

# Battlefield Mercy: Unpacking the Nature and Significance of Supererogation in War

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General William T. Sherman was only half-correct when in the midst of the American Civil War he wrote, “War is cruelty, and you cannot refine it.”<sup>1</sup> War is indeed a brutal and destructive enterprise, the cost of which is most frequently borne by those least deserving. Yet for all its cruelty, war has been and continues to be subject to revision and moderation, both morally through the just war tradition and legally through international humanitarian law. This is an incremental process, with debates ongoing over how best to ensure that belligerents operate in accordance with these moral and legal standards.<sup>2</sup> These contemporary debates typically draw a binary distinction between rule compliance and rule violation: how can we incentivize the former and prevent and punish the latter?

I argue that this framing is problematic, excluding a critical third category of battlefield conduct: supererogation—positive acts that go beyond what is demanded by the moral and legal rules of war. We rightly focus on the troubling frequency with which combatants, motivated by exigency or animus, disregard behavioral constraints in battle. Too often, however, this same analysis overlooks the opposite phenomenon: situations in which combatants go beyond their moral and legal duties to extend additional protections to the enemy. This omission has left us with an impoverished understanding of the factors that motivate both positive and negative conduct on the contemporary battlefield.

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This article seeks to remedy this gap in the research by looking more closely at the nature and significance of supererogation in war. It focuses specifically on supererogatory restraint—that is, the refusal of combatants to take the life of the enemy on humanitarian grounds despite being morally and legally entitled to do so. As the first section outlines, this kind of restraint defies simple moral categorization. Combatants who exercise battlefield mercy exceed their moral and legal obligation to the enemy. In doing so, however, they may be in violation of other responsibilities, including their duty to kill. After highlighting this complexity, the article considers the factors that commonly motivate intercombatant restraint: target vulnerability, empathy, and self-reflection.

The article will then detail how our efforts to refine contemporary war can be enhanced through greater consideration of its supererogatory dimensions. Drawing on the example of the Special Operations Forces in the West, I argue that when harnessed, the factors that motivate battlefield mercy also aid in the development of more effective systems of rule compliance. An analysis of supererogation can also enrich our understanding of the concept of “moral injury”—trauma resulting from a dissonance between a combatant’s own moral understanding of war and his or her specific conduct during battle. Treatment of this condition needs to better recognize the potential trauma that may result from the failure to do more than is morally required on the battlefield. The need for such reflection will be reinforced in the final section of this article, which evaluates supererogation in relation to the use of armed unmanned aerial vehicles.

## THE PUZZLE OF BATTLEFIELD SUPEREROGATION

“Supererogation” is the technical term for a class of actions that, while morally good, are not necessarily morally required. To engage in supererogation is to go beyond one’s moral duty. The term can describe the relatively mundane, including minor acts of generosity, gift giving, and volunteering, as well as day-to-day forbearance and forgiveness.<sup>3</sup> It may also include more extreme behavior, including heroic self-sacrifice and saintly acts of restraint and charity.

The origins of the concept can be traced back to Catholic theology, specifically the theological disputes of the sixteenth century. Works of supererogation, understood as meritorious nonduties, were a central component of the Catholic institution of indulgences. J. O. Urmson’s seminal 1958 essay “Saints and Heroes” stands as the most important contemporary contribution to the subject of supererogation

within ethical theory. Urmson challenged the traditional, and what he regarded as overly restrictive, division of moral action into the obligatory, the permitted (or morally neutral), and the prohibited:

We need to discover some theory that will allow for both absolute duties, which, in Mill's phrase, can be exacted from a man like a debt, to omit which is to do wrong and to deserve censure, and which may be embodied in formal rules or principles, and also for a range of actions which are of moral value and which an agent may feel called upon to perform, but which cannot be demanded and whose omission cannot be called wrongdoing.<sup>4</sup>

One way in which supererogation can manifest in war is through battlefield mercy, which is when combatants refrain from taking the life of an enemy, despite their moral and legal license to do so. Consider the example of Italian lieutenant Emilio Lussu from the First World War. Accompanied by his corporal, Lussu traveled during the night into a position from which he could strike at opposing Austrian forces. Just as he was about to kill a young officer, the would-be target lit a cigarette, a gesture that gave Lussu pause: "This cigarette formed an invisible link between us. No sooner did I see its smoke than I wanted a cigarette myself."<sup>5</sup> According to Michael Walzer, who explores the Lussu example alongside similar cases in *Just and Unjust Wars*, mercy of this type, while commendable, is not obligatory in war, and may therefore "be likened to supererogatory acts."<sup>6</sup>

