



## War, Artificial Intelligence and the Theories

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### **Abstract**

Military advancement has changed the notion of war in the last decades. Non-stop technology and artificial intelligence advances are leading countries to transformation in the military context. Semi-and fully autonomous weapons systems are expanding, and countries compete with each other to achieve this innovation. It cannot be denied that the use of AI as weapons in military operations will make combat more manageable; however, this deployment has given rise to a range of legal and ethical debates. These weapons take human beings out of the loop, and control has raised concern among scholars regarding the distinct legal concepts such as responsibility for war crimes. This manuscript seeks to study the ethical and legal challenges of the Autonomous Weapons Systems under different theories of war and in particular with the focus on Kant's theory of Humanitarian Law to highlight the need to establish a legal framework to strike a balance between ethical and legal challenges.

### **Keywords:**

Autonomous Weapons Systems, Kant, Just War Theories, Human Dignity, Legal Framework

## Introduction

War is the center of human history, and all human society's changes depend on it; classical wars were waged between various international nations. However, the notion of war has experienced different evolutions over the last decades. War is no longer an international incident; it can now occur between opposing parties and communities (Orend, 2005). Moreover, these military alterations, such as advances in military equipment, quality of information, and the latest innovation in the deployment of artificial intelligence in battle, are gradually extending to strategies and tools for conducting wars. The mentioned changes in action have revolutionized both military operations between states or the domestic communities. The only thing that has remained certain in all these shifting phases is the deployment of the force that threatens civilian's life (Kahn, 2013).

Almost all countries are trying to become more powerful in deploying military technological advances to achieve the most satisfactory results (Liivoja, 2015). The numerous legal and ethical debates that have arisen in military deployment have contributed to these developments. Programmers, producers, governments, and customers may be involved in the concerns (Javorsky et al., 2019). Many scholars conclude that deploying artificial intelligence as autonomous weapons in war, without human control and decision-making, would contribute to misuse and unintentional malfunctions that will lead to irreparable civilian injuries (Fasoro, 2019).

The long-term effects of deploying autonomous weapons on global security are entirely ambiguous (Russell et al., 2015). Therefore, to better understand the debates and implementation of artificial intelligence in war, it is essential to know the concept of autonomous weapons. While there is no consensus on its definition, almost all the scholars agreed that such weapons would revolutionize warfare. It will be the third warfare transformation that the world will experience after the invention of gunpowder and nuclear weapons (Garcia, 2018). The UN has never had a clear definition of autonomous weapons, the only description which exists belongs to the Department of Defense of the

U.S, which is defined as "autonomous systems, or killer robots are weapons systems that can select, engaging and destroying targets based on sensor inputs, without any human intervention" (Schmitt, 2012).

The main concerns raised from autonomous weapons systems divided as follows (Horowitz & Scharre, 2015);

Does the autonomy in autonomous weapons systems operate as effectively and ethically as humans?  
Does decision-making on human life and death through Automated Systems undermine human dignity?

Who would be accountable or responsible for the malfunction of Autonomous Weapons Systems?

To comprehend such debates, it is significant to go through the current theories on both human dignity, ethics, and the legitimacy of war and peace. Unfortunately, these modern weapons and the new notion of war contributed to only a limited number of theories (*War (Stanford Encyclopedia of Philosophy)*, n.d.). There are three specific perspectives on war and peace: realism, pacifism, and Just War theory; all other theories and principles on ethics and legality of war and peace are categorized under them (Orend, 2004). This contribution will mainly be grounded on the association between Kant's Humanitarian Law Theory, Kant's understanding of human dignity, and the implementation of autonomous weapons systems in warfare.

For many years in this century, the just war theory has been considered as an insignificant theory, although over the last decades' several academics such as Michael Walzer, have attempted once again to revive this theory to protect civilians from possible wars and also to have the highest level of ethics and legality in case of conflict (Makang, 2014). The just war theory provides a reasonable standard for assessing the legal and ethical justification for acts of War (Leinmiller, 2012). This theory frames fundamental moral rules to help decision-makers manage the monumental challenges of war and peace.

