

2016

Armed Drones: An Age Old Problem Exacerbated by New Technology

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Recommended Citation

Frazier, Grant H., "Armed Drones: An Age Old Problem Exacerbated by New Technology" (2016). *Pomona Senior Theses*. 156.
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**Armed Drones: An Age Old Problem Exacerbated by New
Technology**



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Dedication:

I want to take this opportunity to thank everyone who has made my time at Pomona College so memorable and who have contributed to such an amazing, life-altering experience over the past 4 years. There are no words capable of accurately describing or portraying the impact that the last 4 years has had on my growth, not only as a student, but also as an athlete, friend, significant other, and more generally as a person ready and willing to contribute positively to society. This is not to say that the past 4 years have not been without their trials or tribulations. From the first day of orientation Pomona College has challenged me - in many ways by design and in other ways as a result of the very diverse, yet overwhelmingly liberal student body and administration.

Living the first 19 years of my life in Newport Beach, California was a dream come true for me. A beautiful, up-scale, conservative community on the beach with the best weather anyone could ask for. While I loved my childhood and high-school years, I did not come under regular pressure to challenge, be critical of, or re-evaluate my pre-existing views and beliefs. I was surrounded by people who for the most part had very similar beliefs regarding current issues of consequence, and as a result tended to reinforce my existing beliefs and views.

However, this changed as soon as I got to Pomona College. The script was flipped. Pomona, as most colleges are these days, is a bastion of liberal-leaning ideals and politics. I found myself first semester of college in my ID1 class, The Theory of Money with Professor Seery, and out of 15 students I was the only conservative. We tackled questions ranging from the implications of social stratification in major sporting stadiums with skyboxes separating the rich and elite from the “regular people” below, to whether toll roads and their ability to allow

paying customers to get to their destination quicker and gain an “unfair advantage,” was in fact “unfair.” Time and time again I would fall on one side of the isle and the remaining 14 students would fall on the other side. My first reaction to this was a feeling of frustration and an initial temptation to stop speaking up in class. To me, the struggle to convince the people on the other side of the isle to see my point of view seemed a hopeless endeavor.

However, I soon realized I was looking at the glass half empty. Regardless of whether or not I was successful in convincing those people with opposing views to switch to the way I saw things, I could nonetheless use the situation to my advantage. As a conservative at an overwhelmingly liberal institution, I was a political and ideological minority. Being in such a situation allowed me a forum to voice my opinions and receive a plethora of intelligent and well thought out criticisms. These criticisms, and the diverse backgrounds of the people who provided them, enabled me to look at issues from other points of view that I had not previously considered. The aforementioned situation provided me with a vehicle for altering, strengthening, and in some cases, changing my original opinions. This has typified my experience at Pomona College, in and outside of the classroom. I am grateful for the education Pomona College has provided me, asking that I question my views of the world, push my limits, and find my identity as a leader.

To my Parents (Mark and Geri):

Nothing that I say here or any amount of words will ever be able to come close to properly recognizing the sacrifices you have made, or repaying you for all that you have done for me. There are of course the material things you have done – 1) providing me with an unparalleled education through The Pegasus School, Newport Harbor High School, and paying full tuition 4 years at Pomona College, 2) always making sure I have the right gear and the

means to play all the sports and participate in all the activities I want to be involved in, 3) providing for me in everyway from housing in the most beautiful city in the country to transportation, clothes, food (I know this is a BIG one), etc.

However, what is more important to me, what has been more impactful on my life, is the way in which you both support me, as well as Nick and Ben. You both are extremely hardworking and successful professionals, yet you always make sure to prioritize family. You always put the 3 of us boys first. Athletic events, family gatherings, school functions, or major life events are rarely, if ever, missed. Family is the first priority in each of your lives. There is no better example of this than the unparalleled support you have provided to the athletic teams I have participate on during the past 4 years. Not only did you travel across the country (literally) for both football and rugby games, including the likes of Pennsylvania, Massachusetts, Tennessee, Oregon, Nevada, and multiple trips up to the Bay Area, in addition to ~100 games played across southern California, but you took up significant leadership roles in both programs, organizing parent giving and involvement, food for players, and improved conditions through work with various 5C school administrations. It is truly astounding that you two have been able to travel to see me play so many games, and I am still dumbfounded by how the two of you find time in your schedules and muster up the energy to make these trips, let alone contribute in the other aforementioned ways. That is the type of people you are though, you go above and beyond what is required of you for those you care about. I have heard many peers say, “I don’t want to become like my parents.” I for one strive to become like you. You are both the type of person that I strive to emulate in life, true role models.

You both emphasize taking advantage of great opportunities when they present themselves. I recognized Pomona College as a great opportunity and I have done my best to take

full advantage of this opportunity during the last 4 years. I have taken classes that interest and challenge me, not simply ones that I know will pad my GPA and make my semester easier. I have not taken any classes Pass/No Credit, but rather challenged myself to get the best grade possible in every course and take responsibility for my grades. I have done my best to use all the opportunities Pomona College has presented me to grow as a student, athlete, leader, and most importantly as a person.

I feel as though I have taken advantage of the incredible gift I have been provided by both of you, and I hope you feel the same way. For, the only true way I think I can show the depth of my appreciation for the sacrifices you have made is by making decisions and by living a life that you will be proud of. I hope you know that I realize how fortunate and blessed I am to have you in my life. You are not only my parents, but also my best friends. The special relationship we have with each other is something I cherish everyday of my life. I hope I have made you proud and that I continue to make you proud by living a life of integrity, loyalty to those I care about, passion for those I love, hard work in all my pursuits, and unwavering dedication to the things, and most importantly, to the people whom I love. I love you mom and dad and will be forever grateful for all that you have done for me.

To my Brothers (Nick and Ben):

While Pomona College has definitely challenged me to become a better student and a deeper thinker, I believe it is my drive in life that has enabled me to take advantage of the opportunities that Pomona presented me. This is of course a direct reflection of what dad refers to as being a “grinder,” meaning that regardless of lack of natural talent or inherent advantages, if you work hard enough and “grind it out” you can be successful. Hard work always pays off. Dad not only preaches this idea of being a “grinder,” but more importantly, he lives it. Mom

does as well not only with her 2nd career, but also with regard to the effort she put in raising us. Mom and dad are the hardest working people I know, and I am sure you both feel the same way. On the list of hardest working people I know, not far behind mom and dad are you Nick and Ben.

You two have also played a significant role in hammering home the importance of being a “grinder.” As the youngest of three brothers, I always looked up to both of you. You both have always been successful in school, sports, relationships, etc. I have always wanted the same type of success and while mom and dad never placed expectations on me to be like either one of you, my competitive spirit drove me to want to be like both of you, to be as successful as the two of you have been. You both set a standard of excellence that was my goal, something I could aim for and measure myself against. While overtime I have realized that measuring myself against you is not as important as doing my personal best, I nonetheless have retained the same competitive spirit and work ethic. It is these two things above all else, which have allowed me to thrive in my various pursuits. For fostering my competitive spirit and work ethic and supporting me every stop along the way, I am eternally grateful. You are two of the best brothers I could ever ask for, and regardless of the geographical distance that separates us, you remain my best friends and I hope will continue to remain my best friends throughout life.

To my girlfriend Margaux:

I want to thank my girlfriend and best friend Margaux Arntson (CMC Class of 2018) for supporting me this year, which judging by the amount of work I have had in school and outside of school, should have been my most stressful year to date, but with her love and support has been my favorite and most successful year of college. I have had a number of very wise men in my life that I look up to who have emphasized that your significant other should not only be your lover, but your best friend. In Margaux I have found such an amazing young woman. She

challenges and inspires me everyday to be a better person. Her support in all my pursuits, whether in the classroom or on the playing field, has not only made the aforementioned pursuits less stressful, but have made my successes in these pursuits more enjoyable.

1. Introduction:

The purpose of this thesis is to examine the history behind and the use of militarized drones in modern day conflicts, and to conclude whether the use of these machines, with special attention to the United States, is legal, ethical, and morally defensible. In achieving the aforementioned goals, shortcomings of current policy surrounding drone warfare will be highlighted, acting as the catalyst for a proposal for changes to be made to better suit legal, ethical, and moral considerations. The proposal of a policy to help us work with armed drones is due to the fact that this thesis acknowledges that armed drones, like guns, nuclear weapons, or any type of military technology, is here to stay and that once we acknowledge that fact, the most important step is to make sure we have the right tools to judge the conduct of conflict carried out using armed drones or other weapons that raise similar issues and questions.¹

This thesis will provide an extensive history of military technology development resulting in armed drones and other similar weapons. Next, this thesis will set out to highlight the political reasons why armed drones have become the tool and weapon of choice in United States foreign conflicts, not only for the United States military, but also for other government organizations, most notably the Central Intelligence Agency (CIA). Examination of why the United States military and the CIA have reconstructed their operating strategies around limited Joint Special Operations Command (JSOC) missions and drone use will bring us to the question of whether drone strikes are preferable to other means of targeted killing, and if so, why. I will argue that

¹ Refer to “but given the likely proliferation of drones of all sorts, there doesn’t seem any prospect of an enforceable ban on their military use.” Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Berkley Center.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (34:38-34:44)

targeted killings and assassinations are not new concepts or practices, regardless of if they are aimed at taking out a military or political target. Rather, these practices go back to Greek and Roman antiquity. However, simply arguing that something has persisted through time is not reason enough to justify a given action. As such, I will make a case that targeted killing and assassinations are not only more efficient than the alternative of indiscriminate killing, but are also ethically and morally superior to indiscriminate killing. Making such a case makes us ask an important question: If these practices have persisted for thousands of years and are seemingly more effective, ethical, and morally good than traditional alternatives of achieving the same objectives, then why is there so much criticism focused on United States drone policy?

This question will bring us to the question of whether drone strikes are legal with regard to United States domestic law and applicable international law. The legality, or lack thereof, of drone strikes will lead into a debate over traditional Just War Theory and whether the ethical framework that it includes is in any way applicable to drone warfare. After proving that traditional Just War Theory is not applicable to drone warfare, I will propose policies of my own which the United States might be able to incorporate into its' current drone policy (or lack thereof) going forward to enable greater oversight, transparency, and compliance with human rights initiatives and international law while still maintaining effective operational capabilities with regard to the United States' war on terror.

2. Military Technology Development Leading to Drones:

Looking at the history of weapons development all the way back to the sword is integral to understanding the development of drones, more specifically armed drones. For as famed 18th and 19th century Prussian general and renowned military theorist Carl Von Clausewitz posited, “[v]iolence arms itself with the inventions of Art and Science in order to contend against

violence.”² While armed drones are a relatively new technology, the questions they raise have been around for centuries with various weapon systems. When new weapons are developed that give one side in a conflict an overwhelmingly dominant position or capability, similar questions about asymmetry of power are raised. An early example of this is during the Bronze Age when the sword was the dominant weapon used in war.³ When the bow and arrow became a more regularly employed and effective weapon, this brought about a new problem. Bow and arrows were viewed as cowardly as they rejected traditional notions of battle with two men engaging in one-on-one close combat fighting.⁴ Rather, archers were able to increase the distance with which two people, or two armies carried out a battle. In theory, and in most cases in actuality as well, the ability to strike your opponent at increasingly long distances means increased safety and probability of defeating your enemy. Such is the case with archers.