Intercombatant restraint is a particularly interesting example of supererogation in that it defies straightforward normative demarcation. It is a dispensation of mercy beyond one's duty to the enemy. At the same time, however, the act itself may be in violation of other moral and legal duties imposed upon the combatant, including the duty to injure and kill the enemy whenever possible. In order to appreciate this tension, we need to first recognize the degree of permissiveness with which intercombatant violence may be exercised on the battlefield. The rules of war place few restrictions on the type and degree of harm that may be directed against opposing fighters. "As far as ordinary combatants are concerned," notes Yoram Dinstein, "they can be attacked (and killed) wherever they are, in and out of uniform, even when they are not on active duty. There is no prohibition either of opening fire on retreating troops (who have not surrendered) or of targeting individual combatants."<sup>7</sup> Immunity from lethal targeting is only restored to combatants who have formally surrendered or to those who are wounded or otherwise incapacitated to the point that they are incapable of defending themselves

(*hors de combat*). Beyond these narrow exceptions, enemy combatants are subject to attack at all times.

The delivery of violence on the battlefield is a right held by all participants in war. It is also, crucially, an obligation. In the United Kingdom, the Military Covenant emphasizes that soldiers have a “legal right and *duty* to fight and if necessary kill.”<sup>8</sup> According to Article 99(8) of the Uniform Code of Military Justice, which is part of the *United States Code*, a combatant who “willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops” may be “punished by death.”<sup>9</sup>

In order to engage in intercombatant restraint, soldiers may be required to violate their *prima facie* duty, grounded in their oath of enlistment, to take enemy life. The transgressive nature of this act is not lost on those who exercise it. As noted above, Emilio Lussu opted to spare the life of the Austrian officer he encountered on the battlefield, but not before acknowledging that “I knew it was my duty to fire.”<sup>10</sup> The obvious question this raises is whether we can even categorize such behavior as supererogatory. Can we ascribe moral value to an action that exceeds one moral duty while appearing to violate another?

There are some who answer no; an action cannot qualify as supererogatory if the agent must disregard an obligation in order to carry it out.<sup>11</sup> If we accept this answer, then battlefield mercy is not meritorious, at least when extended to enemy combatants, and thus ineligible for consideration as a supererogatory act. Frances Kamm, however, is among those who reject this logic, arguing that it is possible in specific situations to perform “a supererogatory act and as a foreseen consequence [permissibly] fail to do our duty.”<sup>12</sup> Kamm substantiates this claim by asking the reader to imagine an individual who, on her way to a lunch appointment, encounters a car crash. In an act of supreme (and nonobligatory) generosity, she offers to donate one of her kidneys to the victim. In doing so, however, she fails to uphold her duty to keep her lunch appointment.<sup>13</sup> We may rightly regard such conduct as supererogatory, Kamm argues, despite the foreseen transgression of duty that it entails. If we accept that supererogation can coexist with the permissible transgression of duty, then the next question is under what conditions, if any, intercombatant restraint meets this standard.

Mercy in general is a philosophically problematic virtue, given its frequent conflict with the principle of equal justice.<sup>14</sup> Mercy in war is especially contentious, given the life-or-death stakes involved. In order for battlefield mercy to qualify as supererogatory, the moral worth of the act, sparing the life of the enemy,

must outweigh the moral worth of the violated duty, killing the enemy. I argue that this is possible, but only when the target poses no immediate physical threat.

Recall that supererogatory acts are meritorious nonduties. Combatants are not morally obligated to spare the life of the enemy, even those who pose no material threat when targeted.<sup>15</sup> They may nevertheless feel profound moral discomfort when they injure and kill opposing fighters in moments of acute vulnerability.<sup>16</sup> Such discomfort was evident during the so-called Highway of Death incident of the first Gulf War, in which retreating Iraqi military personnel were subjected to ten hours of bombardment by Western forces, whose own vulnerability was virtually nonexistent. Four hundred Iraqi fighters were eventually killed, with no loss of coalition life.<sup>17</sup> While most observers accepted that the attack was legal according to the permissive rules of war,<sup>18</sup> many were left troubled by what they regarded as an unnecessary and excessive use of violence.

