DRONE LOGIC

A Dissertation

by

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ABSTRACT

This dissertation presents three scholarly papers dealing with the philosophical dilemmas of drone warfare that challenge the pervasive reliance of current literature on a paradigm of colonialist ideology and offer alternative analyses of drone technology that are not beholden to the corrupt values and procedures of contemporary western thought.

In the first paper, I argue that the classic utilitarian approach is routinely co-opted by colonialist politics as evidenced in the historical debate over western military technologies and the contemporary debate over drones. Because utilitarianism is particularly susceptible to political manipulation due to its amenableness to false dilemmas and dubious counterfactuals, I advocate an alternative approach based on the technology-as-social-experiment framework, which I conclude is not only inoculated from the ideological trappings of utilitarianism but also produces an analysis that is more philosophically consistent with the existing regime of international humanitarian law.

In the second paper, I use Thomas Kuhn's well-known account of science to argue that the drone debate operates within a colonialist paradigm that supplies the problem-field, methods, and standards of solution for contemporary discourse, which in turn consists mainly in solving colonialist puzzles and is therefore incapable of producing non-colonialist results. Within the colonialist paradigm, moral and legal debates over drones inevitably end in paradoxes by which mutually exclusive conclusions are drawn from the same conceptual repertoire. Because there is no higher standard than the assent of the relevant community, I implore scholars to abandon the colonialist paradigm and to restore the traditional role of philosophy as a critical enterprise.

In the third paper, I synthesize existing anticolonial legal scholarship with the debate over drones and outline a philosophy of anticolonial legal realism, which accounts for the actual history and values of colonial imperialism and serves to reorient the drone debate from an amorphous complex of philosophical and legal puzzles to a more unified program of anticolonial critique. Anticolonial legal realism avoids the contradictions of paradigmatic colonialist thought while at the same time revealing a clearer path of resistance against the frightening future world that drone technology portends.

I conclude by offering programmatic suggestions for worldwide anticolonial resistance to drone warfare.

DEDICATION

This dissertation is dedicated to the known and unknown victims of America's horrific drone wars in Pakistan, Yemen, Somalia, Libya, Afghanistan, and Iraq, as well as those whom the United States has extinguished in secret—their sacrifice must not go unchallenged. It is also dedicated to the members of Upstate Drone Action (also known as the Upstate Coalition to Ground the Drones and End the Wars) in Syracuse, New York, whose courageous activism has repeatedly disrupted drone operations at Hancock Field Air National Guard Base. *"Drones fly, children die."*

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1. INTRODUCTION

On the afternoon of October 24, 2012, a United States unmanned aerial vehicle—commonly referred to as a drone[1]—launched two hellfire missiles at the remote village of Ghundi Kala in north Pakistan.[2] The strike occurred as part of America's so-called Global War on Terror (GWoT) and a long campaign of incursions by remote-controlled aircraft over Pakistani territory dating to June 2004.[3] The villagers who found themselves on the receiving end of U.S. missiles this day, however, were anything but Al Qaeda or Taliban combatants. Tossed through the air by the explosive force of the strike and disoriented amidst the smoke and debris it generated, Nabeela Bibi, a girl of only eight years, crawled to the spot where her grandmother, Mamana, had been picking okra just moments before. "I saw her shoes," Nabeela recalled. "We found her mutilated body a short time afterwards. It had been thrown quite a long distance away by the blast and it was in pieces. We collected as many different parts from the field and wrapped them in cloth."[4] Nabeela's two sisters had sustained shrapnel wounds in the explosion, and her three-year-old brother was knocked from the roof of the family home. As Mamana's grandsons Kaleemul and Samadur rushed to aid those injured in the initial blast, a second volley of hellfire missiles struck nearby in the clearing in what is known as a "double-tap" strike, breaking Kallemul's leg and lacerating his body with yet more shrapnel.[5]

[1] Drones are a dual use technology, i.e. they have both civilian and military uses. While a philosophical inquiry could be structured so as to analyze drones as a technology per se, the moral and legal arguments that comprise most of the literature rightly identify surveillance and weaponized unmanned aerial vehicles in use by militaries as a special case. This paper will also focus on the latter and refer to them simply as 'drones'.
[2] "Will I Be Next?" (Amnesty International Publications), 18.
[3] Cavallaro et al, "Living Under Drones" (Stanford Law School), 11.
[4] "Will I Be Next?" (Amnesty International Publications), 19.
[5] "Will I Be Next?" (Amnesty International Publications), 20.

Mamana's son and the father of some of the mangled kids, Rafeequl, was not home at the time of the attack, but he accompanied his children to the U.S. Capitol building a year later to speak as part of a congressional briefing organized by Representative Alan Grayson of Florida. "Nobody has ever told me why my mother was targeted that day," Rafeequl testified.

> Some media outlets reported that the attack was on a car, but there's no road alongside my mother's house. Others reported the attack was on our house, but the missile hit a nearby field, not the house. All of them reported that three, four, five militants were killed. But only one person was killed that day—Mamana Bibi—a grandmother, a midwife, who was preparing to celebrate the Islamic holiday of Eid. Not a militant but my mother.[6]

While explaining his motivation for organizing the briefing, Grayson stated bluntly, "American drone policy is wrong; it's dead wrong." He imagined what lawmakers' and the public's reaction to drones in would be if other nations operated them over American soil. "Invading from the skies is no different from invading from the ground," Grayson said, "and there is no constitutional legal framework in which these life-and-death decisions are being made."[7] Only five of the 535 members of Congress attended the briefing.[8]

As a member of both the House Committee on Foreign Affairs and the Committee on Science, Space, and Technology, Grayson had found in drones an issue that falls squarely under the purview of both. "Now, today, there's a new technology in our lives," he said before he introduced the briefing's participants. "That technology is remote killing—the ability to kill people from a great distance, through drone warfare."[9] Grayson articulated two interrelated dilemmas that govern the debate over drones: what are the legal and what are the moral implications posed by the technology of unmanned aerial vehicles and their use in modern

[6] Grayson, "Drone Survivors Speak," YouTube.
[7] Grayson, "Rep. Grayson Full Speech" (US House of Representatives).
[8] McVeigh, "Drone strikes," The Guardian.
[9] Grayson, "Rep. Grayson Full Speech" (US House of Representatives).

warfare? By characterizing drones as a new phenomenon, Grayson was responding to the dramatic escalation in drone use by U.S. military and intelligence services since the inauguration of the GWoT by President George W. Bush in late 2001. Indeed, the introduction of weaponized drones into the worldwide battlefield by Bush and their establishment as the American weapon of choice by his successor, Barack Obama, inspired a large body of literature over the last two decades in the fields of philosophy of technology, international law, military ethics, and elsewhere in the academy. While loosely held together by their common subject of drones, these discussions nevertheless involve a variety of methodologies coming to an even more various set of conclusions, ranging from those who argue that there is a moral imperative to use drones over other types of military technologies, such as philosopher and military ethicist Bradley J. Strawser,[10] to those who call for dismantling the drone network altogether, such as activist and author Medea Benjamin.[11]

The belligerent use of drones within the territory of other nations, with the expressed intent of assassinating known targets and unknown "combatants," sets into relief deep questions of politics, ethics, and international law. Insofar as these disciplines are implicated in the material outcome of drone warfare, I address them head-on. But there is also a special role for philosophy in this debate, which is twofold: on the one hand, philosophers have already contributed not only to interrogating this technology, but also, more importantly, to devising justifications for is ongoing use at the expense of people like Mamana Bibi. Philosophers therefore hold their share of responsibility for the emergent cultural understanding and judgment of drones, which enjoy majority support among the American public, as well as their material

[10] See Strawser's seminal article, "Moral Predators: the Duty to Employ Uninhabited Aerial Vehicles" in the *Journal of Military Ethics* 9, no. 4 (2010).
[11] See Benjamin's book, *Drone Warfare: Killing by Remote Control* (New York: Verso, 2012).

effects.[12] Nevertheless, this culpability also illuminates the potential for philosophy to provide ideological synthesis to matters of otherwise confounded interest among varied disciplines. So far a synthesis has emerged primarily in the service of explicitly or implicitly justifying the deployment of weaponized drones into foreign lands by the United States—this dissertation will take a different approach. Whereas many philosophers instinctively use hypothetical scenarios to make their arguments about military technologies (especially when reality is inconvenient to those arguments), I look to history and the material facts of drones to ground my analysis and emphasize how current philosophy belies that history and those facts.

The ideological framework of this dissertation is anticolonialism. The term *anticolonialism* refers to a body of literature characterized by its direct analytical and political engagement with the inheritance of centuries of European "civilizing" that touched every corner of the world, for the most part violently. In particular, anticolonialism takes a critical eye to the ideological and material products of Europe's impositions upon the world—chiefly among them the enlightenment conception of universal man and the possibility of universal values—to uncover or develop new methods of resistance to colonial power. The postcolonial author Gayatri Spivak writes that "the colonizer constructs himself as he constructs the colony," and so it is by investigating colonial spaces one can gain significant insight into the values and machinations of the power that controls them.[13] But while *post*colonialism is largely an academic discipline that endeavors to understand the material and cultural legacies of colonialism and focuses less on the politics of contemporary resistance, *anti*colonialism combines scholarship with activism, centering the politics of resistance to uncover its violently

[12] Lerner, "Poll: Americans Overwhelmingly Support," Politico.
[13] Spivak, *Critique of Postcolonial Reason*, 203.

suppressed history and develop programs for its amplification in the present. And yet, the political values of anticolonialism are not unlike those of western liberalism: equal opportunity and self-determination. Western history is unique not in its alleged contrivance of democratic values, but rather their contortion into manifest destiny and a global civilizing mission according to the axiom that, as W.E.B. Du Bois articulates it, "the leaders of world civilization must control and guide the backward peoples for the good of all."[14] Insofar as drone warfare transpires under the direction of "the world's sole remaining superpower" and is perpetrated against former or currently colonized peoples, and insofar as it is almost exclusively analyzed either according to western frameworks of universal morality or western structures of international justice, anticolonialism is primed to offer a critical analysis of drones that deviates substantially from these presuppositions and thus portends different and interesting results. I could borrow from William James and say that the following text should be taken as an illustration of the anticolonial attitude rather than argumentation for its validity, however the cacophony and logjam of current philosophical discourse on drones presents a real opportunity to test the validity of anticolonialism for providing a "radical" perspective that is nevertheless faithful to the facts merely given.[15]

My aim with this dissertation is then, put simply, to indict the failures of current philosophy and to urge a new approach to the debate over drones. Current discourse on drones is marked by two nearly ubiquitous philosophical impulses: first, to abstract from the particular material conditions that characterize the history and contemporary manifestation of drone warfare and, second, to appeal to western concepts of universal value and justice to assess its permissibility. There is almost no political program extant in the academic literature on drones.

[14] Du Bois, *The World and Africa*, 257.
[15] James, *Writings of William James*, 135.

The forthcoming anticolonial analysis will treat these impulses not merely as misguided strategies but moreover as part of the very process by which the colonizer constructs himself. I am not suggesting that this discourse has been heretofore fruitless; on the contrary, I draw extensively on the insights of many commentators for my argument. Rather, the academic debate long since reached the point where its participants—and by extension government bureaucrats and the public at large—miss the forest for the trees while American drones continue flying all around the world, delivering their lethal payloads. The impulses of abstraction and universalism that characterize so much of the scholarly discourse on drones result in a paradox that, as I explain below, is not foreign to colonial history; namely, that both advocates and opponents in the ethics of drones appeal to western moral values to ground their positions, while both advocates and opponents in the legal analysis of drones appeal to western structures of international justice to substantiate their views. I argue that an anticolonial analysis is not only an effective tool for short-circuiting this paradoxical and ultimately stationary operation, but also for illuminating a program of resistance against the perpetuation of colonialist attitudes in the academy as well as the continuing acts of imperialist violence that give occasion to it.

Instead of focusing on questions of moral instrumentalism or idiosyncratic quandaries in the application of positive law, I situate drones into the history of modern geopolitical relations and argue that the technology, along with its concomitant normalization under international law, are best understood as experimental tools for the maintenance of contemporary western neocolonial empire, and thus should be conceptualized always from that perspective. I further argue that, insofar as the use of drones is justified by or accommodated into the present regime of international law as embodied in the United Nations, this should call into further question the so-called pragmatic and decolonial turn of international jurisprudence following the European world

wars.[16] To this end, I ultimately suggest that philosophers and legal theorists grappling with drones recognize the inherently experimental nature of military technologies, question the uncritical idealism at the back of international humanitarian law meant to keep such experiments from going awry, and, finally, reckon with the role of experimental military technologies play in the adaptation and maintenance of neocolonial power relations. In light of these recommendations, I propose an alternative analysis that I call *anticolonial legal realism*. Anticolonial legal realism combines the analytical and political resources of anticolonial critique with the legal philosophy of realism to suggest a way forward in light of America's escalating drone violence and the manifest inability of mainstream western philosophy and legal theory to adequately confront it. At once historical, ideological, and practicable, anticolonial legal realism takes on the problem of drones in light of (rather than in spite of) the colonial history and contemporary power relations that govern their development and use, while accepting the realities of an international legal system that emerged from the ashes of worldwide imperial conflagration only to ensure the continuation of these power relations under the guise of global progress.

Literature review

The academic literature on drones, at least within the humanities, can be roughly divided into three areas: applied ethics, philosophy and technology, and legal theory. These groups find their common ground not just in the shared topic of drone technology, but more significantly within the material fulcrum of those subjected to their use like the Bibi family in Pakistan.

[16] I have chosen not to use the common styling of "World War X" because this term perpetuates the ideology that the world is reducible to Europe—that is, that what happens to Europe happens to the world by logical rather than colonial extension. Instead, I will render this term in the possessive, e.g. "Europe's second world war," to explicitly attribute the cause to European civilization.

Among the first group, participants apply established systems of universal morality to the act of drone assassination and assess whether it coheres with the moral standards they adopt. The chief exemplar of this approach is Bradley J. Strawser, a utilitarian ethicist at the Naval Postgraduate School in Monterey, California. Strawser, whose publications include *Who Should Die: The Ethics of Killing in War* and "Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles," prefers abstraction as a means of analyzing the concrete violence of drone warfare, arguing that "there are good reasons to scrutinize drones distinct from their actual employment."[17] And in true utilitarian style, Strawser cynically (if predictably) concludes through this abstract process that drones are "by far the least bad option in terms of unintended of civilians harmed or killed."[18] While some utilitarians may object that their compatriot fails to consider a just distribution of harms or the importance of respecting human rights for the general happiness, for example, thereby coming to an opposite conclusion on drones, the significance of Strawser's argument lies not in how faithful he is to the dictates of utilitarianism (even though it will turn out that he is rather unfaithful to them). Instead it lies in the degree to which his analysis exhibits the historical strategy of western intellectuals to exploit the utilitarian moral framework to justify self-righteous experimentation on colonized subjects with the technologies of imperial warfare. Utilitarian counterarguments to Strawser are few and far between, perhaps owing to the realization that they are impotent insofar as they appeal to the same framework that has intentionally justified colonial violence throughout the modern era.

On another end of this spectrum is Medea Benjamin, whose focus on human rights leads her to take a deontological approach to the ethics of drones. "Whether machines can ever be

[17] Strawser, *Opposing Perspectives*, 7.
[18] Strawser, 13.

'more humane' than the humans that program them is a dubious notion," she argues.[19] At first blush it would seem that a deontological analysis can effectively circumvent the entanglements of utilitarian obfuscation by establishing moral standards that operate irrespective of the counterfactual mathematics involved in calculating "the least bad option". Deontological objections to drone warfare primarily rest on the notion that there are standards of human dignity that must not be violated regardless of a potential boon to the general happiness. This perspective makes its way into international humanitarian law under the principle that legal protections "should aim to ensure to [protected] persons an existence worthy of human beings, in spite of—and with full recognition of—the harsh circumstances of their present situation."[20] Nevertheless, these universal standards of human dignity are themselves a product of the European enlightenment and have been enshrined in international law through a historical process of colonial gamesmanship. Deontological critics like Benjamin, therefore, nevertheless appeal to universal moral concepts that lie at the foundation of European claims to civilizational supremacy, and the failure of such an approach is evident in the correlative claims of legal legitimacy offered by proponents of drone warfare according to these same standards. Finally, because drone warfare implicates various topic areas within the humanities, as noted above, many texts address applied ethics within a larger synthesis of these subjects. This includes *Drone Warfare* by John Kaag and Sarah Kreps and *The Ethics of Targeted Killing* by Kenneth Himes, both of which include chapters on the applied ethics of drones in addition to their other considerations. Overall, the applied ethics approach is typified by the presumption of universal moral standards and their application to drone killing. This dissertation will argue that any application of ethics to drone warfare must account for the historical emergence and extension

[19] Benjamin, *Drone Warfare*, 164.
[20] Kalshoven and Zegveld, *Constraints*, 48.

into present society of the standards in force, which, in the case of drones and America, is steeped the values of coloniality.

The question of philosophy and technology that is especially pertinent to this dissertation is whether it makes any difference to conceive of technology as a social experiment. This philosophical approach to technology originated in the late 1980s from sociologists Wolfgang Krohn and Peter Weingart, who analyzed nuclear technology in particular and concluded that "technical innovation and social and political implementation…become identical."[21] My entry into this discourse comes on the heels of a more contemporary debate between Ibo van de Poel, who argues that treating new technologies as experiments "enables us to recognize the radical uncertainty and ignorance that surrounds [them]," and Martin B. Peterson, who objects that "it is a mistake to think that it is easier to adjudicate whether a social experiment is ethically permissible than it is to adjudicate whether a new technology is ethically acceptable."[22] In the course of making his argument, Peterson turns to the advent of nuclear weapons and the moral justifications for their use, thereby introducing military technologies into the discussion. Accordingly, I will also rely on texts that address the history of experimental military technologies including Richard Price's *The Chemical Weapons Taboo*, in which he argues that their normalization occurs by way of a rhetorical system that makes "unlimited technological innovation appear at once natural, inevitable, and beneficent," as well as *Hiroshima and Nagasaki: The physical, medical, and social effects of the atomic bombings*, which outlines the research projects undertaken by scientists in the wake of nuclear annihilation.[23] It will turn out that not only colonized territories but also the legal and ethical discourse surrounding novel

[21] Krohn and Weingart, "Nuclear Power As," 32.
[22] van de Poel, "Nuclear Energy As," 354, and Peterson, "New Technologies Should Not," 349.
[23] Price, *The Chemical Weapons Taboo*, 40.

military technologies function as a laboratory that innovates material and ideological instruments for the conservation of colonial power.

Rather than apply established western moral systems, literature addressing drones and the philosophy of technology raises similarly abstract issues like the manifestation of 'technological rationality', the moral hazard of drones, and the aesthetic and moral implications of introducing non-human robots into the battlefield. Kaag and Kreps emerge as the best example of this kind of discourse, interrogating "the way that our understanding of technology and its expedience might skew our normative judgments about the moral and legal dimensions of combat drones."[24] Benjamin also considers questions of the philosophy of technology in her chapter, "Pilots Without a Cockpit," in which she quotes a US military official testifying that "man has never experienced this before—watching someone from above for so long without them knowing it, almost in a God-like way."[25] One can add to this group abstract issues more germane to the study of war, such as asymmetry and remote killing, which are treated extensively by Plaw and Himes, among others. Overall, the philosophy and technology approach is typified by an attempt to abstract from the specific material and historical conditions of a particular technology. This dissertation will show that, by applying the paradigmatic method of abstraction from the material conditions out of which the technology in question emerged, the considerations of philosophy and technology on the issue of drones ultimately fall flat exactly where they mean to end up: that regardless of any conclusions brought to bear by this approach, those conclusions are by their very nature unequipped to deal with the material conditions to which they ostensibly apply.

The explicit scope of the United States' "Global War on Terror" inevitably evokes questions of international law and justice. Due to the breadth of drones as a topic, Benjamin and

[24] Kaag and Kreps, *Drone Warfare*, 205-6.
[25] Benjamin, *Drone Warfare*, 90.

Himes both give considerable attention to this approach, while Kaag and Kreps devote a chapter to outlining the particular legal concepts implicated by drone warfare, such as a purported right to 'anticipatory self-defense' and considerations of distinction and proportionality. Additionally there are texts on drones devoted especially to their legal ramifications, such as *The Drone Debate* by Plaw, Fricker, and Colon, and a report by the Stanford and NYU law schools titled "Living Under Drones," which documents the material impact of drone strikes on civilian populations and assesses their permissibility under international law. Considerations of international law (and his inattentiveness to them) are also raised by Strawser's adversaries in their anthology, *Opposing Perspectives on the Drone Debate*. International jurisprudence is obviously a much larger topic of discourse than drones in particular, and so I consult appropriate primary legal documents at the foundation of contemporary international order, as well as *Constraints on the waging of war*, a leading manual by Frits Kalshoven and Liesbeth Zegveld. Overall, the analysis of drones from a perspective of international law is typified by a recourse to western values and concepts of justice that are falsely afforded a status of impartiality.

My intervention

This dissertation is a product of my extensive search for new ways to analyze the drone debate. I identify analytical resources both from within the philosophical canon and from marginal works that, when adapted to the dilemma of drones in particular, supply different methodologies and portend different results than the standard philosophical approach to drones. The contemporary drone debate operates within a paradigm of problems, methods, and standards of solution that are, much like drones themselves, the products of centuries of colonialist idea-making. It is little wonder, then, that this colonialist paradigm is incapable of producing non-

colonialist results. By refusing to examine methods and standards from outside the colonialist paradigm, participants in the drone debate are merely solving puzzles rather than doing philosophy. There are even compelling resources from within the paradigm of standard western philosophy that have yet to be applied to the drone debate because they call into question methods that philosophers hold dear. While on the one hand a utilitarian analysis of drones rehearses classic rhetorical maneuvers employed by the United States to justify any innovation in the technological repertoire of its imperial dominion, applying a social experiment framework to drones, on the other hand, wards against the jingoistic obfuscation introduced by imperial utilitarians and instead produces an analysis that is at the same time more definitive and more consistent with established norms of international humanitarian law. Despite these more promising results, however, I will ultimately urge scholars to move their work away from the standard approaches within the dominant paradigm and toward a new framework of analysis that can overcome the limits of colonialist procedure.

The introduction of anticolonialism and legal realism into this discourse, then, is my most significant attempt at synthesis in the dissertation and my most radical departure from the standard drone debate. For this I lean not just on seminal texts such as Aimé Césaire's *Discourse On Colonialism* on the one hand, and Derrick Bell's "Racial Realism" on the other. I rely to an even greater extent on Anthony Anghie's extraordinary work, *Imperialism, Sovereignty, and the Making of International Law*, in which he traces legal notions of "sovereignty" and the "family of nations" from the early modern era, to demonstrate that these concepts were borne of the colonial encounter and fabricated by Western jurists for the expressed purpose of providing first moral and then legal justification for the violence of the colonist (and these concepts are almost universally invoked by opponents and proponents of drone warfare). Anghie's approach has

been taken up in more recent literature including articles by Jörn Kämmerer, Fabian Klose, and Herald Kleinschmidt in *Journal of the History of International Law*. Kleinschmidt continues Anghie's work on the "family of nations", arguing that "international law became the house law of the 'Family of Nations', which extended across the globe while denying access to it to many states."[26]

Klose and Kämmerer, meanwhile, zero in on a phenomenon in the development of international law that will be central to my argument vis-à-vis drones. Looking at humanitarian law in particular, Klose illuminates "the paradoxical situation that anticolonial movements as well as colonial powers instrumentalized international human rights documents…for achieving their political goals."[27] Kämmerer takes an even broader view, likewise concluding that "a paradox is inherent in decolonisation because the price of independence consisted in non-European systems being ultimately and definitely superseded by public international law shaped almost exclusively by European powers."[28] The discourse over drones exhibits precisely the paradox over humanitarian law that Klose observes, while anticolonial legal realism will chart a path forward in light of the historical paradox that Kämmerer describes. Finally, the work of W.E.B. Du Bois, particularly his account of the formation of the United Nations in *Color and Democracy*, substantially compliments these legal critiques with an analysis of the instauration of the 20th-century "family of nations" from the view of the colonized, and his foresight on how the defects of the new world order would further cement colonial power rather than disperse it. Altogether these texts call into question the so-called "pragmatic" or "decolonial" turn in

[26] Kleinschmidt, "The Family of Nations," 278.
[27] Klose, "Human Rights," 317.
[28] Kämmerer, "Imprints of Colonialism," 239.

international governance following the European world wars that now underpins the entire legal discourse on drone technology.

