakistan's sovereignty to enter Pakistan territory without permission and kill or capture bin Laden.

Elsewhere I have argued that the targeted killing of Osama bin Laden was probably not morally permissible by the lights of just war theory.⁵² Here I am bracketing just war theory and simply considering the moral permissibility of killing bin Laden independently of just war theory. And, indeed, my conclusion is different; for my argument here, supposing it is sound, shows that the killing of bin Laden was probably morally permissible. Naturally, I will need to help myself in passing to some of the principles constitutive of just war theory, and I also briefly summarize some of the arguments canvassed by myself and others elsewhere. However, my intention is to present a novel and more complex argument to my conclusion, albeit one that takes off from earlier arguments. In short, I seek to extend the deliberative process for and against the killing of bin Laden with a view to bringing it to a conclusion, at least from the perspective of the application of moral theory. I do so in the knowledge that unforeseen empirical consequences have the potential to undermine any such conclusion thought to be definitive.

Let me summarize the basic arguments in play. The basic moral perspectives in play are retrospective and prospective, and procedural and substantive. At the risk of oversimplification, those who regard the killing of bin Laden as morally permissible tend to offer considerations of retrospective and substantive justice, and these considerations coalesce around a principle of retribution.⁵³ Given that he murdered numerous US and other citizens, so the argument goes, he deserved to die. On the other hand, those who disagree tend to offer proceduralist considerations, especially of a legalistic kind. Some argue that even though Pakistan was evidently unwilling to hand over bin Laden to the United States, it was an unacceptable violation of its sovereignty to enter

Pakistan without permission to kill or capture him. Others have recourse to the criminal law; procedural justice requires arrest and a fair trial, and, evidently, bin Laden **(p.260)** could have been captured and tried. By contrast with retrospective, proceduralist, and substantive moral considerations, prospective considerations evidently cut both ways. Hence both the pro-kill bin Laden and the anti-kill bin Laden groups help themselves to these, albeit to different ones. Thus the anti-kill group argues that violating Pakistan's sovereignty and killing bin Laden will simply inflame anti-US sentiment and exacerbate the problem of terrorism both for Pakistan and the United States. By contrast, the pro-kill group emphasizes considerations of deterrence: "others will think twice about murdering US citizens."

Further arguments in play include (on the pro-kill view) that procedural justice is merely a means to realize substantive justice, and that in the case of bin Laden there was not the same need for a formal evidential process as in standard criminal justice cases—after all, there could be no reasonable doubt among the authorities or the general public that bin Laden was culpable. Moreover, a due process of sorts was followed in that the killing was authorized at the highest level and only after appropriate weighing of relevant considerations, including, presumably, legal considerations. This is, of course, not to say that existing institutional arrangements in the United States in respect of targeted killings are adequate. Here there are three elements in play: (1) the decision maker and the decision-making process (e.g., the president of the United States on advice from military personnel and legal advisors); (2) the criteria used in the decisions themselves, including, crucially, moral criteria such as the principles of necessity, discrimination, and proportionality; and (3) oversight of this process (e.g., by an independent judicial entity). However, if these arrangements are not adequate, there does not seem to be any in-principle reason why they could not be renovated in a manner that rendered them adequate.⁵⁴ Another argument invokes the principle of necessity, as it applies in law enforcement contexts. For it might be claimed that bin Laden resisted arrest, and deadly force can be justifiably used against those resisting arrest for very serious offenses, such as murder, if it is necessary to do so.⁵⁵

(p.261) One problem with the "procedure as a means to substantive justice" claim is that such exceptionalism may well undermine the integrity of criminal justice processes. A problem with the "due process" claim is that, arguably, the institutional process actually operative in the bin Laden killing was not adequate, notwithstanding that it could be renovated. A problem with the necessity claim is that bin Laden was apparently unarmed when cornered, and it therefore seems unlikely that the use of lethal force was necessary. Moreover, if the intention was actually to capture bin Laden, and lethal force was only used when he resisted in a manner that removed all nonlethal options, then killing him was not in fact a case of targeted killing, as we are using that term.