Compare this to another encounter from the Gulf War, in which British army helicopter pilots “circle[d] over . . . [Iraqi] tanks as a warning to the crews, who could escape before the tanks were destroyed.”<sup>19</sup> According to one of the pilots, the rationale for this was so that “we could feel at peace with ourselves. We had total superiority, but we didn’t use it.”<sup>20</sup> Most observers would regard the mercy displayed by these pilots as morally praiseworthy, despite its necessary tension with the duty to kill. Rules, even those we respect, are imperfect, often failing to properly reflect the principle that underpins them. In situations such as these, when an otherwise just rule produces what many would regard as an unjustly harsh outcome, mercy can function as a form of redress. Meritorious mercy—mercy worthy of praise rather than condemnation—is applied in response to a situation where “the application of the rules leads to a sentence more severe than that which justice, independent of the operative rules, would require.”<sup>21</sup>

Battlefield mercy follows the same logic. When the rules governing intercombatant violence are overinclusive and expose nonthreatening enemies to unnecessary or excessive harm, mercy can alleviate the resulting tension with our moral intuition. Under such conditions, killing remains a right but loses its urgency as a moral obligation. To be clear, refraining from killing the enemy is not merely supererogatory but obligatory when the enemy has either surrendered or been rendered *hors de combat*. Likewise, such restraint is unjust when the enemy poses an imminent and significant physical danger on the battlefield. Supererogatory mercy lies between these two extremes. It is exercised in the service of vulnerable opponents, but, critically, only those whose vulnerability falls

short of the degree necessary to invalidate their moral and legal liability to direct and deliberate harm.

This is not intended to stand as a definitive moral determination. The ethical standards of war have always been, and remain, highly contested, a reality that complicates our ability to allocate particular acts in battle to the category of supererogation. A pacifist, for instance, might argue that battlefield mercy is always obligatory, rather than supererogatory, regardless of the bellicosity of the potential target. We would also likely find contestation from within the just war tradition itself regarding the parameters of supererogation. Just war “revisionists” dispute the long-standing notion of a “moral equality” between opposing combatants, arguing instead that the justice of a fighter’s cause is central to the permissibility of their use of force. This reformulation dispossesses “unjust” combatants of their moral right to kill. By this logic, were an unjust fighter to refrain from killing his or her just opponent, the action would not be supererogatory, but rather an abstention from a morally proscribed act.

Others might reject supererogation on more realist grounds. Francis Lieber, author of the 1863 document that later came to be known as the Lieber Code—the first modern codification of the laws of war—wrote that “it is my duty to injure my enemy . . . the most seriously I can, in order to obtain my end . . . if destruction of the enemy is my object, it is not only my right, but my duty, to resort to the most destructive means.”<sup>22</sup>

According to this perspective, battlefield mercy is a vice, directly at odds with the duty of all combatants to degrade the capabilities of the enemy and win the war. Supererogatory restraint may also be objected to on the basis that vulnerable adversaries rarely remain vulnerable for long. The decision to spare temporarily unoffending opponents has to be weighed against the potential of these same individuals to pose a mortal threat to others at a later time.<sup>23</sup> The intention of this article is not to settle the long-standing debate over the reach and limits of battlefield violence. It is merely to highlight the philosophical coherency of supererogatory restraint in battle within the context of the existing rules of war.

The next section will explore the factors, beyond enemy vulnerability, that motivate battlefield mercy.

## THE MOTIVATION FOR BATTLEFIELD SUPEREROGATION

Target vulnerability is an essential precondition of supererogatory restraint in battle. It is not, however, the sole incentive for such conduct. Empathy for

“the other” and moral self-reflection are also important motivators for intercombatant mercy.

### *Empathy*

Empathy can be understood as the capacity to recognize and respond to the distinct affective experiences of another individual.<sup>24</sup> It arises when we “mentally transpose” ourselves to the subject’s perspective, to comprehend a situation from his or her point of view.<sup>25</sup> In war, this may include the enemy, particularly those who face comparable obstacles and adversity. As philosopher and former soldier J. Glenn Gray observed, “The foe is a human being like yourself, the victim of forces above him over which he has no control.”<sup>26</sup> Empathy, along with its close companion, sympathy—the feeling of compassion, sorrow, or pity for the hardship of another—has long been an important facilitator of reactive altruism in war, including intercombatant mercy.