Because I am committed to a historical and material analysis, rather than conjuring hypothetical situations or introducing concepts purely in abstract to make my argument, I consult texts that provide an essential historical overview of both the contemporary conditions that give rise to America's military weapons experimentation as well as deep investigations into its aftermath. Peterson's ahistorical argument regarding U.S. President Harry Truman's decision to drop nuclear weapons on Japan demands a properly historicized response using accounts like Oliver Stone's *The Untold History of the United States* and Laura Hein and Mark Selden's haunting collection, *Living With The Bomb*. Stone traces the utilitarian deception that Truman employs to buttress a humanitarian argument for his choice as the horrifying effects of Japan's nuclear destruction became more widely understood. Contributors to Hein and Selden's anthology, meanwhile, such as celebrated Japanese historian Sadao Asada, analyze the widening difference in attitude toward the bombing among citizens of Japan and the United States, which illustrates the jingoistic character of Truman's now widely accepted rhetoric. Regarding drones, on the other hand, Jeremy Scahill's *Dirty Wars* is an indispensable and exhaustive account of the rise of special operations in America's GWoT and their increasing reliance on drone technology. Scahill and other writers at the online publication The Intercept followed *Dirty Wars* with another volume, *The Assassination Complex*, providing even greater detail on the United States' pivot toward drone assassination as the primary tool of its imperial policing. The Standford/NYU report "Living Under Drones" also provides rare and visceral insight into the material effects of America's drone strikes through first-hand accounts on the ground.

Outline of the dissertation

Paper one, "Military Technologies and the Social Experiment Analysis in the Age of Drones," begins the process of reframing the discourse over drones by exposing fallacies in the most widespread and counterproductive analytical tool applied to their use: utilitarianism. Responding to a debate in *Ethics, Policy & Environment* over the efficacy of employing a social experiment analysis to assess the moral permissibility of new technologies, I illustrate how Martin B. Peterson's utilitarian counterargument reenacts a centuries-old tactic in American imperial politics that exploits utilitarianism's inherent vulnerability to dubious counterfactuals and false dilemmas to justify the deployment of experimental weapons technology on humanitarian grounds—in Peterson's case, U.S. President Harry Truman's decision to use nuclear weapons against Japan at the close of Europe's second world war to "save the lives of millions of innocent people."[29] Drawing on the evolution of Truman's own testimony, as well as historical analyses of American imperial rhetoric, I show that Peterson relies on an argumentative structure that is frequently employed in the service of "the enhancement of national power through technological innovation and the legitimation of advanced technology as the currency of domination," as historian Richard Price writes.[30] So common is this strategy that it has already matured within contemporary debates over drone technology, as exemplified in the arguments of Bradley J. Strawser, who concludes that proponents of drone warfare "rightly praise a weapon that has the ability to be far more accurate than alternatives, thereby saving innocent lives."[31]

[29] Peterson, "New Technologies," 350.
[30] Price, *The Chemical Weapons Taboo*, 42.
[31] Strawser, *Opposing Perspectives*, 6.

I argue that the social experiment analysis, on the other hand, is not only inherently resistant to utilitarian obfuscation, and as a result produces more fruitful conclusions than its counterpart, but also that it is founded on moral precepts that are consistent with the bases of international humanitarian law (IHL), which is the moral and legal framework appropriately applied to drones and other military technologies under the present regime. By highlighting the experimental use of new military technologies and analyzing the Belmont Report alongside foundational documents in IHL, I illustrate that the social experiment analysis is already well-suited for application to the existing political and legal frameworks put in place to regulate the development and use of novel weapons. Simply relying on established principles of international humanitarian law, however, will be insufficient because, as I will argue in paper three, IHL was developed within the same neocolonial geopolitical conditions that persist today and that give rise to the deployment of experimental technologies such as drones by imperial powers like the United States.

In paper two, "Debating Drones Within a Colonialist Paradigm," I use Thomas Kuhn's well-known account of scientific paradigms as an analytical model for understanding the drone debate and the resulting impasse between competing interpretations of western legal and philosophical concepts. Western colonial ideology supplies the problem-field, methods, and standards of solution for academic debates over technology and its destructive implementation against colonized peoples, and as paradigm this ideology does not allow for critical analysis of its component rules and instead requires scholars to premise those rules so that they can get to work solving puzzles. While Kuhn was careful to avoid establishing normative criteria for preferring one paradigm over the other, he did suggest a pragmatic rationale for entertaining the possibility of a paradigm shift. "Scientific revolutions," he argues, "are inaugurated by a

growing sense…that an existing paradigm has ceased to function adequately in the exploration of an aspect of nature to which that paradigm itself had previously led the way."[32] Colonialist ideology has led the way not only to the development of weaponized drone technology but also the standards according to which this technology is assessed by the western academy, and so my aim is to inject this sense of inadequacy into the current debate over drones with the hope that its participants will consider the potential value of adopting an alternative paradigm. Because "there is no standard higher than the assent of the relevant community,"[33] it is to the community of scholars currently debating drones within a colonialist paradigm that I must address my critique.

The first part of paper two focuses on the philosophical debate over drones. While this discourse has produced thought-provoking analyses from scholars like Kaag and Kreps, the philosophical debate nevertheless relies on the paradigmatic requirement to universalize western values in an effort to understand geopolitical phenomena that defy western schemas. Just as utilitarian proponents of drones like Strawser extol the analytical effectiveness of abstraction from material conditions, skeptics of the permissibility of drones employ the same paradigmatic method of abstraction that fails to take into account their historical and ideologically peculiar origins. Kaag and Kreps provide an interesting analysis of the technical rationality and means/end manipulation that accompanies moral arguments licensing drone warfare, for example, as well as the moral hazard presented by the technology; however, these scholars are mistaken to search for and locate such problems simply in the technology itself, as though it is only accidental that the United States is the leading innovator of drones and deploys them to such a startling and violent extent. For the hazard of drones and the threat they pose to global

[32] Kuhn, *Structure*, 92.
[33] Kuhn, *Structure*, 94.

humanity is far more extensive, yet more comprehensible, I will argue, when properly historicized into the context of international relations and the legacy of European colonial imperialism.

After highlighting a promising departure from the dominant philosophical paradigm exhibited in the anticolonial critique of Jamie Allinson, the second part of the paper turns to the parallel debate over the legal permissibility of drone warfare. Notwithstanding the benefit of jettisoning dubious utilitarian arguments in favor of a social experiment analysis, outlined in paper one, here I show that legal debates over drones have ended in a stalemate after both sides of the dispute positively invoke the same western legal standards in support of contradictory conclusions. While the utilitarian arguments treated in paper one overtly justify drones on the basis of historically imperialist values, contemporary legal arguments accomplish this same goal more covertly by employing tenets of western international law, such as proportionality and distinction, that are widely (but mistakenly) believed to represent a departure from unchecked imperial destruction witnessed during the European world wars. On the contrary, much as the technology itself is experimental, these arguments are the product of legal experimentation conducted in colonial contexts such as Israel's occupation and suppression of Palestine.[34] By leaning on the historically western values and politics embodied in the United Nations, participants in this debate are incapable of seeing past the colonialist paradigm that entraps them. I will describe the colonial origins of international law in much greater detail in the following paper.

Paper three, "Toward an Anticolonial Legal Realism," further broadens the focus of the dissertation by recounting the history of international law through successive eras of naturalism,

[34] This legal genealogy is outlined in Kenneth Himes, *Drones and the Ethics of Targeted Killing* (Lanham, MD: Rowman & Littlefield, 2016).

positivism, and finally the pragmatism employed in the so-called "decolonial turn." Using the work of scholars like W.E.B. Du Bois and Anthony Anghie, among others, I focus on the ways international institutions reinscribe colonial relations between European and non-European societies, whereby non-European societies are subjected to law "shaped almost exclusively by European powers," as Kämmerer argues.[35] I will then synthesize the preceding discussions by returning to the problem of drones in particular, illustrating how drone technology and its legal justifications reflect the history of Western imperial ideology and illuminate the latent neocolonialism of contemporary international relations. As observed in paper two, the legal debate over drones reflects the general history observed by Klose that "made universal rights a diplomatic pawn in international debates."[36] Because the framework of international law and the values it embodies are themselves products of western colonialism, a legal and philosophical analysis that accepts colonialism as a fact of the world—rather than one that attempts to abstract beyond this reality—is required to move past the stalemates that currently plague academic discourse over drones and other experimental military technologies.

To that end, paper three concludes by outlining an alternative position of *anticolonial legal realism*, which could serve to reorient the debate over drones from an amorphous complex of philosophical and legal quandaries to a more unified program of anticolonial critique. Taking inspiration from Derrick Bell's framework of racial realism, "by viewing the law…as [an] instrument for preserving the status quo and only periodically and unpredictably serving as a refuge of oppressed people,"[37] anticolonial legal realism overcomes the limitations of pragmatism and universal morality as applied to the legal and moral dilemmas of western

[35] Kämmerer, "Imprints of Colonialism," 239.
[36] Klose, "Human rights," 317.
[37] Bell, "Racial Realism," 364.

imperial experimentation. In so doing, I hope to demonstrate that the brutal killing of Mamana Bibi and thousands of other human beings across Asia and Africa are not simply instances of lawful killing or the inevitable collateral damage of a progressive war for freedom, nor examples of the proper or improper use of morally neutral technology, but rather that they are just the latest casualties in the centuries-old confrontation between the imperial west and its colonial subjects, enacted in the modern era through sophisticated technologies of material death and neocolonial international law. Insofar as drones are emerging as the preferred tool of contemporary colonialist violence, establishing this anticolonial groundwork should enable the development of a more responsive political program for resisting colonial power into the 21st century.

2. PROLOGUE: A BRIEF HISTORY OF DRONES

> The drones were terrifying. From the ground, it is impossible to determine who or what they are tracking as they circle overhead. The buzz of a distant propeller is a constant reminder of imminent death. – David Rohde, Reuters (2012)[38]

To the casual observer drones appear to be radically new machines with largely unknown implications in the realm of human warfare, and this characterization is not without some basis. Drones are a cutting-edge military technology that continuously undergoes rapid modification and advancement not unlike most computerized devices in twenty-first century society. They are also dramatically cheaper to research and produce than conventional airborne attack vehicles.[39] Most significant to this perception, however, is the fact that the United States has singled out the drone as its primary weapon in the GWoT, after President Barack Obama authorized at least ten times as many drone strikes as his predecessor over a multitude of foreign lands,[40] and President Donald Trump then tripling Obama's numbers.[41] Yet in fact drone technology dates earlier than this common perception apprehends.

Drones trace their origin to the "aerial torpedoes" developed during Europe's first world war but never deployed in combat. At the coming of Europe's second world war, however, drones were in widespread use by the U.S. Army, Air Force, and Navy as practice targets for antiaircraft weaponry, for surveillance over enemy territory, and in some cases even weaponized with explosives. Not surprisingly, drones played a larger role in America's hot confrontation with communism in Vietnam, with the Lightning Bug version flying well over three thousand

[38] Rohde, "The Drone Wars," Reuters.
[39] Plaw et al, *The Drone Debate*, 18. While an F-22 Raptor costs ~$137 million and an F-35 Joint Strike Fighter costs ~$110 million, a Predator drone, e.g., costs between $1.5 and $4.5 million.
[40] Zenko, "Obama's Embrace," The New York Times.
[41] Purkiss, "Trump's First Year," The Bureau of Investigative Journalism.

missions during the war. The Israeli-developed Pioneer drone conducted constant surveillance over Iraq throughout America's first Gulf War, and afterward was joined by the Gnat 750 model in the skies over Bosnia, where the contemporary Predator drone also saw its introduction. The U.S. armed its Predator drones immediately after the attack by Al Qaeda on September 11, 2001, and the enhanced model undertook its first kinetic strike in Afghanistan in October of that year.[42] The U.S. military's shift to dependence on the (relatively) more expensive and vastly more capable Reaper drone was formalized in 2010, and it consequently took on "a true hunter-killer role" in the words of Air Force Chief of Staff General T. Michael Moseley.[43] Various devices that fall under the general category of drones, therefore, have been in use by U.S. military and intelligence forces since the mid-twentieth century, which also saw the near total self-destruction of European colonialism as well as the dawn of permanent western institutions that adjudicate international relations and enforce the laws of war.

Nevertheless, the public profile of drones grew significantly due not only to their technical advancement and Obama's preference for their use, but also America's steady and largely secret transition from conventionally overt acts of war to a clandestine model of covert operations conducted by special forces and extrajudicial assassinations far from any established battlefield. While the unique capabilities and role of covert U.S. forces are certainly not novel, in the aftermath of the George W. Bush Administration's drawn-out and catastrophic occupation of Iraq, the incoming President—who had campaigned on a platform of winding down the U.S.'s subsequently less popular military adventurism—found in special ops a potential solution for the dilemma posted by a war-weary public and the antagonism of terrorist groups that experienced an increase in recruitment in the shadow of the extralegal detention center at Guantánamo Bay,

[42] Plaw et al, *The Drone Debate*, 14-25.
[43] Plaw et al, 23.

Cuba, as well as images and tales of grotesque torture at the hands of U.S. personnel at Abu Ghraib and in numerous black site prisons around the world.[44] Sharing a border with Afghanistan, the original battleground for Bush's GWoT, and suspected of being the new residence of America's most wanted adversaries, Pakistan became a principal focus of Obama's national security apparatus.

As in many other cases, however, President Bush and his deputies had laid the groundwork for Obama's Pakistani campaign in the opening years of the GWoT. In his indispensable and painstakingly researched exposé of America's shift to reliance primarily on special ops, *Dirty Wars*, investigative journalist Jeremy Scahill details the processes by which the war on terror was globalized and shrouded in ever-deeper secrecy, as well as the intense jockeying between U.S. military and intelligence institutions for supremacy over this new paradigm. With U.S. intel suggesting that Al Qaeda's leadership had in large part fled to Pakistan, the latter's government found itself confronted with the reality of the world's most powerful military force knocking at its door as the memory of total societal collapse in Iraq festered. This resulted in an often reluctant intercourse between the countries' respective intelligence services that Scahill describes as "a mutually agreed-upon relationship based on mistrust, dishonesty, backstabbing and, in the end, necessity."[45] While the extension of the GWoT into Pakistan was officially grounded in increasingly liberal interpretations of the 2001 Authorization for Use of Military Force (AUMF), which put no temporal or geographical limit

[44] Postel, "Guantánamo Bay's Existence" The Atlantic. In the first issue of Al Qaeda's propaganda magazine *Inspire*, Osama bin Laden called attention to "the crimes at Abu Ghraib and Guantánamo...which shook the conscience of humanity." Additionally, Scahill recounted the testimony of terrorists in a grisly video depicting the decapitation of Nicholas Berg (a U.S. civilian contractor in Iraq), one of whom said "we tell you that the dignity of the Muslim men and women in Abu Ghraib and others is not redeemed except by blood and souls...How can a free Muslim sleep well as he sees Islam slaughtered and its dignity bleeding, and the pictures of shame and the news of the devilish scorn of the people of Islam—men and women—in the prison of Abu Ghraib?" (*Dirty Wars*, p. 163).
[45] Scahill, *Dirty Wars*, 168.

on the scope of the U.S. military response to the September 11th attacks, the growth of the campaign was justified to a much larger extent in opinions and directives authored secretly throughout the government.[46] In particular, a document known as the Al Qaeda Network Execute Order (AQN ExOrd) authorized special operations "anywhere in the world" and, according to Scahill's sources, "named fifteen to twenty such countries, including Pakistan, Syria, Somalia, Yemen, and Saudi Arabia, as well as several other Gulf nations."[47] The 2001 AUMF, the AQN ExOrd, and a host of other secret opinions established "unprecedented latitude" for U.S. special ops, "effectively pre-authorizing lethal operations outside of any stated battlefield."[48] By the time Obama was settled into the White House, both the Central Intelligence Agency (CIA) and the emergent Joint Special Operations Command (JSOC) were operating assassination programs using drones,[49] and these entities derived their targets from in-house kill lists, as well as a third kill list maintained by Obama's National Security Council.[50] Due to the legal, geopolitical, and logistical complexities surrounding operations conducted in Pakistan in particular, Obama insisted on final authority to give the go ahead on strikes; more generally Obama was often directly involved in managing and executing the kill lists, holding a weekly meeting with relevant officials that the latter cynically titled "Terror Tuesdays."[51]

During the first four years of his presidency, Obama steadfastly refused to acknowledge the existence of drone assassinations until finally, once the official denials were met with universal and naked skepticism from the press and non-governmental organizations,[52] in April

[46] "S.J.Res.23" (United States Congress).
[47] Scahill, *Dirty Wars*, 170.
[48] Scahill, 171.
[49] Scahill, "The Assassination Complex," The Intercept.
[50] Scahill, *Dirty Wars*, 351.
[51] Scahill, *Dirty Wars*, 351.
[52] The American Civil Liberties Union submitted a Freedom of Information Act request pertaining to the drone program on January 13th, 2010. For details on the subsequent history of court filings by the ACLU to have the FOIA request met, see "Targeted Killing," ACLU.org.

2012 his counterterrorism adviser John Brennan stated that "in full accordance with the law...the United States government conducts targeted strikes against specific Al Qaeda terrorists, sometimes using remotely piloted aircraft, often referred to publicly as drones."[53] Obama followed up this statement with a letter to Congress specifically acknowledging military drone campaigns in Yemen and Somalia, while similar operations conducted by the CIA, including those in Pakistan, remained an open secret.[54] Nevertheless, the official acknowledgments led to a quickening of the public and academic debate over the implications of this no longer merely alleged shift in the U.S. military paradigm, a debate which can be roughly divided into two subcategories pertaining to whether the strikes are indeed permissible according to international law, and to whether the use of weaponized drone technology is consistent with the West's liberal democratic morality.

By bringing drones into the light of day, non-governmental legal organizations such as the American Civil Liberties Union (ACLU), research groups such as the Bureau of Investigative Journalism (BIJ) and Reprieve, reporters on the ground and in the West, and (belatedly) Washington itself inspired a wide-ranging debate over the legality and morality of drone use. The legal argument over drones is derived from a number of statutes in international law and can be divided into two subgroups: questions pertaining to *jus ad bellum*, or justice in the initiation of war, and those pertaining to *jus in bello*, or justice in the execution of war. One should note at the outset, however, that in the American context the initial justification for secretly using drones in the GWoT was based on domestic legislation, such as the 2001 AUMF, and domestic legal reasoning purportedly contained in classified documents such as the AQN ExOrd: the impetus for America's use of drones has always been, at bottom, American strategic interest.

[53] Miller, "Brennan Speech," The Washington Post.
[54] Entous, "U.S. Acknowledges," The Wall Street Journal.

Nevertheless, when the Obama administration finally acknowledged drone assassinations in the presence of the global community, statements from officials that drones are used "in full accordance with the law" took on an international dimension. Obama explicitly invoked these tenets in his 2013 "drone speech" to the National Defense University, saying "this is a just war—a war waged proportionally, in last resort, and in self-defense."[55] In Obama's estimation, the U.S. drone war adheres to both *jus ad bellum* and *jus in bello* aspects of international law.

The legal restrictions on initiating and waging war reside in the United Nations (UN) Charter and associated international agreements such as the 1949 Geneva Conventions and the 1977 Protocols relating to the protection of victims in international conflicts. Article 2, Principle 4 of the UN Charter states "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state," establishing both the norm of peace and the principle of national sovereignty.[56] On the other hand, the document later states that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations," thereby establishing the countervailing right to self-defense against aggression to which every member nation is entitled.[57] Both of these *jus ad bellum* principles carry the caveat of granting ultimate authority to the UN Security Council, a body comprised of both permanent and rotating member states charged with deciding, within a reasonable timeframe, the permissibility and parameters of international armed conflict.

By stating that the U.S. drone war is one waged "in last resort" and "in self-defense," Obama maintains the legality of the operations under established international law; this

[55] Obama, "National Defense University" (The White House).
[56] "United Nations Charter, Chapter I" (United Nations).
[57] "United Nations Charter, Chapter VII" (United Nations).

conclusion, however, has been met with deep skepticism from jurists and philosophers. The principal concept at issue in these objections is the notion of self-defense. In the historical context of the United Nations, self-defense would conventionally refer to the defense against an attack or invasion undertaken without the blessing of the Security Council by traditional armies representing sovereign nation states. The American GWoT, on the other hand, and especially the use of drones within it, rarely reflects a straightforward war between two countries. Instead, the threat to the U.S. comes from insurgent terrorist groups, sometimes, as in the case with Pakistan, within the confines of an otherwise functional sovereign state that the U.S. may even consider an ally. This relational dynamic is often referred to as 'asymmetrical' or 'irregular' warfare, wherein large nations with conventional armies are confronted by much smaller, non-state actors who can be nomadic or otherwise clandestine and who resort to unconventional tactics.

Another issue at the center of *jus ad bellum* debates over drones is the central concept of state sovereignty. The question of sovereign rights takes on a dynamic character in the context of drones due to the geographical scope of the U.S. campaign and GWoT, which extends beyond Iraq and Afghanistan to Pakistan, Yemen, Syria, and Somalia, as each of these locations admit of subtly or sometimes more significantly different analyses from the perspective of positivism. For example, U.S. deployment of drones in Iraq came after the separate and more explicit 2003 AUMF and is therefore consequent to the original question of America's right to engage in war there, on which drones have no special bearing. Somalia, on the other hand, is a country against which America has no formal declaration of war, while at the same time it has experienced repeated periods of instability over the last three decades and is considered by many to be a "failed" (that is, not sovereign) state.[58] Yemen, for its part, has recently experienced a similar

[58] "Chronology of Somalia's collapse," Reuters.

collapse of its central government—though long after the U.S. began deploying drones there—demonstrating that the question of sovereign rights can fluctuate even during the course of war.[59]

The example of Pakistan, however, is particularly illuminating because it has a strong central government—presumably allied with the U.S.—notwithstanding its difficulty controlling the Federally Administered Tribal Areas (FATA) region against which America has launched hundreds of drone strikes, killing as many as four thousand people according to the BIJ.[60] The Pakistani government has registered complaints against the U.S. with the UN Security Council on a number of occasions, most recently in June of 2016, calling the latest drone strike "an unacceptable and blatant violation of Pakistan's sovereignty and of the UN Charter and international law."[61] Feisal Naqvi, in his response to Bradley Stawser's defense of drones, comes to the same conclusion, writing that "Mr. Strawser's failure to discuss 'legality' is deliberate, because US drone strikes in FATA are a gross violation of the law of nations," citing not only Article 2, Principle 4 of the UN Charter, but also the lack of any formal agreement between these states allowing for the incursions, as well as repeated public condemnations of them by official representatives of Pakistan.[62] Moreover, Naqvi casts doubt on the justification for violating Pakistan's sovereignty based on the principle of self-defense. "The issue of self-defense," he writes, "would only arise if Pakistan itself had shown no interest in attacking militants. However, Pakistan has lost thousands of people, not just civilians but also military personnel, in trying to combat terror."[63]

[59] Al-Haj, "Yemen's Shiite Rebels," Associated Press.
[60] "Get The Data," The Bureau of Investigative Journalism.
[61] "Pakistan Condemns US" (Pakistan Mission to the United Nations).
[62] Strawser, *Opposing Perspectives*, 37-38.
[63] Strawser, 39.