Similar problems persisted through time but became exacerbated with the introduction of gunpowder weapons. As Carl Von Clausewitz noted “[t]he invention of gunpowder, the constant progress of improvement in the construction of firearms are sufficient proofs that the tendency to destroy the adversary which lies at the bottom of the conception of war, is in no way changed or modified through the progress of civilization.”⁵ The point Von Clausewitz is making is that with technological innovation in the military space, such advancements are accompanied by an asymmetry of power. The nation or state with the advanced military technology is able to carry

² Gerard Chaliand and Carl Von Clausewitz, *The Art of War in World History* (Los Angeles: University of California Press, 1994), 672.

³ Kristian Kristiansen, “*The Tale of the Sword- Swords and Swordfighters in Bronze Age Europe*,” *Oxford Journal of Archaeology* 21, no 4 (2002)

⁴ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 191-193.

⁵ Gerard Chaliand and Carl Von Clausewitz, *The Art of War in World History* (Los Angeles: University of California Press, 1994), 673.

out war in a way that may seem unfair to the opposing side. In reality, this asymmetry of power is something inherent in technological progress. Therefore, militarized drones and other weapons such as cruise missiles are simply an extension of this age-old situation accompanying military technology development. Despite the existence of asymmetry of power in military conflict throughout history, recent technology, notably armed drones, have become so advanced and so effective at killing, that critics have argued the resulting asymmetry of power has become too great to enable any conflict including the aforementioned weapons to meet existing moral and ethical standards meant to apply to war and armed conflict.

While it may seem monotonous to point out the progression from swords to bows and arrows to muskets to artillery to airplanes and eventually to long-range missiles and drones, all these military advancements have been made with the same goals in mind. As the common goal of militaries is to try to gain an advantage over their adversary by increasing the striking distance between them and their opponent, one can see how we made our way from swords to long-range missiles and drones. All this technological advancement has been about increasing our chance of success by reducing our risk.

3. Why Drones have Become Dominant Form of U.S. Military Involvement:

Despite advancement of military technology leading to the development of weapons such as armed drones, there still exists the question of why the United States has adopted drones as such a major and integral part of their strategies against terrorist groups in Afghanistan, Libya, Pakistan, Somalia and Yemen, as well as against Islamic State jihadists in Iraq and Syria. In order to answer the above question, we need to examine and analyze excerpts from politicians and military leaders, changes in military tactics, government reports on foreign engagements,

and expert analysis of the changing ways in which the United States has conducted war over the last 40 years. The United States' reorientation towards utilizing drones as a major part of our military involvement abroad over the last decade has been driven by three factors: 1) the desire to save American lives 2) cost effectiveness and 3) tactical military considerations (in that drones can observe a target and linger for much longer periods of time than traditional aircraft).⁶ The reasoning is fairly simple and straight forward. Politicians answer to the public. The public does not like to support wars that are costly, both with regard to the taxpayer, and more importantly with regard to the lives of United States soldiers. In addition, ever-increasing media coverage in warzones has lead to a greater impact of wartime casualties on citizens back home.⁷ United States politicians always want to find ways to fight wars that are as least costly as possible.

While casualties were always something that needed to be taken into account when judging the state of public opinion, casualty numbers really became a point of serious public contention for the United States public, and therefore for United States politicians, during the Vietnam War.⁸ High casualty rates and increasing front-line media coverage of the travesties of war changed the perception of war for the American public and changed what United States citizens viewed as "acceptable" casualty rates for United States soldiers.⁹ The disaster of public sentiment that resulted from the Vietnam War lead to a post-war hangover in terms of military

⁶ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014.

⁷ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. Chapter 3.

⁸ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 1-14

⁹ Susan Brewer Why America Fights and Morley Safer interview

tactics and strategy, where United States presidents and generals were afraid of ever taking significant losses again in a armed conflict due to fears about losing public support.¹⁰

To avoid military casualties associated with traditional ways of carrying out war, military leaders started to look for alternative weapons and strategies. The objective of fewer casualties at all costs governed United States policy during numerous small-scale military operations from 1975-1990 including those in Afghanistan, Guatemala, Mozambique, El Salvador, Angola, and Nicaragua.¹¹ Rather than having a significant presence on the ground, the United States turned to other means of fighting, such as supplying money, arms, and training to militia groups that either aligned with the United States' foreign policy goals.¹² The aforementioned proxy wars started the United States military's move towards lower-impact, small-scale conflicts. The United States only broke from this mold of minimalistic involvement following the break up of the Soviet Union after its' invasion of Afghanistan

When the United States initiated the First Gulf War in response to Saddam Hussein's military invasion and annexation of Kuwait, it signaled the first major ground offensive for the United States since the end of the Vietnam War. During this campaign, the United States went away from limited involvement and transitioned back to its pre-Vietnam traditional ways of carrying out war. The reason for this was three-fold. First and foremost was that Iraq had a

¹⁰ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 1-14 and Chapter 3

¹¹ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 3-14 and Chapter 3

¹² Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 3-14 and Chapter 3

military that used conventional styles of warfare, meaning that Iraq would fight in the way the United States preferred.¹³ Iraq had a mechanized army and sought to carry out combat out in the open, rather than hiding among the civilian population like the Vietcong did during Vietnam. Second was the United States' belief that its' military technology had developed so much and was so dominant that the United States would be able to fight a decisive, large-scale military campaign with relatively little cost in regard to US lives. Third, the United States was no longer opposed directly or indirectly by a major power, such as with the USSR or China in Vietnam. Without the threat of a major power to rival the United States, the United States felt comfortable turning back to significant military involvement.¹⁴

The US military's confidence in its' technology and tactical superiority turned out to be well-founded, as United States forces achieved a quick, decisive victory over Saddam Hussein's military. Consequently, the United States public did not meet the First Gulf War with significant backlash, due to the fact that only 268 United States soldiers died during the conflict compared to estimates of between 22,000-100,000 Iraqi combat deaths.¹⁵

However, the same cannot be said for Operation Iraqi Freedom. While the beginning of Operation Iraqi Freedom mirrored the First Gulf War, characterized by an initial swift and decisive air and ground campaign, the fighting turned from conventional warfare to guerilla warfare when Saddam Hussein was toppled and the preexisting government splintered.

¹³ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. Chapter 3.

¹⁴ Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. Chapter 3.

¹⁵ "The Gulf War: How Many Iraqis Died?," *PBS-Frontline*, accessed on March 1, 2016. <http://www.pbs.org/wgbh/pages/frontline/gulf/appendix/death.html>

Extremist groups and insurgents all fought against US-lead coalition forces in a bid for power. While Iraqi forces and related militant groups suffered by far the most casualties of the conflict with 34,144-37,344 dead during the invasion and subsequent occupation period, the United States suffered much greater losses than during the First Gulf War, with 4,491 dead.¹⁶ The great majority of these losses came during the occupation that followed the initial ground campaign.

As United States casualties started to mount, public opinion weakened, and the military and executive high command started to look once again for a way to meet their goals in a way that was acceptable and palatable to the United States public. This new strategy would become even more important given the fact that the United States began their military withdrawal from Iraq in 2011.¹⁷ Drones and JSOC special operations fit the bill due to the fact that both options emphasized relatively inexpensive, precise, small-scale, low risk involvement with a high probability of success for the United States and a decreased likelihood and frequency of unintended civilian casualties and collateral damage to non-combatants on the other end of US actions.¹⁸

In addition to tactical considerations, drones and JSOC special operations fit the Obama administration's goals well with regard to wanting to shutdown the Guantanamo Bay military base, which houses many non-state-based terrorist militants captured during the United States' War on Terror. The United States' public has been very hesitant about allowing these terrorist

¹⁶ n.p. "U.S. Casualties in Iraq." *Globalsecurity.org*. Globalsecurity.org, n.d. Web. 13 April 2016. http://www.globalsecurity.org/military/ops/iraq_casualties.htm

¹⁷ Brian Montopoli, "Obama Announces End of Iraq War, Troops to Return Home by Year End," *CBS News*, CBS News. 21 October 2011. Web. 10 March 2016. <http://www.cbsnews.com/news/obama-announces-end-of-iraq-war-troops-to-return-home-by-year-end/>

¹⁸ Cohn, Marjorie. *Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues*. Northampton, Massachusetts: Olive Branch Press, 2015. 14-18

militants, or those suspected of being terrorist militants, to be transported to domestic United States prisons. However, shutting down Guantanamo Bay raises not only the question of what to do with current Guantanamo Bay prisoners, but also the question of what to do with future terrorist militants that are captured. Drones eliminate one of these two problems, quite literally, with drones. The United States has shifted away from making a concerted effort to try to capture terrorist leaders in high-risk operations, to targeting the aforementioned militants with drone strikes. While killing terrorist leaders with drones instead of capturing the militants doesn't allow the United States to interrogate the terrorists, it does provide the US a more cost-effective and low-risk way to combat terrorist leadership.

It is important to note that the targeting of terrorist leadership is not the only reason why drone strikes are carried out. Rather, drone strikes are divided up into two categories, "signature strikes" and "personality strikes". A signature strike is a drone strike on "suspected terrorists or militants whose identities are not know, but whose 'pattern of life activity' would seem to indicate that they are involved in some militant/terrorist activity" whereas a personality strike is when known terrorists or militants with connections to terrorist groups are targeted.¹⁹ The distinction between the two types of strikes is important, as one is discriminate killing, while the other resides in a moral gray area between discriminate killing and indiscriminate killing. This will be critical when we examine discriminate and indiscriminate killing in chapter 5, **Targeted Killing and Assassinations in Modern Warfare.**

¹⁹ Brian Glyn Williams, "Inside the Murky World of 'Signature Strikes' and the Killing of Americans with Drones," *The Huffington Post*, last updated July 31, 2013, http://www.huffingtonpost.com/brian-glyn-williams/nside-the-murky-world-of-b_3367780.html

4. Targeted Killings and Assassinations as an Old Practice:

Some arguments against United States' drone strikes in the Middle East have centered on the fact that drone strikes are targeted killings or assassinations, rather than "traditional warfare." Traditional warfare, the notion and image of soldiers from two sides engaging in a battle that they both know they are fighting in, is what the aforementioned critics are referring to.²⁰ This is supposedly the way that "civilized" states and nations have carried out conflicts against one another for thousands of years. While there is a precedent for the aforementioned way of fighting, especially in European and Western history, it is not such an overwhelmingly dominant way of carrying out war that we should view any alternative such as targeted killing or assassination, as unacceptable or so out of place as to completely condemn it without proper justification.

