

THE ROLE OF REMOTELY PILOTED VEHICLES IN COUNTERTERRORISM:
LEGAL, ETHICAL, AND MORAL IMPLICATIONS

CC
BOR 6387: Seminar in Criminal Justice Agency Ethics
July 22, 2016

Abstract

The use of remotely piloted vehicles, either in civilian or military roles, is highly controversial. Legal, ethical, and moral issues are hotly debated and argued by a broad continuum of advocates. Legal issues seem to revolve primarily around the basis of national self-defense vice international governance. The ethical and moral issues are more complicated. The efficiency of using remotely piloted vehicles is contrasted against the psychological impacts their use has upon the operators and society as a whole, as demonstrated by select researchers. The teachings of Jeremy Bentham and Immanuel Kant are briefly discussed as they relate to this particular endeavor. Once ethical and moral issues are settled, defining the Constitutional guidelines and restrictions for use against insurgents or rebellious factions that might include United States citizens will become easier to decide.

Introduction

The use of remotely piloted vehicles (RPVs), unmanned aerial vehicles (UAVs), or the commonly used but incorrectly defined term “drones” is highly controversial. The technology is still being developed; it is quickly outpacing concurrent legal and philosophical discussions. The controversy is not restricted to the use of RPVs, but also surrounds the targets of these machines—civil rights of declared enemy combatants and/or citizens. While much of the brouhaha is politically motivated, the issue is very well deserving of serious thought and discussion. Kolff (2003) accurately and justly notes that as a weapon platform, the RPV does not have ethical or legal issues. The use of the machine incurs these issues (p. 243). As with all inanimate objects, it is the human source that is responsible for legal and ethical use. In this report, I will discuss legal, ethical, and counterterror implications from the use of RPVs.

Legal Issues of RPV Use

For those who assert that the United States should approach the terror problem from a criminal justice basis, the use of RPVs is counterintuitive. “[B]y engaging in executive action to target and kill enemies of the state, [the United States] has embraced the core doctrine of the war approach, which bypasses the legal due process of the criminal justice system” (Rosenthal, 2013). Whether or not one agrees with the tactics or strategy, the action must have a legal basis.

The Obama Administration stridently disagreed with the Bush Administration’s depiction of the “global war on terror”, but has determined that “a global armed conflict” is being waged by the United States. Thus, the use of RPVs is warranted under Article 3 of the Geneva Conventions (Flaherty, 2014, p. 27). The primary justification for their use is self-defense, but events confuse the issue. Keene (2015) notes that more strikes occurred in 2009 than in the previous eight years (pp. xi, 1). “By mid-2010, the [U.S.] drone program accelerated from an average of one strike every 40 days to one every 4.” (Ceccoli, S. and Bing, J., 2015, p. 147)

Dissenting opinions originate from many legal bodies, including the United Nations, which opine that the use may actually constitute a war crime. The underlying problem, as supported by Keene, is that “no central legislative body” exists to define or oversee the use of RPVs, and the current legislative body “is not fully equipped to tackle the 21st century security environment” (p. 6).

I believe a more basic problem is the western tradition of attempting to codify warfare, such as the Law of Armed Conflict that all U.S. military members are required to at least browse in Basic Training and Officer Training. We witness the thoughts of Jomini (*The Art of War*, 1838), who teaches that unrestrained warfare is to be shunned, while von Clausewitz (*On War*, 1831) advocates a total war leading to decisive battles (Miller, A.R. and Maslowski, P., 1984, pp. 127, 128). All of the authors cited above present a wide-ranging argument both for and against

the use of RPVs in warfare. Other authors also give valid opinions that must be addressed before this issue is finally resolved.

Ethical and Moral Issues of RPV Use

Many supporters and detractors agree that the use of RPVs is cost-effective. That is not an ethically related issue—it is an economic, and thus separate, issue. The more realistic agreement that has ethical implications is the decreased potential for loss of human life on the part of the military force using RPVs. However, removing personnel from the battlefield might alter or change civilians' attitudes in ways not really anticipated, to the detriment of society. A test case demonstrates that people are more willing to support the use of drones for force (Walsh, J.I. and Schulzke, M., 2015, pp. vii-ix, 1-3). This emotional detachment is dangerous to the psyche, and gives rise to many ethical dilemmas.