What are we to make of these various arguments, some in favor of killing bin Laden, others against it? I suggest that, weighing one set against the other, they are inconclusive, that they fail to be decisive one way or another. My response is twofold. First, the issue needs to be framed in terms of the conflict between the law enforcement model and the military combat model. Essentially, as already argued, neither model can be straightforwardly applied, but both remain relevant. The military combat model cannot be straightforwardly applied because Abbottabad was not a theater of war; it was a well-ordered jurisdiction. But neither can the law enforcement model be straightforwardly applied, because it was not a jurisdiction in which the laws against terrorists, specifically bin Laden, were being effectively applied. Second, in the context of framing the issue in this manner, I suggest a further argument that is capable of breaking the deadlock. This is based on a notion discussed in Chapter 6.1 and 6.3 in particular; namely, collective self-defense. What is meant by collective self-defense in this context? (What is *not* meant is the legal idea of multiple nation-states acting collectively, as opposed to unilaterally.⁵⁶)

Evidently, killing bin Laden was not an act of individual self-defense. As already noted, it is highly unlikely that the US Special Forces personnel killed bin Laden because he constituted an imminent threat to their lives. Therefore, the principle of necessity operative in law enforcement contexts is probably not relevant (see section 9.2 above). Similarly, the principle of proportionality, as it applies in law enforcement contexts, is not relevant (see Chapters 4 and 6 and section 9.2). Notwithstanding that killing bin Laden was not an act of individual self-defense against **(p.262)** an imminent threat, it could well have been an act done in collective self-defense. Arguably, the United States—a collective entity—was defending itself against another collective entity, al-Qaeda, in the context of an ongoing armed conflict. Here I need to rely on the discussion in section 9.2 regarding the differences between collective self-defense in the context of an ongoing armed conflict between collective entities and the use of lethal force by police officers in discrete, self-contained encounters with criminals; more specifically, the differences with respect to the application of the principles of necessity and proportionality.

As elaborated in section 9.2, in the case of collective self-defense, but not individual self-defense, the ends in play are medium and long-term (military) collective ends, and the principles of necessity and proportionality apply at this collective level. So the appropriate set of questions to be asked in relation to bin Laden were: (1) Is he an active member of the enemy organization (al-Qaeda)? (2) Would killing him be disproportionate in terms of foreseeable loss of civilian life? (3) Is killing him a necessary means to a medium or long-term collective end in the armed conflict with al-Qaeda? Question 1 must obviously receive an affirmative answer. But what of questions 2 and 3?

Question 2 is ambiguous insofar as it could apply to a theater of war or to an area outside a theater of war. Clearly, in the case of the bin Laden killing, it is the latter that is relevant. Abbottabad is a well-ordered jurisdiction, albeit one in which the laws against the terrorist, bin Laden, were, for whatever reason, not being enforced effectively. Accordingly, the argument from collective self-defense faces a serious obstacle. What of question 3? If bin Laden was encountered on a battlefield in Afghanistan rather than in Abbottabad, then it would have been fairly obviously morally permissible to kill him, assuming doing so did not put innocent civilians at a disproportionate risk of harm; in short, the principles of military necessity and proportionality would straightforwardly apply and, hence, the argument from collective self-defense would be decisive. However, this was not the case. So while the answer to question 3 is affirmative, compliance with the principle of necessity nevertheless remains problematic, given he was killed outside a theater of war.

My response to this conundrum is to construct a further argument that is derivable from the argument from collective self-defense. This argument seeks to make the best of the moral considerations constitutive of both the law enforcement model and the military combat model in a context in which neither can be straightforwardly applied. According **(p.263)** to this argument, collective self-defense would justify the killing of bin Laden in a well-ordered jurisdiction under three conditions: (1) the laws against terrorism were ineffective—the default law enforcement model was not available; (2) the lives of innocent civilians were not put at serious risk—the principle of discrimination as it applies in law enforcement contexts rather than the more permissive one applicable in military combat contexts was applied; and (3) bin Laden was a high value target—so the fact that it would have been morally permissible to kill bin Laden in a theater of war merely on the grounds of being a member of al-Qaeda is not in itself sufficient to justify killing him in a well-ordered jurisdiction, even one in which the laws against terrorism are not effectively enforced. Evidently, conditions 1 and 2 obtained, what of 3?