The power of empathy to induce supererogatory restraint is evidenced in part by the determination of militaries across history to undermine it.<sup>27</sup> In his memoir of the First World War, Brigadier General F. P. Crozier described his training regime in detail:

I, for my part, do what I can to alter completely the outlook, bearing, and mentality of over a thousand men. . . . The German atrocities . . . help to bring out the brute-like bestiality which is so necessary for victory. . . . The British soldier is a kindly fellow. . . . It is necessary to corrode his mentality.<sup>28</sup>

What Crozier describes here is a process of “combatant socialization.” In order to effectively function on the battlefield, soldiers must first be properly conditioned to their new role as a fighter.<sup>29</sup> Their default mentality, developed within and suitable for ordinary conditions, must be refashioned. A key aspect of this process is the nullification of interpersonal ties with the enemy. Occasionally, however, an empathetic connection with the adversary either endures or is momentarily restored on the battlefield. At particular junctures, this feeling of empathy may be sufficiently intense as to function as a circuit breaker on intercombatant violence.

Recall again the earlier example of Emilio Lussu. The act of smoking a cigarette “formed an invisible link” between him and the Austrian officer, sufficient to overcome the insider-outsider dualism that typically characterizes the battlefield. In another example of battlefield mercy from the First World War, Ernst Jünger describes an encounter in which he was poised to kill a French soldier. At the last moment, however, the panicked Frenchman displayed a photo of himself,

surrounded by family. “It was a plea from another world,” writes Jünger.<sup>30</sup> This reminder of normality generated empathy and sympathy within Jünger powerful enough to briefly upset the violent dynamic that would otherwise govern his relationship with the enemy.

We must be careful not to overstate the role of empathy. Paul Bloom has argued convincingly that in certain conditions empathy can function as a precursor to cruelty, rather than compassion.<sup>31</sup> Interrogators, for example, routinely employ empathetic tools against subjects to extract information and expose psychological weaknesses that can then be exploited.<sup>32</sup> In war, conditions that would motivate mercy in one combatant may affect no behavioral change at all within another. In addition to empathy, an important attribute of the merciful soldier is a capacity and willingness to self-reflect on his or her own moral conduct.

### ***Self-Reflection***

Mercy is not a universal impulse—war could not function if it were. Most combatants dispense their violence dutifully, taking no great pleasure in the act of killing but committing to it nevertheless. And there are others still who do derive a joy from the taking of life. According to one former soldier, “It’s frightening and unpleasant to kill, you think, but you soon realize that what you really find objectionable is shooting someone point-blank. Killing *en masse*, in a group, is exciting, even—and I’ve seen this myself—fun.”<sup>33</sup>

Some combatants have likened killing to a sexually pleasurable act,<sup>34</sup> while others have described battle as a “narcotic.”<sup>35</sup> What then are we to make of the opposite compulsion? Beyond empathy and target vulnerability, what was it that inspired Emilio Lussu, Ernst Jünger, and others to extend mercy to those not entitled to it, at least according to the explicit rules of war? While it is beyond the scope of this article to offer anything more than preliminary speculation on this matter, some insight can be drawn from Hannah Arendt’s work on fascism. Arendt argued that rule compliance, an ordinarily positive attribute, may cease to be a virtue when the rules themselves lead to morally problematic outcomes:

All our experiences tell us that it was precisely the members of *respectable* society, who had not been touched by the intellectual and moral upheaval in the early stages of the Nazi period, who were the first to yield. They simply exchanged one system of values against another.<sup>36</sup>

Arendt went on to argue that the most essential characteristic of the domestic opponents of Nazism was not a “highly developed intelligence or sophistication



in moral matters, but rather the disposition to live together explicitly with oneself.”<sup>37</sup> Conscience, navigated through self-reflection, helps to direct our moral choices: it sets the terms of who we wish to be, and evaluates our conduct in light of these terms.<sup>38</sup> Interaction with the self is a common feature among the men and women who feel compelled to exercise supererogatory restraint in battle. Rather than simply being good or magnanimous, they are self-reflective. They know themselves enough to recognize that if they kill in a specific moment, then an essential and irretrievable part of themselves will be lost. J. Glenn Gray spoke to this when he wrote:

There is a line that a man dare not cross, deeds he dare not commit, regardless of orders. . . . For such deeds would destroy something in him he values more than life itself. He may decide that his commander, his army, or his people may justly demand his life but may not command him to do what is in violation of his deepest self.<sup>39</sup>

Having outlined the nature of, and common motivators for, supererogatory restraint, the following section will explore the significance of this concept in relation to our ongoing efforts to understand and refine contemporary war.

