

# No Right To Mercy: Making Sense of Dignity-Based Arguments in the Lethal Autonomous Weapons Debate<sup>1</sup>

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Arguments from human dignity feature prominently in the Lethal Autonomous Weapons (LAWS) moral feasibility debate, even though there exists considerable controversy over their role and soundness and the notion of dignity remains under-defined. Drawing on the work of Dieter Birnbacher, I fix the sub-discourse as referring to the essential value of human persons in general, and to postulated moral rights of combatants not covered within the existing paradigm of the International Humanitarian Law in particular. I then review and critique dignity-based arguments against LAWS: argument from faulty targeting process, argument from objectification, argument from underappreciation of the value of human life and the argument from the absence of mercy. I conclude that the argument from the absence of mercy is the only dignity-based argument that is both valid and irreducible to another class of arguments within the debate, and that it offers insufficient justification for a global ban on LAWS.

**Keywords:** Military Ethics, Lethal Autonomous Weapons, Ethics of New Technology, Killer Robots, Dignity, Just War Theory

## Bez prawa do litości. Krytyczny przegląd argumentów z godności w dyskusji o autonomicznych systemach bojowych

Argumenty z godności ludzkiej odgrywają istotną rolę w dyskusji o etycznej dopuszczalności użycia Autonomicznych Systemów Bojowych (ASB), pomimo istnienia sporych kontrowersji co do ich roli i zasadności a także niedookreślenia samego pojęcia godności. Bazując na pracy Dietera Birnbachera, dookreślam tę dyskusję jako koncentrującą się na pojęciu istotowej wartości osoby ludzkiej, z której wypływać mają rzekomo dodatkowe prawa kombatantów niewzmiankowane przez Międzynarodowe Prawo Humanitarne. Następnie dokonuję krytycznego przeglądu argumentów z godności ludzkiej na rzecz zakazu użycia ASB; omawiam argument z wadliwego procesu identyfikacji i doboru celów; argument z uprzedmiotowienia; argument z przyporządkowania niedostatecznej wartości ludzkiemu życiu i argument z braku miłosierdzia. W konkluzji stwierdzam, że jedynie argument z braku miłosierdzia jest jednocześnie poprawny i nieredukowalny do argumentów innej kategorii niż argumenty godnościowe; tym niemniej nawet ten argument nie zapewnia wystarczającego uzasadnienia dla powszechnego zakazu użycia ASB. Argumenty godnościowe nie spełniają tym samym wyznaczonej im w dyskursie roli.

**Słowa kluczowe:** etyka wojskowa, autonomiczne systemy bojowe, etyka nowych technologii, roboty zabójcy, godność, teoria wojny sprawiedliwej

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Dignity-based arguments (DBAs) are frequently used to deny the moral feasibility of Lethal Autonomous Weapon Systems (LAWS) – military robots capable of identifying targets on their own and engaging these targets with lethal force<sup>2</sup>. There exists substantial controversy over the soundness of these arguments, with positions ranging from decisive rejection (Birnbacher 2016) to wholehearted embrace (Rosert and Sauer 2019). Permissivists – thinkers finding no specific moral fault with LAWS – are not alone in their dismissal of DBAs. Even some prohibitionists – proponents of the global ban on LAWS – express doubts over the salience of DBAs and relying on them in the broader policy debate. Amanda Sharkey, taking an openly prohibitionist stance, nevertheless concludes that “(...) the risk to human dignity is only one of many reasons for calling for a ban of autonomous weapons and for insisting on the need for meaningful human control of lethal weapons in war; and it is not the most compelling” (Sharkey 2018, 85)<sup>3</sup>.

Sharkey’s view is diametrically opposed to the positions taken by a few other prominent prohibitionists (Asaro 2012, Docherty et al. 2018, Heyns 2016b, Rosert and Sauer 2019, Sparrow 2016). All these thinkers view DBAs as vital or even essential to the prohibitionist stance. Rosert and Sauer state that only on these grounds a genuinely general prohibition could be established (2019, 370); they also find a turn toward dignity to be beneficial in terms of argumentative tactics and public appeal (2019, 372-3). Robert Sparrow – even though he is referring to the notion of “the respect of the humanity of our enemies” rather than explicitly to dignity – seems to regard this kind of an absolutist argument as a last line of defense of the prohibitionist position, other types of arguments being possibly refuted (Sparrow 2016, 110-112).

These controversies are coupled with the tendency of prohibitionist authors to refer to different moral considerations when speaking of dignity and to be somewhat obscure when discussing the exact mechanisms of dignity violation through the use of LAWS. This confusion as to the actual substance, soundness, and salience of DBAs is obviously a problem for the prohibitionist stance. Yet it is also problematic from a permissivist’s viewpoint, since the vague and multi-faceted DBAs constitute an in-

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2 Platforms marking targets for automatic lethal engagement by other units would also meet the definition for LAWS – see Michel (2020, 6-18). Unless stated otherwise, such attacks are to be assumed, as they are throughout the discourse, to be attacks aimed at individual combatants, vehicles, or small military structures that are currently undertaken by individual combatants of lower ranks. Without establishing the moral permissibility of authorizing LAWS to conduct such limited attacks, there can be no discussion about the permissibility of LAWS autonomously launching any attacks of a larger scale.

3 Conversely, not all thinkers putting forward some kind of dignity-based reservations about LAWS are in favor of a total prohibition on LAWS – Purves, Duncan, and Strawser (2015) offer one such possible stance (I thank an anonymous reviewer for emphasizing this point). Still, DBAs were first – and most decisively – put forward by prohibitionists. While there is a theoretical possibility that DBAs could offer strong enough reasons to pursue some regulations of LAWS without a full-fledged ban, I do not believe they actually do.

tractable challenge that cannot be decisively and successfully addressed. Only if every single DBA is charitably stated and then properly addressed, will the permissivists be able to move the debate forward. Accomplishing this task is the goal of this paper.

