

## **Drones as Tools of the State System**

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*Paper prepared for the symposium, "Reconfiguring Global Space: The Geography, Politics, and Ethics of Drone War," School of Global and International Studies, Indiana University, Bloomington. 13-17 July, 2015.*

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<sup>1</sup> The author would like to thank the following assistants for their invaluable research contributions to this project: Christopher Bryson, Daniel Dorman, William Dyer, and Taylor Wantje.

This paper seeks to assess whether lethal drones offer a fundamental challenge to the modern state system. In other words, do drones represent a revolution in international affairs, or are they simply a new tool supporting the status quo? Not unlike developments in realms like cybersecurity, drones raise questions about the integrity and future of the sovereign state, so the paper evaluates drone use in two broad categories: international humanitarian law and grand strategy. First, can drone use be legitimated using standard, mainstream principles and precedents as established in international law? If so, whatever their failings, lethal drones fit within the broad normative and ethical parameters that modern states have adopted. Second, can drones provide an effective, relevant tool for a state's grand strategy? If so, lethal drones can address the pragmatic needs and material incentive structure of powerful states.

By finding positive answers to both questions, the paper is not necessarily making a case in favor of lethal drones. Rather, it argues that instead of challenging the state system, drones are a rational or logical response of modern states—particularly great powers—to nonstate and weak state threats. Based on existing standards, they achieve legitimate security goals and minimize destruction. They are also flexible, endanger no pilots, offer precise targeting and (to date) are prohibitively difficult for most international actors to deploy. In sum, lethal drones arise from and support the state system. The paper's subsequent argument, though, holds that these findings do not necessarily endorse drone use as a moral or political good. Rather, they indicate clear parameters and incentives arising from the sovereign state system.

The following sections overview the current literature surrounding these questions and then briefly describe this paper's approach. The analysis then turns to evaluating lethal drones from, first, an international humanitarian law perspective and then a grand strategy perspective. The final sections connect that analysis to the state system and then, finally, summarize the findings and offer conclusions.

## **Existing Research**

To date, scholarship on this topic has tended to focus on lethal drones' strategic and tactical effectiveness as well as—and perhaps more voluminously—their legal and ethical standing. Such discussions typically grapple with immediate decisions regarding whether and how to deploy lethal drones. By contrast, this paper seeks to understand how drones relate to their world historical context and whether, in turn, they represent a fundamental transition in that context.<sup>2</sup> This is not a purely academic question. As with nuclear weapons, air power or Gatling guns, misunderstanding a technological change and the new epoch it heralds is of immediate and mortal seriousness.

Attacks via lethal drones grew steadily under George W. Bush and, for a time, ballooned under Barack Obama. Yet despite such strong momentum, this new tool begged a simple question: was it effective at achieving strategic and political goals, or did it simply fit parameters—like accurate targeting—that officials found appealing? Did the weapon rise to prominence simply because it achieves immediate objectives? Most observers agree that US drones have been effective at striking insurgents and al Qaeda targets. Lethal drones pressure nonstate networks, which must live with constant uncertainty and whose members are forced to avoid aerial detection. Incredible power like this is seductive, but even sober minds recognize that lethal drones offer a uniquely useful tactical capability.

Nevertheless, legitimate critiques of lethal drones raise concerns about, for example, civilian casualties and seek a moratorium on their use. Unfortunately, this line of attack often fails to establish how and why drones are different than other modern, impersonal weapons systems.<sup>3</sup> Do lethal drones make critics uncomfortable simply because they are brutally effective, or do they really represent a qualitatively new development? In more pointed critiques, observers do raise serious questions about drones' strategic and political effects. In places like Pakistan, popular and official backlash may

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<sup>2</sup> Gurcan (2013), for example, argues that drones, like nuclear weapons, represent a fundamental change to war.

<sup>3</sup> See, for example, Benjamin 2013.

undermine US credibility and inspire greater, rather than less, sympathy for extremists.<sup>4</sup> Williams (2013), for instance, insists that drones are a “public relations disaster in Pakistan.” In a New York Times column, to take another example, Yemeni activist Ibrahim Mothana (2012) argues that the drone program is a blunt instrument hurting local initiatives and strengthening al Qaeda’s propaganda. Closer to home, scholars have worried that the United States is sliding toward permanent war under a “predator empire” (Shaw 2013) and that the highly technical and bureaucratic nature of these weapons is sliding toward a “rule by nobody” in which violence is nearly automated and accountability is obscure (Shaw and Akhter 2014). In a vivid summation, David Cortright (2012) concludes that “if other nations follow [the US] example ..., we will soon face the prospect of a world in which terror can rain down from the sky at any moment without warning.” Cortright then calls for the US to halt its drone operations and for a UN conference to establish international legal standards.

Revealingly, many legal and ethical analyses fit drones into existing categories and, as such, argue that lethal drones are either acceptable or unacceptable under existing frameworks. Stated differently, both sides of the debate take the state system for granted.<sup>5</sup> What if drones defy this categorization? The most common approach, here, is to apply the just war tradition.<sup>6</sup> *Jus in bello* particularly rests on intent and proportionality, and on these standards, using drones as weapons in a war theater or against a legitimate belligerent, even if that belligerent has crossed a sovereign border after an attack, is legitimate.<sup>7</sup> Drones are targeted, rather than indiscriminate, weapons and, at least for the United States, their kinetic missions are approved through a formalized (if less than transparent)

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<sup>4</sup> Boyle (2015) finds that lethal drones are marginally more cost effective than manned aircraft, but that does not account for their political implications. In addition to foreign backlash, there is some evidence (McCauley 2013) that while drones have enjoyed high US public support, those numbers have declined.

<sup>5</sup> McNabb and Matthews (2011, 662-664), for example, acknowledge that political and technological change confound the traditional standards set out by agreements like the Geneva Conventions; nevertheless, their own task assumes the basic stability of the sovereign state system and seeks to untangle how lethal drones may or may not fit into that legal framework.

<sup>6</sup> See, for example, Beard 2009; Buchanan and Keohane 2015; Watkin 2004.