## THE SIGNIFICANCE OF BATTLEFIELD SUPEREROGATION

Sensitive to the political cost of military interventions, particularly those that fail to deeply engage the national interest, Western powers have increased their investment in less intrusive, lower-risk modes of warfare. One aspect of this shift has been a growing reliance on clandestine Special Operations Forces. Alongside this, Western militaries have undertaken “danger-proofing”—that is, providing enhanced protective measures for ground-based troops, combined with investment in stand-off weapons and distancing technology, including armed unmanned aerial vehicles (UAVs).<sup>40</sup>

The remainder of this article will explore these changes in the character of war through the lens of supererogation. As Christian Enemark notes, military ethics can be divided between two approaches: the dominant “sword approach” and the “shield approach.”<sup>41</sup> The former is primarily concerned with establishing practical and morally defensible standards by which combatants can use violence justly. The latter, in contrast, focuses on the moral wellbeing of warriors themselves. Recognition of the supererogatory dimensions of armed conflict can and should inform our approach to both the sword and shield accounts of military ethics.

### ***Sword Approach: Supererogation and the Rules of War***

Special Operations Forces (SOFs) are an increasingly dominant feature of contemporary Western warfare. In 2013 a leaked U.K. Ministry of Defence study claimed that greater numbers of SOFs were needed in light of an increasingly “casualty averse” public.<sup>42</sup> In 2014, U.S. Special Operations Forces were operating in 134 countries.<sup>43</sup> That same year, retiring head of the U.S. Joint Special Operations Command, Admiral William McRaven, referred to the current period as “the golden age of special operations.”<sup>44</sup>

SOFs have been utilized by the West for a range of tasks, including surveillance, reconnaissance, and airpower support. American, Australian, and British SOFs have also been heavily involved in search and destroy missions. From 2009 onward, SOFs in Afghanistan operated an effective kill list, methodically eliminating senior Taliban commanders as well as mid-level Taliban leaders.<sup>45</sup> These “intense operations” were “designed to kill as many Taliban commanders as possible.”<sup>46</sup> While many have praised the military effectiveness of these search and destroy missions, others have voiced criticism—including concern that the disproportionate focus on targeted killing has degraded the ethical status of SOFs.<sup>47</sup>

Chris Masters highlights a number of cases of alleged misconduct in Afghanistan by the Australian special forces, including accusations of violence against “shopkeepers and tailors,” individuals with no affiliation with the Taliban.<sup>48</sup> In 2018 members of the Australian special forces were accused of executing a bound Afghan man by kicking him over a cliff edge. These same soldiers, it is alleged, had posted a kill list on the door of their barracks in order to record their death tally.<sup>49</sup> The soldiers were highly trained and presumably cognizant of their criminal liability for the unlawful killing. What they lacked (if we are to believe the charges) was a code of honor, one that encouraged both empathy with the “other” and moral reflection with the “self.”

Comprehensive training, strict orders, and effective sanctions are necessary but insufficient motivators of appropriate conduct in battle. According to a 2005 study by the International Committee of the Red Cross (ICRC), mere knowledge of, or even a favorable attitude toward, existing rules does not necessarily translate into higher levels of compliance.<sup>50</sup> In a subsequent study focusing exclusively on battlefield restraint, the ICRC argued that the most effective way to narrow the gap between rule awareness and rule compliance in war is to encourage individuals, through socialization, to internalize the foundational values represented by the law.<sup>51</sup> “Value-based motivation,” the study claimed, including a commitment to

“warrior’s honor,” is as powerful a determinant of combatant behavior as the threat of punishment.<sup>52</sup>

This highlights the need for greater engagement with the supererogatory dimensions of war. Supererogatory restraint is constituted by values that when cultivated also incentivize adherence to the more explicit rules and standards of the battlefield. This is not to argue that battlefield mercy must be encouraged as the default behavior of combatants in war. Enemy soldiers, even those acutely vulnerable at the moment of targeting, retain their liability to harm.<sup>53</sup> As noted, combatants are not obligated to spare the life of opponents who have not surrendered or been rendered *hors de combat*, but this does not mean that we should disregard their impulse to do otherwise.