New wars are shifting away from conventional methods and weapons (Leinmiller, 2012). Therefore, there is no battlefield where the opposing sides can confront and clash with each other

under the supervision of the commander. The autonomous weapons will be the technological game-changer that will allow the military to wage war anytime and at any moment (Kahn, 2013).

War morality is based on the fact that the combatants cannot be responsible for the battle they fight; they are only accountable for their actions and decisions during the battle, but in the case of the deployment of autonomous weapons systems, how can we hold them responsible for the decisions they make, how can we ensure that they make decisions and behave in compliance with ethics and legal principles? (Orend, 2007).

Kant's contribution and thoughts towards war and peace have been remarkably significant over the last decades. Scholars considered him as either realistic or pacifistic. However, there is a strong base that indicates that he has a just war theory, and his theory is in line with this contribution. Kant is a profound philosopher of war, peace, and human dignity, whose thoughts can shed light on the moral and legal challenges of the 21st century (Orend, 2004). Kant's perspective on human dignity is based on man's ability to make decisions autonomously while he is bound to follow some moral and legal principles (Rinie Steinmann, 2016).

One of the moral ethics of war is the principle of responsibility or accountability; military leaders ought to instruct soldiers to make ethical and legal choices in a military operation (Kalmanovitz, 2016). One of the most significant is that civilians' lives must be protected during the operation, and they must be able to distinguish between combatants, injured combatants, and civilians (Sethu et al., 2015). Kantian's approach towards moral education in war concentrates on providing moral judgment and moral duty for soldiers. (Sandewall, 2019). Additionally, according to Kant, people are involved in making rational and ethical decisions in daily life. Therefore, it is simple to teach soldiers as moral characters to make ethical and legal decisions. However, the challenge appears when states want to substitute moral characters (soldiers) with autonomous weapons systems that are unable to gain ethical and legal education, and it is possible that they do not differentiate between combatants and non-combatants, which will threaten the security of civilians in the War (Martinelli-Fernandez, 2006).

This contribution attempts to demonstrate that the deployment of autonomous weapons systems in battle is against Kant's Humanitarian Law Theory and moral thoughts on human dignity. It also provides a strong justification to regulate and restrict the implementation of these weapons. The just war theory emphasizes moral ethics and legality of the decisions made by military commanders, officers, and soldiers during the war to convince themselves and others that their decisions were ethical enough and their actions were in association with humanity (Umbrello et al., 2020).

## Main Theories on War

It has been argued that there are three essential perspectives on war realism, pacifism, and Just War theory; the core of each perspective, as well as the preposition of Kant towards them, will be discussed within the following parts. Generally, realists insist on applying moral principles to the international affair, but particularly in the context of war, they believe that war is an inseparable part of the anarchic world, therefore once a war has been waged against a country, that nation can invoke whatever it takes to save its civilians and win the War (Orend, 2004). Moreover, realists claim that it must be a fundamental distinction between international and domestic policies that establish a stable balance of power to achieve peace. This stable balance of power can only be accomplished based on a strategic position, military, and economic power, not based on constitutional structure (Thomas Mertens).

In contrast, pacifism can be considered as an anti-war theory; according to this perspective, war can neither be a solution in any situation nor is there such a thing as a just war. Also, moral and ethical judgment is applied to all international affairs. Although the Pacifistic are strongly opposed to war, their reasons vary from an extreme version to a plausible one. Followers of the extreme version believe that any kind of aggression can be considered violent, while others argue that the scale of battle violence is impossible (Orend, 2007).

It is considered that pacifism and realism are radical approaches to war, while there is a theory in the midst of these two perspectives called Just War (Orend, 2007). Just war theory is the most

significant point of view on the ethics of war and peace. This tradition has enjoyed a long and respected pedigree such as Augustine, Aquinas, Grotius, Suarez, Vattel, and Vitoria (Pagallo, 2011). It seems that Hugo Grotius is undoubtedly the most excellent classical member of this theory. This theory concentrates on this concept that not permanently, but sometimes war can be wedged by moral justifications. For example, on the Allied side, World War II is always trotted out as the definitive instance of a just and reasonable war (Orend, 2004). Moreover, this theory is divided into three distinct part, jus ad bellum, which refers to justice for starting a war, jus in bello, which focuses on the rules during the wartime and finally, jus post bellum, which is rules for the transition from conflict to peace and normal situation (Orend, 2007).