I will start with summarizing the extremely useful work of Dieter Birnbacher that the present paper aims to expand upon. Then I will present charitable interpretations of several DBAs, each followed by an attempt at either their refutation or reduction to an argument belonging to a different category. I hope to demonstrate that most if not all DBAs are in fact restatements of valid and perfectly understandable arguments in the language of human dignity. Such restatements do not contribute to the debate but artificially inflate the list of possible moral concerns regarding LAWS. What is left of DBAs after such reductions is mostly the argument from the value of mercy, which I will subject to an extended discussion and try to show to be easily outweighed by other considerations, if not outright unsound. If I am successful, this will offer the LAWS discourse an opportunity to decisively move past DBAs onto other, more salient and meaningful issues.

### **Dignity as the Inherent Worth of Human Persons**

The most comprehensive and systematic statement of the prohibitionist positions on DBAs to date has been offered by Dieter Birnbacher in a 2016 article entitled “Are autonomous weapon systems a threat to human dignity?”. The usefulness of Birnbacher’s work for systematizing and developing the dignity sub-discourse is threefold. Firstly, he identifies the interpretation of human dignity as the intrinsic worth of each and every human person to be the meaning of the term referred to within the discourse and which is indeed appropriate for it. Secondly, he discusses the distinction between legitimate and illegitimate (or inflationary) uses of dignity, simultaneously specifying the relation between violations of dignity and violations of human rights. Lastly, he identifies verification of IHL-compliance as a necessary preliminary to any non-redundant discussion of presumed dignity violations by LAWS.

Defining or rather explaining dignity as the inherent worth of a human being that is close to the intuitive meaning of the German word ‘Menschenwürde,’ but not intuitively conveyed by the English ‘dignity,’ allows one to see the difference between this ethical concept and the everyday uses of ‘personal dignity’ and ‘status dignity’ (Birnbacher 2016, 111). It also allows appeals to the inherent worth of human life (Asaro 2012) or to the moral necessity for a certain attitude of respect (Sparrow 2016) to be classified as DBAs even though they do not specifically employ the term ‘dignity.’

As these articulate similar or even identical concerns and prominently feature in the sub-discourse, this is a right choice, seconded by others (Sharkey 2018). While I do not endorse the entirety of Birnbacher's approach to the notion of human dignity, especially his views on its metaethical role, I will follow him in this "inherent-worth" understanding of the concept, as do some other authors writing on LAWS (Doherty et al., 2018, 24; Heyns 2014, 7)<sup>4</sup>.

As the decision to adopt a certain understanding of dignity is a central decision of the paper, it is important for me to explain which alternative understandings I reject and why. In this, I will rely on the taxonomy of various philosophical uses of the term created by Lucy Michael (2014). The basic distinction Michael makes is between inherent and non-inherent types of dignity. Inherent dignity is possessed by all humans simply in virtue of being human (Michael 2014, 16); in contrast, non-inherent dignity "is an acquired condition; it is contingent upon a person's circumstances and behavior" (2014, 21). The discourse concerned with presumed violations of human dignity is clearly centered on the inherent kind; this is evident from the fact that various authors consider their arguments and their normative consequences to be universally applicable.

Michael (2014, 17-21) describes three different understandings of inherent dignity – dignity as the inherent worth, dignity as the inviolable right to autonomy and agency, and dignity as a "radical universalization of the status of inviolability (...) traditionally associated with high rank," an understanding proposed by Jeremy Waldron (2007). Of the three uses, only the first one can be substituted for the term dignity in the discourse without utterly distorting the meaning of what is being said. As both the permissivist and prohibitionist authors involved are not pacifists, they do in principle accept the very significant limitations of human autonomy engendered by the necessities of war, and they do not hold civilians – let alone enemy combatants – to be inviolable in the sense Waldron has in mind. It would be impossible, at least within the framework of non-pacifist military ethics, to make sense of the notions of "respect for the autonomy and agency," or "respect for the royalty-like inviolability" of enemy combatants; yet it is perfectly possible to form an understanding of what it means to respect the inherent worth of enemy combatants *qua* human beings.

One may object that perhaps understanding human dignity as something different than the inherent worth of all humans could strengthen some DBAs or allow one to develop a novel prohibitionist argument. Perhaps it would. Still, it is both

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4 Heyns writes: "(...) the notion of the right to life cannot be understood in isolation from the concept of dignity, because it is the value of life that makes it worth protecting."

possible and productive to interpret all the DBAs discussed in this paper while understanding dignity to mean this inherent worth. If productive readings based on a different meaning of dignity were to emerge, they would need to be classified as novel arguments. Without rejecting such a possibility, I will proceed to understand dignity as the inherent value of all humans, believing such a reading to be the most charitable among the alternatives.

I am also adopting as my own Birnbacher's opinion on the limits of the notion of dignity and its legitimate uses. He identifies three illegitimate ("inflationary") uses of the notion: 1) applying dignity to entities other than human individuals; 2) inflating the notion of dignity violation to cover all immoral actions, not just very substantial violations of basic human rights; and 3) using the charge of dignity violation as a conversation stopper, taboo marker, or an expression of moral disgust while insisting that it carries the argumentative weight that is not provided by its substantive content (Birnbacher 2016, 108-113; Lin, 2015). The latter two are especially important. They are, at the minimum, tantamount to a requirement that DBAs describe in sufficient detail the mechanism of dignity violation and establish that the harm produced by such violations meets the threshold of harm prohibited by the moral restraints we place on wartime conduct. A stronger reading would suggest that dignity violations are necessarily supervenient on other types of serious wrongs, and so cannot be spoken of in the absence of seriously wrong actions that may be morally condemned as violations of basic human rights. Accordingly, a sentence: "None of my rights were violated but my human dignity was" should be considered nonsensical.

