

Legitimising the US Drone Programme

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Abstract

In this thesis I outline the Obama administration's legitimating discourse for the drone programme focusing on the discourse's language and claims of precision. I begin with an analysis of the precision language in order to demonstrate its central role in the government's discursive defence of the drone programme. Claims of precision underpin two key claims justifying the drone programme: (1) drone strikes adhere to just war principles and (2) drone strikes adhere to the laws of armed conflict. Since precision is at the heart of claims that drones allow for more virtuous foreign policy the aim of this thesis is to interrogate the drone's alleged precision capabilities, and the programme's related policies and intelligence practices, in order to reveal a gap between what is claimed about the programme and how it actually functions. Crucially, this thesis examines a component of the drone programme that is consistently overlooked in debates over the drone's precision: surveillance. It also looks beyond the technical aspects of the weapon's precision and towards the racist policies and practices that underpin the drone programme in order to show that drone strikes are inherently imprecise due to the current state of technology and a cultural racism that suffuses the programme's surveillance and targeting practices.

Keywords: Drone Warfare, Orientalism, Algorithmic Warfare, Precision Warfare, Surveillance, Racism

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Acronyms

CIA	Central Intelligence Agency
JSOC	Joint Special Forces Operation Command
NSC	National Security Council
NSA	National Security Agency
RMA	Revolution in Military Affairs
LOAC	Laws of Armed Conflict
IHL	International Humanitarian Law
AUMF	Authorization for Use of Military Force
AQAP	al-Qa'ida in the Arabian Peninsula
UN	United Nations
NGO	Non-governmental Organisation
FBI	Federal Bureau of Investigation
RAF	(British) Royal Air Force
ICRC	International Committee of the Red Cross
NCTC	National Counterterrorism Center

Obama Administration Officials

John Brennan

Homeland Security Director January 2009-March 2013

CIA Director March 2013-January 2017

Hillary Clinton

Secretary of State January 2009-February 2013

Harold Koh

Legal Advisor of the Department of State June 2009-January 2013

Leon Panetta

CIA Director February 2009-June 2011

Secretary of Defense July 2011- February 2013

Michael Hayden

CIA Director May 2006-February 2009

Jeh Johnson

Department of Homeland Security December 2013-January 2017

General Counsel of the Department of Defense February 2009-December 2012

Jay Carney

Official White House Press Secretary February 2011- June 2014

For my Mom and my Abuelos

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Author's Declaration

I declare that the research contained in this thesis, unless otherwise formally indicated within the text, is the original work of the author. The thesis has not been previously submitted to this or any other university for a degree and does not incorporate any material already submitted for a degree.

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April 20, 2020

Introduction

The centrepiece of Obama's counter-terrorism policy was the drone programme. It consists in using an armed remotely piloted vehicle to conduct "targeted killings" of terrorists on a "Kill List". Although drones had been employed by earlier administrations, it was the Obama administration that attempted explicitly to justify their use.

According to government officials and defenders of the drone programme, the programme consists of cost-effective targeted killings that are humane, precise, and efficient methods for individually killing "high-value terrorist leaders". Targeted killings by remotely controlled drones are perceived as having minimal, if any, downsides, since they spare both civilians and US troops from bombardment. Although the drone is beloved by many journalists, academics, and government officials alike, critics remain skeptical. They argue that use of the drone lowers the threshold for war, that drone strikes are assassinations, and that the drone programme kills many innocent civilians.

When the drone programme was brought to the US public's attention it was amidst controversy due to its use in the targeted killings of US citizens; Anwar al-Awlaki and Samir Khan were killed by drone strikes in Yemen on September 30, 2011 without the provision of due process (Raghavan 2011). Due to the resultant controversy the US had to justify its use of violence to the public. The Obama administration is central in that it sharply expanded the use of drones and formalised the drone programme (Junod 2012). President Obama (2013) and Central Intelligence Agency (CIA) Director John Brennan (2012) defended and justified the drone programme, both legally and ethically, in speeches and interviews. The Obama administration chiefly defended the drone programme by deploying a legitimating discourse which highlighted the precision of drone strikes. By claiming that use of the drone affords more precise, and therefore more principled violence that spares civilians from attack, the US

government attempted to alter the public's perception of the drone programme. Even today, the Obama administration's discourse and legal rationales continue to legitimise the programme. It remains important to criticise and interrogate the precision claims of the government because they have helped create a discursive environment in which the use of drone weaponry continues to proliferate and because they underpin claims that strikes are legally and ethically legitimate.¹ Consequently, although the past tense is normally used when discussing the Obama administration, the claims, arguments, and assumptions stated, as well as the policies enacted by his administration, are still current.

In this thesis I outline the Obama administration's legitimating discourse for the drone programme focusing on the discourse's language and claims of precision. I use the term "discourse" to mean a limited range of possible statements which promote a limited range of meaning, or a special political language with its own narratives and meanings, and its own exclusive forms of knowledge (Jackson 2014). Large-scale projects of political violence, such as the "war on terrorism", require a significant degree of political and social consensus, and this consensus is not possible without language. Language manufactures approval by suppressing individual doubts and wider political protest. Language, then, is the medium of legitimation, rendering the deployment of language by politicians an exercise of power (Jackson 2014). Understanding discourse as language in the service of power means that the language deployed by government officials requires examination so that the unchecked power it receives in time of war does not become abusive (Jackson 2014). In the specific context of my argument about the nature of the Obama administration's attempted justifications of drone warfare, I use "discourse" to denote the language used by government

¹ There are reports that the Trump administration wants to increase CIA drone strikes and take an even more aggressive posture (Dilanian & Kube 2017). The Trump administration has also given the CIA more autonomy to decide on whether the US can pull the trigger. There are also reports that the Trump administration is tolerating more civilian deaths (Dilanian et al. 2017).

officials, journalists, philosophers, policy-makers, and others to construct drone violence as reasonable, responsible, and “good”; and in so doing, to silence any elements of knowledge and counter-arguments that would challenge the terms of the exercise of state power. Such discourse is constitutive of a language that is exclusionary and that functions to silence other modes of representation so as to normalise the government’s drone programme.

I provide an analysis of the government’s precision language in order to demonstrate that claims of precision are fundamental to the government’s defence of the drone programme. Precision claims underpin two other critical government claims: (1) drone strikes adhere to just war principles and (2) drone strikes adhere to the laws of armed conflict (LOAC). Government officials assert that the drone’s surveillance and precision munitions enable US officials to better adhere to just war theory’s and the LOAC’s principles of necessity, discrimination, proportionality, and humanity, and that as a result, the drone is the legally and morally superior weapon among alternatives. Given the centrality of precision rhetoric to the legitimisation of the drone programme, this thesis interrogates the Obama administration’s claims of precision, as well as its secondary claims of legal and ethical violence.

Although this thesis does provide an analysis of the legitimating discourse’s precision language, the aim of this thesis is *not* to provide a formal discourse analysis. The analysis of precision rhetoric is solely to render clear that claims of precision are central to the government’s legitimating discourse. While I do discuss other features and foundational narratives of the discourse, this is solely to provide the historical and background conditions which help make the government’s discourse appear persuasive. Since precision is at the heart of claims that drones allow for more virtuous foreign policy the aim of this thesis is to interrogate the drone’s alleged precision capabilities, and the programme’s related policies and intelligence practices, in order to reveal a gap between what is claimed about the

programme and how it actually functions. In this thesis I show that not only are drone strikes not precise due to the current state of technology and programme policies, but also that they are inherently imprecise. I do this by looking beyond the technical aspects of the weapon's precision and towards the racist policies and practices that underpin the drone programme. By engaging with both critics and proponents of the drone programme I am able to show that despite the civilisational language at work to create a hierarchy of violence, where the US's violence is positioned as humane, in many instances US practices are indistinguishable from those of terrorists.

In order to substantiate my argument that many government claims about drone warfare were and continue to be misleading and inaccurate, I draw on the work of non-governmental agencies, of reporters and war journalists, and of academics that focus on security, precision warfare, and counterterrorism and its discourse (e.g., Jackson 2005, Amoores 2009, Chamayou 2015a, Gregory 2011, Said 2003, Wilcox 2015, Grayson 2012, Wall 2016, Zehfuss 2011). I am aware that there already exists a great amount of literature that points out the myth of precision targeting during war and more specifically, that there is growing literature that demonstrates that the drone, its intelligence practices, and its policies are not precise (Kaplan 2006, Chamayou 2015a, 2015b, Wilcox 2015, Zehfuss 2011, Beier 2003, Norris 1991, Cavallaro et al., Calhoun 2015, Long 2012, Woods 2015, Benjamin 2013, Scahill & Greenwald 2014, Friedersdorf 2012). My thesis continues in the tradition of this literature. It does so by focusing in detail on the precision of US drone strikes. Although the aforementioned literature has started to address the precision of the drone programme, most criticism focuses solely on one aspect of the drone programme's precision, be it its precision munitions, intelligence practices, or its policies – they have not subjected to extended and comprehensive treatment the government's central precision claim. This thesis is to my knowledge, the first full-length interrogation of the claim according to which drone strikes

are precise. This thesis not only takes into account the technical capabilities of the drone, the programme's policies, and its intelligence practices, but also takes into account how surveillance affects precision. This is significant given that how surveillance affects precision has been overlooked by proponents and critics alike. This thesis not only offers a holistic critique of the drone programme's precision, it also provides a novel analysis of the drone programme's legitimisation discourse by focusing on the centrality of precision. Moreover, while literature critical of the drone programme's surveillance is increasing, most academics have focused on its bio-political nature. Neglected here, is how surveillance and the racist attitudes of government officials affect the precision of the drone programme. In demonstrating the racism that suffuses the programme's surveillance and targeting this thesis is able to further critiques of the drone programme's precision by demonstrating that the programme is inherently imprecise. This thesis, then, makes three contributions to the field: it offers an analysis which demonstrates that precision language is fundamental to the drone programme's legitimisation discourse; it demonstrates that the claim the drone programme is precise is empirically false; and finally, using Edward Said's orientalism framework, this thesis demonstrates that the programme is inherently imprecise due to the racist attitudes and knowledge that underpin its targeting policies and practices.

My analysis of the government's precision language draws on speeches and interviews from high-ranking government leaders: former President Obama, former CIA Directors John Brennan and Michael Hayden, and former Secretaries of State Leon Panetta and Hillary Clinton. As well as on statements from US senators, military leaders, and drone operators in order to explain the drone programme and demonstrate the gap between the legitimating discourse and the actual programme. Their speeches and statements are used to demonstrate how the programme was justified. I focus especially on how they describe the technology of the drone and its capacities for "hunting" targets with objectivity and precision.

Additionally, I turn to war journalists and reporters from major news outlets such as *The New York Times*, *The New Yorker*, *The Guardian*, *The Atlantic*, *The Washington Post*, *The Bureau of Investigative Journalism*, *The Intercept*, *Democracy Now!*, and *Slate*. I also use information and reports in the academic literature on the drone programme, both from critics and proponents.

This inquiry does not give sustained attention to the attending political or technological discourses that also help legitimise the programme. Although there are three drone programmes – the CIA’s, the military’s, and Joint Special Forces Operation Command’s (JSOC’s) – the focus is on the CIA’s and the military’s, JSOC’s is not discussed. Finally, I focus only on the drone programmes of the US, although Israel and the United Kingdom have similar programmes.

The structure of the thesis is as follows. The first chapter provides the meta-narratives, assumptions, and myths that underlie the government’s legitimating discourse. These meta-narratives are implicit in the discourse and they are significant because they play a role in making the precision language work and also in legitimating the programme. After explaining these meta-narratives, I situate my thesis within other critical literature on the programme in order to demonstrate the perspectives which inform my critique and my contribution to that literature. In the next chapter, chapter two, I focus on giving an analysis of the precision rhetoric in order to outline the government’s precision claims justifying the use of drones. In the following two chapters I interrogate the precision claims of the government. Chapter three interrogates the drone programme as a whole – e.g., its precision munitions, intelligence practices, and policies, and chapter four interrogates the programme’s surveillance. Since the claims that drone strikes are precise are central to the government’s ethical and legal legitimisation of the programme, in the fifth chapter, I utilise my arguments from chapters three and four in order to demonstrate that the legal and ethical claims of the

government break down. Again, the purpose of this thesis is not to provide a full analysis of the content of the discourse, nor analyse whether it does in fact work to legitimise the drone programme in the eyes of the wider population. Rather, the purpose is to subject the precision claims of the government's justificatory discourse to critique, showing that the rhetoric of the government does not stand up to scrutiny.

Chapter 1. Discourse and Narratives of Legitimation

1.1: Meta-Narratives, Myths, and Assumptions That Underlie the Government's Discourse

The discourse legitimising the Obama administration's drone programme did not emerge in a vacuum. Before I introduce the Obama administration's precision rhetoric, it is therefore helpful to be aware of the different meta-narratives, myths, and cultural assumptions that underlie the government's legitimising discourse and that implicitly bolster the latter even when it is challenged. To view drone warfare as acceptable merely due to its technical capabilities and ability for remote control is too simplistic. The legitimisation of drone warfare goes beyond technical rationalisations and security, for there are underlying beliefs, attitudes, and events that, albeit tacitly, affect how we contemplate and discuss drone use and violence (Grayson 2012). Drone warfare, then, is legitimised through a complex interplay of discourses, ideologies, historical and political narratives, and economic and political interests (Grayson 2012). In order for the US government to normalise the practice of drone strikes in the name of counter-terrorism it requires a language, or a public narrative which suppresses individual doubts and wider political protest. Meta-narratives and language which features US "good guys" versus terrorist "bad guys" and Obama as "prudent" and averse to unnecessary wars play a role in legitimising the drone programme. So too does the assumption that science and technology allow for continuous improvement – technical and normative – in the conduct of warfare. These tacit narratives and assumptions are not new; they are colonial tropes that have been utilised to legitimise war since the 20th century. But they continue to underwrite attempts to legitimise the drone programme. As such, one has to understand these meta-narratives and tropes in order to understand, in turn, the power of the government discourse that is used to justify drone violence.

In this first section I provide some background for the discourse by setting the context in which the drone programme emerged, and the background circumstances and understandings that make the legitimising discourse possible. I then move on in the second to situate my thesis within the critical literature on the drone programme and outline my overall contribution.

Exceptional US Citizens and the Righteous Killing of ‘Terrorists’ After September 11th, 2001

In war, the question of who is doing the killing and who is being killed is uppermost. The September 2001 attacks were the worst act of political violence on US soil and were discursively constructed by the Bush administration as an exceptional tragedy (Jackson 2005). These attacks are a pivotal historical and cultural event that have been construed as an act of war instead of a criminal act (Jackson 2005). They were used to maintain a myth of exceptional victimhood and suffering, allowing for the US to portray itself as a *victim* and not an aggressor. This becomes salient in the government’s rhetoric of a legal and just “war on terror”. The American exceptionalism that underpins US consciousness positions US soldiers and intelligence analysts as noble heroes and “good guys” who work to defend the US and others from “evil” terrorist threats (Bush 2003, Jackson 2005, Miller et al. 2013, Walt 2011). In this context, US soldiers are constructed and essentialised as “good guys”, while terrorists are essentialised as their opposite: “irrational villains” who are morally corrupt and cannot be bargained with or rehabilitated (Heng 2002, Tesón 2012, Statman 2004, Jackson 2005). This language constructs identity and creates both a civilisational meta-narrative of US “good guys” versus terrorist “bad guys” and a hierarchy of legitimate and illegitimate violence (see Bush 2003).

As shall become clear in the context of the drone programme, the Obama administration sustained the Bush administration's construction of a pervasive and global terrorist threat (Obama 2013, Brennan 2012). The narrative of ruthless terrorists that never cease to plot attacks is all the more convincing because since the 2001 attacks there have been others on US soil, all by US citizens or legal residents: the San Bernardino incident in 2015; the Fort Hood shooter in 2009; the Florida attack in 2016 at a gay night club; and the 2013 Boston marathon bombings (Barrett 2016). There have been attacks in Western Europe as well: to name but a few, three attacks in Paris in 2015 and an attack on Bastille Day in Nice 2016; attacks in Brussels and Berlin in 2016; and attacks in London and Manchester in 2017 (Yourish et al. 2017). Though these events are not attributable to terrorist networks like al-Qa'ida, it is nonetheless the case that they bolster the narrative of insecurity and uncertainty that fuels the US deployment of drones abroad.

These attacks, along with the demonisation of terrorists by both US political parties, help to make their killing acceptable and help to construct US violence as necessary, defensive, and just. Against the backdrop of the "war on terror" and these associated framings of violence it becomes easier for the government to defend its violence as just and lawful. US soldiers are considered inherently "good", which gives them the right to break the law in times of need (Jackson 2005). Whether concerning torture, occupation, indefinite detention, or indeed drone strikes, the narrative of the "war on terror" sanctions US atrocities and helps to render them "necessary".

The Anti-Bush: "Prudent" President Obama the Nobel Prize Winner

It matters who is declaring to the public that the drone programme is ethically and legally justified, for some people are seen as more trusted and credible than others. Obama helped

render the discourse defending the drone programme more credible, on the basis of a particular perception of him and his future presidency. His election meant not only the end of the Iraq war, but ending ‘the mindset that got us there in the first place’ (Glaister 2008: n.p.). Obama was the candidate of “hope” and “change” (Hartnett 2013), which supposedly meant the end of the Bush administration’s foreign policy (Reeves & May 2013, Tierney 2012, Mayer 2009, 2013). Significantly, Obama was seen as a counterpoint to every negative aspect of the Bush doctrine. During his campaign for office he professed that he would turn the page on the imperial presidency that treated national security as a partisan issue and would establish a “National Declassification Center” on the basis of “the necessity of openness in a democratic society” (CNN 2008, Obama 2007a, Obama 2007b, Ivie & Giner 2009). Obama’s democratically inflected discourse featured themes of transparency and accountability (Ivie & Giner 2009, Junod 2012); and since he was a former legal scholar at Harvard he was seen as rational and as an intellectual. Given the appearance of Bush as a dunce, Obama thus seemed to be his sensible opposite (Glaister 2008, Chirindo & Neville-Shepard 2015).

After Obama’s election, his speech at Cairo University in 2009, which proposed a new beginning between the US and Muslims, was seen as an attempt to change the direction of US relations with Islamic nations and seek common ground through diplomacy (Chirindo & Neville-Shepard 2015). The Obama administration officially dropped the rhetoric of his adversaries as “evil”, toned down the framing of 9/11 as a conflict between Islam and the “West”, and purportedly stopped using the term “war on terror” (Chirindo & Neville-Shepard 2015, Rohde 2012). As Dominic Tierney writes: ‘[t]he quest for the Obama Doctrine reveals a president with the wisdom to resist doctrinaire thinking’ (2012: n.p.). Obama was seen as “good”, as well as wise and progressive (Robinson 2008, Ivie & Giner 2009, Junod 2012). Compared to Bush, he appeared more restrained when it came to using armed force and more concerned by the potential for unintended consequences (Tierney 2012). Centrally, Obama

was perceived as favouring “precise” and “surgical” operations, including Special Forces raids and drones strikes (Tierney 2012).

Nevertheless, as Ivie and Giner (2009) point out, Obama did not break free of the use of military force as an instrument of foreign policy. As Obama himself stated before his election, ‘[t]here will be times, when we must again play the role of the world’s reluctant sheriff. This will not change—nor should it’ (Obama 2009: n.p.). Despite his acceptance of the Nobel Peace Prize and his criticism of the Iraq war, Obama was far from being a pacifist and presided over one of the most lethal US presidencies ever. Upon receiving the Nobel Prize, he emphasised that he was a realist, and significantly, that ‘[t]here will be times when nations—acting individually or in concert—will find the use of force not only necessary but morally justified’ (2009: n.p.).

The image of being the figurehead of a less bellicose administration than his predecessor’s allowed Obama to pursue a lethal campaign against suspected terrorists. In response, conservatives including John Yoo (2013) denounced Obama’s drone killings as a worse assault on human rights than anything the Bush administration had ever facilitated.² Along with Yoo, many others argued that partisanship, and not principle, had been the reason why members of the mainstream press had not treated the *White Paper* – on which the legal defence of drone strikes rests – with the same outrage as the torture memos (Mayer 2009, Yoo 2013). Andrew C. McCarthy (2013), in the conservative *National Review*, asserted that it was hypocritical of the Obama administration’s Attorney General, Eric Holder, to have argued that terror suspects should be tried when possible, only then to go on to support their lethal targeting by drones. Nick Gillespie, in the libertarian *Reason*, also wrote of a liberal ideological hypocrisy: ‘[i]t reveals that for all their crowing about being watchdogs of all that is good and decent in society, when push comes to shove, too many journalists are ready and

² Yoo was a supporter of Bush and the lawyer who co-authored the infamous “torture memos” which offered a legal rationale for waterboarding and other forms of prisoner abuse.

willing handmaidens to power—including the power to kill’ (2013: n.p.).³ The object of criticism for conservatives such as Yoo and Gillespie is not the lethal targeting of people; rather it is what they saw as the media’s hypocritical support of the drone programme. They felt that had Bush tried to get away with the drone programme there would have been outrage. They were right. The media, for all of the controversy surrounding drones, defended the drone programme in part because of how it perceived Obama.

The perception of Obama by the liberal media as a more “prudent” and intellectual President helped to confer legitimacy upon the drone programme. Obama assured his audiences that he personally was taking responsibility and rigorously choosing those on the programme’s “Kill List”. After all, Obama was the antithesis to Bush the war criminal; the one who wanted to shut down Guantánamo and who thought the Iraq war was “dumb”. This narrative of a more “prudent” Obama is especially salient when examining the legal and ethical rhetoric on uses of armed drones. For, as I shall demonstrate more in depth in chapter five, he and his administration re-defined certain concepts to make the programme appear ethical and legal, whilst simultaneously expanding the use of drones to more countries; and it was the perception of Obama that helped give the appearance that the re-definition of concepts and the expansion of the programme were not an executive power grab or a continuation of Bush’s imperial presidency, but a necessary – and legally legitimate – aspect of the “war on terror”. Furthermore, the perception of him as more practical and rational than his predecessor helped further the assumption that the use and expansion of drone strikes was both reasonable and wise.

³ The political Right was reduced to criticising Obama for killing terrorists instead of capturing them and interrogating them in Guantánamo. Senator Lindsey Graham went on to claim that Obama killed out of convenience: ‘[w]e lack, as a nation, a place to put terrorists if we catch them. . . . They know that if they capture a guy, it creates a nightmare. And it’s just easier to kill him’ (quoted in Junod 2012: n.p.).

The Revolution of Military Affairs and the Capabilities for More Objective and Scientific Warfare

The appeal of drones as the weapon of choice in the “war on terror” also has to do with two further interconnected developments: the Revolution of Military Affairs (RMA) and the growing military orthodoxy that humans are the weakest link in the intelligence chain. The RMA is an idea set forth in the 1980s that understood and presented American advances in missile technology at the time as able to potentially change the nature of warfare (Lemann 2001). In other words, this view holds that military pre-eminence rests on the application of military technology to warfare (Harris 2003). A central component of RMA rhetoric is that technological revolutions – for example the Naval Revolution, the Aviation Revolution, and the Nuclear Revolution of the 19th and 20th centuries – will inevitably lead to military domination (O’ Hanlon 1998). In this context, the first Gulf War (1991) was seen as evidence for the RMA position and the harbinger of technologically-oriented future wars, given its success in using communications, intelligence, and “smart bombs” against Saddam Hussein (O’ Hanlon 1998, Beier 2003).

The RMA emerged as the solution to the Vietnam syndrome of extended warfare and high casualties. It is a defence policy for a time of public intolerance for drawn-out conflict and US casualties (Lemann 2001). This is highly significant given the way in which engagements in Iraq and Afghanistan showed that Vietnam syndrome had not gone away, and that no adequate means for avoiding drawn out engagement been found. In this context, the ability of drones to be remote controlled makes them an attractive alternative to boots on the ground. The more a president can control US casualties, the more they can retain or even build their support.

Additionally, through this RMA narrative, mechanical drones gain appeal from the way in which they are perceived to reduce the potential for human error. The RMA calls for more emphasis on the use of technology in military operations – for example, the use of global surveillance and networked warfare – to deter, discipline and destroy fast, fleeting and unpredictable adversaries. The aim is no longer to seek battle, but rather asymmetrical violence to prevent insurgent attacks (Gregory 2011). Surveillance and intelligence are the cornerstones of this type of asymmetrical warfare. Technically advanced drones are significant in this respect because of their integrated function of collecting data, providing intelligence, and selecting potential suspects for human analysts. Given drone technology's capacity to track insurgent movements on the ground or anything of significance in real-time, military officials argue that they provide "complete situational awareness" or "full dimension protection" (O' Hanlon 1998). "Situational awareness" provided by surveillance is presumed by Donald Rumsfeld and other architects of the RMA as a way to significantly reduce the "fog of war" on the battlefield (O'Hanlon 1998, Lemann 2001). Hours and days of surveillance are reputed to clean out and see through battlespace (Lemann 2001), allowing for more precise strikes at a distance, without putting troops in danger. Data mining, algorithms, and surveillance are being used to "predict" attacks and kill "suspects" or "militants" before they are able to fulfil their plans. Hence, drone technology now helps to do the immaterial labour of knowing, sensing, and remembering (Reeves & Packer 2013). This use of technology and mathematics to calculate the probability of a "terrorist threat" is seen as the answer to human error or underperformance and emotional setbacks, all allowing for more objective decision making (Reeves & Packer 2013). Thus, the employment of surveillance, communication networks, and algorithms for warfare gives the impression that targeting is more objective and scientific, and therefore, more "precise". It furthers the view that war can be "cleaner" and that the US can drop long-range "surgical" bombs anywhere in the world

(Lemann 2001). Drones are thus seen as the manifestation of the RMA goal of projecting significant power without vulnerability (O' Hanlon 1998, Deptula 2013).

Machines like drones, then, are woven into myths of technological superiority, objectivity, and control that help support their adoption (Wall & Monahan 2011), establishing them as examples of American ingenuity. Indeed, they are on display at the Smithsonian to celebrate the progress in aviation and air power.⁴ Videos on a loop demonstrate drone strikes from the view of the drone, accurately bombing buildings without showing any dead bodies. They convey an emphasis on power and control prevalent in the rhetoric of “Western” science and this helps convince the public that violence is something that is controllable with “precision weaponry”, particularly with drones. This understanding of the drone as the most advanced weapon available is crucial because it allows for it to be defended even when mistakes occur and civilians are killed – for it is still considered to be more “precise”, and hence to kill less civilians, than alternative weapons. The fetish of technology and of getting rid of the human weak link constitute a background condition that make the precision rhetoric work. As I will demonstrate in the coming chapters, surveillance and technology are used as evidence of the drone’s ability to target precisely.

Civilisational Tropes

The language deployed by the Obama administration in order to defend the drone programme is not novel. The language of precision, just war, and legality are all long-standing civilisational tropes that have long been used by imperial powers in order to legitimise colonialism, war, and violence. What do I mean by civilisational tropes? The “West” –

⁴ The Smithsonian institution is a group of museums in Washington D.C. administered by the government of the US. The drones are displayed in an Air Museum with other military and commercial aircraft in order to show and celebrate the US’s advancement and progress in aviation and military air power.

specifically in this context Great Britain, France, and the US – were and still are imagined as inherently blessed with unique virtues: rational, hard-working, independent, liberal-democratic, advanced, and progressive (Said 2003). The “East,” which refers to the Middle East and Asia cast as the West’s opposite “other”: irrational, lazy, corrupt, backward, dependent, and unchanging (Said 2003). Thus,

[b]y this term [“civilisation”] Western society seeks to describe what constitutes its special character and what it is proud of: the level of *its* technology, the nature of *its* manners, the development of *its* scientific knowledge or view of the world, and much more (Elias 1978: 3-4).

Significantly, “civilisation” was and still is, used as a way of ordering the world and demarcating oneself from the “other” (Duara 2004). The notion is based on the conception that certain races are more “civilised” than others, especially in contrast to the natives in the colonies (Duara 2004). This hierarchy of races with different capacities to achieve civilisation was made to appear natural, an important means for justifying imperialist domination of the rest of the world (Duara 2004).

The discourse deployed by the Obama administration in order to legitimise drone use clearly features civilisational tropes in order to create a distinction between US violence and terrorist violence and to create opposing identities. This can be seen in the discourse’s use of colonial binaries whereby the US’s violence is framed as “precise” and “discriminate”, while that of non-state terrorist groups as “indiscriminate” and “barbaric”. The US’s warriors are “just”, “rational”, and “lawful”, while terrorists are “irrational criminals”. In invoking these

tropes the US government uses explicit civilisational language, as is seen in the way that it claims that killing by drone is more “civilised”, “level-headed”, and “precise”, and as a result, more “humane” (see Sirota 2013, Mayer 2013, Lewis 2013). These tropes, along with the deployment of a language of modernity and efficiency that highlight the technical superiority and advancement of the US drone (see Bowden 2013, Brennan 2012, Deptula 2013) work to create a distinction between “backward” and unreasonable terrorists and “rational”, sensible US soldiers. These ideological binaries are significant in that they aid in the creation of enemies; they are necessary to sustain war (Ivie 2005). As the Bush administration claimed explicitly at the beginning of the “war on terror”, terrorists are a threat to civilisation and therefore must be made liable to attack (Jackson 2005). As I will go on to show, colonial registers are present not only in the language of the US government, but also in its attitude and embedded in policies. These colonial tropes will become important when I discuss the racism that underpins the drone programme (Chapters 4 & 5).

To conclude, the meta-narratives, cultural views, and assumptions outlined in this section are significant because they play a key role in legitimising the use of drones. US culture, which privileges the military and intelligence agencies and portrays its warriors as good guys, helps to bolster the rhetoric of just war and legality. Historically and politically, current uses of drones are located within the “war on terror” which promotes the cultural narrative that the terrorists were the aggressors and US citizens the victims. This in turn helps foster the impression that drone use is necessary to ensure the security of the US.

Furthermore, since the public views the wars in Iraq and Afghanistan – fought ostensibly as part of the “war on terror” – as quagmires, the ability to kill dangerous terrorists without putting troops in danger makes drone use highly desirable. Furthermore, the positive perception of drone use gains from its endorsement by an Obama who was perceived, by some, to be more judicious and less of a hawk than his predecessor. His endorsement of the

programme helped make the discourse credible. Finally, the US's cultural view of technology normalises a perception according to which technologically advanced warfare is more efficient and precise. As I show in the next chapter, the argument of technological progressivism helps strengthen the rhetoric of precision strikes that lead to more discriminate and just war. It fosters the presumption that technology can lead to more "virtuous" and "efficient" warfare and elude the political and cultural subjectivities of the humans who control it. This is salient, for as I go on to show in the next chapter, the drone's precision will become central to the claims that drones allow for more virtuous warfare.

Mapping the Literature and My Contribution

There has been an explosion of literature on the drone programme. This is in part due to the fact that so much of the drone programme is contested: its precision, objectivity, utility, legality, and morality. In this section I review some of the existing literature on the drone programme and outline the contribution this thesis makes to that literature. In addition, this section works to map the structure of the thesis: chapter two focuses on outlining the precision claims of the government in order to demonstrate that they are central to the drone programme's legitimisation discourse, underpinning both its ethical and legal legitimacy; chapters three and four interrogate the drone programme as a whole in order to see if government precision claims outlined in chapter two stand up to scrutiny; and since the government's legal and ethical claims rest on claims of precision, chapter five draws on the arguments made in chapters three and four in order to find out if the drone programme is in fact legally and ethically justified like the government claims. The themes, arguments, and concepts introduced here will be examined in full in the coming chapters.

Chapter 2: Precision Rhetoric and the Drone Programme's Legitimacy

I begin my contribution to the literature on the drone programme in the second chapter of this thesis by outlining the precision rhetoric of the government's legitimating discourse. It draws on speeches from Obama (2013) and former CIA director John Brennan (2012), as well as from statements made by other Obama administration officials and members of Congress, to show that claims of precision are pivotal to the defences of drone strikes. This chapter shows that the government underscores both its utilisation of drone weaponry and its tactic of targeted killings to assert precision strikes. It then uses this assertion to claim that strikes are both ethically and legally legitimate. According to the government, the precision of the drone allows for US violence to conform to the legal and ethical principles of discrimination, proportionality, necessity, and humanity, better than other weaponry. Indeed, the government avows that the drone is the most humane weapon available enabling the US to greatly minimise civilian casualties.

This chapter also adds to the literature by demonstrating that academics, like the government, consider the drone to be the most precise weapon available. They too promote the view that the drone is the best weapon to minimise casualties given its surveillance capabilities and precision munitions (Strawser 2010, 2012b, Brooks 2013, Brunstetter 2012, Stohl 2015). Other academics agree with the government that the tactic of target killings is a more precise, discriminate, and proportional use of force, especially when considered alongside all-out war (Statman 2004, Clark 2012, Patterson & Casale 2005). Academics, like the government, ask us to weigh the consequences of drone strikes in comparison to all-out war. According to them, since more lives will be saved by resorting to drone strikes, it is the more ethical option. Most of the academics I have chosen to highlight in this chapter are significant because they have a clear connection to military-industrial-academic complex. They not only have ties to military institutions, they also have direct ties to the government.

In addition, they are given the privilege to speak on the drone programme in the media. By analysing the government's and academics' precision rhetoric this chapter shows that it is the foundation for ethical and legal defences of drones.

Chapter 3: A Precise Drone Programme?

After demonstrating that precision claims are central to defences of drones I continue in the third chapter to interrogate whether these claims are accurate. As I have stated at the beginning of this thesis, both academics and journalists have been critical of the drone programme's precision. This has a lot to do with the fact that one of the most discussed and controversial aspects of the programme has been its policies (Chamayou 2015a, Wilcox 2015, Cavallaro et al. 2012, Greenwald 2014, Friedersdorf 2012, Gregory 2011, Calhoun 2015, Grayson 2012, Wall 2016, Wall & Monahan 2011, the American Civil Liberties Union (ACLU), the United Nations (UN), Woods 2015a, Becker & Shane 2012, Cockburn 2016, Pilkington 2015b), which many have criticised as not only imprecise, but also as constituting state terrorism (Greenwald 2014, Calhoun 2015, Espinoza 2018). Journalists and human rights organisations focus on government policies to contest the precision narrative; to them the policies that govern the programme preclude discriminate strikes (Greenwald 2014, Ackerman 2015, *Democracy Now!* 2015, Benjamin 2013, Scahill & Devereaux 2014, Grim & Linkins 2015, Blakeley 2018). In other words, the challenge is to policy determining how drones are used and who is targeted.