There are two conflicting approaches to Kant and war perspectives. Some scholars believe that Kant is either pacifist or realism and that he does not have a Just War theory, while others argue that he is one of the greatest theoreticians of war and international law, also he is among the scholars who have a Just War theory (Starke, 2016). For instance, Howard Williams claims that It is difficult to conclude that Kant has a Just War theory since war and justice are two contradictory concepts in his point of view, and mankind must overcome War (Lim, 2019). For Kant, there is no such thing as Just War theory since war can only be a devastating concept. It is the greatest evil that human beings can face (Orend, 2007); further, Kant adds in his perpetual peace that “International law would be meaningless if it were perceived as a right to go to war.” In Kant's view, war is not a phenomenon that humans consider as a solution; therefore, it is not reasonable to hire people to kill and be killed by each other, since it means using people as robots in the hands of countries that can be considered opposed to human rights (Orend, 2004). According to these anti-war interoperations, some scholars have argued that Kant is either pacifism or realism (Teson, 1992). It can be due to focusing only on the perpetual peace paper of Kant that is popular among scholars; however, it is going to be proved that Kant has a Just War theory that is special in its way Kant's Theory of Humanitarian Law.

Kant's viewpoint on realism is complicated, whereas realism assumes war to be an inevitable part of the anarchic world, Kant's believe that governments invoke war to justify their self-serving actions and decisions, he highlights that it is due to the duality of our nature that our rational nature always has this desire to strive towards a more just world. Therefore we try to justify our self-serving actions by terms of moral concept, and we can consider that even governments sometimes want to find a moral basis for their actions (Orend, 2004). Kant does not accept war as an endemic aspect of international relations; his just war theory limits the destructiveness of war and is a step closer to his perpetual peace. Kant also argues that, on the one hand, the actions and decisions of governments should be assessed and validated on a moral basis, even though the decision to wadge war must have excellent and moral foundations. On the other hand, the theory of realism does not pursue a moral basis to justify a wedge of war; therefore, it is impossible to consider Kant as a follower of realism. His attitude toward realism is a complete rejection of this theory (Sandewall, 2019).

In contrast to realism, pacifism claims that an ethical and moral basis should be extended to international relations. That might be the only mutual point between pacifism and the followers of Just War theory. From the point of view of pacifism, there can be no ethical justification for war, and states can never resort to war to address international issues. However, the Just War theory's followers claim that it is often morally acceptable to go to war. In his Doctrine of War, Kant states that "it is the original right of free states in the states of nature to make war upon another" (Reichberg, 2002). It means that for Kant to be a pacifist is to be against all types of war; however, his words in his essay prove that there should be just War (Martinelli-Fernandez, 2006).

Moreover, there was a section of the Kant perpetual peace paper previously stated; Kant says that "hiring men to kill and be killed is against human rights." It should be interpreted that war can be objected to human rights if it is for a dread purpose and cannot be seen as one of the pacifisms. Further in his article, he claims that if nations have to protect themselves and their fatherland from outside attacks, it is justified enough to go to war. He also points out that "if a country believes that

another country has attacked it, it is entailed to resort to violence and war to protect its civilians. " By discussing all these statements, it can be considered that Kant is not pacifist and, in some particular cases, he sees war as a solution to international challenges (Orend, 2007).