<sup>7</sup> See, for example, Epstein 2002.

process. Still, legal and ethical analysis suggests that lethal drones do push the boundaries of traditional war. Sauer and Schörnig (2012) argue that lethal drones represent the appearance of conformity with the state system's norms, particularly for democracies, but ultimately, lethal drones will undermine these very norms and leave democracies more war-prone. In an early study on the topic, Thomas W. Smith (2002) found that traditional humanitarian law was frequently cited in legal interpretations of new, high-tech weapons, yet that traditional framework allowed the United States and others to sidestep "long-term public health and human rights." Further, says Boyle (2015), as drone technology diffuses, it will spur arms racing that will test old rules, allow states to push traditional strategic boundaries and, in turn, increase the probability of conflict spirals. Drones raise the threshold of violence that is possible before actual war, they make violations of sovereignty easier, they make assessment of noncombatant deaths difficult, and they open the potential for what Enemark (2014) calls *vis perpetua* (perpetual force).<sup>8</sup>

Assuming that lethal drones should be explicitly integrated into the state system, Buchanan and Keohane offer an innovative proposal that both reflects this literature and reveals its overarching constraint. They make a case for a Drone Accountability Regime (DAR) similar to the Cold War's Missile Technology Control Regime (MTCR). Here, regimes are sets of informal or semi-formal arrangements that serve to build trust and accountability among states. In this case, the DAR might include an ombudsman, non-governmental organizations and governments in monitoring and publicizing how lethal drones are used. Notably, this is a firmly state-centric enterprise. It is an effort to draw lethal drones into what might be termed "normal" use among states. Though the proposal carries great potential, or at least will provoke serious discussion, it takes for granted the state system and its parameters. Are Buchanan and Keohane correct to do this? MacMillan (2013), for instance, argues that all types of "intervention" are unique to a given historical context and could change based upon

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<sup>8</sup> See also Brunstetter and Braun 2011; Buchanan and Keohane 2015, 18-22.

normative and technological pressures. The very characteristics that make lethal drones a challenging technology may also suggest that they may be undermining, or at least represent the decline, of the state system. This paper, therefore, is seeking to analyze lethal drones' relationship with the state system.

## **Method**

Methodologically, the paper's approach remains simple. It seeks to determine if a plausible, mainstream case can be made in support of, first, the international legality and, second, the grand strategic utility of lethal drones. We might call this a "plausible case standard." The goal is not to argue in favor or against lethal drones. Rather, the goal is to determine whether drones can be reasonably justified in these realms. For example, a mainstream application of international humanitarian law may reveal that unconventional or innovative defenses are required to defend the use of drones. If so, then we can reasonably conclude that drones do in fact challenge our existing legal framework, which has developed in conjunction with the modern state system. Basically, if those defending lethal drones must resort to elaborate arguments or stretch traditional understandings of the state system, then observers can reasonably suspect that lethal drones in fact represent a challenge to or a decline of the traditional state system.

To illustrate with a controversial example, consider the George W. Bush administration's defense of "enhanced interrogation" techniques in the years after 9/11. Critics charge that this was simply torture. Bush administration lawyers, however, offered finely-calibrated explanations for why these techniques did not constitute torture. Wherever one falls on this debate, special attention should attend to novel or nuanced categories along the boundaries of torture. That Bush officials were making these arguments does not necessarily indicate that these techniques should be considered torture (as

defined by the Geneva Conventions or US law); nevertheless, that the arguments appeared at all suggests that special scrutiny should be applied.<sup>9</sup>

Whether or not the Bush administration actively espoused a torture policy, most observers can agree that the debate and known facts suggest that the administration at least probed the boundaries of such behavior. It was pushing the limits of the modern international system's accepted law and practice. Similarly, if lethal drones fit comfortably within mainstream international law and grand strategy practices, then their use fits within in the state system's parameters. If, on the other hand, unusual effort must be made to defend their use, then they are likely challenging—even if not necessarily transcending—those parameters.

### **Lethal Drones and International Humanitarian Law**

To apply this “reasonable standard” approach, the paper first turns to international humanitarian law (IHL). Common critiques of lethal drones include that they are dehumanizing, violate state sovereignty and expand casualties beyond what is necessary. If, in the face of such critiques, a reasonable legal defense based upon IHL can be advanced, then the debate is really about how drones are used, and it is not about whether they as a technology are fundamentally inhumane. Stated differently, if lethal drones can be assimilated into IHL, then they are not revolutionary. Governments may be using them illegally, but possessing the weapon itself is not inherently illegal.

Modern IHL is a response to excesses and abuses during wartime. It is rooted in the West's just war tradition, but the Geneva Conventions and the Hague Regulations represent its current and widely accepted form.<sup>10</sup> As a whole, IHL focuses on major topics like the parameters of legitimate military violence; treatment of captured or wounded combatants; treatment of civilians; and even respect for cultural and infrastructure sites.<sup>11</sup> These are all based on an assumption of human rights and individual

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<sup>9</sup> In a similar fashion, US Constitutional courts bring special scrutiny to cases involving race or gender.

<sup>10</sup> For background, see Dunoff et al. 2000, 489-490 and Griffin and Çali, 2010.

<sup>11</sup> Meron (2000, 239) describes how, over the 20<sup>th</sup> century, IHL gained “a more humane face.”

dignity. IHL seeks not to end war but merely to constrain it. Belligerents are expected to use violence necessary to end a war, but not use excessive violence. Notably, these standards are also “actor-centric.” They protect individuals and states when those actors operate within IHL’s standards, and they hold both states and individuals responsible when they violate those standards. In theory, they also apply to all sides of a conflict, whether or not those actors recognize, for example, the Geneva Conventions. In reality, these standards tend to be actively applied to individuals and states in a middle zone between great power and state collapse. Thus, Serbian war criminals have been brought to trial but US officials and Somali militants accused of such violations remain effectively immune.

Common Article 3 of the Fourth Geneva Convention (1949) and Protocol I (1977) are of particular relevance to lethal drones and other kinetic actors. Parties to the Geneva Convention have committed to treat noncombatants “humanely” and cannot pass sentence or carry out executions without judgment from a “regularly constituted court.” Protocol I offers greater detail regarding international conflicts. Indiscriminate attacks and targeting civilians are banned, while special protections are extended to women and children. When in doubt, targeting should err on the side of caution. Griffin and Çali (2010, 246-7) characterize these considerations as the principles of *distinction*, *proportionality* and *precaution*. Belligerents are expected to carefully identify legitimate targets, use appropriate force levels and seek to spare noncombatants and civilian objects as much as possible.<sup>12</sup> As the International Court of Justice commented in its famous decision regarding nuclear weapons, the core aim and spirit of IHL is to protect noncombatants and avoid “unnecessary suffering.” In turn, “it is prohibited to use weapons causing them such harm or uselessly aggravating their suffering.”<sup>13</sup> Nevertheless, even this ruling did not definitively rule out any conceivable use of nuclear weapons. More generally, a new technology or class of weapon does not alter the principle that while

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<sup>12</sup> Walzer (1992, 138-159) develops related concepts in greater detail and with a focus on military necessity and the notion of “double-effect.”