As Birnbacher speaks of "the illusion that affirming that an action is against human dignity adds anything substantial to the judgment that it is morally wrong," which "tends to give the wrong impression of justifying the judgment of immorality whereas it only reaffirms it" (2016, 112), this stronger reading seems to be correct. I will accordingly try to present each DBA in the form that identifies a specific wrong inflicted by a LAWS onto a specific person and the mechanism by which it comes to be. While I will not go as far to automatically consider a specific argument invalid if a rights violation cannot be identified, this is to be taken, at least *prima facie*, as a substantial blow to its soundness.

If I find Birnbacher's framing of the issue of so much value, where does the deficiency of his article lie? After all, his is a critical review of all major DBAs arriving at a permissivist conclusion. What else is there to accomplish? Unfortunately, Birnbacher's attempt is severely limited by his own presupposition that the only persons whose dignity might be violated by the use of LAWS are "civilians threatened by attacks from AWS either as direct targets or as incidental losses" (2016, 113). His

justification is purely Walzerian: “Soldiers are part of the game (...) they are the active players. Therefore, they are also passive players” (ibidem).

Even if we charitably assume that Birnbacher uses the term ‘civilians’ as a synonym for ‘non-combatants,’ this statement – tantamount to saying that because combatants may be blamelessly killed in war, they can never be wronged by being killed in war – is simply not true, even within the Walzerian interpretation of Just War Theory. Combatants who may otherwise be legally killed cannot be killed through the use of perfidy or treachery, or in a way that causes them unnecessary suffering, or in the rare cases when it is clear that their deaths would advance no military goal. They are fair game, but within certain limits of civilized warfare. Whether the use of LAWS violates these limits is exactly the point of contention. Many prohibitionists, including those familiar with Birnbacher’s arguments, write specifically about the presumed violations of enemy combatants’ dignity (Sparrow 2016, Rosert and Sauer 2019, Sharkey 2018). As Christof Heyns asserts: “in the context of the use of force the right to dignity serves primarily to protect those targeted, rather than those who are incidental casualties” (Heyns 2014, 7).

These authors’ concerns cannot be answered by merely reinterpreting or modifying Birnbacher’s arguments<sup>5</sup>; they need a fresh review and that is what I will offer, presenting and critiquing arguments from the right to due process of IHL, prohibition of assuming certain contemptible attitudes towards fellow humans, due appreciation for the value of human life, and from the value of mercy.

## **Due Process of (International Humanitarian) Law**

International Humanitarian Law – also referred to as the Law of Armed Conflict or the Law of War – is the body of international law concerned with the wartime conduct of combatants. It is closely aligned with the *Ius in Bello* principles of Just War Theory. All newly introduced weapon systems must be capable of being used in a way that would not violate IHL. LAWS, as autonomous systems, face a higher bar – they must be capable of conducting themselves so as not to violate IHL in the environments and circumstances they are designed to serve in.

The four basic principles of IHL, binding all combatants, are the principles of distinction (between combatants and non-combatants), military necessity, unneces-

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5 Birnbacher’s arguments would cover those violations of combatants’ human dignity that supervene on the violations of the IHL: perfidious or treacherous attacks, causing unnecessary suffering to the combatants, the use of prohibited weaponry such as glass projectiles, etc. Yet these constitute a class of acts that are uncontroversially considered impermissible, and that LAWS are not particularly likely to engage in (their ability to commit acts of perfidy would, for example, be understandably lower than that of human soldiers).

sary suffering, and proportionality (Solis 2010, 250-286). The requirement of IHL compliance translates into a right, possessed by all persons, to have the targeting decisions that involve them as potential objects comply with the IHL criteria. Thus, civilians have a right to be recognized as non-combatants, to never be targeted directly, and to be affected indirectly through collateral damage only if this is necessary for and proportional to a given military gain. Soldiers have a right to be recognized as non-combatants when they become ones through incapacitation or surrender, not to have superfluous suffering inflicted upon them, and not to be killed via methods such as perfidy. Killing them is, however, always a valid military goal in itself and almost always fulfills the standard of military necessity.

Both prohibitionists and permissivists agree that to be morally and legally feasible LAWS have to be capable of fulfilling the IHL requirements. Were we to dismiss the possibility of LAWS ever complying with IHL, DBAs would be made redundant, as the moral case for a ban would be decisively established. Yet it is precisely the anxiety about the possibility of the IHL-compliant LAWS (Rosert and Sauer 2019) or outright acknowledgment that such a compliance will likely become possible (Sparrow 2016, 93) that drives the recent prohibitionist turn towards DBAs.

Still, some prohibitionists argue that compliance with IHL is not enough – that it is not the result, but the process that matters. It is not enough for a machine to make correct judgments as frequently as, or even more frequently than an average human soldier; it is the fact that the process the machine engages in to produce its performance is different from the human one.

It is easy to demonstrate the problems with the notion of an inferior process reliably delivering an equal or superior result. Any process that would consistently produce actions in line with the IHL-based recommendations of human experts would in fact be sensitive to the IHL-driven concerns. It is thus a contradiction in terms to speak of a process that is at the same time reliably IHL-compliant and arbitrary. Thus, the concerns about the arbitrary nature of LAWS targeting decisions actually constitute assertions about IHL non-compliance (Asaro 2012, 697-700, 708). As such, they remain valid, but should be classified as arguments against the possibility of IHL compliance, not dignity-based ones.

Still, could a charitable interpretation render some other reasons for insisting that the process matters? I think yes. One possibility is that while LAWS will be more law-abiding than an average human soldier, they will also necessarily fall short of an ideal. In this case relying mostly or exclusively on LAWS would mean forsaking the possibility of ideal conduct (Asaro 2012, 695). As Christof Heyns puts it: “If humans are replaced on the battlefield by entities calibrated not to go below what is expected

of humans, but which lack the capacity to rise above those minimum standards, we may risk giving up on hope for a better world” (Heyns 2013, par. 97).