### **Kant's Humanitarian Law Theory**

Kant has his humanitarian theory, which is somehow different from other thinkers; his primary focus is on jus ad bellum (right and justice to wage war) and, in particular, on jus post bellum (the rules of transition from conflict to peace after the war). Most scholars consider the right to go to war to be a defensive right, which means that states have this right only if they face attacks; however, for Kant, it is not only a defensive right, he believes that if a nation faces threats of war or invasion by other states, it will have the right to wage a war that is called the right of "anticipatory attacks. "In this case, war is not an evil phenomenon for Kant; it rejects the wrong of violence and of asserting and defending; in fact, international law gives all states the right to protect themselves with force in case of violence and aggression. To better understatement Kant's Just Humanitarian Theory, it is classified into some principles; however, only the related principles to this manuscript are investigated in this section.

For Kant, the ability to discriminate is one of the significant rules in jus in bello. Kant insists that troops must be able to distinguish between combatants and non-combatants. Kant has never discussed the killing of any civilian in military conflict who considers an innocent person. Also, he has always pointed out the security of civilians during the war, which would lead a battle to become fairer. Governments can apply any kind of force to armed conflict in a just war, but they can never target civilians.

The second principle specifies that countries shall obey all the existing international rules and treaties referring to prohibited weapons. Currently, the implementation of chemical, biological and nuclear weapons are banned, and thus, concerning this principle of Kant, none of these weapons should be deployed to have a just war. The following principle of Kant is proportionality in battle, which leads the fight a step closer to the Just War; soldiers must consider the outcome of their

decisions and the weapons they are deploying and the effect that the weapons would have on civilians. Therefore, soldiers must strike a balance between their decisions, deployment of the weapons, and the outcome for the non-combatants. Moreover, Kant emphasizes that it is impossible to deploy weapons that are evil in themselves; also, the deployment of weapons that are not controllable and can have unintended consequences is forbidden. Thus, Kant's principle is called No Means in Se.

Further, Kant highlights the principle of punishment. Soldiers might commit war crimes during the war; therefore, they must be kept accountable, and their faults or crimes must be investigated in court. The Just War theory offers guidelines that instruct decision-makers on the appropriateness of their acts and decisions during the resort to war, wartime, and the transformation time from conflict to peace. Kant seeks to ensure that battle begins based on justified reasons. It continued with the ethical and legal manner, and in the last step, soldiers and commanders who broke the legal rules or violated the moral norms will be held accountable by the court.

Nowadays, countries have a great desire to implement autonomous weapons since it is possible for states to minimize amounts of money in distinct fields. Also, autonomous weapons will allow the armies to understand better and predict the condition of War (Report). Therefore, questioning the adequacy of existing international regulations on Autonomous Weapon Systems cannot be interpreted as the stigmatization of their applicability (Burri, 2017). Automation, Personhood, Control, and Standardization are the elements that can completely transform the current international legal framework and regulations (Burri, 2017). One of the most critical legal concerns arising from Automation of the Weapons is the concept of "Accountability" or "Responsibility." According to current international law and legal legislation, accountability has to be kept individuals responsible for their actions, while this type of responsibility cannot be extended to Robots since they are not moral agents (Koppelman, 2019). This Lack of unified regulation on the "Accountability of Autonomous Weapons" gives rise to the fear that states and military commanders may use these weapons indefinitely and in any case as they do not feel ethically accountable for the actions of these weapons (Gubrud, 2014).

In addition to artificial intelligence's legal challenges in the war, ethical challenges should not be underestimated. Human dignity, decision-making, and meaningful human control are crucial ethical dimensions that must be protected by law against AI and autonomous Weapons (Amoroso,2018; ICRC Expert meeting, 2014). On the one hand, Soldiers must make a range of instant decisions in a complicated and unpredicted scenario of war. On the other hand, these weapons are only smart machines that suffer from a lack of decision-making and cognitive capability. Therefore, their pre-programmed human decisions cannot be trusted enough to distinguish between civilian and non-civilian targets. (Chengeta, 2019; ICRC, 2018).