<sup>13</sup> See “Legality of the Threat or Use of Nuclear Weapons” 1996.



noncombatants should not be targeted, they may become casualties as a secondary or unintended effect of a legitimate attack. Lethal drones, given these standards and precedents, appear to be simply another weapons system to be integrated into IHL.

Nevertheless, lethal drones do raise questions about targeted killing. IHL holds that deliberately identifying an individual and applying lethal force is legal only when it occurs in an accepted theater of armed conflict, and when it is directed against combatants or active participants in violence (Cline 2013, 95-96). Notably, though, lethal drones are far from the only weapon to which these standards apply, so the legal question of targeted killing is centered on context and intent rather than the specific weapon (in this case, lethal drones). As Schmitt (2013, 111-112) argues, two legal issues—lawful engagement across borders and individual targeting—govern lethal drone use. Governments may choose to violate these standards, but there appears to be nothing unique about drones except, perhaps, their enhanced—but not unique—capacity to reach and, effectively, execute targets. This issue arose in the early Obama administration as senior officials wrestled with “kill/capture” missions in which the president had to determine whether a suspected al Qaeda member, for instance, should be extracted for trial or targeted with a lethal drone. The latter option is considered legal only if the former is impossible or risks disproportionate damage to US forces. There is some evidence that the administration may have systematically used the “kill” option even when other possibilities existed. Such a policy would violate IHL, but, crucially, even in this case, lethal drones themselves are not assumed to be inherently illegal.

Two other legal and ethical considerations may be relevant, here, but I will dismiss them as not unique to lethal drones. One is sovereignty. Opponents to the US use of lethal drones in Pakistan, in particular, argue that the sovereignty is being violated by drones, and sovereignty is fundamental to both IHL and the state system itself. Indeed, the larger concern is that drones enable decision makers to more easily use this technology to violate another state’s sovereignty. While true, this capacity is not

unique to drones (Lewis 2012, 314). Throughout the Cold War, for instance, both superpowers consistently sought to innovate ways to spy or strike within another territory with minimal risk to their own personnel and assets. In addition, complex legal questions attend to when and how a state's sovereignty can be violated. Drones do shift the cost-benefit calculation for policy makers, but whether or when violations of state sovereignty occur is a broader issue that is not unique to that technology.

The second, related consideration is whether attacks with drones fit within a legitimate conflict (Cline 2013, 58). This is *jus ad bello*, of the justness of the war itself. This is a serious consideration; however, again, it is not specific to drones. In cases of intervention and recognized battlespace, many conflicts outside a well-defined interstate war have occurred and continue to arise. They challenge easy application of traditional notions of legitimate conflict. Drones have clearly expanded the zone of potential conflict and targeting, at least for states able to wield them; however, as stated above, drones affect the scale but not the basic fact that technologically advanced states have been dealing with such concerns for some time. Further, whether categorized as a traditional or nontraditional armed conflict, within the conflict, states are obliged to follow IHL (Kretzmer 2005, 202). The nature of the conflict, on this issue, is separate from the weapon.

Beyond sovereignty and targeted killing, though, a central argument against drones is humanitarian: many civilians are caught up in the direct and indirect violence of these weapons. Indeed, drones allow decision makers to extend their reach and conduct violent operations in regions that they would never have previously considered. In other words, while the US administration may argue that it is carefully legal with its use of drone strikes, most of those strikes would not be happening at all without this specific technology. Even if noncombatants are never physically affected, those in regions where drones operate must live with a constant fear that death is circling, invisible, in the skies. In fact, this terror is one of the military benefits of drones: like satellites, they force targeted belligerent forces

to disperse and remain wary of concentrated activity as well as one another. In the parlance of IHL, lethal drones cause “unnecessary suffering.”

On this point, US policy toward drones appears to fit IHL standards, though as with other military and clandestine operations, some specifics remain hidden from public scrutiny. In 2012, for instance, Obama’s top counterterrorism adviser, John O. Brennan, publicly insisted that, “in full accordance with the law,” officials applied rigorous parameters and legal review standards before approving deadly drone strikes.<sup>14</sup> Similarly, US military officials have consciously located their rules of engagement for lethal drones squarely in existing IHL and similar standards.<sup>15</sup> Such assertions appear to place US drone policy within legal parameters, but critics rightly charge that without transparency, such legality cannot be assumed. Leading up the 2012 election, for instance, administration officials worried that Obama might not be reelected and worked to codify standards for using lethal drones, yet the administration did not alter its relatively opaque accounting of actual lethal drone use and its effects (Scott 2012). Under these conditions, abuses are easy to imagine and hard to prove. Indeed, secrecy itself raises serious questions about the policy’s legality (Sterio 2015).

Implicitly, though, what this line of attack reveals is that there are conditions in which lethal drones can be considered legal or acceptable weapons. Major criticisms of this drone policy typically center on transparency and legal application of lethal drones. This may be a pragmatic strategy in a long-term push to eliminate lethal drones as a weapon; however, such a strategy itself concedes that a mainstream legal standing for lethal drones is plausible. In other words, that lethal drones might be immoral or troubling remains under debate; however, that a reasonable case that they might be legal, at least under certain circumstances, is largely taken for granted.

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<sup>14</sup> This included “a high degree of confidence that the individual being targeted is indeed the terrorist we are pursuing,” that noncombatants would likely not be killed, and that only certain, predetermined individuals from organizations like Al Qaeda were targeted (Savage 2012).

<sup>15</sup> For an Air Force overview, for example, see Drake 2011.