For this problematic result to obtain, though, there would have to be some limit to AI performance that cannot be surpassed (perhaps because of the AI safety concerns), and human troops would have to be free of such a limit themselves (and it can be argued such a limit is constituted by many hard-wired aspects of human nature). Even then the LAWS should substitute humans until the performance of human troops would improve enough to surpass them, in contexts in which the moral requirements are relaxed, and in any other situations in which the LAWS hold temporary moral advantage.

The “moral limit” concern connects with another potentially troublesome aspect. While generally more compliant with IHL than an average soldier, the machine might nonetheless be capable of more repugnant violations. If it is true that “a Canadian soldier will never intentionally shoot a toddler,” but this cannot be said of a Canadian LAWS, then some may be unwilling to make the substitution, even if on average the robot will commit fewer war crimes (perhaps it is far less likely to shoot a prisoner). If reducing the maximal (negative) quality, not the quantity of violations, was to be one’s focus, the IHL-compliant robots could in theory prove inferior to humans.

It is hard to imagine LAWS equaling human cruelty in warfare on a qualitative level, given their obvious inability to conduct some of the most gruesome human practices such as rapes, most forms of torture, and intentional acts of humiliation and offense. Still, it should be granted that weapons deemed capable of rare yet extraordinarily harmful actions should not be allowed under IHL, thus solving the issue and simultaneously removing it from the province of dignity-based concerns.

One more *prima facie* unsettling feature of the process is the inevitability of outcomes (Leveringhaus 2016, 89-117). LAWS would not have the ability to do otherwise – upon identifying something or someone as a legitimate target, a LAWS will always engage. This eliminates, *inter alia*, the possibility of disobedience, and therefore, of conscientious objection to legal yet immoral orders. To provide one example, LAWS would never refuse orders because they believe the war to be illegitimate on *Ius ad Bellum* grounds. Consequently, another barrier to unjust, unnecessary, or perennial conflict, offered today by moral and psychological characteristics of human troops, would disappear.

Complete and unchangeable obedience to orders, even legal ones, is indeed a valid concern because of the consequences it may generate for the world peace or the preservation and expansion of authoritarian rule. Yet the argument presented



by Leveringhaus is a wide consequentialist one (Sharkey 2018, 78) and may be stated without any references to human dignity. As such, it cannot be classified as a DBA.

Three other major concerns are raised about the process of targeting as carried out by LAWS: that it either generates or is an expression of attitudes that are themselves offensive to the dignity of enemy combatants, that it is not sensitive to the value of human life, and that it has no place for mercy. As these require more spacious discussions, they will be separately addressed in the subsequent sections.

### **Arguments from Attitudes Offensive to Human Dignity**

Some allege that LAWS are injurious to human dignity of enemy combatants they target because their use is inherently indicative of attitudes that themselves constitute dignity violations. Among such alleged attitudes are: objectification (Heyns 2016b); profound disrespect or “vermin-like treatment” (Sparrow 2016); lack of any moral attitude toward a target tantamount to sociopathic indifference (Purves, Duncan, and Strawser 2015); and lack of respect for the intrinsic value of lives being taken (Docherty et al. 2018).

Christof Heyns’ account of dignity-related problems with AWS is quite rich, involving process-based arguments, appeals to the inevitability of AWS actions, and an appeal to the impossibility of mercy (to be addressed later on). Regarding the argument from objectification itself, Heyns renders it in Kantian terms:

A central thrust of the notion of human dignity is the idea that humans should not be treated as something similar to an object that simply has an instrumental value (as is the case e.g. with slavery or rape) or no value at all (as with many massacres). The person against whom the force is directed by autonomous weapons is reduced to being an object that has to be destroyed (...) (Heyns 2016b, 18).

I find this account of what happens when enemy combatants are targeted by deadly force highly implausible. First of all, objects are not a typical example of a class of entities targeted by deadly force – in fact, targeting objects with deadly force is impossible, since objects cannot be killed. The entities targeted in warfare or private self-defense by deadly defensive force are threats – usually human and animal threats, and sometimes machines. When such force is used in a legitimate way (which in warfare means IHL-compliant), they are targeted *qua* threats, not *qua* humans, *qua* animals, or *qua* objects. To be a threat – especially a wrongful mortal threat, such as an unjust combatant – means to necessitate the use of defensive force regardless

of all other features possessed. Defenders target threats not because they believe the entities threatening them have no value, but because – *qua* threats – these entities have extremely significant negative value, and – again *qua* threats – they make it impossible to acknowledge or address any other value, intrinsic or instrumental, that they possess, before their status as a threat is ended by death, incapacitation, or surrender. Indeed, war is an environment in which the acknowledging of the intrinsic worth of other humans is frequently impossible – and the aggressor in warfare, responsible for creating this horrific environment, cannot complain about the consequences of having made himself a threat that may only be addressed by deadly force.

There is no reason why the extent to which IHL-compliant LAWS would out of necessity treat the enemy combatants as mere threats should differ from the extent to which human combat troops treat their enemies as mere threats, and there are several reasons to think LAWS would need to adopt an attitude of this sort much less often. Their superhuman combat abilities, coupled with the fact that – having no intrinsic moral value – they do not need to protect themselves, would allow LAWS to target their opponents in non-lethal manner, or take risks in order to capture rather than kill, more frequently than humans. Moreover, the attitude of treating the enemy as a mere threat would be much easier to reverse when no longer necessitated by the realities of combat.