In addition, while there are negative connotations associated with targeted killing and assassinations, these are not new concepts or practices unique to the technology of militarized drones. These practices, whether military or politically related, have been around for centuries.²¹ We can go back as far as Ancient Greece and Rome. In these societies, the most common form of targeted killing or assassination is that of tyrannicide, the killing or assassination of a tyrant or unjust ruler. Both Aristotle and Plato talk about tyrannicide being justifiable in certain situations. Plato's story of Gyges in the *Republic*, addresses tyrannicide, portraying the story of

²⁰ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.
<https://www.youtube.com/watch?v=Pc2kOMJQJoQ>

²¹ Refer to "targeted killing isn't new. Assassination is an ancient practice." (5:25-5:35) Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.
<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> and Kenneth R. Himes, "Drones and the Ethics of Targeted Killing." 21

Gyges, a shepherd that finds a ring that gives him the power of becoming invisible. Using the technological advantage of the ring, Gyges spies on what others say about him, including the acting king. Eventually Gyges seduce the queen, and uses the ring to kill the acting king.²²

In Book Five of Aristotle's *Politics*, he includes a sort of "case study" that discusses "a variety of example of, and an array of motives for, tyrannicide in Ancient Greece."²³ Similar defenses of tyrannicide can be seen by prominent thinkers in Roman society such as Cicero, the supposed great defender of the Republic who Kenneth Himes notes "may have been the first Roman to defend tyrannicide, even by means of assassination... Cicero is clear that he viewed Caesar's death as tyrannicide and he repeats that assertion several places in the text."²⁴ Cicero, like his Greek contemporaries, placed a great emphasis on only carrying out targeted killings with the intention of benefitting the whole of society. In both the cases of the Greeks and Romans:

[t]argeted killing in the form of assassination of a tyrant was sometimes permissible. Circumstances that might affect support for such killing included who committed the act...the motive behind the act...and the nature of the tyrant.²⁵

The same practices of targeted killing and assassinations are not only present in modern drone warfare, but also in a number of other, more regularly used forms of modern warfare such as sniping, bombing runs using piloted aircraft, and cruise missiles fired from naval ships offshore.

The fact that targeted killings and assassinations are carried out by other instruments of

²² Kaag, John, and Sarah Kreps. *Drone Warfare*. Cambridge: Polity, 2014. Print. 110

²³ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 22.

²⁴ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 23.

²⁵ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 22-25.

war, yet do not receive the same criticism as when these targeted killings are carried out by militarized drones, begs us to ask the question why the significant difference in reaction, and is this difference justified? In order to answer this, we must first look at the role other forms of targeted killing and assassinations have played in recent warfare and the changes in condemnation for these practices that have accompanied said practices throughout the modern era.

For the purpose of this thesis, we will start with the proliferation of the gunpowder armies in the western world starting in the 17th century. In order to see an early and applicable example, we need only look at the United State's founding, to the American Revolutionary War. The Continental Army and related forces, especially militias filled with men from the backwoods of the colonies, were known for fighting a guerilla style of warfare, harassing British forces with precise, concentrated fire from points of relative safety, rather than engaging in head up confrontations in open fields.²⁶ General David Morgan was a pioneer in these guerilla and sniping tactics, and was considered one of the most gifted military tacticians in the Continental Army.²⁷ While General Morgan effectively used skilled rifleman to carry out sniping missions numerous times during the first 2 years of the war, the aforementioned tactics became famous during the Battle of Bemis Heights.²⁸ During this battle, the Continental Army encountered the battle-hardened British General Simon Fraser. General Morgan ordered Timothy Murphy, one

²⁶ Refer to pg. 18 in Gregory Mast, Hans Halberstadt, *To Be a Military Sniper*. Minneapolis: Zenith Press, December 15, 2007. http://www.amazon.com/To-Military-Sniper-Gregory-Mast/dp/0760330026#reader_0760330026

²⁷ Refer to pg. 18 in Gregory Mast, Hans Halberstadt, *To Be a Military Sniper*. Minneapolis: Zenith Press, December 15, 2007. http://www.amazon.com/To-Military-Sniper-Gregory-Mast/dp/0760330026#reader_0760330026

²⁸ Refer to pg. 18 in Gregory Mast, Hans Halberstadt, *To Be a Military Sniper*. Minneapolis: Zenith Press, December 15, 2007. http://www.amazon.com/To-Military-Sniper-Gregory-Mast/dp/0760330026#reader_0760330026

of his marksmen from the 11th Virginia Regiment, to specifically target General Fraser, who was rallying British troops to maintain their line, and therefore their tactical positions. Murphy's shot was true and knocked Fraser out of the battle, causing British ranks to waver and break, eventually sealing an American victory.²⁹ Such tactics highlighted two things, how targeting a leader could bring about or speed up an opponent's demise, and the disgust for such tactics portrayed by the side that was encountering this new form of targeted killing.

As is portrayed in Gregory Mast and Hans Halberstadt's book To Be a Military Sniper, "[g]entleman simply did not shoot other gentlemen and the officers were drawn from the gentlemen class."³⁰ It was not so much a British unwillingness to carry out targeted killing, but rather reluctance in targeting gentlemen, which for the British meant members of the aristocracy who would be in positions of leadership in the military. This British unwillingness to breach this unwritten moral code, or code of conduct, could have cost them the war. For as the story of the "Shot Not Taken" demonstrates, British Major Patrick Ferguson of the 70th Regiment of Foot, and inventor of the Ferguson breech loading rifle, took aim at a high ranking Continental Army officer during the Battle of Brandywine, believed to be General George Washington, but did not fire because he "did not feel that it was right to shoot an officer in the back when he was conducting himself in such a calm manner under fire."³¹ While the respect Major Patrick Ferguson showed for this high ranking Continental Army officer is commendable, it is also a

²⁹ Refer to pg. 18 in Gregory Mast, Hans Halberstadt, *To Be a Military Sniper*. Minneapolis: Zenith Press, December 15, 2007. http://www.amazon.com/To-Military-Sniper-Gregory-Mast/dp/0760330026#reader_0760330026

³⁰ Refer to pg. 18-19 in Gregory Mast, Hans Halberstadt, *To Be a Military Sniper*. Minneapolis: Zenith Press, December 15, 2007. http://www.amazon.com/To-Military-Sniper-Gregory-Mast/dp/0760330026#reader_0760330026

³¹ Refer to pg. 19 in Gregory Mast, Hans Halberstadt, *To Be a Military Sniper*. Minneapolis: Zenith Press, December 15, 2007. http://www.amazon.com/To-Military-Sniper-Gregory-Mast/dp/0760330026#reader_0760330026

cautionary tale about how the sides in a conflict having different moral and ethical measuring sticks can influence the long-term outcome of the conflict. Major Ferguson's reluctance to shoot what is believed to be General George Washington not only had an impact on the battle of Brandywine (although the British eventually won the battle), but also could have cost the British the Revolutionary War by not knocking out General George Washington when they had the chance.

5. Targeted Killing and Assassinations in Modern Warfare:

However, an argument that simply posits targeted killing and assassination have been around for centuries and therefore is or should be acceptable is not enough. Neither is the argument that targeted killings and assassinations can bring about the end of a battle, campaign, conflict, or war more quickly or effectively and therefore should always be used as the preferred method of carrying out war. Rather, we must look critically at the moral and ethical implications for militarized drone warfare versus other traditional means of carrying out war. Is indiscriminate or discriminate killing preferred in conflict?

I believe most people would agree discriminate killing is better when forced to choose between the two. Traditional ways of carrying out war with large masses of infantry supported by cavalry (whether horse or armored) and artillery (whether arrow, rock, or gunpowder based) are characterized by indiscriminate killing of opposition forces. When a force of the aforementioned makeup or design is given an objective of taking a town, city or region, they are not told "you need to kill people A, B, and C," but are rather given strong points or areas they need to clear of hostile fighters and then effectively control. Therefore, soldiers will approach an

objective as if it is a single entity, rather than the individual people who consist of the defense of that objective.

In such a situation, soldiers on Side A attack their objective, and whichever people from Side B get in the way of Side A obtaining the objective are attacked with the same effort and vigor indiscriminately. However, this is not the case with armed drones, cruise missiles, or snipers, as these are forms of discriminate killing. Forms of discriminate killings are utilized and carried out in an effort to reduce the overall amount of killing, especially those killed as a result of collateral damage. Discriminate killing aims to do this in two difference ways. For when Side A utilizes drones, cruise missiles, snipers, or other similar weapons systems, Side A is only setting out to kill those who Side A wants to or needs to kill - those in direct opposition to Side A, not those people who simply happen to inhabit areas of ongoing hostilities. Furthermore, discriminate killing, especially in the case of drone strikes, is aimed at taking out high-value targets, leadership targets that are likely to impair or disable the enemies fighting capabilities.³²

By impairing or disabling the enemies fighting capabilities, Side A will, in theory, achieve a quicker, more decisive victory, and therefore reduce the number of casualties on both sides.³³ Even the harshest critics of United States drone policy, such as Peter Maurer, President of the International Committee of The Red Cross, echoed the aforementioned sentiment, stating:

[f]rom the perspective of international humanitarian law, any weapon that makes it possible to carry out more precise attacks, and helps avoid or minimize

³² Neal Conan, Daniel Klaidman, *How the President Decides to Make Drone Strikes*, interview, 16:46, June 6, 2012. <http://www.npr.org/2012/06/06/154443665/how-the-president-decides-to-make-drone-strikes>

³³ Gerard Chaliand, J.F.C. Fuller, and Basil Liddell Hart, *The Art of War in World History* (Los Angeles: University of California Press, 1994), 922-931.

incidental loss of civilian life, injury to civilians, or damage to civilian objects, should be given preference over weapons that do not.³⁴

Killing fewer people with more precise weapons is always preferable to more death and destruction with less precision. Therefore, discriminate killing not only has a strong argument for being more practical and efficient than indiscriminate killing, but it also holds the moral high ground. For as renowned political theorist Michael Walzer notes:

[e]ven if the assassination is a wrongful act...the wrongfulness is of a second order. By aiming carefully of a person thought to be guilty of something, the assassin indicates his rejection of aimless killing and his concern about collateral damage.³⁵

What Walzer means can be illustrated by looking at two different situations on a hypothetical battlefield. In situation 1, Person A is an artilleryman in an attacking force and Person B is an unarmed military age male living in a city that Person A is ordered to take over. During Person A's attack on the town, he sends a shell to the sector Person B lives in as part of a general bombardment and kills Person B along with a number of other military age males in the same building.