Meanwhile, analyses of the use of drones according to the principles of *jus in bello* set aside the question of whether such actions are legal initiations of war and turn to whether drone strikes violate international laws governing the conduct of combatants during war. The relevant statutes in international law are found in the first 1977 Protocol Additional to the Geneva Conventions, which establishes two principles: distinction and proportionality. The principle of distinction is articulated through the requirement in Article 48 that "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objective and accordingly shall direct their operations only against military objectives."[64] The principle of proportionality, on the other hand, is derived from Article 51, which defines as unlawfully *dis*proportionate,

> an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.[65]

Cases such as the 2013 killing of Mamana Bibi in Ghundi Kala present clear violations of both of these principles: Bibi and her grandchildren were decidedly not enemy combatants, and there was no direct or even indirect military advantage resulting from their needless injuries and death.[66]

Through the work of independent, non-governmental humanitarian efforts such as the Stanford/NYU and Amnesty International studies, it has become clear that these incidents are widespread across all theaters of the U.S. drone war. In addition to the straightforward and presumably accidental failure in distinction that lead to the attack on the Bibis, this case also bears the marks of a practice reportedly employed by the U.S. called a 'double-tap strike',

[64] "Protocol Additional" (United Nations), 25.
[65] "Protocol Additional" (United Nations), 26.
[66] For an account of this tragic incident, see "Introduction," above.

wherein there is a brief pause between volleys to allow surviving targets to become comfortable returning to the open, only to be killed by the follow-up strike. According to Stanford/NYU, "evidence also indicates that such secondary strikes have killed and maimed first responders coming to the rescue of those injured in the first strike," or, in the case of Mamana Bibi, her grandchildren.[67] The protection of medical personnel is among the oldest principles in international humanitarian law, dating to the first Geneva Convention of 1864, which M. P. W. Brouwers calls "a milestone in the history of humanity, offering care for the wounded, and defining medical services as 'neutral' on the battlefield."[68] Finally, the U.S. government has infamously developed and employed the concept of a 'signature strike', by which targets are selected according to criteria that stop short of actually knowing the identity of the person to be killed. According to Scahill, U.S. government officials determined "that 'military aged males' who were part of a large gathering of people in a particular region or had contacts with other suspected militants or terrorists could be considered fair targets for drone strikes."[69] The U.S. government has refused to make the exact criteria public, but it is not hard to imagine how such a standard could result in devastating mistakes in distinction. I now turn to establishing alternative frameworks for analyzing drones that honor this history and reveal new ways of apprehending and confronting their frightening implications.

[67] Cavallaro et al, "Living Under Drones" (Stanford Law School), 74.
[68] Brouwers, *International Criminal Law*, 5.
[69] Scahill, *Dirty Wars*, 249.

3. PAPER ONE: MILITARY TECHNOLOGIES AND THE SOCIAL EXPERIMENT ANALYSIS IN AN AGE OF DRONES

> Mechanical power, not deep human emotion nor creative genius nor ethical concepts of justice, has made Europe ruler of the world. Man for man, the modern world marks no advance over the ancient; but man for gun, hand for electricity, muscle for atomic fission, these show what our culture means and how the machine has conquered and holds modern mankind in thrall. - W.E.B. Du Bois (1947)[70]

Introduction

Should we conceive of emerging technologies as social experiments?[71] Ibo van de Poel and Martin B. Peterson have debated the merits of this analysis in the pages of *Ethics, Policy & Environment* since 2011, when the latter introduced his seminal argument.[72] At issue is whether, as van de Poel claims, applying a research ethics framework to our assessments of emerging technologies will clarify and advance our moral reasoning about them or, as Peterson contends, introducing this analysis only serves to further complicate an already intractable subject of applied ethics. Nuclear technology is singled out by van de Poel at the outset and, as if it were inevitable, in the course of the debate our attention is drawn to a singularly provocative example that Peterson hopes will clinch his objection: U.S. President Harry Truman's decision to drop two atomic bombs on Hiroshima and Nagasaki in August of 1945. The choice facing Truman, Peterson argues, obviously had nothing to do with nuclear technology as a social experiment and everything to do with weighing the costs of war, so van de Poel's proposal would not have been of any use to him. While this technology may be seen as an unacceptable social experiment, one

[70] Du Bois, *The World and Africa*, 95.
[71] A shortened version of this paper was accepted for publication in *Ethics, Policy & Environment* on May 9th, 2019.
[72] van de Poel's articles appear in *Ethics, Policy & Environment 14*(3) and *16*(3) and Peterson's in *16*(3) and *20*(1), respectively, between 2011-2017.

could nevertheless point to a strong example of its justified use in a particular historical moment and, Peterson concludes, in such a case the social experiment analysis does not produce a definitive answer to the original, "traditional" question: is this a morally acceptable technology?

Van de Poel counters that he did not intend to replace the "traditional" question about technologies with the social experiment analysis, but instead to reconfigure the terms of our debates over them. Peterson dubs this "the rhetorical interpretation" and finds it to be "clearly irrelevant" because "it does not help to make any claim about how people participating in some discussion would react to a certain maneuver."[73] By invoking Truman's decision, however, Peterson ultimately demonstrates why the rhetorical dimension of our debates over certain technologies is supremely relevant, because his own utilitarian argument is dependent on an oft-mentioned yet fallacious counterfactual known to history as "the Truman orthodoxy." Peterson thereby injects seventy years of American nationalist propaganda into an otherwise benign philosophical discussion with precisely the hope that participants will react in such a way as to be persuaded to his side. As I will demonstrate below, Peterson's move is not at all foreign to debates over America's military legacy or its contemporary policies and, as van de Poel suspects, the framework for treating emerging technologies as social experiments is especially well-equipped to neutralize the obfuscating effects of nationalism in our moral assessment of emerging military weapons. While one could challenge Peterson's employment of utilitarianism according to its traditional analytic definition, my analysis will reveal that his defense of allegedly humanitarian killing machines is nevertheless consistent with a *historical* definition of utilitarianism that accounts for its singular role in sanctioning continuous development and use of imperial weapons technology.

[73] Peterson, "What is the Point?," 83.

My argument will proceed in two parts: first, I will review and reassess the Peterson/van de Poel debate in light of its rhetorical dimension and the Truman orthodoxy. Peterson's utilitarian objection to van de Poel will no longer hold water when corrected for its ahistoricism, the elimination of which illustrates the inherent strength of van de Poel's proposal. In the second part, I will explore what fortifies the social experiment analysis against this style of objection, and reinforce my findings by highlighting the commonality between Peterson's approach on the one hand, and arguments put forward by advocates of the development and use of combat drones on the other, demonstrating over and again the particular value of van de Poel's proposal in the context of military weapons technology.

Part I

In his initial target article, van de Poel begins by observing that, as the 2011 disaster at the Fukushima Daiichi plant in Japan demonstrated, the deployment of nuclear technology takes on the character of an ongoing experiment due to the persistent unpredictability of its failure modes and subsequent risks. The traditional approach to assessing the moral status of this technology, he argues, "is based on the assumption that we can reliably express the hazards of nuclear energy in terms of risks. For at least some nuclear hazards, this assumption is hard to maintain."[74] The disaster at Fukushima serves as a painful reminder that it is "impossible to test whether a nuclear reactor design is resistant to earthquakes or tsunamis in the laboratory,"[75] for example, and so the technology must be deployed and such a disaster must occur (with all of its concomitant damage to life and property) before we can collect reliable data on which future risk assessments can be based. Van de Poel therefore concludes that "the employment of nuclear

[74] Van de Poel, "Nuclear Energy," 286.
[75] Van de Poel, 286.

energy technology retains an experimental nature even after its implementation in society. It is a social experiment."[76] By redirecting our focus onto the experimental nature of nuclear technology, van de Poel argues that the social experiment analysis "shifts the discussion away from a debate about whether nuclear energy technology as such is acceptable, towards a debate about the conditions under which experiments with nuclear energy technology are or might be acceptable."[77] It is on this point that Peterson thinks he can drive a wedge into van de Poel's reasoning; for if the question is not whether it is acceptable to expose the public to risks posed by an experimental technology on an ongoing basis, but rather whether it is acceptable to use a certain technology for a particular end at a particular point in time, van de Poel's approach would seem to lose its traction. In other words, one can still conclude that using a given technology is permissible, even if it its use amounts to an impermissible social experiment. And it just so happens that Peterson believes he has the perfect counterexample: Truman and The Bomb.

Peterson first invokes the Truman case in his commentary on van de Poel's target article. "In 1945," he writes,

> the USA was at war with Japan and Truman did what he had good reason to think would be the best way to stop the war, which might have saved the lives of millions of innocent people. To think of the decision to use nuclear weapons against Japan from a research ethical point of view would not have been of any help for Truman.[78]

Peterson doubles-down on the Truman example in a later follow-up, with modification: "a strong case can be made," he then writes, "that the introduction and development of better and more powerful nuclear weapons was ethically acceptable, because it helped to prevent a new war between the U.S. and the USSR."[79] In both instances Peterson relies on a counterfactual

[76] Van de Peol, 287.
[77] Van de Poel, 288.
[78] Peterson, "New Technologies," 350.
[79] Peterson, "What is the Point?," 81.

utilitarian calculation to ground his belief that not only did Truman have "good reason to think" but also that, more generally, "a strong case can be made" in favor of the world's first and only offensive use of nuclear weapons and their further development by the United States.

The moral weight of *millions* of people is essential to Peterson's utilitarian contention that there is "good reason to think" Truman made the right decision and his subsequent problematic regarding van de Poel's support for the social experiment analysis. Importantly, Peterson agrees with van de Poel's argument that the social experiment question can be answered in the case of nuclear weapons: he calls both their use and further development "a paradigmatic example of an impermissible social experiment."[80] The bombing produced unprecedented human suffering for those who were not turned "to bundles of smoking black char in a fraction of a second as their internal organs boiled away."[81] For passersby up to two kilometers from the epicenter, "exposed skin was burned, inflamed, and desquamated; and in many people skin became loosened and dropped down in flaps."[82] The many more affected by radiation illness experienced nausea, vomiting, polydipsia, anorexia, general malaise, fever, and diarrhea before succumbing.[83] Unmoved, Peterson exploits the prospect of *millions* dead to divert readers' conscience onto his hypothetical utilitarian claim that Truman's decision was righteous irrespective of the social experiment analysis, so that he may thereby determine the introduction of that analysis to be of little assistance in assessing the moral status of the technology itself.

Peterson's rationale is the product of a nationalist doctrine three generations in the making. In a 1997 volume commemorating the 50th anniversary of the bombings, Sadao Asada

[80] Peterson, 81.
[81] Quoted in Hasegawa, *Racing the Enemy*, 179-80.
[82] "Hiroshima and Nagasaki" (The Committee for the Compilation of Materials On Damage Caused by the Atomic Bombs in Hiroshima and Nagasaki), 121.
[83] "Hiroshima and Nagasaki," 130.

refers to the kind of appeal Peterson makes here as "the Truman orthodoxy." Despite becoming "the standard line for American presidents from Truman to Bill Clinton,"[84] its articulation developed in a way that casts serious doubt onto Peterson's indispensable premise. In a report from the Potsdam Conference immediately after the attack, Truman said of the bomb, "we have used it...in order to save the lives of thousands and thousands of young Americans."[85] In a speech before the Gridiron Club later that year, however, he began to inflate the figure, stating that "a quarter of a million of the flower of our young manhood were worth a couple of Japanese cities."[86] Truman's inflationary rhetoric continued into the 1950s: he wrote in his 1955 memoir that "General Marshall told me that it might cost half a million American lives to force the enemy's surrender on its home grounds,"[87] and finally told students at Columbia University in April 1959 that "the dropping of the bomb stopped the war, saved millions of lives,"[88] for the first time presumably including Japanese people within the scope of moral concern. Asada cites Presidents Reagan and H.W. Bush repeating the "millions" figure, while President Clinton was similarly unwilling to diverge from this now-entrenched orthodoxy when pressured on the occasion of its 50th anniversary.[89]

For Asada, the growth and staying power of the Truman orthodoxy accounts for asymmetry in opinions regarding the bomb between American and Japanese people over time. Just after Japan's surrender, the US Strategic Bombing Survey found that only 12% of Japanese people resented the use of the bomb against them. But as Asada notes, "many respondents refrained from disclosing their feelings for fear of offending the Americans" and "the press

[84] Hein and Seldon, *Living with the Bomb*, 184.
[85] Truman, "Radio Report" (The American Presidency Project).
[86] Truman, "Gridiron Dinner Speech" (National Archives).
[87] Truman, *Memoirs*, 417.
[88] Truman, *Truman Speaks*, 67.
[89] Hein and Seldon, *Living with the Bomb*, 184.

code...severely restricted information about the bomb and the devastation it wrought."[90] As facts about the horror of nuclear annihilation became more widely known, the portion of those expressing resentment in Japan began to grow to 38% by 1970 and continued to climb to 44% in 1985 and 50% in 1991,[91] until finally a survey conducted in 2015 recorded 79% of Japanese respondents expressing disapproval.[92] Meanwhile, in the United States a full 85% of those polled supported Truman's decision immediately after the bombing,[93] with 23% going so far as to agree that "we should have quickly used many more of the bombs before Japan had a chance to surrender."[94] A 1965 survey found 70% approval among Americans, followed by 55% in 1994, with the same Pew survey finding 56% in 2015.[95] Although these studies have registered downward movement in American approval of Truman's decision, researchers attribute that to the country's shifting demographics: "Seven-in-ten (70%) Americans 65 years of age and older say the use of atomic weapons was justified," they report, "but only 47% of 18- to 29-year-olds agree," while "whites (65%) more than non-whites (40%), including Hispanics, say dropping the atomic bombs was [justified]."[96] Older white Americans, in other words, have hardly changed their view.

The Truman orthodoxy became gospel upon the 50th anniversary of the bombings. Michael Sherry reports in the same volume that plans to commemorate the event with an exhibit of the *Enola Gay* at the National Air and Space Museum and a special edition "mushroom cloud" stamp issued by the United States Postal Service—featuring the caption "Atomic bombs hasten war's end"—generated controversy and debate over the legacy of Truman's choice. Although

[90] Hein and Seldon, 174.
[91] Hein and Seldon, 179.
[92] Bell et al, "Americans, Japanese" (Pew Research Center), 5.
[93] Moore, "Majority Supports," Gallup.
[94] Hein and Seldon, *Living with the Bomb*, 177.
[95] See note 92.
[96] Bell et al, "Americans, Japanese" (Pew Research Center), 6.

contrary opinion regarding the wisdom of the bombings had been tolerated since 1945, "in 1994," Sherry argues, "orthodox patriots all but obliterated such reservations, as if embarrassed by them."[97] Those in favor of venerating rather than atoning for the event began to characterize references to historical debate over the efficacy of the bomb as revisionism: the *New York Times*, for example, described the controversy as one occurring between "revisionist historians" and "veterans groups protecting their heritage."[98] As a result, the Truman orthodoxy was transformed from just one (questionable) view in a complex historical debate into a point of ubiquitous and unquestionable dogma on which the "heritage" of America's war veterans depends. Far from offering a philosophically probative counterpoint, Peterson's claim that Truman "had good reason to think" the bombing would save "the lives of millions of innocent people" merely rehearses a nationalist doctrine so commonplace that it fits on a postage stamp.

In the most recent iteration of his argument, Peterson modifies his example to accommodate van de Poel's complaint that the Truman case does not implicate the moral status of the technology as such, but rather focuses more narrowly on whether it was permissible to use the technology only in that historically discrete moment. Nonplussed by this rebuttal, Peterson shifts his focus to the ensuing Cold War arms race, arguing again that "a strong case can be made that the introduction and development of better and more powerful nuclear weapons was ethically acceptable, because it helped to prevent a new war between the U.S. and USSR."[99] Along with the fact that this new construction preserves his argument's dependence on counterfactual utilitarianism, it belies contemporaries' worries about precisely this outcome in the summer of 1945. "For many officials," Sherry notes, "the bomb's future implications had

[97] Hein and Seldon, *Living with the Bomb*, 138.
[98] Kifner, "Hiroshima: A Controversy," The New York Times.
[99] Peterson, "What is the Point?," 81.

consumed more attention that summer than its consequences for the war against Japan."[100] "Robert Oppenheimer," he continues, "hoped that showing the bomb's power might avert a future arms race."[101] Obviously this did not happen. If it is true that the prospect of future conflict with the Soviet Union weighed more heavily on the Americans' decision, then Peterson's earlier contention that Truman's choice was righteous on account of its intent to forestall "millions" of deaths is no longer valid. What's more, given that the Korean and Vietnam wars were fought to curtail communist expansion, and more recently the Iraq war was fought under the false pretense of nuclear nonproliferation, here we actually have millions dead not in spite of the decision to drop and further develop the bomb but rather because of it.

Peterson does not substantiate his rationale for stating that Truman "had good reason to think" that dropping atomic bombs "would be the best way to stop the war, which might have saved the lives of millions of innocent people" or that "it helped to prevent a new war between the U.S. and USSR," because for Peterson these points are axiomatically true rather than contentious claims requiring evidentiary support—in other words, they function as orthodoxy. According to the commonly accepted analytic definition, his argument is not even strictly utilitarian. The basic utilitarian principle holds that acts are right "just in case no alternative act produces a greater sum total of well-being,"[102] but Peterson only entertains two alternatives: dropping the bomb or commencing a ground invasion of Japan. Choices of such magnitude rarely admit of binaries and, with regard to this particular historical moment, it turns out that more than two options were on the table. General Douglas MacArthur, for his part, argued that an alteration of the surrender terms "would have obviated the slaughter at Hiroshima and

[100] Hein and Seldon, *Living with the Bomb*, 138.
[101] Hein and Seldon, 138.
[102] Peterson, *Ethics for Engineers*, 64.

Nagasaki in addition to much of the destruction...by our bomber attacks."[103] As noted above, the deployment of nuclear weapons did not avert an arms race but rather precipitated one, and subsequent conflagrations over the technology and its geopolitical implications have left millions dead across Asia. These are critical problems for Peterson's argument against van de Poel because, if the utilitarian calculation is no longer prima facie straightforward, it is consequently no longer so obvious that van de Poel's approach generates a counter-intuitive assessment. In other words, if on the one hand the "traditional" question gets bogged down in orthodoxy, false dilemmas, and dubious utilitarian counterfactuals, while on the other hand applying the social experiment analysis identifies in Peterson's own estimation "a paradigmatic example of an impermissible social experiment," then it would seem that the social experiment analysis rather easily accomplishes what the "traditional" question could not: an unambiguous answer to whether nuclear weapons are a morally acceptable technology.

Part II

Peterson's line of attack against van de Poel is a familiar strategy in debates over the moral acceptability of offensive military technologies. When objections are raised in response to the nature or use of controversial new weapons, advocates often resort to false dilemmas and utilitarian counterfactuals that—no matter how dubious—are seen to overwhelm any moral reservations that critics may have. And so Peterson assumes that, if he can demonstrate a utilitarian justification for the use and further development of nuclear weapons, he can then conclude that the technology-as-social-experiment analysis fails in its effort to clarify our moral assessment of particular technologies. Regardless of whether Peterson satisfactorily constructs

[103] Quoted in Stone and Kuznick, *Untold History*, 176.

his utilitarian argument in accordance with its analytic principle, I will demonstrate below that his use of utilitarianism to generate a plausibly righteous defense of Truman's decision to vaporize thousands of Japanese city-dwellers is consistent with its quotidian role in light of a *historical* account of the theory. One preliminary takeaway from the foregoing analysis is that the social experiment analysis is resistant to utilitarian obfuscation. Given the ease with which utilitarians can modify and arbitrarily circumscribe the variables in their calculations to fit preordained value judgments (in Peterson's case, the Truman orthodoxy), this may indeed be an important advantage. In this section, I will analyze the general resilience of our analysis in the face of utilitarian arguments, and further test it by introducing an altogether different example, weaponized drones, the debate over which nevertheless closely resembles Peterson's objection to van de Poel.

First we must identify what it is that fortifies the technology-as-social-experiment analysis against utilitarian counterattack. As a faithful utilitarian disciple, Peterson defends a static assessment of nuclear weapons by analyzing their use at a particular point in time. The social experiment analysis, on the other hand, holds that new technologies "need to be continuously monitored and assessed, just like research experiments."[104] The primary advantage of this approach, van de Poel argues, is that, by importing established principles of research ethics, "a focus on responsible experimentation would then shift the debate away from an absolute acceptance or rejection" of the disputed technology.[105] Peterson in turn objects that this would leave us no better off, because "the traditional debate between consequentialists and deontologists tends to pop up in research ethics as well" and "that controversy cannot be easily

[104] Peterson, *Ethics for Engineers*, 169.
[105] van de Poel, "Nuclear Energy," 289.

solved or avoided."[106] However, as we have seen, Peterson's counterargument to van de Poel is not motivated by research ethics. While conceding that the principle of informed consent may be difficult to translate into the present context, van de Poel nevertheless asks us "to focus on the underlying moral concern on which the principle is based, that is moral autonomy or respect for persons."[107] Peterson abandons this point at the outset, opting instead to replace that distinguishing criterion with the traditional utilitarian concern for the total utility generated by a particular act. He does not take seriously van de Poel's original proposal that we conceive of new technologies as social experiments, and so it is no surprise that Peterson ultimately finds he can so easily sweep it aside.

On the other hand, the United States Code of Federal Regulations mandates, without qualification, that Institutional Review Boards must require the informed consent of subjects exposed to the risks posed by research.[108] The formulation of this code was structured by the results of the Belmont Report of 1979, which endeavored to articulate the basic ethical principles of morally acceptable research and develop guidelines for adhering to them. In its report, the commission identified respect for persons as the primary concern for research ethics, over and above beneficence, and thus enumerated informed consent as its first application.[109] Notwithstanding Peterson's contention that the classic debate between consequentialists and deontologists also plagues discourse over research ethics, codified principles appear to have drawn a line in the sand on precisely that issue. If respect for persons is the organizing moral principle of research ethics and thereby entails informed consent as a paramount requirement, this framework does not allow for traditional utilitarian attempts to overwhelm any deontological

[106] Peterson, "New Technologies," 349.
[107] van de Poel, "Nuclear Energy," 287.
[108] "Protection of Human Subjects" (US Health and Human Services).
[109] "Belmont Report" (US Health and Human Services).

concern. By importing this distinguishing feature of research ethics, therefore, the technology-as-social-experiment analysis is unaffected by the false dilemmas and dubious counterfactuals of imperialist propaganda. So while the United States exploits these weaknesses of utilitarianism to justify its experiments with weapons technology, its opponents in international debates over novel weapons have historically appealed to the principles of research ethics to resist the moral manipulations of empire.