Robert Sparrow targets a different, though not entirely dissimilar attitude inherent, in his opinion, in the use of LAWS – the attitude of profound disrespect towards the targeted enemy’s humanity. He has illustrated it – in a publicly circulated draft, if not in the final version of his 2016 paper “Robots and Respect” – with an emotional label of “vermin-like treatment.” Yet such a label is entirely erroneous in a context of IHL-compliant fighting, especially if we accept Sparrow’s own definition of respect (in which he follows Thomas Nagel) as involving “establishing this interpersonal relationship with those who are the targets of a lethal attack (...) and acknowledging the morally relevant features that render them combatants.” IHL-compliant LAWS *ex definitione* track these relevant moral features and respond towards them by offering relevant IHL protections as soon as the opponents cease to constitute a threat. Vermin are not offered the opportunity to surrender, or spared and offered medical assistance when rendered incapacitated, not to mention negotiated with for a peaceful resolution of differences. On the other hand, vermin rarely pose a mortal threat to humans or carry a degree of moral guilt for their destructive behavior.

An analogy that needs multiple caveats is not just a failed analogy, it is a misleading one. This leaves Sparrow’s point relying only on the lack of relevant “interper-

sonal relationship” between combatants. Such a relationship is surely absent between a LAWS and a targeted enemy, but I would say it is also absent in almost every other form of modern combat. If such a relationship was to be genuinely present, then it would be a forced relationship between a just warrior and an unjust warrior, that is, between the victim and the aggressor (or between the proxy defender of the victim, herself endangered by having come to the victim’s defense, and the aggressor). Why the victims of an aggression would be required to form interpersonal relationships with the aggressors to be permitted to repulse them, I do not see.

Heyns and Sparrow both argue for the moral impermissibility of assuming certain attitudes without themselves proposing a model attitude. What would a combatant – human or robotic – have to do, besides strictly following IHL, to meet their standards? I suspect the answer is – be merciful, at least from time to time. If this is a wrong answer, then either Heyns and Sparrow postulate a standard of behavior that is unknown to me (and has not been identified clearly enough to count as an argument in the present debate) or they postulate that permissibility of *in bello* actions depends on a presence of mental states unlikely to influence behavior – that the state of mind or perhaps the emotion one feels when attacking the enemy is decisive. Yet the focus here is on the objective permissibility of actions, not with the subjective variety, so the latter would not count either.

Purves, Duncan, and Strawser take a diametrically different approach, blaming the absence of certain attitudes – motives and intentions – for a LAWS inability to permissibly attack an enemy combatant (2015, 860). In their own words, “AI cannot be *motivated* to act morally; it simply manifests an automated response which is entirely determined by the list of rules that it is programmed to follow. Therefore, AI cannot act *for* reasons, in this sense. Because AI cannot act for reasons, it cannot act for the *right* reasons.” (2015, 861; authors’ own emphasis). Theirs is a complex stance supported by several unrelated arguments, each meriting its own discussion.

Their first argument is that it would be morally problematic to use a person obviously incapable of acting for moral reasons – a known sociopath – as a combat soldier, and that therefore it would also be morally problematic to use a similarly incapable AWS<sup>6</sup> (2015, 860-862). Yet both the initial premise and the analogy between a human sociopath and an autonomous weapon (especially some types of autonomous weapons) cannot hold up to scrutiny. The authors assert that we would object to using a sociopath in combat even if he followed all the *in bello* rules and

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6 Unlike other authors discussed, Purves, Duncan, and Strawser consider their objections to be merely *pro tanto* reasons for opposing the use of AWS, capable of being outweighed by other considerations (2015, 866-68) – hence the talk of “morally problematic” instead of “morally impermissible.”

we were sure that he would follow them in the future. Yet our intuitions regarding the sociopath's participation in combat cannot be separated from our understanding that in the real world we could never have such certainty, and that such a person would be exceedingly likely to violate the *in bello* precepts at some point, with truly horrid consequences. In contrast, the AWS – or at least the type of AWS the authors seem to have in mind – may provide us with such certainty.

Furthermore, Purves, Duncan, and Strawser do not make it clear what the alternative to sending the sociopath into combat would be. Would he be discharged and not replaced, thus lowering the overall capabilities of the just warriors to realize their morally worthy goals? Would he be replaced by someone else, perhaps a wild-eyed idealist, whose life (and moral character) would be imperiled in the war? Both alternatives seem profoundly unattractive. What we want is for certain actions to be performed, and I am not really sure we want the risks involved to burden the ethically best amongst us.

I believe that the authors fail to make a distinction between a) the actions' worth – the moral desirability of the outcome it produces – and b) the amount of merit a given action bestows upon an actor, and c) the facts about the actor's moral disposition that are revealed through an action. The sociopathic soldier's actions, when scrutinized with full knowledge of his intentions, do not bring him merit and do reveal disturbing facts about his character; yet does that mean we would rather he not perform them? Would we say to him: if you cannot defend your country out of ethically pure motives, than do not defend it at all? I do not think this is a recommendation the soldier should hear. This is because his action, whatever his reasons for it, has an inherently good outcome (supporting the just side in a war)<sup>7</sup>. But if the recommendation such a soldier should hear is to "keep doing what you have been doing, just feel differently about it," I do not think we should say we have a moral problem with his actions, just with the kind of person he is and with the inner life he leads. Alternatively, we are troubled with that person's behavior in future and/or counterfactual situations, but not in the situation being discussed. In summary, the sociopathic soldier troubles us precisely because he is human, and thus ultimately uncontrollable and deserving of a morally proper inner life.

While the authors acknowledge that some sociopathic individuals (or individuals with morally equivalent traits) do serve in even the most IHL-compliant forces, the authors assert that these individuals form a tiny minority, which is probably true.

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<sup>7</sup> Thus fails another point the authors are making – that some actions, such as offering someone flowers, derive their worth primarily from their motive, and that many *in bello* actions may be like that. But saving a country from an aggression is not like giving the country flowers – it is like giving it a lifelong supply of chocolate.

