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Drones: Legitimacy and Anti-Americanism

Greg Kennedy

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The appearance of new weapons' technologies often gives rise to questions of legitimacy. The use of missile weapons against armored knights was considered illegitimate and unchivalrous by some, as well as a destabilizing influence on the conduct of civilized warfare. An acknowledged and accepted set of rules, designed to limit the vulnerability of the ruling elite in combat, made longbow and crossbow technology illegitimate in the eyes of that warrior-class.¹ German U-boat actions against commerce in World War I, the use of aerial bombardment against civilian populations, and defoliation agents in Vietnam, are modern examples of new technologies whose legitimacy was contested in times of conflict.²

Questions of legitimacy, however, have not always been linked to the condition of war or to a specific technology. British concentration camps during the Boer War were examples of illegitimate policies related to warfare devoid of any specific technological change. Their illegitimacy came not from technology but from the legal and ethical questions raised by the implementation of those methods of waging war.³ Throughout these debates over technology and policies, the term legitimacy seldom meant the same thing. Legitimacy has been used in such circumstances interchangeably with concepts such as proportional, moral, ethical, lawful, appropriate, reasonable, legal, justifiable, righteous, valid, recognized, and logical.

The recent phenomena of using unmanned vehicles, or drones, to deliver lethality in situations of conflict is yet another instance in which a type of technology has proliferated before considerations of its legitimacy have been agreed upon:

The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law and it is both right as a matter of principle,

1 Katie Stevenson, *Chivalry and Knighthood in Scotland, 1424–1513* (Woodbridge, United Kingdom: Boydell & Brewer, 2006); Christopher T. Allmand, *Society at War: The Experience of England and France during the Hundred Years' War* (Woodbridge, United Kingdom: The Boydell Press, 1998); Dennis E. Showalter, "Caste, Skill, and Training: The Evolution of Cohesion in European Armies from the Middle Ages to the Sixteenth Century," *Journal of Military History* 57, no. 3 (July 1993): 412-23.

2 Paul G. Halpern, *Naval History of World War I* (London, United Kingdom: Taylor and Francis, 1995); Alex J. Bellamy, *Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity* (Oxford, United Kingdom: Oxford University Press, 2012); Edwin A. Martini, *Agent Orange: History, Science and the Politics of Uncertainty* (Boston: University of Massachusetts Press, 2012); Nicholas A. Lambert, *Planning Armageddon: British Economic Warfare and the First World War* (Boston: Harvard University Press, 2012); Sir Herbert W. Richmond, *Economic and Naval Security; A Plea for the Examination of the Problem of the Reduction in the Cost of Naval Armaments on the Lines of Strategy and Policy* (London, United Kingdom: E. Benn Ltd., 1931).

3 A. W. G. Raath, *The British Concentration Camps of the Anglo-Boer War, 1899-1902* (London, United Kingdom: War Museum, 1999).

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and inevitable as a matter of political reality, that the international community should now be focusing attention on the standards applicable to this technological development, particularly its deployment in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and the standards and safeguards which should apply to it.⁴

The current debate over the legitimacy of America's use of drones to deliver deadly force is taking place in both public and official domains in the United States and many other countries.⁵ The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: "Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability."⁶ This article will address only the first three critical questions.

The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct "signature strikes" is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.⁷ Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.⁸ Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama's nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America's elected officials have regarding the legitimacy of drone use.

Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA's lack of

4 Ben Emmerson, quoted in Chris Cole, "Will UN Drone Inquiry Get to the Heart of the Matter?" *Drone Wars UK*, January 25, 2013, <https://dronewarsuk.wordpress.com>.

5 Mary Ellen O'Connell, "Lawful Use of Combat Drones" *Congress of the United States, House of Representatives, Subcommittee on National Security and Foreign Affairs, Hearing: Rise of the Drones II, Examining the Legality of Unmanned Targeting*, April 28, 2010.

6 Job C. Henning, "Embracing the Drone," *The New York Times*, February 20, 2012.

7 "UN launches inquiry into drone killings," *BBC News*, January 24, 2013, <http://www.bbc.co.uk/news/world-21176279>.

8 Valentina Spiga, "Law-of-war murder definition and its repercussion on the legality of the use of drones," *The Left: Legal Issues in the Fight Against Terrorism*, May 28, 2010.

legitimacy in its use of drones.⁹ The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaeda-linked threats to US security, only deepened such suspicions.

Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “. . . damage counter-terrorism collaboration with Saudi Arabia.”¹⁰ The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.¹¹ Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy.

In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.¹² It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.¹³ One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom.

Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world's stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion of many, makes Great Britain culpable in the illegality and immorality of

9 Chris McGreal and Ian Black, “White House Silent Over CIA Drone Reports as Pressure Builds on Brennan,” *The Guardian*, February 7, 2013.

10 Ibid.

11 Mark Mazzetti and Scott Shane, “Drones are Focus as CIA Nominee Goes Before Senators,” *The New York Times*, February 7, 2013.

12 David Kilcullen, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One* (New York: Oxford University Press, 2009).

13 Lisa Schirch, “9 Costs of Drone Strikes,” *Huffington Post*, June 28, 2012, <http://www.huffingtonpost.com>.

those operations.¹⁴ Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.¹⁵

The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve *adequate* rather than decisive victories, thereby setting an example of restraint for the international order.¹⁶ The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

14 Conflicting attitudes towards the use of targeted killing and assassination created varying degrees of anti-Americanism on the British side of the Anglo-American intelligence world throughout the Cold War period, a result of such things as requests from the CIA to engage in assassination operations when MI5 and MI6 had renounced such tactics, as well as that anti-Americanism being “. . . partly it was residual upper-middle-class anti-Americanism,” combined with a jealousy of the superior pay and benefits the Americans received for their services, as well as the British “. . . seeing themselves as servants of the Crown, and their services as part of the orderly, timeless configuration of Whitehall. . . . There was a streak of ruthlessness and lawlessness about the American intelligence community which disturbed many in the senior echelons of British Intelligence.” See Peter Wright, *Spycatcher: The Candid Autobiography of a Senior Intelligence Officer* (London, United Kingdom: Viking Penguin, 1987), 303.

15 Greg Kennedy, “Anglo-American Strategic Relations and Policing the Post-9/11 World” in *Anti-Americanism in the British Defence/Security Community*, ed. Greg Kennedy (Carlisle, PA: Strategic Studies Institute, 2013).

16 Colin S. Gray, *Weapons Don't Make War: Policy, Strategy, and Military Technology* (Lawrence: University Press of Kansas, 1993), 7; on restraint, morality, and achieving strategic aims, see <http://www.bbc.co.uk>.