For example, the government's narrative of precision which assures limited negative consequences for civilians was shown to be false by the 2012 *Living Under Drones* report by Cavallaro, Sonnenberg, and Knuckey. The report discussed policies known as "double taps" and "signature strikes". These policies have been at the forefront of the drone programme's controversial status, in particular "signature strikes". A "signature strike" targets groups of

unidentified military-aged males in order to deter them from congregating. A “double tap” – originally a terrorist tactic – is a strike followed by subsequent strikes targeting rescuers. The report was ground-breaking because it centred on the drone programme’s role in terrorising the population, and because it presented testimony from civilians living under drones. Such terrorisation stems from the fact that drone targeting is predicated on surveillance, which means that there is a longer prelude to violence; drones hover and then strike unexpectedly, which intimidates the population since they never know when and where a drone will strike. Critics also highlighted the Obama government’s labelling all military-aged men “militants”, thus allowing it to claim low numbers of civilian casualties. Although journalists are correct to use the programme’s policies in order to disrupt the government’s precision narrative, some nevertheless reinforce the precision discourse just the same by not putting into doubt the drone’s technical capability to hit its intended target. By not interrogating the claimed technical capacity for precision, the problems with the programme appear to be solely at the level of government policies; and this in turn allows both academic and journalist apologists and proponents to argue that, with the termination of such policies, a truly legal and moral drone programme is possible (Mayer 2013, Bowden 2013, Strawser 2010, Braun & Brunstetter 2013, Guiora & Blank 2012). But it is not just policies that are the problem; so is the alleged precision they claim.⁵

By examining the precision of the drone’s missiles (Zehfuss 2012, Chamayou 2015a, Wilcox 2015) and also the drone’s systems intelligence, which is provided by data mining and algorithms (Chamayou 2015b, Weber 2016), academics have shown that it is not just policies that lead to imprecise strikes. There is growing research on security intelligence methods that use data to select targets by predicting what they will do in the future. This is

⁵ This is not to say that some journalists have not critically examined the programme’s intelligence collection methods and targeting tactics (Woods 2015a, Scahill & Greenwald 2014, Currier & Maas 2015, Crider 2014), but that they have tended to focus on policy.

what the drone's systems do with the help of software that utilises data mining and algorithms. While some literature on security and data mining makes explicit reference to the drone programme (Chamayou 2015a, Weber 2016, Scahill & Greenwald 2014), much of it does not (Amoore 2009, Schneier 2005, Aradau 2015, Matzner 2016, Stokes 2008).⁶ The drone's use of data mining has been a central issue because many, including civil rights groups such as the ACLU (2016), are skeptical that the government can predict which people will commit an act of terrorism. The programme has created an intelligence apparatus that revolves around faith in data mining to predict people's actions, which academics, security experts, and civil rights activists view as unsound (Schneier 2005, Stokes 2008, Aradau 2015, Chamayou 2011, Amoore 2009, Matzner 2016, Grothoff & Porup 2016). Although there is literature that demonstrates the shortfalls of algorithmic intelligence, the literature has not discussed how these shortfalls affect the drone programme's precision. I shall add to this literature by demonstrating that despite the government's narrative of surgically precise strikes, the drone's systems leave much scope for error when discriminating because they in fact choose targets based on probability, not on certainty. The algorithms used for intelligence, which many consider to be more accurate than intelligence that comes from humans, actually lead to a looser form of discrimination when targeting by drone.

Chapter 4: Surveillance: The Silver Bullet for Precision Strikes?

I also add to critical literature on the drone programme by examining the surveillance capabilities of the drone and its effects on precision in chapter four. Surveillance plays a pivotal role in the government's and military's precision narrative; it is framed as a solution to the "fog of war". According to them, surveillance allows for better distinguishing between

⁶ In the media there is a growing discussion on "predictive policing", or the use of data and algorithms to forecast crime, but only in a law enforcement context (Saunders 2016, Winston 2018, Winston & Burringston 2018, Robinson & Koepke 2016, Pringle 2017, Lum 2016, Bachner & Lynch 2016).

civilian and enemy because by recording a suspect's movements for hours, days, or even months, officials can be certain that the person targeted is in fact a terrorist. It also purportedly allows officials to better control violence; they can wait to strike until they are sure that there are no civilians present. For instance, officials can wait until a terrorist suspect has driven away from civilian areas to strike, thereby keeping civilians from attack. The presumptions here are that there is a visible difference between civilian and enemy that can be perceived through surveillance; that stored surveillance footage can be reviewed, thereby helping to prevent targeting mistakes; and that drone personnel watching the footage are rational and disinterested due to the safety afforded by the drone. With the safety of distance – so the argument goes – officials remain level-headed when analysing footage, which helps to mitigate targeting mistakes.

Despite the centrality of surveillance to the government's narrative of precision strikes, both critics and proponents have failed to examine how surveillance technology affects the ability to strike precisely. While academic proponents and government officials simply frame surveillance as beneficial or at worst, innocuous, critics have really only discussed surveillance in reference to the terrorism that results from the drone's continuous hovering (Cavallaro et al. 2012) and the bio-political (and necro-political) nature of this terrorism (Allinson 2015, Wall 2016, Kordela 2016, Wilcox 2015). Other critics have offered a historical analysis of the drone's surveillance in order to demonstrate that the drone programme is not novel, but instead constitutes a neo-colonial encounter (Afxentiou 2017, Blakeley 2017, Wall 2016, Neocleous 2014, Shaw & Akhter 2014, Allison 2015, Gregory 2001). Derek Gregory (2011) has problematised drone surveillance by demonstrating that it is a political technology. He demonstrates that visual apprehension is culturally constructed and prescriptive, thereby rendering what is seen through surveillance a techno-cultural accomplishment. In other words, according to Gregory, what is visible through drone

surveillance is limited, partial, and always conditional. Also important in this context is the work of Allinson (2015), who has shown that the drone's eye view is fundamentally a bio-political and necro-political one. Importantly, this literature demonstrates that the gaze of surveillance is not objective. However, the link between this lack of objectivity and the precision of drone strikes has not yet been made, with surveillance yet to be discussed in the context of precision.

My interrogation of the government's claim that surveillance helps distinguish between civilian and enemy fills this lacuna. Despite the framing of surveillance as an effective technology for discriminate strikes, surveillance feeds must be interpreted accurately in order for strikes to be precise. Drone analysts must know what a threat looks like and interestingly, officials are often uncertain about what it is they are seeing through the drone's surveillance. This problem is compounded by US policy which considers all military-aged males as threats and by the fact that officials who assess intelligence are not as disinterested as the government makes them out to be. Targets are often selected on grounds of assumptions of what counts as a threat, and not on the basis they do indeed provide a threat. By utilising Edward Said's "orientalism" as a lens to analyse both the government's policies and the attitudes and language of drone pilots, I demonstrate that what underpins drone surveillance and targeting is a cultural racism. Cultural representations of Muslims justify drone strikes against Muslim men. Racism affects precision in that those who fit a particular corporeal image are considered threats or suspects before they have done anything wrong. As a result, the targeting process is not anything like as precise as it is claimed to be. The discussion of racism and surveillance in relation to precision targeting is significant not only because it has been entirely overlooked by critics, but also because it demonstrates that imprecision and indiscriminate targeting is inherent to the drone programme. The racism of the drone programme is significant because it means that contrary to the arguments of some

proponents (e.g., Mayer 2013, Bowden 2013, Braun & Brunstetter 2013), drone strikes cannot be precise and legitimate even if technologies and policies improve.

My contribution to understandings of precision also relate to the broader way in which I focus on the drone programme as a whole, and not solely on drone technology. Typically, when government officials and their academic supporters (Strawser 2010, Brennan 2012) discuss the precision of the drone programme they focus solely on the drone, or solely on the tactic of targeted killings which is perceived as more discriminate. They highlight first and foremost the drone's precision-munitions and its capability for surveillance.⁷ I add to scholarship by demonstrating that in order to assess the precision of strikes, it is not to the drone alone that we must look, but the programme as a whole – its intelligence practices and sources, its policies and legal foundations, its surveillance capabilities, its systems, *and* the accuracy of its missiles. Assessing the programme as a whole is important because it makes it possible to understand all of the reasons for which drone strikes are imprecise and in doing so, allows for me to demonstrate all of the problematic aspects of the US's use of drones. The problematic aspects of the programme discussed in chapters three and four will take centre stage again in chapter five, where I utilise them to demonstrate why it is that drone violence fails to satisfy legal and ethical requirements.

Chapter 5: A Legal and Ethical Drone Programme?

After demonstrating the reasons for which the drone programme is not precise, in chapter five I interrogate the implications this has on the ethical and legal claims made by government officials and academics. Drone strikes are ethically justified using the framework of just war

⁷ This focus on justifying the use of drone weaponry is understandable given the controversy surrounding its use. Some find the mere use of drone weaponry objectionable because of its asymmetry (Williams 2015), others because they feel the drone lowers the threshold for war since it is remote-controlled (Kaag & Kreps 2012), while others have started to argue against fully autonomous drones (Sharkey 2010, 2011, Human Rights Watch 2012).

theory and legally justified using the legal framework of the LOAC. Both frameworks seek to preclude indiscriminate war through the principles of discrimination, necessity, proportionality, and humanity. They necessitate that only combatants are liable to be killed intentionally. They forbid intending the deaths of civilians, but do not forbid the deaths of civilians that are merely foreseen due to an attack as long as the deaths are proportionate to the threat, and as long as the attack is militarily necessary. The principle of discrimination requires that only military objects be intentionally targeted and that civilians be protected from being intentionally targeted. Proportionality requires that the negative effects must be proportional to the good effects. The principle of necessity requires that the target have definite military value. And the principle of humanity requires that states use weapons that will not inflict unnecessary suffering. Through these principles legal and ethical frameworks aim to keep the suffering of civilians in war to a minimum (ICRC 2002). These frameworks thus permit the US to justify its killing of civilians caused by drone strikes as long as civilians' deaths are foreseen, but unintended, and as long as they are militarily necessary.

I demonstrate in chapter two that government claims of precision underpin two secondary government claims justifying the drone programme: (1) drone strikes adhere to just war principles and (2) drone strikes adhere to the laws of armed conflict. The government, and even academics, claim that drone strikes adhere to the principles of discrimination, proportionality, necessity, and humanity because the drone provides the precision necessary for adherence to these principles. For this reason, if the claims that drone strikes are precise are false, then the claims that drone strikes are legal and ethical collapse.

Many academics and journalists have pushed back against government claims that strikes adhere to the legal and ethical principles of just war theory and the LOAC given the programme's policies (Greenwald 2014, Shane 2015, Ackerman et al. 2015, Porter 2011, Zenko 2015, Benjamin 2013, Calhoun 2015, Enemark 2013, Boyle 2015). In particular, they

have focused on disputing the claims that drone strikes adhere to the principles of discrimination and proportionality. I add to this literature by assessing the legality and morality of the programme more broadly. By this I mean that my assessment not only takes into account policies, but also for example, surveillance and intelligence practices, and the programme's legal and ethical foundations found in the *White Paper Memo*. The reason for this is because to focus solely on drone programme policies of signature strikes and double taps neglects that the drone is predominantly utilised for surveillance and that there are other facets of the drone programme that render its use unlawful and immoral that do not necessarily have to do with bombing. Moreover, as I have mentioned before, since some assume that a cessation of these policies means a legal and ethical programme is possible, it is necessary to demonstrate that even with the cessation of these policies and even with truly precise missiles, the programme would nevertheless remain legally and ethically problematic.

In order to demonstrate why it is mistaken to assume that use of the drone and the tactic of targeted killings lead to a legal and ethical programme I draw on my arguments from chapters three and four, and I also look at the drone programme more broadly via a critical framework that situates the programme as imperial air power. I draw on the work of Blakeley (2018), Afxentiou (2018), Wall (2016), and Neocelous (2014) because this literature, which gives an analysis of drone use as imperialism and state terrorism, reveals similarities between the drone programme and colonial policing. Analysing the drone programme as a form of air power elucidates other reasons for drone use that are anything but altruistic since air power has historically been used to rule over colonial subjects; for preventive policing; to terrorise through surveillance and bombing; and to gain information to kill political enemies and maintain power. By analysing the programme as air power, then, I am able to reveal additional reasons as to why the drone programme does not comply with legal and ethical frameworks.

The government not only defends drone strikes by arguing that they conform to the principles of discrimination, proportionality, humanity, and necessity, it also defends them by claiming that they are legally and ethically justifiable because they constitute self-defence in a legitimate war against terrorism. Obama (2011) and Brennan (2012) stated in speeches that drone strikes are part of a legal and just war on terror. Many journalists and academics have pushed back against these claims arguing that non-military agencies such as the CIA were deploying drones outside official warzones (Mayer 2009, O'Connell 2010, Foreman 2013, Calhoun 2015, Foreman 2013, Braun & Brunsetter 2013, Benjamin 2013, O'Connell 2010, Mazzetti et al. 2016, Reeves & May 2013, Savage & Landler 2011, Lubell & Derejko 2013), while others argued that strikes constitute extrajudicial killings, or assassinations, that fail to provide due process (Williams 2015, Barrinha & da Mota 2017, Wilcox 2015, Shaw & Akhter 2014, Grayson 2012, Greenwald 2013, Calhoun 2015). In response to this criticism the Obama administration released the *White Paper Memo*, a government memo which laid-out the reasons for which drone strikes are justifiable. In the *White Paper Memo* the US government defends strikes as targeted killings in self-defence, even if they take place away from war zones. It also defends strikes taken against US citizens by claiming that it does indeed provide due process before targeting. I add to critical scholarship by drawing on my orientalist arguments made throughout this thesis in order to give an analysis of the *White Paper Memo* that demonstrates drone warfare was made legitimate through: the re-defining of ethical principles; the use of racist legal precedent and rationales, and secrecy. After demonstrating the legal and ethical problems with the *White Paper* I demonstrate additional ethical problems with the programme that are missed as a consequence of the narrow ethical assessment of the government and academics. Thus, I discuss the orientalism that underpins the programme and the ethical hazards that result. By doing this I render clear the problems that would plague the drone programme even if precision claims were true and additionally, I

demonstrate that only by assessing the programme more broadly can we have a more accurate and honest legal and ethical assessment of drone strikes and their consequences.

Conclusion

This chapter outlined the key meta-narratives and cultural assumptions that help make possible the political, legal, and ethical defences of drones. First, I considered the narrative of the “war against terror”: despite the fact that the September 2001 attacks occurred more than seventeen years ago, they remain crucial for legitimating the drone programme. I explained that the narrative of US exceptionalism and the assumption that the US military is particularly virtuous works to underpin justifications of drone use. Second, I explained the role of the narrative of Obama as a rational, non-belligerent leader who embodied a more virtuous and prudent turn in the way the US conducts its military operations. Third, I discussed the role of the RMA and the narrative of technical advancement and more virtuous war in legitimating drone use. And fourth I showed that these meta-narratives are civilisational, not neutral, creating a story about “us” versus “them” based in older colonial tropes.

I then proceeded to provide a literature review in order to situate my work. There exists a large amount of literature which is critical of Obama’s drone programme, and more specifically, that is critical of the programme’s precision. Nevertheless, a holistic examination of the drone programme’s precision is still needed, one that looks beyond technical capabilities and that takes seriously how racism and surveillance affect precision targeting. This thesis offers: (1) the first dedicated study focused on the precision of the drone programme – and hence the first study that looks at the programme as a whole, and not just aspects of it in isolation (e.g., the strike itself, the policies governing it); (2) it adds to the critical literature on drones by showing how the orientalism of surveillance impacts precision; (3) as a result, it is able to engage critically with reformist drone scholarship, by showing that the drone programme cannot be rendered legitimate through further technological advancement, improved policies, or greater transparency. Rather it is fundamentally racist.

Chapter 2: Precision Rhetoric and the Drone Programme's Legitimacy

Although the Obama administration – as well as the CIA – attempted to keep the drone programme a secret, secrecy was breached when the government sought to defend the programme against mounting criticism.⁸ Due to the mounting controversy in the media, high-ranking officials from the US military and the Obama administration publicly and explicitly justified the programme in limited speeches and interviews, as well as in memoirs written by those who retired from office.⁹ The government overwhelmingly defended, and continues to defend the drone programme via a rhetoric of precision.

Obama administration lawyers, CIA officials, military officials, and government representatives consistently framed the mechanical drone as precise using undeviating talking points. According to them the drone's surveillance capacities, its precision munitions (Hellfire missiles), and its technical systems which utilise algorithms and data mining to select suspects, provide a more precise way of war. The rhetoric of precision constructs the drone's technical capabilities as entirely advantageous for civilians; it asserts that the drone's advanced missiles ensure accurate targeting and that the capacity for surveillance and remote control can help drone personnel to better evaluate the status of those being observed, thereby allowing US forces to minimise the potential for collateral damage (Deptula 2013, Brennan 2012). The accuracy and capability for better discrimination afforded by the drone is used as support for government claims of low civilian casualties.

Crucially, this claim that drone strikes are precise is central to government defences of drone strikes not only because it allows the government to claim civilian casualties are minimal and that strikes are effective, but also because it underpins two other important government claims: that drone strikes are ethical, and that drone strikes are legal. The

⁸ As Hillary Clinton, former Secretary of State under Obama wrote in her book, *Hard Choices*, secret drone strikes quickly became 'one of the most effective and controversial elements' of the war on terror, 'but in 2009 all I could say was "No comment" whenever the subject came up' (Clinton 2015:183).

⁹ See Clinton's *Hard Choices* (2015) and Leon Panetta's *Worthy Fights: A Memoir of Leadership in War and Peace* (2014).

government avers that the precision of the drone and its capacity for surveillance and oversight allow for drone strikes to more readily adhere to just war theory's principles of discrimination, necessity, humanity, and proportionality. Since these principles also make up the laws of armed conflict (LOAC), by claiming that drone strikes adhere to these principles the government asserts that strikes are both ethical *and* legal. The precision rhetoric then, immediately turns normative. The claim that the drone affords precision strikes allows the US to claim that drone strikes are a more virtuous form of warfare compared to other options. Importantly, then, if the claim that drone strikes are precise is false, then the secondary claims that drone strikes are legal and ethical collapse.

This chapter is divided into two sections, the first outlines the Obama administration's rhetoric of precision in order to demonstrate the centrality of this rhetoric to the legitimization of the drone programme. The statements and speeches shown in this chapter I have chosen for their content and because of who is stating them. They demonstrate the use of a restricted set of words that highlights the precision of the drone and that privileges the viewpoint of the government. Due to the secrecy surrounding drone strikes, these statements and speeches are rare instances of the government being forthcoming with information and of explicitly stating that the drone programme is justified. Furthermore, these speeches and statements are also significant because they come from people in positions of power. The statements in this section come from the former President, the former leaders of the CIA, the Pentagon, and the State Department, as well as from military leaders and other senior members of the Obama administration. Their status is significant because government sources are viewed as providing news and facts, which is why these leaders are sought by prestigious newspapers, political shows, and news outlets to speak on the programme (Chomsky & Herman 1988). Not to mention that they are also trusted and lionised. What they have to say on the drone programme is especially significant because these are people who control the drone

programme, who are involved in active operations, and who ultimately have an interest in its continuation.

The second section of this chapter demonstrates the precision claims of academics in order to show that the claims of precision are also central to academic defences of drone use in the media. The academics I highlight in this chapter were chosen not only because they accept government claims of precision, but also because these are academics who have connections to government institutions, the media, and government think tanks. This academic component is significant because there is what Senator William Fulbright calls the existence of a military-industrial-academic complex (Fulbright 1970). There is a network of experts, academics, private institutions and think-thanks, and state institutions and corporate entities, which influence US foreign policy (Newsom 1996).¹⁰ My aim is not to produce an analysis of their impact on the media or on public opinion, it is to show their precision and normative claims in order to subject them to critique in the following chapters.

¹⁰ Take for example the fact that administration attorney Koh now works at Yale Law School and that former CIA Director Brennan was named Distinguished Non-Resident Scholar at the University of Texas at Austin in 2017, where he also acts as a senior advisor to the university's Intelligence Studies Project.

2.1 The Government's Precision Rhetoric

One of the central justifications of drone strikes deployed by government agencies and officials is that drones strikes are precise and therefore can reduce, and in some cases, entirely avoid civilian casualties. When the government and military declare that the drone is precise, it is based on the supposition that the drone's missiles strike the target accurately, or as they say, "surgically"; and that the drone's surveillance capacity allows for more discriminate strikes. Take as an example these claims from air power expert Lt. Gen. Deptula:

[i]t takes over 200 people to operate a MQ-1 Predator [drone] or MQ-9 Reaper RPA orbit for 24 hours. This little-known fact among the RPA [remotely-piloted aircraft] naysayers is one of the reasons that the use of "drones" allows for more ethical oversight than any other weapon. Drones allow us significantly greater control, oversight, and review before a shot is fired than occurs using manned aircraft or other operations conducted by soldiers, sailors, airmen or Marines. . . .

The persistence, situational awareness, and degree of control possible with an RPA allows for the immediate suspension of lethal engagement if circumstances change or questions emerge – even after a weapon has been released or launched. RPA are networked aircraft and their data can reach any spot on earth in less than two seconds. . . .

How can I argue that RPA are the most precise means of employing force in a way that reduces collateral damage and minimizes casualties? The

accuracy of weapons employed from a RPA is nominally less than 10 feet. . . . A significant advantage of RPA is that they allow us to project power without projecting vulnerability – something that can't be done when ground forces are put in harm's way. This capability provides us with an asymmetric advantage that our adversaries find difficult to counter. Because RPA are so effective, our enemies try to manipulate us to do what they cannot – limit the use of one of our asymmetric advantages – by spreading falsehoods that “drones” cause reckless collateral damage or are somehow not accurate. . . .

Adversary falsehoods regarding inaccuracy and collateral damage divert attention from the fact that the massive intentional damage, intentional killing of civilians, and intentional violations of international law are being conducted by Al Qaeda and the Taliban – not U.S. “drones” (Deptula 2013: n.p., emphasis added).

While Deptula makes many different claims about the drone's superiority, what matters here is his claim that the drone and its weaponry are *precise* and *accurate*. When he says that the accuracy of weapons of remotely piloted aircraft (RPA) is nominally less than 10 feet of the intended target, he means that the drone's missile will land within ten feet from the intended target. What this means, then, is that the missile does not land accurately *on* the target, but *within 10 feet of the target*.

Deptula also emphasises the ability to “control” collateral damage due to the incessant surveillance afforded by RPA, a claim expanded upon by Lt. Col. Chris Gough:

. . . unlike all the other weapons systems out there, I can control collateral damage to a much greater degree in this and I can minimize it and negate it because if I *see* a high-value individual – one of those jackpot guys – that I want to prosecute an attack on I'm not limited by gas. I'm not limited by the physiological constraints of the air crew. I'll swap another air crew out. I'll bring another plane out . . . and I will stay with that individual until the time is right by *my making* (quoted in Rattansi 2010: n.p., emphasis added).

So according to military officials, the persistent stare of surveillance allows for greater *control* of collateral damage by waiting for the perfect time to strike. Controllers can wait as long as necessary to ensure that the “high-value individual” is away from the civilian population: “[t]he argument that we have executed collateral damage – I dispute that, honestly I have never seen it . . .” (quoted in Rattansi 2010: n.p.). But there are two assumptions here. First, it is assumed that surveillance allows drone personnel to see the difference between civilians and combatants. Second, it is assumed that the drone's missiles hit the target and only the target. Thus the drone's surveillance capacity, or the ability to *see* what is happening on the ground, plays a principal role in confirming the claimed precision of targeting. That is how it is possible for a colonel to claim that he has seen no civilian casualties.

It is not only the military that touts the benefits of drone surveillance. The CIA do as well. Former CIA Director Brennan also discussed the “benefits” of using technically advanced drones espousing the Revolution of Military Affairs (RMA) ideology of technology keeping us safe from terrorism by either preventing an attack or by killing terrorists:

[n]ow, I want to be very clear. In the course of the war in Afghanistan and the fight against al-Qaida, I think the American people expect us to use advanced technologies, for example, to prevent attacks on U.S. forces and to remove terrorists from the battlefield. We do, and it has saved the lives of our men and women in uniform. . . .

In addition, compared against other options, a pilot operating this aircraft remotely—with the benefit of technology and with the safety of distance—might actually have a clearer picture of the target and its surroundings, including the presence of innocent civilians. It's this surgical precision—the ability, with laser-like focus, to eliminate the cancerous tumor called al Qa'ida terrorist while limiting damage to the tissue around it—that makes this counterterrorism tool so essential . . . (Brennan 2012: n.p.).

Like Deptula and Gough, Brennan asserts that surveillance can indicate the presence of civilians and prevent a strike from taking place; it leads to a “surgical” and “laser-like” “precision” because it helps to decipher between civilian and enemy. This view that surveillance leads to greater precision was a common refrain of the US government. Another former CIA director, Michael Hayden, also affirmed that drones provide ‘an unblinking stare at a target and the opportunity to be incredibly precise’ (Coll 2014: n.p.). Plainly, the government’s rhetoric of precision highlights the precision of munitions and the use of surveillance to insist that the drone yields the possibility of bombing without killing civilians.

This emphasising of the drone’s ability to “target” terrorists precisely and discriminately with the help of surveillance and precision munitions is significant due to the fact that the Obama administration was heavily criticised about the lack of information

related to civilian casualties and its targeting policies. Indeed, the administration was accused of undercounting how many civilians it killed via drone strikes (Ackerman 2016, Becker & Shane 2012). This led to statements that asserted exceptionally few civilian casualties due to the use of advanced technology like drone weaponry, and that declared targeted killings via drone were the best option for minimising collateral damage. The claims of precision and the subsequent claims of limited civilian casualties were and are crucial to the government's legitimisation of drone strikes. Take for instance, this statement from Brennan:

I can say that the types of operations . . . that the US has been involved in, in the counter-terrorism realm, that nearly for the past year there hasn't been a single collateral death because of the exceptional proficiency, precision of the capabilities that we've been able to develop (C-SPAN 2011: n.p.).

Brennan later qualified his statement during a speech: '[d]espite the extraordinary precautions we take, civilians have been accidentally killed. It is exceedingly rare, but it has happened' (Mayer 2009: n.p.). He was not alone in claiming that the drone programme was the best approach for sparing civilians due to its precision. In a *New York Times* op-ed titled *To Keep America Safe, Embrace Drone Warfare* Hayden wrote:

[t]he program is not perfect. But here is the bottom line: It works. I think it is fair to say that the targeted killing program has been the most precise and effective application of firepower in the history of armed conflict. We were confident that the intelligence was good enough to sustain a campaign of very precise attacks. . .

. Unmanned aerial vehicles carrying precision weapons and guided by powerful intelligence offer a proportional and discriminating response when response is necessary. Civilians have died, but in my firm opinion, the death toll from terrorist attacks would have been much higher if we had not taken action (Hayden 2016: n.p.).

It was a common talking point from CIA and Obama administration officials that civilians were dying from strikes, but that civilian deaths were few given the precision of the drone. Administration attorney Jeh Johnson as well as former President Obama made similar claims. According to Johnson the US is able to target terrorists ‘with great precision’, but acknowledged: ‘[n]ow, are we perfect? No. There have been regrettable and unfortunate losses of life, but I believe we have a pretty good track record’ (quoted in Baron 2012: n.p.). Obama took the opportunity to push-back against criticism of drone strikes during an online question and answer session in 2012, stating:

“I want to make sure that people understand actually drones have not caused a huge number of civilian casualties. For the most part, they have been very precise, precision strikes against al-Qaeda and their affiliates. And we are very careful in terms of how it’s been applied. . . . This is a targeted, focused effort at people who are on a list of active terrorists, who are trying to go in and harm Americans, hit American facilities, American bases and so on” (quoted in Scahill 2013: n.p., Parsons 2012: n.p.).

In 2016, before leaving office, he again reassured the public:

[t]here is no doubt that some innocent people have been killed by drone strikes . . . it is not true that it has been, willy nilly, let's bomb a village. What I can say with great certainty is that the rate of civilian casualties in any drone operation is far lower than the rate of civilian casualties that occur in conventional war (Crabtree 2016: n.p.).

These statements from various government officials demonstrate that the drone's precision is a common talking point when it comes to defending drone strikes in part because it allows the administration to downplay civilian killings. And also because it provides the government the opportunity to argue that collateral damage would only increase with the use of alternatives because they are not as targeted or as precise as drone strikes. According to the government drone warfare is distinct – and superior – in comparison to conventional warfare because it is directed solely at specific high-level terrorists. Not to mention that the drone is different from other weaponry since it is remote-controlled and has the capability for continuous surveillance. Since the drone programme is targeting specific people one by one, it is seen as a more proportional and discriminate use of force that better spares civilians from bombardment. The drone, then, is seen as a tool that allows for precise “targeted killings” to be realised. Hence why Jay Carney, the official White House spokesperson declared that a hallmark of US counterterrorism efforts has been its “ability to be exceptionally precise, exceptionally surgical and exceptionally targeted” (quoted in Friedersdorf 2012: n.p.). The word targeted is important because it permitted the administration to claim that drone strikes were restrained and judicious despite the fact that the drone programme was spreading to

other countries beyond Iraq and Afghanistan. Take this statement by former Secretary of Defense, Leon Panetta:

“[o]ur target there represents those terrorists, or those al-Qaida terrorists that involve a threat to this country, and there are very specific targets. This is not broad based. We are very precise, and very targeted and will remain pursuant to those operations” (quoted in MacAskill 2012: n.p.).

The claim that drone strikes are targeted is significant in that it helps to further the impression that civilians will not be harmed. Even if drone strikes are increasing and spreading to more countries, according to the government there is nothing to be alarmed about because strikes are nevertheless targeted solely at terrorists. In claiming that strikes target specific terrorists, the assumption is that the government *knows* who it is killing and that it is not deviating from killing those people on the “Kill List”. The claims that strikes are targeted and surgical assumes that the government has flawless intelligence before striking. In this context it is important to recall Hayden’s claim that the CIA was confident that the intelligence was good enough to sustain a campaign of very precise attacks.

The assumption that the intelligence for drone strikes is accurate, that it reveals who is planning and conducting terrorist activity, is how the government can claim that drone strikes are not only targeted and surgical, but also effective as a counter-terror strategy. Hayden, Brennan, and Deptula unequivocally declared that drone strikes are the most precise, proficient, and effective application of fire power. That drone strikes are effective is yet another defence of the use of drones that stems from the claim of precision. Take these

statements from former Defense Secretary Leon Panetta, who commented that the drone programme was the ‘only game in town’:

“I believe that it [the drone] is a precise weapon. . . . The fact is that we had very precise, effective operations to go right at al Qaeda’s leadership. And by weakening them, and by significantly impacting them, especially with the bin Laden raid, the fact is we are safer today from a 9/11 type of attack” (quoted in Zenko 2013: n.p.).

Like Panetta, a CIA spokesperson asserted that the US uses ‘lawful, highly accurate, and effective tools and tactics to take the fight to Al Qaeda and its violent allies. That careful, precise approach has brought major success against a very dangerous and deadly enemy’ (Mayer 2009: n.p.). These statements demonstrate that precision also denotes success in killing terrorist threats, making the drone an effective tool that keeps Americans, as well as civilians under drones, safe from terrorism.

A number of members of Congress also declared that drone strikes were precise. Senators repeated claims given by Brennan and Obama. Take as examples these statements from Democratic senators Adam Schiff and Diane Feinstein. Schiff claimed that he had seen first-hand that the CIA took “extraordinary care in its targeting” and added that “[i]f the American people were sitting in the room, they would feel comfortable that it was being done in a responsible way” (quoted in Dilanian 2012: n.p.). Feinstein asserted that CIA targeting procedures kill only “single digits” of civilians annually (quoted in Everett 2015: n.p., Ackerman 2013: n.p.) and that “the way in which this is being done is very careful” (quoted

in Dilanian 2012: n.p.). When Feinstein was asked why the Intelligence Committee could be so confident that the CIA was not misleading Congress about civilian casualties since the CIA misled Congress about their torture and detention programme she stated, “[t]hat’s a good question actually. That’s a good question” (quoted in Ackerman 2014: n.p.). Democrats were not alone in defending the programme. Republican Senator Lindsay Graham also defended drone strikes by assuring that they were effective and that civilian casualties were unintended: “[s]ometimes you hit innocent people, and I hate that, but we’re at war, and we’ve taken out some very senior members of Al Qaeda” (quoted in Jackson 2013: n.p.). In a deeply polarised Congress drone use is one of the few issues both parties agree on (Sides 2013). While there has been some criticism of the drone programme from members of Congress, like for example Rand Paul and Ron Wyden, there were harsh rebuttals from Republican members of Congress and a lack of support from Democrats (Sides 2013).¹¹

Precision Capabilities and Their Moral and Legal Implications

Plainly, government statements suggest that it is possible to bomb precisely and keep civilians safe from any harm via use of the drone. Keeping civilians from harm is significant in that it imbues precision with a normative dimension. Above, Deptula compared the drone to alternatives in order to claim that it allows for more ethical oversight given its surveillance. As I mentioned at the beginning of this chapter, the discussion of precision capabilities by the government turns immediately normative. The reason as to why the government highlights the use of precision weaponry is because it is critical to the broader representation of Western warfare as ethical and superior (Zehfuss 2011). The rhetoric of precision plays a crucial role

¹¹ In 2012, twenty-six lawmakers, all but two of them Democrats, signed a letter to Obama questioning his policy on signature strikes (Dilanian 2012).

in ethically and legally legitimating violence because as Zehfuss (2011) claims, war is acceptable to the public only if it is seen as ethical in the sense of causing a very limited amount of death and suffering. The connection between precision weaponry and fewer civilian casualties is particularly significant because the legal and ethical frameworks for war – the laws of armed conflict and just war theory – require that violence be directed to as great an extent as possible only at combatants, with the suffering, loss, and damage caused to civilians kept to a minimum. Just war theory's *jus in bello* principles and the LOAC require that strikes be discriminate, proportional, and militarily necessary. The principle of discrimination, or distinction, requires that soldiers clearly distinguish between combatants and civilians, so that civilians are not deliberately attacked. Proportionality requires that collateral damage not be excessive in relation to the direct and concrete military advantage anticipated from military operations. The principle of military necessity permits solely those actions or activities which are necessary to defeat the enemy as economically as possible and forbids those that are unnecessary for military victory. This presumption that precision weaponry helps us act in a more ethically responsible manner helps retain support for government violence. While death in war is bound to occur, the use of precision munitions reflects the desire to save civilian lives to the greatest extent possible and demonstrates a commitment to the principles of discrimination and proportionality, as well as a broader commitment to reduce violence and war.

Given critics' contestation of the programme's legality and morality, Obama administration officials presented speeches and statements to legally and morally justify drone strikes. Precision again took centre stage, buttressing government claims that drone strikes conform to legal and ethical principles. Take as an example Hayden's statement above where he affirmed that the drone, or unmanned aerial vehicles, carrying precision weapons and guided by powerful intelligence offer a *proportional* and *discriminating* response when a

response is necessary. Hayden makes use of the drone synonymous with the fulfilment of these principles. Hayden was not the only one, administration attorney Koh also created the impression that use of the drone could better satisfy these principles ‘[b]ecause drone technology is highly precise, if properly controlled, it could be more lawful and more consistent with human rights and humanitarian law than the alternatives’ (Koh 2015: n.p.). Deptula claimed that the drone programme allows for more ethical warfare due to its surveillance capabilities, and also because ‘[w]e’re using these weapons systems under the most excruciating scrutiny and fully in compliance with the laws of armed conflict’ (Bowman 2016). At the 2010 Annual Meeting of the American Society of International Law Koh stated:

... some have argued that the use of lethal force against specific individuals fails to provide adequate due process and thus constitutes unlawful extrajudicial killing. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force. Our procedures and practices for identifying lawful targets are extremely robust, and advanced technologies have helped make our targeting even more precise. In my experience, the principles of distinction and proportionality that the United States applies are not just recited at meetings. They are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with all applicable law. ...

Some have argued that our targeting practices violate domestic law, in particular, the long-standing domestic ban on assassinations. But under

domestic law, the use of lawful weapons systems—consistent with the applicable laws of war—for precision targeting of specific high-level belligerent leaders when acting in self-defense or during an armed conflict is not unlawful, and hence does not constitute “assassination” (Koh 2010: n.p.).