In Situation 2, Person A is a drone operator for the attacking force and Person B is again an unarmed military age male in the city that is being attacked. Person A has carried out a

³⁴ "The Use of Armed Drones Must Comply with Laws," *International Committee of the Red Cross*, last modified October 5, 2013,

<https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>

³⁵ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (6:00-6:24)

number of reconnaissance missions over the city and has observed such a high concentration of military age males entering Person B's home, that Person A believes Person B and his visitors are fighting for the opposition forces. As such, Person A carries out a drone strike on Person B's home, killing person B and a number of other military age males. It turns out Person B was not affiliated with the force opposing Person A's, but was actually trying to organize medical aid for those that would be wounded in the upcoming battle. According to Walzer's argument, neither situation is ideal, but Situation 2 is preferable to Situation 1. This is because in Situation 2, the aggressor (Person A) is at least able to claim what could be justified reasoning (if the intelligence was correct) for killing Person B. Whereas in Situation 1, Person A has no claimed or actual justification for killing Person B, but rather is only driven by a general objective of capturing the city in question.

6. Legal Precedent for Drone Warfare:

Part 1: Drones and Domestic Law:

For the purpose of this thesis, constitutional laws afforded to United States citizens will not be evaluated, although they very well could be in cases of United States citizens that have been killed in drone strikes, such as Anwar Al-Awlaki, Samir Khan, Jude Kenan Mohammed, and Abdulrahman Al-Awlaki.³⁶ Rather, we will look at laws relating to targeted killing, assassinations, and recent United States laws enacted to enable the War on Terror. While there are not federal laws that deal directly with the use of militarized zones, there are United States laws that deal with the legality of assassinations carried out by the United States military.

³⁶ Jere Van Dyk, "Who Were the 4 U.S. Citizens Killed in Drone Strikes?" CBSNews, last modified May 23, 2013, <http://www.cbsnews.com/news/who-were-the-4-us-citizens-killed-in-drone-strikes/>

For as Kenneth R. Himes notes, “[d]omestic U.S. law prohibits assassination by the military except in times of war.”³⁷ However, it is important to note that following the terrorist attack on September 11th, 2001, Congress passed the resolution “The Authorization for the Use of Military Force.”³⁸ The aforementioned resolution empowers the United States president to “use all necessary and appropriate force...in order to prevent any future acts of international terrorism against the United States.”³⁹ This means, according to domestic law, targeted killings using drones or any other weapon in the United States military’s arsenal against known terrorists would be legitimate and justifiable acts.

However, the question still remains whether this law and others like it meant to increase the US president’s ability to go after those responsible for the 9/11 attacks and protect the United States from future terrorist attacks extends to departments of the United States government that are outside of the military and are comprised of people classified as “noncombatants” by traditional standards, such as the Central Intelligence Agency (CIA).⁴⁰ This is a crucial question as the CIA carries out the majority of the targeted killings that the United States conducts.⁴¹ The fact that there has been no definitive ruling on whether the “Authorization for the Use of Military Force” applies to the CIA has left many wondering by which laws the CIA drone program are supposed to be held accountable to.

³⁷ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 16.

³⁸ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 16-18.

³⁹ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 16-19.

⁴⁰ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016), 16-21.

⁴¹ Cohn, Marjorie. *Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues*. Northampton, Massachusetts: Olive Branch Press, 2015. 13-21.

Part 2: Drones and International Law:

Much of the same confusion regarding what laws to apply to the United States' drone program also exists in the international realm of law. For there does not exist an "International Supreme Court", there is no overarching judicial system with which nations' actions are judged.⁴² Rather, international law is dependent upon a set of shared ideals, limits, rules, and standards with which large groups of nations agree to in an attempt to try and create a shared understanding of what is acceptable and what is not acceptable across different cultures and political systems.

What is important about this shared understanding is that it makes states' actions relatively predictable and transparent; at least that is international law's intent. However, the premise of international law on warfare is that two states engage in conflict, yet the asymmetric war of counterterrorism involves a state using violent force against non-state actors. This creates a number of issues ranging from what defines an armed conflict to what makes someone a combatant or non-combatant. As international law is carried out in most cases through non-judicial mechanisms, how does one or how can one apply international law to an issue that is not directly addressed in international law but that must be held accountable to some standard or set of rules? This is the problem we face with militarized drones and similar weapons.

As Peter Maurer, President of the International Committee of the Red Cross (ICRC) posited in a 2013 interview:

⁴² Refer to pg. 2 of Rosa Brooks "Drones and the International Rule of Law," *Georgetown University Law Center*, last modified 2013, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2296&context=facpub>.

[u]nder international humanitarian law- the rules of war, i.e. the set of laws governing armed conflicts – drones are not expressly prohibited, nor are they considered to be inherently indiscriminate or perfidious.⁴³

The fact that drones are not expressly prohibited or even talked about is due to the fact that armed drones are a relatively new weapon on the battlefield. Substantial time has not passed since their introduction and although their use has drawn the ire of many nations' governments and human right groups, there are no official international laws on the books prohibiting their use. The lack of applicable international law for militarized drones and the fact that they are not considered to be inherently indiscriminate in their mode of killing means that they are not viewed in the eyes of the law in a different light than weapons such as manned aircraft, helicopters, or tomahawk cruise missiles.

Despite the lack of language directly relatable to militarized drones in international law, militarized drones are nonetheless a weapon system, and therefore are subject to the rules of international humanitarian law and agreements that the United States has signed onto.⁴⁴ Such an agreement is Article 52(2) of Protocol I (1997) of the 1949 Geneva Convention, a peace of law often cited to dismiss the legality of drone warfare, which states:

[a]ttacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose, or use make an effective contribution to military action and

⁴³ “The Use of Armed Drones Must Comply with Laws,” *International Committee of the Red Cross*, last modified October 5, 2013,

<https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>

⁴⁴ “The Use of Armed Drones Must Comply with Laws,” *International Committee of the Red Cross*, last modified October 5, 2013,

<https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>

whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁴⁵

Article 52 is a direct effort by major nations following World War II to ensure that the civilian-targeted bombing of World War II did not repeat itself in future conflicts. Notorious bombing runs such as the fire bombing of Dresden and the two atomic bombs dropped on Hiroshima and Nagasaki are examples of militaries setting out to win victories at the expense of mass civilian deaths.

Applying Article 52 of the Geneva Convention to drone warfare would mean that the United States would have to exclusively attack military targets, those directly involved in fighting for, planning for, or carrying out missions for terrorist organizations. The most important part of international law that is relevant to drones and is brought up by critics of drone use, is the necessity for the respective country or state using drones to “always distinguish between combatants and civilians and between military objectives and civilian objects.”⁴⁶ While one might think that the distinction between a combatant and civilian would be clean-cut with little room for differing opinion, this is not the case.

For as a New York Times report by Scott Shane and Jo Becker relays, a number of Obama administration officials in 2012 noted that President Obama embraced a disputed method for counting civilian casualties, which “in effect counts all military-age males in a strike zone as

⁴⁵Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 13 (Protocol I, Article 52, para. 2)

⁴⁶“The Use of Armed Drones Must Comply with Laws,” *International Committee of the Red Cross*, last modified October 5, 2013, <https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>

combatants...unless there is explicit intelligence posthumously proving them innocent.”⁴⁷ If true, this means there is a clear and significant difference in how the United States executive branch is defining combatants and civilians compared to other major players, such as the United Nations (UN), North Atlantic Treaty Organization (NATO), and non-government human rights organizations. While the Obama administration has claimed to have amended the aforementioned method of defining civilians and combatants with the 2013 “U.S. Policy Standards and Procedures for the use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities,” there is still much debate among the international community as to whether United States’ methods have actually changed or whether the supposed changes were simply for show and to get the public off the Obama administration’s back. This will be discussed further in Chapter 9, **Proposing a New Framework.**

While what legal standards the international community believes the United States should be adhering to is important as far as a discussion regarding US drone policy going forward, what is more important present day is what laws, if any, the United States is actually adhering to. The United States Attorney General for the majority of the duration of the United States drone program, Eric Holder, made clear that the United States:

[i]s in an armed conflict, we are authorized to take action against enemy belligerents under international law. The Constitution empowers the President to protect the nation from any imminent threat of violent attack. An international

⁴⁷ Jo Becker and Scott Shane “‘Secret Kill List’ Proves a test of Obama’s Principles and Will” May 29, 2012 http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?_r=0 and Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016. <https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (18:15-18:26)

law recognizes the inherent right of national self-defense. None of this is changed by the fact national law recognizes the inherent right of national self-defense.

None of this is changed by the fact that we are not in a conventional war.⁴⁸

While Holder does not outright disregard some of the other aforementioned laws and provisions of international law, he does assert that the United States is following international law in its war on terror. He makes the argument that the United States is justified in carrying out their strikes, as they are part of an ongoing armed conflict, which while not a conventional war, is nonetheless a threat to the safety of the United States. This threat to the United States allows the United States to act out of self-defense.

7. Traditional Just War Theory:

The dominant thinking in judging military ethics has been based around traditional Just War Theory. As will be argued in my thesis, traditional Just War Theory and other previous theories based on the idea of mutual-risk are ill-suited for this problem and we are unable to utilize these theories when judging the morality of drone operations. In traditional Just War Theory, both sides that are involved in a given conflict have something at stake, and therefore have some type of risk, some skin in the game.⁴⁹ This is not to say that the fight needs to be evenly balanced, however the threat of harm to both sides must remain.⁵⁰ This threat of harm is critical because it means that both sides have the ability, regardless of how limited it is, to defend

⁴⁸ Eric Holder, “Attorney General Eric Holder Speaks at Northwestern University School of Law,” United States Department of Justice website, March 5, 2012, www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html

⁴⁹ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 59-61.

⁵⁰ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 59-61.

themselves.⁵¹ Therefore if person 1 and person 2 are two soldiers from opposing forces who are on the same battlefield, person 1 is justified in killing person 2 because person 2 presents a threat to person 1's life, and therefore person 1's killing of person 2 is an act of self-defense and self-preservation.

Henry Shue and Matthew Evangelista in their book *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones* sum up the main ways in which drone warfare breaches the aforementioned provisions of Just War Theory, noting that with drone warfare:

[i]nstead of a heroic encounter between equal combatants, we have a radically asymmetric situation where the drone operators, far from being combatants watched by an audience, have become the audience that observes the act of death; looking on from high in the sky, they have assumed the position of the gods who decide who will live and die.⁵²

This distinction is important for two reasons. First and foremost is to highlight that drone warfare violates the aforementioned principle of required threat of harm to both sides. For due to the advanced technology of armed drones, drone pilots are able to sit in heavily-protected computer rooms on the other side of the world from those who they are targeting.⁵³ Operating from these protected rooms removes drone operators too far from the conflict, to the point where

⁵¹ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 59-62.