I take it that the US strategy in relation to al-Qaeda consists in large part in degrading its capability by “neutralizing” “high value” targets, notably by killing them. Assuming this strategy is rationally defensible in the context of the collective military ends of the United States, the question to be asked is whether or not bin Laden is or, at least, was a high-value target at the time he was killed. I suggest that the answer is in the affirmative. How so? Presumably, bin Laden continued to be useful to al-Qaeda in an advisory role. However, his importance to al-Qaeda at the time of his death was principally symbolic; he is the person the world most associates with al-Qaeda and 9/11 and, apparently, he had got away scot-free. Moreover, symbolism is far from being inconsequential to terrorists and, therefore, to those engaged in counterterrorism. Consider, for example, the symbolic importance to al-Qaeda of its successful attack on the Twin Towers in New York in 2001. Accordingly, in the context of the ongoing

armed conflict between the United States and al-Qaeda, the United States is diminished, and al-Qaeda is correspondingly enhanced, so long as bin Laden has neither been killed nor captured. For this reason, bin Laden was a very high-value target. It follows that killing bin Laden was a significant symbolic victory for the United States and its allies in the overall context of their counterterrorist campaign of collective self-defense.

I conclude that, other things being equal, the killing of bin Laden was justified on the basis of the argument from collective self-defense appropriately adjusted (as described above). But are other things equal? As we saw above, there are a number of retrospective (especially retribution), proceduralist, and prospective moral considerations in play. However, it was concluded that these were not decisive one way or another; there was a deadlock. It seems, therefore, that the (adjusted) argument from **(p.264)** collective self-defense breaks the deadlock. I conclude that killing bin Laden was morally permissible, at least by the lights of the moral considerations canvassed here.

Naturally, from this it does not follow that, all things considered, killing bin Laden was morally permissible. To arrive at that conclusion one would have to authoritatively weigh up a number of consequentialist moral considerations (taking collective self-defense to be a deontological consideration), including ones mentioned above. However, I do not have the relevant expertise to assess these. Here I simply reiterate that while some of these weighed against killing him (e.g., the negative impact on US-Pakistan relations and an upsurge in anti-US sentiment in Pakistan), others weighed in favor of killing him (e.g., if incarcerated for a lengthy period, bin Laden may well have continued to serve as an important rallying point for pro-terrorist activity).

9.5 Lethal Use of Drones in Counterterrorist Operations

In Afghanistan and in the so-called tribal areas of Pakistan (the Federally Administered Tribal Areas, or FATA—especially North Waziristan) and in Afghanistan, the US military and the CIA⁵⁷ have engaged in a sustained campaign of killing by means of unmanned aerial vehicles (UAVs), or drones.⁵⁸ Here I note that drones are a weapons system that can be used for targeted killing but also for nontargeted indiscriminate killing. For example, a drone operator *could* deliberately activate a drone to destroy school buildings known to be occupied by children. Moreover, even when carried out with the best of intentions, drone strikes have killed innocent bystanders. Accordingly, while the moral controversy in relation to targeted killing overlaps with the moral controversy over the use of drones, it is different in important respects. One might, therefore, support the targeted killing of terrorists under certain circumstances but argue that the use of drones in counterterrorism operations should be banned.

(p.265) There are a variety of circumstances in which the targeted killing of terrorists by liberal democratic states might take place and which bear on its legality and morality. For the sake of simplicity in this section I invoke distinctions made earlier and assume that the targeted killings in question take place either (1) in a de facto theater of war, albeit war against a nonstate actor, or (2) in a jurisdictional setting in which there is not effective enforcement of the law in relation to terrorists perpetrating ongoing, serious terrorist attacks against the liberal democratic state in question. (If 2, this is because the authorities are either unable or unwilling to enforce the relevant laws.) Accordingly, as mentioned above, I am not considering the targeted killing of terrorist suspects by state security forces in the well-ordered, liberal democratic states of those security agencies in peacetime, or, indeed, in wartime if the territory in question is enjoying effective law enforcement against terrorism.⁵⁹ Here my focus is on the targeted killing of terrorists by state security agencies in disorderly jurisdictions and, specifically, US drone attacks in the FATA of Pakistan.

Perhaps the firing of a rocket by a US unmanned aircraft in Yemen in 2002⁶⁰ that killed six al-Qaeda operatives is an instance of targeted killing in a context that is a relatively sparsely populated geographical location (so that there is little or no chance of collateral damage) and a jurisdiction in which there is no effective law enforcement in relation to terrorists conducting attacks on liberal democratic states.