Peterson might have selected the atom bomb as the basis for his rebuttal because at first blush military weapons seem an odd case for research ethics; however, the principles articulated in the Belmont Report are strikingly consistent with the foundations of international humanitarian law, not least with regard to controversial weapons. In the wake of the astonishing destruction and killing produced by the European world wars, the Geneva Conventions of 1949 sought to elaborate different categories of protected persons and the kinds of treatment to which enemy combatants could lawfully subject them. Central to this emerging paradigm were the moral concepts of respect and humane treatment, which international legal scholars explain "should aim to ensure to these persons an existence worthy of human beings, in spite of—and with full recognition of—the harsh circumstances of their present situation."[110] Persons not engaged in combat (that is, civilians) were singled out by Geneva as protected and deserving of humane treatment "in all circumstances,"[111] and this led to the adoption of the foundational principle of distinction in the Protocol Additional I, which requires that "parties to the conflict shall at all times distinguish between the civilian population and combatants."[112] Many have argued that nuclear weapons may be intrinsically incompatible with the principle of distinction

[110] Kalshoven and Zegveld, *Contraints*, 48.
[111] "Convention (IV)" (International Committee of the Red Cross).
[112] "Protocol Additional" (International Committee of the Red Cross).

and, in formulating its advisory opinion on the "Legality of the Threat or Use of Nuclear Weapons," the International Court of Justice was amenable to that argument. Noting that established law of armed conflict ("at the heart of which is the overriding consideration of humanity") is no less applicable to nuclear weapons, and that "the destructive power of nuclear weapons cannot be contained in space or time,"[113] the court expressed similar concern over distinction, finding that "the use of such weapons in fact seems scarcely reconcilable with respect for such requirements."[114] Yet the worry over distinction stretches even further back into world history over weapons that preceded nuclear warheads.

Although they are now denounced as an excessively brutal means of waging war, chemical weapons were originally considered an unacceptable threat to civilian populations at the time of their initial prohibition at the Hague Conference of 1899, even before efficient means of deploying them had been devised. "This association seems crucial in understanding the efforts to prohibit this possible weapon," the political scientist Richard Price concluded. "The rationale of civilian discrimination was the last to be voiced before the preliminary vote on gas shells, and it met no counterarguments."[115] Reconsidering for a moment the appropriateness of informed consent as our guiding moral principle, perhaps its translation into this context is not as difficult as van de Poel might have thought, for there is a real sense in which this concern for noncombatants was a concern for those who had not consented to assuming the inherent risks of war. "As soldiers became more familiar with the use of gas and defenses against it," Price reports, "many of the initial inhibitions ebbed and gas became increasingly—though grudgingly—accepted as another unavoidable technology of modern warfare that one may as

[113] "Legality of the Threat or Use of Nuclear Weapons" (International Court of Justice), 40, 21.
[114] "Legality of the Threat or Use of Nuclear Weapons" (International Court of Justice), 40.
[115] Price, *The Chemical Weapons Taboo*, 33.

well get used to."[116] While soldiers consent to this risk by engaging in armed conflict on the battlefield, noncombatant civilians have proffered no such consent, and thus deserve special protection against the risks to which soldiers are otherwise lawfully exposed. Meanwhile, at other moments during the Hague Conference, opponents of the ban—notably the United States delegation—resorted to utilitarian appeals, arguing that "such projectiles might even be considered as more humane than those which kill or cripple in a much more cruel manner, by tearing the body with pieces of metal."[117] The prohibition passed anyway. In debates over nuclear weapons technology and its predecessor in chemical weapons, then, the primary ethical concern for consent and respect for persons (in particular protected civilian populations) similarly overrode counterarguments regarding the kinds and degree of harm caused to soldiers. In this way, historical discourse over acceptable means of warfare exhibits a resistance to utilitarian reasoning not unlike research ethics. Peterson's invocation of the Truman orthodoxy in response to van de Poel ironically confirms the latter's intuition that the research ethics framework entailed by the technology-as-social-experiment analysis may be particularly suitable for military technologies.

The correspondence between research ethics and international humanitarian law outlined above gets routinely painted over by the approach to military weapons encapsulated in Peterson's response to van de Poel, the origins of which Price finds in the U.S.'s position at the 1899 Hague Conference. He explains,

> it was the humanitarian discourse of shortening and eliminating wars—and thus reducing suffering—that was invoked in order to make the commitment to unlimited technological innovation appear at once natural, inevitable, and beneficent. That is, the condition for making U.S. opposition to a ban on asphyxiating shells appear

[116] Price, 66.
[117] Price, 32. Notwithstanding the smokescreen of humanitarianism, I call this perspective "utilitarian" because it was ultimately concerned with reducing the suffering caused by war. The idea was that, while one can recover from respiratory distress, the damage caused by conventional weapons is permanent.

> acceptable was to marry the logic of the pursuit of unlimited technological efficiency with the avoidance of war and the amelioration of suffering.[118]

Thus, not only does Peterson's attempt to counter van de Poel with the Truman orthodoxy illuminate the technology-as-social-experiment's inoculation against utilitarian counterfactuals, it also reenacts a centuries-old strategy in western discourse, the end of which, Price explains, is always rather "the enhancement of national power through technological innovation and the legitimation of advanced technology as the currency of domination, not the progressive humanitarian effect of increasingly destructive technology on warfare."[119] So it may be that in this context the social experiment analysis has another, perhaps even more profound advantage: it clears the fog of American jingoism from moral arguments over military technologies.

To explore this outcome further, I finally turn to contemporary debates over the permissibility of weaponized drones, the discourse over which shows a degree of correspondence with the foregoing analysis that cannot be ignored. Unmanned aerial vehicles, popularly known as drones, have been developed and deployed by the United States military on an ongoing basis since the Europe's first world war, but it began experimenting with weaponized models more recently in the Afghan theater at the dawn of America's so-called "global war on terror" (GWoT).[120] The novelty of outfitting drones with "hellfire" missiles reflected what U.S. officials considered to be "a new kind of war" following the events of September 11th, 2001. Donald Rumsfeld, then the U.S. Secretary of Defense, ominously wrote, "it is easier to describe what lies ahead by talking about what it is not rather than what it is."[121] Used sparingly by the Bush administration, drones became increasingly controversial when President Barack Obama turned

[118] Price, 40.
[119] Price, 42.
[120] Plaw et al , *The Drone Debate*, 14-22.
[121] Rumsfeld, "A New Kind of War," The New York Times.

to them as his weapon of choice for achieving the dual aims of expanding the GWoT while drawing down U.S. troop deployments[122]—Obama authorized more drone strikes in his first year in office than Bush had during his entire term as president, and ultimately oversaw ten times as many strikes as his predecessor,[123] as part of military campaigns in seven different nations.[124] Inevitably, the rapid escalation of drone use by the Obama administration began to produce troublesome results; for example, the UK human rights group *Reprieve* found that at least 1,147 unknown people in Yemen and Pakistan had been killed in failed attempts to assassinate 41 named targets. Put another way, by 2014 Obama's drone campaign was killing 28 unknown people for every intended target.[125] Unsurprisingly, countries in whose territory the United States had deployed drones began to voice their objections to the UN Security Council.[126]

Unlike in the cases of nuclear and chemical weapons, U.S. officials justify the use of drones precisely on account of their perceived ability to carefully distinguish between combatants and noncombatants. After the Obama administration finally acknowledged its use of combat drones in 2012,[127] White House Press Secretary Jay Carney characterized US counterterrorism efforts as "exceptionally precise, exceptionally surgical, and exceptionally targeted,"[128] while Homeland Security Advisor John Brennan, speaking about drones in particular, lauded the technology's "surgical precision" and "laser-like focus," comparing the use of drones in the GWoT to removing cancerous tissue from a medical patient.[129] We might call this 'the Obama orthodoxy'. In academic literature, on the other hand, debate has ensued

[122] Scahill, *Dirty Wars*, 353.
[123] Purkiss, "Obama's Covert Drone War," The Bureau of Investigative Journalism.
[124] Agerholm, "Map Shows Where," The Independent.
[125] "US Drone Strikes," Reprieve.
[126] "Pakistan Condemns US" (Pakistan Mission to the United Nations).
[127] Miller, "Brennan Speech," The Washington Post.
[128] Carney, "Press Briefing" (The White House).
[129] Miller, "Brennan Speech," The Washington Post.

regarding the legal and moral permissibility of US drone use, implicating diverse disciplines from international legal studies to military ethics and the philosophy of technology. The philosophers John Kaag and Sarah Kreps have noted that the U.S. government's emphasis on "surgical precision" erases the distinction between facts and values by conflating technical precision (that is, the ability to accurately assassinate a target) with normative precision (that is, the ability to justly identify a target for assassination).[130] Analyses of drone strikes by Reprieve and other human rights groups similarly call into question the assumption that technical precision entails normative precision. Nevertheless, the Obama orthodoxy once again sets the stage for utilitarian arguments in defense of drones. For this discussion, I will focus on an argument advanced in an early book on the topic by Bradley J. Strawser, a chief proponent of the use of drones by the United States, which not only mirrors Peterson's strategy but also offers another potentially fruitful test case for the technology-as-social-experiment analysis.

Strawser frames his argument favoring drone use in precisely the same manner as Peterson does for The Bomb. The first step is to generate a false dilemma pitting the preferred option against a single, untenable alternative (recall that for Peterson, this is nuclear strikes versus a ground invasion of Japan). Focusing on the Federally Administered Tribal Areas (FATA) region of Pakistan, Strawser writes, "if one thinks some attempt should be made to stop these militants, then we must weigh the available options. U.S. and NATO ground forces could be sent into these regions."[131] Note that here Strawser has already foreclosed non-military options, just as Peterson paid no mind to alternatives like modifying the surrender terms offered to Japan, and therefore has similarly run afoul of the traditional utilitarian requirement to weigh potential utility against *any* alternative. No matter, he forges onward to step two (dismissing the

[130] Kaag and Kreps, *Drone Warfare*, 132-35.
[131] Strawser, *Opposing Perspectives*, 12.

solitary alternative) by arguing that "sending in large-scale U.S. ground forces to the FATA region is a nonstarter; the political and pragmatic problems are innumerable."[132] Lo and behold, Strawser is thereby able to conclude that "drones emerge as by far the least bad option in terms of unintended civilians harmed or killed."[133] Interestingly, as Price foretold, it seems to make little difference that drones are thought to be inherently precise while nuclear and chemical weapons are inherently imprecise. In either case, advocates paradoxically render a weapon of war into a humanitarian device; on the one hand Strawser labors to "rightly praise a weapon that has the ability to be far more accurate than alternatives, thereby saving innocent lives,"[134] while on the other hand Peterson too believes that nuclear weapons attacks have "saved the lives of millions of innocent people."

At the outset Strawser's argument is correspondingly problematic given the false dilemma and questionable assumptions on which it also rests, but my aim here is to draw attention to the way in which, for Strawser as for Peterson, counterfactual utilitarianism functions as the moral license for developing and using fraught military technologies; or, as Price argued, it again serves "to marry the logic of the pursuit of unlimited technological efficiency with the avoidance of war and the amelioration of suffering," in keeping with that historical American predilection. We are thus faced with the familiar problem of an argument over new weapons technology becoming mired in the fog of jingoism and utilitarian obfuscation. Can the technology-as-social-experiment analysis be of any assistance here?

Often lost in the discussion of drones' "surgical precision," Obama's kill lists, and the specter of terrorism are the effects of drone use on civilian populations. Over and above the

[132] Strawser, 13.
[133] Strawser, 13.
[134] Strawser, 6.

troubling fact that the United States was killing 28 *unknown* people for every intended target—casting serious doubt on claims of appropriate distinction—the mere presence of drones has a profound impact on those living beneath them. David Rohde, a *New York Times* journalist who was held captive by the Pakistani Taliban in FATA, reported that "the drones were terrifying. From the ground, it is impossible to determine who or what they are tracking as they circle overhead. The buzz of a distant propeller is a constant reminder of imminent death."[135] A joint Stanford/NYU report found that inhabitants of areas targeted by drone strikes exhibit symptoms of anticipatory anxiety and post-traumatic stress disorder.[136] The U.S.'s track record of striking religious schools (madrassas), indigenous tribunals (jirga), and funerals, as well as conducting follow-up strikes that disproportionately impact first responders, has meant that a broad spectrum of Waziri culture is upended by the drones incessantly circling overhead—education, legal proceedings, funerary practices, and medical care, just for example. Nor is their impact contained to targeted populations. Because U.S. drone pilots conduct their flights in Asia remotely from North America, a link is needed to facilitate these electronic communications, and one principal link is the Ramstein Air Base in Germany.[137] At the base in 2016, thousands of Germans protested a complicity in U.S. drone wars to which they had never consented. Reiner Braun, a member of the "Stopp Ramstein" committee, testified that "drones are very unpopular in Germany. It is killing. It is from our understanding against international law."[138]

As I argued above, the spirit of international humanitarian law would require us to ask, do drones afford affected populations "an existence worthy of human beings, in spite of—and with full recognition of—the harsh circumstances of their present situation?" This is certainly

[135] Rohde, "The Drone Wars," Reuters.
[136] Cavallaro et al, "Living Under Drones" (Stanford Law School).
[137] "US Ramstein Base," Spiegel Online.
[138] Svan, "Thousands Expected to Protest," Stars and Stripes.

debatable, but as long as our moral assessment of drones is open to the kind of utilitarian arguments employed by Peterson and Strawser, an unpalatable counterfactual can always be cooked up to overwhelm concerns motivated by respect for persons. If on the other hand we orient our assessment along the lines suggested by van de Poel, and regard the use of drones as a sort of social experiment, then I see little reason why we should not similarly conclude that they are "a paradigmatic example of an impermissible social experiment." Combat drones affect civilian life well beyond the stated goal of "surgical" assassinations, significantly encumbering the autonomy of noncombatants living in the area, and moreover implicate non-consenting persons far outside any battlefield, in Pakistan, Germany, and beyond. As in the case of nuclear weapons, the technology-as-social-experiment analysis clears the fog of jingoism and utilitarian obfuscation from the air of the debate over drones, allowing for a more focused and productive assessment of the technology that corresponds with the history and thrust of international legal norms. No longer do we have to settle for drones as "the least bad option."

Conclusion

Perhaps one can forgive van de Poel (a Netherlander) and Peterson (a Swede) for failing to recognize the foundational importance that nuclear weapons and technological supremacy hold in the national psyche of 21st-century America. This oversight is an inevitable outcome of simply ignoring the rhetorical dimension of our debates over technologies, as Peterson would have us do. By stubbornly constricting his argument to an analytic interpretation of utilitarianism, Peterson disregards its historical use as a procedure for licensing imperial destruction regardless of the actual parameters or consequences. A majority of Americans continue to harbor the view that the United States righteously consigned as many as 225,000 Japanese city-dwellers to nuclear annihilation in order to save "the lives of millions of innocent

people," as stipulated by the Truman orthodoxy. A majority of Americans also support their country's use of combat drones.[139] Whether the weapon incinerates small groups of "surgically" targeted individuals or entire city blocks, the American instinct is to maintain in all cases that developing and deploying the technology in question is our only humane choice on utilitarian grounds. What was likely intended as a relatively innocuous thought experiment by Peterson has instead created new space for reckoning with our nationalist dogmas, and a renewed assessment of the technology-as-social-experiment analysis in light of, rather than in spite of, perennial stalemates in moral discourse over military technologies. On the one hand, Peterson's objection to van de Poel quickly loses its force as one accounts for the questionable orthodoxy hoisted on the public after the war by a morally conflicted Truman and his apologists in the media. More importantly, however, Peterson's argument exposes the fact that, even if his counterfactual were more credible, resistance to this utilitarian strategy is baked into the technology-as-social-experiment analysis. By importing the principles of research ethics, the social experiment analysis sets certain boundaries around the terms of our discourse, according to which it is not the case that any rhetorical appeal to total utility should be taken as a legitimate rejoinder. Insofar as new weapons development is repeatedly validated by such rhetorical means, van de Poel's proposal has added purchase. And as the United States continues to modernize its nuclear arsenal while at the same time introducing autonomous artificial intelligence into combat drones, a paradigm shift in our moral assessment of military technologies may be sorely needed.

[139] "Public Continues" (Pew Research Center).

4. PAPER TWO: DEBATING DRONES WITHIN A COLONIAL PARADIGM

> A pragmatist turns his back resolutely and once for all upon a lot of inveterate habits dear to professional philosophers. He turns away from abstraction and insufficiency, from verbal solutions, from bad *a priori* reasons, from fixed principles, closed systems, and pretended absolutes and origins. He turns towards concreteness and adequacy, towards facts, towards action and towards power. – William James (1848)[140]

Introduction

After United States President Barack Obama dramatically escalated his country's use of weaponized drones in the course of its so-called "Global War on Terror" (GWoT), a corresponding surge of academic debate followed during which scholars staked out their respective positions on the technology and its destructive implementation. Two questions organized this discourse over which a fierce debate ensued within and across relevant disciplines: is it morally acceptable for the U.S. to assassinate people all over the world with drones, and is it legal to do so? Ethicists divided into utilitarian and deontological camps, raising quantitative and qualitative questions about drones and their effect on the general happiness and human dignity, while legal theorists reviewed U.S. claims to a right to "pre-emptive self-defense" and deliberated whether drones enhance or degrade our adherence to humane requirements of proportionality and distinction. All the while the United States killed thousands of people in half a dozen countries with its "predators" and "reapers," among whom most of the victims were unknown.[141]

More recently, however, drones have started to become old hat. U.S. national politics shifted toward domestic affairs with the controversial election of Donald J. Trump to the White

[140] James, "What Pragmatism Means," 379.
[141] "US Drone Strikes," Reprieve.

House, while decades of unmitigated drone wars normalized this technology in the minds of most Americans.[142] Within academia, the moral and legal debates over drones largely played themselves out, with stalemates among the participants concerning how best to apply universal moral theory and western legal norms to their questions—and now scholars are beginning to move on to newer and shinier things. Before presenting some of my work on drones at the Society for Philosophy and Technology conference at Texas A&M University, an anonymous reviewer commented that "a lot is already said about combat drones, and it is difficult to come with something new." The reviewer advised me to change my target: "I would suggest that the author focus on autonomous armed drones," they wrote. "Non-autonomous drones are not the case at the moment, we have already passed that stage." Yet the Trump administration continues to use non-autonomous drones to "find, fix, and finish" people throughout Africa and South Asia—and surely those who are directly affected by the ongoing drone wars do not think we are past that stage. Now the death toll could be nearly 17,000.[143]

Before moving on to greener professional pastures, we should take stock of where this has debate ended up. Rather than simply accept drones as our inevitable reality and proceed to the next stage, in this article I argue that there is something to learn from the resulting state of academic discourse before our attention wanders elsewhere. After reading volumes of material on these debates I leave with more questions than answers, and so I have decided that our answer must lie *within* the resulting intellectual paralysis. Reflecting on the impotency of scholarly discourse toward making a meaningful impact on the escalating march of U.S. drone assassinations, and the subsequent indifference of scholars now eager to find professional

[142] Lerner, "Poll: Americans Overwhelmingly Support," Politico.
[143] "Drone Warfare," The Bureau of Investigative Journalism. This website provides current statistics from US drone strikes in Pakistan, Yemen, Somalia, and Afghanistan…an inexhaustive list.

novelty, I conclude that this failure demands a new framework that is inoculated from the trappings of current philosophical and legal analysis. If we change the framework of the debate, perhaps we can come with something new.

Borrowing from Thomas Kuhn's famous account of science, I hold that the current drone debate operates within a colonialist paradigm that is incapable of producing non-colonialist results. Kuhn argued that normal science cannot aspire to objective truth but only solves puzzles that are structured according to values and methods stipulated by the paradigm within which that puzzle-solving takes place: "[the scientist's] object is to solve a puzzle, preferably one at which others have failed, and current theory is required to define that puzzle and guarantee that, given sufficient brilliance, it can be solved."[144] Paradigms, Kuhn explains, "are the source of the methods, problem-field, and standards of solution accepted by any mature scientific community at any given time."[145] In the normal course of their work, scientists is not permitted to question the framework provided by the operational paradigm; instead, "when engaged with a normal research problem," Kuhn argues, "the scientist must *premise* current theory as the rules of his game."[146] When anomalies are uncovered by normal science, however, the practitioner is forced to either stubbornly ignore them or to finally question the efficacy of the current paradigm. "Only when they must choose between competing theories do scientists behave like philosophers," he concludes.[147] What Kuhn failed to realize here is that philosophers often behave like scientists. When faced with the legal and ethical puzzles of drones, philosophers premise current theory so that they can get to work, and western colonial imperialism provides the problem-field, methods, and standards of solution for their debate. Bradley J. Strawser, the

[144] Kuhn, "Psychology," 4-5.
[145] Kuhn, *Structure*, 103.
[146] Kuhn, "Psychology," 4, italics in the original.
[147] Kuhn, "Psychology", 7

academy's chief drone evangelist, makes this evident in his approach: "if one thinks some attempt should be made to stop these militants," he argues, "then we must weigh the available options."[148] Strawser's problem-field is how the United States should kill its enemies; his methods are abstraction and universal moral theory; and his standard of solution is "the least bad option."[149] Notwithstanding their antagonism toward his conclusions about drones, Strawser's opponents in the debate work according to these same paradigmatic rules.

Rather than emphasize the explicit apologetics of drone evangelists like Strawser, my analysis will focus on anomalies produced from the other side of the colonialist puzzle—what could be called the contradictions of counter-drone advocacy.[150] Functioning within the same paradigm, oppositional arguments end in paradoxes that are historical features of colonialist politics. Incorporating neglected critical scholarship, I argue that, through their application of common methods and standards of solution (that is, western standards of universal morality and international justice), drone opponents reinforce paradigmatic myths of colonialism; and in the legal debate, specifically, Eurocentric myths of international relations (IR). An anticolonial analysis, on the other hand, introduces new coherence to an allegedly conflicted discourse and illustrates that the opposing arguments have more in common than a superficial for-and-against rubric would suggest. This common orientation of Eurocentricity demonstrates that the two sides in the drone debate are in fact two sides of the same colonialist paradigm. It should be no wonder, then, that contrarian arguments are powerless to thwart the forward march of America's drone imperialism—on the contrary, they help preserve the paradigm of civilizational supremacy that undergirds the views of their opposition as well as the official justifications proffered by

[148] Strawser, *Opposing Perspectives*, 12.
[149] Strawser, *Opposing Perspectives*, 13.
[150] For an excellent model of the kind of critique I offer here, see Gürses et al, "The Contradictions of Counter-Surveillance Advocacy," *Media, Culture & Society* 38, no. 4: 576-590.

politicians to warrant ongoing U.S. imperial violence. As a result, both sides of the drone debate fail to overcome the limitations of the colonialist paradigm and instead operate as apologetics for the ideological origins of drone warfare.

Although the moral and legal debates over drones would seem to implicate different academic disciplines, they not only share their uptake in the violent demise of drone casualties but are also most often addressed in tandem by the literature. Accordingly, this article will cover both the philosophical and legal discourse on drones in order to illuminate the common paradigm at work. I will also highlight a promising departure from the more general stagnation in scholarship on drones and suggest areas for continued research. In light of Kuhn's reluctance to provide normative criteria for preferring one paradigm over another, I will close by explaining why I think scholars should shift the paradigm of the drone debate through the application of an anticolonial critique.