However, this does not mean that “those who are reasonably capable of making the moral decisions necessary in war” (a standard that authors themselves posit) constitute a decisive majority of any military force on Earth. An intention to fight justly in a just cause is merely one of many primary motives for joining the armed forces and then fighting in wars, alongside the desire for adventure, glory, camaraderie, livelihood, instruction and education, family tradition, impulse, fascination with war and violence, jingoism, etc. I believe that applying the authors’ stern standard to motivations of most contemporary soldiers fighting on *the just side of wars*, and to motivations behind most contemporary wartime actions *compliant with ius in bello*, would mandate that most of them never serve and never be undertaken. And it is this reality, rather than a never-realized ideal, that we must compare AWS against.

Finally, it is not at all clear that all AWS would be devoid of motives and intentions. The kind of AWS described by the authors – otherwise known as a reflex-based agent (Russell and Norvig 2016, 48-52) that “simply manifests an automated response which is entirely determined by the list of rules that it is programmed to follow” – certainly would not. Yet due to its simplicity and relative lack of autonomy, it could serve as a transmission belt for the intentions and attitudes of its programmers, intentions that could be proper. Other, more autonomous types of AI agents, known as goal-based and utility-based agents (Russell and Norvig 2016, 52-54) would perhaps be too independent of their programmers to be considered simple vehicles for their intentions. However, in the case of utility-based agents, to maximize certain values, they could be oriented towards worthy goals and values. Granted, these machines would not have goals and values any more than they would truly understand the situation or perceive their environment – they would merely ‘understand,’ ‘perceive,’ and ‘realize values’ without any phenomenal experience. But as long as these behaviors are undistinguishable from real understanding, perception, and pursuit of goals, I would say it counts. Asserting that a robot consistently displaying certain behaviors does not realize the goal of protecting civilians in its care would be equivalent to asserting that it does not perceive them – true in a certain metaphysical sense, yet irrelevant to the practical aspect of the situation.

Another argument made by the authors tries to assert equivalence between the importance of right intention for *ad bellum* and *in bello* reasoning. Considerations of space preclude a deeper analysis of textual foundations the authors base the equivalence on (which are quite shaky); suffice it to say that while it may be possible for particular attacks undertaken for different motives to be identical in their course and outcome, when affairs as complex as wars have different motivations behind them, it shows. If a sniper shoots a war criminal attempting to hurt a civilian, whether

the sniper's motive is cruelty or mercy, the outcome is the same. However, a genuine humanitarian intervention and a geopolitical show of force differ by many telltale signs – if not always then frequently enough – for the requirement of right intention to be clearly established. The same cannot be said of *in bello* actions; as already discussed, if we disallowed undertaking them for less than noble motives, most of them would never be performed, even in service of a perfectly good cause.

The final problematic attitude to be discussed is the putative lack of respect and due appreciation for the intrinsic value of lives being taken by LAWS. To address this issue, one needs to reflect on the meaning of respect or recognition for the intrinsic worth of human life in the context of combat. Such respect still allows for intentionally killing an enemy combatant – prohibitionists are not pacifists. It even allows for killing enemy combatants on sight just because they are enemy combatants, a vital asset to the enemy's war effort. What is then the content of the combatants' right to have the intrinsic value of their lives recognized?

One answer to this question has been provided by Bonnie Docherty: "Before taking a life, an actor must truly understand the value of a human life and the significance of its loss. (...) If an actor kills without taking into account the worth of the individual victim, the killing undermines the fundamental notion of human dignity (...)" (Docherty et al. 2018, 24-25). Yet such an answer is both wrong and inapplicable as a standard of military ethics, for reasons similar to those for which I have rejected assertions made by Purves, Duncan, and Strawser. It is wrong because it seems to presuppose a certain very complex mental state as a prerequisite of any morally legitimate wartime killing. It is highly unrealistic to suppose that such a mental state has been realized by more than a tiny fraction of historical combatants whom we believe to have fought in a just cause and fought well. Yet even if such a frame of mind was to be required of combat troops, how would we gain insight into their private mental states? Lack of such insight makes Docherty's proposition inapplicable as a criterion for judging the actions of others. The only possibility for such insight is through behavior, one that is compatible with an attitude of profound respect for human life – but also with some other complex mental states.

Thankfully there exists a set of principles – IHL – abiding by which guarantees such thoroughly respectful behavior. Of course, one may abide by IHL for many other reasons, such as fear of punishment or a desire for reciprocity. The attitude of profound respect for human life that Docherty would require of all combatants would then be absent. However, we generally cannot require others to think or feel certain things. The right that the opponents have is not the right to be thought of in a certain way, but to be treated in a certain way, and they would be.

The content of a combatants' right to have the value of their lives recognized is precisely the content of IHL, as summarized in its four main principles. They have a right not to be killed needlessly, or in a manner that is needlessly excruciating or humiliating, and they have an absolute and unquestionable right not to be killed as soon as they surrender or become *hors-de-combat*. In other words, as soon as soldiers choose to no longer perform combat duties, they start being treated as humans that may not be reduced to their function within the military machine (non-combatants). The choice of changing their status is not always present, but the actor limiting it is never the IHL-abiding opponent. Instead, it is most likely the commanders who limit the combatants' option of surrender. In the present, they may punish the attempts to surrender; in the past, they might have elected a form of combat environment – such as submarine warfare – that makes surrender less possible or not possible at all.

IHL, in its attempt to limit the war's carnage to the minimum, is clearly and explicitly motivated by profound respect for the value of human life, health, and well-being. Strict abidance by its principles, an uneasy feat while in combat, is a valid proof of a commitment to human dignity. Were the introduction of LAWS to increase the general level of compliance with IHL – as it would if such machines were both frequently used and IHL-compliant – it would constitute an expression of such commitment, not its rejection.