I will assume in the ensuing discussion of the morality of targeted killing that targeted killings in our sense are constrained by minimal moral, or morally informed, principles strictly applied. Naturally, here I am excluding those principles the application of which are ruled out by my definition of targeted killing, notably the principle of imminent threat; as noted above, the targets of targeted killing are, by my definition, *not* imminent threats. The principles to be strictly applied include the following: (1) it has been well-confirmed that the target is a terrorist; (2) the decision has been authorized at an appropriately high political level (e.g., by the US president or the Israeli prime minister), and (3) the decision is subject to effective accountability mechanisms, (e.g., judicial oversight). Importantly, these principles also include: (4) the targeted killing **(p. 266)** is principally undertaken for purposes of (collective) self-defense (e.g., to prevent future lethal terrorist attacks, as opposed to, for example, as retribution) and is militarily necessary and proportionate. That is, I assume for our purposes that the required justification is essentially prospective in character.

I take it that while the lethal use of drones in a well-ordered jurisdiction is morally impermissible, there is no good in principle moral objection against the lethal use of drones in a theater of war in the context of a just war.⁶¹ B. J. Strawser provides a sustained argument to this effect.⁶² Drones have been used

by the United States, in particular, to conduct targeted killings in Afghanistan, the FATA of Pakistan, and Yemen. By the lights of the argument of section 9.3 above, insofar as these drone strikes have been genuine cases of targeted killing in a theater of war and have not violated the principles of *jus in bello*, then, other things being equal, they are morally permissible.

However, as already mentioned, the term “targeted killing” has been used by US government officials, the media, and others somewhat loosely. Sometimes it is used to refer to so-called surgical strikes on high value targets as part of a decapitation strategy (targeting “the brain”). Other times it has been used to refer to the use of drones by US armed forces in Afghanistan and Pakistan to inflict relatively heavy casualties on the enemy and, thereby, disable it (targeting “the body”). Moreover, this strategy has evidently led to significant civilian casualties—an issue I discuss below. According to a recent Stanford/NYU report, “The best currently available public aggregate data on drone strikes are provided by *The Bureau of Investigative Journalism (TBIJ)*, an independent journalist organization. *TBIJ* reports that from June 2004 through mid-September 2012, available (p.267) data indicate that drone strikes killed 2,562–3,325 people in Pakistan, of whom 474–881 were civilians, including 176 children.”⁶³

As mentioned earlier, drones have also been used to conduct so-called signature strikes, or strikes on individuals who have not been uniquely identified in our sense but who exhibit a pattern of suspicious behavior. Moreover, signature strikes are also frequently referred to as targeted killings. Here there are a number of points to be made. First, using drones to inflict heavy casualties in this manner is, as already mentioned, not targeted killing in our sense—which is, of course, not to say that it is not morally permissible in a theater of war. Accordingly, the use of drones for targeting “the body” lies outside the scope of this paper. Suffice it to say here that, given the scale of such killings, the opportunities for mistaken identity and the lack of precision attaching to the weaponry deployed (including by the use of surgical drone strikes—see below), it is extremely doubtful that such a strategy could be morally justified outside a theater of war.

Second, and following on this first point, we need to invoke the distinction between targeted killing of terrorists, on the one hand, and signature strikes and surgical strikes against terrorists, on the other. Signature strikes are morally problematic because, in effect, the definitions on which they rely are far too permissive and inevitably lead to the deaths of innocent civilians. The notion of suspicious behavior is far too weak to underpin a moral justification to take the life of a person otherwise only known to be a civilian in an area in which there is terrorist activity. This problem is compounded by the fact that these definitions are inherently vague and, as such, susceptible to indefinite expansion. For example, evidently, the definition of the targets in question expanded under President Obama so that it “in effect counts all military-age males in a strike

zone as combatants . . . unless there is specific intelligence posthumously proving them innocent.”⁶⁴

Surgical strikes are frequently lethal drone strikes against combatants living among innocent civilians and not readily distinguishable (**p.268**) from those civilians. Notwithstanding that they are, at least by definition, intended to minimize innocent civilian deaths (collateral damage), surgical strikes bring with them the distinct possibility of collateral damage, and given multiple surgical strikes, there is the likelihood of significant loss of innocent human life. By contrast, targeted killings, as we are using the term, do not necessarily imply any loss of innocent human life on any occasion, or, indeed, on multiple occasions taken in aggregate. Naturally, a targeted killing could be planned in such a way as to allow rather than remove the possibility of collateral damage. However, the point to be stressed here is that in the case of targeted killings of terrorists, but not surgical strikes against terrorists, loss of innocent human life is typically avoidable. Accordingly, surgical strikes can only be morally justified in a military conflict in which the principles of military necessity and proportionality—rather than more restrictive principles, such as those governing the use of lethal force by police—are applicable. Therefore, surgical strikes are morally permissible in theaters of war but not, at least *pro tanto*, elsewhere.