Koh’s statements are demonstrative of the government’s attempts to create a connection between the drone’s advanced precision technology and more lawful and humane violence. It is an example of the RMA view (discussed in chapter one) that technology can lead to more virtuous and decisive warfare. Since the LOAC require discriminate and proportional strikes, Hayden and Koh deliberately create a connection between the use of precision weaponry and lawful conduct.¹²

Obama and Brennan also gave speeches unequivocally defending strikes as both legal and ethical. Here are excerpts first, from John Brennan’s (2012) counterterrorism speech and then from former President Obama’s speech at the National Defense University in 2013.¹³

John Brennan states:

[s]o let me say it as simply as I can. Yes, in full accordance with the law—and in order to prevent terrorist attacks on the United States and to save American lives—the United States Government conducts targeted strikes on specific al-Qa’ida terrorists, sometimes using remotely piloted aircraft, often

¹² Many find it ironic and hypocritical that Koh – who spent years criticising the Bush administration for violating international law – legally defended the drone programme and what many view as assassinations of American citizens (Hastings 2012). Before defending drone strikes he had called them extrajudicial killings (McKelvey 2011).

¹³ The Pentagon issued a memo of drone war talking points which instructed officials to use statements from Brennan’s speech to defend the drone programme (Ackerman 2012).

referred to publicly as drones.

First, these targeted strikes are legal. Attorney General Holder, Harold Koh and Jeh Johnson have all addressed this question at length. To briefly recap, as matter of domestic law, the Constitution empowers the President to protect the nation from any imminent threat of attack. The Authorization of Use of Military Force—the AUMF—passed by Congress after the September 11th attacks authorizes the President “to use all necessary and appropriate force” against those nations, organizations and individuals responsible for 9/11. . . .

As a matter of international law, the United States is in armed conflict with al-Qa’ida, the Taliban and associated forces, in response to the 9/11 attacks, and we may also use force consistent with our inherent right to national self-defense. There is nothing in international law that bans the use of remotely piloted aircraft for this purpose or that prohibits us from using lethal force against our enemies outside of an active battlefield, at least when the country involved consents or is unable or unwilling to take action against the threat . . .

Second, targeted strikes are ethical. Without question, the ability to target a specific individual—from hundreds or thousands of miles away—raises profound questions. Here, I think it’s useful to consider such strikes against the basic principles of the law of war that govern the use of force.

Targeted strikes conform to the principle of necessity—the requirement that the target have definite military value. In this armed conflict, individuals who are part of al-Qa’ida or its associated forces are legitimate

military targets. We have the authority to target them with lethal force just as we targeted enemy leaders in past conflicts, such as German and Japanese commanders during World War II.

Targeted strikes conform to the principle of distinction—the idea that only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted. With the unprecedented ability of remotely piloted aircraft to precisely target a military objective while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to distinguish more effectively between an al-Qa’ida terrorist and innocent civilians.

Targeted strikes conform to the principle of proportionality—the notion that the anticipated collateral damage of an action cannot be excessive in relation to the anticipated military advantage. By targeting an individual terrorist or small numbers of terrorists with ordnance that can be adapted to avoid harming others in the immediate vicinity, it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft. For the same reason, targeted strikes conform to the principle of humanity, which requires us to use weapons that will not inflict unnecessary suffering. For all these reasons, I suggest to you that these targeted strikes against al-Qa’ida terrorists are indeed ethical and just. . . . (Brennan 2012: n.p.).

Brennan’s speech provides the government’s reasons for why drone strikes conform to both ethical and legal principles. His justifications for drone strikes highlight the precision and technical capabilities of the drone. According to Brennan, due to the unprecedented precision capabilities of the drone, officials can more effectively distinguish between civilian and

enemy and better adhere to the principle of discrimination. Furthermore, since drone munitions can be adapted to target individuals or groups of terrorists, strikes are proportional. The declaration that US violence is ethically and lawfully principled depends significantly on drone weaponry and the assumption that it is precise. The assumption underpinning the claim that drone strikes are proportional is that drone missiles accurately land on, or near the target, and have a small blast radius that consistently limits exposure to civilians. Underpinning the claim that drone strikes are discriminate is the assumption that strikes are precisely targeted solely at combatants, and the assumption that surveillance helps decipher between civilian and enemy. Hence the view that it is the better tool to use if the goal is to inflict violence solely on the adversary, or those deserving of violence, and not on those who should be spared from it. Given this, Brennan compares the drone to other weaponry and claims it is the best tool to prevent casualties and unnecessary suffering. According to his speech, then, the drone is a humane weapon due to its technological capabilities.

Like Brennan, Obama justified the use of drones by emphasising precision. Here is an excerpt from his speech from the National Defense University in 2013:

[w]e are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war -- a war waged proportionally, in last resort, and in self-defense.

Beyond the Afghan theater, we only target al Qaeda and its associated forces. And even then, the use of drones is heavily constrained. America does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute. America cannot take strikes wherever we choose; our actions are bound by consultations with

partners, and respect for state sovereignty.

America does not take strikes to punish individuals; we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat. And before any strike is taken, there must be near-certainty that no civilians will be killed or injured -- the highest standard we can set.

Now, this last point is critical, because much of the criticism about drone strikes -- both here at home and abroad -- understandably centers on reports of civilian casualties. There's a wide gap between U.S. assessments of such casualties and non-governmental reports. Nevertheless, it is a hard fact that U.S. strikes have resulted in civilian casualties, a risk that exists in every war. And for the families of those civilians, no words or legal construct can justify their loss. For me, and those in my chain of command, those deaths will haunt us as long as we live, just as we are haunted by the civilian casualties that have occurred throughout conventional fighting in Afghanistan and Iraq.

Yes, the conflict with al-Qaeda, like all armed conflict, invites tragedy. But by narrowly targeting our action against those who want to kill us and not the people they hide among, we are choosing the course of action least likely to result in the loss of innocent life.

As I've said, even small special operations carry enormous risks. Conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage. . .

So it is false to assert that putting boots on the ground is less likely to

result in civilian deaths or less likely to create enemies in the Muslim world.

(Obama 2013: n.p.).

In contrast to Brennan, Obama does not explicitly mention the principles of just war theory or the laws of war in relation to drone use except for the principle of proportionality, but he does tacitly focus on the principle of discrimination and drone strikes. He begins by asserting that the US's use of force is proportional and he corroborates this claim by claiming that strikes are more targeted and precise, and therefore are less likely to result in collateral damage than conventional air power. Again, what underpins this claim is the assumption that drone bombing is not as devastating, indiscriminate, and as far-reaching as conventional air power. Though Obama does not mention the principle of discrimination explicitly, by claiming that the US narrowly targets those who want to kill US citizens and that before a strike there must be near-certainty that no civilians will be killed or injured, he is claiming that the drone programme discriminates between civilian and enemy. And while he admits that there have been civilian casualties, he makes the argument that drone strikes are precise and therefore, the best alternative for sparing civilians from attack. Although Obama only states that drone strikes in the war on terror are just, by drawing on the language of proportionality and discrimination, he is also implying that drones strikes are lawful.

These three speeches demonstrate further that at the heart of the government's legitimating discourse is the claim that drone strikes are precise. The speeches and statements by government officials clearly demonstrate that claims of precision are used to substantiate the claims that drone strikes are both legal and moral; Brennan's and Koh's speeches, as well as Deptula's and Hayden's article excerpts, are clear examples of this. According to the government, the drone's precision allows US violence to conform more, and not less, with

the principles of discrimination, proportionality, humanity, and necessity. There is an explicit connection made between use of drone technology and more lawful and ethical war: persistent surveillance allows for better discrimination and precision munitions allow for more proportional war; together they allow for violence that is allegedly targeted only at terrorists thereby helping to prevent unnecessary suffering. The precision rhetoric turns normative because the idea of discriminating between combatants and noncombatants has a long historical association with questions of legitimacy in war (Beier 2003). This rhetoric is strategic for justifying drone warfare because war is acceptable to the public only if it is seen as ethical in the sense of causing a very limited amount of death and suffering (Zehfuss 2012). Not to mention that both the LOAC and just war theory require that violence be directed to as great an extent as possible only at combatants in order to reduce the suffering, loss, and damage caused by war. Hence why the drone is discussed as “humane” and in better conformity with humanitarian law. What this rhetoric does, then, is promote the view that by merely utilising drone weaponry US violence and combatants are just and law abiding.

2.2 The Precision Rhetoric of Academics

It is not just the government that espouses precision rhetoric in the media. Academics do so as well. They not only further the view that the drone programme is precise, they also further the view that with the use of drone weaponry and the deployment of targeted killings the US can better comply with the LOAC and just war principles. The academics I present in this section have the privilege of speaking to the media about the drone programme. Given the government's lack of transparency and the debate over whether the programme is precise, ethical, and legal, academics are called to not only speak on the alleged precision of the drone programme and the issue of civilian casualties, but also on the morality of drone strikes and the use of drone weaponry.

Bradley Strawser is one of the more well-known academics that has been interviewed and quoted in the media (Strawser 2010, 2012a, 2012b, Carroll 2012, Shane 2012). He explains his role: '[t]he school wanted a voice in that conversation, so they hired me. My job is to talk on the ethics of drones. It's what I've become most known for' (Carroll 2012: n.p.). Strawser is a tenured track assistant professor of philosophy at Monterey's Naval Postgraduate School, an elite college which gives masters and PhD courses to military officers, academics, and policymakers. He teaches not only officers from the US, but also allied militaries from around the world (Carroll 2012). Strawser is a self-professed "army brat", son of an academic father who worked on air force computer systems and grew up on air force bases (Carroll 2012). According to him, in a contentious debate over drone warfare, it is necessary to separate US government policy from the broader moral question of killing by aerial robots such as drones. Strawser argues that utilising drones to go after terrorists is not only ethically permissible, but also ethically obligatory, because of their advantages in identifying targets and striking with precision (Shane 2012: n.p.). In *The New York Times* he

wrote: ‘ . . . the empirical evidence shows that drones are more accurate and allow drone pilots to be more capable at discriminating between combatants and civilians than alternative means’ (Strawser 2012a: n.p.). He expands in a piece for *The Guardian*:

[t]he best empirical evidence suggests that drones are more precise, result in fewer unintended deaths of civilian bystanders, and better protect their operators from risk . . . Other things being equal, then, drones should be used in place of other less accurate and riskier weapons. But they should be used only for morally justified missions, in pursuit of a just cause (Strawser 2012b: n.p.).

According to Strawser, since drones are more precise and allow drone pilots to better discriminate ‘they actually improve our ability to behave justly. Literally every action they do is recorded. For a difficult decision (operators) can even wait and bring other people into the room. There’s more room for checks and oversights. That to me seems a normative gain’ (Carroll 2012: n.p.). Though he acknowledges why many call strikes assassinations or extrajudicial killings, he argues that they could be deemed ‘necessary and proportionate’ to save lives (Carroll 2012: n.p.). Thus, he claims that ‘[d]rones, for all their current and potential misuse, have the potential for tremendous moral improvement over the aerial bombardments of earlier eras’ (2012b: n.p.). Clearly then, according to Strawser, use of the drone improves the ability of US combatants to act justly and lawfully because of its surveillance and unparalleled accuracy.

Daniel Brunstetter (2012, 2019, Braun & Brunstetter 2011, 2013) is another academic that has added to the literature on the drone programme's morality and who has written and been quoted in regard to the programme in the media (Byman 2013, Feeney 2013). Brunstetter is an associate professor in the Department of Political Science at the University of California, Irvine. He is also on the editorial board for *Ethics and International Affairs*. Brunstetter promotes the view that drone use can lead to more ethical warfare due to its precision and surveillance both in academic literature (Braun & Brunstetter 2011, 2013) and in the media. In an article for *The Atlantic*, Brunstetter wrote that drones have the ability to 'undertake limited, pinprick, covert strikes' which 'significantly reduces civilian casualties compared to other weapon platforms, as well as the costs and risks of waging a larger war to curtail the terrorist threat . . .' (2012: n.p.). He claims that drones 'limit but [do] not eliminate' noncombatant casualties (2012: n.p.). He also furthers the narrative that the Obama administration sought to limit civilian casualties and was abiding by the framework of just war theory:

[w]hen it came to drones, Obama was swayed by the principle of noncombatant immunity: the moral necessity of sparing civilians from the horrors of war whenever possible. He limited drone strikes to scenarios with near certainty that there would be no civilian casualties. . . . Obama's ethical turn was a step forward. It emerged from his moral reckoning with the act of killing and the tragedy of civilians getting caught in the crossfire (Brunstetter 2019: n.p.).

Brunstetter echoes government officials by claiming that drone strikes are precise and therefore, diminish civilian casualties. He also furthers the narrative that drone strikes conform to just war principles by claiming that the administration's drone programme was discriminate and that Obama adhered to the principle of noncombatant immunity.

Ronald Arkin (2009), a roboticist at the Georgia Institute of Technology has also been widely cited in the media (Suebsaeng & Jacobs 2013, McKelvey 2012, Hambling 2018, Spotts 2015, Beres 2016). He has provided expert testimony to the United Nations, The International Committee of the Red Cross, and the Pentagon (George Institute of Technology, n.d.). According to Arkin, in modern warfare precision-guided smart weapons like drones are now seen as essential for avoiding civilian casualties. Arkin views humans as a weak link in the targeting chain and thinks robots like drones, which can select targets using data and algorithms, can better discriminate between ally and enemy. For example, in combat, a drone operator may struggle to tell whether people on the ground are insurgents with ak-47s or farmers with spades, but according to Arkin "robots can be developed so that they are not vulnerable to such patterns of behaviour" (quoted in Hambling 2018: n.p.). He argues that artificial intelligence can help to make better battlefield judgments than humans. In 2012, Arkin published a proposed software architecture for introducing ethics into autonomous weapons systems. Other researchers are collaborating in developing the algorithms needed to keep war-fighting robots within the bounds of the laws of war and international humanitarian law (Spotts 2015). Groups that have joined the effort include research teams in New Zealand, France, Britain, and at the US Air Force Research Laboratory and the US Naval Postgraduate School (Spotts 2015). "The hope is that if these systems can be designed appropriately and used in situations where they will be used appropriately; that they can reduce collateral damage significantly" (Arkin quoted in Beres 2016: n.p.). Although drones are far from autonomous, Arkin's claims are significant because they are illustrative of the RMA

ideology. Not only does Arkin view humans as the weakest link in the intelligence chain, he also shows faith in technological progress to bring about more virtuous warfare. As I explained in the previous chapter, due to the RMA, technological progress is also taken to mean ethical progress in the context of how war is conducted. This ideology helps support the adoption of drone use, which we can see at work in Arkin's claims that precision weaponry like the drone is essential because it leads to more lawful warfare due to both its precision munitions and its surveillance capabilities.

Rachel Stohl is another researcher who has been given a chance to speak on drones in the media (Lichtenbaum & Stohl 2015, Stohl 2015, 2016a, 2016b, Johnson 2016b, Shane 2015). She is an author at *Just Security*, which is part of the New York University School of Law, and part of the Stimson Task Force on U.S. Drone Policy. Due to her work on the Task Force she has contributed to *Breaking Defense*, a digital magazine on strategy, politics and technology of defence.¹⁴ She was a senior Analyst at the Center for Defense Information in Washington D.C. from 1998-2009 and is currently an adjunct professor in the Security Studies Program at Georgetown University (Just Security 2016: n.p.). Stohl (2015) has argued that drones have a combination of persistence and precision that makes them uniquely suitable for certain challenging military and counterterrorism operations. She explains that drones are able to loiter for extended periods of time and can collect information from the battlefield and elsewhere that can be used for more-accurate targeting. After a drone strike was found to have killed civilians Stohl explained that "drone strikes are precise, the failure is in the intelligence about who it is that we are killing" (quoted in Shane 2015: n.p.). Plainly, this claim by Stohl promotes the view that the drone will target precisely, inaccuracy comes from human beings. She also promotes the view that the drone's capacity for persistent

¹⁴ General David Deptula is also part of the Editorial Board of Advisors for *Breaking Defense* (Breaking Defense 2019 n.p.).

surveillance allows for more accurate targeting and makes them a wise choice for counterterror operations.

Also important in this context is Rosa Brooks, another academic who has been widely featured in the media in regard to the drone programme (Brooks 2013, Gilsinan 2016, New York Times Editorial Board 2014, Dylan 2014, Bowman 2016, C-SPAN 2016, Abizaid & Brooks 2015). She is a former counsellor to the Under Secretary of Defense for Policy from 2009-2011 and previously served as senior advisor to the US State Department in the Obama administration (Brooks 2013). She was also a co-chair with Rachel Stohl and General John Abizaid on the Stimson Center's nonpartisan task force for reviewing US drone policy. She is a professor at Georgetown University Law Center and a senior fellow with the New America/Arizona State University Future of War Project. In an interview for an article Brooks hyped the precision technology of the drone and explained why the tactic of targeted killings is more discriminate than other forms of bombing:

. . . drone strikes represent part of a trend towards the individualization of warfare, where instead of firebombing Tokyo or Dresden, which kills thousands upon thousands of people from soldiers to infants indiscriminately, we now have a technology that enables us, combined with our intelligence and surveillance resources, to be really focused in who we target and say, we're not going to drop a bomb on cities in Syria, we're going to bomb this guy over here. And we are pretty amazingly good at hitting that guy and nobody else—not always, no question. And I sometimes say to my friends who say "I don't like targeting killing," "Would you prefer untargeted killing?" Because that's

what World War II was most of the time, with catastrophic results for civilian populations (quoted in Gilsinan 2016: n.p.).

Brooks here echoes government officials, claiming that because drone strikes are targeted they are more discriminate and therefore the superior choice when it comes to minimising civilian casualties. She also hypes the accuracy of the drone by claiming that it is amazingly good at striking the target and solely the target, even if it is not consistently the case.

Brooks's comment is significant because it demonstrates that the reason strikes are considered precise has to do not only with the accuracy of drone weaponry, but also to do with the fact that strikes are "targeted" against specific individuals. Since targeted killings precisely target individual active terrorists they are considered to be a more legitimate use of force in comparison to all-out war. She is not the only academic to think so. There are other academics that argue targeted killings adhere better to legal and ethical principles. The academics I briefly present here do not have ties to government agencies like the ones presented above, but they share the view of government officials including Hayden, Brooks, and Brennan, who argue that targeted killings are precise, and therefore, a more discriminate and proportional use of force.

According to people like Brooks, targeted killings are by their very nature precise and discriminate because they target individual terrorists. The defence of target killings stems largely from comparing it to all-out war. Take as an example Statman's argument:

... targeted killing is the preferable method not only because, on a utilitarian calculation, it saves lives—a very weighty moral consideration—but also because it is

more commensurate with a fundamental condition of justified self-defense, namely, that those killed are responsible for the threat posed (Statman 2004: 187).

Statman demonstrates the two underlying assumptions about targeted killings: that they save more lives, than say another alternative like war, and they kill only those that pose a terrorist threat. Since strikes target only those that pose a threat Statman is telling us that strikes are discriminate and ethically and legally defensible as self-defence. He states: '[t]argeted killing, then, emerges as the most natural manifestation of *jus in bello* in wars on terror, for under *jus in bello*, even if a war is unjust, it should be directed (to as great an extent as possible) only at combatants' (2004: 186). Targeted killings are not only discriminate, but proportional as well. They are viewed as a more proportional response because as Brooks tells us, they take out individual threats instead of cities. Patterson and Casale agree: 'attacking individual terrorists and their network rather than going to war against entire states is proportionate to the task' (2005: 646). Given this, the tactic of targeted killings is the least costly, most efficient, and pragmatic way of fighting culpable terrorists, which is why targeted killings are seen as expressing what is in fact the appropriate respect for human life during wartime. Clark explains that:

[n]aming targets [targeted killings] attempts to lessen that collateral damage and minimize the indiscriminate killing that is often associated with war. By doing this, countries are actually bringing more dignity to human life because they are attempting to attack only the specific threats (Clark 2012: 26).

Clearly, targeted killings are assumed to bring about more principled violence and because of this they are seen as much less harmful to civilians than war. Academics support the government's argument that by virtue of being targeted killings drone strikes are discriminate and proportional. Drone strikes, then, are ethically and legally legitimate not only because the drone is precise, but also because targeted killings are by their nature precise.

The claims made by academics demonstrate that when asked to discuss drone strikes, they, like the government, construct them as precise and targeted, and subsequently, as advantageous for civilians. Their defences of drone strikes also align with the government's in that they too create a link between the drone's precision and more ethical warfare. Academics not only agree with the government's use of just war theory, but also with the view that persistent surveillance and the drone's accuracy can lead to more discriminate and proportional war. Plainly, they further the narrative that technology is helping the US fight a just war and that targeted drone strikes constitute progress in comparison to earlier forms of bombing. So we see that in the same manner as the government, academics also make normative judgments based on the premise that the drone is precise. They promote the view that targeted killings are more discriminate and advantageous for civilians because they minimise collateral damage. Crucially, academics and government officials alike, defend US drone strikes by asking us to appeal to the consequences. According to them, if the goal is to limit destruction and civilian casualties then drone warfare is the best option.

I mention these academics not only because of their defences of drone strikes, but also because of their credibility and their ability to influence foreign policy. Their credibility stems not only from their academic roles, but also from their proximity to institutions of the state, the military, and associated industrial interests (Miller and Mills 2009). These academics have a clear connection to military-industrial-academic complex. This connection to the government or government institutions is significant because it can lead to knowledge

that is produced to reflect the priorities and values of certain social interests (Miller & Mills 2009). Government connections create a particular ideological, social, and political framework within which their expertise is communicated, and this is because these institutions are neither neutral nor impartial on the question of how political violence is defined or framed (Miller & Mills 2009). These connections also matter because these academics have the ability to influence foreign policy. Given this, their views and assumptions that the drone programme is precise are important.

To conclude, I have shown that a key feature of the discourse of legitimation is a language of precision. The government utilised precision rhetoric in order to discuss the drone programme positively and gain approval for its use in the “war on terror”. Administration officials, as well as military and CIA officials all defended the drone programme predominantly by discussing the drone as a precise weapon. The drone is front and centre, framed as a solution to the collateral damage that is inherent to war and as a solution to the human mistakes that occur during targeting with the help of surveillance. Although precision is also assured through claims of specific targeting and accurate intelligence, the government’s precision narrative centres mainly on drone technology. There are clear connections made between the drone’s surveillance and better discrimination and the drone’s precision-munitions and accuracy, it is these capacities that the government claims denote the heralding of “surgical” precision. The use of words such as “surgical”, “pinprick”, and “targeted”, furthers the view that the US can bomb terrorists without affecting civilians. Indeed, the most common government talking point is that collateral damage is minimal, even rare. The bold and uniform language of precision is at the heart of the legitimation of drone strikes because it underpins government claims of low civilian casualties, of effective counterterrorism efforts, and of more ethical and legal warfare. Speeches and statements by government officials clearly indicate that it is precision that

underpins the claims that drone strikes are ethically and legally justified.

The significant role of precision in the legitimisation of the drone programme is apparent in the government's and even academic discourse, however, it is also apparent in their consistent comparison of the drone to other weaponry. By comparing the drone to other weaponry the government – and academics – are having us compare the consequences of using the drone with not using the drone. They also have us compare the tactic of targeted killings to all-out war. Precision is key here because given the drone's and target killings' precision we are supposed to infer that US drone strikes will bring about the best consequences, rendering them the wise and ethical choice.

Given that the purported ethical superiority of drone strikes depends on prior acceptance of factual claims about precision, then any normative position based on such claims collapses if the programme is imprecise. In the following two chapters, chapters three and four, I scrutinise the precision claims of the government and after doing so, I scrutinise its ethical and legal claims in chapter five.

Chapter 3: A Precise Drone Programme?

In the previous chapter I highlighted government claims of precision as well as their underlying assumptions. They can be broken down into the three empirical claims: (1) that the target is hit with accuracy; (2) that only the target is hit and not the surrounding area; and that (3) only a legitimate military target is intentionally targeted so that civilians are protected from being intentionally targeted. This chapter will interrogate these three claims. It begins first with an examination of the first two claims, which entails an examination of the drone's precision munitions, or the accuracy of strikes and the hitting of solely the target and not the surrounding area. Therefore, the first section of this chapter will interrogate their accuracy as well as the radius of their blasts. The third claim, that only military targets are intentionally targeted, is interrogated in the second section. The second section interrogates the intelligence utilised for drone strikes as well as the programme's policies. Intelligence comes from both the drone's systems and from human intelligence analysts and it plays a pivotal role in assuring that civilians are protected from bombardment. The drone programme's policies are also critical to precision since they dictate whom is liable to be targeted. Critical examination of these three claims demonstrates that drone strikes do not satisfy the government's claims to precision.

3.1: Are the Drone's Missiles Surgically Precise?

The US government tells us that the drone's strikes are "surgically" precise, and that civilians are protected from attack because the drone's missiles are so accurate that they bomb solely the intended target. This section asks whether drones meet the first two claims to precision: hitting the target and only the target. I argue that the drone can be said to be precise in terms of how the precision of such munitions is measured, but that, contrary to the rhetoric, surgical strikes are not possible given the current state of technology. By failing to interrogate the realistic capabilities of the drone's Hellfire missiles, both proponents and some critics and human rights organisations (Ackerman 2015, Scahill and Greenwald 2014, see also Walters 2014) miss the point that the imprecision of strikes is due not only to US policy, but also to the drone's missiles themselves.

Hitting the Target: The Drone's Hellfire Missiles

Brennan describes drone strikes as "surgical", as a "scalpel" approach. This use of medical language implies control: a particular (terrorist) threat can be identified and "removed" without affecting what surrounds it (civilians). Recall General Deptula's (2013) pronouncement that the accuracy of the drone's Hellfire missiles helps limit destruction and collateral damage. Crucially, there is a difference between accuracy and precision. Accuracy is a matter of the desired target site's being hit every time by the missile. Precision is a matter of the missile landing within a certain radius of the target – in other words, that the missile will land near the target site, but not necessarily on it. Specifically, when Deptula says that Hellfire missiles are precise, he means that they land no more than 10 feet from the target site. Although this is not *perfectly* accurate, it is close. The precision of the bomb also depends on whether it is GPS or laser guided. Although GPS guided missiles can be precise,

they can lead to error if the GPS coordinates are inaccurate. A laser-guided bomb on the other hand, has a laser which human operators can use to guide the bomb directly to the target leading to optimum precision. Although the drone's missiles can land quite close to the target, especially when laser-guided bombs are used, precision is a matter of *averages*. The CEP, or circular error probability, is how the precision of laser or GPS-guided munitions is measured (Zehfuss 2011, Wilcox 2015, Long 2012, Chamayou 2015a). CEP is a radius of a circle centred on an aim point within which *50 percent* of weapons fired at the aim point will usually fall (Zehfuss 2011, Wilcox 2015, Long 2012). Now, what this means in the context of the drone's Hellfire missiles is that, since Deptula claims the CEP is 10 feet (although critics say it is more like 25), fifty percent of the time the missiles will land within those 10 feet; but the other fifty percent of the time they will land *somewhere else*, more than 10 feet from the target (or more than 25 feet, if critics are correct). Hence, what counts as precise is actually not very precise in terms of accuracy: "precision" weapons are inherently *inaccurate* because 'the precision claimed for a weapon is, even under test conditions, normally achieved *every other time*' (Zehfuss 2011: 348, emphasis added). Half the time the missiles are going to land *further away* from the desired target. Since the precision of the missiles used by drones is only an average, precision-munitions cannot be said to be *surgically* precise, at least not with the technology that is currently available (Long 2012).

Now, we can imagine that Deptula and other government officials would claim that laser-guided drones are the most accurate weapon *available*. But even the use of laser-guided bombs has drawbacks. Consider Matthew Nasuti's (2011) account of reasons for inaccuracy: distance to target; weather conditions; human mistakes; equipment error such as design defects and maintenance problems; and inherent problems associated with laser targeting. Laser targeting although much more accurate than GPS targeting, is nonetheless dependent on good weather and is liable to disruption by cloud, smoke and dust – all features that are

often present in areas of bombing due to other explosions (Cole 2015). When these features are present, laser targeting is more prone to malfunction. Contrary to Stohl, it is not just intelligence that can lead to targeting errors, but also the missiles themselves and their capacity for malfunction. Missile technology, and not just the humans who control it, is fallible.

Upon examination, it becomes clear that what counts as precision bombing is in actuality not very accurate and that the precision standard is low inasmuch as it does not demand that the missile consistently hit the desired aim point. Since precision is measured as an average, it allows for missiles to land away from their targets but nevertheless retain the description of “precise”. Thus strikes are not surgical, for two reasons: given the state of technology they are not empirically possible, and because “accuracy” allows for Hellfire missiles to land within 10 (or 25) feet from the target site in fifty percent of cases. The claim that drone strikes are “surgical” cannot be factually supported.

Hitting the Target and Only the Target: The Radius of Hellfire Missiles

The second component of “accuracy” involves hitting the target site *and only the target site*. Part of the reason as to why the drone’s missiles are claimed to be like “scalpels” is because Hellfire missiles are usually 100-pound bombs. Significantly, compared to the 500-pound bombs that bigger drones fire, the 100-pound bomb has the potential to create smaller blasts. Bombs with smaller payloads can be more proportional in the sense that they do not bomb such a big area and can limit the damage that comes from the explosion (Cole 2015). As Col. James Blitzes states in regard to bombing cars containing targets, ‘[y]ou’re going to destroy the car, but you’re not going to create a crater’ (quoted in Hastings 2012: n.p.). In spite of more accurate Hellfire missiles, however, explosions will nevertheless extend much further than the target site.

When a missile explodes, there is a blast radius also called a “kill radius” that extends about 50 feet, or 15 metres, from the blast site. There is also a “wounding radius”, which extends about 65 feet or 20 metres (Chamayou 2015a: 142). This means that if you are within 50 feet the bomb is more than likely lethal, and that if you are beyond 50 feet from the target site you may be wounded. The US Department of Homeland Security informs us in its “Bomb Threats Stand-Off Chart”, that a safe distance from a 50-pound bomb is 150 feet (n.d: n.p.). As I have pointed out, however, drone Hellfire missiles can weigh from 100 to 500 pounds. Consequently, when proponents of aerial bombing talk of striking precisely within a few meters or feet, such a narrative simply ignores the much wider lethal radius that the blast will create (Cole 2015). This blast radius means that the drone’s Hellfire missiles are not surgical in the sense of hitting only the target site and that the impact of Hellfire missiles is not necessarily reduced.¹⁵ Due to the fact that precision munitions are actually not very precise, and since there is this large blast radius, it is easy to see why critics like Wilcox (2015) and Chamayou (2015a) claim that the drone is not precise, let alone surgical.

Still, proponents of drones, including Strawser (2010) and Brooks would again say the drone is the most precise weapon available and the best weapon to minimise casualties. Compared to other counterterrorism options – night raids and ground assaults by Special Forces – they argue that the drone is the more precise choice. Given the data available this does seem to be the case, but since much of the drone programme is kept secret comparisons are speculative (Plaw 2013).

Despite their use of the language of surgical strikes, academics and government officials in fact acknowledge that despite the use of such advanced weaponry civilians will

¹⁵ These missiles are extremely lethal and kill or injure in several ways: through incineration, flying shrapnel, and the release of powerful blast and heat waves capable of crushing internal organs (Cole 2015). After strikes people are left in pieces and those who are not killed are left maimed due to the shrapnel (Cavallaro et al. 2012). Khalil Khan, a witness to drone strikes, explained that he was unable to identify body parts lying on the ground, all he could do was ‘collect pieces of flesh and put them in a coffin’ (Cavallaro et al. 2012: 60).

die. After Brennan had claimed drones resulted in *zero* civilian casualties and was questioned by a skeptical journalist he stated, '[u]nfortunately, in war, there are casualties, including among the civilian population. . . . And unfortunately, sometimes you have to take life to save lives' (*This Week With George Stephanopoulos*, 2012). But this is a completely different argument; and it is one that contradicts claims to precision. For "comparative precision" is one thing, "precision" another. Recall Brooks' argument that the drone is preferable in comparison to the carpet that occurred during the Second World War. The problem with her comparison is that the drone is *not* a weapon for carpet bombing. The whole point of the drone is that it is a weapon that allows for violence short of carpet bombing. So Brooks' is an immaterial argument; individual targeted killings is not to carpet bomb entire towns. Drone strikes have to be compared to other forms of killing individual terrorists, which is why comparison – with Special Forces ground raids or night assaults – is what is needed.

The other problem with Rosa's statement and the use of the word "targeted", like the words "scalpel" and "surgical", is that the drone's missiles are not bullets, but bombs. These bombs may be smaller in size – and certainly nothing like carpet bombing – but they remain extremely powerful. Reporter David Rohde, who was held captive by the Taliban, explains what the impact from a drone's missile is like:

[i]t was so close that shrapnel and mud showered down into the courtyard . . . Just the force and size of the explosion amazed me. It comes with no warning and tremendous force . . . It's a serious military action. It is not this light precise pinprick many Americans believe (quoted in Moyers & Winship 2013: n.p.).

The medical language used by the government to discuss the precision and selectivity of strikes obscures the imprecision, lethality, and large radius created by Hellfire blasts that leave civilians in danger of death or injury. The imprecision of strikes and the radius of their blast means that, empirically, the missiles do not allow for a “scalpel” approach even if they allow for a more targeted and proportional use of force than for instance indiscriminate bombing.

So are drone strikes surgical in the sense of hitting the target accurately and only the target? No. The “precision” of precision-munitions is measured as an average, which allows for missiles to land away from their targets half the time and nonetheless retain the description of “precise”. Empirically, precision-munitions are inherently inaccurate since they usually land away from the target. Consequently, drone strikes cannot be said to be consistently surgical because strikes that are consistently accurate are not technologically possible. What is more, the precision of these missiles is also affected by human error, system malfunctions, weather, and distance to target.

In regard to the second aspect of “accuracy”, hitting only the desired target and not its surroundings, drone strikes, yet again, are not surgical, since there is a large blast radius that shoots shrapnel much further than the target site. The rhetoric of exceptionally surgical strikes that manage to single out a terrorist and leave the surroundings unscathed is overstated and does not reflect the reality of Hellfire missiles. The inherent inaccuracy of drone strikes and their wide blast radius means that, contrary to the precision rhetoric, civilians remain in danger. Even though the words “targeted” and “surgical” are used quite freely by government officials, they are not representative of current reality.

3.2: Discriminate Targeting? The Drone Programme's Intelligence and Policies

As I discussed in the introduction of this chapter, precision also refers to discrimination: respecting distinctions between civilians and non-civilians such that only non-civilians are targeted. Government and military rhetoric stresses that the drone allows for enhanced human oversight providing operators greater control over collateral damage. The claim is that by watching for long periods of time with the aid of persistent surveillance and with the safety of distance, operators are able to make better determination of combatant status. Indeed, the declarations of surgical drone strikes imply that drone operators have the knowledge to flawlessly discern between enemy and civilian, thus precluding civilian casualties. So, what does discrimination require? Discrimination requires two things: (1) a definition for terrorist and/or militant given by the government; and (2) intelligence, provided by both humans and the drone's technological systems, to find out who is an enemy.

In this section I argue that strikes are not and *cannot* be as discriminate as the rhetoric suggests for three main reasons. First, because drone targeting is based on vague definitions of what constitutes a terrorist. Second, since the programme strikes preventively, it inhibits both human and technical intelligence from providing certainty that targets are indeed a threat. Thus, intelligence is based on probability, guilt by association and other unreliable methods including the use of algorithms, which do not provide the accurate and sound information that would be needed for surgical strikes. Third, the policies of the drone programme actually sanction indiscriminate strikes. After making these three points I go on to argue, more broadly, that the emphasis on the technically advanced character of drone weaponry, which purportedly assures precise and discriminate strikes, obscures the fact that the drone's ability to target "discriminately" and "accurately" terrorists and militants depends on the many government officials, intelligence, and policies that guide and control it. Thus,

the drone's targeting precision cannot be presumed *a priori* on the basis of its technological capacity. Rather, to assess the precision of strikes, the entire drone programme must be assessed – its human bureaucracy, intelligence methods, and policies – not just the weaponry and its technical capabilities.