At the time of Brennan's 2012 statement, for instance, critics were particularly focused on the decision to kill Anwar al-Awlaki, a US citizen. However, in that case, the ACLU and others were largely concerned about the violation of US law—not international law—and principles of transparency.<sup>16</sup> Still, when a group of human rights organizations sent an open letter to the President demanding greater transparency in the administration's drone policy, they did indicate "serious questions about whether the U.S. is operating in accordance with international law" (Scott 2013). Crucially, though, the letter and its signatories did not indict lethal drones as such; rather, they suggested that the administration's use of these weapons was potentially unethical and illegal. Other key examples reiterate this point. When an earlier UN report (Savage 2010) called upon the United States to dramatically reduce its lethal drone use, the lead author indicated concerns about spiraling violence and illegal executions, but he did not officially seek to simply ban lethal drones. To take another example, Shakeel Ahmad (2013) makes the case that lethal drone use in Pakistan under conditions of international armed conflict (IAC) could be legitimate; however, Pakistani officials by 2013 had publicly rejected the US drone policy as it was being executed in their own borders. Later, appealing to "the laws of war and norms of customary international law," two Yememi families (2015) sought to sue the US government for "unlawful deaths" caused by lethal drone attacks. They were seeking redress within the normal legal channels for misuse of a weapon rather than condemning the weapon itself. Though often shrouded in secrecy, the US lethal drone policy has typically made plausible—if not widely satisfying—claims to legality (Bellinger 2011). Most criticisms charge that lethal drones are a potentially legal weapon being used illegally.

So, do drones *prima facie* violate international humanitarian law? No, not obviously or necessarily. A reasonable case can be made that drones do not violate IHL. This "reasonable case" standard is important, here, because it reveals that the current international legal and political system allows these

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<sup>16</sup> For example, Obama's nominee for CIA director, John Brennan, set off alarms for advocacy groups when he failed to explicitly renounce the possibility of domestic lethal drone strikes (Gorman 2013).

kinds of weapons. Certainly a strong humanitarian case can be made against drones, and perhaps courts and treaties will eventually determine that they violate certain rules. However, that outcome seems unlikely because the current international standards focus on intention, excess or abuse rather than the technology or the mere fact that civilians are affected. As Wuschka (2011, 897) finds, lethal drones meet IHL standards of combatant/noncombatant discrimination, so the weapon itself is not inherently illegal. Thus, “only specific drone strikes raise legal issues.”

### **Lethal Drones and Grand Strategy**

Though lethal drones are widely deployed by military and intelligence organizations and consistently achieve tactical objectives, critics make a strong case that they are a grand strategy mistake. By angering innocent populations and alienating foreign governments, lethal drones undermine the larger political objectives of a police action or armed conflict. Further, with their seductive capabilities, lethal drones may entangle a great power like the United States in endless violence that it would not have previously countenanced. If lethal drones are in fact strategically self-defeating yet regularly deployed by states, they may represent a serious challenge to the state system. Not unlike *glasnost* and *perestroika* revealing the Soviet Union’s fundamental weaknesses and unsustainability, as a strategic tool, lethal drones may appear to be a solution that is in fact a harbinger of revolutionary change. However, lethal drones may in fact serve or strengthen state strategic interests. If a reasonable case can be made to that end, then this weapon system may in fact be a function of, or at least compatible with, the state system and its priorities.

Grand strategy is typically defined as a means-ends calculation. How do state policy makers define and pursue their national objectives? Originally applied to military capabilities and objectives, the concept expanded throughout the twentieth century to include economic, diplomatic and other types of power. In other words, grand strategy is a state’s overarching approach to achieving its interests. It spiked as a policy focus in the 1940s, but since the decade bookended by the Cold War’s end and 9/11,

“grand strategy” has reemerged as a frequently discussed concern for policy makers and scholars. Of course, from Sumerian city-state interactions to Chinese imperialism to Aztec expansionism, grand strategy has remained a concern among powerful polities long before the modern phrase emerged. Some principles of grand strategy may be perennial and universal; however, the specific incentives, constraints and shape of grand strategy will differ depending upon historical context. For example, centralized agrarian empires defended by large border armies make more sense in some places and eras than others. In any given international system, then, useful insights can be gained by evaluating whether and how a given practice, weapon or technology fits within or fundamentally challenges grand strategy. For example, in the early modern period, merchant innovations reinforced the trading state and slowly eroded agrarian empires. A territorially small actor like the Netherlands or the United Kingdom could rise to dominance with a grand strategy centered on commercial and maritime dominance.

In the current period, drones look like a potentially transformative strategic technology. For example, with the right infrastructure, they allow global reach without jeopardizing personnel, and, in turn, they can be operated with no regard for borders. Given this, how will observers know whether drones actually challenge or reinforce grand strategy in the modern state system? As with international humanitarian law, this evaluation considers a “reasonable case” argument. For grand strategy, the standards center on a) whether using drones can effectively advance state interest, and b) whether using drones might actually be undermining state authority. To test these standards, the following paragraphs set out and then assess an argument that drones undermine state interests and challenge state authority. Under such circumstances, drones would be inimical to state grand strategy. Their ongoing use in the face of traditional state interests would suggest that the modern state itself was in transition. On the other hand, if drones can and do bolster state interests and centralize or maintain power in state governments, then from a grand strategic perspective, drones are indeed a tool that fits

within the state system. Stated more simply, how do drones currently interact with great power grand strategy?

The United States maintains both the world's most advanced drone capabilities and its most widely-observed grand strategy, so it serves as a primary indicator on this issue. As a tactic to serve strategic ends, targeted killing and assassination were considered by ultimately rejected by US policy makers during the Cold War. US officials were particularly frustrated by Fidel Castro's indefinite tenure as Cuban president (Gorman 2010). After the Bay of Pigs fiasco and the Cuban Missile Crisis, the situation highlighted how which massive military strength could be rendered moot by an opposing great power. Lower levels of violence, particularly assassination, were increasingly considered legitimate where other types of violence and war might escalate. In other words, stymied by traditional tools of coercion and brute force, CIA officials entertained alternative methods. However, domestic backlash to such plans led Gerald Ford to ban political assassination. Notably, this decision occurred in a stable, if tense, security environment dominated by traditional states and great power balancing.

Faced with unconventional, nonstate threats, though, subsequent administrations interpreted this ban liberally. Ronald Reagan reiterated the ban, but he also authorized clandestine teams to kill terrorists in the face of an impending attack, and in the 1990s, Bill Clinton even authorized targeting and killing Osama bin Laden (Gorman 2010). During Clinton's tenure, the CIA also began to redesign unmanned Air Force surveillance vehicles with the goal of both monitoring and striking unconventional threats which operated in weak states and maintained networks rather than governments or other physically-rooted organizations. Still, deep concerns about using such "assassination tools" persisted until 9/11, at which point the Bush administration ramped up development and deployment of lethal drones. Later, promising to wind down ground-based combat operations in Iraq and Afghanistan, Barack Obama came to use drones in deadly attacks far more than his predecessor. These weapons allowed the

administration to risk few US assets but still pressure Taliban, al Qaeda and other militants even in previously safe, sovereign regions like Pakistan's tribal areas.