Third, and relatedly, notwithstanding their renowned capacity to carry out surgical strikes, drones are a relatively blunt instrument when it comes to targeted killing. Compare, for example, a drone strike on a terrorist-combatant walking in a village to shooting the terrorist with a handgun at point-blank range (or, more likely, a sniper shooting the terrorist). Hence the significant loss of innocent human life arising from drone strikes in, for example and as mentioned above, the FATA of Pakistan.

Fourth, our concern in this section is with the moral permissibility of the use of drone strikes to kill terrorists embedded in a civilian population in a disorderly jurisdiction as opposed to a theater of war or a well-ordered jurisdiction. Our example here is the FATA of Pakistan.

In light of these four points, let us get clear on the moral problem presented by the lethal use of drones to kill terrorists embedded in a civilian population in the disorderly jurisdiction of FATA. Here there is the following dilemma: On the one hand, al-Qaeda has important bases in these areas from which it conducts terrorist attacks against the United States (among others), so there is a need to engage in counterterrorist operations. On the other hand, the areas in question are neither theaters of war⁶⁵ nor a well-ordered jurisdiction in which laws against terrorists (**p.269**) could be enforced. So, evidently, the two salient options—the military conflict model and the law enforcement model—are both ruled out.

Evidently, there is a solution to this moral problem: targeted killing. Genuine targeted killing is, as we have seen, a *potential* solution, since under certain circumstances it may be morally permissible to kill terrorist-combatants who are unable to be arrested and tried, notwithstanding that the killing takes place outside a theater of war. Our discussion of bin Laden demonstrated as much. Moreover, the case for targeted killing of terrorists in a disorderly jurisdiction is even stronger than it was in the case of bin Laden. For in a disorderly jurisdiction, the argument that it is a violation of sovereignty is considerably weaker.

Unfortunately, however, the lethal use of drones in the FATA is frequently not targeted killing in our sense, but rather the much less discriminatory tactics of surgical strikes or signature strikes. As we have seen, whatever the strategic virtues of these tactics, they come at a heavy moral cost in terms of the loss of innocent human life. Indeed, in the FATA, commensurate with the increase in the numbers of surgical and signature strikes by drones, the quantum of collateral damage did sharply increase.

As we have seen, if drones are used for surgical strikes in a theater of war—and the war in question is morally justifiable—then what counts as an acceptable risk to, and indeed acceptable loss of life among, innocent bystanders is governed by the relevant principles of just war theory; namely, military necessity and proportionality.⁶⁶ But the FATA are not per se a theater of war. Accordingly, it is not the relatively morally permissive principles of military necessity and proportionality that are applicable.

Nor can we invoke the argument made in sections 9.3 and 9.4 above for the moral permissibility of targeted killing in the context of the failure of the law enforcement model to deal with the terrorist threat. For that argument relied on either the context being a theater of war or, if not—as in the case of bin Laden—there being no *foreseen* loss of innocent human life (and, arguably, no substantial risk of loss of innocent human life). So the crucial relevant moral requirement justifying targeted killing outside **(p.270)** theaters of war is, at the very least, that there is no foreseen loss of innocent human life. But it is precisely this requirement that, as we have seen, cannot be met in the case of surgical or signature strikes by drones.

I conclude that, *pro tanto* at least, the use of drones to conduct surgical strikes and signature strikes to kill terrorists embedded in a civilian population in a disorderly jurisdiction is not morally permissible. This is consistent, of course, with my claim that targeted killing of such terrorists, including by means of drones, may well be morally permissible in, for example, areas well away from civilian populations.

Naturally, it might be countered that this does not demonstrate that the use of drones to conduct surgical strikes or signature strikes in these areas is not morally permissible, all things considered. This is correct, but it needs to be borne in mind that such lethal strikes would not be rendered morally permissible merely because they were a military necessity from the US perspective, for this maneuver would be tantamount to a reintroduction of the already rejected military model. The moral considerations invoked would have to be different from, and weightier than, this. It is not entirely clear what they could be, especially given the long-held view that the main aim of counterinsurgency, including operations against terrorists embedded in civilian populations, is to win over the “hearts and minds” of those populations and not increase the threat by further radicalizing these populations.⁶⁷

9.6 Conclusion

In this chapter I have defined targeted killing and distinguished it from assassination and from extrajudicial killing. I have argued that targeted killing of combatants in theaters of war is morally permissible. I have further argued that while targeted killing of terrorists is morally impermissible in well-ordered jurisdictions—since the law enforcement model is applicable—it may be permissible under certain circumstances in disorderly states, given that the law enforcement model is unable to be applied. If so, it would need to be conducted in a manner that ensures the lives of innocent civilians are not put at risk.