⁵² Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014. 193

⁵³ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016. <https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (15:22-15:30)

there is no credible or actual threat to their life.⁵⁴ The operators do not have any skin in the game, and the targets of the drone strikes have no ability to defend themselves and strike back at their attackers.⁵⁵

The second reason the distinction is important is because of how adherence to the mutual harm principle, or lack of adherence in the case of armed drones, draws a distinction between armed drones and other vehicles for targeted killing such as snipers, cruise missiles, and smart bombs dropped from manned aircraft. The other forms of targeted killing all expose those using the weapon system or tactic to harm, regardless of if that harm is great or miniscule.

Snipers, while shooting from a distant, concealed position, are nonetheless present on the battlefield and can be easily engaged and killed if their position is discovered. Cruise missiles fired from ships put distance in-between the naval ship and the target, but the ships still must be in the coastal waters off the area in question. Attacks on United States naval ships have been a real threat in the Persian Gulf and Gulf of Aden in the form of mines, small boats loaded with explosives, and attacks on United States naval ships while in port, such as the attack against the USS Cole on October 12, 2000 in Yemen.⁵⁶ Pilots carrying out precision-bombing runs on high-value targets also undergo threat from the enemy, although limited, when they enter enemy-controlled airspace to conduct their missions. While it is true that ISIS, Al Qaeda, and other similar radical groups don't have advanced enough weapons systems to shoot down United States planes, pilots nonetheless take on a small amount of risk associated with mechanical

⁵⁴ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 59-64

⁵⁵ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 59-64

⁵⁶ "The USS Cole Bombing." *The Federal Bureau of Investigation*, accessed January 30, 2016. <https://www.fbi.gov/about-us/history/famous-cases/uss-cole>

failure and insurgents getting lucky with anti-aircraft batteries and assorted small arms fire. This risk, while minimal, means that these weapons can still fit under traditional Just War Theory.

Trying to apply traditional Just War Theory to drone strikes and United States drone policy is also problematic due to Just War Theory's approach to the various rules or laws that govern conflicts or wars. These two important sets of rules or laws are defined as Jus ad bellum and Jus in Bello.⁵⁷ Jus ad Bellum is defined as the law that defines the legitimate reasons a state may engage in war, whereas Jus in Bello consists of the law that is supposed to regulate how wars are fought once hostilities have commenced.⁵⁸ When you look at Jus in Bello principles in traditional Just War Theory, if one side in a conflict has no way to retaliate, then that side is traditionally viewed as a "non-combatant," and therefore should be free from targeted killing.⁵⁹ Taking this principle and trying to apply it to United States drone warfare raises a number of conundrums and unsatisfactory results. For using this thinking, we would come to the unfortunate and inaccurate conclusion that targets of drone strikes, such as ISIS militants and Al Qaeda leaders, are "non-combatants" due to their inability to defend themselves and retaliate in the moment.⁶⁰

The main counter argument to this line of thinking claims that while ISIS or Al Qaeda may not have the ability to defend itself or retaliate in the moment, when it comes to specific acts of drone warfare, ISIS, Al Qaeda, and other similar groups are able to retaliate or "defend

⁵⁷ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 58

⁵⁸ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 58-61

⁵⁹ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 58-60

⁶⁰ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 58-62

themselves” by carrying out pre-emptive or reactive terrorist attacks. However, such an argument would be erroneous as such types of retaliation are not self-defense as they do not occur in the moment when ISIS or Al Qaeda is threatened, but rather require significant planning and resource allocation, taking place over a prolonged period of time. Due to the prolonged period of time between the initial incident and the response, ISIS or Al Qaeda’s supposed “self-defense” attacks are just that, attacks. They are categorized as acts of aggression, planned attacks, rather than acts of self-defense. An attack, regardless of if it is a reactive attack, is still an attack taking place outside the immediate time frame of the conflict and therefore is, and should be, disqualified from being an act of self-defense.

8. Ethical Considerations:

As famous philosopher George Santayana noted, “those who do not remember the past are condemned to repeat it.”⁶¹ In looking to the past for guidance, let us remember and re-examine Plato’s story of Gyges in the *Republic* as was mentioned before in Chapter 4 **Targeted Killing and Assassinations as Old Practices**. This work by Plato was perhaps the first to address the dilemma or moral hazards associated with targeted killing in the western world. Gyges’ story is an allegory for problems that existed during antiquity, but that also are present in the present with the use of armed drones. Gyges has a technology, the ring, which provides him with the same advantage of acting with near impunity that armed drones provide for the United States. In both cases, Gyges and the United States, self-interest and power serve as the justification for each entity’s actions.

⁶¹ “George Santayana Quotes,” *BrainyQuote*, accessed January 16, 2016, http://www.brainyquote.com/quotes/authors/g/george_santayana.html

With regard to the story of Gyges, Plato wants the story to “illicit a certain response....the feeling of disgust.” This feeling of disgust, derived from the fact that for Gyges practical efficiency has taken the place of moral legitimacy, is something that can be taken into account and should be taken into account when determining whether a drone attack is the best approach to a certain situation.⁶² While there is no comprehensive formula for discerning whether an attack is practically efficient, morally legitimate, or both, being cognizant of abusing a technology simply you can and because it is efficient is important to making sure armed drones are not abused.

In looking to the past, we should also take note of the ideas of Herbert Marcuse, a philosopher, sociologist, and political theorist during World War I and World War II, who talks about a “technological rationality” approach to warfare. This approach examines the way in which innovations in mechanization and new technology lead leaders to rationalize the concept that if something is “efficient” and “reasonable”, then it should be commonplace in military tactics.⁶³ Such a concept places a great emphasis on expediency and convenience to the attacking side. However, just because something is efficient or convenient does not mean it should be done, or done regularly. The fact that during World War II the great powers of the world were all threatened with the possibility of being taken over meant that the great powers could be justified in choosing tactics simply based off of whether they were “efficient” and “convenient.”

However, the United States’ current conflicts are not ones in which the United States is worried about being taken over, but rather the United States is the dominant side trying to weed

⁶² Kaag, John, and Sarah Kreps. *Drone Warfare*. Cambridge: Polity, 2014. Print. 110

⁶³ Kaag, John, and Sarah Kreps. *Drone Warfare*. Cambridge: Polity, 2014. Print. 106

out radical terrorists. With the current type of conflicts that the United States is participating in, we now have the time to attend to other “descriptors that are antithetical to technological rationality: morality, reflection, deliberation, and autonomy.”⁶⁴ In short, the necessity of expediency present during World War II is no longer present in current United States conflicts. Only if the United States were to be engaged in a conflict where a legitimate fear of domination existed would the United States be justified in using weapons simply because they are convenient and expedient, without regard to any other considerations. Analyzing Marcuse should serve as a warning for our current society to realize that while governments try to play ease and convenience off as virtues, they are not and never will be. Political theorist Michael Walzer echoes these warnings and sentiments, holding that “such advanced technology can lull us into a sense of false security with regard to their effectiveness, noting that “the technology is so good, that the criteria for using it is likely to be steadily relaxed.”⁶⁵

If the type of involvement we are undertaking in modern conflicts does not warrant the use of unbridled asymmetric power, then what should United States involvement in the form of drones and JSOC operations look like?

⁶⁴ Kaag, John, and Sarah Kreps. *Drone Warfare*. Cambridge: Polity, 2014. Print. 105-108

⁶⁵ Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.
<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (16:30 - 17:37)

9. Proposing a New Framework:

Part I: Setting a Precedent for the Future:

At the present time, the United States is the predominant user of drones for both surveillance and targeted killing operations.⁶⁶ This puts the United States in a unique situation to help shape the norms and accepted practices of drones in military conflict. The United States ought to establish norms that we want other countries to follow once the aforementioned countries have developed and started to utilize militarized drones of their own. As more than 50 nations are now developing surveillance drones, it is certain that a number of these countries, if not all of them, will eventually try and succeed in effectively arming their drones.⁶⁷ When these countries succeed in arming their drones, what norms will they follow? While it is true that the aforementioned countries could decide not to follow the standard set forth by the United States, the existence of an existing policy would pressure countries to adhere to the policy.⁶⁸ Even if a country were not to adhere to the policy or the norms the policy espoused, other members of the

⁶⁶ Maya Shwayder “Drones: Which Countries Have Them for Surveillance and Military Operations?” May 18, 2013 <http://www.ibtimes.com/drones-which-countries-have-them-surveillance-military-operations-map-1264271>

⁶⁷ Kenneth R. Himes, *Drones and the Ethics of Targeted Killing*. (Lanham Maryland: Rowman & Littlefield, 2016),17.

⁶⁸ Refer to “One way to establish the rules is for the United States, the first country to use drones on a large scale, to proclaim and observe a code for this kind of warfare.” Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.
<https://www.youtube.com/watch?v=Pc2kOMJQJoQ>
<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (35:30-35:38)

international community would likely meet the country's actions with criticism and condemnation.⁶⁹

Part II: What Not to Do:

Some proponents of utilizing armed drones as a central part of the United States' military and anti-terrorism strategy have made the argument that we should take full advantage of armed drones while we have the technological, and therefore tactical advantage, over our adversaries. While this makes sense from a standpoint of achieving short-term military goals, as our drones currently operate with immunity, the long term consequences are much more complex. For a similar argument was put forth in the mid 1940's with the nuclear weapon. The United States had the technology and the weapons, while the Soviets did not. Even during World War II when the US and Soviets were allies, it was clear the two countries had major ideological differences. These ideological differences were only magnified by the fact that the US and Soviet Union were the two dominant countries that remained in the world following World War II.

Why didn't we just drop atomic weapons on Russia then?⁷⁰ Besides the obvious fact that this would have continued World War II and embroiled us in another conflict, it would have also set a dangerous and violent precedent for the use of nuclear weapons. United States leaders argued that the two uses of nuclear weapons against Japan were justified, as they saved the lives

⁶⁹ Refer to "still it is important to have rules, if only to make possible public criticism and condemnation and perhaps also the legal indictment of those who violate them." Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (25:15-35:26)

⁷⁰ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (34:00-34:30)

of millions of soldiers and citizens compared to if the United States were to have invaded mainland Japan.⁷¹ Furthermore, Japan was the aggressor in the conflict, with their surprise attack on Pearl Harbor in 1941, and therefore the United States dropping a nuclear bomb was the US reacting to stop Japanese aggression and trying to bring an end to the conflict. This would not be the case if the United States dropped a nuclear bomb on the Soviet Union. The United States would not only be the aggressor, but would also be using nuclear weapons for indiscriminate, unjustified killing in order to further their ideological ends, rather than having used the nuclear weapon to stop a conflict as they had with Japan and World War II. This would have opened the door for the use of nuclear weapons as being a viable option for countries to turn to for regular use, not only for defensive purposes, but also offensive.