This said, IHL is not the most important instrument for protecting the dignity of human persons from the ravages of war. Proper restraint in undertaking war, coupled with a readiness to discourage, deter, and if need be, stop unjust and unnecessary conflicts from happening goes much further. Such restraint, described and prescribed in the *Ius ad Bellum* part of Just War Theory, might be enabled or made less likely by the kinds of weapons placed at the disposal of political decision makers. Yet arguments aimed at enhancing it through a preemptive ban on LAWS are best classified as consequentialist, not dignity-based, just like the argument from LAWS' inability to do otherwise.

### **The Impossibility of Mercy**

There is, however, one aspect of human deliberative process that is unlikely to be replicated by LAWS' algorithms – a tendency for compassion and mercy (Birnbacher 2016, 121). In this context 'mercy' is not to be understood broadly as an altruistically motivated help provided to the needy or the suffering, but narrowly as a decision to spare an otherwise liable combatant from death or injury. I believe that it is the

possibility of mercy that most of the intuitions underlying the DBAs are after (Heyns 2013, par. 97; Leveringhaus 2016, 90-94).

Most intuitive evaluations of wartime mercy and the humane attitudes that underlie it are highly positive, largely because the same attitudes breed morally right behavior towards civilians, prisoners, and enemy wounded (Docherty et al. 2018, 24). Mercy towards armed opponents is highly predictive of respectful and benevolent treatment of non-combatants, and vice versa. It might be psychologically unlikely, if not impossible, for human troops to remain fully IHL-compliant while never performing acts of mercy towards enemy combatants. LAWS, however, are not subject to the rules of human psychology. Consequently, our intuitions about the value of mercy need to be examined without assuming such a coupling of mercy and IHL compliance and its implications.

Let us analyze a historical example of a commander performing an act of mercy for morally commendable reasons: a desire to spare the lives of fellow humans and simultaneously produce a spirit of conciliation conducive to the eventual peace. During the Confederate evacuation of Richmond, Union General U.S. “(..) Grant discerned the Confederate army escaping across a bridge (...). He deliberately refrained from bringing up artillery to mow it down. ‘At all events I had not the heart to turn the artillery upon such a mass of defeated and fleeing men’, he explained, ‘and I hoped to capture them soon.’” (Chernow 2017, 493). As evident from the quote, Grant has allowed himself to perform an act of mercy because he believed the troops in question will be eventually captured anyway. Yet throughout the subsequent week, as the units he spared confronted his men in some of the most desperate fighting of the war, he continuously fretted about the possibility of them escaping to transform into an extremely disruptive guerilla force – a possibility avoided only through a mixture of great effort, luck, and decisions not his own. To show mercy to the fleeing Confederates, Grant risked the lives of his own men who had to face them yet again, and thus he lowered – albeit mildly – the probability of achieving his own military goals.

The price of mercy in the context discussed is almost never lower, yet it may be higher still. As a commanding general, Grant knew both the tactical and strategic picture and was able to estimate the risks involved with a degree of accuracy. Such a luxury is rarely if ever available to low-level commanders, let alone privates. Grant also had the legal (if not necessarily moral) authority to place additional risks upon his soldiers, which rank-and-file soldiers do not have in relation to their comrades. Thus, acts of mercy in the sense of sparing liable enemy combatants performed by low-ranking soldiers – the group to be replaced by LAWS – may be expected to be



on average of negative moral value. That is, of course, if the realization of military goals pursued by the troops may be assumed to be morally positive. Yet if such an assumption is unwarranted, the soldiers should not fight at all, for their war is likely unjust.

That is not to say that intuitions about mercy mislead in all contexts. Their very strength is based on the fact that in many historical contexts, such as that of WWI, they were largely correct (Walzer 1977, 138-143). In wars that were unjust on both sides and involved a large number of conscripts facing substantial punishment for conscientious objection, sparing enemies who did not pose an immediate threat – so-called ‘naked soldiers’ – made moral sense, especially as such a pattern of behavior was likely to evolve into a tacit local truce, reducing casualties on both sides – and therefore did not necessarily involve producing extra risk for one’s own comrades. Even in a just war soldiers confronting conscripts have moral reasons to spare them if practicable, these reasons’ strength being proportional to the amount of coercion used to press enemy combatants into service and keep them fighting. Yet these reasons can only go so far, as duress is at best an excuse and very rarely justifies participation in an unjust war (McMahan 2009, 131-137). Even if enemy combatants were fully innocent, so are the soldiers onto whom the risk of sparing them would be transferred. In these circumstances all morally warranted acts of mercy would be likely to prove upon a close examination to be cases of soldiers following the IHL principle of military necessity, with those spared posing but little threat both short and long-term.

Alas, there is a category of wholly innocent combatants – child soldiers – in whose case our intuitions are likely to point toward a special need for compassion and mercy. Unless specially programmed or specially commanded, LAWS would treat child soldiers no different than all other combatants<sup>8</sup>. Yet, as illustrated by Paul Scharre’s poignant example (Scharre 2018, Introduction, II), on some occasions child soldiers will be pressed into service for a very brief period, render a relatively small service to the enemy, and pose no direct and immediate threat to friendly forces<sup>9</sup>. These situations in particular showcase the need for a compassionate and commonsensical assessment of a combat situation. Moreover, while presently the innocent life of a child soldier may be placed on the scales against an equally innocent

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8 However, recognizing child soldiers could prove far easier for robots than discerning other morally-distinct categories of persons, as combatants below a certain height are very likely to be child soldiers.