Notes:

- (1.) An earlier version of this section appeared in Seumas Miller, “The Ethics of Assassination and Targeted Killing,” *Annual Review of Law and Ethics* 19 (2011): 15–22.
- (2.) Douglas Lackey, “Assassination, Responsibility and Retribution,” in Harold Zellner, ed., *Assassination* (Cambridge, Mass.: Schenkman, 1974), 57.
- (3.) Haig Khatchadourian, “Is Political Assassination ever Morally Justified?,” in Harold Zellner, ed., *Assassination* (Cambridge, Mass.: Schenkman, 1975), 41.
- (4.) So they are reflective or premeditated actions.
- (5.) I am assuming that the relevant legally constituted, political entities in questions are nation-states, but in theory there are other possibilities (e.g., city-states).
- (6.) Daniel Byman, “Taliban vs. Predator: Are Targeted Killings inside Pakistan a Good Idea?,” *Foreign Affairs*, March 18, 2009.
- (7.) Franklin L. Ford, *Political Murders: From Tyrannicide to Terrorism* (Cambridge, Mass.: Harvard University Press, 1985).

- (8.) Georgi V. Plekhanov, *The Role of the Individual in History* (New York: International Publishers, 1940).
- (9.) Andrew Altman and Christopher Heath Wellman, "From Humanitarian Intervention to Assassination: Human Rights and Political Violence," *Ethics* 118, no. 2 (2008): 228-257.
- (10.) David Kretzmer, "Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?" *European Journal of International Law* 16, no. 2 (2005): 171-212.
- (11.) Steven R. David, "If Not Combatants, Certainly Not Civilians," *Ethics & International Affairs* 17, no. 1 (2003): 138-140.
- (12.) Mark Osiel, *The End of Reciprocity: Terror, Torture, and the Law of War* (New York: Cambridge University Press, 2009).
- (13.) Lackey, "Assassination, Responsibility and Retribution."
- (14.) Or, for that matter, extrajudicial killing.
- (15.) Miller and Blackler, *Ethical Issues in Policing*, Chapter 1.
- (16.) Michael Walzer, "Political Action: The Problem of Dirty Hands," *Philosophy and Public Affairs* 2, no. 2 (1973): 164-167.
- (17.) Seumas Miller, Peter Roberts, and Edward Spence, *Corruption and Anti-corruption: A Study in Applied Philosophy* (Saddle River, N.J.: Prentice Hall, 2005), 27.
- (18.) See Igor Primoratz, ed., *Terror from the Sky: The Bombing of German Cities in World War II* (New York: Berghahn, 2010) for useful discussions of these issues.
- (19.) Miller, *Terrorism and Counter-Terrorism*. See also Nathanson *Terrorism and the Ethics of War* Chapters 1 and 2.
- (20.) Kretzmer, "Targeted Killing of Suspected Terrorists"; Miller, *Terrorism and Counter-Terrorism*.
- (21.) Miller, *Terrorism and Counter-Terrorism*.
- (22.) Uzi Rubin, *The Rocket Campaign against Israel during the 2006 Lebanon War* (Ramat Gan: Begin-Sadat Center for Strategic Studies, Bar-Ilan University, 2007), 12.
- (23.) The Israeli aerial bombing response to rockets fired by Hamas from Gaza since 2005 might also be thought to be a candidate. However, this is doubtful,

given the apparent inability of civilians in Gaza to vacate the areas being bombed, Israeli warnings notwithstanding.

(24.) It goes without saying that in claiming that such and such liberal democratic state is waging an internal or an external war, I am not eo ipso claiming that the war is morally justified. Liberal democratic states can engage and have engaged in wars that, for example, fail to comply with the conditions of just war theory; the 2003 Iraq War is arguably a case in point.