Part III: Moving Beyond Traditional Just War Theory:

Acknowledging that traditional Just War Theory has been disqualified and attempting to find a suitable alternative to measure the morality or “justness” of drone operations, increase accountability, and adhere to international humanitarian rights all while successfully stymieing terrorist organizations is a significance challenge to overcome. For as renowned military philosopher Carl Von Clausewitz noted, striving for and attaining a perfect set of laws for war will only happen if:

1. War becomes a completely isolated act, which arises suddenly and is in no way connected with the previous history of the states;
2. If it is limited to a single solution, or to several simultaneous solutions;
3. If it contains within itself the

⁷¹ Duncan Anderson “Nuclear Power: The End of the War Against Japan,” *BBC*, last updated February 17, 2011. http://www.bbc.co.uk/history/worldwars/wwtwo/nuclear_01.shtml

solution perfect and complete, free from any reaction upon it, through a calculation beforehand of the political situation which will follow from it.⁷²

This is Von Clausewitz's long-winded way of saying that coming up with a philosophy of war that will take everything, and every weapon into account is impossible. Intra-nation conflicts, and even more so conflicts between states and non-state actors, are too complicated with too varied of outcomes to construct a perfect system with which to judge such conflicts.

While no philosophy of war is perfect, and there are challenges associated with creating a comprehensive and effective drone policy, we nonetheless have the tools and structures in place in order to ensure more careful use of armed drones. Political theorist Michael Walzer hits the nail on the head when he posits:

[t]he rules of the code won't be and shouldn't be anything new, they should just be emphatic. The users of drones claim that they are a highly precise weapon, they should therefore be used with real precision. That is, they should be aimed with great care against individuals chosen in accordance with criteria that can be and that are publicly defended. The proportionality standard should be tough, and they too should be publicly defended.⁷³

Effectively, while the questions we must ask and the moral and ethical judgments we must make are extremely difficult, there already exists precedent for the same questions and judgments. We

⁷²Gerard Chaliand and Carl Von Clausewitz, *The Art of War in World History* (Los Angeles: University of California Press, 1994), 675.

⁷³ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016. <https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (35:38-36:16)

should look to these precedents and then aim to effectively apply them to drone warfare with increased transparency and accountability and more strict requirements for justification.

In a 2012 appearance on *The Daily Show*, President Barack Obama acknowledged the challenges that the United States faces going forward with regard to amending its' current drone policy, highlighting a lack of accountability with the current way the United States currently carries out their drone operations. Barack Obama admitted that:

[o]ne of the things we've got to do is put a legal architecture in place, and we need congressional help in order to do that, to make sure that not only am I reined in, but any president is reined in terms of some of the decisions that we're making.⁷⁴

President Obama's call for a legal architecture, and Congress playing a larger role in oversight of the drone program came to fruition on May 23, 2013, when the Obama administration put forth the "U.S. Policy Standards and Procedures for the use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities."⁷⁵ This set of standards and procedures is meant for all counterterrorism operations, but aimed at addressing backlash over the CIA drone program. While it is definitely a step in the right direction and parts of it should be included in a comprehensive framework going forward, the policy falls short of what is needed.

⁷⁴ Sarah Childress and Priyanka Boghani, "Why the U.S. Doesn't Always Know Who It's Killing in Drone Strikes," *Frontline*, last modified April 23, 2015. <http://www.pbs.org/wgbh/frontline/article/why-the-u-s-doesnt-always-know-who-its-killing-in-drone-strikes/>

⁷⁵ "U.S. Policy Standards and Procedures for the use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities" *Whitehouse.gov*, accessed February 15, 2016, https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf

The policy affirms the United States' dedication to using lethal force as a last resort, stating, "lethal force will not be proposed or pursued as punishment or as a substitute for prosecuting a terrorist suspect in a court or a military commission."⁷⁶ While this quote and the section titled "Preference for Capture" make it seem as though the United States is using all available options to confront a threat before using lethal force, it is clear in other parts of the policy this is not the case. For the policy also reads that:

[c]apture operations are conducted only against suspects who may lawfully be captured or otherwise taken into custody by the United States and only when the operation can be conducted in accordance with all applicable law and consistent with our obligations to other sovereign states.⁷⁷

If taken seriously, and adhered to by the United States government, the first of these excerpts would mean that the United States is not allowed to conduct capture operations or drone strikes in any country where the government of that country has not given the United States' government express permission.

However, this is definitely not the case, as the United States has carried out over 50 drone strikes since the 2013 policy in a number of countries that have spoken out regarding the

⁷⁶ Refer to pg. 2 of "U.S. Policy Standards and Procedures for the use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities" *Whitehouse.gov*, accessed February 15, 2016,

https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf

⁷⁷ Refer to pg. 2-3 of "U.S. Policy Standards and Procedures for the use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities" *Whitehouse.gov*, accessed February 15, 2016,

https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf

illegality of United States drone strikes including Pakistan and Yemen.⁷⁸ While it is not reasonable to create a policy in which the United States always has to gain permission from the country in question before carrying out a capture operation or drone strike, as more often than not the United States would not be given permission, it is nonetheless important that the United States at least tries to gain permission for such operations given they meet certain criteria agreed upon beforehand. While this will not solve the problem of governments such as Pakistan and Yemen expressing disdain for United States foreign policy in the region, it will not make the United States look as though it is completely arrogant when it comes to going about its' anti-terrorism objectives abroad.

The policy also states that "lethal force will be used only to prevent or stop attacks against U.S. persons."⁷⁹ But who is to decide whether a person or group of people are planning to, or have the resources to carry out an attack against United States citizens or interests? There is no mention of this, and this is a key oversight in increasingly accountability, decreasing unjustified attacks, and preventing the abused proliferation of drone attacks. The extremely broad language in the policy allows for an abuse of power by the CIA and the executive branch of the United States government with few checks on the aforementioned institutions' power to carry out targeted killing.

⁷⁸ Scott Shane, "Drone Strikes Reveal Uncomfortable Truth: U.S. is Often Uncertain About Who Will Die," *New York Times*, last modified April 23, 2015
http://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html?_r=0

⁷⁹ Scott Shane, "Drone Strikes Reveal Uncomfortable Truth: U.S. is Often Uncertain About Who Will Die," *New York Times*, last modified April 23, 2015
http://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html?_r=0

The area of the policy that comes closest to listing criteria needed in order to justify a drone strike reads as follow:

[t]he following criteria must be met before lethal action may be taken:

- 1) Near certainty that the terrorist target is present;
- 2) Near certainty that non-combatants will not be injured or killed;
- 3) An assessment that capture is not feasible at the time of the operation;
- 4) An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons; and
- 5) An assessment that no other reasonable alternative exist to effectively address the threat to U.S. persons.⁸⁰

While this section of the policy seems to address many of the worries talked about in this thesis, talking about something and having words match actions are two different things. Not long after the Obama administration released this policy, did the Obama administration violate this policy.

For in late 2014, in response to a Tomahawk missile strike in the Syrian Village of Kafr Daryan, White House representatives acknowledged “for the first time that strict standards President Obama imposed last year (2013) to prevent civilian deaths from U.S. drone strikes will not apply to U.S. military operations in Syria and Iraq.”⁸¹ These statements came in response to

⁸⁰Refer to pg. 2 of “U.S. Policy Standards and Procedures for the use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities” *Whitehouse.gov*, accessed February 19, 2016,

https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf

⁸¹ Michael Isikoff, “White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths,” *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

reports by Syria rebel commanders and leaders claiming the targeted building hit by the Tomahawk missile was in fact a home for displaced civilians and the strike culminated in the deaths of a dozen civilians, including women and children.⁸² Such civilian deaths, while shocking, are not uncharacteristic of drone strikes. Micah Zenko, a renowned drone scholar at the Council on Foreign Relations compiled and averaged separate counts of American drone strike victims from three organizations tracking U.S. drone policy – The new America Foundation, the Bureau of Investigative Journalism and The Long War Journal.⁸³ By doing so, Zenko found an average of 522 drone strikes having killed 3,852 people with 476 of them being civilians.⁸⁴

The Syrian reports and the Obama Administration's response confirmed fears by members of the international community that believed the Obama administration's 2013 policy was more for show than an actual standard that would influence United States drone policy. Furthermore, the aforementioned statements came on the heel of the Obama Administration acknowledging for the first time that the "strict standards" imposed by the Obama administration

⁸² Michael Isikoff, "White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths," *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

⁸³ Scott Shane, "Drone Strikes Reveal Uncomfortable Truth: U.S. is Often Uncertain About Who Will Die," *New York Times*, last modified April 23, 2015 http://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html?_r=0

⁸⁴ Scott Shane, "Drone Strikes Reveal Uncomfortable Truth: U.S. is Often Uncertain About Who Will Die," *New York Times*, last modified April 23, 2015 http://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html?_r=0

in 2013 do not and will not apply to the CIA and United States military's ongoing operations in the Middle East focused on combating and destroying ISIS, ISIL, and Al Qaeda.⁸⁵

In response to questions of why the administration has so easily relaxed their policy, White House spokespeople have claimed that the “near certainty” standard noted in the 2013 policy, thought to be a huge step forward in curtailing the proliferation of drone warfare, was only intended to be used by the administration “when [the U.S. take(s) direction action ‘outside areas of active hostilities’].”⁸⁶ The spokesperson for the National Security Council in 2014 followed up these statements by holding that the term “‘outside area of active hostilities’ simply does not fit what we are seeing on the ground in Iraq and Syria right now.”⁸⁷ By arguing that Syria and Iraq are areas of active hostilities and therefore do not qualify for the “near certainty” standard, the United States has effectively opened the door for the US or any other country who follows their lead with drone policy, to claim that any area inhabited by an extremist or terrorist group can be considered an “area of active hostilities,” thereby disqualifying these areas or regions from the “near certainty” standard put forth in the 2013 policy.⁸⁸

Exempting Syria and Iraq from the “near certainty” standard aimed at reducing the abuse of armed drones leads the United States down a dangerous road of lack of credibility in sticking to its’ word. Who is to say what is an area of ongoing hostilities? There is no definition, and the

⁸⁵ Michael Isikoff, “White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths,” *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

⁸⁶ Michael Isikoff, “White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths,” *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

⁸⁷ Michael Isikoff, “White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths,” *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

⁸⁸ Michael Isikoff, “White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths,” *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

vagueness of the term allows the United States to make exceptions to the strict certainty standard based on very loose, seemingly always changing criteria.

Part IV: Who are Justifiable Targets:

In determining what types of people are justified in being targeted by armed drones, we should go back to the ideas espoused in Chapter 5, Targeted Killing and Assassinations in Modern Warfare, and examine Walzer's distinctions regarding targeted killing and assassinations. Walzer posits that when deciding whether an assassination is just or not, it must "depend on the political official or military officer that is targeted, the character of the regime, he or she serves, and the immediate political circumstances."⁸⁹ While this description is somewhat broad and dependent upon and relative to how the country carrying out the attack measures character, Walzer's standard is useful in ruling out many cases in which drones might be used for assassinations. When two countries are fighting against one another not because they view the other as a corrupt, malicious, or as an oppressive actor, but rather due to disputes over land, resources, etc. both of these countries should refrain from using militarized drones in targeted killings in civilian areas under Walzer's standard. While it is true that most conflicts do include significant differences in ideology and therefore significant differences in how a nation or group of people's character is viewed, the Walzer's initial standard does help us narrow the scope of militarized drone's appropriate usage.