The philosophical puzzles of drone warfare

A major puzzle of the philosophical drone debate is whether technologies employed by the U.S. empire are morally neutral. Those who posit the moral neutrality of technology maintain that technological devices can be used for good or bad ends and that responsibility for those ends lies solely with the human(s) operating the device. Strawser asserts "there is nothing inherent in the nature of drones that makes them morally wrong to use, in principle, for an otherwise just cause."[151] Nor is the inherent nature of technology a foreign issue in IR. Modern international law was deeply impacted by the nuclear annihilation of Japanese cities by the United States during the second of Europe's world wars, and subsequent debate revolved around

[151] Strawser, *Opposing Perspectives*, 10.

not the novelty of the technology but its nature. As Fritz Kalshoven and Liesbeth Zegveld explain,

> the argument of the novelty of nuclear weapons was flawed from the outset. Rules and principles on the use of weapons of war did not come into being on the implicit understanding that they would be limited to existing weapons, and they have always been regarded as applicable to the use of all kinds of weapons without exception.[152]

What set nuclear technology apart were its fundamental characteristics rather than its nascent entry on the imperial battlefield. Questions about the inherent nature of military weapons, then, represent an acute point of overlap between the disciplines of philosophy and international legal studies. In 1994, the United Nations General Assembly submitted the question of nuclear weapons to the International Court of Justice requesting an advisory opinion. While the Court ultimately set aside the dilemma of using nuclear weapons in an extreme situation of self-defense where the very survival of the state is at stake, they nevertheless held that "the destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet."[153] Nuclear weapons, in other words, are inherently indiscriminate and disproportionate, which suggests that they are a peculiar type of technology that may be incompatible with the central tenets of international humanitarian law. John Kaag and Sarah Kreps caution against an overly legalistic approach to military technologies, however, writing that these discussions "tend to skip over the way that our understanding of technology and its expedience might skew our normative judgments."[154] Thus philosophers tackling the puzzle of drones have investigated the fundamental characteristics of the technology in search of similarly intrinsic problems. Inevitably, in their effort to generate insights into the nature of drone technology in accordance with the rules of the colonialist

[152] Kalshoven and Zegveld, *Constraints*, 41.
[153] Kalshoven and Zegveld, 228.
[154] Kaag and Kreps, *Drone Warfare*, 106.

paradigm, both advocates and critics of drones resort to the methods of abstraction and universalization in support of their arguments, coming to a stalemate of philosophical maneuvering divorced from the particular historical and material conditions that characterize drone warfare and account for its actual manifestation.

The principal argument in defense of drones is that, unlike nuclear weapons, they are inherently discriminate and precise. Strawser argues that drone advocates "rightly praise a weapon that has the ability to be far more accurate than alternatives, thereby saving innocent lives."[155] White House Press Secretary Jay Carney characterized U.S. counterterrorism efforts as "exceptionally precise, exceptionally surgical, and exceptionally targeted,"[156] while U.S. CIA director John Brennan, speaking about drones in particular, lauded the technology's "surgical precision" and "laser-like focus," comparing the use of drones to removing cancerous tissue from a medical patient.[157] Despite the empirical basis of claims to technical precision, Strawser reaches his conclusion that drones are inherently neutral and morally obligatory through the prescribed method of abstraction. To argue that "there is no need for special ethical concern for this weapons system as opposed to any other more standard weapon technology,"[158] Strawser does not examine the use of drones by the United States to kill unknown Pakistani villagers, for example, but instead takes the reader through an imaginary tale about "a group of soldiers [who] are fighting in a just war against an unjust enemy."[159] By abstracting from the reality on the ground, and arbitrarily configuring the parameters of his mental experiment to solve the puzzle, Strawser is able to conclude that "Captain Zelda" is morally obligated to use drones for an

[155] Strawser, *Opposing Perspectives*, 6.
[156] "Press Secretary Jay Carney" (The White House).
[157] Miller, "Brennan's Speech," The Washington Post.
[158] Strawser, "Moral Predators," 343.
[159] Strawser, "Moral Predators," 345.

otherwise just cause. And to sufficiently broaden this claim Strawser takes his readers on yet another imaginary journey, this time to "Prudentville" and "Recklessville," where we learn that the prudent civilization uses robots to do its violent bidding while a reckless civilization refrains from robotic warfare.[160]

Kaag and Kreps are dubious of the conclusion that drones are morally neutral but not the method Strawser uses gets there. In the face of clinical and utilitarian assessments of the capabilities of drones, they offer a paradigmatic observation: such arguments, without qualification, move "from touting the technical capabilities of the U.S. military to describing the normative or legal distinctions concerning the ability to spare innocents while aiming at legitimate targets;"[161] or, in other words, "they seem to conflate drones' ability to hit a target precisely with drones' ability to minimize [noncombatant] casualties."[162] In reality, drones have no special ability of the latter kind. For all of the evangelism likening drone strikes to surgery, "the very question of evidentiary standards for the use of lethal force is itself a matter of normative judgment. Targeting determinations are thus of a legal and ethical, rather than technological, nature."[163] Kaag and Kreps attribute this conflation of technical facts with moral values to what they call 'technological rationality', or a generic mode of thinking "in which 'the easy' is used interchangeably with 'the good' or 'the just'."[164] They offer no justification for their decision to resort to this abstract and presumably universalizable concept because abstraction and universalization are prescribed by the rules of the game. In Kaag and Kreps' telling, 'technological rationality' can afflict anyone—that is, despite inventing and using drones

[160] Strawser, "Moral Predators," 347.
[161] Kaag and Kreps, *Drone Warfare*, 134.
[162] Kaag and Kreps, 92.
[163] Kaag and Kreps, 93.
[164] Kaag and Kreps, 208.

to accomplish its particular aims, in terms of 'technological rationality' the United States is no different from "Recklessville." It seems just as likely, however—and the fact that similarly technologized societies have refrained from deploying assassination drones strongly suggests—that this case is symptomatic of a peculiar kind of rationality, one that is not universal but specific to the American context. Nevertheless Kaag and Kreps, who are wholly critical of drones, follow the same route taken by Strawser, the loudest advocate of drone technology, who insists "there are good reasons to scrutinize drones distinct from their actual employment."[165] Because the colonialist paradigm stipulates abstraction as its method, on either side of the debate the particular historical conditions that produced America's peculiar drone logic are neglected, and the critical tools available in anticolonial literature are passed over.

Another puzzle met with paradigmatic philosophers in the drone debate is whether drones produce a moral hazard. "Targeted killings and signature strikes have always been in the repertoire of military planners," Kaag and Kreps generically note, "but never, in the history of warfare, have they cost so very little to use."[166] Invoking the Ring of Gyges parable, they lament "the ease with which [Gyges] can commit murder and get away scot-free," and draw a comparison to the fact that "remote-controlled machines cannot suffer these consequences, and the humans who operate them do so at a great distance."[167] Here again we see the prescribed method of abstraction belie the particular historical circumstances that produce a moral hazard with this technology in the American context. In the Gyges parable, "there came to pass a great thunderstorm and an earthquake; the earth cracked and a chasm opened."[168] A shepherd enters the chamber and takes the magic ring off a corpse he finds therein—only after its discovery is he

[165] Strawser, *Opposing Perspectives*, 7.
[166] Kaag and Kreps, *Drone Warfare*, 108-9.
[167] Kaag and Kreps, 111.
[168] Plato, *Republic*, 359d.

faced with the temptation to use this technology for ill-gotten ends. There is an obvious commonality between the Gyges parable and a contemporary story that may be more familiar to readers: the ring of power acquired by Bilbo Baggins in J.R.R. Tolkien's *The Hobbit*, a prequel to his famous *The Lord of the Rings* trilogy.[169] In Tolkien's story, Bilbo was crawling around a dark tunnel when "his hand met what felt like a tiny ring of cold metal lying on the floor."[170] Like Plato's shepherd, Bilbo simply stumbles upon this ring in the course of unrelated business (and after finding it his thoughts quickly drift to bacon and eggs)—only later does Bilbo discover the power of the ring and moral dilemmas it evokes. While an appeal to abstract literary references adheres to the rules of the colonialist paradigm, in reality the United States did not stumble upon drones by act of god or chance; rather, drone technology was deliberately and painstakingly developed as part of the broader trajectory of U.S. empire-making over the course of the last seventy-five years.[171] By abstracting from this history, philosophers who are ostensibly opposed to drone warfare nevertheless position the United States as a sudden and unsuspecting beneficiary of technological (mis)fortune, rather than the self-conscious inventor of problematic devices of imperial necrophilia. The colonialist paradigm demands in either case that one abstract from material conditions to make one's point, and the resulting puzzle-solving exercise follows this method to ahistorical and contradictory conclusions.

Medea Benjamin, a vociferous critic and activist against drones, expresses similar concerns about this trend in war in her book *Drone Warfare: Killing By Remote Control*, in particular its effect on the psychological health of remote pilots.[172] Benjamin's argument

[169] See, for example, Jane Beal, "Why Is Bilbo Baggins Invisible? The Hidden War in The Hobbit," *Journal of Tolkien Research* 2, no. 1 (2015): 1-29.
[170] Tolkien, *The Hobbit*, 79.
[171] See "Prologue: A Brief History of Drones," above.
[172] See Medea Benjamin, *Drone Warfare: Killing By Remote Control* (New York: OR Books, 2012).

coheres with Kaag and Krep's more generalized conclusion that militaries "are tempted to engage in morally or legally questionable activities now that semiautonomous and precision technologies help them avoid the consequences that had always attended these actions."[173] But because these analyses abstract from the actual context in accordance with the rules of the paradigm, they overlook the fact that colonialist problem-field is never thought to be morally or legally questionable (irrespective of the consequences to its operators). This view lies at the back of claims from drone advocates like Strawser, who argues that they are the "least bad option," "the most proportionate means of force available," preferable to "other means of war," and, counter-intuitively, that drones "save innocent lives."[174] In giving the appearance that his apology for drones is a form of lesser-evil reasoning, Strawser conceals the fact that at every turn he assumes a state of war between the U.S. and Pakistan. "Sending in large-scale U.S. forces to the FATA region," Strawser writes, "is a nonstarter; the political and pragmatic problems are innumerable."[175] While acknowledging the unviability of conventional tactics, Strawser never seriously entertains the possibility of the U.S. *refraining* from war or why that possibility seems so remote, because that possibility lies outside the problem-field established by the colonialist paradigm; rather, in his view war is inevitable, and we are left to simply choose the "least bad" means. Strawser's rhetorical maneuver illuminates the real hazard of drones: that they make U.S. imperialism more tenable, materially *and ideologically*. The parabolic analysis of Kaag and Kreps, on the other hand, obscures the ideological dimension of this hazard by assigning to drones a mythical power to which human beings of any creed are universally vulnerable, when in fact their manufacture, perceived viability, and subsequent use resulted from the peculiar logics

[173] Kaag and Kreps, *Drone Warfare*, 276.
[174] All of the quotations in this passage have been previously cited above, aside from Strawser's comment about drones as "the most proportionate means," which can be found on page 15 of his book, *Opposing Perspectives*.
[175] Strawser, *Opposing Perspectives*, 13.

of the American empire. At the heart of Strawser's justification for drone warfare is the fundamental assumption of colonialism left uncontested by his critics: that one takes for granted the moral authority of the empire and thus need only adjudicate its means.

This dynamic of means and ends is yet another puzzle in the conventional debate over drones, because a balance in the relationship between strategic ends and the means used to achieve them is inherent to the western humanitarian principle of proportionality, which falls squarely within the problem-field of the colonialist paradigm: Article 51 of the 1977 Protocol Additional I to the Geneva Conventions proscribes those means "excessive in relation to the concrete and direct military advantage anticipated."[176] Kaag and Kreps write, "this challenge is particularly acute during times of rapid technological innovation."[177] Regarding drones in particular, they continue: "when given more precise military scalpels, there is a good chance that everything will look like it deserves surgical removal," as implied in the clinical rhetoric adopted by U.S. government officials and scholars advocating the use of drones.[178] According to Jeremy Scahill, Joint Special Operations Command (JSOC) operatives in Iraq referred to an airbase there as "the Death Star because of the sense that 'you could just reach out with a finger, as it were, and eliminate somebody'."[179] In an interview with a confidential source from the American special ops community, Scahill was told that, six years later, "the operations have been institutionalized to a point where it is an integral part of any campaign, in any theater, and at some point we crossed a threshold where JSOC *is* the campaign."[180] Scahill's *Dirty Wars* is primarily devoted to illuminating the wholesale transformation (rather than innovation) of the

[176] "Protocol Additional" (United Nations), 25.
[177] Kaag and Kreps, *Drone Warfare*, 98.
[178] Kaag and Kreps, 99.
[179] Scahill, *Dirty Wars*, 162.
[180] Scahill, 350, italics in the original.

ends of U.S. imperialism to accommodate the new means-principle of "find, fix, finish," yet these indispensable historical details are omitted from the philosophical literature on drones in favor of vague metaphysical worries, because the latter cohere with the prescribed methods of a colonialist paradigm that must not call into question its own problem-field nor its values.

Philosophical concern over the interplay between strategic or ideological ends and military means is typically rebutted through an appeal to the nature of the GWoT. In his speech inaugurating the war, George W. Bush warned that "Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen."[181] The following week Bush's Defense Secretary, Donald Rumsfeld, wrote an op-ed for the New York Times titled "A New Kind of War" in which he repeated the President's assessment: "the truth is, this will be a war like none other our nation has faced," he wrote. "Indeed, it is easier to describe what lies ahead by talking about what it is not rather than what it is."[182] In November 2002, after the drone assassination of Ahmed Hijazi, an American citizen collaborating with Al Qaeda, Bush's National Security Advisor Condoleezza Rice told reporters "we're in a new kind of war, and we've made very clear that it is important that this new kind of war be fought on different battlefields. It's broad authority."[183] Despite Strawser's attempt to hedge this view by initially arguing that "remotely controlled weapons systems are merely an extension of a long historical trajectory of removing a warrior ever farther from his foe,"[184] he leverages the methods of the colonialist paradigm to conclude "that drones are the best option (or least bad option) presently available in which to engage this fight."[185] To Strawser and the architects of the GWoT, new

[181] Bush, "Joint Session of Congress" (United States Archives).
[182] Rumsfeld, "A New Kind of War." The New York Times.
[183] Scahill, *Dirty Wars*, 78.
[184] Strawser, "Moral Predators," 343.
[185] Strawser, *Opposing Perspectives*, 12.

ends call for new means. By appealing to mythological rings and metaphysical tensions, anti-drone advocates bolster this sense that drone war is a new frontier. Ironically, scholarship on drones and their moral and legal status could sorely use what Strawser inadvertently suggested: an analysis of the "long historical trajectory" of colonial ideology and western-dominated international law, which is surely required to understand the emergence and operation of drones in relation to the ends of America's GWoT. But because the colonialist paradigm sets as its problem-field the proper application of U.S. power, and the methods for solving that puzzle are abstraction and universal theory, the particular historical details that actually produced the question of drones rarely get a hearing and the latent good of U.S. power is never doubted.

While drones do not at first broadcast straightforwardly intrinsic problems along the lines of nuclear weapons, leading Strawser and others to dismiss concerns over the nature of the technology and focus instead on the ends for which it is used, critics such as Kaag and Kreps note the inherent conflation of technical precision with normative precision that undergirds much of the bureaucratic and philosophical debate—the fact that helpless villagers like Mamana Bibi and her grandchildren were struck precisely by a drone does nothing to alter the magnitude of the failure in normative distinction that led to the attack, repeated hundreds of times across all theaters of America's drone war.[186] According to leading drone critics, the purported 'technical rationality' that skews our normative judgments of technology in practice, to which anyone is vulnerable, is just one of several generic factors (along with remoteness, efficiency, and low cost) that produce the moral hazard of increasing reliance on drones for military use. Coupled with the tendency—or, in the case of American imperialism, the well-documented effort—to adjust the ends of military campaigns to the means available, the hazard of drones becomes

[186] For an account of this tragic incident, see "Introduction," above.

dynamic, mutating the nature of war while providing a convenient solution to the changes thereby introduced. Lisa Hajjar writes, "the seductiveness and availability of drone technology is a driving factor in the geographical expansion of what the U.S. government refers to and justifies as war."[187] Even though they are merely following the rules of the paradigm, scholars are mistaken to locate these problems simply in the technology itself, as though it is an accident that the United States is the leading innovator of drones and deploys them to such a startling extent. The United States is no Bilbo Baggins. The hazard of drones and the threat they pose to global humanity is far more extensive, yet more comprehensible, when analyzed under a different framework that rejects the method of abstraction from material conditions and regards the development of universalized concepts in international relations theory as a continuation of the peculiar ideology of western colonial imperialism.

A different paradigm

The current colonialist framework of the drone debate exhibits the tell-tale features of a Kuhnian paradigm, not only because it supplies the problem-field, methods, and standards of solution that practitioners must premise to get to work, but more importantly because it results in "the abandonment of critical discourse" that characterizes a mere puzzle-solving exercise.[188] At no point in the mainstream drone debate have participants stopped to question whether the methods and standards of western liberalism are up to the task. While philosophers working within the colonialist paradigm must resort to abstraction from material conditions and application of universal theory to solve their puzzles, even when discussing the very real and ongoing killing of people all over the world by America's remote-controlled assassins, there are

[187] Strawser, *Opposing Perspectives*, 29.
[188] Kuhn, "Psychology of Research," 14.

others whose work suggests a way out of this stalemated paradigm and whose approach therefore ought to be replicated. In his article, "The Necropolitics of Drones," Jamie Allinson observes that "the use of drones has been subject to a debate about their tactical conditions of use rather than the strategies they serve or the structures of power of which they form a part," and that "the positions in this debate present the problem not as the western use of military force for imperial ends, but rather how the perceived failure or excess of that force can be prevented."[189] In other words, because the problem-field assumes the validity of the U.S. empire as such, the puzzle consists in adjudicating the means of exercising that power, not in critically analyzing its existence.

Allinson's analysis circumvents the ahistorical trappings of the colonialist paradigm by rejecting the assumption that drone assassins are "perfectly rational, liberal subjects sifting information about potential targets to carry out just acts of killing" and establishing instead that "drones already operate within an algorithm of racial distinction."[190] While scholarly debates over drones imply a universal value of life in the question of whom should be spared the violence of war, Allinson sees in drones an arrogation of the United States' unilateral "right to command death and assign grievable meaning to the dead."[191] He uses Achille Mbembe's anticolonial notion of necropolitics to situate drones *within* the historical development of American colonialist ideology, in the process "identifying racism as the technology of power that unites the exercise of sovereign power with technologies of the surveillance, auditing, and management of populations."[192] Allinson's analysis not only provides answers to why America *in particular* has come to prefer drone technology in its prosecution of the GWoT, but also why

[189] Allinson, "The Necropolitics of Drones," 113 and 115, respectively.
[190] Allinson, 114.
[191] Allinson, 113.
[192] Allinson, 119.

"the current debate on drones and their potential autonomy misses the point."[193] Allinson's approach calls into question the problem-field, methods, and standards of solution of the colonialist paradigm, and so it is excluded from purview of "normal" philosophy.

Allinson's work represents a new and useful departure from the paradigmatic philosophical debate over drones. Rather than respond to professions of unmatched distinction by applying the traditional fact/value heuristic according to established methods of the colonialist paradigm, like Kaag and Kreps do, thereby implying that horrifying scenes of distinction gone wrong are an aberration of ideal drone use, Allinson demonstrates that "the atrociousness of drones arise[s] from their 'correct' and quotidian use" by historicizing their emergence.[194] As a method of the colonialist paradigm, on the other hand, the fact/value heuristic is typically employed to inoculate the colonizer's technologies from political critique, just as Strawser attempts to do by declaring that "there is nothing inherent in the nature of drones that makes them morally wrong to use for an otherwise just cause," and Kaag and Kreps do by attributing the hazard to the universalized concept of 'technological rationality'. By driving a wedge between technical precision and normative precision, Kaag and Kreps imply that there is nothing inherently wrong with using technically precise weapons for a normatively precise cause like the GWoT, as long as we kill the right people. This method and its true purpose, however, should be familiar to readers of anticolonial critique.

The fact/value heuristic was central to justifying the neocolonial imposition of American agricultural technology in India, according to Vandana Shiva, who argues that "by splitting the world into facts vs values," this method "conceals the real difference between two kinds of value-laden facts"—for example, the existence of American drones and the precision with which

[193] Allinson, 120.
[194] Allinson 117.

they kill their targets.[195] Shiva reveals something left implicit in Allinson's analysis, namely that the paradigmatic method of abstraction that is endemic to the colonialist debate over drones accounts for how the technology "is politically and socially created, how it builds its immunity and blocks its social evaluation."[196] Sara Gürses and her co-authors observe a similar dynamic in the debate over the American global surveillance technologies. Disputes in this discourse often hinge on a factual distinction between 'mass' and 'targeted' surveillance, which, "by shifting the discussion to the technical domain…undermine[s] a political reading that would attend to the racial, gendered, classed, and colonial aspects of the surveillance programs."[197] Either way you go, this heuristic is routinely used by apologists to sunder the issue, thereby papering over the colonialist values lying back of allegedly value-less technological facts—it "solves" the puzzle without threatening the paradigm. In the drone debate, Strawser relies on the supposed objectivity of technical precision to conclude that drones are an inherently neutral technology and, despite their intent to counteract Strawserian drone evangelism, Kaag and Kreps paradoxically affirm his view by employing a paradigmatic philosophical procedure to separate the normative problem of drones from their technical abilities. Prohibited from conceiving of technical precision as a colonialist "value-laden fact," Kaag and Kreps divert our attention away from the technology onto sequestered normative implications, when in reality these two aspects are inseparable parts of the same colonial phenomenon.

By associating the enthusiasm for drone precision with the mechanics of necropolitical population control, Allinson exposes technical precision to be another value-laden fact within the modern repertoire of colonial power. In doing so he has begun the work of shifting the paradigm

[195] Shiva, *Green Revolution*, 22.
[196] Shiva, 23.
[197] Gürses et al, "Contradictions," 576.

governing the drone debate such that the method of abstraction from colonial history loses its license. Like the paradigmatic philosophical approaches outlined above, however, Allinson focuses on the intrinsic nature of drone technology and explicitly refrains from engaging "most of the controversy concern[ing] the legality of attacks carried out with drones."[198] The academy, on the other hand, seems to view these disciplinary approaches as wedded facets of a common subject; and while an anticolonial paradigm is rare in the philosophical dialogue over drones, it is completely absent from the legal debate over the technology. I will now inventory this related discourse in search of correlative insights from anticolonial critique that point to a different paradigm for future legal scholarship, in the way Allinson has done for the philosophical debate over drones.

Legal puzzles

The legal argument over drones exhibits the same paradigmatic features of its philosophical cousin—that is, its participants take as their problem-field when and how the United States may kill its enemies; they use abstract and universalized concepts as their method; and their standard of solution is what is "legal" according to colonialist jurisprudence. This discourse can be divided into two subgroups: puzzles of *jus ad bellum*, or laws respecting the initiation of war, and puzzles of *jus in bello*, or laws respecting the execution of war. The debate over drones and *jus ad bellum* revolves around two abstract and universalized concepts in tension: state sovereignty and self-defense. While Article 2 of the UN Charter forbids the threat or use of force against other nations, Article 51 codifies a right to collective self-defense.[199] According to Kaag and Kreps, legal analysts are divisible into two camps with respect to self-

[198] Allinson, "The Necropolitics of Drones," 114
[199] "Charter of the United Nations" (United Nations).

defense and other germane concepts: the restrictionists and the counter-restrictionists. While both are positivist approaches, the former takes a strict reading to Article 51, concluding that the text "limit[s] almost any type of intervention."[200] Counter-restrictionists, on the other hand, grant more flexibility to the concept of self-defense, allowing for, in this case, the U.S. government's argument that drone operations meet the standard of 'anticipatory self-defense' or, as the George W. Bush administration styled it, "pre-emptive self-defense." Restrictionists counter that 'anticipatory' responses must address "an impeding attack" that is "'instant, overwhelming, and leaving no choice of means, and no moment of deliberation,'" to quote 19th-century U.S. Secretary of State and jurist Daniel Webster, and that "drone strikes...do not meet a reasonable standard of imminence."[201] Thus the debate comes to a head with competing interpretations of abstract concepts in western international law—'self-defense', 'imminence', 'anticipatory'—and there is no objective standard against which the dispute can be resolved within the colonialist paradigm. Given America's permanent seat on the UN Security Council, in the final analysis the proper application of these concepts becomes a moot point, as the U.S. will act to secure its interests by whatever codified (or non-codified) means. The final standard that actually functions in the course of international relations is the same one that organizes the problem-field of colonialist puzzle-solving: America's unquestionable status as a legitimate imperial power.