(25.) Carl von Clausewitz famously offered this definition in his book *On War* (1989): “Denotes properly such a portion of the space over which war prevails as has its boundaries protected, and thus possesses a kind of independence. This protection may consist in fortresses, or important natural obstacles presented by the country, or even in its being separated by a considerable distance from the rest of the space embraced in the war. Such a portion is not a mere piece of the whole, but a small whole complete in itself; and consequently it is more or less in such a condition that changes which take place at other points in the seat of war have only an indirect and no direct influence upon it. To give an adequate idea of this, we may suppose that on this portion an advance is made, whilst in another quarter a retreat is taking place, or that upon the one an army is acting defensively, whilst an offensive is being carried on upon the other. Such a clearly defined idea as this is not capable of universal application; it is here used merely to indicate the line of distinction.”

(26.) See Primoratz, *Terror from the Sky*, for useful discussions of these issues. The Israeli aerial bombing response to rockets fired by Hamas from Gaza mentioned at note 23 might be thought to be akin to the bombing of Dresden in so far as there is thought to be insufficient regard for the lives of civilians. However, the fact that Hamas is apparently deliberately using civilians as, in effect, human shields would serve to differentiate the Gaza scenario from the Dresden one.

(27.) Kirpal Dhillon, *Police and Politics in India: Colonial Concepts, Democratic Compulsions: Indian Police 1947-2002* (New Delhi: Manohar, 2005), Chapter 13.

(28.) Miller, *Terrorism and Counter-Terrorism*.

(29.) In some cases these might be under a state of emergency (e.g., martial law), in other cases not.

(30.) My concern in this work is only with de facto armed conflicts, whether they be declared or undeclared. De facto is, of course, to be contrasted with de jure. See note 254 for a definition of a theater of war.

(31.) Miller, *Terrorism and Counter-Terrorism*.

(32.) For recent articles on the ethics of targeted killing, see Finkelstein, Ohlin, and Altman, *Targeted Killing*. See also Anna Goppel, *Killing Terrorists: A Moral and Legal Analysis* (Berlin: De Gruyter, 2013), and Simon Bronitt, Miriam Gani, and Saskia Hufnagel, eds., *Shooting to Kill: Socio-Legal Perspectives on the Use of Lethal Force* (Oxford: Hart, 2012).

(33.) Miller, "The Ethics of Assassination and Targeted Killing."

(34.) Michael L. Gross emphasizes the idea of a legal prohibition on the killing of named individual in his "Assassination and Targeted Killing: Law Enforcement, Execution or Self-Defense?," *Journal of Applied Philosophy* 23, no. 3 (2006): 323-335.

(35.) Contra my definition here, the US Department of Justice, in a recent white paper, "Lawfulness of a Lethal Operation Directed against a US Citizen Who Is a Senior Operational Leader of Al Qaeda or an Associated Force," has sought to characterize the targets of targeted killings as imminent threats if there is only a limited (and present) opportunity to eliminate it. However, this is either incorrect or at best a highly novel rendering of the term "imminent," according to which a threat becomes imminent if there is only a limited window of opportunity to remove it. This novel rendering has the untoward consequence that a threat in the far distant future becomes imminent if there is unlikely to be an opportunity to remove it in the far distant future when the threat becomes active. This collapses the distinction between defense against an imminent threat and a preemptive strike against a future threat, and for this reason should be rejected.

(36.) For definitions of assassination, see Harold Zellner, ed., *Assassination* (Cambridge, Mass.: Schenkman, 1974). The other term in use in relation to this issue is extrajudicial killings. I find this unhelpful for my purposes here, since my concerns are with the morality rather than the legality of targeted killing, and, in any case, the legality of targeted killings is hotly contested. The CIA has evidently carried out a number of assassinations over the years, although a number of these would not be assassinations but rather targeted killings on my account (see below). See the Church Committee's *Report on Alleged Assassination Plots Involving Foreign Leaders* (Washington D.C.: US Government Printing Office, 1975).

(37.) I elaborate and defend this notion of armed conflicts in Miller, "On the Morality of Waging War against the State."

(38.) Amnesty International, "*Will I Be Next?: US Drone Strikes in Pakistan*" (London: Amnesty International, 2013), <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>.

(39.) This is not to say that there is never any imminence requirement at the collective level (e.g., since Germany's invasion of Poland is imminent, war is justified).

(40.) Miller, *Terrorism and Counter-Terrorism*.

(41.) See Amnesty International, "Will I Be Next?", 15–16.

(42.) Amnesty International, "Will I Be Next?", 53. This is a matter of dispute.

(43.) Miller, *Terrorism and Counter-Terrorism*.