What Constitutes a “Terrorist”?

In order to find targets US intelligence analysts and drone operators must have knowledge of what *constitutes* a terrorist threat – of who can be considered a terrorist and who cannot.

Crucially, we must ask, who counts as a terrorist and what are signs of terrorist activity?

Given the claims of “surgical” strikes, is the ability to differentiate between civilian and terrorist as unambiguous as the US makes it out to be? In this section I argue that since the drone programme defines the category “terrorists” in very broad and vague terms it lowers the threshold for constituting someone a threat.

US government and military rhetoric underscores that those put on the “Kill List” are known “high-level terrorists”, giving the impression that those killed have been previously identified and that they have done something to warrant being on the “Kill List”. Well what kind of activity counts as terrorism? The US Watchlisting Guidance created by the National Counterterrorism Center (NCTC) states that terrorism and terrorist activities,

are acts that: (a) involve violent acts or acts dangerous to human life, property, or infrastructure that may be in violation of U.S. law, or may have been, if those acts were committed in the United States; and, (b) appear intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of the

government by mass destruction, assassination, kidnapping, or hostage-taking. This includes activities that facilitate or support TERRORISM and/or TERRORIST ACTIVITIES (NCTC 2013: 35, capitalisation in the original).

While this definition provides examples of what activities constitute terrorism, it is quite broad. By this I mean that this definition – and the examples that are cited in it – make it possible for a large number of people to be categorised as terrorists since they include criminal actions that fall far short of bombing or hijacking, like hostage-taking (Schaill & Devereaux 2014). Note for example, that the 2013 Watchlisting Guidelines also define the damaging of computers used by financial institutions as activities meriting placement on the terror list, meaning that indiscriminate attacks on civilians are not needed in order for someone to be considered a terrorist.

In law professor Gregory McNeal's (2014) case study on the drone programme he highlights that for the Obama administration a sufficient condition for being listed on any "Kill List" is to be a member of an organised armed group. What counts as an organised armed group? al-Qa'ida and the Taliban certainly spring to mind, however, there are many organised armed groups thereby leaving us once again with large pool of potential targets that do not necessarily intend to commit acts of terrorism against US citizens. Jetta Weber worries that "it might describe a group of tribal elders in Waziristan [Pakistan] who traditionally carry weapons as a sign of their status," but are not terrorists (2016: 110). Jetta's concern is understandable given that "terrorist activity" can also be, "[a] convoy of Toyotas with guys in the beds carrying guns" (Grim & Linkins 2015: n.p.). Simply being armed in a terrorist "safe haven" like Waziristan, where carrying weapons is a sign of status and not terrorism, might lead to innocent men being targeted. Weber (2016) also reveals that even non-members of

such groups are added to the terror list if they are regarded as being important for the group. However, there are no *strict criteria* for cases when non-members might be added.

To make matters worse, the exact criteria for what puts someone on the US “Kill List” are entirely secret. The Obama and Bush administrations fiercely resisted disclosing the criteria for placing names on their terror databases. Obama’s Attorney General, Eric Holder, invoked *State Secrets Privilege* to prevent Watchlisting Guidelines from being disclosed in litigation (Scahill & Devereaux 2014).¹⁶ While the reports I mentioned above divulge that terrorists are found through group membership and through certain activity, for the most part what constitutes someone as a terrorist, or as a target for drone strikes, is unknown. Despite the activities and conditions provided to constitute someone as a terrorist it is important to note that there is no clear international or legally binding definition of terrorism, and the definitions used by the US government institutions vary quite widely (Weber 2016, Schmid 2011). The expansive definition for what constitutes terrorism and the low threshold for designating someone a terrorist is significant because it opens the way to targeting innocent people and because it presents a challenge for ascertaining whether strikes are truly discriminate.

Preventive Striking: Algorithmic Intelligence

As pointed out previously, one form of intelligence utilised for drone strikes comes from the drone’s systems. These systems, engineered by military and private contractors, collect data and use algorithms to find and produce targets for the drone programme. Intelligence culled from data is seen as “raw” – and therefore, as objective or neutral – even though what it is set to look for to indicate that someone is a potential threat is still set by the human software

¹⁶ The official policy of the US is to neither confirm nor deny that someone is on a terror watchlist (NCTC 2013).

engineers who tune the algorithms. The use of data mining and algorithms is so beloved by intelligence analysts because it is seen as providing a way of predicting whether someone will become a threat. Since data mining has had remarkable success in predicting consumer behaviour for advertising, government officials tasked with keeping Americans safe assert that they can replicate that success with terrorists (Stokes 2008). In this context, the US Department of Justice has stated that “in the search for terrorists and terrorist cells, we are employing predictive technology that was previously utilized by the business community” (US Dept. of Justice 2002: n.p.). Anyone who has had products recommended based on past purchases can comprehend how these algorithms try and predict behaviour. These data mining tools are now being used in the service of counterterrorism in order to identify “terrorist behaviours” that could tip an agent off to a possible terror plot or a possible militant (Stokes 2008). The ambition of predictive data mining is to detect the traces of the future in the present (Chamayou 2015b).

Another contributing factor to this increased reliance on data collection and signals intelligence is the Revolution in Military Affairs (RMA) development in the US military, mentioned in chapter 1. The technological turns signified by the RMA has brought to the foreground – and helped entrench – intelligence methodologies such as signals intelligence (SIGINT). SIGINT refers to the collection and exploitation of signals transmitted from communication systems, radars, cell phones, and weapon systems such as drones. The National Security Agency (NSA) collects, processes, and analyses the signals intelligence and then NSA translators, cryptologists, analysts, and other technical experts turn the “raw data” into something that an analyst can use. Whereas before most intelligence came from human intelligence – intelligence acquired through clandestine acquisition of photography and documents by human beings that are then analysed by CIA analysts – now large amounts of intelligence come from SIGINT (Horn 2006). The trust and confidence in SIGINT is so

strong that the NSA has the saying, “SIGINT never lies” (Crider 2014). Due to the fact that intelligence produces targets for the drone programme, intelligence agencies like the NSA and the CIA have become indispensable parts of the US counterterrorism strategy. The NSA has become the single most important intelligence agency in finding al-Qa’ida and other enemies overseas (Scahill & Greenwald 2014). The motto for one NSA unit is “We Track ‘Em, You Whack ‘Em” (Priest 2013).

There is a pervasive view that large data sets offer a superior form of intelligence and knowledge that can generate insights that were previously impossible, with the aura of truth, objectivity, and accuracy (Boyd and Crawford 2012). The promise of big data is to have enough data ready, or enough sources to cite, in order for the government or law enforcement to “judge” everyone (Matzner 2016).¹⁷ Data from surveillance do not aim at producing knowledge in the sense of facts about a person, but to single out *suspects* as potential or possible *future* wrongdoers (Leese 2016). Thus, “data-based verdicts do not only concern who someone is, but who this person will (potentially) be” (Matzner 2016: 203).

My specific focus in this section is on two types of data analyses used to find targets: social network analysis and “pattern of life” analysis. I argue that despite the faith in predictive data mining, the intelligence produced by data is not as dependable as the government avers. There are three reasons for this: first of all, suspects are produced based on guilt by association, racial profiling, and probability; second, there is a lack of a definite terrorist profile essential for effective data mining; third, the data used for predicting terrorist behaviour is of low quality. The judgments that data mining and algorithms deliver to the US

¹⁷ The use of data to find potential suspects is also being used by law enforcement, thus leading to the term “predictive policing”. A University of California-Los Angeles anthropology professor, Jeff Bratingham, adapted his Pentagon-funded research for American police departments, patenting his research and founding a for-profit company named PredPol, LLC (Winston & Burrington 2018). Another company selling “predictive policing” software is Palantir – a data-mining firm co-founded by American spies with seed money from the CIA’s venture capital firm (Winston 2018). Palantir has patented at least one crime-forecasting system and has sold similar software to foreign intelligence services – like that of Israel – for predicting the likelihood of individuals to commit terrorism. It has lucrative contracts with the Pentagon and US intelligence services and has been used for years by the NSA (Winston 2018).

government then, cannot provide certainty that someone is a terrorist. It provides only a probability, and therefore leaves significant room for error.

Social network analysis used to find terrorist suspects gathers

SIGINT from video feeds, mobile phones, geo-locational information as well as data from email, social media and other internet services . . . often based on quantitative link analysis methodology. This means that the more often somebody contacts a suspect, the more suspicious that person becomes (Weber 2016: 111).¹⁸

The reason that a person becomes more suspicious the more s/he contacts a suspect or a known terrorist is because military doctrine has it that terror groups are non-hierarchically organised networks with often loosely connected individuals (Weber 2016). Thus, anybody who is in loose contact with members of the Taliban and al-Qa'ida networks are regarded as possible targets (Weber 2016, Chamayou 2015a). Reporter James Ball, with the help of the information Edward Snowden¹⁹ released, explains how this social analysis works: “. . . the NSA will check up to ‘three hops’ from a target of interest: one hop’s your friends, two hops is friends of friends, and three hops drags their friends in too” (2014: n.p.). Since this process of connecting people to a terrorist network leads to such a high number of contacts, what

¹⁸ Palantir’s prediction model deployed by US police also uses social network analysis to draw connections between people, places, cars, weapons, addresses, and social media posts. After entering a query term like a partial license plate, nickname, address or phone numbers the police department’s analyst would review the information scraped by Palantir’s software and determine which individuals are at the greatest risk of either committing violence or becoming a victim, based on their connection to known victims or assailants. The person who initially ran New Orleans’ social network analysis from 2013-2015 was Jeff Asher, a former intelligence agent who joined the New Orleans Police Department from the CIA (Winston 2018).

¹⁹ Edward Snowden is a whistle-blower from the US. He worked for NSA contractor Booz Allen Hamilton when he revealed thousands of NSA classified documents because he became alarmed at all of the data the NSA was gathering from US citizens.

becomes salient is which of those second or third-degree contacts also happened to be in the networks of other people of interest to the NSA. Those people are then at a high possibility of being scrutinised. Advanced network analysis software enables data from the drone to be cross-checked with other sources, building up a more detailed picture of how the targeted individual(s) may fit into a wider network (Williams 2015). It not only builds connections between “persons of interest”, but also brings those previously unidentified into view (Williams 2015). Hence, the aim of the military and of the intelligence agencies is to tear-down terror networks by generating a social-network analysis, connecting targets to other nodes (Cockburn 2016).²⁰

A key reason why such kind of social analysis is trusted is due to the faith in metadata.²¹ Social analysis is perceived as more neutral since it is used to identify patterns of conduct or activities based on metadata collected from cell phones or social network sites. Algorithms are then used to find *associations* between the data, which is why the use of metadata *excludes the actual content* of the phone conversations. It is used only to provide records of who called whom, when and from where. The NSA finds a suspect and then looks at the metadata to see who the suspect called, but it does not know what the connection is between the suspect and those s/he spoke to. Despite not examining the actual content of the calls, General Hayden, former NSA boss, emphasised the centrality of metadata in targeting people, asserting that ‘[w]e kill people based on meta-data’ (quoted in Cole 2014: n.p.).²²

²⁰ Cockburn (2016) persuasively demonstrates in his book that this military tenet of killing “high-value targets” or nodes in a network has a history – it was used in Vietnam in the Phoenix assassination programme (1970s) and in the “war on drugs” in the US. They have been counterproductive in the past and have led only to the enlargement of targets.

²¹ Metadata is data, or information, which gives information about other data. It is an electronic “fingerprint” that adds identifying information to files, phone calls, e-mails, and documents (Harvard Law School 2018). So for example, metadata from a phone call would give every bit of information about the call except the word-by-word content (*New York Times* Editorial Board 2013).

²² In addition to helping the US find people based on who they are in contact with, metadata also allows the US to track suspects’ cell phones. The drone is equipped with devices known as “virtual base-tower transceivers”, which create fake cell phone towers that can force a targeted person’s device to lock onto the NSA’s receiver without their knowledge. These receivers are then used to gather as much metadata as possible. The receiver

The second type of data analysis is “pattern of life” analysis. The aim of “pattern of life” analysis is to build up a detailed profile of the person of interest by using surveillance to track his or her daily routine and *everyone* with whom the person associates with. This type of analysis is perceived as useful by intelligence analysts, who often point out its utility in targeting hard-to-find enemy targets. As Letitia Long, a Chief Technologist for global security company Northrup Gunman explains: “[i]n environments where there is *no visual difference between friend and enemy*—it is by their actions that enemies are visible. Motion is the first indication of activity” (2013: 7 emphasis added). Those who are targeted “are people whose actions over time have made it obvious that they are a threat,” a US Army manual explains, “[w]hile the enemy moves from point to point, reconnaissance or surveillance tracks and notes every location and person visited” (US Army 2010: vii). So add the suspect’s cellphone, text, and e-mail intercepts to the information gained by surveillance tracking and you begin to understand why proponents view the drone as the best weapon for discriminate strikes. Such analysis, allows personnel to reduce targeting mistakes because by watching the suspect’s movement and activities they can be sure that those killed by drones have made themselves liable to attack.

In order to predict a threat using “pattern of life analysis”, intelligence agencies like the NSA need to collect large amounts of data in order to derive their expectations about normality. Big data requires an obscene amount of data because the NSA wants the “whole haystack” or “total collection” (Aradau 2015). The collection of data is crucial because in order to kill people they have to be made visible, identifiable, and locatable. This need to be

allows the NSA to track both the SIM card found in cell phones as well as the cell phone device itself. When the NSA is able to triangulate where the individual is – within about 30 feet or so of their location – they strike. The problem is that “[t]hey do not require an actual human confirmation that the individual SIM card or phone handset that they’re tracking is in fact possessed by the person that they believe is a potential terrorist. And so, what we understand is that this is essentially death by metadata, where they think, or they hope, that the phone they’re blowing up is in the possession of a person that they’ve identified as a potential terrorist” (*Democracy Now!* 2014: n.p.).

visible explains, in turn, why the government attempts to make visible the minutiae of daily life, to seek security in the transactions, journeys, and movement of suspects. Algorithmic war requires a target for its calculations, preferably a moving target – what Samuel Weber calls a “target of opportunity,” a competitive “seizing of targets that were not foreseen or planned” (2005: 4). Software takes input from cameras and then recognises and identifies the objects in each frame to learn what kind of activities normally take place within the area of observation (Crandall 2011). This is possible through the use of computers which store these moving images so that analysts can dial back to a particular time and place and mark certain individuals and vehicles and instruct the machines to track them over time (Bowden 2013). With “norms” firmly in place, the software then aims to detect activity that deviates from it. Algorithms screen out non-critical movement activity and foreground the critical “anomalous” activity that is to be gathered by experts who then decide which action to take. This is how data is rendered “actionable” and how contexts are created for the data where conclusions are able to be drawn (Crandall 2011). Analysts look for specific behaviours or link patterns, which are regarded as suspicious, or, they look for anomalies in the normal patterns of activity, which “emerge” during the analysis and are read as signs of imminent threat (Weber 2016, Gregory 2013). In addition, ‘[a]ny interruption of the norm that you yourself have established by your habits, any departure from your regular behaviour, can sound an alarm bell: something abnormal and therefore potentially suspect is happening’ (Chamayou 2015a: 48).

How dependable are these tools for choosing suspects? In regard to social network analysis, the problem is that underneath the techno-scientific gloss of metadata analysis is also the tactic of killing people based on association. A tool such as metadata analysis is not fool-proof because the US does not actually verify what the association or connection is between the suspect and the terrorist. There is a negligence in this practice since the person

contacting the suspected terrorist may be family members or friends who are not terrorists. Association is not sufficient to predict that a person will commit a terrorist attack and consequently leaves us with room for error since a family member, or a friend, that is innocent, may become a target. What is more, the presumption that people are terrorists merely because they associate with or contact other terrorists also ignores the realities of living in certain regions where being in contact with Taliban commanders is a survival mechanism and not necessarily a show of support, let alone a sign of being involved in terrorist activity.²³

In regard to the effectiveness of “pattern of life” analysis, the problem is that what data mining tools do is not provide definitive evidence that someone is a threat, but suggest that they are a threat based on probability. They predict that a person is a threat not only on the basis of being associated with certain people, but also based on being involved in particular activities. In this context, the signs or “signatures” that are taken to indicate that someone is probably involved in terrorist activity can be: travelling certain routes frequently; visiting “suspicious” locations; receiving only incoming calls; excessive SIM or handset swapping; overnight trips, and permanent move (Robbins 2016, Weber 2016). Thus, the use of big data can render a broad variety of actions a sign of terrorist activity making it difficult to conclusively distinguish between enemy and civilian (Aradau 2015). This problem is magnified by the government’s vague definition of terrorism, discussed previously, which includes several activities that are not exclusive to terrorists. And yet, in spite of this uncertainty, algorithms take the data from people’s activities, communications, and movement and then process the data in order to give a *probability* that someone is a militant. As Chamayou observes, “your pattern of life might suggest a 70 percent chance that you are a

²³ See David Cockburn (2016) for an example that demonstrates the problem with blindly trusting metadata to the exclusion of other information to kill people p. 197.

militant, in other words you are a combatant, and we accordingly have the right to kill you” (2015a: 145). Thus, algorithms do not provide certainty, but only a probability that someone is a militant based on their suspicious movement and alert the programme’s personnel about the potential target.

Proponents of the drone programme may respond that social network analysis does choose people based on suspicion, but that, as the National Counterterrorism Center (2013) explains, people become suspects based on *reasonable* suspicion that may be *rationaly* inferred from the context of the relationship with a known or suspected terrorist. They may point out that people become suspects due to a close, continuing, or direct relationship with a known terrorist that reasonably suggests the individual is knowingly involved or wilfully supporting the known or other suspected terrorist’s activities. They may argue that by looking for people based on their proximity to other suspects or known terrorists, and by looking for them among “populations at risk” of terrorism, they mitigate the large numbers of potential suspects, much the same way a medical screening to find a rare illness starts by tracking family history or “populations at risk” of the illness (Ferguson 2017, see Chamayou 2015b).

Proponents may defend pattern of life analysis by pointing out that metadata can be very revealing. As a *New York Times* Editorial Board explains, metadata can reveal “political leanings and associations, medical issues, sexual orientation, habits of religious worship, and even marital infidelities” just by analysing who you call and when (2013: n.p.). Not only does the US collect data from cell phones, but also from bank statements and e-mail intercepts, and from drone surveillance feeds to provide greater certainty in predicting whether a person is associated with terrorism.

Given all that metadata underpins the confidence in social network analysis is understandable, and it may sometimes be correct and lead to the killing of a legitimate target.

However, it is not clear why we should trust someone's reasonable suspicion, especially when the Watchlisting guidelines (2013) explicitly state that irrefutable evidence or concrete facts are *not necessary* for suspicion to be reasonable. Moreover, the characterisation of metadata judgments as authoritative markers for target selection obscures the fact that since big data come from different sources – commercial transactional data, GPS signal data, digital pictures, and social media (Aradau 2015) there can be an increased chance of error in the data. If you put garbage data in you will get garbage out (Stokes 2008, Pringle 2017). A 2008 National Research Council report revealed that data of questionable quality are likely to be the norm in counter-terrorism. So for the most part, when using this analysis for counter-terrorism the judgments provided cannot be characterised as certain because the data is likely to have inaccuracies. Given that the data will be of questionable quality, the fact that the US bases some of its decisions to kill people based on metadata alone is careless. And this carelessness is only amplified when the data is used as part of an attempt to provide *probability* of guilt by association. It would only take spurious data, *or* false positives, *or* misleading associations for a civilian to be targeted.

Additionally, the characterisation of data analysis as more neutral and infallible because it eludes the influence of the humans is false. These tools do not elude the knowledge and influence of US personnel, in particular engineers, because they tell algorithms where to look and what to look for. There may be a glitch in the software left by the programmer or biases may be unknowingly injected, meaning that these tools are nevertheless clumsy (Pringle 2017, Shoemaker 2015). When algorithms are used to search for suspects among “populations at risk” of terrorism there is a risk of categorising someone a terrorist or a suspect according to a thinly veiled logic of racial profiling (Chamayou 2015b). To the NSA, populations at risk of terrorism constitute the Arab-American population and persons living near and in the Middle East (Chamayou 2015b). Since race and geography play a factor in

predicting where a crime will happen and whom will commit it, there is already a bias in the collecting and analysing of data.²⁴ The algorithm recycles the bias already embedded in existing NSA practices. Thus, “[u]nder the apparent colour blindness of computational analysis, an old racist vision did not fail to resurface. In some NSA documents, the target type has a revealing sobriquet: ‘Mohammed Raghead’” (Chamayou 2015b: 4).²⁵ This racial profiling leaves Muslim civilians at disproportional risk of being erroneously targeted and kept under surveillance because algorithms are informed by our own prejudices, beliefs, and blind spots. Human prejudices can shape anything from the design of the algorithm itself, to the data it is imputed with (Pringle 2017). For all of these reasons the judgments provided by metadata analysis tools are not entirely reliable or neutral ways for predicting who should be killed by the drone programme.

Nonetheless, proponents may respond that since terrorists hide among civilians and since there is no combat to make factually clear who is a combatant because there are no troops on the ground in countries like Pakistan, Yemen and Somalia, expecting a high standard of discrimination is unrealistic. Given this difficulty in discerning who is a terrorist, “pattern of life” analysis in particular is presented as a valuable and rational way to find terrorists. Watching these people’s activities through data analytics tools they may argue, increase the likelihood that those attacked deserve it. These methods assure a mathematical association between terrorist signatures and the people selected as suspects to give a probability that someone is a potential threat. They may acknowledge that algorithms do not

²⁴ A bias occurs because the machine learning algorithms will learn patterns fed into the software, however, the machine is not learning patterns of crime per se, but how police, or in the context of the drone programme, the NSA, record crime (Lum 2016).

²⁵The NSA admitted that it collects data about all U.S. phone calls and that ‘[i]t’s effectively the same standard as stop and frisk’ (Tummarello 2013: n.p.). “Stop and frisk” is highly controversial since it is usually implemented in a discriminatory way. Those “stopped and frisked” are disproportionately people of colour. A problem with algorithms is that they cannot recognise such a context, they often see all data as equal instead of disproportionately targeting people of colour or people in certain communities. Nonetheless, law enforcement defends this tactic as preventing crime.

elide human bias, but that with proper checks and balances algorithms can be beneficial (Pringle 2017).

Are proponents right? Can these tools actually predict someone's intentions, or the future, given someone's actions in the present?²⁶ And are they at least more reliable than other methods? According to Bruce Schneier (2005), in order to function effectively, algorithms necessitate a well-defined profile for terrorists. Well-defined profiles are essential. I demonstrated in the previous section that the US has a broad profile for what constitutes terrorist activity. Yet another reason for this lack of a definite profile is because terrorist attacks are very rare (Schneier 2005). While many credit-card thieves share a pattern and the cost of a false alarm is only a phone call to the cardholder asking him or her to verify a couple of questions, terrorist profiles are more complex and the cost associated with a false alarm is death. Crucially, because terrorists are not the same as mobsters with criminal records, or consumers with credit histories, "[t]here's no large dataset of terrorist behavior out there that can be used to train a data mining application to predict an individual's intention to commit an act of terror with any *degree of confidence*" (Schneier 2005: n.p. emphasis added). Data mining systems fail in two different ways: false positive and false negatives (Schneier 2005). "A false positive is when the system identifies a terrorist plot that really isn't one. A false negative is when the system misses an actual terrorist plot" (Schneier 2005: n.p.). Depending on how you "tune" your detection algorithms you can err on one side or the other (Schneier 2005: n.p.). To reduce both errors you need a well-defined profile. Since data mining is effectively an act of searching for a needle in a hay stack, when it is used for counterterrorism it will be flooded with the trillions of connections that exist between

²⁶ According to Jessica Saunders, a criminologist at the Rand Corporation, "[n]o algorithm is likely to ever predict with absolute certainty the who-when-where of a crime. But researchers have made great progress at identifying who is at heightened risk for both criminal perpetration and victimization" (2016: n.p.). Robinson and Koepke state that "[t]he fact that we even call these systems 'predictive' is itself a telling sign of excessive confidence in these systems. The systems really make general forecasts, not specific predictions" (2016: n.p.).

people and events and very few plots (Schneier 2005, Grothoff & Porup 2016). While collecting endless amounts of data may seem like a good idea in order to stop terrorist plots,

[a]ttempts to identify very rare incidents or targets from a very large data set are highly likely to result in unacceptably large numbers of “false positives” (identifying innocent people as suspects) or “false negatives” (not identifying real criminals or terrorists) (Brown & Korff 2009: 5).

It is because such a large data set will result in large numbers of false positives that Schneier maintains, “[w]e’d be far better off putting people in charge of investigating potential plots and letting them direct the computers, instead of putting the computers in charge and letting them decide who should be investigated” (2005: n.p.). Thus, counterintuitively, intelligence would be more dependable if computers were not in charge of dispensing death sentences.

On the surface, data mining and algorithms appear to be rational and mathematical tools and subsequently seem like reliable means for finding potential terrorist threats. Data mining and algorithms, the intelligence agencies tell us, constitute novel and useful ways to predict that someone will commit something nefarious and therefore provide intelligence that can be used to target discriminately. Nonetheless, in this section I have shown that these tools which provide intelligence through social network analysis and “pattern of life” analysis are not as reliable as proponents make them out to be. First, they produce targets based on guilt by association, probability, and racial profiling. Second, effective data mining would require a clear and definite terrorist profile, and such a profile does not exist. Third and finally, the quality of data used to determine whether someone is a civilian or a militant is often of low quality. The combination of these three problems means that there remains significant room

for mistakes when trying to discriminate between civilians and militants. And when mistakes are – inevitably – made, the consequences are lethal.

Human Elements of the Drone Programme: How Intelligence Gathering and Policies

Sanction Indiscriminate Strikes

At the beginning of this chapter I explained that the intelligence necessary to discriminate correctly between combatants and non-combatants comes from human beings that operate the drone programme as well as the drone's systems themselves. Recall where I presented the precision discourse of the government and academics. They state that the use of the drone allows for better oversight than any other weaponry available. Additionally, they claim that because of its ability for remote control the drone yields more level-headed personnel that is able to better evaluate the status of people under its gaze thereby preventing mistakes. The view that the use of the drone allows for better oversight has to do both with surveillance and with the drone's ability to connect via network the hundreds of people that make decisions on targeting. Although it is the drone and its systems that are highlighted, the drone is actually part of a programme that is predominantly human. Even the data analysis tools that produce targets to a certain extent autonomously are engineered by humans. The drone is still far from autonomous and relies heavily on the human bureaucracy that controls it. In this section, I will demonstrate that the human bureaucracy and policies that control the drone programme's targeting have an array of problems which, once more, undermine claims that drone strikes discriminate between combatants and civilians.

Intelligence Gathering Practices: Bureaucracy, Paid Spies, Outsourcing, and Private Contractors

The drone programme is a form of networked warfare. Drones are complex integrations of sensors, computers, software platforms, controls, military lawyers, maintenance crews, human pilots, and sensor operators. Each drone crew consists of a pilot for firing the missile; a sensor operator responsible for running the plane's cameras and weapons using laser instruments to guide it all the way to its target; and a mission monitor (Crandall 2011). Additionally,

[d]espite the widespread portrayal of many US drone operations as the work solely of the CIA or JSOC, in reality the US targeted killing program had always involved multiple players. Personnel from the military, the CIA, the NSA, military contractors and other intelligence agencies would jointly assess terabytes of data gathered in the field by drones and other assets every day (Woods 2015a: 19).

As another senior Pentagon official put it, '[t]he best way to view this thing is holistically, as the work of the United States government' (quoted in Woods 2015a: 56). Drone missions and targeting are operated by a vast and hierarchically organised bureaucracy which includes high-ranking government politicians such as the president and the secretary of state (Woods 2015a).

Becker and Shane explain the bureaucratic choosing of targets in their exposé:

[e]very week or so, more than 100 members of the government's sprawling national security apparatus gather, by secure video teleconference, to pore

over terrorist suspects' biographies and recommend to the president who should be next to die (Becker & Shane 2012: n.p.).

Becker and Shane (2012) report that Obama, Brennan, and other government officials look over terrorist suspects' biographies on what one official calls the macabre "baseball cards" of an unconventional war. The biographies on these baseball cards contain intelligence that government officials use to decide whether those people will become targets or not. Obama's participation was touted in order to show the public that he took responsibility and that the programme's targets were only decided upon after a rigorous vetting process (Bowden 2013). A national security advisor told Becker and Shane that Obama's participation made for a prudent programme stating, '[h]is [Obama's] view is that he is responsible for the position of the United States in the world. He's determined to keep the tether pretty short' (2012: n.p.). Lawyer for the administration Harold Koh, also reassured the public that the drone programme is careful by stating '[i]f Brennan is the last guy in the room with the president, I'm comfortable, because Brennan is a person with genuine moral rectitude' (quoted in Becker & Shane 2012: n.p.).²⁷ Brennan also explained that

[w]e don't just hear out differing views, we ask for them and encourage them. We discuss. We debate. We disagree. We consider the advantages and disadvantages of taking action. We also carefully consider the costs of inaction . . . as the President's counterterrorism advisor, I feel that it is important for the American people to know that these efforts are overseen with extraordinary care and thoughtfulness (Brennan 2012: n.p.).

²⁷ Despite Koh's confidence in Brennan, it should be noted that Brennan oversaw the CIA torture programme and then lied and obstructed the government's investigation (Ackerman 2015).

According to government and military officials then, choosing who to kill is a careful and thoughtful process.

Decisions on who to target, however, are not only carried out under the watch of government representatives. Decisions about who to kill are also made by CIA officials and JSOC officials (which have their own programmes), and by intelligence analysts and drone operators who are observing through the drone's video feeds in real time. When government or military officials claim that the drone allows for oversight they are also referring to the drone programme's network and its datalink. This is why James Ross, a retired Air Force major general says he has grown weary of the fascination with the drone itself and has adopted the slogan, '[i]t's about the datalink, stupid' (quoted in Bowden 2013: n.p.). The ability to share information through the datalink allows for two-way communication between the Ground Control Station (GCS) and the drone. Commanders, advisers and analysts in the network scan live video streams in order to give time-critical information to drone crews and ground forces responding to emerging events. Missions are executed onscreen through video feeds displaying up to 30 different chats at a time and chat rooms that bring a great number of personnel with different skills in different locations to focus on the same zone (Gregory 2011). The ability to chat and remain connected to other personnel in order to share intelligence and information is what proponents of the drone mean by "oversight". Personnel not only get to watch in real time what is happening, but also get to assess what they are watching along with other specialists, analysts, and lawyers to decide who is a target and whether they can legally strike, which they claim provides benefits for civilians (see Gregory 2011). So, what we have is a narrative that the drone and its network enhance the decision-making of the drone programme's human bureaucracy. This narrative however, neglects the different sources of intelligence that the US relies on to find terrorists, the interests involved, and how they affect the quality of intelligence necessary for precision.

In addition to the military personnel and intelligence analysts who provide intelligence, the US also deploys a large network of spies – male and female – in areas under control of the Mujahidin in order to direct the strikes of Predator drones (Woods 2015a). These spies are used to place infra-red chips in cars or other places in which targets may be. The drone’s missiles are then directed to the chip. According to a former agency officer, the CIA mainly recruited poor local men to help identify targets (Woods 2015a). It is not hard to understand the potential usefulness of these spies. They probably better understand the situation on the ground and may have dependable information as to who the programme should target. But the tactic has major drawbacks. As Calhoun explains, “[t]ribesmen serving as paid CIA informants were directing American drones against their rivals, falsely claiming that these individuals were terror targets” (2015: 114). Since the US provides large financial incentive for becoming a spy, many poor locals find it impossible to resist the hundreds, or sometimes thousands of dollars for their spying and start to provide the US false targets and intelligence.²⁸ Yemen and Pakistan are two of the poorest countries, making financial incentives particularly enticing. Indeed, the incentives are so large that people become spies despite the fact that those caught are executed (Woods 2015a). ‘The money was good so I started throwing chips all over. I knew people were dying because of what I was doing, but I needed the money’, claimed Habibur Rehman before he was executed in 2009 (quoted in Woods 2015a: 272).²⁹ The US put local collaborators in danger, while mercenaries took the enticement of the US to its logical conclusion, creating militants where there were none

²⁸ US intelligence agents let it be known that they would pay anywhere from \$3,000 to \$25,000 for al-Qaida or Taliban fighters handing out leaflets that stated ‘[g]et wealth and power beyond your dreams. You can receive millions of dollars helping the anti-Taleban forces. . . . This is enough money to take care of your family, your village, your tribe for the rest of your life’ (quoted in Klein 2007: 306). As Klein puts it, this is ‘an unprecedented convergence of unchecked police powers and unchecked capitalism’ (2007: 306).

²⁹ US officials dismiss this information as propaganda.

(Gusterson 2016). The use of paid spies, left out of the government narrative, is one reason why the US intelligence for drone strikes cannot be said to be entirely reliable.

The veracity of intelligence is also questionable due to the fact that the US has largely outsourced its human intelligence to host governments like the Saudi Arabian government in Yemen. Due to limited US presence on the ground, human intelligence is outsourced to “the notoriously sort of corrupt Saudi regime and its operations and informants inside of Yemen” (*Democracy Now!* Transcript 2014: n.p.).³⁰ He claims that the Saudis feed intelligence to the US that benefits the regime of Saudi Arabia and not necessarily the stated aims of the US counterterrorism program.³¹ In Somalia, U.S. forces were manipulated by opposing sides in Somalia’s complex clan-based society. The US thought it had killed al-Shabaab fighters only to later realise that the fighters were from another region of Somalia and were not al-Shabaab (Gaffey 2017).

The 2015 “Recommendations and Report of the Task Force on US Drone Policy” by Rosa Parks and former US General Abizaid, also discusses worry over the use of intelligence from other countries. They ask in the report, “[h]ow can we be sure we are not being drawn into a civil war or being used to target the domestic political enemies of the host state leadership?” (2015: 12). Their worry is understandable for, like paid spies, governments like that of Pakistan and Saudi Arabia have also been found to use drone strikes to kill their political rivals (Woods 2015a). Subsequently, some of the intelligence used to target suspects is not neutral or reliable due to the sources, which may lead to the killing of people who are not political enemies of the US, but of other countries. Government narratives about the

³⁰ SIGINT also comes from foreign partners due to the reduced access environment in Yemen and Somalia (Currier & Maas 2015).

³¹ In Yemen, the US is involved in a proxy war aiding Saudi Arabia in its fight against the Houthis. Though the US’s General Mattis has stated that “[o]ur conduct there is to try and keep the human cost of innocents being killed to a minimum” (quoted in Bruce 2018: n.p.) the Yemen war is a humanitarian crisis (Nikbakht & McKenzie 2018). The military coalition led by Saudi Arabia and the United Arab Emirates has killed thousands of civilians in airstrikes. A report by the United Nations Human Rights Council has revealed that Saudi airstrikes have caused the most civilian casualties by striking residential areas, markets, funerals, weddings, jails, and medical facilities (UN Human Rights Council 2018).

precision targeting of drone strikes efface this politicised dimension of the intelligence information upon which targeting is based. Basically, they can only present targeting as this neutral and objective process by effacing the political aspect of the sources of information.

Along with government and military officials, private contractors also help to operate and choose targets for the drone programme. Since the US seeks information dominance and network warfare, it increasingly requires technical specialists to engineer software, to repair the mechanical drone and its systems, and to help operate the drones given their sophistication. It was the Bush administration that opened the flood gates for private contractors. The administration's central tenet was that the job of government was to subcontract the task of security to the more efficient and generally superior private sector (Klein 2007). As former NSA director Ken Miniham puts it, '[h]omeland security is too important to be left to the government' (quoted in Klein 2007: 300). Consequently, these private employees, many of whom are retired military personnel, are also helping to choose people for targeting by drone.