For many, this evolution represents a troubling breakdown in ethical standards and legal categories, but strategically, it is a logical, even inevitable, trajectory. Through the 1960s and 1970s, technological capabilities for aerial monitoring had risen to unprecedented heights, but spy planes remained piloted, and in any case, the central security concern for the United States remained conventional and nuclear threats related to the Cold War. Of course, there were instances of US-sponsored coups and assassinations, but neither the technology nor the geopolitical context favored a drone-type system. Through the 1980s and 1990s, as computing and remote control technologies improved, US security concerns shifted toward weak states and terror networks, neither of which could be deterred by conventional or nuclear capabilities. A flexible, unmanned tactical tool is a good fit for such a strategic environment. From a strategic perspective, then, legal and ethical debates are nearly a foregone conclusion: if the capability exists and it is reliable as well as effective, it will be used. For instance, rather than condemn drones, Maass (2015) argues that they should be bound to clear parameters, similar to those implemented by the Eisenhower administration, in order to strike "a better balance between what is necessary for security and what is politically sustainable." State incentives are, primarily, to advance security and protect their interests. Once 9/11 crystallized the nonstate security threat or once Obama committed to reducing the US footprint in two theaters, lethal drones—nonexistent a generation prior—naturally appeared necessary and indispensable. Just as World War I retired certain weapons and techniques just as it made others essential, a changing geopolitical and technical landscape have left lethal drones a natural strategic tool.

Debate persists, though, regarding whether drones really benefit state interests. Analyzing drones as an appropriate tool for any given state is not a direct concern for this paper; nevertheless, if lethal drones are obviously counterproductive to grand strategy, then the paper's thesis is undermined.



Specifically, drones are neither relevant nor effective under such conditions. Foust and Boyle (2012, 3 and 8) argue that the basic cost calculation for policy makers is not financial expenditures (because drones are slightly less expensive than manned aircraft) but “the potential security threat posed by higher crash rates and growing backlash in target environments.” Furthermore, they say, whether drones have become, by default, a strategy in themselves or are incorporated into a larger strategy remains unclear. Stated differently, US officials may find drones a seductive tool that they can use to address a number of previously perplexing threats; however, they have not systematically assessed whether the effect of drones achieves larger strategic ends.

Consider a domestic analogy. “Broken windows” policing—in which law enforcement actively addresses even minor infractions—has been demonstrated to reduce overall crime rates. Internationally, constantly pressuring asymmetric threats like terror networks has yielded some dividends as leaders die and physical congregation becomes dangerous. Nevertheless, though tactically successful, a “broken windows” drone strategy is not necessarily strategically useful. If it also yields an international political backlash or engages the United States in more violence than it would have without drones, then strategic goals may actually be undermined. A common critique is that lethal drones foster a “whack-a-mole” approach in which counterterrorism and counterinsurgency lose their strategic focus and devolve into merely striking every possible target (Abizaid and Brooks 2014, 9).

Similarly, if lethal drones provoke a broad, domestic political backlash, then their strategic value is likewise undermined. Through 2011 to 2013, for instance, the Obama administration slowly moved to make its lethal drone policy more transparent and shifted it toward more exclusive control by the DoD and away from the CIA.<sup>17</sup> Though such adjustments did not satisfy many of the policy’s strongest critics, such as human rights organizations, the goal appears to have been to neutralize enough criticism to maintain the President’s governing coalition. As Gorman et al. (2013) point out, the combination of left

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<sup>17</sup> See, for example, Entous et al. 2013.

leaning legal and humanitarian critiques had combined with libertarian leaning privacy and transparency concerns to produce a perception of growing “political liabilities.” By slowly opening up the process and implementing standard practices, the administration undermined a brewing, broadly-based protest movement that would scrutinize all lethal drones. By 2015, lethal drone strikes had declined from the peak monthly numbers and officials could point to at least a few standard operating procedures.<sup>18</sup>

The argument that they actively undermine national interests is perhaps the strongest pragmatic case against lethal drones, yet policy makers across two different administrations have applied and expanded this tool. Pakistan represents the most fraught theater for US drones (Fair 2014; Mahmood 2014), yet the strategic case for drones remains plausible enough for policy makers to continue to pursue it. For years, the Pakistani public loudly—sometimes violently—protested US drone strikes, and their voices were amplified by US groups. Indeed, one Pew poll in 2012 revealed that 80 percent of Pakistanis held negative views of the United States, and some Pakistani officials publicly called for a “drone drawdown.”<sup>19</sup> Over time, Obama officials responded with limited but real changes to the program, and as US forces withdrew from neighboring Afghanistan with no sign of return, their effort was assisted by a shifting Pakistani focus on internal threats. Threats that, in some cases, US drones might effectively address. Further, throughout the Bush and Obama years, Pakistani military and political officials consistently, though often discreetly, approved or permitted the lethal drone policy (Miller and Woodward 2013).

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<sup>18</sup> For example, along with the President’s landmark speech on the topic (Obama 2013), a “Drone Reform Act” introduced in 2014 would hand all lethal drones to the DoD. The administration’s self-imposed rules already included the following: 1) ‘a target that is authorized by our laws’; 2) ‘a threat that is serious and not speculative’; 3) ‘a situation in which we can’t capture the individual before they move forward on some sort of operational plot against the United States’; 4) ‘we are very careful about avoiding civilian casualties’; 5) respecting ‘the protections of the constitution and due process’ even as ‘there is a legal justification for us to try and stop [US citizens] from carrying out plots’ (Woods 2012).

<sup>19</sup> See Craig 2014; Craig 2015; Entous et al. 2012; Leiby 2012.