The abstract concepts of self-defense and sovereignty underly the debate over *jus ad bellum* considerations and drone war, and although the scholarly discourse on drones assumes that an answer to these disputes should solve the puzzle, the material situation on the ground belies that assumption: the United States and Pakistan have stated their respective, contradictory

[200] Kaag and Kreps, *Drone Warfare*, 83.
[201] Kaag and Kreps, 85.

opinions and U.S. drones continue to fly. This methodology, then, deserves closer scrutiny if we are to appreciate why scholarship on drones fails to move beyond the tit-for-tat of colonialist puzzle-solving. Like with the fact-value dichotomy, Kaag and Kreps supply the abstract restrictionism distinction in an effort to clarify the debate, but this distinction cannot move beyond the paradigmatic problem-field of adjudicating the proper application of U.S. imperial might. Instead, it provides a contradictory position from *within* the paradigm of western legal analysis and masks what is, from outside that paradigm, really a question of raw power. U.S. Vice President Dick Cheney articulated this point succinctly at the outset of America's "nation-building" mission in Iraq: "this is deemed such an important issue and such an important problem that we will address [it] by ourselves if we have to."[202] The application of a "restrictionist" or "counter-restrictionist" label merely describes different viewpoints within the same colonialist frame, and cannot account for the unilateral exercise of U.S. power irrespective of such a distinction.

A similar dynamic follows the puzzle of sovereignty. An inviolability of state sovereignty is the foundation of the UN Charter's prohibition of aggressive acts against member states. As a full member of the United Nations, for example, Pakistan's sovereignty should be protected, and yet the United States has conducted over 400 drone strikes in its territory.[203] In the face of contradictions such as this further distinctions are made: Somalia is a "failed state," Yemen's civil war provides an exception, and Pakistan's alleged complicity in American drone strikes lends them legitimacy. But the sheer breadth of America's drone wars calls into question the practicality of such distinctions. Is there really enough in common to the sovereign status of these diverse theaters to explain their common receipt of American aggression? The common

[202] "Bush Says," The Wall Street Journal.
[203] "Drone Warfare," The Bureau of Investigative Journalism.

denominator, rather, is America's commitment of its own sovereignty, as U.S. President Donald J. Trump made abundantly clear at the United Nations in 2018: "We will never surrender America's sovereignty to an unelected, unaccountable, global bureaucracy," he declared. Although Trump's domestic opponents balked at the frankness with which he articulated this principle, Tarun Chhabra demonstrated that "Trump's rhetorical moves are familiar," charting its various expression by U.S. presidents stretching back seven decades to the founding of the United Nations.[204] There is something perverse, then, in appealing to the very concept that the aggressor uses not only to justify its aggression but also to determine its targets, but unfortunately that is what the colonialist paradigm demands. With regard to both self-defense and sovereignty, critics of U.S. drone wars dutifully follow the rules of the colonialist paradigm and invoke allegedly universal concepts the concrete application of which is at all times decided by the subject of their critique. Insofar as the self-righteous unilateralism of the United States hinges on its in-house notions of self-defense and sovereignty, critics reflexively legitimate concepts that are foundational to the arguments of their opposition—in other words, they offer apology.

A major obstacle in the way of solving the puzzle of drone strikes according to the legal principles of *jus in bello*, meanwhile, is the unwillingness of the United States to offer any details or follow-up reports on the strikes, leaving that work to non-profit organizations relying primarily on testimony and evidence collected by witnesses and victims. This has resulted in significant disparities among studies with respect to how many civilians have been killed by drones and under what circumstances, and this epistemic deficiency has been exploited by scholars arguing in defense of drones. Strawser, for example, writes that "if we believe that

[204] Chhabra, "Trump's 'Strong Sovereignty'," Brookings.

there are times when killing can be morally justified, then we are obligated to carry out such actions as justly as is possible."[205] "Drones," in Strawser's paradigmatic view, "emerge as by far the least bad option in terms of unintended civilians harmed or killed."[206] These claims, however, are followed by a revealing moment in his utilitarian analysis: while reckoning with the potential for greater harm in the long run from local resentment and blowback, Strawser notes,

> such fears rest on empirical questions. And to weigh them properly, we need good data on this prediction, which we don't have. [...] But, given the present evidence we do have, we can cautiously conclude that using other means of war instead of drones would likely lead to more unintended deaths of innocent civilians.[207]

Strawser thereby suspends judgment on the question of blowback due to insufficient evidence, after arriving at a conclusion about disproportionate civilian harm *despite* insufficient evidence, employing a sudden shift in the burden of proof for justifying the continued use of drones. This ad hoc abstraction from the facts on the ground—for the lack of data is also a fact—allows scholars like Strawser to solve the puzzle while skirting around inconvenient realities revealed through attention to facts that are excluded from the colonialist problem-field. Can we blame Strawser for simply following the rules of the game?

Citing the reticence of the U.S. government to educate the public on its drone use, Fasal Naqvi responds that "if the United States does not have data to actively justify its contention that drone strikes are the best way to combat global terrorism, then it is the United States that should desist from killing."[208] Kaag and Kreps, meanwhile, note that the question of proportionality is directly dependent on the nature of the threat against which the calculation is made. "Casting military objectives in expansive terms, such as eliminating evil or fighting terror," they explain,

[205] Strawser, *Opposing Perspectives*, 8.
[206] Strawser, 13.
[207] Strawser, 16.
[208] Strawser, 44.

> becomes so broad that any civilian damage is, by comparison, more palatable. [...] If a modern military is charged with the eradication of great evil, then the use of any military means may appear justified."[209]

Thus it is not merely questionable tactics, such as 'signature strikes' and 'double-tap strikes', nor alarming statistics emerging from the U.S. drone war that call into question its practice —for example, Reprieve discovered that in Yemen and Pakistan *unsuccessful* attempts to kill 41 targets had resulted in the deaths of 1,147 unknown people[210]—but that, not unlike the concepts of sovereignty and self-defense, the underlying principles of distinction and proportionality are similarly vulnerable to manipulation by drone belligerents and their advocates. Nevertheless, critics of drones fall back on these very same concepts because, while the paradigm can support contradictory conclusions, it will not tolerate critical analysis of its stipulated parameters.

From *jus ad bellum* puzzles of self-defense and sovereign rights, to *jus in bello* puzzles of civilian welfare, proper military distinction, and proportional responses to threats, then, all sides of the dispute positively invoke the same legal concepts in support of contradictory conclusions. While the debate over the legality of drones is arcane, immersive, and the stuff of considerable interest to jurists and analytic philosophers of law, one ought to occasionally step back and reckon with the governing paradigm altogether. The puzzles generated by the positivistic approach to western international law and the problem of drones do not clearly admit of useful answers; instead the constituent legal principles are perennially vulnerable to conceptual manipulation in the service of whatever conclusion they are thought to support, so long as that conclusion does not threaten the paradigm. Taking the broader view, a philosopher should question the paradigm of western international law altogether, for which the case of drones is particularly valuable insofar as it illuminates many systemic and perhaps unresolvable puzzles

[209] Kaag and Kreps, *Drone Warfare*, 97.
[210] "US Drone Strikes," Reprieve.

regarding the law's proper application. And if the problem lies not in how the law is interpreted but rather in the paradigmatic assumptions of the extant legal regime as such, then our analysis must turn against that paradigm and all of its puzzle-solvers on either side of the drone debate.

Fortunately, as Allinson exhibits with his anticolonial work on philosophy of technology and drones, there are resources lying outside the dominant paradigm that have heretofore gone unused in legal debates over this horrifying technology. The paradoxical endpoint of current debates is strongly reminiscent of a more widespread phenomenon described by authors applying anticolonial critique to the paradigm of western international law more generally. Jörn Axel Kämmerer, for example, argues that the "'birth defect' of universality explains many persisting tensions in international legal relations."[211] Since the inception of modern international law, human rights discourse has exhibited a paradox according to which both aggressors and victims "instrumentalized international human rights documents…for achieving their political ends," as described by Fabian Klose, yet in the drone debate these principles are still treated as the only standards of solution.[212] The very idea of state sovereignty, which underlies both the United States' claim to "preemptive self-defense" and Pakistan's resistance to U.S. aggression alike, arose from colonialist aggrandizement of western civilization and the so-called 'family of nations' illustrated in the extensive work of Anthony Anghie and successors like Harald Kleinschmidt. Can we reasonably expect an appeal to western concepts of civilization to effectively counteract the violent civilizing mission of the west? A paradigm cannot critique itself!

What binds all of these legal arguments together, and explains their ineffectiveness in the face of permeating drone death, is their common adherence to a paradigmatic myths of

[211] Kämmerer, "Imprints of Colonialism," 239.
[212] Klose, "Human Rights," 316.

Eurocentric IR, or "the key disciplinary axioms that are presently revered as self-evident truths," identified by John Hobson.[213] By appealing to international humanitarian law, drone apologists on both sides of the debate reproduce "the 'noble identity/foundationalist myth'" of IR, according to which "it is assumed that the IR infant had been born with the noblest of moral purposes,"[214] and by which participants "in one way or another work to defend or celebrate the West as the highest normative referent in world politics."[215] No wonder Kaag and Kreps' fact-value distinction is idle: the analytical heuristic with which they hope to clarify the debate is itself a western colonial procedure, as Shiva explained many years ago. An appeal to international humanitarian law also reproduces "the 'positivist myth' of international theory," which, it should be noted, carries the corollary of dismissing critical theory outright. The basic feature of this myth is the assumption of value-neutral explanations of world politics that we witness in counter-drone advocacy, which, "when viewed through a non-Eurocentric lens…produces a parochial or provincial analysis of the West that masquerades as the universal," Hobson writes.[216] Central to this myth is yet another, "the 'sovereignty/anarchy myth'," wherein Eurocentric anti-imperialism, "while seemingly respecting the political self-determination of Eastern polities nevertheless denies them cultural self-determination,"[217] and requires nations subjected to drone terror to brandish their sovereign credentials according to the western civilizational paradigm in order to register a "legitimate" complaint at the UN. Finally, the drone debate in toto, which is taken to be the spectrum of possible perspectives on drones—from Strawser to Benjamin—is itself manifestation of "the 'great debates myth'," beneath which "lies

[213] Hobson, *The Eurocentric Concept*, 14.
[214] Hobson, 15.
[215] Hobson, 15.
[216] Hobson, 18.
[217] Hobson, 19.

the hum-drum consensus of virtually all parties concerning the politics of defending and celebrating Western civilization in world politics."[218] Accordingly, counter-drone advocacy shuns Strawser's naked jingoism in favor of higher-minded and progressive concepts of western civilization like proportionality, distinction, and "postcolonial" sovereignty, but neither escape the trappings of the colonialist paradigm.

Why we should shift the paradigm

Ajamu Baraka asks, "how could a nation that claims its fidelity to 'universal values' of human rights, international law, democracy, freedom, and human progress, also be the main protagonist in the systematic global assaults on those very same values without any apparent psychological tension between those two contradictory realities?"[219] The answer is that this tension is endemic to the colonialist paradigm. While those attempting to solve the puzzles of drone warfare believe they are inching toward universal truth, Kuhn argues that, when it comes to paradigms, "there is no standard higher than the assent of the relevant community."[220] Now that work on the colonialist problem-field is exhausted, it is time for scholars participating in the drone debate to stop behaving like scientists and start behaving like philosophers again. Puzzle-solving drones within a colonialist paradigm reached its climax and now participants are itching to move on to something different—but before we do that, let us try a new framework, one that moves away from abstraction and pretended absolutes toward facts and toward power. Lacking this disposition, the current debate has ended in a standstill between contradictory applications of paradigmatic legal and philosophical methods and standards.

[218] Hobson, 18-9.
[219] Sirvent and Haiphong, *American Exceptionalism*, ix-x.
[220] Kuhn, *Structure*, 94.

In the philosophical debate, participants resort to abstraction from particular material conditions to produce generic conclusions that treat drones as though they are a problem common to all of humanity, rather than a problem that threatens the existence of targeted segments of humanity through the violence of another, according to specific and historical rubrics of American imperialism—for example, the necropolitical rubric described by Allinson. The problems with drones, according to this paradigm, are recondite philosophical puzzles of 'technological rationality', the fact-value distinction, or the metaphysical relationship between means and ends. Correlatively, in the legal debate, critics invoke universal concepts of sovereignty and appropriate self-defense to indict the illegality of U.S. drone wars, while Washington describes its global assassination campaign as the ultimate expression of American sovereignty and self-defense. Critics decry the lack of distinction and proportionality characteristic to drone strikes, while Washington extols the "exceptional precision" of acts it regards as proportional to "a new kind of war." At the end of the day, all of these arguments participate in foundational mythologies of western IR theory as required by the paradigm, and the anomalies are piling up. As such, "the conventional binary that differentiates a Eurocentric or racist conception of imperialism"—a la Strawser—"from a tolerant cultural-pluralist conception of anti-imperialism"—a la Benjamin—"turns out to be more imaginary than real."[221]

We need a new paradigm, one that takes to task not only the technologies of empire but also its problem-field, methods, and standards of solution. Kuhn was careful to avoid offering normative criteria for preferring one paradigm over another, but he could not help letting a bit of pragmatism slip in. Shifts in paradigms, Kuhn explains, arise when "an existing paradigm has ceased to function adequately in the exploration of an aspect of nature to which that paradigm

[221] Hobson, *The Eurocentric Concept*, 1-2.

itself had previously led the way."[222] Western colonialist philosophy has led the way in our debates over drones, through the application of European theory to the moral dilemma and Europe's standards of sovereignty to its legal cousin, and the contradictions produced by this discourse do not function. Debates over scientific paradigms are hard to settle, Kuhn warns, because practitioners "acknowledge no supra-institutional framework for the adjudication of revolutionary difference."[223] In the light of history, however, colonialism supplies a "supra-institution" both ideologically and materially;[224] but it need not provide the rules of our debate. The real question before us, Kuhn argues, is "which problem is it more significant to have solved?"[225] I submit that a solution to the problems of colonialism is all the more significant in light of the emergence of weaponized drones compared to the esoteric puzzles this technology engenders in mainstream academic philosophy. And the only thing required to shift our paradigm is "the assent of the relevant community."[226]

The perspective that anticolonialism can inject into the discourse carries weight because it is founded in a well-established literature, sorely absent from the majority of scholarship on drones, which stands ready to provide a new problem-field, new methods, and new standards of solution—we need only be brave enough to venture beyond the colonialist paradigm. Current literature treats drones like a special case, a non-partisan "ring of power" that suddenly fell into the hands of an unsuspecting civilization left with nothing but axioms of universal morality and

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[222] Kuhn, *Structure*, 92.
[223] Kuhn, 93.
[224] In their mind-blowing article, "Defining the Anthropocene," Simon Lewis and Mark Maslin argue that the current epoch began in 1610, the year that atmospheric CO_2 reached its low point before accelerating to current levels, due to the systematic extermination of 54 million indigenous people by European colonialists in the Americas and subsequent "regeneration of over 50 million hectares of forest, woody savanna and grassland" (175). The cotemporaneous "Columbian Exchange" of flora and fauna, they argue, precipitated "a swift, ongoing, radical reorganization of life on Earth without geological precedent" (174). Colonialism, in other words, is indelibly written into the geologic record of our world. See Lewis and Maslin, "Defining the Anthropocene," *Nature* 519 (2015).
[225] Kuhn, *Structure*, 110.
[226] Kuhn, 94.

justice to assess the implications of its use. Anticolonialism, on the other hand, would place drones within an established historical trajectory throughout which empire has innovated technologies of all types to maintain and diversify its power. Anticolonialism can illuminate pitfalls in the recourse to an international legal paradigm that emerged out of the very same ideological crucible that gave rise to the U.S. empire and its "predator" fleet. By appealing to universal principles essential to a western civilizing mission that has now arrived at necropolitical "hunter-killer" drones, critics may be following the rules of the game, but in doing so they merely offer apologies for the suppositions of their opponents, thereby joining the reinforcement of a paradigm that would drone the whole world. It is little wonder, then, that scholars now look for novelty in the next imperial technology rather than produce novelty in the form of a critique of the American empire as such. Within the problem-field of our dominant paradigm, liberal apologetics for colonial violence really are nothing new.

5. PAPER THREE: TOWARD AN ANTICOLONIAL LEGAL REALISM

> The Commander, The Drone Ranger, doesn't do
> Tuesday shows live. He pre-records his play-
> list of Golden Oldies for heavy rotation: "Our
> Hearts and Prayers Go Out Waltz," "Senseless
> Violence Sonata," "The Gun Control Conga," etc.
> He has another play-list. A list of places to see and
> people to kill. A play-list of smash hits—Tarantino
> Shorts, sans N-word— shot weekly in Syria, Yemen,
> Afghanistan, Iraq, then pitched softly, like Jel-Low
> Puddin/Dr. Huxtabullshit
>
> – Raymond "Nat" Turner (2015)[227]

I. Introduction

Responding to Bradley J. Strawser, the American academy's staunchest advocate for drone warfare, Lisa Hajjar writes that a "fundamental shortcoming in abstract reasoning about drones is an unwillingness—whether by omission or commission—to understand or deal with the *actual* history and practice of targeting killing."[228] This tendency, which Hajjar remarks is "exceedingly popular in the American context,"[229] is common to the body of Strawser's apologies for drone warfare, during which he appeals to possible worlds such as "Alpha and Beta," fictional lands such as "Prudentville" and "Recklessville" and "Zandar," as well as their fictional inhabitants of course, in order to illustrate crucial points in his legal and moral defense of real-world drone killing.[230] For his part, Strawser retorts by arguing that abstraction

[227] Turner, "Weekly Mass Murders," Black Agenda Report.
[228] Strawser, *Opposing Perspectives*, 86, italics in the original.
[229] Strawser, 86.
[230] See Bradley J. Strawser, "Moral Predators," *Journal of Military Ethics*, Vol. 9 No. 4 (2010).

> does not invalidate our moral reasoning. Rather, it provides just what it is designed to provide: moral conclusions in the abstract. We can then turn to the real-world cases and see if they adhere to those moral principles.[231]

The methodology that Strawser describes is not only popular in western discourse on drones, but also characteristic of broader western scholarship on international law. Despite its attention to institutions of power and its identification of jurisdictional authority as part of that power, legal positivism nevertheless treats terms like 'sovereignty', 'self-defense', and 'distinction' as though they are sterile concepts with universalizable meanings, rather than fundamentally western ideas pregnant with peculiar socio-historical connotation. Real-world cases like America's drone wars are then shot through these conceptual tools, artificially stripped of material context to "see if they adhere" to a morality that is unconscious of its own manifestations. Despite strong efforts on the part of Hajjar, Faisal Naqvi, and others to bring this absent context to bear on the subject, the current legal debate over drones remains largely divorced from the actual history of international government and law, notwithstanding the importance of the latter for properly understanding their use and legal justification in contemporary practice. Nevertheless, in recent decades critical scholarship on this history—in particular the legacies of European colonialism maintained therein—has emerged within legal and international relations disciplines and lies in wait for fruitful application to the problem of drones.

Due to the widespread conviction that abstract reasoning "helps to clarify our understanding of real-world practice,"[232] the debate over the legality of drones is awash in conceptual vagueness such that any number of conflicting conclusions may be drawn from the available conceptual repertoire. By exploiting these ambiguities to argue that drone warfare is not only legally permissible but also a moral duty, the U.S. government and its apologists in the

[231] Strawser, *Opposing Perspectives*, 154.
[232] Strawser, 156.

academy employ centuries-old tactics whereby western legal concepts are continuously adapted to accommodate the demands of contemporary colonial control. Scholarship on drones, therefore, remains steeped in a logjam of dispute over concepts that were designed to proscribe exactly the kind of progress that critics hope to achieve, and thus far has failed to incorporate the work of a minority of scholars attempting to pull the discourse on international law from the heights of philosophical abstraction down to the depths of material reality. Resorting to abstraction as a mechanism for justifying continuous colonialist violence is not a new phenomenon of legal philosophy. In his classic article, "Racial Realism," Derrick Bell argues that in the American context "abstract principles lead to legal results that harm blacks and perpetuate their inferior status."[233] Bell hoped that, "by viewing the law—and by extension, the courts—as instruments for preserving the status quo and only periodically and unpredictably serving as a refuge of oppressed people,"[234] new clarity and thus new programs for resistance would emerge through the displacement of positivism in legal discourse over race relations in the United States. Insofar as the legal debate over drones is similarly dominated by positivist perspectives, and insofar as the abstract concepts at work in the legal assessment of drones serve to maintain the status quo at the expense of historically oppressed groups in Pakistan and elsewhere, it follows that an application of realism to the drone debate in the spirit of Bell has the potential to produce commensurate results and "lead to policy positions and campaigns that are less likely to worsen conditions for those we are trying to help."[235]

This article will apply a philosophy of *anticolonial legal realism* to the contemporary drone debate. Anticolonial legal realism combines the analytical and political resources of

[233] Bell, "Racial Realism," 369.
[234] Bell, 364.
[235] Bell, 378.

anticolonial critique with a legal philosophy of realism to suggest a way forward in light of America's escalating drone violence and the manifest inability of mainstream western philosophy and legal theory to adequately confront it. At once historical, ideological, and practicable, anticolonial legal realism takes on the problem of drones in light of (rather than in spite of) the colonial history and contemporary power relations that govern their development and use, while accepting the realities of an international legal system that emerged from the ashes of worldwide imperial conflagration only to ensure the continuation of these power relations under the guise of global progress. In section two I will review critical work in international relations theory to historicize the legal concepts occupying the center of the debate over drones, demonstrating them not to be objective notions to which all people have equal access, but rather value-laden beliefs forged in the crucible of the west's colonial violence. In section three I return to the drone debate specifically to explain in light of this history why the current legal protections provided to formerly colonized lands like Pakistan do nothing to prevent repeated and increasingly deadly incursions into their territory by U.S. drones, leaving scores of innocent people dead in their wake. The hope is that, by taking a realist approach to the drone debate, those scholars who object to American drone violence can locate "a manifestation of our humanity that survives and grows stronger through resistance to oppression, even if that oppression is never overcome,"[236] and that through such an intervention the academic drone debate might abandon is present apologetic mode and foster a more historically enlightened critique.

[236] Bell, 378.

II. Historicizing international relations and law

Because the legal principles at issue in the drone debate were codified in the wake of Europe's world wars, we should give thorough consideration to these cataclysmic events and the contemporary international institutions they produced. The enormity of bloodshed that occurred in the course of the second war—in particular the mechanized annihilation of six million European Jews in the Nazi holocaust—caused many in the west to doubt the progress of human civilization altogether. Elie Wiesel famously wrote, "the Holocaust demands interrogation and calls everything into question. Traditional ideas and acquired values, philosophical systems and social theories—all must be revised in the shadow of Birkenau."[237] And so Europe's second world war is regarded as a turning point in human history, from the ashes of which arose a new world order, embodied in the United Nations, that would eschew the ethno-nationalist values that had brought Europe to its knees and swept up much of the world in its collateral damage. To the extent that Europe's second world war was seen as a departure from the enlightenment ideal of universal human dignity, moreover, the establishment of the United Nations was taken as a return to that ideal. In his first address to the UN General Assembly, not long after vaporizing 225,000 Japanese city-dwellers with atomic bombs, U.S. President Harry Truman declared that "the world has experienced a revival of an old faith in the everlasting moral force of justice."[238] Five years later, at an event to celebrate the laying of the cornerstone for the United Nations headquarters in New York City, Truman further characterized this "revival" as universal in scope: "The United Nations represents the idea of a universal morality," he said, and it was founded "upon the belief that men in every land hold the same high ideals and strive toward the

[237] Wiesel, *Night*, 61.
[238] "Address by Harry S. Truman" (US Department of State, 1945).

same goals for peace and justice."[239] The notion that Europe's 20th-century conflagration was a departure from its most hallowed values and that the resulting new world order represents a return to them, however, has long been challenged by critics working outside the paradigm of Europe's civilizing mission.