War is more rule bound today than at any other time in history. It remains a setting, however, in which the gravest matters of life and death are routinely adjudicated by individuals answerable to no authority beyond their own conscience. It is partly for this reason, John Keegan stresses, that “there is no substitute for honor as a medium for enforcing decency on the battlefield, never has been and never will be.”<sup>54</sup> This is especially true in relation to SOFs, the members of which routinely operate in the absence of sustained oversight and accountability.<sup>55</sup>

Supererogatory action provides moral agents with the chance to express virtuous traits of character and to conduct themselves in accordance with their own values—opportunities denied to them within the impersonal moral framework of duty and obligation.<sup>56</sup> Even if these combatants forgo the exercise of battlefield mercy, the factors that motivate it—empathy, self-reflection, and restraint in response to defenselessness—should be instilled as essential virtues. This is particularly necessary as we gain greater awareness of the causes and consequences of moral injury in war.

### ***Shield Approach: Supererogation and Moral Injury***

Harriett Jackson Brown, Jr. famously wrote, “Twenty years from now, you will be more disappointed by the things you didn’t do than by the ones you did.” While I have never fought in war, I suspect that for many who have the opposite is true. War has long been described as an existential and transformative experience—a realm within which combatants are able to “find the definition of their whole being.”<sup>57</sup> For some, though certainly not all, this transformation is characterized more by shame than glory. According to Jennifer Manion, moral shame

results from the personal failure to meet one's own moral ideals.<sup>58</sup> This shame can, in turn, generate moral injury; that is, damage inflicted upon combatants by a disharmony between their own ethical values and their specific conduct in battle. Diane Silver describes moral injury as "a deep soul wound that pierces a person's identity, sense of morality, and relationship to society."<sup>59</sup> This condition can have a debilitating impact on the lives of combat veterans, leading to serious depression and in extreme cases even suicide.<sup>60</sup>

The Moral Injury Project at Syracuse University lists a number of examples of moral injury-inducing acts in war. These include killing civilians either intentionally or unintentionally, giving an order that results in the injury or death of one's own personnel, failing to come to the aid of a fellow service member or civilian, discovering that local nationals one has worked alongside have been executed, failing to report sexual violence, and following orders that were illegal or immoral.<sup>61</sup> Each of these examples involves an objectively wrongful act. The moral injury itself is triggered by the combatant's proximity to this wrong, either as the deliberate or accidental author of the wrong itself or as a helpless bystander.

Similar descriptions can be found across the literature. Moral injury, it is commonly argued, results from an act of "transgression";<sup>62</sup> from "violations" or "betrayals" of accepted behavior;<sup>63</sup> or from "inhumane," "depraved," or "cruel" acts.<sup>64</sup> According to Wayne Chappelle, the catalyst for moral injury is "intentionally doing something that you felt was against what you thought was right."<sup>65</sup> These definitions are all problematic, however, because they provide an overly narrow criterion for moral injury. Though the causes of this condition include unambiguously wrongful acts, crucially, we must also consider situations in which combatants are forced to choose between incommensurable moral goods; specifically, between mercy and the duty to kill.

Most cases of intercombatant restraint sit in tension with the military duty to take enemy life. Our understanding of moral injury needs to expand to better encompass this tension. Consider the following example from Afghanistan, in which a twenty-two-year-old American soldier killed an Afghan boy:

Here's Nick, pausing in a lull. He spots somebody darting around the corner of an adobe wall, firing assault rifle shots at him and his Marines. Nick raises his M-4 carbine. He sees the shooter is a child, maybe 13. With only a split second to decide, he squeezes the trigger and ends the boy's life. . . . There is a long silence after Nick finishes the story. He's lived with it for more than three years and the telling still catches in his throat. Eventually, he sighs. "He was just a kid. But I'm sorry, I'm trying not to get shot

and I don't want any of my brothers getting hurt, so when you are put in that kind of situation . . . it's shitty that you have to, like . . . shoot him. You know it's wrong. But . . . you have no choice."<sup>66</sup>

It is important to be precise regarding the nature of this self-reported wrong. According to the ethics and laws of war, the child, though morally innocent on account of insufficient cognitive capacity, was directly participating in hostilities and thus liable to be killed. Mercy in this context would not have been in accordance with the explicit rules of war, but rather Nick's own ethical code. It would have been an act of supererogation.