In other words, US and Pakistani officials managed or channeled the political backlash, which proved insufficient to shift the strategic cost-benefit calculations surrounding lethal drones.<sup>20</sup> Between 2011 and 2015, for instance, the administration shifted from offering no details about its lethal drone program (DeYoung 2011) and policy to a relatively public set of legal standards (DeYoung and Horwitz 2014) and approving sales of the technology to allied governments (Ryan 2015). Again, based on the plausibility standard applied by this paper, US policy makers have found the strategic benefits of lethal drones to outweigh the deficits. More generally, drones' use in a limited set of official and de facto theaters—Afghanistan, Libya, Iraq, Pakistan, Somalia, Yemen—suggests that their use is constrained rather than universal. To reiterate, then, policy makers appear to be making a cost-benefit calculation regarding the strategic utility of lethal drones, and they have constrained drone use to minimize the political costs.

Crucially, then, lethal drones achieve broadly accepted security goals and minimize destruction. They are also flexible, endanger no pilots, and offer precise targeting.<sup>21</sup> In his now classic essay “The Diplomacy of Violence,” Thomas Schelling (1969) carefully separates brute force from coercion. The former involves exercising destructive power, whereas the latter carries weight as a threat. Strategically, in asymmetric war and police actions, drones offer the best of both. They can instill fear as an invisible menace, and they can actively destroy. Both of these occur with little serious compromise of state interests. As Schelling pointed out long before such devices were feasible, “the threat of pure damage will not work against an unmanned vehicle.”

Of course, whether lethal drones are objectively effective is a slightly different question, because what matters, here, is whether policy makers *believe* lethal drones are effective or whether

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<sup>20</sup> Taj (2010) even argues that the drone program, at least as of 2010, was relatively popular because it indeed was well-targeted and focused on militants. See also Williams 2010.

<sup>21</sup> As the extensive taskforce report by Abizaid and Brooks (2014, 9) put it, UAVs are “an attractive option for a wide range of military and intelligence tasks” because they offer “long loiter time, sophisticated sensors and extensive operational reach.”

they believe that drones are, if nothing else, the most effective tool available given their strategic goals and constraints. For instance, in early 2014, US intelligence and defense agencies faced the prospect of losing their drone air bases in Afghanistan. Officials scrambled to either preserve or replicate those surveillance and strike capabilities, particularly regarding access to Pakistani airspace. Drones had become integral to monitoring, and sometimes attacking, key targets—most notably Osama bin Laden—and a false alarm during Obama’s first term, in which observers feared that a Pakistani nuclear device was missing, convinced the administration that drones had become indispensable (Sanger and Schmitt 2014).

Some ardent supporters even assert that “drones save lives” (Murray 2013). President Obama himself insisted in 2013 that “dozens” of high-ranking al Qaeda members and their plots had been destroyed. “Simply put,” he said, “these strikes have saved lives.” While that claim carries ethical and legal implications (already addressed, above), from a grand strategy perspective, it is a legitimate consideration. Its logic is that fewer Americans, to focus on the exemplary case, are in danger and targeted combatants can be struck with greater precision than with other weapons systems. Still, critics respond that lethal drones simply make killing easier and allow their owners to take lives that they would never have considered targeting before this new technology.

On the one hand, then, lethal drones have expanded America’s zone of killing, but on the other hand, they have sharpened its kinetic efficacy. Strategists would consider both a gain. In the drive to protect the state’s national interests, greater reach and greater accuracy are positive. Arguments that drones save lives are not directly strategic; rather, they focus on tactical capabilities. Indeed, the Abizaid and Brooks (2014, 10-11) report holds that the Obama administration had not systematically or rigorously assessed the strategic cost-benefit ratio of lethal drones “saving lives” and were at risk of expanding existing conflicts to an unmanageable scale. The strategic danger of unwisely deploying

drones, then, is a matter of calculation and planning, but the basic strategic potential of drones as tactical weapons is not in question.

Ongoing technological change does not appear to alter this equation. Some researchers argue that, not unlike machine guns flooding 20<sup>th</sup> century battlefields, less expensive but equally sophisticated drones will fundamentally shift the balance of power. By becoming nearly universal, lethal drones might change how—and even whether—states can defend themselves. However, widely dispersed air power has not achieved this feat, and in many ways, it has strengthened state capabilities. As one analysis (Anderson and Wittes 2014) surmised, drones “are just another air platform.” For political reasons, in the US case, drones are used in only select theaters, so states with even less capacity and political latitude than the United States are unlikely to use drones expansively.<sup>22</sup> More drone use may tip the balance of power among lead states, but that is a shift *within* not a shift *of* the grand strategic context.<sup>23</sup> Autonomous or “robotic” systems also raise questions about the tool driving the strategy (as well as defying traditional just war theory or international human rights law).<sup>24</sup> However, this remains a speculative capacity and, despite legitimate fears, there is little concrete evidence that automated weapons will be used any differently than human-controlled weapons. As the Department of State’s former legal advisor Harold Koh pointed out in 2010, “The rules that govern targeting do not turn on the type of weapon system used.” Similarly, the strategic and political parameters of a targeting system do not turn on the type of weapon system used.

### **Lethal Drones in Context: The State System**

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<sup>22</sup> As Joshi and Stein (2013) point out, developing a drone infrastructure can be an important barrier to broadly deploying this weapon.

<sup>23</sup> By 2015, recognizing the inevitable diffusion of this technology and seeking to channel its use, US officials had approved export of US-made drones to allied governments (Nissenbaum 2015)

<sup>24</sup> See, for example, Anderson and Waxman 2013. In 2013, the UN Human Rights Commission called for a moratorium on “lethal autonomous robots” (LARs) before such devices are actually deployed (Heyns). Serious thinkers on this topic have even characterized an imminent “moral Rubicon” in which “robotic weapons eventually will make kill decisions on the battlefield with no more than a veneer of human control” (Latiff and McCloskey 2013). Further, runs the argument, “when robots rule warfare, utterly without empathy or compassion, humans retain less intrinsic worth than a toaster.”

In sum, drones do not necessarily violate international humanitarian law, and they represent a useful grand strategy tool. Drawing on insiders and academics to assess both the technology and policy of lethal drones, the Abizaid and Brooks (2014) report finds that most discourse about drones and drone policy has been defined by misconceptions. Rather than “super-weapons,” drones are simply “an extremely valuable military tool.” They have not caused disproportionately high civilian casualties or radically dehumanized war. Still, the report concludes, administration officials need to carefully weigh how and when to use this tool, which could undermine broader strategic goals if used unwisely. At a broader level, imprudently deploying lethal drones might undermine international standards of sovereignty, particularly among weak states, and this is a standard that the United States has traditionally sought to protect. Similarly, the report finds that rather than inherently illegal, lethal drones are tools that can simply be used illegally. The major challenge with lethal drones and international law is, in fact, not unique to drones. Modern technology and warfare defy traditional war frameworks, so issues like targeted killing and undue harm are difficult to parse for any government, whether or not it deploys lethal drones. Notably, though, traditional states and governments remain at the core of these legal discussions.