9 Scharre’s small unit, charged with observing a village being a center of Taliban activity, faced a decision to either eliminate a six-year old child used as a spotter or fail their mission and accept a risk of being attacked by a potentially overwhelming force. They refused to consider killing the child as a genuinely available option.

life of a just combatant, a side using LAWS as frontline troops cannot counterweigh such an innocent life. The problem is not restricted to the (hopefully) disappearing phenomenon of children being pressed into combat. Slave soldiers – wholly innocent unjust combatants forced into service by a credible threat of death articulated towards them and their family – belong to the same moral category. Many recruits used by ISIS, and most if not all North Korean military personnel, answer to the latter description.

This is a genuine concern. Yet I doubt it is common or in itself severe enough to justify outlawing an extremely broad category of weapons, especially as the problem may be alleviated to a large extent by changing the rules of engagement LAWS operate under in combat zones where they are likely to encounter child or slave soldiers (if LAWS are to be IHL-compliant, they need to be capable of executing various ROE, or else varied enough so that a type executing a specific ROE would be available). As no friendly lives are at stake, the LAWS user may go to far greater lengths to capture/liberate child soldiers rather than engage them with lethal force (use of non-lethal weapons also becomes an option). The user is, moreover, unlikely to employ LAWS-only elements to perform combat missions in environments as complex as guerilla-dominated farmland. Accompanying human soldiers should have the ability to switch the LAWS back from a fully autonomous mode, if a situation such as the one described by Scharre is encountered and the machines' ROE are not complex enough to handle it on their own.

Overall, the argument from the absence of mercy, while being the only DBA that is not reducible to an argument of another category or to absurdity, carries far too little weight to fulfill the monumental task of justifying a ban on LAWS. It is doubtful whether acts of mercy defined as sparing combatants are morally positive in the aggregate when performed by a just side of a war; they may be on average positive when performed towards child or slave soldiers, yet the number of persons affected is unlikely to offset humanitarian gains from the LAWS technology or lower casualties of own troops; also, as LAWS are unlikely to be employed all the way up the chain of command, the most significant possibilities for mercy in the form of adjusting the ROE would still exist.

The most substantial fault of the mercy argument lies, however, in overlooking the mid- and long-term consequences of LAWS introduction not only for LAWS users, but for their opponents as well. If such weapons become militarily feasible at all, they are almost certain to make most attempts at opposing them with non-specialized human troops futile. The invention of the machine gun did not lead to countless spectacular cavalry charges leading to horrendous carnage before cavalry charges

were abolished as a tactic; it is equally unlikely that LAWS would often face multitudes of poorly trained conscripts – let alone child soldiers – on the battlefields of the future. Far from mercilessly mowing down innocent combatants, they are likely to end the military utility of this group and so on balance greatly reduce the regrettable outcomes that follow the forcible involvement of the innocent combatants in warfare.

## Conclusion

I have reviewed arguments for the claim that combat use of IHL-compliant LAWS against military personnel constituting legitimate targets would nevertheless violate human dignity of the enemy combatants, objectify them, or demonstrate a lack of due appreciation for their essential value as human beings. Assuming a definition of human dignity as the intrinsic worth of human persons underlying their human rights, I restated the sometimes vague or obscure DBAs in an accessible and understandable manner. I have found a few of them (concerns over arbitrary targeting, undesirable obedience to orders, cessation for the striving for moral perfection in warfare) to be reducible to arguments about IHL-compliance or to broad consequentialist arguments. These may or may not have merit, but they do not need to rely on the notion of human dignity and should not be classified as DBAs. This matters practically, as it helps to avoid replaying discussions that have already happened and making the LAWS issue seem more intractable than it really is.

Genuine, non-redundant DBAs – those that assume the possibility of IHL-compliance – are aimed at positing standards of treating enemy combatants that would go above and beyond the IHL standards, and at showing that LAWS could not fulfill these. Most such attempts fail, chiefly because IHL already represents a demanding and highly considerate standard based on profound respect for the essential value of a human person, extremely hard to expand without abolishing the possibility of combat itself. After all, there are only two modes of engaging with an armed enemy who continues to fight – attack him or not attack him. Charges of objectification being inherent in LAWS combat seem to ignore the fact that most human interaction, let alone mortal combat, includes a substantial degree of objectification, sometimes as a prerequisite for the activity's existence; the charges of lack of appreciation for human life inherent in LAWS killings disregard the fact that it is those who craft the rules, and not those who merely obey them, who must possess a full appreciation for the underlying values. The common feature of these arguments is comparing the likely behavior of LAWS against an idealized standard that is rarely if ever fulfilled by human troops – or outright impossible to be realized by them.

The only viable DBA is reducible to a claim that there should exist a real possibility of mercy being afforded even to enemy combatants that continue fighting, especially to ‘naked soldiers,’ child soldiers, and slave soldiers. Yet the value of showing mercy to ‘naked soldiers’ is highly questionable, if not outright negative, and the other groups on the list would most probably no longer serve in combat in the age of LAWS warfare – not that they are so commonly present on contemporary battlefields. LAWS’ inability to show full or partial mercy to these other groups is also not a given. In fact, LAWS may open the possibility of warfare oriented towards disarmament, capture and/or wounding, rather than outright killing, of all enemy combatants, in a way that manned or even remotely controlled systems never could.

More broadly, LAWS hold the promise of sparing a vast number of civilians through a combination of precise targeting, lowered demand on force protection, and absence of human cruelty. They also have the potential of permanently removing all human combatants from the frontlines, making warfare “not unlike fights between chess computers of different origin or fights between the teams of soccer robots manufactured and programmed by the engineering faculties of different universities” (Birnbacher 2016, 116). I cannot imagine a development in military technology that would do more for the preservation of the dignity of all human persons. Granted, such a prospect is far and uncertain, and may ultimately prove elusive. Many difficult problems, including ethical ones, would need to be resolved before it came to be. But a genuine commitment towards safeguarding the inherent value of all human persons mandates that we at least try. An absolutist rejection of this possibility in the name of human dignity is not only unwarranted – it is likely to prove counter-productive from the perspective of realizing this fundamental value.

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