Grossman (1996) writes of the ethical issues faced by the military, in trying to teach people to willingly kill other humans. Whereas in previous generations, soldiers were so reluctant to take a human life that they often involuntarily and unconsciously even reloaded their weapons without actually firing them, the present generation has no compunction in taking a life or experiencing the gore of combat. The problem of instructors has now become how to instill a sense of restraint and the discriminating use of deadly force. Grossman then relates the continual, systematic desensitization of America's youth via cartoons, video games, movies, etc. that promote violence as the answer to any of life's problems, much to the neglect of human role models. Today's video games are often either the same or direct descendants of training videos used to teach our military to react instinctively to danger. As a result, we view (literally and figuratively) the act of inflicting pain and suffering with vicarious pleasure rather than with revulsion (pp. 299-322). This is one of many underlying causes for ethical lapses and concerns.

Keene discusses what she calls "PlayStation mentality" and the effects on the RPV pilots. This concept is actually closely related to Grossman's theories. A basic point of contention for her is that the use of RPVs "signals a dangerous decline in morality and accountability." She also addresses sociological and physiological problems being seen as a result of remote warfare. Although they are physically removed from the scene by thousands of miles, the pilots still experience an accelerated dropout rate due in a significant part to PTSD. There remains much disagreement about the psychological effects, but evidence is showing that even remote warfare is taking a toll on society. Her research also offers examples of those who profess to have no ill after-effects and express a detached, unemotional or even pleasurable experience. Such subjects often liken their duties to those of video gaming (Keene, 2015, pp. 4, 21-23). She does not offer evidence or direct correlation between the psychological trauma suffered by those who abhorred their duties, and those who actually enjoyed their tasks. A follow-up study would be very enlightening.

Bradley Strawser (2010) argues for the moral duty of using RPVs to protect the warrior, and that this is a logical step in modern warfare, detached from ethical considerations. Therefore, it is ethically and morally imperative for a government to use RPVs, if it will preserve life (pp. 342-343). Jai Galliot (2012) argues against Strawser, saying that if one country employs RPVs where the enemy does not have a comparable weapon system, then the warfare is inherently unjust (p. 59). This argument is similar to most, in that it attempts to adapt or conform the issue to the legal guidelines for warfare as commonly accepted in Western society—*jus ad bellum* and *jus in bello*. It also exemplifies the current popular opinion of "equality" and "fairness", totally ignoring the history and reality of warfare among nations and people groups.

Arkin (2010) advocates RPVs, saying that they might actually improve the efficacy and morality of warfare. He explains six reasons why RPVs of the future will actually perform better than humans under Clausewitz's fog of war. His basis for this is in part the idea that humans react instinctively to the depravity of war, often engaging in war crimes as part of revenge acts instead of following legal orders or guidelines. RPVs of the future will not be burdened by human feelings or reactions; so they will be more efficient in conducting warfare than humans.

What would Jeremy Bentham, the founder of the philosophical concept of utilitarianism and the advocate of subordinating individual rights to the greater general good, or Immanuel Kant, proponent of actions due to personal morals based on reason, have to say about drone warfare? Bentham argues for doing whatever brings the most "happiness" to the community, regardless of human feelings or moral/ethical beliefs (Sandel, 2009, p. 34). Utilizing this argument, the use of RPVs would save lives, money, and preserve battlefield dominance or national sovereignty. This is in line with the greatest good for the greatest number, despite the mental/emotional/moral issues that arise. Immanuel Kant might agree, based on his theory of social contracts; however, he might have problems with RPV use and its inherent moral conflict (unreasonableness) in killing other humans. One major argument of Kant is found in his theory of duty and morality, based on the assumption that one must obey the higher moral law that one sets for oneself (Sandel, 2009, pp. 120-138). A logical counterargument to both philosophers is that of determining which person/nation has the greater moral authority, thus having the higher moral obligation of the two factions, and who determines which basis for that decision is the correct foundation.