The efficient and meaningful human supervisory control of weapons must be ensured within the deployment of lethal autonomous weapons. These weapons cannot respect the value of life, nor can they decide to kill people without any human intervention or control (Sharkey,2019). Moreover, it must be ensured that humans remain at the top of the decision-making process (Horowitz & Scharre, 2015). Given that AI will be more available in the coming years, its challenges are beyond the scope of current international law (Chengeta, 2018). On the one hand, Legal difficulties such as the accountability gap highlight the need for a new legal framework, particularly on Autonomous Weapons. On the other hand, regarding the commercial and other advantages of these weapons, governments are reluctant to ban their use based on ethical reasons. Therefore, scholars seek to balance legal and ethical challenges based on moral principles to shed light on the future of life with the presence of semi-and fully autonomous weapons.

The indefinite future of the world with semi and, in particular, fully-autonomous weapons has led the international community to raise awareness among civil societies. Throughout history, various types of weapons have been either banned or limited; nuclear weapons, biological weapons, explosive weapons are only a few examples of restricted or prohibited weapons. Usually, these types of weapons are banned or limited once they have been deployed and their irrecoverable losses have been revealed (Mickevičiūtė, 2017).

Moreover, the current regulations are suffering from a "Lacuna" in the deployment of Autonomous Weapon Systems; Lacuna can be defined as "a situation where the absence of a law or legal norm prevents an inherently illegal situation from being addressed, or where the applicable law is incomplete" (Chengeta, 2019). Indeed, the challenges raised by Autonomous Weapons led ICRC as guardian of International Humanitarian Law highlights that the current regulation is not adequate. Further efforts need to be made by the international community to deploy these weapons under International Humanitarian Law. This organization states that approaches towards these challenges can be solved by ignoring, having creative interoperation of the current law, or creating new legal framework and treaties (Chengeta, 2016). One of the main domains of international humanitarian law is the prohibition of force in international relations that would guarantee the peace and stability of the world. According to international humanitarian law, autonomous weapons will disrupt the existing regulations of war under the rules of the United Nations (Garcia, 2016), therefore if the implementation of the autonomous weapons systems is needed to be regulated under the International Humanitarian Law and Charters of United Nations, a range of principles should be considered;

One of the concerns regarding the implementation of the Autonomous Weapons against ethical principles is their ability to be completely automated and out of control, leading them to unpredictable actions during the battle and also their inability to distinguish between civilians and non-civilians or between injured or surrounded soldiers and others (Arkin, 2009; Suchman & Sharkley, 2011). Autonomous Weapons or Robot soldiers can replace human soldiers. Military orders will be carried out without any human doubt. Thus, once the military commander orders an action, some certain human death or harm would occur. These robots will only follow the orders by algorithms and their data without any hesitations or uncertainty. In contrast, with human soldiers, there would be this chance that the consequences of the order be considered before carrying it out (Sullins, 2010).

The First Principle is the ability of distinction, which can be found in numerous international humanitarian law instruments and is considered a customary rule. Moreover, it binds all the parties

in armed conflicts and is applicable in international and domestic armed conflicts (Mickevičiūtė, 2017). Indiscriminate attacks are prohibited under International Humanitarian Law; therefore, the war parties should distinguish between targets. Autonomous weapons must have specific sensors to differentiate between combat and civilians since civilians must be protected within the conflict under international humanitarian law (Mickevičiūtė, 2017). Regarding The 1949 Geneva Convention, distinguishing between targets is only possible through "Common Sense." It does not provide any specific definitions of civilians and non-civilians. At the same time, the protocol of 1977 mainly defines civilians as someone who is not combatant, even though Robots will be able to distinguish between civilians. A uniformed military person, there are some risks that they cannot determine a combatant without an army uniform (Suchman & Sharkley, 2011).

The new regulations on these weapons must comply with the principle of proportionality. If attacks result in excessive civilian life loss and injury compared to the expected direct military advantage, the attack must be prohibited. The difficulty in proportionality is to calculate the balance result between loss of civilians and military benefits. Some artificial intelligence engineers believe that Robots can be programmed to calculate proportionality better than humans, resulting in a better function of the military operations (Suchman & Sharkley, 2011).