(44.) Gordon and Miller, "The Fatal Police Shooting of Jean Charles de Menezes."

(45.) Whether or not the police complied with all the relevant legal and moral principles on this occasion is another matter.

(46.) Miller "Just War Theory and Counter-Terrorism"

(47.) Miller, "Just War Theory and Counter-Terrorism."

(48.) Relatedly, it is sometimes argued that since there is no arrest and trial in the case of targeted killing, it cannot be lawful. See, for example, Yael Stein, "By Any Name Illegal and Immoral," *Ethics & International Affairs* 17, no. 1 (2003): 127–137. See also Miller, *Terrorism and Counter-Terrorism*.

(49.) Kretzmer, "Targeted Killing of Suspected Terrorists"

(50.) Another possibility is that it takes place in a jurisdiction which is operating under martial law. This is a complication that I do not have the space to deal with here. See Miller, *Terrorism and Counter-Terrorism*.

(51.) Amnesty International, "Will I Be Next?"

(52.) Miller, "Just War Theory and Counter-Terrorism."

(53.) If so, then the justifying principle is not the related instrumentalist principle of tit-for-tat in the service of restoring symmetry of risk in armed conflict.

(54.) There is an important issue here with respect to the nature of both kinds of mechanisms and their relationship to one another.

(55.) US officials said bin Laden resisted and was shot in the head, and, as already mentioned, it has also emerged that he was unarmed. US officials also said that three other men were killed during the raid, one believed to be bin Laden's son and the other two his couriers; in addition, a woman was killed

when she was used as a shield by a male combatant. There were no American casualties.

(56.) Christine Gray, *International Law and the Use of Force* 2nd ed. (Oxford: Oxford University Press, 2004), Chapter 5.

(57.) I will not in this work address the important question of intelligence agencies, such as the CIA—as opposed to the military—carrying out targeted killing operations.

(58.) For example, General Atomics' MQ-1 Predator and MQ-9 Reaper. For the purposes of this chapter I will assume that the drones in question are not so-called autonomous drones—ones in which humans are (to use the jargon) out of the loop. This raises importantly different issues of moral responsibility, dealt with in Chapter 10.

(59.) For more on these distinctions, see Miller, *Terrorism and Counter-Terrorism*.

(60.) "CIA killed Al-Qaeda suspects in Yemen" *BBC News: World Edition*, November 5, 2002 <http://news.bbc.co.uk/2/hi/2402479.stm>

(61.) But for general arguments against the use of drones, see Medea Benjamin *Drone Warfare: Killing by Remote Control* (London: Verso, 2013) and Amnesty International, "Will I Be Next"

(62.) Bradley Jay Strawser, "Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles," *Journal of Military Ethics* 9, no. 4 (2010): 342–368. Strawser argues for the stronger claim that use of drones is morally obligatory in a just war. The anti-drone arguments include the claim that asymmetrical warfare is unfair, and the so-called "threshold effect" argument. According to the former argument, the fact that drone operators are safe but the terrorist-combatants are at risk is unfair. No doubt this is true, but surely a just war does not need to be fair in this sense. According to the latter argument, since the enemy does not have drones and does not have the means to target one's own drone operators, then one is more likely to resort to drones, and so the total quantum of innocent lives lost is likely to increase notwithstanding that in any given drone strike, considered on its own, the likelihood of innocent loss of life is reduced. This is, of course, a disputable empirical claim.

(63.) International Human Rights and Conflict Resolution Clinic (Stanford Law School) and Global Justice Clinic (NYU School of Law), *Living Under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan* (September 2012), vi, http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/313671/doc/slspublic/Stanford_NYU_LIVING_UNDER_DRONES.pdf.

(64.) Quoted in Micah Zenko, *Reforming US Drone Strike Policies*, Council on Foreign Relations Special Report No. 65 (New York: Council on Foreign Relations, 2013), 12.

(65.) Naturally, heavily populated areas such as towns and cities could become theaters of war if they come under sustained bombardment (e.g., by drones), as happened to German cities during World War II. Moreover, some areas of FATA are relatively sparsely populated (e.g., areas well away from villages) and could serve as appropriate locations for targeted killings. Moreover, these areas are potentially theaters of war.

(66.) Note that signature strikes are problematic even in theaters of war, since in these strikes terrorist-combatants are only identified as such by their suspicious behavior.

(67.) Naturally, notions such as so-called extreme emergencies could be invoked. But this seems farfetched.

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