Hiring private contractors may indeed seem like a superior and more efficient way to find terrorists and suspects, but as Singer points out, "[p]rivate employees have distinctly different motivations, responsibilities, and loyalties than those in the public military" (2003: 154). At the end of the day, private contractors are chiefly working to increase company profits. Therefore, their loyalty as Singer points out, is to the company and not to the stated aims of the military. Crucially, what is problematic about the use of contractors is that since their aim is to make a profit and thus to continue to be contracted by the military, they must continue providing targets. Contractors' continued employment depends on their ability to satisfy the stated performance metrics. They must review a certain number of possible targets per given length of time. As a result, they too have a financial incentive to make life-or-death decisions about possible targets just to stay employed (Benjamin 2013). This affects the

discrimination abilities of the drone programme because, since people are required to review a possible number of targets, it means that they are not just passively waiting for a target to make themselves known, but are actively seeking to produce targets. This can lead to inaccurate or hasty intelligence. These quotas may lead to the creation or finding of targets when there are none, like we saw with the use of paid spies. If there are incentives to find targets then people are going to find them, meaning that civilians will be considered suspects when they should not be.

The Drone Programme's Policies

So far, I have shown that human intelligence methods are not as prudent as the government implies. However, the drone programme's human bureaucracy also affects the ability to discriminate between civilian and combatant through the policies it sets to govern the drone programme's targeting process. In this section I focus on the policies which dictate who is liable to be targeted, and examine their effects on the standards of discerning between civilian and suspect.

We have already seen that the meta-data and intelligence that informs drone strikes does not accurately discriminate between civilians and combatants. Against this backdrop, one would hope that policies guiding when strikes are permitted would be water-tight, and ensure that there are lots of checks in place to prevent strikes from being only on the basis of suspicion and dubious data. But as I show in this section, drone programme policies indicate that strikes can be permitted with little, or no proof that someone is indeed a threat. In other words, policies allow for personnel to actually circumvent discriminating rigorously before striking. What is more, some policies make civilians deliberate targets of attack, rendering some strikes deliberately indiscriminate. Therefore, I argue that the drone programme's policies prove that the drone programme is not as discriminate or as precise as the government claims. Worse still, the government's precision narrative is deliberately

deceptive. The government narrative hides the escalation of violence and recklessness on the part of government officials, which contribute to an imprecision that puts civilians in danger of being killed by the programme. Overall, the policies of the drone programme outright eliminate or lower the standard of discrimination necessary for targeted strikes.

Recall the previous section where government officials flaunted the involvement of former president Obama to assert a restrained and sensible programme that targets solely individual “high-value targets”. I have already begun to demonstrate however, that “high-value terrorists” are not the only targets of the drone programme. In the second section on systems intelligence I demonstrated that algorithmic war works best with targets of opportunity. As I shall now demonstrate, there are further practices that render this claim untrue: the policies of “signature strikes”; the targeting of people in “kill boxes”; and “double taps”.

One of the drone programme’s most controversial policies that provides proof that discrimination standards do not have to be rigorously met is that of “signature strikes”. “Signature strikes” are different from “personality strikes” – strikes that kill people identified on the “Kill List”. These strikes see drone operators fire at armed military-aged males associated with suspicious activity even if their identities are *unknown*. They allow for *groups* of men who bear certain “signatures”, or signs associated with “terrorist activity”, to be killed. Daniel Klaidman offers the following explanation for “signature strikes”:

[t]he president was learning for the first time about a controversial practice known as “signature strikes,” the targeting of groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose identities aren’t known. They differed from “personality” or “high-value individual” strikes, in which a terrorist leader is positively identified

before the missile is launched. Sometimes called “crowd killing,” signature strikes are deeply unpopular in Pakistan. Obama struggled to understand the concept. Steve Kappes, the CIA’s deputy director, offered a blunt explanation. “Mr. President, we can see that there are a lot of military-age males down there, men associated with terrorist activity, but we don’t always know who they are.” Obama reacted sharply. “That’s not good enough for me,” he said. .

..

[Former CIA director Michael] Hayden forcefully defended the signature approach. You could take out a lot more bad guys when you targeted groups instead of individuals, he said. And there was another benefit: the more afraid militants were to congregate, the harder it would be for them to plot, plan, or train for attacks against America and its interests (Klaidman 2012: n.p.).

Because “signature strikes” attack crowds of people without knowing who they are, critics often cite it when claiming that the drone programme is not as precise as it is claimed to be. This practice not only contradicts outright the claim that the US kills only *individual* identified “high-value targets” on a list, but also claims according to which targets are vetted thoroughly before strikes are ordered. It also highlights prejudices inherent in targeting, for the targeting process assumes that military-aged men gathering is a sign of a terror attack being planned. These strikes, which “kill unnamed persons who obviously have not been connected to any specific crimes because their names are not even known” (Calhoun 2015: 79), are not exceptional. They make up the majority of the programme (Heller 2012, Shane 2015).

To the drone programme, being a military-aged male places you in a category that is understood as threatening and allows for you to be put to death (Allinson 2016).³² Indeed, military-aged males killed by drone strikes are conveniently considered “militants” unless *posthumous* evidence is provided to prove otherwise. Thus, one does not have to be a known terrorist in order to be put to death, being a military-aged male is a sufficient reason for being labeled a “militant”. Consequently, critics including Greenwald (2014), *Reprieve* (2014) and Cavallaro et al. (2012), allege that most western media outlets label *unknown* victims of drone strikes as “militants”, indicating an uncritical acceptance of the government’s claims. Since the US automatically labels as “militants” military-aged men killed by drones, some have become skeptical of government casualty counts. As Becker and Shane (2012) report,

[t]his counting method may partly explain the official claims of extraordinarily low collateral deaths. In a speech last year Mr. Brennan, Mr. Obama’s trusted adviser, said that not a single civilian had been killed in a year of strikes. And in a recent interview, a senior administration official said that the number of civilians killed in drone strikes in Pakistan under Mr. Obama was in the “single digits” – and that independent counts of scores of hundreds of civilian deaths unwittingly draw on false propaganda claims by militants. But interviews with three former senior intelligence officials expressed disbelief that the number could be so low. One called it “guilt by association” that has led to “deceptive” estimates of civilian casualties.³³ “It bothers me when they

³² As Laleh Khalili (2012) points out, the US practices a gendered profiling of men, where any man between the ages of 15-50 is considered a suspect and the target of intensive, aggressive, and invasive surveillance.

³³ The *Washington Post*’s Dana Priest, also noted that the attitude of the US was that with a primary target that was a big deal and difficult to arrange, ‘whoever else was with him was a legitimate target too. They just felt like the primary target, whoever was with him, was guilty too you know?’ (quoted in Woods 2015a: 60). A drone officer affirmed: ‘if we decide [someone is] a bad person, the people with him are also bad’ (Porter 2011: n.p.).

say there were seven guys, so they must all be militants,” the official said.

“They count the corpses and they’re not really sure who they are” (Becker & Shane 2012: n.p.).

Like critics, we see that government officials are also skeptical of estimates of civilian casualties because they too contend that the government does not actually know who it is killing. “Signature strikes” target people based on guilt by association and assumption, not because the US really has incontrovertible evidence that they are threats or that they deserve capital punishment. On this basis, even leading drone proponent Scott Shane admitted that “[g]radually, it has become clear that when operators in Nevada fire missiles into remote tribal territories on the other side of the world, they often do not know who they are killing, but are making an imperfect guess” (2015: n.p.). If the US cannot be sure of who it is actually targeting, it cannot be said that strikes are discriminate.

According to the drone programme policy line, another sign of being a militant is being in preapproved “kill boxes”. Although Obama claimed to oversee strikes, he pre-authorized strikes for the CIA as long as they were targeting people in geographical boxes near the borders of Afghanistan and Pakistan. Since insurgents leave Afghanistan to enter Pakistan, people in “kill boxes” along Pakistan’s tribal areas could be killed because being in those kill boxes automatically renders them potential “militants” (Williams 2015). These strikes clearly do not require rigorous intelligence. Instead, all they require is for people to be in certain geographical boxes. This shows yet again that the US circumvents discriminating properly in certain instances, and hence undermines government claims of precision in targeting.

Finally, “double taps” also threaten civilians and reveal a lack of care in drone strikes. The drone programme’s double tap practice is one in which a targeted strike site is hit

multiple times in relatively quick succession (Cavallaro et al. 2012). The *Living Under Drones* report (2012), and journalists Greenwald (2012) and Woods (2013), point out that there is significant evidence that the US has repeatedly engaged in this tactic. The report claims that

[c]rucially, the threat of the “double tap” reportedly deters not only the spontaneous humanitarian instinct of neighbors and bystanders in the immediate vicinity of strikes, but also professional humanitarian workers providing emergency medical relief to the wounded (Cavallaro et al. 2012: 76).

Glenn Greenwald also reported on the tactic and revealed a 2004 US Federal Bureau of Investigation Bulletin (FBI) that states:

“[t]errorists may use secondary explosive devices to kill and injure emergency personnel responding to an initial attack”. Such terror devices “are generally detonated less than one hour after initial attack, targeting first responders as well as the general population” (cited in Greenwald 2012: n.p.).

The FBI is, then, describing as “terrorist” a tactic that is frequently used by the US.

The drone programme’s policies of “signature strikes” (crowd killing), of preapproving strikes in geographical “kill boxes”, and of “double taps” are all blatantly at odds with the precision rhetoric that claims US drones do not deliberately target civilians unlike “terrorists” and that reiterates that the US takes great care to discriminate and spare civilians from

attack.³⁴ Claims regarding low numbers of civilian deaths seem all the more doubtful because the policies and tactics used in the context of drone strikes make it likely that civilians will be targeted. Despite the assurances of control and judiciousness validated by such a large bureaucracy, US policies ‘raise questions about how much the government knows – or how little the government knows – before it pulls the trigger’ (*Democracy Now!* 2015: n.p.). Critics are right to doubt government assertions of precision because with policies such as the all-encompassing definition of ‘militant’, the US can lower the threshold of who counts as a militant and can shirk what it claims incessantly to do – rigorously discriminate.

Academic proponents on the other hand, including Strawser (2010) and Brunstetter (2012), contend that even though these policies are problematic and should be done away with, the drone is still the most logical and, indeed, ethical weapon to use in order to spare civilians from bombardment. They argue that when used with restraint and in accordance with legal and ethical principles the drone can help provide discriminate and precision strikes. To them, an ethical and legal drone programme is possible despite these policies because drone weaponry provides the capabilities for precision strikes. They are asking us to think about the consequences, and so, even if the programme is leading to casualties, the drone must be used because it will provide the potential to diminish civilian casualties better than the alternatives.

In the weighing of consequences however, the calculation of academic proponents is poor. They fail to recognise the wider effects of drone strikes and fail to subject to scrutiny government figures on civilian deaths. In terms of failing to recognise wider effects, the calculation of consequences of drone strikes leaves out some of the consequences revealed in the significant *Living Under Drones* report. Researchers Cavallaro et al. (2012) have

³⁴ It should be noted that these practices are not new, or particular to the drone programme, these are tactics of counterinsurgency. These tactics have been used especially by former colonial powers against guerrillas (Levich 2012, Khalili 2012, Blakeley 2018).

interviewed people in Pakistan living under the drone programme and exposed that people are terrorised not only as a consequence of “signature strikes” and “double taps”, but also by the constant hovering of drones. Since people never know when and where the drone will strike, people live in constant fear. People stopped sending their children to school and they stopped coming together for social functions, revealing that the drone programme has disrupted political and social life. “Signature strikes” have been responsible for the targeting of funerals, weddings, mosques, and tribal meetings in Pakistan called *Jirgas*, where tribal elders gather in *groups* to solve disputes and make political decisions (Cavallaro et al. 2012, Woods 2015a, Engelhardt 2013). Thus, coming together for *Jirgas* is dangerous given the policy of signature strikes. This provides just one example of the wider effects of drone strikes, not covered when proponents look only at how many innocent people are killed.³⁵

More broadly, while Brennan did not clarify what constituted “credible evidence” of civilian casualties, there were many public reports – from Pakistani and Yemeni reporters, human rights organisations, journalists, and anonymous administration officials – of civilians killed by U.S. drone strikes (see Zenko 2016). *Reprieve’s* 2014 report, *You Never Die Twice*, demonstrates that strikes miss and thus require more strikes to hit the intended target, leading to greater collateral damage. According to the report,

³⁵ In contrast to the government’s rhetoric of effective drone strikes that are annihilating “high-level targets”, many, including journalists and current and former government officials, have reported and warned that strikes and resulting collateral damage are angering those in Yemen and Pakistan and helping, rather than hindering, al-Qa’ida recruitment (Cavallaro et al. 2012, Mothana 2012, Coll 2014, Ackerman 2016, Shah & Beaumont 2011, Becker & Shane 2012, Moyers & Winship 2013). ‘Drone strikes are causing more and more Yemenis to hate Americans and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair’ (Mothana 2012: n.p.). In 2010, Faisal Shahzad, who tried to set off a car bomb in New York’s *Times Square*, justified his targeting of civilians by telling the judge ‘[w]hen the drones hit, they don’t see children’ (quoted in Becker & Shane 2012: n.p.). Some claim that while there may be short-term military gains from killing militant leaders, they are miniscule compared with the long-term damage the drone programme is causing (Mothana 2012). These are other consequences that are also left out when proponents and government officials solely discuss the numbers of civilians killed.

[w]hile the US refuses to say who is on the “Kill List,” a look at the reporting around drone strikes gives the names of dozens of individuals who have been targeted or reported killed once, only to be killed again and again. In fact, 41 individuals have been the target of multiple strikes, some of them as many as seven times. Consequently, attempts to kill 41 men resulted in the deaths of an estimated 1,147 people (Reprieve 2014: 2).

While it is true that drone strikes have taken out “high-level leaders”, left out of these success stories is how many misses there were before they were killed and the number of civilians killed along with them.

Although information about the CIA’s drone programme outside of war zones (e.g. Pakistan, Yemen, and Somalia) is covert, according to declassified intelligence reports, the CIA, like Brennan, was of the opinion that drone strikes also killed people in the single digits (Zenko 2016). The CIA’s contention was that out of 95 drone strikes conducted in Pakistan between September 2010 and 2011, 482 people referred to as “other militants” or “foreign fighters” at a cost of only a *single* civilian casualty.³⁶ A two-and-a-half-page report released by the Office of the Director of National Intelligence (ODNI) in 2016 before Obama left office, stated that in areas outside of active hostilities between January 2006 and December 2015 there were 473 strikes that killed between 2,372 and 2,581 combatants and between 64 and 116 non-combatants.³⁷ Zenko argues that “[w]e have limited direct insights into how the

³⁶ Zenko (2016) also points out that while the US military does provide detailed investigatory reports about airstrikes conducted within battlefields that kill civilians and US service members in Afghanistan, Syria and Iraq, the CIA and JSOC do not.

³⁷ Recall that Rosa Brooks stated in the previous chapter that drone strikes are “targeted” against individual terrorists and therefore are preferable when compared to carpet-bombing that kills thousands. This comparison creates the false impression that drone strikes kill fewer people aggregately, but as casualty numbers demonstrate, thousands of people have been killed by the drone programme.

government classifies somebody as a combatant or noncombatant, but what we do know is that official government estimates for civilian deaths have been implausibly low” (Zenko 2016: n.p.). For Zenko, the declarations given by Brennan and the reports by the government and the CIA demonstrate an unrealistic faith in intelligence and the precision of strikes. Even if the independent investigations suggesting a higher civilian death toll are incorrect, the inability of the US to adequately investigate civilian casualties calls into question the government’s denials of civilian harm (Lewis & Holewinski 2013).

To conclude, even if one thinks that the drone allows in theory for the best oversight possible and the most accurate intelligence possible given the bureaucracy and the systems intelligence, the programme’s policies and practices demonstrate that the real, existing drone programme is not precise in its targeting. These policies make it all the more implausible that civilian casualties could be so rare. As Chris Woods states, “[i]ntelligence flaws, technical challenges, and human error all meant that noncombatant deaths were inevitable—even before the Agency’s targeting policies were taken into account” (2015a: 263). The rhetoric of a restrained programme gives the impression that only a small number of people are liable to be targeted, but what we see is that the programme’s policies of targeting “signatures”, suspects, military-aged males, people in particular areas, and first responders casts out a wide net in which numerous civilians risk being targeted.

Proponents of the drone programme are wrong to defend and assess the precision of *strikes* by focusing primarily on the drone and its ability to accurately strike near its target. When talking about precision, it is important to focus beyond drone strikes themselves and look also at the wider programme in which they operate. This programme is, as we have seen, rife with policies and practices that render it indiscriminate, and ensure that strikes put civilians at risk. It is therefore misleading to say that the drone is the logical weapon to diminish civilian casualties because it can only diminish casualties *if it is used discriminately*.

To remove the drone from the programme not only omits that government policies blunt its precision, but also that it deliberately uses the drone indiscriminately. Precision weaponry like the drone, understood as a pinprick, or a scalpel, promotes hubris, recklessness, and an escalation of violence which can be seen not only the expansion of who is targetable (known combatants to any suspect or military-aged male), or the policies, or what counts as intelligence, but also in the expansion of countries where the drone programme is sent to find targets.³⁸ Thus, it cannot be claimed that the drone has a purely a positive impact on discrimination and therefore precision, due to the negligence and escalation of violence it induces in those that employ it. Despite the use of the most precise weapon, we see that the drone programme is indiscriminate and imprecise.

Furthermore, we see that the consequentialist logic used by academics to defend the drone programme is misleading. It not only overstates the precision of the programme, it also minimises the costs of the programme. The problem with proponents is that they are consequentialists who refuse to actually recognise all of the consequences of the programme, especially the negative ones. They not only assume a level of precision that is not empirically accurate, they also neglect the other costs of the programme: the terror caused to civilians, the disruption to their social and political lives, the suffering those left alive and maimed must deal with, and the political costs. The fact is that we do not know the true costs of the programme and we have a government that gives assurances but does not attempt to verify whether its programme really is as effective as it claims. Given what the independent investigations and war journalists have found out about the programme it is no wonder that the government attempts to keep it shrouded in secrecy.

³⁸ As one administration official stated: '[i]t's not at all clear that we'd be sending our people into Yemen to capture people we've been targeting. But it's not at all clear we'd be targeting them if the technology wasn't so advanced. What's happening is that we're using the technology to target people we never would have *bothered* to capture' (Junod 2012: n.p.).

In conclusion, the government highlights precision in order to assure that it intentionally targets terrorists and not civilians. Any civilian casualties are therefore purely accidental. By intentionally targeting solely terrorists, the US assures that it is satisfying the notion of precision that requires discrimination, or that the target is a combatant. The rhetoric of the US government and its academic supports claims that drone strikes are “surgical” – that its accuracy is perfect and that it provides data and situational awareness essential to the ability to discriminate leading to the abatement of civilian casualties. I demonstrated that the rhetoric is so confident that government and military officials claimed no civilian casualties, or casualties in the single digits. It promotes the impression that with the drone discrimination standards have risen. It is on the basis of taking this rhetoric at face value that academic proponents including Strawser (2010) argue that the drone must be used.

But is the drone programme as discriminate as government rhetoric suggests? No. In this chapter I have shown that this precision discourse which highlights improved discrimination standards is overstated and untrue. Drone strikes are not and for the most part cannot be surgically discriminate for three main reasons. First, the drone programme largely targets suspects and strikes preventively. This precludes certainty as to whether the person targeted was indeed a threat. Second, intelligence cannot provide perfect information at all times because systems intelligence actually delivers a looser form of discrimination based on probability, guilt by association, and non-decisive signatures. Third and finally, the policies of the drone programme – the use of “signature strikes”, “kill boxes”, and “double taps” – actively sanction indiscriminate strikes. I will come back to the indiscriminate aspects of intelligence collection and targeting when I discuss the morality and legality of the drone programme in chapter five.

Chapter 4 Surveillance: The Silver Bullet for Precision Strikes?

Surveillance is considered to play a key role in allowing for surgical, precise, and discriminate strikes. The ability to track and to persistently watch people allows the government to claim it knows whom it is killing. US intelligence agencies and the military can now see through their weaponry and kill instantly. The ability to hover for such a long period of time, as well as the ability for a whole network of personnel to see through it and make decisions based on the information received through the drone, separate the drone from other weaponry (Deptula 2013).

Academic proponents as well as government officials argue that surveillance is beneficial for civilians. These technologies are not only a solution, but a superior *ethical* solution since they allow for more accurate targeting that reduces “collateral damage” (Stawser 2010, Braun & Brunstetter 2013). As I demonstrated in the previous chapter academics’ and government officials’ discussion of precision is normative, arguing that surveillance allows for significantly greater ethical oversight and control. The presumption is not just that there is a visible difference between civilian and enemy that can be perceived through surveillance, but also that stored surveillance footage can be reviewed thereby helping to prevent targeting mistakes and that drone personnel watching the footage are rational and disinterested due to the safety afforded by the drone. With the safety of distance – so the argument goes – officials remain level-headed when analysing footage.

Despite the centrality of surveillance to the government’s narrative of precision strikes, both critics and proponents have failed to examine how surveillance technology affects the ability to strike precisely. In this chapter I interrogate the government’s claim that surveillance helps distinguish between civilian and enemy. Despite the framing of surveillance as an effective technology for discriminate strikes, in order for surveillance to work the interpretation of what is observed has to be correct and the “signatures” or “signs” that indicate that someone is a terrorist have to be unambiguous. Drone analysts must know

what a threat looks like and interestingly, officials are often uncertain about what it is they are seeing through the drone's surveillance. In this chapter I argue that surveillance is not purely beneficial for civilians and does not necessarily bring about precision strikes for two main reasons. First, there is no visual difference between enemy and civilian and second, the gaze of drone surveillance is racist. By utilising Edward Said's "orientalism" as a lens to analyse both the government's policies and the attitudes and language of drone pilots, I demonstrate that what underpins drone surveillance and targeting is a cultural racism. The racist gaze of the drone programme's surveillance, combined with a vague definition of "terrorist", leaves civilians at risk of being mistakenly targeted. Given these two reasons as to why surveillance does not bring about precision strikes, this chapter demonstrates that government and academic claims concerning surveillance are false.

4.1 Introducing the Appeal of Surveillance

When discussing surveillance, there are three things that are highlighted by government officials and academic proponents. Surveillance 1) provides greater situational awareness, real-time information, and allows personnel to watch until the target is accurately identified; 2) provides more objective information which yields more rational and informed operators; and 3) allows for personnel to attack targets when they are away from the civilian population.

Academic proponents point out that drones have powerful sensors which have increasingly high-resolution imagery to assess the ground situation. Back in the control room, trained imagery analysts scrutinise a target area prior to engaging, which is not always possible by those on the ground (Lewis & Holewinski 2013). 'The dazzling clarity of the drone's optics' (Bowden 2013: n.p.) and its "high-fidelity" video stores every second of footage for 'very precise review and evaluation' (Deptula 2013: n.p.). The drone's surveillance allows for footage to be stored and for analysts to return to earlier footage, which can be helpful, for example, in a scenario where someone has planted a bomb. Analysts can go back and review earlier footage in order to determine who planted the bomb before it went off and catch the culprit. In the case of "pattern of life" analysis where people are followed and their actions are mapped, surveillance is especially useful. It is surveillance that allows for algorithms to be used to predict behaviour and find potential threats based on the mapping of the suspect's activities. Some of the activities personnel look for are the crossing of the Pakistan/Afghanistan border, meeting with other suspects, and buying suspicious materials like fertiliser. Due to keeping some people under surveillance for such a long time, an intimacy between the operator and the suspect develops; personnel watch suspects or known targets have sex, eat, and spend time with their families (see Wenzl 2018). As a former pilot put it, they were the ultimate "peeping toms" (Woods 2015b). This intimacy, based on

detailed knowledge of the life of the target, then allows for personnel to single out the individual for killing.

Another appeal of surveillance is that it gives an aura of objectivity. Those watching are merely observing. Since operators are safely watching thousands of miles away the government also assures that those watching and interpreting the surveillance footage are disinterested and rational because they do not have to worry about their own safety.

Lastly, as I demonstrated at the beginning of this part, government and military officials claim that surveillance allows for personnel to strike away from the civilian population. What we have from academic proponents and government officials is an idealised image of experienced, dedicated, well-informed professionals making measured, calm, well-reasoned decisions about whether they have sufficient information to be confident that they have correctly identified their target and then choosing their moment to attack in order to minimise collateral damage (Williams 2015). This image is at the heart of advocacy of drone strikes as an ethically superior and precise way of war (Williams 2015). The problem, however, is that the rhetoric of government officials and their academic supports does not align with the empirical realities and policies of the programme. As I shall now argue, the empirical realities show that 1) surveillance is not as helpful as is claimed and 2) the drone's surveillance is orientalist. Due to the lack of visual difference between enemy and civilian and the necessity to interpret people's movements (which would persist even if technology improved to allow for crystal-clear surveillance), what is seen is still subject to the interpretation of US officials who, as I shall now argue, look – with adverse implications for civilians – through an orientalist gaze.

4.2 The Orientalism of the Drone's Surveillance

Visual (In)Differences

What do those observing surveillance look for when searching for suspects? Are suspects easy to discern from the civilian population? I have already shown that “terrorist signatures” while helpful, are vague and have been called lax by government officials (3.2). Moreover, whilst proponents discuss surveillance as if there is a visual difference between enemy and civilian which allows for easy discrimination, I already pointed out that there is no visual difference between them. Terrorist suspects, especially in counterinsurgencies, blend in with the population making it difficult to decipher suspects from non-combatants, hence the use of algorithms and data-mining to find suspects based on their “pattern of life” or movements. The use of surveillance is not so much to help distinguish people by what they look like, but by their movements and activities (Long 2013).

Despite the hype of the drone's sensors and its clear surveillance, they do not always allow for personnel to make confident judgments about who is targetable. As one drone pilot attests,

“[y]ou never know who you're killing because you never actually see a face. What we're looking at are shadows and silhouettes. Just because some remote guy in a chair says, ‘Yep that's him’—I mean anybody who in this Age of the Internet knows never to trust a screen-based pseudonym telling you to do something. There's no way to confirm that; he doesn't look any different from anyone else on that screen. How the hell can you know?” (quoted in Woods 2015a: 267).

Heather Linebaugh, who used to be an intelligence analyst with the Air Force admits that

“[t]he video provided by a drone is not usually clear enough to detect someone carrying a weapon, even on a crystal-clear day with limited cloud and perfect light. This makes it incredibly difficult for the best analysts to identify if someone has weapons for sure. One example comes to mind: ‘The feed is so pixelated, what if it’s a shovel, and not a weapon?’ I felt this confusion constantly, as did my fellow UAV [drone] analysts. We always wonder if we killed the right people, if we endangered the wrong people, if we destroyed an innocent civilian’s life all because of a bad image or a bad angle” (quoted in Woods 2015a: 267).

These testimonies from personnel expose that drone surveillance is sometimes unclear and that it does not provide the confidence to those observing that the precision rhetoric suggests.³⁹ In addition, the claim that surveillance footage can be stored for later review should require qualification. While, in principle, it can be reviewed, in practice there is such a gargantuan amount of footage recorded that it is impossible to review it all. Indeed, personnel claim to be ‘drowning in data’ (Gregory 2011: n.p.). It is for these reasons that surveillance is not as advantageous as the government’s rhetoric claims.

*Orientalism and Racist Profiling*⁴⁰

The lack of visual difference is one reason why surveillance is not as helpful in discerning between civilian and enemy. Another reason surveillance does not aid in discriminating

³⁹ Personnel stated that seeing through the drone’s surveillance is like seeing through a soda-straw, other officials reported that the surveillance has improved but would not state how much (see Gregory 2011)

⁴⁰ This section is taken from an article I have published (Espinoza 2018).

accurately is because of human operators. The human operators of drones also make targeting decisions in a manner that is both rushed and based upon problematic assumptions. To give an example, the CIA once mistakenly assumed that it was tracking bin Laden and two confederates because one of the figures on the ground seemed, like bin Laden, *unusually tall*. Pentagon spokesperson Victoria Clarke explained, “we’re *convinced* that it was an appropriate target ... [although] we do not yet know exactly who it was” (quoted in Singer 2009: 397, Struck 2002, Mayer 2009, emphasis added). The men who were killed in the resultant drone strike turned out to be civilians searching for scrap metal.

This incident is noteworthy because it shows that personnel are not always cautious; that they can be hasty and feel confident in their decisions even when they should not. Technology sometimes makes them feel they as though they know more than they actually do, while civilians deal with the consequences (see Gusterson 2016). What is more, this incident demonstrates that these men were killed due to racial profiling and their geopolitical location. The problem, then, of relying on the interpretations and gaze of analysts is that they are not objective. Personnel may be less critical of intelligence because they are already under the impression that they are observing “terrorist safe havens”. In addition to this bias, there are others I have already discussed that stem from financial and political incentives, and due to the policies that govern the drone programme. Here, I add that there is also a bias that stems from a racist and cultural bias in interpreting surveillance, which stems from orientalism, or the cultural racism inherited from colonialism.

So how is the drone’s gaze orientalist and how does it function in drone targeting? Drone vision must be considered not as neutral, but as operating within a long history of imperial looking that divides the world into those who are rightful subjects and those who are mere objects of the coloniser’s gaze (Stahl 2013). Surveillance is a political vision whose

structure promotes a binary opposition between the familiar “us” and the strange “them” (Loomba 1998, see also Gregory 2011).

According to Edward Said (2003), orientalism refers to Western depictions, assumptions, and knowledge about the Orient, or Middle East. It is a way of seeing that exaggerates and distorts the differences between the “West” and the “East”. Orientalism denotes the cultural representations generated by the binary social relation between the “Occident,” and the “Orient”. Importantly, the Orient is a cultural construction of the West used to rationalise European, and later, US imperialism. European scholars presented the Orient as inferior, irrational, unproductive, uncivilised, and backward; the opposite of the rational, civilised, superior, and inventive Westerner. In so doing, they constructed an Orient that necessitated Western intervention. Crucially, orientalism constructs an “us” versus “them” where the Orient by definition cannot be a point of empathy. Accordingly, Arabs and Muslims become a series of crude, essentialised caricatures of the Islamic world, presented in such a way as to make that world vulnerable to military aggression (Said 1998). Orientalism leads Arabs and Muslims to be culturally, politically, and religiously marked as “others”, or non-western, and therefore not entirely human (Denike 2015, Said 2003). Said argues that these linguistic representations – or the ways in which the West perceives and defines the East – are not reality, but constructs, that are reiterated in order to make *enemies*.

Orientalism then, is the cultural framework against which tangible racism is practiced against Asian and Arab people in the West. The orientalist stereotypes lead to Islamophobia and anti-Muslim sentiment. In the West, and in the US in particular, the Islamic religion is stigmatised and seen as deviant. Since 2002 the New York Police Department has engaged in religious profiling and suspicionless surveillance, singling out Muslim religious and community leaders, mosques, and businesses (ACLU 2018, Harb 2020, Hasan 2020).⁴¹ There

⁴¹ The NYPD sent informants known as “rakers” and “mosque crawlers” to infiltrate campuses and places of worship. It also eavesdropped on thousands of conversations between Muslims in restaurants and stores in New

is a fear and mistrust of Muslims and Arabs since they are presumed threatening (Denike 2015, ACLU 2018, Harb 2020).⁴² Said (1998) argues that so far as the United States seems to be concerned, it is only a light overstatement to say that Muslims and Arabs are potential terrorists. The drone programme's surveillance and targeting do not escape the orientalism of US culture, they draw their legitimacy from an ideological offensive against Muslims and Arabs in particular (Espinoza 2018). Take as an example the way in which categories such as "terrorist" or "militant" are perceived in the US as exclusively made up of Arab and Muslim men. Categorized as such, terrorist = Muslim or Middle Eastern male (Egan 2002). There is an alignment between the drone programme's "knowledge" of who constitutes an enemy and the orientalist bias of colonial knowledge. When it comes to targeting, the categories of "terrorist" or "militant" are not neutral categories that exist in the world; they are categories which are always political, racialised, and cultural. This is how alleged racial differences inherited from colonialism mark those who are expendable, deportable, detainable, or in the case of drone strikes – targetable.

This orientalist gaze is also inflected with a militarist mindset. The gaze of those observing cannot be neutral, as it is a gaze that is mediated by a weapon and for this reason is inherently aggressive. This gaze is meant to find targets, which along with US political discourse – as well as the warrior culture these operators are submerged in – creates hostile ways of seeing. This adversarial way of seeing is not unintended; it is designed. Excitement

York City, New Jersey, and on Long Island (Hasan 2020). Paid informants were ordered to "bait" Muslims into saying inflammatory things (Hasan 2020).

⁴² When Trump was a candidate he told MSNBC '[y]ou're going to have to watch and study the mosques, because a lot of talk is going on at the mosques. And from I heard, in the old days . . . we had great surveillance going on in and around mosques in New York City' (Hasan 2020: n.p.). Once Trump was president, he called for 'a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what the hell is going on' (Hasan 2020: n.p.). There have been other members of the US government who have fanned fear of Muslims as well, Republican Ted Cruz pledged to 'patrol and secure Muslim neighborhoods', another, Lyndsey Graham, proclaimed that '[i]f I have to monitor a mosque, I'll monitor a mosque (quoted in Hasan 2020: n.p.).

and motivation are necessary for targeting and are promoted by military institutions. As former drone pilot Chris Haas states:

“[w]e would walk into work and look at the picture of [Osama] bin Laden and all these leaders. And it would be ‘which one of these motherfuckers is gonna die today?’ It’s easy to get wrapped up in that attitude, because that approach was really pushed in to you” (quoted in Woods 2015b: n.p.).

Haas explains that those under drone surveillance – suspects as well as entire communities – are debased to such an extent that they become simply ‘blobs on a screen’ (Pilkington 2015a, n.p.). Targeted communities are referred to in degrading racist, and sexual terms such as “prairie dogs”, “barbarians”, “poor bastards”, “squirters”, and “savages” (Mayer 2009 Gusterson 2016, Baggiarini 2015). Even young children are referred to as “fun-sized terrorists” or “terrorists in training” (Pilkington 2015a). Former drone pilot Matt Martin revealed that “suspected terrorists” are regarded as “rats”, “mice”, and “rabbits” – in other words, as prey – being snagged by (US) “hawks” from above (2010: 252). Enemies are thus “. . . made into the Other, dragged symbolically backwards down the evolutionary ladder until they are no longer seen as human, but as insect or animal, germ or disease” (Steuter & Wills 2010: 153). Accordingly, surveillance practices are thoroughly biased by an orientalist attitude, with drone operators internalising cultural stereotypes in a manner that fuels aggression, and drawing upon ideological filters, or ways of seeing, that align with racist categories.

This orientalism which suffuses the drone programme is significant because it is the biopower which justifies drone violence and creates the critical break between what must live and die. As I mentioned previously, there is growing literature which demonstrates that the

drone programme is biopolitical. The shift from punishment to more “humane” and “precise” biopolitical forms of warfare has been necessary to legitimise the violence of capitalist democracies throughout modernity (Kordela 2016, Wall 2016). Since precision bombing is an exercise of sovereign power in the sense that it involves deciding who will die and who shall be left alone to live, the drone programme is a biopolitical form of warfare used to protect the US population from the risk of terrorism (Kordela 2016, Allinson 2015, Wilcox 2015, Wall 2016). According to Foucault (2003), the sovereign’s biopower, or right to put people to death so that others may live, is only legitimate insofar as it preserves (certain) lives and can appear meaningful only if it succeeds in presenting itself as necessary for the reproduction of life (Foucault 2003, Wilcox 2015, Kordela 2016). Crucially, biopower’s right to kill finds its sole justification in racism. Racism is a way of introducing ‘a break into the domain of life that is under power’s control: the break between what must live and what must die’ (Foucault 2003: 254).