Not all observers saw Europe's fratricide and its aftermath as a suspension of universal morality followed by the dawn of a new enlightenment. In his 1920 book *Darkwater*, W.E.B. Du Bois wrote of Europe's first implosion that, "in the awful cataclysm of World War, where from beating, slandering, and murdering us the white world turned temporarily aside to kill each other, we of the Darker Peoples looked on in mild amaze."[240] "As we saw the dead dimly through rifts of battle-smoke and heard faintly the cursings and accusations of blood brothers," du Bois wrote,

> we darker men said: This is not Europe gone mad; this is not aberration nor insanity; this *is* Europe; this seeming Terrible is the real soul of white culture—back of all culture,—stripped and visible today. This is where the world has arrived,—these dark and awful depths and not the shining and ineffable heights of which it boasts. Here is whither the might and energy of modern humanity has really gone.[241]

Du Bois, along with other observers, understood Europe's decent into unprecedented destructiveness as not a departure from European morality but rather the culmination of centuries of colonialist idea-making. In the same vein, Aime Césaire wrote in his *Discourse on Colonialism* of Europe's second world war that,

> what [the European] cannot forgive Hitler for is not the crime in itself, the crime against man, it is not the humiliation of man as such, it is the crime against the white man, the humiliation of the white man, and the fact that he applied to Europe colonialist procedures which until then had been reserved exclusively for the Arabs of Algeria, the 'coolies' of India, and the 'niggers' of Africa.[242]

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[239] "Address by Harry S. Truman" (US Department of State, 1950).
[240] Du Bois, *W.E.B. du Bois Reader*, 500.
[241] Du Bois, *W.E.B. du Bois Reader*, 502.
[242] Césaire, *Discourse on Colonialism*, 36.

These procedures were not limited to the perfection of mechanized death and the victimization of half the world to western designs; rather, functioning alongside the material dimension were concepts of civilization, nationalism, sovereignty, and international law that similarly trace their European origins as far back as the 16th century. Insofar as these counter-narratives call into question the analysis of world war and holocaust as an abandonment from Europe's universal values, so too does this history cast doubt on arguments that America's contemporary drone slaughter should be understood as a departure from the "revival" of those values.

Unfortunately, critics of the civilizational dimension of European ideology have been excluded from the official canon as well as current debates in international relations, and naturally this exclusion has ricocheted into the discourse over drones in particular, which with few exceptions neglects the political and legal history from which this technology and the its justifications have emerged.[243] Instead, according to John Hobson, traditional international theory still "doubles up as a vehicle, or repository, of the various Eurocentric metanarratives."[244] Hobson identifies and deconstructs six major Eurocentric metanarratives (or "myths") that underlie the basic presuppositions of current international relations scholarship, in particular sovereignty and positivism, and accordingly these foundations cut to the bone of legal discourse over drone warfare. With these myths operating continuously in the background of contemporary scholarship, Hobson argues that, ultimately,

> international theory does not so much explain international politics in an objective, positivist, and universalist manner but seeks, rather, to parochially celebrate and defend or promote the West as the proactive subject of, and as the highest or ideal normative referent in, world politics.[245]

[243] One exception: Jamie Allinson's "The Necropolitics of Drones".
[244] Hobson, *The Eurocentric Concept*, 2
[245] Hobson, *The Eurocentric Concept*, 1.

Notwithstanding the hegemony of Eurocentric narratives outlined by Hobson, however, Robert Vitalis has given voice to the minority report of international relations theory. Calling it a "mongrel American social science," Vitalis argues that "international relations" is a continuation of what was previously conceived as race relations—and that by extension the modern focus on war reflects a historical preoccupation with "race antagonism." Uncovering the neglected history of Black internationalism, Vitalis argues that intellectuals who identified racism as the persistent catalyst of war and the lingering remainder characterizing its aftermath—people like Césaire and Du Bois—"represent a critical counternetwork to the networks dedicated to upgrading the institutions of colonial rule."[246] These colonial institutions not only include the brick and mortar United Nations and International Criminal Court, for example, but also the bedrock concepts underlying international jurisprudence such as sovereignty, self-defense, and international humanitarian law.

In his book *Imperialism, Sovereignty, and the Making of International Law*, Antony Anghie provides a deep historical account of the development and transformation of modern international law into its contemporary positivist framework and in particular the foundational concepts through which positivists analyze the law and its application, both of which, he argues, are products of colonial encounters over the course of centuries following Europe's discovery of the so-called new world. "My broad argument," Anghie writes,

> is that colonialism was central to the constitution of international law in that many of the basic doctrines of international law—including, most importantly, sovereignty doctrine—were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation.[247]

[246] Vitalis, *White World Order*, 12.
[247] Anghie, *Imperialism*, 3.

Anghie traces the origins of concepts fundamental to the establishment of an internationally functional legal doctrine through successive periods of religious and secular natural law theory, the rise of positivism, and the allegedly decolonial turn in the 20th century inaugurated amidst the rubble of European conflict. In addition to the all-important concept of sovereignty, Anghie identifies other notions such as the 'family of nations' and what he calls the 'dynamic of difference' that will figure into my application of a realist approach to the case of drones.

The explicitly colonial origins of international law, Anghie argues, are first illuminated in the works of Francisco de Vitoria, a Spanish theologian and jurist whose life traversed the turn of the 16th century. Seeing the interest of the Spanish crown in secularizing the basis for sovereignty over conquered lands and peoples, Vitoria transmuted the claims of divine right into a "universal system of *jus gentium* whose rules may be ascertained by the use of reason."[248] Unlike many philosophers of the period, Vitoria did not deny colonized peoples' rational capacity and thus created a jurisdictional space in which Spanish-Indian relations could be analyzed irrespective of religious difference. Nevertheless, according to the rules of *jus gentium*, Spaniards had a legal right to entry into native lands as well as to engage in commerce and religious conversion, and thus resistance on the part of indigenous peoples should consequently be seen as acts of war.[249] Vitoria wrote that if indigenous peoples

> persist in their hostility and do their best to destroy the Spaniards, they can make war on the Indians, no longer as on innocent folk, but as against forsworn enemies and may enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new ones.[250]

[248] Anghie, 20.
[249] Vitoria wrote, "ambassadors are by the law of nations inviolable and the Spaniards are the ambassadors of the Christian peoples. Therefore, the native Indians are bound to give them, at least, a friendly hearing and not to repel them" (Anghie, *Imperialism*, 23).
[250] Anghie, *Imperialism*, 24.

In Vitoria's system, then, the sovereign is marked by his right to wage war and power to acquire title. Despite initially establishing legal equality between the Spaniard and the Indian through their common participation in the universal rationality embodied in *jus gentium*, the inevitable resistance of native peoples against colonial intrusion entailed the establishment of the European colonist as the only true sovereign. "Vitoria's work suggests that the conventional view that sovereignty doctrine was [first] developed in the West and then transferred to the non-European world is, in important respects, misleading," Anghie concludes. Instead, "sovereignty doctrine acquired its character through the colonial encounter."[251]

The natural law approach exhibited in the works of Vitoria persisted over subsequent centuries of Europe's colonial exploits, until the 19th century saw both 'The Age of Empire' and "the period in which positivism decisively replaced naturalism as the principal jurisprudential technique of the discipline of international law."[252] A doctrine of sovereignty being no less important (and perhaps more so) to legal positivists, this concept took on renewed urgency as the central problem of international law was reformulated into a question of maintaining order amongst sovereign states. "Positivist international law," Anghie argues, "distinguished between civilized states and non-civilized states and asserted further that international law applied only to the sovereign states which comprised the civilized 'family of nations'."[253] Yet from the outset a potential positivist approach to international law was challenged by John Austin's conception of law as fundamentally a sovereign command,[254] and so the articulation of a framework in which international law may claim legitimacy and binding force despite the absence of a singular

[251] Anghie, 29.
[252] Anghie, 32-3.
[253] Anghie, 35.
[254] Anghie, 44.

sovereign became the principal ambition of positivists who took Austin seriously while hoping to preclude imminent conflict between empires competing for control over colonized territories.

19th-century jurists needed to establish boundaries for which customary behaviors between states amounted to a society of nations lest they end up equating the new positivist international scheme with simply the totality of all interstate relations; and they found a ready-made principle in the historical distinction drawn between the civilized and uncivilized. The 19th-century jurist Henry Wheaton, for example, asked "is there a uniform law of nations?" His answer: "There certainly is not the same one for all the nations and states of the world. The public law, with slight exceptions, has always been, and still is, limited to the civilized and Christian people of Europe or to those of European origin."[255] Maintaining this distinction proved difficult, however, as the specter of John Austin once again emerged to haunt his positivist successors. For in observing the workings of non-European societies, one could hardly deny that Austin's basic criteria for legal sovereignty were met: like their European counterparts, non-Europeans often answered to a societal authority, from whom commands were issued, and who exerted control over discrete territories. "The broad response," Anghie explains,

> was that Asiatic states, for example, could be formally 'sovereign'; but unless they satisfied the criteria of membership in civilized society, they lacked the comprehensive range of powers enjoyed by the European sovereigns who constituted international society.[256]

Thus, in contrast to naturalists like Vitoria, "'society' and the 'family of nations' [was] the essential foundation of positivist jurisprudence and the notion of sovereignty it supports," which "enabled positivists to develop a number of strategies for explaining why the non-European world was excluded from international law."[257] "The racialization of positivist law followed

[255] Anghie, 54.
[256] Anghie, 58.
[257] Anghie, 59.

inevitably from these premises," Anghie argues, and altogether this establishes a 'dynamic of difference' that he contends is central in the application of international law to the non-European world.[258] As a result,

> all non-European societies, regardless of whether they were regarded as completely primitive or relatively advanced, were outside the sphere of law, and European society provided the model which all societies had to follow if they were to progress and become full-fledged members of the family of nations.[259]

This general notion of entry criteria for acceptance under the purview of international law persists in the present era.

The failure in modern international jurisprudence to account for its roots in colonialism was evident at the inauguration of those institutions that underly the contemporary international order. As Europe's second world war finally came to an end and diplomats from numerous afflicted countries converged on the Dumberton Oaks estate to produce an outline for a new formalized international society charged with preventing another planet-consuming conflict, observers from the non-European world expressed doubt that the essential causes of the war were adequately recognized and addressed in the framework produced there. "The present war," Du Bois wrote in his book *Color and Democracy*, "has made it clear that we can no longer regard Western Europe and North America as the world for which civilization exists; nor can we look upon European culture as the norm for all peoples."[260] Over and above the vulgar revival of European depravity in the course of the latest war, the urgency of dismissing the paradigm of Western civilization was evidenced by the persistence of colonialism as a cause of conflict.

> A recognized cause for the war was the status of colonies; the demand of Germany for a new allocation of colonial territory, for a 'place under the sun', was one of the main reasons that brought on the war,

[258] Anghie, 56.
[259] Anghie, 62.
[260] Du Bois, *The World and Africa*, 241.

du Bois noted.[261] "If war has been and may be the result of race hate, and of colonial might based on racial repulsions as well as on greed for wealth and power," he argued, "we must beware how far we build the new world upon military force and ignore such known and existent causes of war."[262] Sadly, Du Bois did not find this attitude reflected in the outcome: "there emerged a tentative plan for world government designed especially to curb aggression, but also to preserve imperial power and even extend and fortify it," he wrote.[263] Central to Du Bois's critique was a failure of Dumberton Oaks to adequately address the lingering problem of colonialism. "There will be at least 750,000,000 colored and black folk inhabiting colonies owned by white nations," he noted, "who will have no rights that the white people of the world are bound to respect,"[264] invoking that infamous phrase from the U.S. Supreme Court's shameful *Dred Scott* decision in 1857.

In particular Du Bois decried the failure of the Mandates Commission established two decades earlier by the League of Nations, which was ostensibly meant to assist in the decolonization of the non-European world and facilitate the admittance of newly self-determining states into the international family of nations. "We must remember," Du Bois implored, "that one of its causes was our failure to implement the magnificent promise of the Mandates Commission."[265] Following Europe's first world war, colonies were rendered into Mandates under the supervision of allied powers. This effort, Du Bois explains, "was supposed to see that the people of these colonies were fairly treated, and that something was done for their

[261] Du Bois, 250.
[262] Du Bois, 246.
[263] Du Bois, 246
[264] Du Bois, 248-9.
[265] Du Bois, 308.

social uplift and their economic betterment."[266] The failure of the Commission lay in the largely ceremonial avenues for redress available to colonized peoples:

> [the Commission] could not of its own initiative inquire into or investigate facts in the various colonies; the colonial peoples themselves had no vested right of appeal to the Commission, and as a matter of fact the mandated colony soon became indistinguishable from the other colonies of the countries holding the mandates.[267]

Less than thirty years later, Du Bois hoped that this simple problem would remain fresh in the minds of luminaries converging on Dumberton Oaks. Such a memory, he regrets, was seemingly absent: "apparently the colonies taken from Germany are to become integral parts of present empires," he concluded.[268]

While Du Bois remained hopeful for the original promise of the Mandates Commission and its possible reemergence in the wake of Europe's second world war—an optimism not uncharacteristic of his earlier works—in the new millennium Anghie offers a more critical, albeit measured, take on this legacy. Like Du Bois, Anghie contends that, officially, "the primary goal of the Mandate System was to prevent the exploitation of the native peoples; its secondary goal was to promote their wellbeing and development."[269] On the other hand, not unlike the development of sovereignty and the notion of an international society, the Mandate Commission, for all its promise, represented another example of how "colonialism profoundly shaped the character of international institutions at their formative stage."[270] Yet again, Anghie explains, the Mandate Commission "did not seek merely to qualify the sovereign, but rather to create the sovereign."[271]

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[266] Du Bois, 327.
[267] Du Bois, 328.
[268] Du Bois, 251.
[269] Anghie, *Imperialism*, 121.
[270] Anghie, 117.
[271] Anghie, 133.

Allegedly, rather than a reworking of the positivist approach, the establishment of the League of Nations and the creation of the Mandate Commission were techniques of a newly emergent pragmatic approach to international law. The positivist approach, Anghie argues, "resulted in formalism, since the positivist preoccupation with rules led to the conclusion that the life of the law was logic rather than experience."[272] For the pragmatists, on the other hand, "international institutions made pragmatic jurisprudence a possibility in the field of international relations,"[273] and, accordingly, "anticolonial resistance...played a crucial role in shaping the League's policies toward the mandate territories."[274] Ironically, however, in rejecting the positivist takeover of international jurisprudence from the naturalism of its predecessors, the pragmatists "returned to the work of Vitoria," Anghie explains. "The circle was complete: in seeking to end colonialism, international law returned to the origins of the colonial encounter."[275] "In this way," Anghie argues,

> the universalizing mission of international law...could now be adapted to changed circumstances and anticolonial political sentiments, and still continue its task of ensuring that the Western model of law and behavior would be seen as natural, inevitable, and inescapable.[276]

Like Du Bois, Anghie is not altogether critical of the hopefulness that lay at the back of the Mandate Commission, both for colonized peoples desperately needing organized uplift and for the future of Western civilization now twice ripped apart by the inevitable results of colonial competition. Ultimately, however, this legacy is no less troubled: "the tragedy for the Third

[272] Anghie, 128.
[273] Anghie, 136.
[274] Anghie, 139.
[275] Anghie, 145.
[276] Anghie, 146.

World," Anghie explains, "is that the mechanisms used by international law to achieve decolonization were also the mechanisms that created neocolonialism."[277]

The creation of an international legal system ostensibly meant to liberate colonized peoples by renewing their subjugation to European models of government and concepts of civilization inevitably led to a contemporary paradox of so-called pragmatists appealing to the ahistorical ideals of positivism to redress the historical reality of their manifestation. "The abuse of international law as the house law of the 'family of nations'," Harald Kleinschmidt writes, "has created a legacy, as the victims of colonial suppression have had to recognize international law favoring colonial governments, while allowing and even supporting acts of discrimination of the victims of colonial suppression."[278] Accepting Truman's premise that "the United Nations represents the idea of universal morality" entailed that the colonial origins of the legal system hoisted on the rest of the world in reaction to Europe's self-destruction were rendered invisible, and so the apparent way forward was to appeal to those now-"decolonized" concepts in hopes that they may not be just conceptually but actually universalized. While this procedure is preferred among critics of drones who appeal to allegedly universal norms of law and humanitarianism to argue that U.S. drone warfare is illegal and immoral, it bears a troubling resemblance to Strawser's insistence on using a method of abstraction to sanitize drones of their material context and then reapply his thereby "decolonized" concepts to ensure that they adhere.

This foundation of colonialism in contemporary international relations "is not the inspiring kind of story that Americans prefer to hear about themselves,"[279] but it does explain why "decolonization was by no means able to heal all wounds but was rather characterized by a

[277] Anghie, 192.
[278] Kleinschmidt, "The Family of Nations," 306.
[279] Vitalis, *White World Order*, x.

kind of 'post-colonial paradox'. A Greek gift, if we may say so."[280] The less flattering picture illuminated by Anghie, Kämmer, Hobson, and others, demonstrates how the sovereignty doctrine—indispensable to a contemporary positivist's argument against the belligerence of the United States—is a colonial construct that was designed to exploit a perpetual 'dynamic of difference' according to which the victims of colonial suppression are always excluded from the positive legal recourse to which they are ostensibly entitled. Although Truman's idealism still undergirds most debates in international law, Du Bois bore witness to the creation of the modern 'family of nations' that belies the "revival" Truman imagined and instead has generated sanction for neocolonial violence. In the following section, I will apply these lessons to the particular case of US drone warfare, illustrating a new approach to contemporary international relations I call anticolonial legal realism.

III. Drones and anticolonial legal realism

While the racial dimension of drone warfare is ultimately a function of its role in America's broader GWoT, it reaches its clearest expression in a U.S. drone's 'signature strike'. The United States attempts to abstract from of race by waging its war against "radical Islamic terrorism," but the resultant disambiguation of "terrorist" from permissible human types nevertheless falls along racial lines. Gargi Bhattacharyya argues that the war on terror "is a racialization that builds on the insights of anti-racist critiques and the lessons of postcolonial theory."[281] The war on terror, he explains, is couched in "a language of racism that has learned to disavow the terms of 'race' in order to relegitimize racist practices," according to "the proposition that identities are based on cultures and that cultures are separate and absolutely

[280] Kämmer, "Imprints of Colonialism," 240.
[281] Bhattacharyya, "Dangerous Brown Men," 90.

different."[282] Domestically, this is manifested through what Muneer Ahmad calls "an unrelenting, multivalent assault on the bodies, psyches, and rights of Arab, Muslim, and South Asian immigrants,"[283] from a surveillance regime targeted generically at "Mohammad Raghead"[284] to an all-out ban on travel from Muslim-majority countries in "an attempt to cast the United States as a white nation, off-limits to those who don't fit [the] preferred racial type," according to New York Times columnist Jamelle Bouie.[285] On the hunting grounds of America's drones, however, "no-fly" lists and "terror watch" lists transform to kill lists—"sans N-word"—approved by the President during special advisory meetings glibly named "terror Tuesdays."[286] In order to extend the range of drones beyond lists of identified "terror" suspects, American officials developed the concept of a 'signature strike', according to which "military-aged males" could be killed on sight after exhibiting secret "patterns of behavior" that the U.S. has determined are unworthy of life. While the 'dynamic of difference' between the social activities of drone "reapers" versus their targets may determine whether an individual lives or dies on any given day, more broadly, Bhattacharyya argues, "the War on Terror represents an attempt to reshape public perceptions of threat, the role of the state, and the proper exercise of law."[287] I will explore how legal realism might be adapted to accommodate the colonial extension of America's racist drone wars.

In his evaluation of the historical development of international law, Anghie notes that, in the minds of its progenitors, positivism "was scientific, precise, comprehensive and capable of providing clear and coherent answers to any legal dispute it had to resolve."[288] "The positivist

[282] Bhattacharyya, 97.
[283] Ahmad, "Homeland Insecurities," 101.
[284] Greenwald and Hussain, "Muslim American Leaders," The Intercept.
[285] Bouie, "Trump's Travel Ban," The New York Times.
[286] See note 51.
[287] Bhattacharyya, "Dangerous Brown Men," 92
[288] Anghie, *Imperialism*, 40.

self-image of being engaged in a scientific inquiry," he continues, "—and all that suggested in terms of rigor, consistency and precision—played an important role in the method, elaboration and application of nineteenth-century jurisprudence."[289] Anghie often refers to the concepts developed in both the positivist and pragmatist approaches to international law as 'technologies' of a sort—in the case of pragmatism, the Mandates Commission, for example. This insistence on a sort of 'technological rationality' is reflected in both the legal and philosophical evaluation of drone technology, and currently legal approaches to drones are thoroughly positivist in their orientation. "[This] discipline operates very much within the framework it has inherited from the nineteenth century," [290] Anghie warns, providing "a rich and complex set of ideas—which are still an integral aspect of contemporary international legal jurisprudence."[291] In particular, as Anghie explains,

> this scientific methodology favored, then, a movement towards abstraction—a propensity to rely upon a formulation of categories and their systemic exposition as a means of preserving order and arriving at the correct 'solution' to any particular problem.[292]

As I argued above, this propensity is evident in Strawser's prioritization of abstract reasoning with respect to drones, the completion of which allows the jurist to apply artificially ahistoricized concepts to the world and "see if they adhere." Yet it is evident from the ongoing debate over drones that the positivist approach is not producing the solutions that its progenitors promised: both advocates and opponents of drones appeal to positivist concepts of sovereignty and the laws of "just" war to argue for mutually exclusive conclusions—drones are at the same time a flagrant violation of international law and human rights, as well as "the least bad means" of achieving the common good and therefore morally and legally obligatory. In this section I aim to demonstrate

[289] Anghie, 49.
[290] Anghie, 109.
[291] Anghie, 95.
[292] Anghie, 51.

how a realist approach, in particular an approach of anticolonial legal realism, clarifies disputes over drones that have thus far eluded positivism and confounded the academy.

Anghie does not devote much of his text to discussing realism in international law, ostensibly because he did not find it to be a significant factor of history and contemporary practice. There is a germ of realism in pragmatism, to be sure, but observers have recognized similar failures in the latter's application to the problem of colonialism. In *Color and Democracy*, Du Bois observed passionately "realism is here calling for awakened action."[293] Philosophers of law who have advocated realism in a domestic context, interestingly, argue that it is the more genuinely scientific approach to law, because it takes into consideration material and historical conditions. "The rational study of law," Oliver Wendell Holmes wrote in 1897,

> is still to a large extent the study of history. History must be a part of this study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened skepticism, that is, toward a deliberate reconsideration of the worth of those rules.[294]

Put simply, the realist approach reorients the focus of legal studies from what the law *is*, to what the law *does*. In applying realism to the issue of drones and their use and justification in an international legal context, therefore, one must look at what drones and the laws purported to justify their use *do*.