Rather than a revolution, then, lethal drones fit within and reinforce the modern state system’s status quo. As tools of the status quo, drones also reveal the state system’s underlying value hierarchy: security first followed by concerns like stability and predictability and, more distantly, justice.

This arrangement is not new. Indeed, international relations since the earliest city-state systems have been shaped or even driven by the security dilemma.<sup>25</sup> Driving the security dilemma is a simple question: can a polity trust its peers, and if not, how can it protect itself against those peers? For example, Watson (2009, 24-32) argues the ancient Sumerians, organized as city-states and representing

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<sup>25</sup> Arguably, insecurity even drove the development of cities and civilizations. In other words, like scarcity, it could be a fixed aspect of the human material condition.

the earliest of international systems, developed a mutually shared understanding of order, particularly hegemony, as a response to the security dilemma. In turn, as logistical and economic capacity grew, Empires expanded and likewise espoused some form of the following argument: we will rule and, in exchange, we will provide shared and public goods like protection. Subordination in exchange for stability security. Other values like justice, honor, or religious devotion might also factor into these formulas, particularly as frameworks for diplomacy, but the basic material incentives remained stability and security.

Several schools of thought now dominate discussions on the security dilemma. Realists hold that power is the only reliable tool international actors possess because no overarching authority exists to guarantee security. Under such conditions, though perhaps not always aggressive, states constantly seek to expand and maintain their relative power. Other traditions (such as liberal internationalism, constructivism, and the English school) maintain that, for example, international actors can develop a society of norms in which violent breaches or violations are the exception; or they insist that institutions can foster rule of law, transparency and other tools that mitigate distrust. The shared point, though, is that at the heart of international relations lies a problem: with no supreme government, polities must determine a means to protect themselves and their interests.

From this perspective, then, the modern state system is a specific solution to that general problem. It evolved over several centuries to address the challenges of overlapping authorities, economic competition and military revolution.<sup>26</sup> Named for a series of treaties ending the Thirty Years' War, this "Westphalian system" is typically defined a set of characteristics among states. These include a fixed territory and clear borders; mutually recognized government authority; and monopolization of violence by the state. Added to this are legal frameworks like diplomatic norms; the law of the sea; and standard trade practices. While we tend to think of modern international relations as fraught with bloodshed, the

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<sup>26</sup> For overviews, see Jackson 2007, 49-61; Spruyt 1994, ch 8.

aim of this system is to foster predictability and, in turn, stability. Just as “good fences make good neighbors,” this arrangement is intended to minimize or provide alternative routes for conflict. Revealingly, though, the balance of power emerged among Europe’s great powers as an acceptable, even desirable, method for preserving stability while respecting sovereignty. For long periods, such as the 19<sup>th</sup> century, the balance of power appeared (largely) to work, but when it failed in the 20<sup>th</sup> century, it did so catastrophically. Twice. Norms and legal parameters did little to stabilize the system during those periods; however, the 1940s saw a reiteration of the state system, but this time with even more institutions and rules because raw power—either balancing or dominating the system—was also perceived as dangerous.

### **The Argument**

What all this tells us about drones—and how drones tell us something about the state system—now starts coming into focus. As the analyses above show, drones as weapons do not necessarily or obviously violate international humanitarian law, and they can effectively serve great powers’ grand strategies. Thus, this paper is arguing that drones fit the state system as it has developed over several centuries. They are complementary to the legal frameworks that have developed over the last century, and they do not disrupt a key manifestation of the modern state system: the balance of power. As a grand strategy tool, rather than assuming an uncontrolled status separate from states, lethal drones can be and are used to project and reinforce state power.

Viewed in a broad historical context, drones’ destructive capacity is neither unusual nor new. Their payloads are physically limited and no different from, and often smaller than, what manned aircraft or long-range missiles can achieve. By contrast, the industrialization of warfare and the advent of air power carried true potential for revolutionary change. Indeed, World War II represented the culmination and expansion of these technologies and the targeting of civilian populations. From an international law perspective, while the Geneva conventions and other agreements have been updated to address this



menace, few in the 1930s or 1940s would argue that aerial bombing or, later, atomic weapons represented a clearly humane or legal use of violence. Yet, incredibly, the state system was not fundamentally challenged by this technological transition. Rather, it was reinforced because only states could afford and, later, legally use these weapons. Advancing the national interest and national security along with protecting one's population were and remain sufficient in the state system to justify using air power of all kinds. Under customary international law, among other norms, states are only expected to minimize noncombatant casualties and not target civilians. This standard remains in place.

Similarly, from a grand strategy perspective, drones are a useful tool to protect or advance a great power's national interest as well as reinforce or consolidate state power. Stated differently, drones meet immediate material or security interests but also comport with the most fundamental, widely-accepted value in the state system. As a new technology, drones do offer advantages to states able to develop and deploy them, but as seen above, they are a tactical advantage rather than a revolutionary one. If used prudently, drones can effectively strike distant targets without generating serious political or military backlash. Furthermore, other states in the system are more likely to accept such strikes if either (a) the state is facing an immediate security threat or (b) the state is ostensibly acting for the good of the larger international community. Thus, US strikes in places remote from any US or US ally's battlefield, such as Yemen or Somalia, might face some international opprobrium, but they can also be legitimately framed as working to maintain both national security and international stability because they pressure or eliminate extremists who, like al Qaeda in 1990s Afghanistan, might take advantage of a technologically integrated world.

There are some ways in which drones might defy or undermine the modern state system, but to date, none of these appears to pose a fundamental challenge. For instance, as a tactically disruptive technology, drones might challenge the balance of power. As some states lead in this technology, those states might gain disproportionate power relative to others. Further, compared to earlier disruptive

technologies, such as naval ships or nuclear weapons, drones are far less expensive and based on more accessible technology. Nevertheless, drones are unlikely to upset the balance of power because no state can use them as a one-off innovation to gain a serious military or other material leverage over another state. While the technology is widespread, it is dominated by the states (particularly the United States) already possessing lead military capabilities. Even if the technology diffuses and is effectively universal, it would offer little leverage because it is not fundamentally different than other types of air power, against which many states already possess defenses and strategies. Similarly, unless the political context changes, violating a peer state's sovereignty with an airborne weapon will remain off-limits.