In Allinson’s (2015) biopolitical analysis of drone violence, she utilises Achille Mbembe’s “necropolitics,” which ‘refers to the arrogation of, in Foucauldian terms, the sovereign’s command of death, but within the apparatuses of surveillance, auditing, and management which characterize “biopower”’ (2015: 114). Allinson argues that by identifying racism as the technology of power that unites the exercise of sovereign power with the technologies of surveillance, auditing, and management of populations, ‘the drone is precisely a technology of the management of populations: of the drawing of a “caesura” between worthy and unworthy life’ (2015: 119). The drone is not an instrument for making life live among those it surveys, but ‘to define who matters and who does not, who is disposable and who is not’ (Mbembe 2003: 27). In colonial fashion, the drone’s surveillance is to identify populations as less than life, or as dangerous life whose extinguishing must be managed in order for valuable life to flourish (Allinson 2015).

So how does the orientalism embedded in practices of surveillance relate to and affect precision? Well, if precision means intending to target *only* people who are “terrorists” or combatants, racism affects precision because *all* Middle Eastern bodies come to be associated with terrorism. Since even innocent Muslims or Middle Eastern men fit a particular corporeal image, they are presumed guilty prior to doing anything wrong, or even before US operators have collected intelligence to confirm their status. In other words, racism sometimes leads to the killing of innocent people because they are already judged as guilty due to what they look like or where they live. Civilians are not given the benefit of the doubt due to the unsympathetic gaze of both personnel and policy, leaving them at risk of attack. This is plain to see not only in the attitudes of pilots and operators who view children as potential combatants, but also in the example of the men who were erroneously killed while searching for scrap metal.

Characterising drone surveillance and targeting as a colonial and racialised confrontation (Allinson 2015, Baggiarini 2015, Wall 2016, Afxentiou 2018) is important because it explains the aggressive and visceral subjectivities of some military drone operators and intelligence analysts alike, and draws attention to the dehumanising effects on both “terrorist suspects” and “noncombatants”, which in turn allows for civilian massacres. It also explains how populations, despite them having done nothing wrong, are nevertheless ascribed negative characteristics – such as possessing a treacherous nature, being intractable, inferior, etc. (Allinson 2015). Because of the racism at work in targeting and surveillance practices, perfect, crystal-clear surveillance vision will not save civilians from attack. This is because surveillance is a techno-cultural accomplishment: high-resolution imagery is not a uniquely technical capacity but part of a techno-cultural system (Gregory 2012). As a consequence, even when civilians are visible they are nevertheless not judged as such because of the orientalism at work in targeting.

To demonstrate what I mean I draw on Gregory's (2012) analysis of a reported instance of a US attack in February 2010 in Afghanistan when a drone was called to track three vehicles that set out before dawn because they had flashed their headlights.⁴³ Operators construed the flashing of headlights as a signal of suspicious behaviour in part because they assumed that the people they were watching planned to attack US troops on the ground. Image analysts kept watch over the cars and were linked only to the Predator drone crew with no direct contact with US troops on the ground. Video feeds were of variable quality and the Predator crew had to rely on infra-red sensors in the half-light until they could switch to 'Day TV'; the weather also intermittently muddied the image stream (Gregory 2011). Despite this, however, the Predator crew did not hesitate to identify 'tactical movement' and individuals holding cylindrical objects that they thought (or in fact 'hoped') were rifles (Cloud 2014: n.p.). When an image analyst identified 'at least one child' the pilot objected that he was 'so quick to call [expletive] kids but not to call a [expletive] rifle', and the sensor operator agreed: 'I really doubt that children call . . . I really [expletive] hate that' (Cloud 2014: n.p.). The report continued that there was 'definite suspicious movement, definite tactical movement' and spoke of 'human shields' and 'a grouping of forces' (Cloud 2014: n.p., Gregory 2011: 202). When the crew saw the occupants get out of the car to pray they were convinced that they were looking at the Taliban: '[p]rayer, I mean, seriously, that's what they do' (Cloud 2014: n.p.). A mission intelligence coordinator watching the feed in the US at Creech air force base agreed: '[t]hey're gonna do something nefarious' (Cloud 2014: n.p.). Due to fuel limitation the chain of custody was ceded to the Predator, but because the drone only had one missile left two helicopters were called in. The Predator crew hoped that 'they'll let us have one vehicle since we tracked them for so long', otherwise they would just watch

⁴³ The account of the attack is derived from the official transcript of radio transmission, chat log, and intercom conversations obtained by the Los Angeles Times under a Freedom of Information request (see Cloud 2014).

and be on ‘squirter patrol’ (Cloud 2014: n.p., Gregory 2011: 202). Analysts then told the predator crew that they had identified 21 ‘military aged males’ and ‘two possible children’ (Cloud 2014: n.p.). The drone crew was told to keep tracking the vehicles and ‘[b]ring them in as close as we can . . . We want to take out the whole lot of them’ (Cloud 2014: n.p.). Teams of US military linguists and intelligence personnel with sophisticated eavesdropping equipment were vacuuming up cellphone calls in the area. For several hours they were listening to cellphone chatter in the area that suggested a Taliban unit was assembling for an attack (Cloud 2014). Although neither the identities of those talking nor the precise location were known, the drone crew took the conversation as confirmation that insurgents were in the convoy (Cloud 2014). When the vehicles reached an open, treeless road, the airstrike was called. Eight minutes later women and children were identified, but too late. Operators consoled themselves by stating: ‘[n]o way to tell from here’ (Cloud 2014: n.p.). Subsequent reports identified at least 23 people dead and more than a dozen wounded, including three children, all civilians (Cloud 2014).⁴⁴ Officers who later reviewed the feed said that it was clear from the tape that civilians were about to be “rocketed” (Cullison and Rosenberg 2010: n.p.).

This example demonstrates why surveillance is not a silver bullet for precision. Although the US government and academics promote the view that surveillance renders clear combatant status, we see that empirically it is not that simple. Even when able to view the movements and actions of those on the ground for hours – which we are told allows operators and analysts to make positive identification of combatant status – operators can still misconstrue what they are seeing. The orientalism at work in targeting did not allow for the operators to see the civilians on the ground as anything other than terrorist suspects. And the

⁴⁴ Senior officers said that the incident was part of a larger pattern of fatal mistakes being made by Special Forces and Special Operations Forces that were acting too aggressively in pursuit of Taliban field commanders and other so-called high-value targets (Cullison & Rosenberg 2010).

problem does not stem from the fact that surveillance may not be clear, it stems from the racist and aggressive filters at work colouring what operators are seeing. Despite the fact that women and children were made visible by surveillance, operators nevertheless refused to see them as such, thinking instead that they were being deceived due to orientalist assumptions. Placing the onus only on individuals for this mistake neglects the structural effect of a military apparatus and political technology that viscerally immerses physically remote operators in combat (Gregory 2011). The geographic area these people were in, their proximity to US forces on the ground, the fact that so many people were in the group, and the fact that many were males, led operators to assume that the group of males consisted of terrorists. Since operators know that they have fellow servicemen on the ground it makes them worry about their safety leading them to have ‘a strong desire to find weapons’ or see something suspicious (Drew 2010: n.p.). Another Army officer involved in the incident stated, ‘[w]e all had it in our head, “Hey, why do you have 20 military age males at 5 a.m. collecting each other?”’ (quoted in Cloud 2014: n.p.). Crucially, operators assumed a group of Middle Eastern men was suspicious based on profiling, not based on them actually engaging in any suspicious activity. Plainly, despite the great distance the operators are not as calm, patient, and level-headed as they are made out to be and this is not an accident.

Given this egregious error on the part of human controllers, it is no wonder that government officials and academics look to technology to purge bias and prevent errors. However, technology does not operate separate from those that employ it and from the policies that govern its use. Seeing more clearly or being able to track someone for longer does not purge an attitude to which men (and even women and children) from the Middle East are presumed to be terrorist suspects. Even an autonomous drone would not escape the existing knowledge of what constitutes a threat: a military-aged male. And it should be noted that surveillance makes it even easier for the drone to target groups of men. Having robots do

our killing still does not solve the problem of imprecise drone strikes because what is targetable is still set by humans and government policies. The US government and its intelligence agencies rely upon an orientalist apparatus of knowledge which constructs Middle Eastern males as enemies and it imparts this knowledge to algorithms and software.⁴⁵ Furthermore, this view also neglects that algorithms also inhibit the ability to discriminate correctly due to the fact that they: kill based on probability leaving room for error; that data used for targeting decisions is of low quality; and that technology is also fallible. Not to mention that this view ignores that, counterintuitively, it is humans that are better at choosing targets than algorithms and data.

To conclude, I have shown that surveillance does not necessarily raise the standard of intelligence or of discrimination. Merely having surveillance footage and the ability to store and review it does not mean that personnel are automatically able to discern between civilian and enemy. Furthermore, I have shown that operators do not remain cool-headed or neutral despite their distance from the battlefield. The language and attitudes of some personnel towards those under surveillance are racist and dehumanising. When discussing discrimination and precision the racist gaze of surveillance must be considered. This is because the orientalism embedded in the drone's gaze lowers the discrimination standard by rendering people guilty due to what they look like and where they live. Government officials and academics can only present surveillance as objective and as entirely beneficial for civilians by neglecting the political and racial components of surveillance vision. They ignore that the analysis of surveillance footage is never an objective, value-free enterprise, but a highly partial, politically and culturally loaded process of discriminating amongst data and intelligence. In the next chapter, I draw on the arguments made in this chapter and the

⁴⁵ This view of artificial intelligence, or machine learning, as more objective elides the many studies that have found that AI inherits and perpetuates the implicit biases that exist in society, meaning that they too can be racist and sexist (Resnick 2019, Buolamwini 2019, Buryani 2017).

previous – e.g., that drone targeting is imprecise and racist – in order to consider their implications on the ethical and legal claims of government officials and academics outlined in chapter two.

Chapter 5: A Legal and Ethical Drone Programme?

Drone strikes are ethically justified using the framework of just war theory and legally justified using the legal framework of the laws of armed conflict (LOAC). Both frameworks seek to preclude indiscriminate war through the principles of discrimination, necessity, proportionality, and humanity. They necessitate that only combatants are liable to be killed intentionally. They forbid intending the deaths of civilians, but do not forbid the deaths of civilians that are merely foreseen due to an attack as long as the deaths are proportionate to the threat and as long as the attack is militarily necessary.⁴⁶ The principle of discrimination requires that only military objects be intentionally targeted and that civilians be protected from being intentionally targeted. Proportionality requires that the negative effects must be proportional to the good effects. The principle of necessity requires that the target have definite military value. And the principle of humanity requires that states use weapons that will not inflict unnecessary suffering. Through these principles ethical and legal frameworks aim to keep the suffering of civilians in war to a minimum (ICRC 2002).⁴⁷ These frameworks thus permit the US to justify its killing of civilians caused by drone strikes as long as civilians' deaths are foreseen, but unintended, and as long as the strikes are militarily necessary.

As I demonstrated in chapter two, claims of precision underpin two key claims justifying the drone programme: (1) drone strikes adhere to just war principles and (2) drone strikes adhere to the laws of armed conflict. Government speeches claim that drone strikes are morally and legally justified on the basis that they provide the precision with which it is

⁴⁶ I acknowledge that the categories of civilian and combatants are not clearly delineated, with some academics arguing that the category of civilian is being eroded. Moreover, some contemporary just war theorists, including Frowe et al. (2014), are proposing non-combatant liability. But this is at the very least a revisionist view. For orthodox views see Aquinas (1947) and Walzer (1977).

⁴⁷ It is important to note that these principles are flexible and are more abstract than concrete. There exists an ongoing academic debate on what these principles entail exactly, whether they are useful, and whether they are effective at limiting violence. Just war's doctrine of double effect remains controversial and is also hotly debated. Critics of both the doctrine and the principles argue that these criteria are too permissive and they are critical of how deontological and consequentialist views seem to jostle one another (Jones 2013).

possible to conduct a proportional and discriminate war. I have shown that government officials claim surveillance and algorithms help to provide accurate intelligence for discriminate target selection; that the drone's precision munitions lead to a more proportional blast that keeps civilians from exposure; and that targeted killings, which specifically target certain people, are a more discriminate, proportional, and more humane form of bombing in comparison to all-out war. Thus, as Brennan (2012) stated in his speech justifying drone strikes: the drone programme conforms to the principles of discrimination, proportionality, necessity, and humanity. However, as I stated at the beginning of this thesis, if the claims that drone strikes are precise are false, then the secondary claims that drone strikes are legal and ethical collapse. Drawing on the arguments made in the previous two chapters, I argue that the claims that drone strikes adhere to just war principles and the LOAC are empirically false. Furthermore, drawing on my analysis of the drone programme as a whole, I argue that the government's and academics' narrow focus on individual drone strikes leads to an incomplete and erroneous ethical and legal assessment, which neglects the ways in which drone strikes and surveillance are employed.

In the first section I draw on previous arguments that the drone programme is not precise and that not all strikes are targeted killings in order to argue that, contrary to government claims, the drone programme does not and cannot comply with the legal and ethical principles of discrimination, proportionality, necessity, and humanity. To further demonstrate why it is mistaken to assume that use of the drone and the tactic of targeted killings lead to a legal and ethical drone programme I focus, like in previous chapters, on the wider drone programme. In order to give a broader analysis of the drone programme I draw on the work of Blakeley (2018), Afxentiou (2018), Wall (2016) and Neocleous (2014). This literature, which utilises a critical lens to give an analysis of drone use as imperialism and state terrorism, reveals similarities between the drone programme and colonial policing, and

in the process helps to reveal additional reasons as to why the drone programme does not comply with ethical and legal frameworks.

In the second section of this chapter I build further on my approach of focusing on the drone programme as a whole in order to interrogate the claims that drone strikes are legally and ethically justified on the grounds that they constitute self-defence in a legitimate war against terrorism. Administration officials claimed in the *White Paper Memo* that the drone programme constituted self-defence in a legitimate “war on terror” and that drone strikes were not illegal assassinations or extrajudicial executions, but legal and defensive “targeted killings” that adhered to due process requirements (Brennan 2012, Obama 2013, Holder 2012). These claims are significant because the use of force in self-defence is both legally and ethically justifiable under the frameworks of just war theory and the LOAC. These frameworks concern themselves not only with how war is carried out, but also with the justifications or reasons for going to war.⁴⁸

In this chapter I add to the critical literature on the drone programme by interrogating government claims made in the *White Paper Memo*. By drawing on the arguments I have made throughout this thesis I provide an orientalist analysis of the *White Paper Memo* that demonstrates that US violence is made legitimate through: the re-defining of legal and ethical principles; the use of racist legal precedents and rationales; and secrecy. Additionally, I draw on the problematic aspects of the programme I have shown thus far in order to demonstrate the ethical problems of the programme that are missed due to the government’s and academics’ narrow ethical assessments. To this end, I also explore the role orientalism plays in further ethical hazards associated with the programme, namely: the fact that people are

⁴⁸ *Jus in bello* principles – distinction, proportionality, and necessity – which deal with how war is carried out, are independent (according to some theorists) from *jus ad bellum*, which deals with questions concerning the justifications or reasons for war.

killed based on faulty intelligence and that operators have financial incentives to find targets; the fact that racialised civilians are considered disposable and ungrievable; and the ability for drone use to lower the threshold for war. In so doing I render clear the problems and negative consequences that would plague the drone programme even if precision claims were true.

5.1 Drone Strikes: More Virtuous Warfare?

In chapter two I demonstrated that claims of precision targeting are at the centre of government officials' and academics' legal and ethical justifications of drone strikes. I demonstrated that the government supports its claims of legal and ethical precision strikes by highlighting its use of drone weaponry. It is the drone, according to the government, with its surveillance and its accurate munitions that allows for precision targeting that minimises, or in some cases avoids entirely, collateral damage. The government and its academic supporters create an explicit link between use of the drone and violence that conforms to the legal and ethical principles of discrimination, proportionality, necessity, and humanity. Drone weaponry, therefore, signifies both technological *and* ethical progress. As I mentioned in chapter one when discussing the Revolution of Military Affairs, technological advancement is perceived by some to signify ethical advancement when it comes to how war is conducted. Technological progressivism helps to strengthen the rhetoric of just war and allows for the presumption that technology can lead to more "virtuous" and "efficient" warfare. Indeed, the use of drone weaponry to deploy targeted killings is seen as a novel and progressive development that shows proper respect for human life in comparison to all-out war between states.

In this section I demonstrate why it is mistaken to assume that use of precision weaponry like the drone and the deployment of targeted killings means that the drone programme complies with legal and ethical principles. I do this by drawing on previous chapters where I demonstrated that empirically the drone programme is not precise and that most strikes cannot be classified as targeted killings. I also look at the drone programme more broadly via a critical framework that situates the programme as imperial air power. I draw on the work of Blakeley (2018), Afxentiou (2018), Wall (2016), and Neocleous (2014) in order to situate the drone programme historically and demonstrate that the drone programme is not

a novel development in warfare, but a continuation of colonial air power. In so doing I am able to demonstrate that government claims of a legal and ethical drone programme do not stand up to scrutiny. So let us see why the drone programme does not satisfy legal and ethical principles.

Discriminate Drone Strikes?

The second chapter of this thesis demonstrated that a central defence of drone strikes is that they are discriminate. The principle of discrimination requires that the US intentionally target solely combatants. There are various reasons as to why government officials and academics claim that drone strikes can better adhere to the principle of discrimination: the drone's precision munitions; the drone's capabilities for surveillance and its use of algorithms to find suspects; and the fact that drone strikes are targeted killings that kill specific people.

A central reason as to why drone strikes are considered to be more discriminate is because of the drone's precision munitions. According to government officials and academics the drone is the most precise weapon available given that its missiles will land within 10 feet from the target site. The use of such an accurate weapon results in fewer unintended deaths of civilian bystanders. Another reason drone strikes are considered to be discriminate is because of the drone's surveillance capabilities. I provided various statements from both government officials and academics that created a link between more discriminate violence and the use of surveillance. Surveillance allows the US to keep suspects under constant watch so that operators can be sure that who they are killing is indeed a threat. Surveillance is also helpful because of its use of data and objective algorithms to choose suspects. Government officials argue that algorithms allow for more discriminate violence because they are a more sound and mathematical way of choosing terrorist suspects. Surveillance, then, helps the US target solely terrorists not only through continuous observation, but also through the use of

algorithms and data. Finally, drone strikes are viewed as more discriminate because they are considered to be targeted killings. Targeted killings target specific known terrorists, meaning that the person being intentionally targeted is a *known* combatant and not a civilian. Targeted killings direct violence solely at combatants and that is precisely what the principle of discrimination requires. The assumption of both government officials and academics is that the level of US intelligence is high enough to allow for discriminate strikes.

So is the drone programme discriminate? No. Although the drone's munitions may be the most precise available, I demonstrated that the precision standard is low since missiles will land within 10 feet from the target site only 50 percent of the time, and also because of the large blast radius drone bombing creates. Furthermore, contrary to academics and government officials, surveillance is not the silver bullet for precision, but more of a double-edged sword. Civilians are left in danger of attack since operators have a hard time accurately interpreting what they see due to the varying quality of surveillance feeds and the lack of visual difference between enemy and civilian. In addition, the orientalism which underpins surveillance leads to racial profiling and indiscriminate strikes. It also turns out that algorithms lead to a looser form of discrimination because they choose people to kill based on probability and questionable data. Given all of this, an accurate level of intelligence which is vital for discrimination cannot be assumed.

It is not only US intelligence practices that pose a problem for the satisfying of the principle of discrimination. Government policies do as well. US policies of signature strikes, double taps, and targeting people in kill boxes are deliberately undiscerning. These policies actually circumvent having to discriminate because they deliberately target civilians, kill suspects, or kill based on the assumption that someone is a militant due to their geographical location. Maybe *some* strikes are discriminate, but I have shown that for the most part strikes are signature strikes. This is why former United Nations Special Rapporteur on extrajudicial

killings, summary or arbitrary executions Christof Heyns, has stated that signature strikes are ‘not a concept known to international humanitarian law’ (quoted in Coll 2014: n.p.). The laws of war only permit the attack of a person who has a continuous combat function or is directly participating in hostilities (Coll 2014) and the Geneva Conventions clearly state that if there is doubt whether someone is a combatant, then the person is a civilian (Woods 2015). If a signature strike rests on ‘targeting without sufficient information to make the necessary determination, it is clearly unlawful’ according to Heyns (quoted in Coll 2014: n.p.). Heyns has also stated that double taps may constitute war crimes (Greenwald 2014). These indiscriminate strikes cannot be in conformity with the LOAC nor with just war theory. Thus, when discussing the legality and morality of strikes one needs to take into account the type of strike it was as, given the different policies, one cannot assume outright that the strike was a targeted killing.

Drone Strikes are Proportional?

The principle of proportionality requires that the anticipated negative effects, or collateral damage, not be excessive in relation to the anticipated military advantage. Academics and government officials assure us that strikes are proportional because the drone’s precision munitions minimise collateral damage and because strikes target specific people, thereby keeping civilians spared from attack.

Drones, so the argument goes, are not only accurate, but another advantage is that they can deploy smaller bombs, which cause smaller explosions. Although drones can sometimes deploy bombs that are 500-pounds, they can also deploy bombs that are 100-pounds. Bombs with smaller payloads can be more proportional in that they do not bomb such a big area. Hence why the government claims that the drone allows for the use of ordnance that can avoid harming others in the vicinity of a target. Compared to weaponry that

deploys larger bombs, drone strikes are seen as the more proportional option. The other reason drone strikes are assumed to be proportional is because of the comparison made between targeted killings and all-out war. I demonstrated that there is a cost benefit analysis that is utilised in order to claim that the deployment of targeted killings saves the lives of civilians. The view is that targeted killings allow for a single death to avoid the deaths of thousands or millions. Given this, the net effects or consequences of targeted killings are better and preferable to that of conventional warfare.

So does the drone programme adhere to the principle of proportionality? One may find it hard to disagree with these reasons. It is hard to disagree with the claim that targeted killings are a more proportionate response than all-out war, and given the 100-pound bombs used by drones, it is also hard to imagine that it is less proportional than other options. But while these reasons are seductive it is not necessarily the case that the drone programme adheres to the principle of proportionality. This is because the drone programme is not discriminate and this hinders the US's ability to fulfil the principle of proportionality. Proportionality requires a calculation: the negative effects cannot be greater than the positive effects, which means that the US must know who it is killing ahead of time in order to make the calculation. But the US drone programme is not made up of targeted killings and it largely kills suspects, so it does not always have the information that is necessary for the calculation. Furthermore, the assumption of government officials and academics is that all it takes is one drone strike to kill a terrorist, but I have shown that due to poor intelligence many terrorist leaders require more than one strike to be killed. As a consequence, such an assumption is unwarranted. Moreover, the US's deliberate targeting of civilians means that proportionality cannot be upheld.

Drone Strikes Fulfil the Principle of Necessity?

The principle of necessity requires that the target have definite military value. The government asserts that since targeted killings specifically target terrorists drone strikes fulfil the principle of necessity. The Obama administration asserted that the drone programme is judicious, targeting only those on the “Kill List”. By targeting only those that pose a threat, the US contends that it adheres to the principle of necessity.

So does the US drone programme conform to the principle of necessity? No. Since the drone programme is indiscriminate it also hinders the US’s ability to adhere to the principle of necessity. In addition, when we take into account that strikes are pre-emptive and that all men of military age are considered legitimate targets, the US’s adherence to the principle of necessity becomes even more dubious.

Drones: More Humane Weaponry?

The principle of humanity requires that the US use weapons that will not inflict unnecessary suffering. The US claims that it complies with the principle of humanity by utilising the drone since it is a weapon that deploys guided precision munitions. Such munitions inflict less damage in comparison to inherently indiscriminate bombs like landmines or cluster bombs, or inaccurate barrel bombs (Human Rights Watch 2012). Drone weaponry and its strikes, then, are presented not as injurious to civilians, but instead as advantageous for them. But though the drone may cause less damage than other weapons, it is still an exceedingly lethal weapon that can cause civilians severe injury or death. As I have already mentioned, the drone deploys explosives with wide-area effects, which is why Human Rights Watch warns that

[a]ir delivered weapons that produce a large lethal blast or fragmentation areas are frequently linked to high levels of civilian harm. . . . Regardless of whether

they're guided their size can create blast and fragmentation effects that severely affect civilians and civilian structures (Human Rights Watch 2020: n.p.).

Just because drone munitions are relatively “precise”, this does not mean that they do not cause suffering or that they are entirely beneficial for civilians’ well-being; the drone’s missiles kill or injure in several ways: through incineration, flying shrapnel, and the release of powerful blast and heat waves capable of crushing internal organs (Cole 2015).⁴⁹ The shrapnel that is blasted farther than the target site leaves people in pieces and those who are not killed are sometimes left maimed due to shrapnel. People in the vicinity of drone bombing suffer decapitation, limb amputation, severe burns, and some are left without vision (Cavallaro et al. 2012, Sperber & Turse 2020).⁵⁰ Given this, it would be wrong to assess the drone as humane solely based on the premise that it deploys a guided precision missile. Such an assessment is also flawed because it neglects that the drone is predominantly utilised for surveillance. Bombing is not the only reason for utilising the drone, neither is it the only consequence of its deployment.

*Beyond Drone Strikes: Taking into Account the Drone Programme*⁵¹

As I have now made clear, the arguments I have made throughout this thesis regarding the precision of drone strikes also begin to show that drone strikes are neither legal nor ethical. But this only scratches the surface of the way in which the programme as a whole undermines claims of the legality and morality of drone strikes. In order to explore and understand the

⁴⁹ This explains why the drone’s missiles are called “Hellfire missiles”.

⁵⁰ Khalil Khan, a witness to drone strikes, explained that he was unable to identify body parts lying on the ground, all he could do was ‘collect pieces of flesh and put them in a coffin’ (Cavallaro et al. 2012: 60).

⁵¹ Part of this sub-section comes from an article I have written (Espinoza 2018).

broad range of drone uses and the effects on civilians, it is necessary for an assessment that looks beyond individual strikes and analyses the conduct of the wider drone programme. In order to do this, I draw on analyses of the drone programme as imperial air power. Air power is the use of lethal or nonlethal means by air forces to achieve strategic, operational, and tactical objectives. Air power is more than dropping bombs, strafing targets, and firing missiles. It is also a way to influence world situations in ways which support national objectives (US Air Force 2015: n.p.). Analysing the drone programme as a form of air power elucidates other uses and reasons for drone use that are anything but altruistic. Air power has historically been used to rule over colonial subjects; for preventive policing; to terrorise through surveillance and bombing; and to gain information to kill political enemies and maintain power. There are important similarities between the drone programme and both British air power and previous US counterinsurgency operations. A common thread running through these programmes are the terrorising effects that they have, and are intended to have, as part of a policing process aimed at crushing rebellions and reconfiguring the political economy of the targeted territory (Blakeley 2018). Blakeley (2018) and Afxentiou (2018) have shown that British air power in the early twentieth century provides the paradigmatic historical case of imperial state terrorism, arguing that the contemporary US exercise of air power through the drone programme can be seen as a contemporary manifestation of such state terror. From this point of view, drone violence is the latest episode of a more protracted process of state violence, terrorism, and domination (Blakeley 2018). State terrorism, then, has and continues to play a role in the United Kingdom's and the US's quest for hegemony in global politics (Blakeley 2018).

State terrorism has been central to the imperial and neo-imperial projects of powerful states for centuries. Terrorism was widely used by European colonial powers as they colonised and policed their colonies (Blakeley 2018). Its use is deliberately intended to instil

fear among populations, to quell dissent, and to force populations to acquiesce to the agendas of powerful political and economic elites. The US has a history of supporting state terrorism. During the Cold War it was part of a process of organising under US sponsorship ‘a neo-colonial system of client states ruled mainly by terror and serving the interests of a small local and foreign business and military elite’ (Chomsky & Herman 1979: ix). In oil rich regions in the Middle East, the use of state terrorism is a way of “armouring” the neoliberalisation process and insulating local elites from dissent, thereby stabilising the production and flow of oil that underpins US hegemony (Stokes & Raphael 2010). Neoliberalisation, used as part of European and then American imperial and neo-imperial projects, is aimed at securing unfettered access to key markets as well as core assets such as oil (Blakeley 2018).

Blakeley (2018) explains that US imperialism promotes political sovereignty elsewhere on the condition that the reproduction of capital is not undermined and that it secures unfettered access to resources and markets. Where such access is threatened, the US projects power, deploying violence to terrorise those who would resist, sometimes directly, but frequently through proxies. The attacks by al-Qa’ida on the 11th of September 2001, as well as prior attacks on US interests in the Middle East, including the bombing of the USS Cole, were an affront to US interests and to US primacy.⁵² The US responded with enormous displays of force in Afghanistan and Iraq and followed up with various covert “unconventional war” efforts characteristic of US Cold War approaches to dealing with supposed enemies who would threaten US strategic interests. The US’s ongoing struggle against al-Qa’ida, its affiliates and most recently, ISIS, should be understood in relation to its quest to maintain its primacy. Since these groups have the potential to undermine the

⁵² In October 2000, the USS Cole was attacked by suicide bombers, while it was in Yemen for refuelling (CNN Editorial Research 2020). The attack, which ripped a hole in the hull of the ship, killed 17 US sailors and was attributed to al-Qa’ida (CNN Editorial Research 2020).

contemporary order in the Middle East, which is key to the US's global hegemony, the response of the US has been to support proxy wars, as well as to increase its reliance on the drone programme to target high profile leaders of such groups, in the hope of toppling them from the top (Blakeley 2018).

The US's approach to air power via the drone programme shows various continuities with the British experience of imperial policing through air power developed in Iraq almost a century ago. Contemporary documents from the US Department of Defense contain repeated references to what it learned from the British experience of policing Iraq through air power in the 1920s, referring to it as a counterinsurgency mission in the trust sense (Blakeley 2018). Key elements of British air power were first that it was aimed at containing revolts with minimal use of ground force. Air power was a form of colonial policing by first the British Royal Air Force (RAF) in the 1920s and 1930s, and by the US during and after World War II. Air power and colonial rule went hand in hand; since air power's inception it was thought of as a technical solution for the menace to civilisation, or the lawless and disobedient native that needed to be civilised (Neocleous 2013).

A second element of air power was that it offered a form of preventive policing that would both 'stifle disorder at its birth' and 'construct a new world order' (Neocleous 2013: 582). Air power was in fact historically referred to as "air police" and its use for policing needs to be taken seriously in any analysis of aerial violence (Neocleous 2014). Air power functioned as control without occupation in the 1920s and as a way for establishing peace (Neocleous 2014). In the 1920's the British would carry out night terror raids in order to crush rebellions against the British occupation of Iraq. These raids, 4,800, in total, were described by Wing Commander J.A. Chamier as the best way to demoralise the local population by bombing on villages, houses, inhabitants, crops, and cattle continuously (Glancey 2003). The Air Ministry knew that the frequent appearance of aircraft overhead

would give the inhabitants of a native village the impression that the occupant of the airplane is actually looking at them and that all their movements are being watched and reported. Aerial surveillance 'did not merely denote a non-aggressive technique of gathering information; it also acted as doleful reminder to people on the ground of the omnipresence of imperial power' (Afxentiou 2018: 314). Far from innocuous, air patrols were a coercive measure meant to establish the impression that all their movements were being watched and recorded. Hence why the British Royal Air Force referred to its use of surveillance as an ocular demonstration of power (Spurr 1993). Surveillance furnished the power to enter and examine other countries at will, allowing for the production of knowledge necessary to modify and control populations who actively challenged colonial power (Neocleous 2014, Omissi 1990).

Contemporaneously, drones are the perfect technology of liberal police because they allow for power projection which influences people's behavior. Drones are historical continuations of colonial police power because their main function is not to assassinate or bomb, but to construct the knowledge required for the maintenance of social order (Neocleous 2014). Drones, Neocleous argues, are the perfect technology of the liberal police because they allow for air occupation – permanent police presence in the skies in order to purge anything disorderly (Neocleous 2014).

According to Wall (2016) and Neocleous (2014) the drone's aerial violence can also be understood as a form of police power due to its mandate of emergency power. The prerogative to decide who will live and who must die is given to drone operators and government officials (Allinson 2015). This emergency power can be seen at work in the drone programme's signature strikes, in that they are underpinned by a broad, all-expansive notion of a "threat": '[a]s Petty Sovereigns or Everyday Sovereigns or Everyday Executives, police exercise the prerogative to decide who is or is not a threat, who must live and who

must die' (Wall 2016: 1132). This emergency power is the same power which animates policing. Police discretionary power is at work in the drone programme and this is evident in the administration's *White Paper Memo*, which outlines the drone programme's legality. It equates drone strikes to routine police shootings in emergency situations (Wall 2016). This discretionary power underpins the entire *White Paper*:

[t]his is to say that the "prerogative of discretion" animating drone violence has its domestic corollary in the broad discretionary powers of police embedded in the Public Authority justification, and making this point serves to locate the legal animus of drone violence in the routine, and not spectacular, circuits of state power (Wall 2016: 1132).⁵³

For Wall, 'approaching the war drone through a critique of the police concept' is to 'lay bare the violence at the heart of the liberal, bourgeois state' (2016: 1132). Reading drone strikes in terms of longer histories of colonial air policing helps to show that the drone does not signal progress when it comes to more discriminating violence. Rather, like aerial weapons before it, it is utilised to deploy discretionary violence against a threat that is broadly defined. It also exposes the mistakes of the ahistorical liberal argument of some critics (*New York Times* Editorial Board 2014) of the programme that casts drone strikes as a new form of violence:

[t]he broad discretionary powers, executive decisions, institutional impunity, legal unaccountability, and necropolitics that have been the basis of so much

⁵³ Public Authority justification is a legal concept that permits government officials to take actions in emergency situations that would otherwise break the law – as when police officers kill someone (Van Buren 2014: n.p.).

outrage over targeted drone killings has long been operative in the most banal operations of police power, and hence from the police perspective the adoption of drones to police the home-front is a logical, commonsensical conclusion (Wall 2016: 1137).

Wall's and Neocleous's critical analysis of drone use as policing is significant because it helps demonstrate that the drone programme's violence and surveillance is neither novel, just, nor humane. Policing has always been racialised as well as oppressive for communities of colour and the poor, whether in the US or abroad. Police officers in the US have a long history of White Supremacy and of extrajudicially killing black men; they remain unaccountable even after killing black men for reaching for their wallets, for running away, and for simply looking suspicious (see Wall 2016). Like the police, drone operators can cite a style of dress, skin colour, or body shape to designate a person as suspicious or as a terrorist (see chapter 4). Drone violence, thought of as a unilateral delivery of death and as a biopolitical technology of racial distinction, mimics how the police in the United States have long operated (Wall 2016).