What I offer is not merely a jurisprudential realism of legal theorists like Holmes, however, but an *anticolonial* legal realism that takes the history of international law as a history of racist cognizance and sees drone warfare as a continuation of the long and uninterrupted history of racist violence emanating from the west. Applying a racially-tuned realist principle to international jurisprudence should produce results similar to those Bell generated when testing

[293] Du Bois, *The World and Africa*, 251.
[294] Holmes, "The Path of the Law," 1001.

his 'racial realism' on U.S. domestic law. Bell derived several lessons from his novel analysis of allegedly groundbreaking legal developments in America's long struggle with anti-Blackness, three of which will help organize my realist critique of the drone debate. First, Bell noticed that finding a convergence of interests provides an explanation for sudden changes of heart on the part of the colonizer that is more coherent than simply chalking these occurrences up to a "revival" of the colonizer's latent universal morality. As a consequence, Bell argues, interest convergence is far more effective at producing real relief than calling for redress by pointing to the harm exacted on colonized subjects. Bell ultimately concludes, however, that any remedy achieved through this fleeting convergence "will be abrogated as soon as it threatens the superior societal status of whites."[295] With these realist lessons and the history of international relations in hand, I now turn to drones directly to show how an anticolonial realist analysis brings clarity to the drone debate and points to an alternative path forward distinct from what is offered by traditional positivist approaches.

Much like the landmark Supreme Court decision in *Brown vs Board of Education*, the creation of the League of Nations and the Mandate Commission was heralded as a breakthrough toward decolonization when in reality it was a globalized example of racial interest convergence, which ultimately explains the opposing roles Pakistan and Israel play in the production of U.S. drone wars. Before Pakistan was partitioned from India in the course of the latter's independence, India was included as an allegedly sovereign member of the League of Nations through what Joseph McQuade calls a "political anomaly" owing to the country's participation in the Treaty of Versailles. Upon closer inspection, however, it was evident that India's inclusion

[295] Bell, "Unintended Lessons," 1059.

in this new 'family of nations' was tolerated in light of a convergence of interests with Britain in its desire to maintain imperial dominance. "The British Empire, after all," McQuade explains,

> entered the League with six delegates—and thus six potential votes—due to the inclusion of the United Kingdom, Australia, New Zealand, Canada, South Africa, and India. Although each was recognized as a separate member, in practice the British delegation consulted extensively with the others before providing any formal position to the Assembly of the League. India's position in the League represented an inherent contradiction, reflecting on the one hand a new international role filled with potential opportunities, and on the other a retrenchment or even expansion of the British Empire's international clout.[296]

India declared full independence from the British Empire shortly after Europe's second world war, not because the League had succeeded in uplifting its colonized population, but because it had failed so miserably to do so.[297] McQuade writes, "India's circuitous route to independence largely bypassed the formal structures of the League, which mainstream politicians such as Jawaharlal Nehru [independent India's first Prime Minister] eventually denounced as a 'farce'."[298] Tragically, this process resulted in the partitioning from India of Pakistan (and the later separation of East Pakistan, now Bangladesh), during which millions of people were displaced along sectarian lines and hundreds of thousands were killed. Both countries, still mortal enemies to this day, developed nuclear weapons in violation of international non-proliferation treaties, serving as a stark reminder of the peril colonialism has produced in geopolitical relations and the development of the technologies of war.

Israel, on the other hand, stands as a singular example of postcolonial colonialism, a seeming anachronism that figures importantly in America's experiment with drone technology and the legal instruments justifying its use. Following the Holocaust, thousands of European

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[296] McQuade, "India at the League," 272.
[297] A striking example is the Jallianwala Bagh massacre in Amritsar, Punjab, in 1919, in which the British imperial troops opened fire on an enclosed, unarmed group of protestors, killing between 400 and 1000 people, some of whom fell to their deaths in a deep well while attempting to flee the colonists' bullets.
[298] McQuade, "India at the League," 264.

refugees immigrated to what was then the British Mandate of Palestine, colonizing the land and displacing hundreds of thousands of indigenous Palestinians in what is mournfully known as the Naqba. Israel then declared its own "independence" and has since enjoyed what is described as an "unbreakable bond" with the United States.[299] This bond has resulted in both a material and conceptual exchange with the United States regarding drones in particular. In his book, *Drones and the Ethics of Targeted Killing*, Kenneth R. Himes details the process through which the legal justification for targeted killing was tested in Israeli courts and transferred to America's GWoT. In 2006, he reports, the Israeli High Court of Justice ruled that, "even though some incidents of targeted killing may not have been legal, there was insufficient evidence that a total ban on the practice should be implemented."[300] "In working through their decision," Himes explains, "...the justices relied upon international humanitarian law and where there was a gap in that law it could be supplemented by human rights law as well as Israeli public law."[301] In other words, international humanitarian law was ultimately employed to justify targeted (that is, drone) killing and, where a justification could not be found, Israel's certified 'family of nations' public law would serve as a substitute. Initially the United States was opposed to the Israeli practice of targeted killing against Palestinian combatants, but "after the terrorist attacks of September 11," Richard Boucher of the U.S. State Department noted that "the U.S. embrace of targeted killings would silence this criticism from Israel's most important ally."[302] "With the onset of armed drone use as a central element in U.S. counterterrorism strategy," Himes concludes, "the discussion of targeted killing took a new turn."[303] Thus not only was Israel—a former Mandate

[299] Carlstrom, "Obama Pledges," Al Jazeera.
[300] Himes, *Targeted Killing*, 77.
[301] Himes, 78.
[302] Himes, 84.
[303] Himes, 84.

territory and now a so-called exemplar of democracy in a "troubled" region—integral to the development of drone technology (especially in the case of the Pioneer drone), but it also provided a stock of positivist legal principles on which the use of drones for targeted killing could be justified by the United States according to international and ad hoc law.

Meanwhile, not surprisingly, sovereignty figures heavily in the discussion of drones as a bedrock principle of the United Nations Charter. Advocates of the use of U.S. drones in the GWoT claim that America has a legal right to violate the sovereignty of countries like Pakistan on account of a positivist interpretation of the standards of imminence and self-defense. Pakistan, for its part, has formally objected to such violations against its own sovereignty, and there the issue remains stalled: positivism evidently cannot resolve the dispute. At the same time, the United States continues to conduct drone strikes in Pakistan and justify them under the principles of international law, a reality that suggest that, regardless of what the law is, what it does is allow for repeated incursions by the United States into Pakistani territory that result in innumerable deaths of civilians on the ground. At the same time drone advocates appeal to Pakistan's sovereign status and the implicit cooperation on the part of Pakistani authorities despite their public objections. Notwithstanding this rejoinder, a realist approach would have one take a look at the history of the relationship between the United States and its drone target. Anghie argues that, in the development of international law, "coercion and military superiority combined to create ostensibly legal instruments. Under the positivist system, it was legal to use coercion to compel parties to enter into treaties which were then legally binding."[304] While there is no formal treaty between the United States and Pakistan regarding drones, one can hardly deny

[304] Anghie, *Imperialism*, 72.

that Pakistan's relationship with the world's most powerful military—which continues its operation over objections from the former—is one that is fundamentally coercive in nature.

While sovereignty works on both sides of the dynamic justifying drone incursions in Pakistan, a lack of sovereignty is more often the recourse when U.S. drones venture elsewhere to do their killing. Somalia, another target of US drone assassination, is often referred to as a "failed state" to remove any question of sovereignty from an analysis of America's robotic dominion there. Once called "the most failed state on Earth,"[305] it was recently downgraded to second place in the "very high alert" section of the so-called Fund for Peace's annual "fragile states index".[306] Somalia was supplanted from first place by Yemen, yet another site of repeated U.S. drone incursions, which after years of civil war underwritten by the United States through its ally in Saudi Arabia is now seen as the least sovereign state in the world by FFP. Thus an organization that just so happens to be based in Washington, D.C., assumes the mantle of apportioning grades of sovereignty to peoples all over the world, supplying a ready-made rationale for the America's remote-controlled civilizing mission in those places deemed least sovereign. Despite the revolving door of locales and the upgrades to technology used to control colonized populations, the interplay of sovereignty in justifying U.S. drone murder exhibits the continuity of colonialist frameworks in international law, whereby "the generation of legal rules was possible only within a 'nation' that subjected itself to the control of its own state, while 'nations' allegedly unwilling to do so would have to face the 'complete lack of legal privileges'."[307] Whether in virtue of Yemen's lack of state control or Pakistan's alleged "unwillingness" to take matters into its own hands, sovereignty in its various applications can in

[305] Jones, "The Worst Place," Business Insider.
[306] "Fragile States Index" (Fund for Peace).
[307] Kleinschmidt, "The Family of Nations," 283.

all cases justify U.S. drone colonialism because the notion of state sovereignty was forged through the colonial encounter precisely for this purpose.

The 'dynamic of difference' evident in the application of the sovereignty principle to sites of U.S. drone attacks is even more acute in the actual administration of drone strikes wherever they occur. Detailed in a Stanford/NYU report on drone strikes in Pakistan, "Living Under Drones," 'signature strikes', according to which targets are selected by so-called "behavioral patterns" rather than known identities, often mistake common cultural practices for threatening behavior. For example, simply holding a gun can qualify someone for assassination, even though gun ownership is quite a common phenomenon in Pakistan and Afghanistan, the latter of which has known nearly continuous occupation by foreign powers for a generation. Even more striking is the frequent targeting of *jirga* by U.S. forces. In lieu of a national and secular legal system, especially in remote territories such as the FATA region, *jirga* are an institution in which disputes between litigants are settled through a hearing before tribal elders, who in their official capacities also engage in formal relations with local groups such as the Pakistani Taliban, whom are a target of the U.S. drone war. On repeated occasions these gatherings of "military-aged males" with alleged associations to targets of the GWoT have been annihilated by 'signature strikes', which not only result in the deaths of important figures in the local society but also, ironically, disrupt an indigenous legal tradition tragically misunderstood by western colonialists. Even still, the GWoT is often couched in terms of reducing the "difference" between backward, colonized societies and the liberal democratic societies of the west, with the U.S. styling itself as a liberating force that exports democracy across the globe in a grotesquely violent effort to uplift all peoples.

Outside the more historic mechanisms of colonialism that justify drone warfare by using the sovereignty principle and the 'dynamic of difference' to exclude drone targets from protection under positivist legal frameworks, proponents of drone technology and its application in the GWoT appeal to the "new kind of war" and asymmetry to account for the natural and inevitable development of such weapons, so that these colonialist wars can continue in the light of day despite their transition away from traditional forms of state-on-state conflict. Although drone apologists hope that this diversion from the historical complications of international law will overcome whatever legal stickiness exists in the act of assassinating the citizens of other sovereign states, a historically informed realist approach to the legal dynamics of asymmetry exposes this rejoinder to be yet another tool of colonial adaptation. Kleinschmidt explains, "a critical investigation into the conceptual history of the 'little' war as colonial war…shows that the postulated 'models' of irregularity and asymmetry were part and parcel of the theories used to concoct ideologies of colonial suppression."[308] The risk of overlooking the ideological connection between the history of colonialism and the age of 'new' war is evident in the appeal to asymmetry by critics otherwise skeptical of drones. In light of their positivist analysis of drone warfare and negative conclusion regarding its permissibility under international law, John Kaag and Sarah Kreps argue that "this break from legal tradition suggests a clear course of action: international legal norms need to be reconsidered in light of the challenges that asymmetric warfare poses."[309] Anticolonial legal realism, on the other hand, suggests that just as appealing to the colonialist concept of state sovereignty is doomed to fail in addressing the harms of drone victims, so too will any reconsideration resting on the concept of "asymmetric warfare" fall short of removing colonialist interests from the forefront of its analysis of drones.

[308] Kleinschmidt, 315.
[309] Kaag and Kreps, *Drone Warfare,* 156.

IV. Conclusion

Naïve faith in positivism's ability to counteract the nakedly colonialist violence of America's robotic warfare is terribly misguided. Early on in the development of Europe's violent civilizing project, colonialists realized that "sending out missionaries was cheaper than the deployment of military forces."[310] This simple observation does more to explain the emergence of drone technology than reams of positivist analysis could ever hope to achieve, insofar as positivism serves to reify rather than deconstruct the colonialist values and procedures underlying our "enlightened" world order. Europe's civilizing mission has been secularized and codified into the modern international law, however the cost/benefit analysis evident in early critiques of its effectiveness toward disciplining the barbaric other lingers above everything else. Drones—our new missionaries—are dramatically cheaper to produce and incur less human cost on the civilizer while retaining his ability to terrorize parishioners into submission through the constant reminder of the drone's impending judgment and, when necessary, to zap unruly subjects out of existence with god-like force. The United States did not stumble upon this technology but rather forged it in the fires of Mount Rushmore. While drone critics appeal to positivist principles of international humanitarian law to question whether drones live up to their promise of "surgical precision," an anticolonial analysis asks, "might not the atrociousness of drones arise from their 'correct' and quotidian use—especially in the context of the counterinsurgent battlefield in which they are most likely to be used?"[311] So it is that Strawser agrees that "sending in large-scale US ground forces to [Pakistan] is a nonstarter," and that "drones emerge as by far the least bad option."[312]

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[310] Kleinschmidt, "The Family of Nations," 279.
[311] Allinson, "Necropolitics of Drones," 117.
[312] Strawser, *Opposing Perspectives*, 13.

Anticolonial legal realism, on the other hand, combines the revision of history in anticolonial critique with the lessons of legal realism to inject a new perspective into the stale debate over drones. It exposes the unfortunate reality that any criticism of drone warfare founded on sterilized interpretations of the sovereignty doctrine that ignores the 'dynamic of difference' at work in the selective apportionment of international legal rights, and that obscures the real intentions of colonialist legal doctrines sold as recourse for the harms of colonialism, results in the widespread tendency to abstract international law from its historical foundations in order to start the experiment with colonialism all over again. Realism exposes cases of interest convergence that not only explain the emergence of ostensibly progressive legal remedies but also their inevitable abrogation once those interests diverge. And, if given a chance in the academic discourse over drones, anticolonial legal realism will create space for scholars to produce work without contributing to the colonialist project. Although this last hope may seem marginal in light of the horrid violence perpetrated on drone targets, Vitalis notes that "colleges and universities are crucial, obviously, to the continuous reproduction of our everyday ways of thinking, speaking, and writing about world politics."[313] And as Hobson warns, "failure to uncover these hidden discourses of power and prejudice means not only that we will fail to understand [international relations] adequately but that we will continue, often unwittingly, to reproduce this discourse of power through our own writings."[314] Let this article be an inaugural step in generating a new discourse among scholars that not only resists abstraction in the debate over drones but also challenges the material reality and intellectual devices of 21st-century neocolonialism. By adopting anticolonial legal realism, western scholars could finally abandon their role as apologists for drone warfare and instead answer the call for realism that Du Bois and

[313] Vitalis, *White World Order*, 3.
[314] Hobson, *The Eurocentric Concept*, 16.

others saw in the formation of contemporary international jurisprudence no less than seventy-five years ago.

6. CONCLUSION

Drones are not going away. We have witnessed a doubling of American drone strikes under the Trump administration that is reminiscent of the dramatic escalation perpetrated by his predecessor,[315] and so we should expect his successor to do the same regardless of his or her political affiliation. Moreover, as domestic tensions ratchet up, the U.S. government has started deploying Predator drones to police its own people.[316] If the history of technological intercourse between the U.S. military and police forces teaches us anything, then we can be certain that drones will come home to roost and bring violence in their wake.[317] Current academic discourse on drones represents an embarrassingly limited scope of imagination…from the view that drone warfare is morally obligatory to the limp rebuttal that it poses a moral hazard. All of these perspectives share in the same colonial genealogy despite their alleged antagonism—they use the axioms of western civilizational chauvinism to either sanction drones or condemn them. In the process, scholars leave the foundations of colonialist dogma untouched by critique. The papers presented in this dissertation, on the other hand, provide three novel approaches to the drone debate notwithstanding the impasse of current literature and in light of the intellectual and material legacies of colonialism that persist in the modern era. My hope is that these approaches might be useful for the near-, medium-, and long-term reckoning that this technology has beckoned since its unfortunate cultivation by the United States. Although the emergence of drones was not inevitable, living with them may well be if we cannot establish a mode of

[315] Purkiss, "Trump's First Year," The Bureau of Investigative Journalism.
[316] Koebler et al, "Customs and Border Protection," Vice.
[317] See Casey Delehanty, et al, "Militarization and Police Violence: The Case of the 1033 Program," *Research and Politics* 4, no. 2 (2017): 1-7.

analysis that rises above the necrophilic cauldron that brought them forth, and if we therefore fail to seed a political awakening that would see them abolished.

In the near-term, paper one provides a framework for analyzing the dilemma of drones using an established method of western philosophy that is nevertheless resistant to the standard utilitarian propaganda that is a historical stalwart of the American empire's self-approbation. While on the one hand utilitarian lesser-evilism makes American advancements in the technologies of death "appear at once natural, inevitable, and beneficent,"[318] on the other hand applying a social experiment analysis not only curtails the power of utilitarian obfuscation, it also brings the debate over drones into greater correspondence with the international codes that ostensibly govern their use. This may well be the last hope for the venerated precepts of liberal philosophy to make any headway against the onslaught of remote-controlled violence emanating from the west. In the medium-term, however, paper two urges participants to abandon the colonialist paradigm that has so far supplied the problem-field, methods, and standards of solution for puzzle-solving drones. Insofar as these methods and standards lead to contradictory results, whereby according to the same standards drones are both commendable and condemnable, they do not adequately explain the political phenomena of drone warfare. Fortunately, the establishment of a new paradigm requires nothing more than the assent of the relevant community. While the value of a new paradigm "cannot be made logically or even probabilistically compelling for those who refuse to step into the circle,"[319] if given the chance an anticolonial paradigm should "tell us different things about the population of the universe and

[318] See note 118.
[319] Kuhn, *Structure*, 94.

about that population's behavior."[320] At the very least, something different would be better than putting to rest the debate over drones altogether—in other words, nothing.

The long-term question, undertaken in paper three, is certainly trickier, but anticolonial legal realism points to potentially fruitful avenues for political recourse. In his realist analysis of U.S. domestic law, Bell established that points of interest-convergence between Black Americans and their white overlords actually produced meaningful changes in the former's material condition. By analogy, then, the victims of American drone violence might find relief if their interests were to somehow converge with those of the American empire. During the Cold War, the U.S. State Department found that critics routinely pointed to lynching and state-sanctioned segregation in America as evidence that the west's claim to moral authority over the communist world is a lie.[321] Unwilling to cede this political ground to its enemies, the White House successfully lobbied the U.S. Supreme Court to finally accommodate racial equality through its famous *Brown v Board of Education* decision.[322] The abhorrent violence of drones has occasionally produced enough international condemnation for the U.S. government to take notice, especially when citizens of allied countries are extinguished by their "hellfire." In 2015, President Barack Obama was compelled to publicly apologize for vaporizing Giovanni Lo Porto, an Italian citizen held captive by Al Qaeda in Pakistan.[323] Afterwards Allison Jackson at Public Radio International calculated that "if Obama apologized for 1 civilian drone victim every day, it would take him 3 years."[324] Most of these people are members of "targeted" populations and so

[320] Kuhn 103.
[321] Fast forward to 2020, and the New York Times laments criticism from Russia over the murder of George Floyd, a Black man, by a white Minneapolis police officer and his accomplices, which ignited days of nationwide and international protest. See Andrew Higgins, "Russia Jumps on Floyd Killing as Proof of U.S. Hypocrisy," *The New York Times*, 4 June 2020.
[322] See Mary Dudziak, "Desegregation as a Cold War Imperative," *Stanford Law Review* 41, no. 1 (1988): 61-120.
[323] Baker, "Obama Apologizes" The New York Times.
[324] Jackson, "If Obama Apologized," Public Radio International.

they do not warrant atonement. But were the public to galvanize and sustain international criticism against U.S. drone wars, especially if that criticism came from state enemies like Russia and China, history suggests that the U.S. government would start to second-guess its attachment to the status quo and as a result fewer people would die.

On the international stage, however, the United States is not the only global power with whose interests those of drone victims might converge. As I described in paper one, after the atomic annihilation of 250,000 Japanese city-dwellers by the United States in August 1945, many Americans viewed nuclear weapons as a harbinger of world peace. It was not until after state enemies like Russia acquired nuclear weapons—and non-aligned nations like India and Pakistan a few decades later—that America suddenly viewed non-proliferation as a worthwhile agenda; the U.S. signed the international nuclear non-proliferation treaty in the months following India's inauguration of its atomic weapons development program.[325] The U.S. made the proliferation of weaponized drones inevitable after its thoughtless introduction of this technology into the "global war on terror," but history suggests that their spread will engender rapid second-thinking on the part of American imperialists. Although it seems counter-intuitive, the encouragement of drone proliferation among the enemies of the United States will likely quicken America's resolve to codify and enforce restrictions on their development and use. Insofar as nuclear non-proliferation has produced limited success, demoting the United States from its current position as the global leader in drone deployments might actually reduce their overall use to a comparatively limited state. The seeds of this kind of political development have already been planted, for example, after the downing and reverse-engineering of U.S. drones by the Islamic Republic of Iran.[326]

[325] "Treaty on Non-Proliferation" (United Nations).
[326] Berlinger et al, "Iran Shoots Down," CNN.

Our hope ultimately lies in a reorganization of the global balance of power. Unfortunately enforcement of a non-proliferation agenda usually results in the United States perpetrating even more imperial violence, as the wars in Korea and Libya attest; so while the development of drones by America's enemies might engender second-thoughts regarding this particular technology in the popular discourse, it is not likely to change America's violent disposition. The United Nations Human Rights Council has repeatedly expressed concern about the use and proliferation of drone technology,[327] however any power the UNHRC possesses is merely persuasive owing to the overruling authority of the UN Security Council, which, as Du Bois argued upon its establishment, "will practically be under the control of white Europe and America."[328] The global community of peoples represented in the United Nations, then, should reconsider the diminishing value of an all-powerful council dominated by colonialist nations that recognize among other states "no rights that the white people of the world are bound to respect."[329] While the advent of potentially planet-destroying nuclear weapons failed to inspire meaningful change in the formal structure of the United Nations, perhaps the prospect of globalized robotic warfare will tip the scales in favor of humanity.

The brainstorm above represents just a sliver of what might be possible if we were to redirect the assent of the scholarly community away from a colonialist paradigm and conduct our efforts according to a new mode of thinking on drones. An anticolonial framework, Ajamu Baraka explains,

> allows [us] to critically root [our] analysis in the psychosocial history, culture, political economy, and evolving institutions of the United States of America without falling prey to the unrecognized and unacknowledged liberalism and national chauvinism that seeps through so much of what is advanced as radical analysis today.[330]

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[327] See, for example, UN Human Rights Council resolution A/HRC/25/L.32 submitted on March 24, 2014.
[328] Du Bois, *The World and Africa*, 247.
[329] See note 264.
[330] Sirvent and Haiphong, *American Exceptionalism*, x.

It is not as though the resources we need are difficult to find—all it requires is a resolve not to be instrumentalized by western colonial imperialism and a willingness to venture beyond the colonialist paradigm. Du Bois predicted, "there will return one day to all nations another group with which the world must reckon; young, disillusioned, bitter voices, disillusioned because they realize the futility of war as a settlement of human problems, because they saw its glory in mud, pain, and torn flesh."[331] His forlorn hope: "they will return maimed inevitably in body and mind and ripe for extremity in thought and action."[332] The American academy can foster this "extremity in thought and action" by simply exposing the next generation of scholars and activists to the hard-earned lessons of anticolonial resistance. Against the prospect of robotic death, what do we have to lose?

[331] Du Bois, *The World and Africa*, 329.
[332] Du Bois, 329.

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