Furthermore, it makes sense that in wartime, military leaders are fair game on the battlefield. There is no better way to disrupt an enemy's organization and military plans than to cut off its head, its leadership. Michael Walzer echoes these sentiments, noting that in a time of

⁸⁹ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016. <https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (5:40-5:55)

war “military leaders are obviously legitimate targets. A sniper, sent to a forward position to try to kill a visiting colonel or general is engaged in targeted killing, but no one would accuse him of acting extra-judicially, and therefore wrongly.”⁹⁰ While targeted killing or assassination of military leaders make sense as they are within the sphere of being directly involved in armed conflict, some critics believe that political figures should be off-limits from such discriminate killing.

Walzer agrees with this, noting that “[t]he international laws of war bar the killings of political leaders on the grounds that they are the ones, who will in the end, will negotiate the peace treaty. And that’s a moral as well as a legal argument given the value of peace.”⁹¹ I also agree with the aforementioned belief, as long as the political leader is not also a military leader, or the political leader is so opposed to even considering other means of ending the conflict that targeting of the political leader can be justified. There are exceptions in outlier cases, such as with Adolf Hitler; whose killing via targeted attack would have been extra-judicial, but also entirely justified.⁹²

While not as high-profile of targets, I believe that terrorist leadership would fall under the same category as Adolf Hitler - political leaders that can be justifiably targeted by armed drones. This is due to two reasons. First is that the policy mentioned above, to only target military

⁹⁰ Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (9:20- 9:40)

⁹¹ Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (9:50-10:40)

⁹² Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (8:30-9:03)

leaders with the rare exception for outlier political figures, is meant for fighting against traditional nations and states. However, ISIS, Al Qaeda, and other terrorist groups are not traditional nations or states but rather affiliated groups with no set political structure or homeland, making their defeat and or eradication much more difficult. Secondly, while with traditional nations or states there is a clear distinction between political leaders and military leaders, this is not the case with terrorist groups. Those who might claim they are “political” figures for the aforementioned groups are also actively engaged in military-related activities such as recruiting new soldiers, and planning and organizing terrorist operations.⁹³ Their military activities bring them into the domain of military leaders and therefore targeting them can be justified. Even if we are to disassociate these “political leaders” from the military actions listed above, these “political leaders” have no intention of negotiating with the United States or other allied groups, therefore providing similar justification for targeting them as we talked about above with Adolf Hitler.⁹⁴

Part V: When Drone Strikes should be Used:

While the question of who we are justified in targeting is important, what I believe to be even more important is how we decide what chances for or levels of collateral damage are acceptable in certain situations. In trying to come up with a policy or standard with which to judge the aforementioned problem, the policy or standard should not be subjected to different constraints than any other act of war with regard to meeting very strict standards of

⁹³ Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (10:40- 11:08)

⁹⁴ Michael Walzer “Is the Military Use of Drones Ethically Defensible?” Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016.

<https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (10:40- 11:08)

proportionality.⁹⁵ For example, given the fact that the target of a drone strike is often a single person, it would be hard for the United States to justify a strike on this person unless there was no or virtually no risk to innocent bystanders or the target of the strike was deemed so important to the enemy's capability for carrying out military operations that the killing of the target would be a proportional military act for the resulting collateral damage.⁹⁶ In short, it is imperative that collateral damage for an attack must be proportionate to the value of a military target. What is proportionate is likely to be viewed differently by military personal wanting to use armed drones than an oversight committee consisting of legal experts, non-affiliated military leaders, as well as United States defense and anti-terrorism experts.

Due to the perceived gap between what military leaders believe is proportionate and what is actually acceptable as proportionate, an oversight committee of the composition listed above is critical to ensuring drone strikes are justified not only in who they are targeting, but in the risks that they are taking with regard to collateral damage and resulting animosity towards the United States.

The aforementioned council would use available intelligence to put potential targets through an initial screening process, where they could either be put on a "high priority," "medium priority" or "low priority" list. The high priority list would be reserved for terrorist

⁹⁵ Refer to Gerard Chaliand and Carl Von Clausewitz, *The Art of War in World History* (Los Angeles: University of California Press, 1994), 674-675. "[i]f we desire to defeat the enemy, we must proportion our efforts to his powers of resistance. This is expressed by the product of two factors which cannot be separated, namely, the sum of available means and the strength of the will....sum of available means...depends upon numbers; but strength of volition, is more difficult."

⁹⁶ Michael Walzer "Is the Military Use of Drones Ethically Defensible?" Online video clip. *Youtube*. Berkley Center, 19 March 2013. Web. 8 March 2016. <https://www.youtube.com/watch?v=Pc2kOMJQJoQ> (12:13-12:36) and (12:45-12:53)

leaders critical to the leadership of the militant group. Targets in the high priority list would likely be few in number and would be considered viable targets to attack regardless of civilian casualties. The “medium priority” list would be those who fit in mid-level leadership or recruiting roles. These targets would be acceptable to attack if civilian casualties were unlikely. The “low priority” targets would be terrorists or militants still deemed worthy of spending the money to attack, but not important enough to risk civilian casualties or collateral damage in the attacks. These “low priority” targets would only be attacked if there was near certainty that civilians would not be killed. Unlike the 2013 Obama policy citing “near certainty” standards, the near certainty standard for this new council would also apply to areas of ongoing hostilities.

Take the example of if the proposed oversight committee gets a request to kill a mid-level Al-Qaeda leader in a cafe, with the leader surrounded by his immediate family- a wife and 3 children. The wife and 3 kids, 4 innocent people are likely to be killed in the attack. The oversight committee is responsible for looking at the importance of the Al-Qaeda leader, seeing how integral he is to Al-Qaeda operations, and whether the killing of the leader will save more American lives down the road or whether the killing of the 4 innocent people will bring more radical fighters to Al-Qaeda’s ranks.

The aforementioned type of council would not be something that is a radically new idea for the United States government, as a similar concept is used under the Foreign Intelligence Surveillance Act of 1978, in which “federal judges decide on warrants to allow eavesdropping in national security cases.”⁹⁷ Such a council would not be without its flaws, chief of which is that

⁹⁷ Tom Campbell, “Drone Strikes: Who’s on the ‘kill list’,” *Los Angeles Times*, last modified February 17, 2013, <http://articles.latimes.com/2013/feb/17/opinion/la-oe-0217-campbell-drones-war-powers-20130217>.

nothing in a judge or legal expert's training can prepare him or her to make a decision regarding whether a drone strike should go ahead or not. The skills needed to make good decisions would likely have to be developed through trial and error, a costly process. Furthermore, the council's, and specifically the legal and ethical army of the council's approach would "confuse the government's role in prosecuting criminals with the government's role in carrying out war."⁹⁸

While this system is not perfect and is likely to sometimes make misjudgments as far as whether an attack should go forward or not, at least there will be an oversight committee that talks through the repercussions of each proposed strike.

Part VI: Law Enforcement Theory:

Even if a council of the aforementioned makeup were to be created, what standards would they have for placing a person into a given group of high, medium, or low priority? What standard or framework would replace traditional Just War Theory? Along with the aforementioned distinctions between discriminate and indiscriminate killing as well as between military and politics targets, I believe the best answer would be for the council, and therefore the United State government, to look at drone strikes not solely as acts of war, but rather as actions taken for the purpose of law enforcement.⁹⁹ By utilizing a system mimicking law enforcement, the council would act as the court system, with the council being charged the responsibility of determining whether a person or group of people is guilty or innocent of terrorist activities.

⁹⁸ Tom Campbell, "Drone Strikes: Who's on the 'kill list'," *Los Angeles Times*, last modified February 17, 2013, <http://articles.latimes.com/2013/feb/17/opinion/la-oe-0217-campbell-drones-war-powers-20130217>.

⁹⁹ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 66.

Embracing a law enforcement system would not be a massive shift in thinking, as we have already seen hints of a law enforcement system in U.S. thinking. Hints of such a standard and general outlook on the use of drones were present with President George W. Bush following the 9/11 attacks when he noted “enemies of freedom committed an act of war against our country...whether we bring our enemies to justice, or bring justice to our enemies, justice will be done.”¹⁰⁰ President Bush’s quote shows signs of mixing both a military and law enforcement standard for which to go about carrying out the War on Terror. As Christian Enemark, international politics professor at Aberystwyth University, sums up, current United States conflicts are characterized by:

[a]rmed conflict[s] where state forces [U.S. Forces] have the privilege to use force against those who lack such privilege - a situation that normally prevails in peacetime, under the law enforcement paradigm.¹⁰¹

Given that there is already precedent for use, albeit limited use, of the law enforcement theory, the question becomes what the ramifications of such a system are.

Despite the advantages of applying a law enforcement type system of law to drone strikes, Professor Enemark does highlight shortcomings of this system. Most notable is that in the United States’ law system, the person being accused or charged is supposed to be given a fair trial. In the case of drone strikes, the targets are not given a fair trial, let alone even questioned about their supposed involvement in terrorist activities. Rather, the council would have to rely on intelligence from sometimes-unreliable sources. Not allowing the person in question to

¹⁰⁰ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 66.

¹⁰¹ Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 66.

present a defense not only raises questions of human rights violations, but also violates the United States own emphasis on the right to due process. The most obvious example of this is Anwar al-Awlaki, a United States citizen who was killed in a “personality strike” due to his position as an Al Qaeda propagandist.¹⁰²

While the law enforcement system is by no means perfect, it at least is a step forward towards a more accountable system in which the targets are more thoroughly vetted before being attacked. A law enforcement type system utilized by an oversight council would ensure that potential drone strike targets are at least given a pseudo-trial, rather than being targeted because of the agreement of just a few men in situations lacking any tool for oversight.

10. Conclusion:

In closing I want to make clear that the purpose of this thesis is not for me to expound that I have all the answers to the problems that armed drones raise on the modern battlefield and in the formation of foreign policy. If I had all the answers, I am sure the White House or CIA would have come knocking on my door to employ me by now. Rather, this thesis has attempted to create a meaningful dialogue about how new technology in the form of armed drones has exacerbated age-old ethical and moral problems. The purpose of this dialogue is to highlight ways in which we can move forward in a positive way from where the United States drone policy currently is today.

¹⁰² Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print. 66.