In our efforts to understand and treat moral injury in war, it is essential to look beyond explicit violation and confront the true moral complexities of battle. Specifically, we must acknowledge the severe mental harm that may sometimes be inflicted upon the combatant as a consequence of *following* the rules of war. Recognition of this fact is crucial if we are to properly comprehend the implications of remotely operated warfare and, specifically, the vulnerability of UAV operators to moral injury.

## UAVS AND MORAL INJURY

Debate is ongoing regarding the extent to which armed UAVs comply with or diverge from the moral and legal standards of war. Supporters of this technology highlight the potential of UAVs to surpass battlefield alternatives in relation to both discrimination and proportionality.<sup>67</sup> Kenneth Anderson describes UAVs as a "humanitarian technology" and a "major step forward toward a much more discriminating use of violence in war and self-defence."<sup>68</sup> Others dispute this claim, arguing that the capability of UAVs to mitigate collateral civilian damage has been overstated. According to one report, UAV strikes in non-battlefield settings resulted in thirty-five times more civilian fatalities than manned airstrikes.<sup>69</sup>

Further disagreement surrounds the distancing aspect of UAVs, and the extent to which this enhances or undermines their ethical status. Some have argued the latter, that UAVs encourage a "Playstation' mentality to killing"—a psychological disconnectedness among operators that relaxes inhibitions on violence.<sup>70</sup> The actual evidence, however, suggests something closer to the opposite. It is true that UAVs physically dislocate the operator from the act (and reciprocal threat) of death to a historically unprecedented degree. At the same time, however, the

video feedback technology of this weaponry maintains, and even enhances, the intimacy of such violence. John Williams refers to this phenomenon as “distant intimacy.”<sup>71</sup>

As argued above, combatants are more likely to exercise supererogatory restraint in battle, or at least feel inclined to, when the cognitive partition between normal society and the domain of war erodes. UAV operators are particularly susceptible to such an erosion given the nature of their work.<sup>72</sup> Those operators located in the United States and United Kingdom are required to mentally transition between war and peace at the start and conclusion of every shift, sometimes multiple times a day.<sup>73</sup> Retired UAV operator Jeff Bright stressed the disorientating nature of this transition: “I’d literally just walked out on dropping bombs on the enemy, and 20 minutes later I’d get a text—can you pick up some milk on your way home?”<sup>74</sup>

Complicating this further is the frequency with which UAV operators are required to kill individuals who pose no physical threat at the precise moment of contact. When battle strays too far outside the limits of self-defense, those empowered by such an advantage may grow to doubt their own license to kill. Staff sergeant Brandon Bryant, who operated Predator UAVs between 2005 and 2011, described one incident with particular regret: “We waited for those men to settle down in their beds and then we killed them in their sleep. That was cowardly murder.”<sup>75</sup> In another example, a British Reaper operator destroyed a truck while attempting to kill two suspected ISIS members. Soon after, the two suspects reemerged to investigate the destroyed vehicle, prompting a surge of empathy from the UAV operator: “I felt sorry for them. I felt some association with them because my dad used to take me for drives in trucks where he used to work.”<sup>76</sup> This empathetic connection intensified when, in response to the sound of the incoming Hellfire missile, one of the targets threw himself onto the other:

And that just stuck in my head. I don’t know why it’s affected me. I don’t know if it was the affinity with my father and the truck. I believe they were father and son because of the way the one threw himself on top of the other. And they were both lying there, dead. It’s just something that’s always stuck with me. They were just men like me.<sup>77</sup>

The intimate nature of UAV violence leaves open the possibility of empathetic ties with the enemy. This may, in turn, translate into a discomfort with the taking of life. “At some point,” notes Air Force Colonel Hernando Ortega, “you might gain a level of familiarity that makes it a little difficult to pull the trigger.”<sup>78</sup> This is not

to argue that UAV operators will exercise supererogatory restraint at higher levels than other participants in war.<sup>79</sup> In none of the examples listed above was the target spared. What these accounts should provoke, however, is a greater appreciation of the vulnerability of UAV operators to moral injury. In a recent survey, drawn from interviews with 141 intelligence analysts and officers involved in remote combat operations, three-quarters of respondents reported “negative, disruptive emotions,” including “grief, remorse, and sadness.”<sup>80</sup> Further analysis is needed to assess the extent to which these feelings emanate from an unrealized urge to exercise battlefield mercy.