Last but not least is the principle of accountability, which is a complex concept for the deployment of autonomous weapons. Responsibility must be identifiable, which means that we must know who is accountable in case of malfunction. Both the ICRC and CCW emphasize that the concept of accountability is not transferrable to machines (Koppelman, 2019). Indeed, without identifiable responsibility, the implementation of autonomous weapons systems is not morally defensible. These three principles play a particular role in the discussions on the implementation of autonomous weapons systems. Even if no laws are restricting or prohibiting some weapons, as long as they are incompatible with the three principles, deployment of them can still be unlawful (Mickevičiūtė, 2017). Therefore, establishing a new legal framework for the autonomous weapons systems must be based on these three principles.

In a nutshell, it can be concluded that Kant is neither a realist nor a pacifist, that he has a particular Just War theory, and his belief in a just war is based on his own moral and ethical principles. His theory on the ethical endorsement of the outline of the current laws of armed conflict remains relevant for our time. It can be extended as a strong basis and support for the movement to regulate and limit the deployment of artificial intelligence in the form of autonomous weapons in war.

### **The Phenomenon of Human Dignity**

Human dignity considers as a modern notion in international and domestic law. Although it has been at the center of attention in international and domestic jurisdictions for such a long time, there is no unified explanation for it (Mortimer Sellers, 2018). Unfortunately, this term has never been defined in the first legal document that has highlighted this concept. The Universal Declaration of Human Rights (1984) is the first legal draft to preserve human dignity as a right; however, it has never defined it (Masferrer & García-Sánchez, n.d.). After Second World War, three particular elements for human dignity have been clarified;

First, all human beings are equal in a concept of inherent human dignity.

Second, human dignity must be respected.

Third, governments must recognize and legalize human dignity as a legal phenomenon.

There is no doubt that all of these elements on which the concept of human dignity is based are derived from Kant's moral ethic. Kant protects human's autonomy on the grounds of universal and respected human dignity (Düwell et al., 2015).

Human dignity has always had a particular place in the constitutional systems of the countries.

The modern sources of human dignity are (Sensen, 2011) ;

The universal declaration of human rights (1984)

The international charter of human rights (1948)

Kant believes that dignity is based on a human's ability to act autonomously and make his own decisions also their decisions and actions must be in compliance with the moral ethics and law

The fundamental diversity in dignity's origins illustrates the significant variation in constitutional use by different courts when the abstract and broad principle is applied (Matthias, 2020).

For Kant, human reasoning is the main feature that differentiates humans from other creatures, and it is linked directly to humanity. He highlights that acting because of a reason is to act exclusively out of moral duty. This notion of duty is connected to respect for the human (Düwell et al., 2015). According to Stephen Darwall, respect can be divided into two distinct categories; the respect that we show to people because of their character and place, called "appraisal respect." The second respect is only shown to people due to their humanity; this is called "recognition respect (Addis, 2014). During the renaissance, era dignity was considered the first respect; however, only after the second world war, the concept of dignity changed to the second one since human dignity suffered a lot during the second world ward. It was broken many times countries decided to protect it as a similar inherent concept (Wallace, 2018). In today's life, technological advances raise concerns regarding breaking human dignity once again (Fasoro, 2019). Regarding Kant's belief Human are beyond all the creatures, and humans are the only creatures with decision-making ability; therefore, it is not acceptable to know anything else beyond human dignity and personhood (Burri, 2017). However, developing the autonomous weapons systems that can act and make a decision on the life and death of human beings means considering robots beyond human dignity and decision making, which is opposed to Kant's thoughts; therefore, the deployment of these weapons must be in a way that does not underestimate human dignity and human's autonomy (Fasoro, 2019).

### **Expected Contribution**

This manuscript is expected to have the following results;

The main contribution of this study will be on and theories regarding war and, in particular Humanitarian Law Theory of Kant. It will provide a path towards a uniform legal framework by promoting ethical issues and theories while using autonomous weapons. This legal framework will be based on supporting both morality and human dignity. Also, it will shed light on the debate on whether to limit or spread such weapons under a specific regulation. It is also a step for the

advancement of interdisciplinary approaches in legal studies. The results of this research study not only help to a better understanding of our research goals but also can be extended to future legal researchers.

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