Moral and ethical issues are not necessarily totally objective, as they primarily entail beliefs (which must in turn be based on evidence of reliability and some sort of scientific law or theory). This is the foundational issue of the morality in using RPVs: whose belief system is correct? Once this issue is resolved, the embedded problems of how, when, and where to use RPVs will become slightly less complicated.

Use of RPVs in Counterterrorism

The United States officially numbers "all military-age males in a strike zone as combatants ... unless there is explicit intelligence posthumously proving them innocent." (Keene, 2015, p. 19) That presents some problems outside the scope of this report, but it does highlight some important ideas. In defining the target, how does this apply for use against either citizens and nationals of the defending nation, or the geographic location of the target?

The RPV strike against Anwar al-Awlaki is a primary example of this conundrum. DeSantis (2011) makes a very striking argument that when war is conducted, the nation does not attempt to conduct criminal justice actions. The Framers are very distinctive in discriminating between the powers of the executive and the legislative in enforcing criminal laws or conducting war. Given this, al-Awlaki is not a criminal suspect. "He [is] an active combatant in a war." Alexander Hamilton's observation that "the power to defend the nation 'ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies'" is just as applicable today as it was two hundred years ago. DeSantis also gives the examples of Lincoln targeting Confederate sympathizers and the 1942 incident of Nazi saboteurs, "one of whom was an American citizen". DeSantis closes his argument by saying, "The Framers recognized that when it comes to combating attacks against the nation, the powers granted under the Constitution to Congress and the president represent the primary means to protect the life, liberty, and property of U.S. citizens." This overarching responsibility supersedes the citizenship status of the belligerents.

Paulson (2014) is rather more direct in his opinion:

My proposition is a simple but bracing one: The President of the United States, in his capacity as military Commander in Chief of the nation's armed forces in time of constitutionally authorized war, has the plenary power and discretion under the U.S. Constitution to target and kill specific individuals that he in good faith determines to be active enemy combatants engaged in lawful or unlawful hostilities against the United States.

By "active enemy combatants" I mean persons affiliated with an enemy force or power who have not been captured, who have not surrendered, and who have not laid down their arms and ceased their war-waging activities against the United States. My assumption in this essay is that such enemy combatants *might include U.S. citizens*. My legal position is that, where U.S. citizens engage in war against the United States, the war power of the United States may be employed against them, *just as it could be employed against non-U.S. citizens engaged in war against the United States*.

I further maintain that, in targeting and killing enemy combatants in time of war, the President, as Commander in Chief, may use any and all military means and technologies of war available to him, including drone technology. The President may employ such means and technologies wherever the enemy is present, as the President judges appropriate. And he may do so without regard to whether international law purports to restrict such killings, without regard to whether any (otherwise) applicable U.S. statute might be thought to restrict such action, and without resort to any further U.S. legal process or judicial approval. (pp. 43-44)

Paulson then proceeds to explain in greater detail his reasoning, and is actually quite convincing and logical. Of note to ethics and moral standing is Paulsen's closing remark that such a "fearsome and important power" is another argument for electing someone to the position of Commander in Chief with strong qualifications and character (Paulsen, 2014, p. 61).

Conclusion

So, where does this thought process lead us? Philosophers and legal minds publish tomes and tidbits, expounding on their reasoning and thought processes regarding the morality of using remotely piloted vehicles in warfare. Looking back to thinkers such as Bentham and Kant only provides one with glimpses that are in essence no different than anything being presented today. Granted, much of what is offered in modern times is based in their theories. This only demonstrates that the underlying ethical problems are universal in nature, and have applicability to issues that are intergenerational.

Ethics and morality play a significant, very important part in determining national interests and actions. Whether one believes the use of RPVs should be allowed or prohibited, he or she must objectively decide the role of ethics and morality. For better or worse, use of RPVs is becoming more commonplace. As Paulsen so ably expressed, the reasons and techniques in using RPVs must be controlled by those with a solid foundation in cultural norms and morals.

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