By examining historical weapons development, it is clear that while technology has advanced over time, the same ethical and moral questions have persisted throughout time. However, with such technologically advanced weapons, the ease with which one can kill has increased, and it has been made easier to abuse the use of weapons that create an asymmetric conflict. It is in this type of conflict that moral and ethical questions are raised regarding whether discriminate or indiscriminate killing is better. Accepting that violence is part of society, it is clear that we should aim to make sure any violence that is carried out is discriminate in its nature, and that unintended people are not the victims of violent attacks, whether carried out by a drone or by any other weapon.

After acknowledging that discriminate killing is preferred over indiscriminate killing, we still need a standard with which to measure and judge a state's or group's actions. With such technologically advanced weapons as armed drones, weapons that create a total asymmetry in armed conflict, we are not able to apply traditional Just War Theory. The asymmetry in technology and resulting asymmetry in the conflict means that self-defense theories for justifying conflict do not fit. Instead of traditional Just War Theory, the United States should look to a system similar to that of law enforcement, which utilizes a council of military, foreign policy, counter-terrorism, and legal experts. This council's job will be to making sure a person or group of people is guilty of something before punishing them, in this case, with death via drone strike. Putting accused people through a pseudo-trial is aimed not only at reducing the likelihood of unjustified killings and civilian casualties via collateral damage, but is also aimed at reducing terrorist groups' ability to attract new recruits by using civilian deaths as propaganda to attract people to their cause.

While the aforementioned solution is not perfect, it takes important steps forward in the United States creating norms for armed drone use that include greater transparency, accountability, and regard for human rights. It is imperative that the United States takes these steps themselves, and soon, not only to effectively implement counter-terrorism measures, but also to make sure they have a say in the international community when it comes to commenting on how other countries use their armed drones in the future.

Drones are here to stay and are sure to be utilized by militaries around the world in greater frequency in coming years. We must continue to think about the ways in which we should use these weapons in a responsible and morally justifiable way that limits deadly force to those deemed to be true, viable threats, and limits as much as possible, innocent deaths and collateral damage.

Bibliography:

Benjamin, Madea. *Drone Warfare: Killing by Remote Control*. New York: Verso, 2013.

This book is critical in establishing a timeline of how the drone came to be and then how it was militarized into its current form. It goes through the history of the drone, starting with the origin of its name from anti-aircraft training targets during WWII, the first prototypes of modern predator drones, created by Israeli aviation engineer Abraham Karem in the 1980s, and then these drones first real and effective use gathering intelligence in Bosnia and the first time such drones were armed with ordinances during the 1999 NATO Kosovo campaign. Chapter 3 is especially interesting due to its critical look at the CIA drone program as the single largest user of armed drones in the world. Lack of government or public oversight over the CIA drone program raises major questions as to whether this program is ethically sound.

Cohn, Marjorie. *Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues*. Northampton, Massachusetts: Olive Branch Press, 2015.

Chapter 3 is key in that it argues that the extreme military losses during the Vietnam war, and the increasing front-line media coverage of the travesties of war lead to a certain post-Vietnam war hangover in military tactics and strategy, where US presidents and US generals were afraid of ever taking significant losses again because what it could mean with losing public support. To avoid military casualties, military leaders started to look towards how to make conflicts less costly in US lives. These objectives governed US policy during numerous small-scale military operations including those in Afghanistan, Guatemala, Mozambique, El Salvador, Angola, and Nicaragua. Rather than having a significant presence on the ground, the US turned to other means of fighting, such as supplying money, arms, and training to militia groups that aligned with US foreign policy. This type of small-scale conflict and minimalistic intervention theory would eventually lead to the adoption of armed drones.

Duncan Anderson “Nuclear Power: The End of the War Against Japan,” *BBC*, last updated February 17, 2011.

http://www.bbc.co.uk/history/worldwars/wwtwo/nuclear_01.shtml

This source is used very minimally as a means for background knowledge regarding the atomic bombs dropped on Japan to end World War II. I will make the comparison that nuclear technology is a recent example of another military technology that has the power to create significant asymmetry of power in a conflict. International norms for the use of the nuclear bomb have kept it from being used outside of the two instances in Japan at the end of World War II.

Enemark, Christian. *Armed Drones and the Ethics of War: Military Virtue in a Post-heroic Age*. Florence: Taylor and Francis, 2013. Print.

Chapter 5 of this book and its discounting of applying traditional just war theory is critical to my thesis as I think it sets the foundation for arguing that we cannot approach drone strikes (and other similar technologies like cruise missiles fired from ships) with the same military theories that we have used in previous conflicts. As technology adapts and the way we fight “wars” or “enforce the law” changed, the way in which we assess the actions taken must also change. The

fact that drone operators do not have “skin in the game” means that just war theory cannot apply to drone operators and their actions. We must come up with a new way to judge the morality of these operator’s actions and the way they conduct war. Enemark’s theory based on law enforcement is certainly a theory worth considering and if not fully adopting, at least adopting parts of.

Evangelista, Matthew and Shue, Henry. *The American Way of Bombing: Changing Ethical and Legal Norms from Flying Fortresses to Drones*. New York: Cornell University Press, 2014.

The book makes an interesting argument that the drone is only the latest in a series of technological advances that has been aimed at distancing soldiers from one another (think the advance of sword to arrow, arrow to musket, musket to rifle, rifle to long range artillery, planes, missiles, etc.) However, the authors stop short of making the same distance argument as past authors I have read. Instead, the authors argue that the drone operator has not so much removed himself from the battlefield as he has globalized the battlefield. The book cites the New America Foundation, officials from the Obama administration, a New York Times piece, the Guardian, among other sources in painting a wide scale of the estimated non-combatant deaths caused by drones. This book also presents significant policy history, both internationally with the Geneva conventions, and domestically with formal government policies and statements by administration spokespeople.

Gregory Mast, Hans Halberstadt “To Be a Military Sniper” Voyageur Press - December 2007

This source is used to talk about other instances of targeted, discriminate killing throughout history. Highlighted are examples from the gunpowder age, specifically from the American Revolutionary War, where we began to see norms changing regarding the targeting of officers and those crucial to a state or group’s war effort.

Himes, Kenneth R. *Drones and the Ethics of Targeted Killing*. Lanham: Rowman & Littlefield, 2015. Print.

Himes’ book is relevant to my thesis in that it provides an argument as to how the ethical question that drones present has actually been around for centuries. As military technology has advanced, often the goal of technological advances has been to put more and more distance in-between me and my adversary. Being able to attack from a distance in theory increases my safety and reduces the risk that I am shouldering by taking part in the conflict. There is a reason why we went from swords to arrows to muskets to rifles to long-range artillery to airplanes to long-range missiles, and not to drones. The progression over time has been the same; we just have seemingly reached the extreme of removing risk from the battlefield through distancing our actual selves from the conflict. Drones remove the soldier (or drone operator) so far from his target, that the drone operator is not really on the battlefield, and therefore not really present in battle.

International Committee of the Red Cross “The Use of Armed Drones must Comply with Laws” 10-5-2013 interview w/ Peter Maurer

<https://www.icrc.org/eng/resources/documents/interview/2013/05-10-drone-weapons-ihl.htm>

This interview is also very important to the section on international law with regards to Drones. Even the head of the Red Cross during 2013 noted that there was a tangible benefit to discriminate killing over indiscriminate killing. This sets the groundwork for arguing that the intelligence drones allow and their ability to carry out low-risk, hypothetically low-collateral damage attacks, makes drones an extremely tempting tool to use in any conflict given the conflict cannot be avoided.

Internet Encyclopedia of Philosophy “The Philosophy of War”

<http://www.iep.utm.edu/war/>

This is a minor source used to get background info on traditional Just War Theory and on Von Clausewitz’s military philosophy. It was not use significantly in the paper.

Joel H. Rosenthal “Drones: Legal, Ethical, and Wise?” March 19, 2013

http://www.carnegiecouncil.org/publications/ethics_online/0078.html

This source was also minor in its importance to the thesis, but was used for finding specific international laws and charters of multi-lateral agreements.

Kaag, John, and Sarah Kreps. *Drone Warfare*. Cambridge: Polity, 2014. Print.

Kaag and Kreps focus on technological advantages when addressing the issue of asymmetry. The authors argue that while drones have become the weapons of our age, the moral dilemma that drone warfare presents is not new. The authors cite Plato’s Republic and the story of Gyges. Kaag and Kreps also cite multiple philosophers from around WWI and WWII; most important to my thesis is Marcuse. Marcuse was making observations about Nazi Germany and the German Army’s mechanization and how new technology lead leaders to rationalize the idea that if something is “efficient” and “reasonable,” then it should be commonplace. It emphasized expediency and convenience. However, Kaag and Kreps point out that today we are not constrained like we were during WWII. In short, the necessity of expediency is no longer present. Morality is not expedient and morality should come first before expediency.

Maya Shwayder “Drones: Which Countries Have Them for Surveillance and Military Operations?” May 18, 2013 <http://www.ibtimes.com/drones-which-countries-have-them-surveillance-military-operations-map-1264271>

This page is important in that it shows that drones, especially ones used by the military, are not a technology solely utilized by the United States government. The problems and questions posed by Drones are only going to continue to grow.

Michael Isikoff, “White House Exempts Syria Airstrikes from Tight Standards on Civilian Deaths,” *YahooNews!*, November 3, 2014, <http://news.yahoo.com/white-house-exempts-syria-airstrikes-from-tight-standards-on-civilian-deaths-183724795.html>.

This source is important in that it talks about the United States putting forth a standard, which on its face, looks as though it is meant to protect civilians from drone strikes and other forms of anti-terrorism activities. Yet, in reality, the standard is only applied in areas where there is not an ongoing area of hostilities. Who, though is to judge what constitutes an area of ongoing hostilities?

Neal Conan, Daniel Klaidman, *How the President Decides to Make Drone Strikes*, interview, 16:46, June 6, 2012. <http://www.npr.org/2012/06/06/154443665/how-the-president-decides-to-make-drone-strikes>

This source is important in that it highlights, though via unconfirmed sources, the process that President Barack Obama has used to decide whether a person or group of people will be targeted via drone strike.

Rosa Brooks “Drones and the International Rule of Law” 2013, Georgetown University Law Center

<http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2296&context=facpub>

This article is important due to its discussion on what the Obama administration has said it is going to do versus what it has done in actuality. This specifically has an eye on civilian casualties and standards of certainty with regard to limiting collateral damage.

United Nations Security Council Resolution 1373 (2001)

<http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20%282001%29.pdf>

This resolution is a core primary document to be used in the section on international law that drone critics have argued should be applied to United States drone policy. While international law is technically not enforceable, unless the nation in question adheres to an international court’s ruling, international law is still important as far as setting and adhering to norms of behavior.

“U.S. Policy Standards and Procedures for the Use of Force in Counter-terrorism Operations Outside the U.S. and Areas of Active Hostilities” May 23, 2013.

https://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf

This document is important to gaining a foundational knowledge of United States counter-terrorism operations and comparing the goals of these operations with how they manifest themselves in real life.