There exists a range of quality scholarship exploring the relationship between remotely operated warfare and supererogation. At present, however, this analysis has primarily focused on the alleged incompatibility between UAVs and the battlefield virtue of physical courage.<sup>81</sup> Greater attention must be given to the subject of restraint and, specifically, to the connection between a failure to extend battlefield mercy and moral injury.<sup>82</sup>

UAV operators retain the right to refuse a request to kill a target. Once authorization has been given, however, there is unsurprisingly significant, albeit indirect, pressure to fire.<sup>83</sup> Downward pressure comes from commanders at operational headquarters, while upward pressure comes from fellow soldiers fighting on the ground who may justifiably object when they perceive that their own risk has increased as a consequence of a UAV operator refusing a seemingly valid request to fire. To what extent does this intense and multidirectional scrutiny affect the supererogatory instinct of the operator?

We should also consider the extent to which this instinct fluctuates depending on the precise nature of the battlefield encounter. UAV operators consistently report high levels of pride and moral satisfaction when performing troop overwatch, which involves close air support of friendly forces fighting on the ground.<sup>84</sup> How does this compare to the premeditated killing of specific individuals? Moreover, does the desire to exercise supererogatory restraint differ depending on whether the target has been designated high or low value? Does the background of the operator matter? Are former aircraft pilots turned UAV operators more or less sensitive to the appeal of battlefield mercy than those recruited directly from civilian life? Is the gender of the operator significant? The answers to these and other questions can enrich our understanding of the precise relationship between remotely operated warfare, supererogation, and moral injury.

## CONCLUSION

“The killing of an individual enemy,” argued two military officers, “with a rifle, grenade, bayonet—yes, even the bare hands—is the mission of the Army . . . this mission has no civilian counterpart.”<sup>85</sup> This statement reflects a position long held by many regarding the fundamental discontinuity between war and peace. In order to fight war effectively, its participants must at least partly divorce themselves from the values and expectations that constitute appropriate conduct in normal society. It would be a mistake, however, to view such a divorce as either straightforward or immutable. Even when justified, there is a cost to the taking of life, one that some combatants some of the time may be disinclined to pay.

This article has examined the role of supererogatory restraint in war—situations in which combatants go beyond their moral and legal duties to extend additional protections to the enemy. A more complete understanding of the factors that motivate battlefield mercy will enhance our efforts to create more effective systems of rule compliance. This is of particular relevance to the Special Operations Forces, the members of which frequently engage in targeted killing operations in the absence of sufficient oversight.

The study of supererogation is of equal utility when grappling with the origins and the implications of moral injury. Research into the causes of this condition must be broadened to encompass more than explicit battlefield transgressions. Crucially, it must also include acts of violence that while morally and legally permissible nevertheless invoke within the combatant a sense of deep disquiet. An appreciation of this tension is especially important as we increase our investment in remotely operated modes of warfare. UAVs enable the complete physical dislocation of combatants from the battlefield. The enduring intimacy of this violence, however, ensures that operators are neither psychologically nor psychically divorced from the kill. Going forward, a greater appreciation of the impulse to exercise supererogatory restraint in battle is essential when calculating the unintended costs of putatively risk-free violence.

## NOTES

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Abstract: Debates over how best to ensure appropriate conduct in battle typically draw a binary distinction between rule compliance and rule violation. This framing is problematic, excluding a critical third element of battlefield conduct, supererogation—that is, positive acts that go beyond what is demanded by the explicit rules of war. This article investigates this moral category of action; specifically, situations in which combatants refrain from taking the life of an enemy despite their moral and legal license to do so. It first considers the moral tension between the duty of combatants to kill and battlefield mercy, and goes on to explore the factors that motivate the latter. The article then shifts to consider the significance of supererogation to the ongoing efforts to moderate the conduct of contemporary war. As the article illustrates, supererogatory restraint is constituted by values that when cultivated also incentivize adherence to the more explicit rules and standards of the battlefield. This is demonstrated through analysis of the conduct of Western special forces. The concept of supererogation is of further use when evaluating the origins and implications of "moral injury." This is verified empirically in the context of armed unmanned aerial vehicles.

Keywords: supererogation, military ethics, UAVs, drones, remote warfare, moral injury, Special Forces