A third element of air power was that its bombing was experienced by the population. Afxentiou (2018) demonstrates that the prevailing thesis among air power enthusiasts in the twentieth century was that the bomber aircraft was essentially an instrument of terror. They believed that aerial bombing could win wars if the enemy population was made into the strategic objects of attacks. According to this strategic argument, the prospect and reality of relentless bombing would demoralise the civilian population and force its government to concede defeat. Air strategy was predicated on the idea that the physical violence inflicted by immediate attacks would create broader psychological effects which would coerce and force

into submission a wider audience that felt terrorised by the use of such violence (Afxentiou 2018). It is no wonder, then, that the *Living Under Drones* report found that civilians under drones are terrorised by the constant presence and noise of drones overhead. The drones increase their sense of fear in the community. Those who have witnessed strikes describe symptoms of post-traumatic stress disorder, emotional breakdowns, nightmares, disturbed sleep and insomnia, loss of appetite, and hallucinations (Cavallaro et al. 2012). This is not surprising given that the tactic of signature strikes is to create fear and stop militants from coming together to plot against US interests (Klaidman 2012). This has created fear not only among militants, but also among the civilian population.⁵⁴ By focusing solely on strikes, we neglect that the drone is utilised for more than bombing. We miss that the drone, with its capacity for surveillance, is deliberately deployed by the US to dominate, police, and terrorise populations under its gaze.

The orientalism discussed previously is another continuity between the drone programme and the British RAF's use of air power for colonial policing. Air power theory subscribed fully to the imperial trope of identifying colonial subjects as fundamentally different from 'civilised' enemies. Racist superiority meant that the status of the enemy was as a recalcitrant subject of the empire, which meant that the enemy not only had to be beaten, '[h]e must be beaten thoroughly' (Callwell 1906: 151). The "irregularity" of the colonial enemy meant that the beating of the hostile armies was not necessarily the main object of imperial forces, the "moral effect" – or terrorising effect – was often far more important than

⁵⁴ Utilising the threat of signature strikes, the US has effectively limited movement and social life in FATA through threat of bombardment. As Jan, a man who was left destitute by a drone strike reveals: "... we saw funerals being attacked, bakeries, mosques. It felt like the US is not leaving any part of Waziris' life untouched. They had to destroy every segment of our life" (quoted in Ackerman 2016, n.p.). In Yemen others complain of similar conditions. One man explains, "[p]eople were terrified. People are afraid now to attend any large gathering – weddings, funerals. Everyone is just trying to survive" (quoted in Salama 2014, n.p.). Clearly, the US has disrupted the political, as well as the economic and social spheres of civilian lives.

material success, meaning that the RAF had to commit havoc which the laws of regular warfare did not sanction (Afxentiou 2018). The last chapter of the 1922 RAF Operations Manual entitled *Aircraft in Warfare against an Uncivilised Enemy* stated that ‘in campaigns against savages, the tactics and characteristics of the enemy . . . demand that the normal application of the principles of regular warfare be considerably modified’ (Air Ministry 1922: 126). The British presumed that in Iraq Arabs presumed fatalism, their faith in the incontrovertible will of god led to arguments that such people were used to random acts of violence in ways that ‘Europeans, coddled by secular notions of justice and human rights were not’ (Satia 2006: 40). Wing Commander Norman Bottomley justified the use of excessive violence in the colonies by claiming that the more primitive a race is, the more it respects sheer power (Bottomley as cited in Omissi 1992: 110). Crucially, Afxentiou shows that racial inferiority made the distinction between combatants and populace entirely meaningless. Even when the crushing of active rebellions was not at stake, the natives’ homes and means of life remained a target of air attacks. Like in the colonial era, those under drones are dehumanised and still seen through racist filters. The drone programme’s racialised targeting considers all military-aged men combatants and young men and women as potential threats, which also erodes the distinction between combatants and the rest of the populace.

Beau Grosscup (2006) has shown that the principle of “terror bombing” has been generally accepted in military discourse even as late as the 2003 Iraq War. Afxentiou (2018) too has shown that terror bombing still finds purchase in the ranks of military men since a number of recent military publications regard colonial bombing as both a successful exploit and as a source of invaluable lessons for current applications of air power, drone bombing included (see Meilinger 2008, Longoria 1993). A 1996 US military report explains that the “target” of a bombing campaign

is the adversary's will, perception, and understanding. The principal mechanism for achieving this dominance is through imposing sufficient conditions of "Shock and Awe" on the adversary to convince or compel it to accept our strategic aims and military objectives . . . The key objective of Rapid Dominance is to impose this overwhelming level of Shock and Awe against an adversary on an immediate or sufficiently timely basis to paralyze its will to carry on (Ullman et al. 1996: xxv).

Afxentiou (2018) astutely notes that this excerpt is nothing other than a less graphic update to Douhet's vision of air warfare and that it is the strategic rationale on which the 2003 'Shock and Awe' air campaign in Iraq was based. Charles J Dunlap, a senior US Air Force officer wrote that 'properly employed, the air weapon can impose . . . extreme psychological stress' (2007: 65). And when discussing the Reaper drone he stated: '[a]irmen may soon have a new weapon to carry out such devastating attacks—the MQ9 Reaper unmanned aerial vehicles' (Dunlap 2007: 65). As far as the military is concerned, psychological effects are an inalienable feature of aerial bombing (Afxentiou 2018). Consequently, the invention of armed drones does not signal a break with the notion of air terror, but instead expands the array of technical options available when inflicting such violence (Afxentiou 2018).

A fourth element of air power was the impact it had on the political conduct of colonised subjects, 'consolidating their acquiescence to the new world order' (Neocleous 2013: 584). Policing of targeted populations was not just a feature of air campaigns, but came to also shape various ground-based counterinsurgency operations. Stifling dissent to usher in a new world order also occurred through programmes for mass internment and torture, as part of the US's unconventional war doctrine during the Cold War. US warfare was

unconventional in the sense that its tactical options went beyond those of conventional military operations and extended even beyond the framework of armed conflict itself.

Operations were intended to be covert and were largely unconstrained by consideration of the laws of war (Blakeley 2018).

McClintock demonstrates that a 1985 US manual, *Tactical Intelligence*, issued by US Southern Command states that “battlefield preparation” means collecting information on civil society: ‘who stands for what, which groups or individuals can be mobilized for counterinsurgency and which must be neutralized’ (2001: 10). A 1983 manual, *Psychological Operations in Guerrilla Warfare*, advocated assassination and related terror tactics to Nicaraguan contras (Blakeley 2006). The US offered military training across Latin America and a striking aspect of this was the emphasis on intelligence gathering which enabled the categorisation of people according to their loyalties, or in contemporary parlance, suspect behaviour (Blakeley 2018). Politicisation, intensification of religious unrest, and engagement in labour movement activity were all considered indicators that an individual was a threat (McClintock 2001). Dozens of passages in multiple manuals distributed widely among the Latin American military encouraged numerous human rights violations including disappearances, torture, and murder of political opponents (Blakeley 2006, 2009).

It was within this context that Operation Condor emerged. It was a covert network linking the intelligence agencies of the Southern Cone States of Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay with the CIA and bears all the hallmarks of the US’s approach to counterinsurgency (Blakeley 2018). The aims of Operation Condor were to streamline information-sharing so that covert agents could move through the region evading law enforcement in their efforts to interdict insurgents for detention, but more often than not, elimination (McClintock 2001). Although evidence of US involvement in Operation Condor is limited, there is evidence that the source of much of the intelligence gathered by

Paraguayan officials, which resulted in the kidnapping and torture of hundreds of people by either Paraguayans themselves or by Argentina's Secretariat of Intelligence, was provided by the CIA (Slack 1996). Operation Condor bears the hallmarks of the CIA's earlier programme, Operation Phoenix, which operated in Vietnam in the late 1960s (Blakeley 2018). It too involved targeted killings based on mass intelligence gathered on suspected insurgents with the aim of wiping out what was assumed to be the Vietcong's leadership. It was characterised by mass torture, incarceration, and assassinations (Cockburn 2016, Blakeley 2018).⁵⁵ A former CIA "neutralizer" in Vietnam, Charlie Yothers, explained:

"[s]ure we got involved in assassinations. That's what PRU [Provincial Reconnaissance Units] was set up for—assassination. I'm sure the word never appeared in any outlines or policy directives, but what else do you call a targeted killing?" (quoted in Cockburn 2016: 86).

Over 20,000 Vietcong leaders were killed (Valentine 2000). The programme was intended to not only destroy the leadership of the Vietcong, but also to instil terror among the wider population (Blakeley 2019), which is why families, neighbours, and anyone suspected of having connections to the Vietcong were also killed (Valentine 2000).⁵⁶

⁵⁵ Assassination in the US was banned by President Gerald Ford in 1976 in the wake of grim disclosures of CIA lethal excesses in South America, Vietnam, and elsewhere (Woods 2015). This led the Reagan administration in the 1980s to create a formal *legal* basis for "targeted killing" via the *Memorandum of Law: Executive Order 12333 and Assassination* (Gunnflo 2016).

⁵⁶ Mr. Tran Ngoc Chau, the South Vietnamese Army Officer who contributed to the programme, recalled that the government's intelligence system was "almost a joke" because it depended on informants who had serviced the state for years and who were often fed disinformation by the enemy (quoted in Miller 2017: n.p.). Instead of targeted strikes based on accurate intelligence, commanders resorted to firepower-intensive operations that killed or wounded local residents (Miller 2017). Americans liked Mr. Chau's insistence that it was possible to conduct counterinsurgency in a humane and ethical way, and to minimise collateral damage to civilian lives and property (Miller 2017).

The use of surveillance and intelligence collection methods to develop lists of individuals to be targeted for killing are the key elements that tie the Phoenix and Condor programmes to the drone programme. Like Phoenix and Condor, these lists are compiled through extensive intelligence gathering and sharing with allies, without apparent accountability or oversight of the assumptions that result in someone being added to these lists (Blakeley 2018).⁵⁷ But there are other similarities as well: the tactics of signature strikes, targeting in kill boxes, and targeted killings. The US's current approach to identifying and dealing with individuals on the basis of patterns of suspect behaviour also builds on the unconventional warfare doctrine developed by the CIA and US military during the Cold War. Signature strikes may appear more sophisticated in some respects, thanks to advances in technology, but the underlying assumptions and principles would suggest continuity (Blakeley 2018).⁵⁸ Targeting in kill boxes was also a tactic utilised in the Gulf War and in Vietnam. In Vietnam there were free strike zones, which means that planes could drop bombs anywhere in that area and that anyone caught there would be considered a Vietcong and shot (Chomsky 2002). Plainly, the drone programme is deployed to carry out the same illicit and vicious counterinsurgency policies utilised to change the political conduct of adversaries.

Blakeley's (2018) analysis, as well as that of Afxentiou (2018), Wall (2016), and Neocleous (2014) make clear that the US is deliberately utilising the drone to violate human rights, to terrorise through surveillance and violence, and to murder political opponents. Their analyses help to explain civilian accounts of drone use. It is no wonder that after strikes

⁵⁷ According to Blakeley (2018) there are compelling reasons to conclude that the intelligence resulting in the listing of an individual is likely to have been obtained through torture, which as the US senate investigation found, was not an effective means of acquiring intelligence.

⁵⁸ They also echo approaches Britain took to efforts to crush rebellions in its colonies during the 20th century (Blakeley 2018).

people are left impoverished, anguished, and infuriated (Ackerman 2016). Terrorism is not an unwanted side-effect of finding terrorists because as Levich argues:

[t]he US is consciously integrating the ruinous secondary effects of drone warfare into its overall counterinsurgency strategy. Terrorism is a strategy to coerce people into withdrawing support from the insurgents; this is typically accomplished through assassinations, torture, surveillance, mass expulsions, and ruthless displays of military force (Levich 2012: n.p.).

Counterinsurgency not only focuses on defeating armed groups, but also on controlling the populations within which they move (Blakeley & Raphael 2016, Khalili 2012). The drone programme applies a standard of collective liability through its policies like signature strikes and its surveillance of entire communities. These practices are embodiment of social threats, which is what terrorism aims to do (Armborst 2010). Consequently, it is not surprising that civilians are afraid to congregate or be under drones – that is the point.⁵⁹ Amnesty International has identified the main forms of state terror as arbitrary detention, unfair trial, torture, and political murder or extrajudicial execution (Sluka 2000). The message summary execution seeks to convey is one of impotence (Aretxaga 2000). The dead bodies spread the message (among many) that resistance to the state's project is futile and that the price for resistance is high. When those vaporized by tactics of signature strikes, targeted killings, and double taps are left in pieces we must speak of it as a form of terrorism because such

⁵⁹ As one person explained: '[t]he strikes have become so ferocious it seems they [the US] really want to kill everyone, not just the leaders' (Perlez & Shah 2010: n.p.).

practices are intended to send the message that the US is omnipotent, omnipresent, and utterly ruthless (Espinoza 2018).

These critical frameworks demonstrate the importance of assessing the programme as opposed to just the drone and its strikes. The claims that the drone is a more humane weapon ignores that use of the drone entails more than relatively “precise” strikes, it entails a surveillance programme. To discuss the drone as a more humane weapon is to discuss it in a vacuum without any context. It is understandable that government officials and some proponents focus solely on the drone since many argued it should not be used on principle, but the focus on whether the drone is a humane weapon takes away focus from what is really important – how it is being utilised by the US and what is being utilised for. The language that idealises drone weaponry elides a brutal drone programme whose *raison d’être* is to terrorise and control populations for its imperial ambitions. The drone is always going to be utilised according to state policies, so any assessment of the drone’s violence that fails to take into consideration how the drone is used and what it is used for is incomplete.

To conclude, I have shown that the actual drone programme does not abide by the legal and ethical principles of discrimination, proportionality, necessity, and humanity. Drone strikes are considered to be legally and ethically legitimate based on the premises that they are precise and that they are targeted killings, but strikes are neither precise nor are they all targeted killings. Contrary to government officials and academic proponents who hype the novelty of the drone and of targeted killings, the drone programme does not constitute some new virtuous development in warfare, it consists of the same terroristic practices of counterinsurgency that originated in the colonial era. The US conceals its unlawful and terroristic policies by discussing all strikes as targeted killings. Thus, to view strikes as legally and ethically legitimate one would have to assume a level of precision that does not exist and ignore that the drone programme is part of an imperial project of state terrorism. In

other words, one would have to ignore the broader drone programme of which drone strikes are part of and the neo-imperial rationalisations for US violence. The claims of more virtuous warfare that is advantageous for civilians entirely elides that US drone violence deliberately targets, dehumanises, and punishes whole populations with absolute non-reciprocity.

5.2 Assessing the Legal and Ethical Foundations of the Drone Programme

Whilst the critical literature discussed above criticises the conduct of the drone programme, it does not explore in depth the *White Paper* that the government uses to justify the legality of the drone programme. It is important and necessary to pay specific attention to the *White Paper* because it helps to demonstrate that at its very foundations the programme is racist and indiscriminate. Moreover, since supporters argue that the removal of some of the more contentious elements of the drone programme, in particular signature strikes and double taps, would rehabilitate the drone programme and show that it can allow for legal and more ethical war, it is important to move beyond an analysis of the conduct of the drone programme and towards its legal and ethical foundations. Drawing on my thesis thus far, I engage with crucial claims in the *White Paper* in order to demonstrate that even the foundations of the programme are ethically and legally problematic. In so doing, I interrogate two important government claims: first, that the drone programme constitutes self-defence in a legitimate “war on terror” and second, that drone strikes are not illegal assassinations or extrajudicial executions, but legal and defensive “targeted killings” that adhered to due process requirements (Brennan 2012, Obama 2013, Holder 2012). These claims are significant because the use of force in self-defence is considered both legally and ethically legitimate. Given these claims one would assume that US violence adheres to the requirements of self-defence and due process.

I add to the critical scholarship utilised in the previous section by drawing on my orientalist arguments throughout this thesis to give an analysis of the *White Paper* that demonstrates that drone warfare was made legitimate through: the re-defining of ethical principles; the use of racist legal precedents and rationales; and secrecy. After demonstrating the legal and ethical problems with the *White Paper*, I demonstrate additional ethical problems with the programme that are missed as a consequence of the narrow ethical

assessment of the government and academics. Thus, I discuss both the orientalism that underpins the programme and the ethical hazards that result from it. In so doing I render clear the problems that would plague the drone programme even if precision claims were true.

The Obama Administration's *White Paper Memo*

I explained at the beginning of this thesis that the drone programme during the Obama administration was mired in controversy particularly due to the fact that the programme was targeting US citizens for strikes. The view of many was that drone strikes against US citizens violated their due process rights enshrined in the US Constitution. There were two other issues as well: 1) drones were being deployed to countries outside the war zones of Iraq and Afghanistan; and 2) strikes were pre-emptive. This led many to criticise programme strikes as assassinations (Calhoun 2015, Wilcox 2015, Greenwald 2014, *New York Times* Editorial Board 2014, Rosen 2013, Van Auken 2013, Van Buren 2014). Afterall,

[d]rone warfare...involves the intentional, premeditated, killing of *specific* people, one by one. On its face, this activity looks indistinguishable from what in centuries past was labelled *assassination* or *extrajudicial execution* (Calhoun 2015: 33).

This controversy is what led the US to provide some of its legal and ethical rationales in the *White Paper Memo*. Obama administration officials and lawyers unequivocally claimed that the drone programme was ethical and lawful (see chapter 2). They claimed that the drone programme constituted self-defence in a legitimate “war on terror” and that drone strikes

were not illegal assassinations or extrajudicial executions, but legal and defensive “targeted killings”. Let us interrogate the *White Paper* to see if these claims stand up to scrutiny.

Self-defence and the Re-defining of Imminence

In light of the controversy over where strikes were taking place since they were being deployed beyond Iraq and Afghanistan – in Yemen, Pakistan, and Somalia – where war had not been declared, the Obama administration claimed that strikes were nevertheless legal and ethical because strikes in these countries constituted self-defence (Obama 2013, Brennan 2012, Koh 2010). Critics however, were quick to point out that the administration re-defined the notion of imminent threat which is central to arguments of self-defence. The administration claimed that it did not need evidence that a threat was imminent for it to attack; targeted killings, they claimed, were instead in *pre-emptive* self-defence (US Dept. of Justice 2011). Critics argue that this prevents the notion of imminence from actually restraining the use of force (McKelvey 2011, Calhoun 2015, Jaffer 2013). They point out that the use of preventive violence is at odds with the notion of self-defence. For self-defensive force is justified only if the threat against which it is used is imminent. But these strikes are premeditated killings, with some strikes occurring after *months or even years* of intelligence collection and the use of local collaborators. When Obama approved a strike the authorisation would last 60 days. If the target was not killed within the 60-day window, approval could be obtained all over again (Scahill & Greenwald 2014). This is why, as McKelvey argues,

[t]argeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. “Imminence” would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process (McKelvey 2011: 1368).

Imminence would have no meaning as a standard if it stretched so far as to allow for premeditated attacks, because a threat has to be *imminent* if resort to self-defence is to be *necessary* to counter a threat that is instant, overwhelming, and leaves neither choice of means nor moment of deliberation. When a threat is imminent, in other words, there is barely time to act, let alone decide on a plan of action. So, premeditation is entirely at odds with concepts of self-defence and imminence. As McKelvey explains, '[t]he concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat' (2011: 1368). Obama's lengthy authorisation suggests that an attack is not necessarily happening in the near future and that there is uncertainty as to when and where it will occur. Hence, a premeditated killing does not satisfy the imminence standard required by just war theory and international law.

The US government's response to this is to re-define "imminence"!⁶⁰ In the controversial *White Paper*, the US Department of Justice states that the US can kill terrorists, even Americans, if government officials determine that the target poses 'an imminent threat of violent attack' (2011: 1):

⁶⁰ The government re-definition of imminence has been a topic of discussion recently in US media due to the assassination of Qassem Soleimani, the military leader of Iran. The Trump administration claimed that Soleimani posed an "imminent threat" to US interests in the Middle East. US Secretary of State, Mike Pompeo, claimed that he posed an imminent threat because the US 'had specific information on an imminent threat, and those threats from him included attacks on U.S. embassies. Period. Full stop' (quoted in Forgey 2020: n.p.). Interestingly, however, Pompeo's statement ran counter to his remarks about the threat during a different interview on Fox News, where he stated that '[w]e don't know precisely when and we don't know precisely where, but it was real' (quoted in Forgey 2020: n.p.). When he was pressed on how he knew the Soleimani threat was imminent if he did not know when or where the Iranian general planned to attack, Pompeo insisted that his two sets of statements represented 'completely consistent thoughts' (quoted in Forgey 2020: n.p.). Pompeo was asked about the meaning of imminence, but refused to offer a time frame (Vasquez et al. 2020). Several Democratic lawmakers challenged the administration, claiming that Pompeo's assessment was inaccurate. They stated that such information was not mentioned in their intelligence briefing and that there had been no evidence of the specific target presented to them (Forgey 2020). Multiple lawmakers said they saw no specific intelligence that pointed to an imminent threat from Soleimani that justified the strike (Vasquez et al. 2020). Once the Trump administration's unclassified memo justifying Soleimani's killing was released to Congress it was revealed that there was no imminent threat posed by Soleimani (Hannon 2020).

[f]irst, the condition that an operational leader present an “imminent” threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future. Given the nature of, for example, the terrorist attacks on September 11th . . . this definition of imminence, which would require the United States to refrain from action until preparations for an attack are concluded, would not allow the United States sufficient time to defend itself. The defensive options available to the United States may be reduced or eliminated if al-Qa’ida operatives disappear and cannot be found when the time of their attack approaches (US Dept. of Justice 2011: 7).

This *White Paper* goes on to further justify the broader concept of imminence by explaining that a terrorist “war” does not consist of a massive attack; it is instead drawn out, patient, and sporadic, which leaves the US a limited window of opportunity to defend Americans:

. . . an individual poses an “imminent threat” of violent attack against the United States where he is an operational leader of al-Qa’ida or an associated force and is personally and continually involved in planning terrorist attacks against the United States. Moreover, where the al-Qa’ida member in question has recently been involved in activities posing an imminent threat of violent attack against the United States, and there is no evidence suggesting that he has renounced or abandoned such activities, that member’s involvement in al-Qa’ida’s continuing terrorist campaign against the United States would support the conclusion that the member poses an imminent threat (US Dept. of Justice

2011: 7-8).

The *White Paper* justifies this broader concept of imminence on the grounds that the US would not have sufficient time to defend itself if it waited until an attack was truly imminent. (the *Paper* also contends that waiting too long may cause the US to lose track of the terrorists that are planning an attack.) In other words, if the US waits too long it will lose its window of opportunity. The upshot of this re-definition is that, by virtue of forming part of a terrorist organisation, the terrorist is and remains *by definition* an imminent threat unless there is evidence suggesting that s/he has renounced or abandoned such activities. Being an “imminent” threat is *constitutive* of terrorism, and what counts as imminence is decided by the relevant threat being a terrorist one.

But, this is a manipulation of the concept of imminence. An imminent attack is instant, overwhelming and leaves no time to deliberate (Alston 2010). If an attack is imminent, the threat is already materialising. In other words, there is clear evidence that the attack will take place in the immediate future.

The US’s re-definition however, eliminates precisely that condition. Consequently, the concept of imminence becomes a façade; the US permits itself to kill – at an indeterminate point within the next 60 days – even when it has no evidence of threat. So re-defined, the imminence criterion is no longer able to restrain the use of violence to conditions of necessity. Rather than serving to restrain violence, it serves to enable it.⁶¹

The US government’s concept of imminence is, then, a far cry from just war theory’s

⁶¹ The stretching of imminence began under the Bush administration under Cheney’s famous “1 percent doctrine”, which justified the invasion of Iraq on the grounds that if there was a 1 percent chance that something is a threat, it requires that the US respond as if the threat is a 100 percent certainty (Klein 2007: 301). Klein (2007) argues that the Bush administration defined the parameters of the “war on terror” in order to maximise profitability and sustainability as a market – from the definition of enemy to the rules of engagement.

and humanitarian law's concept of imminence. The Obama administration's re-definition allowed it to kill even when the threat is uncertain, so that any necessity of recourse to violence is unknowable. It gives the US government power to use force even when a threat *may not exist*. The other problem with this re-definition is that it opens up racialised forms of targeting. If operators and other government officials do not need evidence that someone poses an actual threat in order to be able to kill them, they are able to kill people they presume to be a threat. This is worrying because what comes to be used by operators and analysts to decide whether someone is a threat is where they live, how they dress, whether they are near a group of men, and what they look like. Racial profiling thus comes to replace actual evidence that someone poses a threat. As a result, this re-defining of imminence not only means that legal and ethical frameworks are being undermined, it also means that it becomes all the more dubious that those killed are legitimate targets, a central requirement for precision strikes. Even if policies like signature strikes or double taps were discontinued, the orientalism in which the programme is mired would mean that drone strikes would continue to be indiscriminate, with imminence re-defined in a manner that results in racial profiling being used to determine who is a threat.

Drone Strikes and the Upholding of Due Process

When critics claim that drone strikes are extrajudicial or summary executions, they cite in particular US citizen Anwar al-Awlaki, who was killed by a drone strike in Yemen (Calhoun 2015, Wilcox 2015, Greenwald 2014, *New York Times* Editorial Board 2014, Rosen 2013, Van Auken 2013, Van Buren 2014). In addition, they claim that drone strikes are a violation of the US Constitution, because they violate both the Fourth and Fifth Amendments. The Fourth Amendment prohibits the use of deadly force unless it is necessary to prevent the escape of a fleeing felon and the officer has probable cause to believe that the suspect poses a significant threat of violence to the officer or the community. It protects US citizens against

unreasonable searches and seizures.⁶² The Fifth Amendment requires that no one shall be deprived of life, liberty, or property without due process of law.⁶³ To deny anyone such due process is unconstitutional.

It is against this background of criticism that the *White Paper* emerged. The *White Paper* was intended precisely to legitimise the strikes beyond Iraq and Afghanistan, *as well* as the strikes taken against US citizens. It is thus clear that it should be seen as a tool for the administration to neutralise criticism of drone strikes taken against US citizens, and this is clear from Obama's 2013 speech quoted earlier:

[o]f course, the targeting of any American raises constitutional issues that are not present in other strikes – which is why my administration submitted information about Awlaki to the Department of Justice months before Awlaki was killed, and briefed Congress before this strike as well (Obama 2013: n.p.).

Notice that he recognises that there are constitutional requirements when targeting US citizens; and indeed he claims to have complied with them – which is why he submitted information about al-Awlaki to Congress.⁶⁴ In the *White Paper Memo* the administration

⁶² The Fourth Amendment states: '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized' (Cornell Law School n.d.: n.p.).

⁶³ The Fifth Amendment says to the *federal government* that no person shall be 'deprived of life, liberty or property without due process of law' (Constitute n.d.). While there is no definitive list of "required procedures" for due process, some procedures include the right to an: unbiased tribunal; to present evidence and know opposing evidence; and the opportunity to be represented by counsel (Strauss n.d.).

⁶⁴ In 2012 Obama made explicit reference to due process stating: '[i]t's very important for the president and the entire culture of our national security team to continually ask tough questions about, are we doing the right thing, are we abiding by rule of law, are we abiding by due process. And then set up a structure and institutional checks, so that, you know, you avoid any kind of slippery slope into a place where we're not being true to who we are' (quoted in Gerstein 2012: n.p.).

outlines how the government provides due process, what becomes clear however, is that the government broadened legal precedents, drew on racist law enforcement rationales, and re-defined due process in order to claim that due process was being upheld.⁶⁵

First, in order to claim that killing a US citizen abroad was not in violation of the Fourth Amendment which protects US citizens from unlawful seizures (including killing), in the *White Paper* the administration cited law enforcement cases. It drew on the Supreme Court case *Scott v. Harris* (2007) which ruled that, if in domestic law enforcement operations an officer has probable cause to *believe* that the suspect poses a threat of serious physical harm, either to the officer or to others, then it is not constitutionally unreasonable to prevent escape by using deadly force. After a police officer had attempted to pull over Victor Harris for speeding, Harris fled in his vehicle initiating a high-speed car chase. Attempting to end the chase, Deputy Timothy Scott rammed Harris's vehicle with his police cruiser, rendering Harris a quadriplegic. Harris sued Scott alleging that he had violated his Fourth Amendment rights by using excessive force (Oyez 2019a). The Supreme Court ruled 8-1 that police officer Scott's actions were reasonable under the Fourth Amendment because Harris had posed an actual and imminent threat to the lives of any pedestrians who might have been present. The opinion weighed the need to prevent the harm Harris could have caused against the high probability that Harris himself would be harmed by Scott's use of force. The Court concluded that it was reasonable for a police officer to use deadly force to prevent harm to innocent bystanders, even to the point of putting the fleeing motorist at serious risk of injury or death (Oyez 2019a). In addition, the administration utilised the "fleeing felon" case, or *Tennessee v. Garner* (1985), which considered the legality of Memphis police killing a Black youth while

⁶⁵ It is striking that Obama mentions these constitutional issues, because the administration had previously insisted that due process was unnecessary because all strikes were either part of the war on terror or in self-defence (Koh 2010: n.p.). Brennan defended the 2011 killing of al-Awlaki as part of the war against al-Qa'ida. He stated that al-Awlaki's efforts to kill Americans made him a legitimate military target (Starr et al. 2013: n.p., see also Obama 2013).

fleeing arrest. Police officer Elton Hymon shot 15-year-old Edward Eugene Garner to prevent Garner escaping over a fence. Hymon admitted that he saw no evidence that Garner was armed; and Garner was killed by a shot to the back of the head (Oyez 2019b). In a 6-3 decision the Supreme Court ruled that the Fourth Amendment prohibits the use of deadly force unless it is necessary to prevent the escape of a fleeing felon and the officer has probable cause to believe that the suspect poses a significant threat of violence to the officer or the community. The Tennessee statute, based on the eighteenth-century common-law rule which allowed the use of whatever force is necessary to arrest a fleeing felon, was deemed unconstitutional as far as it allowed deadly force to prevent the escape of an *unarmed* fleeing felon (Oyez 2019b).

The relevance of these cases to the drone programme is that they purportedly license the shooting of fleeing suspects who pose an imminent threat when capture is infeasible (Dept. of Justice 2011: 9). Indeed, even in the fleeing felon case, where the judgment was that Garner should not have been shot, it remained the case that it would have been right to use deadly force if there was evidence that he provided a significant threat. Thus, as long as there is probable cause that the suspect poses a significant threat of violence, government officials can justifiably deploy lethal force in order to bring the person under government control. To use this precedent to justify drone strikes, however, the administration had to expand it. In these two cases, any threat was *immediate*, in the context of direct pursuit of someone suspected of *having already committed* a felony. Since the programme kills people *before* any crime has been committed, or without evidence of an imminent threat, drone operators kill without probable cause. The administration's is an extraordinary conclusion not only because it expands the precedent, but also because the Supreme Court had *already* stressed that the use of deadly force to prevent the escape of *all* felony suspects, whatever

the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so (Supreme Court *Tennessee v. Garner* Opinion 1985: n.p.).

In its opinion, the Supreme Court, when ruling that lethal force should not have been used in the *Tennessee v. Garner* case, rejected the Tennessee statute which allowed the use of whatever force necessary to arrest a fleeing felon because of ‘sweeping change in the legal and technological context’ (1985: n.p.). Examples include the expansion of felonies to include non-violent offences and new weapons technology that make it possible for the police simply to kill suspects whom they previously would have had physically to subdue (Rosen 2013).

To understand why the use of the Tennessee statute is so problematic, let us recall Wall’s analysis here. The Tennessee statute gives drone operators the power to use lethal force at their discretion. This is troublesome because as I have shown in chapter four and in the previous section, the drone programme is racist. Muslims are part of a suspect population, which is why they are subjected to surveillance both inside and outside the US. Due to orientalist stereotypes they are presumed to be threatening and are stigmatised as “other”. Given this racism, the Tennessee statute application to drone strikes can result in a disproportionate and racially motivated impact on Middle Eastern people under drones. The breadth of discretion that is conferred upon drone operators, is susceptible to racially motivated abuse. My analysis in chapter four is proof of this. The administration’s use of the statute is also problematic because it derives from the US’s racist legal system. In 1986, two

years after the Supreme Court's *Tennessee v. Garner* opinion, Black men were greatly overrepresented among those shot by Memphis police (Fyfe 1986). Even today, getting killed by the police is the leading killer of black men in the US (Khan 2019). Despite police murdering people they are not brought to justice because people of colour are presumed threatening and guilty due to the colour of their skin. Police are able to defend themselves by saying they feared for their lives even if those they have killed were running away or were unarmed (Romain 2018, Lopez 2018, Butler 2017). The administration's use of a statute that justified the killing of a 16-year-old black teenager who was not armed, shows that racialised justice is extended also to the drone programme to justify its very own emergency power.

In addition to broadening legal cases the administration also re-defined due process:

[w]here national security operations are at stake, due process takes into account the realities of combat. . . . Some have argued that the President is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of al-Qaeda or associated forces. This is simply not accurate. "Due Process" and "judicial process" are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process (Holder 2012: n.p.).

Let me begin by explaining the reasoning underpinning Holder's claim. In the *White Paper*, the administration argued that strikes did not deprive people of their Fifth Amendment right to procedural due process by citing the Supreme Court case *Hamdi v. Rumsfeld*. Mr. Hamdi was a US citizen taken from a battlefield in Afghanistan who ended up in a military prison in

Virginia. Hamdi filed a *Habeas*⁶⁶ petition that reached the Supreme Court, where he argued that he was entitled to due process rights. The Bush administration argued that Hamdi had no rights as a detained enemy combatant. The Supreme Court disagreed and concluded that he did have *some level* of due process rights (Feeney 2013). Crucially, what the Supreme Court did in *Hamdi* was to *balance* the rights of the individual against the interests of the government. After applying the balancing test, eight of the nine justices agreed with Mr. Hamdi, allowing him to retain some of his rights (Feeney 2013). Crucially, the Obama administration sought to make use of the case because the Bush administration had succeeded in arguing in it that in wartime the Executive branch (the President) had the right to declare people enemy combatants, even if they were US citizens, and to imprison them without trial provided the President declared them to be a terrorist (Greenwald 2013). This decision to imprison without trial stems from colonial assumptions about who counts as a legitimate target to pursue, arrest, or kill.⁶⁷ Since terrorists were characterised by the Bush administration as uncivilised and barbaric existential threats, it was able to deprive them of their rights and declare that Geneva conventions did not apply to them because they were “unlawful” combatants (Amnesty International 2011). The Obama administration tried to justify people’s deprivation of judicial process along the same lines. Note here that Holder distinguishes due process from judicial process, arguing that citizens are guaranteed due process, but not judicial process:

[t]he Supreme Court has made clear that the Due Process Clause does not impose one-size-fits-all requirements, but instead mandates procedural

⁶⁶ *Habeas Corpus* is a petition to appear in court to claim unlawful imprisonment. It protects the individual from abusive judges and jailers.

⁶⁷ This is yet another imperial register, rules of international law only applied to warfare between “civilised nations”, they did not apply to “uncivilised” states or tribes (Neocleous 2014).

safeguards that depend on specific circumstances. In cases arising under the Due Process Clause – including in a case involving a U.S. citizen captured in the conflict against al Qaeda – the Court has applied a balancing approach, weighing the private interest that will be affected against the interest the government is trying to protect, and the burdens the government would face in providing additional process. Where national security operations are at stake, due process takes into account the realities of combat (Holder 2012: n.p.).

What Holder is saying here is that due process rights are not violated because by applying the balancing test the administration is able to violate some rights – such as judicial process – in the name of racialised security. But Holder is wrong. While there is no definitive list of “required procedures” that “due process” demands, some procedures are clearly minimal requirements: an unbiased tribunal; the right to present evidence; the right to know opposing evidence; a decision based exclusively on the evidence presented; and an opportunity to be represented by counsel. The whole point of due process is to check the power of the government so that it does not unjustly or arbitrarily deprive someone of life, liberty or property, so as to be able to hold the government accountable for any unjust deprivation. But, the “due process” that Holder discusses does not involve any independent review by the courts, or any judicial process for the accused to defend him or herself; and he is able to argue this by utilising the racialised arguments of the Bush administration on which the Obama administration simply drew.