Consider Amy Zegart's (2015) prediction that drones will "revolutionize how nations and nonstate actors threaten the use of violence" because they combine low cost with high threat credibility.<sup>27</sup> Faced with a drone arms race, the US may indeed lose its edge in this technology and, like Kalashnikovs or IEDs, it could diffuse universally. Zegart suggests that inexpensive and disposable drones (and similar types of weapon systems) would allow, for example, adversaries to wear down US political will. This claim is insightful, but it is overstated because it is presented as if the state system and the geopolitics within it are a simple game of power leverage. The strategic context is more complex and the actors more dynamic than that. First, like cellular phones or global positioning systems, the infrastructure to develop and deploy drones is complex and expensive even if the final product seems simple. Second, analogies to previous technologies like nuclear weapons suggest that governments can and do perceive a vested interest in maintaining their monopoly on violence and will coordinate even with a rival to sustain that. Third, and related, states could just as easily build treaty systems and other regimes to monitor drone use. Fourth, to return to the paper's larger principle, states value and respect security. They may behave irrationally to achieve it, but using drones frivolously or aggressively is not on balance a strategy designed to maximize security. Suicidal organizations or disruptive states may adopt such a

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<sup>27</sup> Boyle (2015) makes a similar case in greater detail.

strategy, but in those cases, politics and worldview—not the technology itself—are the animating threat.

On sovereignty, though, drones do raise profound questions. Specifically, drones shift the cost-benefit calculation for policy makers. A pilotless device is far easier to risk destruction or capture in unfriendly territory than traditional aircraft. Further, if drones become widespread, as with cyber attacks, violations of state airspace may become far more common. Under these conditions, sovereignty becomes less meaningful, and a key cornerstone of the state system appears to dissipate. However, the story is not as simple as this. The notion of universally respected and enforceable sovereignty is and has always been an exaggeration, if not a myth.<sup>28</sup>

Sovereignty is complicated because on the one hand, as a practice, it does lend more leverage and respect to small states, and it offers the potential, like standard and respected property laws, to prevent massive, ongoing violations. Crucially, though, only the most powerful states are able to enforce the norms of sovereignty. Not unlike European empires, which respected sovereignty amongst each other but not in the wider world, current great powers regularly violate strict interpretations of sovereignty where they deem it necessary or desirable. Questions of intervention and sovereign rights are fraught and deserve greater treatment than is possible, here. Still, the point is that great powers may use drones to violate other states' sovereignty, but they often limit these violations for the same political and strategic reasons that they more often than not respect sovereignty, even when that respect is inconvenient. For example, a Special Rapporteur for the UN Office of the High Commissioner for Human Rights has determined that Article 51 of the Charter, which allows for the inherent right of self-defense, can justify drone use. It allows a member state to use unilateral, targeted, extraterritorial violence if either a) the host state agrees or b) the strike is in response to an aggressive act against the initiating

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<sup>28</sup> To give one systematic example, David Lake (2011) makes the point that great powers often form security hierarchies with client states.

state. Strictly interpreted, this is not a claim that because they are unmanned, drones represent a minor or acceptable violation of sovereignty. That is a commonly-held view, but interpreting drones in this way is a perceptual, political and strategic question.<sup>29</sup> Manned or unmanned, aircraft fall under the same rules based upon a single set of existing rules and agreements, and these rules and agreements are framed around the sovereign state system. Kreps and Kaag (2012) point out that drones illustrate how traditional just war ethics are insufficient for the modern world, yet even here, the state itself remains the core organizing strategic and political principle.

Powerful states are, in practice, more sovereign than weaker states, but this is not new. The state system has always mixed legal rights with the prerogatives of powerful states. Drones provide a means to expand great powers' reach, but they do not alter the basic context in which interventions and sovereignty exist side-by-side in an awkward, sometimes contradictory, relationship. The *jus ad bellum* tradition in just war theory, for instance, includes exceptions to sovereignty for states that are unable or unwilling to monopolize force within their territories and protect civilians. As Reinold (2011) points out, this principle has been applied extensively by the United States and others since 9/11. Similarly, in US relations with its American neighbors, for instance, US officials consistently emphasize all states' sovereign rights, yet US-Latin American relations are defined, in part, by a series of economic, political and military interventions. Such interventions, though, can fit long-standing legal principles. In short, drones do not represent a new challenge to sovereignty. Rather, they are a new tool in an old dynamic: sovereignty exists for all ... except for all the instances in which it is compromised.<sup>30</sup>

## **Conclusion**

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<sup>29</sup> In a review of the literature, Franke (2014, 130) points out that despite what international lawyers might insist, even the Pakistani public finds lethal drones less a violation than troops on the ground.

<sup>30</sup> Major discussions surround the precise practice and reality of sovereignty. Rather than stake out a firm claim, here, the paper is simply asserting a mainstream or conventional position: sovereignty is widely respected and forms a framework in which all states operate, but it is also often honored in the breach.

Lethal drones do raise many concerns not addressed by this paper. For instance, targeting and killing a specific foreign national—to say nothing of a fellow citizen—looks like assassination, yet major players such as the United States have domestically outlawed such violence. On this issue, drones raise serious moral and constitutional questions. Internationally, drones are perceived as weapons of terror and unchecked power.<sup>31</sup> Pragmatically, this may provoke political backlash and even activate volunteers to join the targeted organization or state. These and others are important issues to address, particularly as policy makers must make ongoing decisions about whether and how to use these weapons. Nevertheless, these concerns do not alter this paper’s basic findings and arguments about the nature of drones in the state system.

Drones are a tool. They are a natural manifestation of the state system, which has sought to minimize but not banish violence. In fact, the system is designed to accept violence and security threats as endemic. In this context, drones emerge as an ideal tool for great powers, those with the most leverage and capacity—really, the most sovereignty—in that system. In addition, lethal drones are neither inherently ethical nor inherently unethical (to the extent, anyway, that we do not condemn all weapons). If we find drone use morally troubling or legally problematic, then the problem lies with the state system itself.

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<sup>31</sup> Well-known insurgency strategist David Kilcullen (2009) even suggested that drones appear “cowardly and weak” to many populations.

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