Not only did the administration do away with the judicial process requirement, but it also re-defined “due process” so that it consisted of nothing more than a careful and thorough Executive branch review of the evidence against suspected al-Qa’ida leaders (Holder 2012).

Whether or not one agrees with the administration's purpose in doing so, this is a re-defining of due process. For the whole point of "due process" is to assure a fair trial; but there can be no fair trial where there is no neutral party, and where the accused cannot contest their status. It should also be noted that, because the Obama administration kept the courts from reviewing the programme, it simply *speculated* that the Supreme Court would side with its balancing decision not to provide judicial process. As Vicki Divoll, a former general counsel for the Senate Select Committee on Intelligence states,

[n]o, I don't think that their Fifth Amendment argument is solid. But I think this is the best they can do, and that they would make this argument if they were before the Supreme Court tomorrow – and I personally think they would lose. But the real problem is, they're not going to be before the Supreme Court tomorrow, or maybe ever. The courts haven't been able to review and resolve this issue because of the limitation on the power of the court, and because the Obama administration has gone to great lengths to keep it from the courts (quoted in Feeney 2013: n.p.).

Holder's discussion of the balancing test gives the impression that the Supreme Court sided with the Obama administration, but that is not the case. He in fact merely speculated that the Supreme Court would agree, because, as Divoll points out, the administration fought vigorously to keep its memos from judicial review (Feeney 2013).

The administration's claim that due process was honoured was further undermined by the fact that it did not always know whom it was targeting. Anwar al-Awlaki is the only US citizen who was targeted deliberately; his children, along with other people who were US

citizens, have been killed accidentally, being at the wrong place at the wrong time (Taylor 2015, Shane 2015). The identities of many of the people killed remains unknown (Woods 2015a), while many are known to have been killed only for the US to determine after the fact that they were US citizens (Taylor 2015, Shane 2015). Here we see that while operators did not know who they were killing, they nevertheless did so utilising systems that are racist in their profiling. Woods (2015a) points out that many critics of the programme in the US have focused on the strikes against US citizens alone, but if they found strikes against US citizens problematic, they should have also found problematic the government's killing people from other countries. There is clearly a higher value placed on the lives of US citizens than those who reside in the Middle East, for instance, which stems partly from the orientalism discussed previously. As Kisilevsky argues, '[j]ustice resides in upholding people's legal rights. You can't balance that against security. That's just what justice is there to protect against' (quoted in Peterson 2016: n.p.). Racialised justice is no justice at all.

Now that I have shown how the administration defended its claims that drone strikes against US citizens do not violate their constitutional rights, notice that in relation to the Fourth Amendment the administration utilised a law enforcement context and in relation to the Fifth Amendment it utilised a war context. It equated drone strikes to law enforcement killings in order to justify its killing of suspects when capture was infeasible, and then used the *Hamdi* case to argue that the Executive had war powers that allowed it to violate the human rights of those accused of terrorism. This is striking. Not only does the *White Paper* use two different contexts simultaneously to justify strikes, it uses a law enforcement justification which is a clear contradiction of the Obama government's position. For in the *White Paper*, the administration adamantly claimed that strikes were part of the "war on terror", even when in self-defence (Dept. of Justice 2011: 3). Despite using it, the

administration never declared that strikes outside of Iraq and Afghanistan constituted law enforcement. So why did the administration use a law enforcement context? As Divoll puts it,

essentially, the government uses the war model when they want to talk about enemy combatants in the Fifth Amendment context, laws of war, presidential power in war – but when they get to the Fourth Amendment, all of a sudden they are talking about police officers chasing suspects down Main Street. They choose whatever context they think makes the argument better under their different constitutional theories (quoted in Feeney 2013: n.p.).

The incongruous use of a law enforcement context in the *White Paper* should be seen for what it is, a legal exercise in order to render drone strikes justifiable. In an attempt to defuse the criticism that strikes were extrajudicial executions it exploited the law enforcement context and broadened the legal precedents in order to carve out a legal space for a drone programme that is shot through with an orientalist attitude, racist in its targeting, and ultimately serves to further a project of state terrorism. In liberal imperial fashion, the US adjudicates its own legality for reproducing and maintaining its power and authority (Wai 2014).

The Administration's Use of Secrecy

In order to legitimise the drone programme, the Obama administration also utilised secrecy. Secrecy was expedient because it allowed the administration to draw on the racist legal grounds of other countries such as Israel, and in imperial fashion, adjudicate its own law. The administration, like previous administrations before it, utilised secret memos to legitimise its violence. For instance, the memos on which the *White Paper Memo* is founded are still

classified, as are the legal rationales that explain why targeted killings are not assassinations. Secrecy was also expedient because it allowed the administration to conceal the programme's illicit targeting practices. Such use of secrecy demonstrates that the administration was deliberately seeking to make the programme unaccountable. Operating covertly allows the US plausible deniability and the ability to shield those involved from prosecution for human rights violations and war crimes (Blakeley 2018), while secret legal memos allow the government to justify actions that would otherwise be considered illegitimate – for example the use of government memos to justify torture. As demonstrated in the previous section, US counterinsurgency practices, which are unlawful in part due to orientalist assumptions about the enemy, necessitate secret memos so that the US government can maintain its power and justify its violence.

All three drone programmes – the CIA's, the military's, and JSOC's – are clandestine. Targeting practices, intelligence methods, and criteria for putting people on the "Kill List" all remain secret. Given this secrecy, a crucial criticism of the programme is the lack of transparency and accountability. In spite of Obama's (2013) claim that the administration was attempting to make the programme more accountable and transparent, it fought especially hard to keep the programme from undergoing judicial review. The ACLU, along with *The New York Times*, had to sue the Obama administration in order to obtain the legal arguments.⁶⁸ In 2013, Obama claimed that he was attempting to introduce new guidelines, as well as adequate oversight for the programme so as to make it accountable. However, when former UN Special Rapporteur Philip Alston tried to get some basic answers from the Obama administration about its programme he explained that:

⁶⁸ The Obama administration was accused of strategically leaking information about the drone programme in order to boost Obama's image as a counter-terrorism tough guy. Such leaks formed the basis of the ACLU's lawsuit challenging the administration's right to keep the programme secret (Junod 2012).

[b]oth the U.S. military and the CIA have carried out such targeted killing in recent years. It's no secret that over the years there have been significant problems with U.S. military compliance with the laws of war, and related transparency and accountability issues. But the CIA almost makes the military look good. Because it shrouds its operations in secrecy, it has to reject out of hand the international law *requirement* that there must be at least some minimal accountability for targeted killings (quoted in Horton 2010: n.p., emphasis added).

As Alston makes clear, the CIA, and to a lesser degree the military, kept its targeting practices from review and accountability. Due to such secrecy, these two drone programmes yet again fail to comply with international law. Strikingly, the administration invoked *State Secrets Privilege* in order to keep US courts from interfering; and in addition, it contended in the *White Paper* that the limits on the government's claimed authority are not enforceable in any court, so that

[a]ccording to the white paper, the government has the authority to carry out targeted killings of U.S. citizens without presenting evidence to a judge before the fact or after . . . Without saying so explicitly, the government claims the authority to kill American terrorism suspects in secret (Jaffer 2013: n.p.).

Significantly, the fact that the Obama administration did not need to acknowledge to the courts that its authority had been exercised demonstrates that it deliberately made sure that it would not be held accountable for such strikes or have to adhere to the rule of law: the

administration simply wanted people to trust it to act lawfully. To achieve that, the government created loopholes for itself to ensure that no limitations were enforceable. The lack of transparency underpinning this was so flagrant during Obama's presidency that even Koh, a defender of the programme, demurred:

[t]his Administration has not done enough to be transparent about legal standards and the decision making process that it has been applying. The administration must take responsibility for this failure, because its persistent and counterproductive lack of transparency has led to the release of necessary pieces of its public legal defense too little and too late (Koh 2013: 13-14).

Koh understood that discussing drone strikes would help to make them appear more legitimate, but his remark neglects the fact that the administration *calculatingly* kept its programme obscured – for it could not exonerate its practices. Koh fails to comment that the lack of transparency deliberately kept the US's illegal actions and legal rationales from inspection. So when the administration killed “high-value targets” like Mehsud, it would tout its “secret” programme as effective; but when it was time to discuss legal rationales and the deaths of civilians, the programme was classified and the US would neither confirm nor deny its existence.⁶⁹ The administration divulged only information that made drone violence

⁶⁹ As Tom Junod put the contradiction to President Obama directly: ‘[a]s soon as the killing started—and the killing started as soon as you took office—you struggled with how to tell the American people about it. You struggled with its secrecy, and you struggled no less with its popularity. You struggled with how you could reconcile your commitment to transparency with your commitment to carrying out classified lethal operations based on secret kill lists, and you struggled with how to promulgate a narrative that has proven remarkably effective at combating Republican charges that you are “soft on terror.” How do you tell a story that is not meant to be told?’ (Junod 2012: n.p.). An unnamed caller left a message to Junod explaining that the goal of transparency, which President Obama would probably have endorsed, is ‘difficult, if not impossible, to achieve. . . . State secrecy, exists for a reason . . . it’s not to cover up wrongdoing. It’s to protect two essential things: the sources and methods of the intelligence community, and something called the “the requirement of non-acknowledgment”’ (Junod cited in Hajjar 2012b: n.p.).

appear legitimate and effective, which is why it discussed solely “targeted killings”.

The government also utilised secret memos to justify the drone programme. If we are properly to understand the significance of legal memos like the *White Paper*, we need to situate it in the context of previous US legal memos sanctioning illicit state violence. Consider, for instance, the use of memos and euphemisms to sanction torture. The Bush administration created a memo to justify its actions as somehow short of torture and thus as “enhanced interrogation” (Kamiya 2009). Yoo, Bush’s lawyer, legally re-defined torture in a way that allowed the Bush administration to torture prisoners without legal consequences (2002: 1).⁷⁰ The U.N. Convention Against Torture, of which the US is a signatory, defines torture as the infliction of severe pain; Yoo’s legal task was to find legal grounds to define ‘severe’ in such a diminished way so as to allow the Bush administration to torture without fear of punishment (Kamiya 2009).

Crucially, the defence of the drone programme depends on the legitimacy of “targeted killings”. Though “targeted killings” may seem a novel concept, as I demonstrated in the previous section, the CIA was deploying the tactic during the Phoenix programme back in the 1960s. The legal justification for “targeted killings” was formulated in yet another memo, one which came from the Reagan administration. After former President Ford banned assassinations in 1976 in the wake of grim disclosures of CIA lethal excesses, every following administration has returned to the issue: for Ford did not define assassination (Woods 2015a, Spurlock 2015). The Reagan administration, for example, issued four directives related to the assassination ban:

⁷⁰ Despite the fact that Yoo’s memos were later discredited – not only by the Bush administration’s Office of Legal Counsel but also by the legal community – Obama went on to pardon US torturers (Kamiya 2009).

[t]he first, issued in November 1984, was designed to circumvent the assassination ban by preemptively declaring “lawful” any actions that were undertaken “in good faith and as part of an approved operation” (Spurlock 2015: n.p.).

Thereafter the *Memorandum of Law: Executive Order 12333 and Assassination*, coordinated by the Department of Defense, the CIA, the Office of Legal Counsel of the Department of Justice, the National Security Council Legal Adviser, and the Legal Adviser of the Department of State (Hays 1989) stated:

[c]landestine, low visibility or covert use of military force against legitimate targets in time of war, or against similar targets in time of peace where such individuals or groups pose an immediate threat to United States citizens or the national security of the United States, as determined by competent authority, does not constitute assassination or conspiracy to engage in assassination, and would not be prohibited by the proscription in EO 12333 or by international law (Parks 1989: n.p.).

This memo is significant in that it produced a formal *legal* basis for the extraterritorial *pre-emptive* “targeted killing” of designated terrorists (Gunnflo 2016). Parks maintained that, while assassination was immoral and illegal, legal “targeted killings” of terrorists in self-defence was not. Subsequent administrations adopted a similar tactic in this regard: in 1989, President George Bush Senior received a further “clarification” of the no-assassination ruling which concluded:

[a]cting consistent with the Charter of the United Nations, a decision by the President to employ clandestine, low visibility or covert military force would not constitute assassination if US military forces were employed against the combatant forces of another nation, a guerrilla force, or a terrorist or other organization whose action pose a threat to the security of the United States (cited in Woods 2015a: 48).

The reasoning here is that if violence is used against terrorists – whether in times of war or peace – then it does not constitute assassination and is thus consistent with the law, even if it is clandestine or covert. Such reasoning in turn paved the way for the Clinton administration’s debate over “targeted killings” in the case of Osama bin Laden. In 1997, Clinton was afraid that if bin Laden did not survive the hunt, it would be seen as an assassination (Gunneflo 2016); and it was this debate that provided the context for the introduction of the notion of “targeted killing” in US counter-terrorism discourse. Thus, it was during the Clinton administration that drones came to be weaponised (Gunneflo 2016). By 2002, drone technology was seen as ‘the holy grail’ – ‘a tool that could kill bin Laden within minutes of finding him’ (Gunneflo 2016: 165). However, despite Bush Senior’s clarification, the US still opposed assassination, and even opposed Israel’s policy of “targeted killings”. The 9/11 Commission chronicles how then-CIA Director George Tenet insisted he had no authority to “pull the trigger”:

“[t]his was new ground. What is the chain of command? Who takes the shot? Are American leaders comfortable with the CIA doing this, going outside of

normal military command and control?” (quoted in Woods 2015a: 47).

Thus, there was initial trepidation and ambivalence about drones, not only in the CIA, a civilian intelligence agency, but also in the Air Force. As Richard Clarke, Clinton’s Chief Counterterrorism advisor acknowledged, “I think both were just avoiding what they thought would be a potentially controversial weapon and a weapon that they thought would get them into political trouble” (quoted in Woods 2015a: 49).⁷¹ More importantly, intelligence agencies also wanted assurance that they would not be prosecuted (Junod 2012).

President Bush wanted to do away with all this ambivalence. On September 17, 2001, he authorised the CIA to kill any members of al-Qa’ida or other global terrorist networks – including American citizens – who appeared on a “high value target list”: again, via a government memo (Woods 2015a). As Former CIA chief lawyer John Rizzo states, Bush’s authorisation was ‘the most comprehensive, most ambitious, most aggressive, and most risky Finding or MON [Memorandum of Notification] I was ever involved in’ (quoted in Woods 2015a: 49).

The legal defence of targeted killings, like the ethical defence, rests on government memos and on the assertion that the US is at war with terrorist organisations. When Bush branded the effort against al-Qa’ida as war, he effectively established a legal protection for “targeted killings” (Bowden 2013). His legal advisors modelled their rationale on Israel’s position on terrorism. Israel’s position on terrorism sits in a context of its ongoing genocide in Palestine, which is rife with issues of orientalism – showing again that there is a modelling

⁷¹ Israel also went through a similar situation when it came to the legality of “targeted killings”. Bergman quotes IDF Chief of Staff, Shaul Mofaz, who summoned chief of the Military Advocate General’s Corps, Menachem Finkelstein, in order to ask: “[i]n the current legal situation, is it permitted for Israel to openly kill defined individuals who are involved in terrorism? Is it legal or illegal?” The minute the IDF advocate general made these actions kosher, legal, and overt, we opened up an assembly line for assassinations. So now our consciences are cleaner, but a lot more folks ended up dead’ (Bergman 2018: n.p.).

on practices that are orientalist and racist.⁷² Drawing on this position, the US claimed that it had the right to use lethal force against suspected terrorists in “anticipatory” self-defence (Mayer 2009). The government was no longer constrained to give suspected terrorists *due process*. In essence, what the US did was to create through “administrative” memos – a legal form of killing short of assassination. These memos provided the Obama administration a legal architecture that it could draw on, ranging from the concept of “targeted killings” to pre-emptive violence. Clearly, despite drone strikes being pre-emptive and therefore not satisfying the imminence criterion required for self-defence, the administration was nevertheless able to characterise strikes as targeted killings with the help of government memos. It was through memos that it could re-define imminence and make legitimate pre-emptive self-defence. Furthermore, it was through memos that it could claim it was providing due process to give a veneer of legitimacy. Thus, the administration legitimised its strikes by characterising *all* of them as targeted killings, concealing that some strikes were double taps, signature strikes, and assassinations.⁷³ Obama’s *White Paper*, then, validates

the idea that obscure Justice Department Officials can be granted the authority to essentially immunize officials at all levels of the government, from the president down to the lowest field officer, by *issuing a secret memo* (Digby 2009: n.p.).

⁷² Israeli law blatantly discriminates against Palestinians (Human Rights Watch 2010, Al Jazeera News 2018, Berger 2018).

⁷³ Bergman reports that in order for Israel to explain what before had been state secrets it used new language and euphemisms. The deaths of civilians due to assassinations were known as *nezek agavi*, or “accidental damage” and assassination became *sikul memukad* or, “targeted preventive acts” (2018: n.p.).

Legal memos are not judicial decisions; they are determinations made by partisan lawyers, not the courts. These lawyers have the power to manipulate the law in their favour and decide which laws apply and for whom. They are able to immunise themselves from the law by drawing up memos with racialised precedents and rationales to strip black and brown people under drones of their rights. This is why the administration wanted only its own lawyers to determine the law instead of independent judges (Greenwald 2013). Thus, close examination of the programme's legal architecture makes it clear that the drone programme's alleged legality is not a result of the drone programme's adherence to the LOAC, but rather of secret memos. As Jaffer retorts to the rhetoric of a legal programme:

[e]xcept at the highest level of abstraction, the law of the drone campaign had not been enacted by Congress or published in the US Code. No federal agency had issued regulations relating to drone strikes, and no federal court had adjudicated their legality. Obama administration officials insisted that drone strikes were lawful, but the "law" they invoked was their own. It was written by executive branch lawyers behind closed doors, withheld from the public and even from Congress, and shielded from judicial review (Jaffer 2016: n.p.).

It is because the administration could invoke what amounted to its own law through top-secret memos and administration lawyers that it could claim its strikes were lawful.

Government rhetoric asserts that US violence complies with all applicable law and with just war theory. The government insists that drone strikes are defensive, that they are targeted killings, and that they provide due process. But interrogation of the drone programme and of the *White Paper* demonstrates that this is not the case. The only reason the

US can make these assertions is because it can re-define concepts, utilise secrecy, and because it can furnish the grounds for its own violence through secret memos like the *White Paper*. Notice that government officials and academics conveniently defend targeted killings, or drone strikes, without ever discussing them in any kind of context. They do not discuss the intelligence necessary for discriminate strikes, they do not discuss any government policies, neither do they discuss the legal and ethical foundations of the drone programme, they just assert that such strikes are ethical and legal. The problem with decoupling drone strikes from the drone programme is that it keeps us from assessing them accurately and from assessing the programme as a whole. This decoupling makes it harder to recognise that even if drone strikes were precise the programme would nevertheless remain ethically and legally problematic. Crucially, if the focus is solely on whether strikes are (or can be) discriminate and precise, we overlook other legal and ethical issues that arise from the drone programme.

The Drone Programme's Neglected Ethical Issues

The problems that arise from the drone programme are not only legal, but also ethical. Just war theory also requires an attack to be imminent in order for strikes to be considered self-defence. Without fulfilling the imminence criteria, the use of lethal force would be considered murder. Not to mention that the secrecy and impunity of the drone programme also pose moral hazards. There are other reasons for which the drone programme is ethically problematic. One of the main reasons has to do with orientalism because it has a direct influence on the conduct of the programme and it clearly plays a role in further ethical hazards, namely: the fact that people are killed based on faulty intelligence; that operators have financial incentives to find targets; the fact that civilians are disposable and ungrievable, and the ability for drone use to lower the threshold for war.

I have shown that contrary to government claims and academic assumptions, the US drone programme is not predicated on robust intelligence. I will not go into specifics again, but I have shown that given advancements in technology and the US's policy of pre-emption people are now targeted on the basis of probability, not certainty. I have shown that killing people based on data mining and algorithms is not sound since to work effectively they necessitate a defined profile for terrorists which the US does not have. Even more troubling, I have shown that there is a clear racist bias in data collection and algorithms. The NSA admitted that its work is similar to "stop and frisk", which is a policing tactic that disproportionately targets people of colour. Stop and frisk has been ruled as unconstitutional (Rose 2020). There are also other troubling aspects of the drone targeting: the fact that the US targets based on guilt by association and the fact that in some instances it targets cell phones instead of people. Since drone technology allows the US to track cell phones, the US in some cases targets cell phones – expected to be in the hands of potential suspects – instead of actual people (Scahill & 2012). These careless and biased practices will inevitably lead to people being killed unjustly, and in addition, to a never-ending list of people to kill.

Also important in this context are review quotas. A neglected aspect of the drone programme is that private contractors hired to operate drones have an incentive to find targets – they have review quotas. Therefore, they have a financial incentive to make life-or-death decisions about possible targets just to stay employed (Benjamin 2013: 155). They also have a financial incentive to make connections between intelligence where there are none, putting people at risk of erroneous targeting. This presents a moral hazard because contractors are not just waiting for a terrorist suspect to make themselves known, they are actively seeking targets. This problem is also exacerbated by the orientalism at work in targeting and the use of paid spies, which opens the door to more faulty intelligence and the killing of innocent people.

Though I have discussed orientalism in relation to precision, it is also important to discuss it as an ethical problem because of the harm it causes to Middle Eastern people. As I explained previously, orientalism constructs an “us” versus “them” whereby Arabs and Muslims become crude, essentialist caricatures of the Islamic world so as to make them vulnerable to military aggression. Orientalism, which engenders Islamophobia and anti-Muslim sentiment prevents Middle Eastern people from being viewed as humans and therefore leads to a withholding of sympathy. Take for example the way in which the killing and constant surveillance of Middle Eastern men by drone is acceptable to many, while that of US citizens is not. Or the fact that when the CIA bombed an “al-Qa’ida compound” and killed two Western hostages their deaths received a rare personal apology from Obama. He said their names on television and vowed to find out what went wrong with the errant strike because the families of the victims deserved to know what went wrong (Devereaux 2015, Baker 2015, Shane 2015). However, when civilians in the Middle East are killed their deaths are denied or turned into numbers. Unlike the families of Westerners, Obama does not think their loved ones deserve explanations or compensation for their deaths. When the Rehman family travelled to the US from Afghanistan to meet members of Congress over the murder of their family’s matriarch, no members of Congress attended the meeting. The family received no apology for the mistaken killing of their family member (Devereaux 2015, Friedersdorf 2012, Grim & Linkins 2015, Gusterson 2016). As a consequence of the orientalism at work in drone targeting, the lives taken from the drone programme are not grievable, but disposable.

The orientalism that underpins the programme also harms the freedom and well-being of its target. Orientalist attitudes lead to the presumption that all Middle Easterners are hostile, which is why they justify aggressive surveillance and indiscriminate policies. As Afxentiou (2018) demonstrates, racism has tangible effects on Middle Eastern people because

it erodes the principle of discrimination. Since Middle Eastern people are not perceived as civilised or as fully human, armies seek to terrorise and use violence which the laws of regular warfare do not sanction. Furthermore, racist filters lead people to be presumed as terrorists simply due to what they look like and where they live. Since those under drones are not seen as people it becomes easier to kill them and strip them of their rights. It is orientalism that explains the drone programme's functioning as state terrorism.

Finally, another ethical issue that should be taken into consideration is the ability of the drone to lower the threshold for war. Ethicists and academics have rightly voiced their fear that drone strikes could increase the use violence instead of restraining it (Boyle 2015, Kaag & Kreps 2012, Zenko & Kreps 2014). I have shown that both academics and government officials discuss drone strikes in a very seductive manner. Since drone strikes are perceived as less costly in life and treasure, and since they can be used without putting troops in danger, the worry is that they could lower the threshold for war. Where presidents used to have to take into consideration the political ramifications of troop casualties, the drone now allows them to take part in violence without putting troops in harm's way. Since the government does not have to worry about justifying the deaths of US troops it is easier for the president to use force without Congressional approval and to deploy drones to more countries where its interests are at stake. Take for example, the fact that Obama made the controversial decision not to ask for Congressional approval for US military operations in Libya, stating '[w]e're not engaged in sustained fighting. There has been no exchange of fire with hostile forces. We don't have troops on the ground. We don't risk casualties to those troops' (quoted in Wilson 2011: n.p.). Charlie Savage and Mark Landler also reported that:

[t]he White House, pushing hard against criticism in Congress over the deepening air war in Libya, asserted Wednesday that President Obama had the authority to continue the military campaign without Congressional approval because American involvement fell short of *full-blown hostilities*. . . .

The two senior administration lawyers contended that American forces had not been in “hostilities” at least since early April, when NATO took over the responsibility for the no-fly zone and the United States shifted to primarily a supporting role – providing re-fueling and surveillance to allied warplanes, *although remotely piloted drones operated by the United States periodically fire missiles, too*.

They argued that United States forces are at little risk because there are no troops on the ground and Libyan forces are unable to exchange fire with them meaningfully (Savage & Landler 2011: n.p., emphasis added).

This demonstrates that drones make it easier for the president to decide to intervene in proxy wars that are humanitarian disasters and use force in other countries without Congressional approval.⁷⁴ This moral hazard should be taken seriously given that the use of drones has expanded from Iraq and Afghanistan to countries the US is not at war with like Pakistan, Yemen, Syria, Nigeria, Libya, Uganda, the Philippines, and Somalia (Reeves and May 2013,

⁷⁴ In Yemen, the US is involved in a proxy war aiding Saudi Arabia in its fight against the Houthis. Though the US’s General Mattis stated that ‘[o]ur conduct there is to try and keep the human cost of innocents being killed to a minimum’ (quoted in Bruce 2018: n.p.), the Yemen war is a humanitarian crisis (Nikbakht & McKenzie 2018). The military coalition led by Saudi Arabia and the United Arab Emirates has killed thousands of civilians in airstrikes. A report by the United Nations Human Rights Council has revealed that Saudi airstrikes have caused the most civilian casualties by striking residential areas, markets, funerals, weddings, jails, and medical facilities (UN Human Rights Council 2018).

Shamsi 2017).⁷⁵ The expansion of drone use demonstrates that a programme that kills, maims, and terrorises elsewhere is considered unproblematic, thus allowing war to continue where it otherwise would not. Owing to orientalist viewpoints, the US public cares about the lives of US combatants, but not the disposable lives of those under drones.

By taking into account the issues outlined above and interrogating the programme more broadly we are better able to recognise that the programme is not ethically and legally legitimate and that there are numerous negative consequences that academics and government officials overlook by focusing solely on drone strikes. They neglect the fact that the programme has greatly expanded the President's lethal powers; that it has helped entrench the killing of people in secret as well as the use of secret of memos; that it has led to a loosening of the principle of discrimination; that the programme terrorises; and that it has eroded human rights and due process.⁷⁶ Neglected is that the programme has made it easier for the US and other countries to police areas vital to their interests and keep people occupied and contained, without putting troops on the ground. Not to mention that algorithmic war, which the programme has also helped ensconce, is increasing the speed at which communities of colour are being tracked, criminalised, and killed, both abroad and in the US. The drone programme is feeding the larger system of institutional racism and state violence. An honest account of the drone programme would have to take these issues on, as they cannot but arise from the very existence of the drone programme.

⁷⁵ In keeping with the Obama administration, the Trump administration is killing people in multiple countries with strikes taking place 'at a virtually unprecedented rate—in some countries, the number has doubled or tripled in Trump's first year in office' (Shamsi 2017: n.p.).

⁷⁶ The drone programme erodes civil rights not only through violence and murderous policies, but also through the use of surveillance and data collection practices. Surveillance inhibits freedom of assembly and freedom of expression, which is why civilian political and social life has stopped under drone strikes. Surveillance means that everyone gets tracked, targeted, monitored and recorded, which also erodes the expectation of privacy. As I explained, algorithmic war requires a gargantuan amount of data which means that people's purchases, emails, social media, telephone calls, daily routines and actions are all being monitored without their consent and without them having committed any wrongdoing since the US is trying to predict who will become a terrorist.

Conclusion

The use of drones is ethically justified using the framework of just war theory and legally justified using the legal framework of the LOAC. Government speeches claim that drone strikes are morally and legally justified on the basis that they provide the precision with which it is possible to conduct a proportional and discriminate war. Thus, the government claims that strikes are both ethical and legal because they adhere to the concept of discrimination, proportionality, necessity, and humanity. In addition, the government claims that strikes are legally and ethically justifiable because they are targeted killings in self-defence. In this chapter I demonstrated that the claims that drone strikes are legally and ethically justifiable are empirically false. I did this by showing, first, that the drone programme is not precise and is instead part of an imperial project of state terrorism. Second, through an interrogation of the *White Paper*, I demonstrated that the US re-defined principles in order to be able to claim that the programme constituted self-defence and provided due process.

By taking into consideration the conduct of the programme, its similarities to colonial air policing, and the *White Paper*, this chapter demonstrated why it is necessary to ethically and legally assess the drone programme as opposed to solely drone strikes. Additionally, by drawing on previous arguments made in this thesis, this chapter offered an analysis of the *White Paper* that demonstrated some of its orientalist registers in order to reveal that at its foundations the drone programme is racist, and is in turn inherently imprecise, illegal, and unethical. In doing so, this section established the ethical issues and negative consequences that are missed when focus is restricted to drone strikes alone. By considering the Obama administration's *White Paper Memo*, the drone's surveillance, and the conduct of the programme, it becomes clear that even if the drone's missiles came to be perfectly accurate

and even if strikes were pre-emptive targeted killings, the drone programme would nevertheless remain ethically and legally illegitimate.

Dissertation Conclusion

In this dissertation I have analysed the precision rhetoric of the Obama administration's legitimating discourse and demonstrated that it is central to the government's discursive defence of the drone programme. By interrogating the arguments, made both by the Obama administration and its academic supporters, according to which the use of drones is precise, ethically justifiable and legally sound, I have been able to show that their precision claims are both empirically unsound and normatively deceitful. They should, then, be seen for what they are: tools of propaganda that conceal the injustice and cruelty inherent in the drone programme's practices. My analyses demonstrate that the use of civilisational tropes continues to be propaganda used to conceal human rights abuses, racism, and terroristic practices. Despite the attempt made by the government and its academic backers to lead us to believe that drone technology allows for more ethical and lawful violence, the drone is merely a new face for the same old imperial counterinsurgency practices.

Through this dissertation, it has become clear that the precision rhetoric that legitimises drone use can only look superficially persuasive on the basis that it focuses on the drone technology itself and "targeted killings". Though the precision rhetoric highlights the drone, its surveillance, and its precision munitions, I have shown that these capabilities do not by themselves ensure precision strikes. Furthermore, I have shown that not all strikes can be characterised as targeted killings. Targeting with precision not only means striking the desired target site, it also means striking a legitimate target. Thus, precision targeting requires both precision munitions and accurate intelligence. Intelligence, as I have shown in this dissertation, comes from not only the drone's surveillance and its algorithms, but also from human beings. Although the drone takes centre stage, this dissertation has shown that the drone programme necessitates a large human component and that this component profoundly

affects the precision of the drone programme through the setting of policies and through intelligence collection and analysis.

By taking a broader approach with respect to the precision of the drone programme this dissertation revealed that even if the drone could deliver munitions precisely, the drone programme would still be imprecise. This is because of US intelligence and targeting practices, government policies, and the orientalism that pervades the entire programme. My analysis showed that sources of intelligence are not as objective or as reliable as the government makes them out to be. I demonstrated that intelligence that comes from algorithms fares no better. Algorithmic intelligence kills based on probability, guilt by association, and what is more, to work effectively it necessitates a well-defined terrorist profile that the US does not have. I demonstrated as well, that it is not just the policies of double taps and signature strikes that lead to indiscriminate strikes, but also the government's policies of pre-emptive and offensive violence. Last but not least, I demonstrated that the programme would still not target precisely due to the orientalism that saturates the programme. Crucially, due to the orientalism at work in drone targeting, surveillance technology comes to function not as a panacea for indiscriminate strikes, but as a source for them. The racialised knowledge of who constitutes a threat is imparted to not only human analysts and operators, but also to the drone's systems. Contrary to government officials, neither surveillance nor algorithms escape the racial bias of operators, which has tangible effects on precision. Racism lowers the threshold for violence since people are put to death based on assumptions about what constitutes a threat. It also causes entire populations under surveillance to be seen as disposable, or dangerous life, leading drone targeting to function as state terrorism.

In showing that the drone programme is imprecise, racist, and constitutes imperialism, this dissertation demonstrated that administration claims of principled violence break down.

In imperial fashion the Obama administration rendered its programme legal and ethical not by actually adhering to the frameworks of just war theory or the LOAC, but by utilising secrecy, altering legal and ethical principles, and by drawing on racist legal precedents and rationales. I demonstrated that at its core US drone violence is unjust because it is predicated on unaccountability, secrecy, and pre-emptive violence. What is more, it is not just the government's racialised violence that is unethical, but also its manipulation of the law and its deceit of the public to allow for its murderous violence. Thus, even if drone munitions were able to strike "surgically", the programme would remain legally and ethically illegitimate.

My interrogation of the programme has shown that the claims of both the government and academics simply fails to accurately characterise drone use. The civilisational language utilised by academics and government officials which frames drone violence as "precise", "discriminate", "just", and "humane" continues to be propaganda. The language which characterises killing by drone as more "civilised" and "level-headed" conceals that the drone programme is racist and constitutes imperial policing. This language, which is intended to give the impression that violence only targets the deserving and spares civilians, erases the true impact of drone warfare on civilians. In utilising this language and ignoring the wider programme, defences of drones diminish – sometimes intentionally – the violence and negative consequences of the drone programme. By refusing the erasure of the violence of the drone programme, this dissertation has shown not only that drones strikes are not new, but also that their justification reinforces and reproduces long-standing orientalist tropes. Said's orientalism is particularly helpful in this respect. Recognising government and proponent discourses as civilisational and as orientalist helps to reveal that the people being targeted by drones as well as the geographical places the drone is sent are still represented as they were centuries ago in the colonial era. Orientalism helps to reveal the racism and ideological binaries which underpin US justifications of violence. Science and technology –

used as another justification for violence – still has not purged the racism which justifies state violence and continues to be another tool used, along with legal and ethical frameworks, against people of colour. We need to understand this in order to contest the narratives of humane and objective technologically advanced violence.

Let us be honest in that we are unable to discuss the political facets and moral hazards of drone use because the discourses and legal and ethical frameworks – co-opted by the government and their academic supporters – force us to view the drone programme through the view of the US government and its apologists. We do not get to evaluate the use of drones from the perspectives of those that live under drones, that are hunted by drones, or that are put on the “Kill List”; their perspectives are marginalised. We predominantly hear from those who want us to acquiesce to the programme and sympathise with the needs of the US government. Furthermore, from the discourses and proponent arguments it is obvious that neither the government nor supporters want us to feel any ambivalence. They would rather us not think of the effects our violence has on some of the most vulnerable people on earth; people that are already dealing with violence, poverty, famine, and a lack of security.

We still have a lot to learn about the programme’s intelligence collection methods, its criteria for putting people on the “Kill List”, and how algorithmic warfare functions. We are barely at the tip of the iceberg when it comes to understanding the ethical ramifications and consequences of the drone programme, especially now that drone strikes have increased under the current administration. But what we do know is that perfect surveillance, full transparency, and “surgical missiles” will not lead to an ethical drone programme. More advanced weaponry cannot render ethical a programme that at its foundations is racist, unaccountable, and indiscriminate. Given what I have shown in this dissertation we should not be seeking ways to make the programme more transparent, or more precise, we should be seeking ways to end it.

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