Global War, Biopower and The Rise of Drone Warfare in the 21st Century

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ABSTRACT

In this senior project I assert that 9/11 was a turning point for the U.S. that changed the way it views warfare and security, which consequently allowed for the abuse of law and power around the globe, specifically in countries such as Yemen, Pakistan and Somalia. This abuse will be explained using three frameworks: constitutional and international law as defined in the Office of Legal Counsel white paper; philosophically through the lens of biopower and other concepts from Michel Foucault, Michael Hardt and Antonio Negri; and lastly I will discuss the issues of the drone campaign using case studies from Yemen. By declaring “global war” and exerting biopower over Al Qaeda and foreign citizens, the United States has created a drone empire of death, in which the U.S. seeks to control certain spaces and populations at the cost of civilian life, public space, and political agency.
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Biopower, a form of power, seeks to condition through death.

To all of those who have lived in terror of Drones and to those who have fallen
INTRODUCTION
The nature of war and security was changed forever on that fateful day, 9/11. The United States at once felt fear, vulnerability, confusion and inadequacy. Nevertheless, the U.S. response was fierce; 9/11 prompted the creation of a new executive department—Homeland Security\(^1\)—just ten days after the original attack; it led the country into its first war against a non-state actor\(^2\), which named itself Al Qaeda; and ultimately brought about an entire restructuring of how law, warfare and power coincide. Legislation was shortly passed that allowed the United States to wage a global war against, what George W. Bush called, enemies of global reach. Not only did 9/11 create the foundation for global war, but it later on created the space for drones to appear and rise to prominence as equalizers in the insurgent theater of war. However, this new “global war” has opened Pandora’s Box and has left the country, along with others, in a perpetual war. The nature of war has changed and along with it the laws that the U.S. uses to govern their actions in war.

In my first chapter, which is focused on law, I will focus on a white paper produced by the Office of Legal Counsel and leaked by NBC news. This white paper establishes the basis for the lawful use of force, which implicitly includes drones even though the OLC never explicitly mentions them. I argue that the OLC, being directly connected to the White House, seeks to appease the President which leads to a reading of law that is not only partisan,

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1 Homeland Security was created by the Bush Administration in efforts to focus different department’s strengths in dealing with national security and focused them into one central body. It was formally proposed by Bush in June 2002 (see Proposal to Create the Department of Homeland Security) and it formally came into being in November 2002 through the Homeland Security Act.

2 Non-State Actor (noun): an individual or organization that has significant political influence but is not allied to any particular country or state. (Oxford Dictionary)
but also allows for a reading of law that is expansive and dangerous. Law should be non-partisan, especially in times of war.

The second chapter will focus more on the use of drones and how they operate within the context of biopower that Foucault, Hardt and Negri put forth. I argue that drones allow the United States to exercise biopower over foreign citizens who, due to the nature of aerial weaponized vehicles, can do nothing but be complicit in this biopolitical control being exercised over them.

The third chapter will focus on Yemen and three case studies done by Human Rights Watch. In this chapter I will talk about how drones, as a thing that is always present in the distance, destroys any sense of political agency or public space; and within that looking at how Yemenis are choosing to take back their agency by protesting.

I hope, by approaching the use of drones through the lens of global war I will bring to light some concerning issues that I believe have surfaced in recent years. In approaching the subject of drones and global war we must have an open dialogue, and this senior project seeks to contribute to such an dialogue.
CHAPTER 1-
The Office of Legal Counsel-
On Imminent Threat, Self-Defense, and Drones
INTRODUCTION

It has been over twelve years and two administrations since 9/11 took place and the concept of global war still stands. However, instead of using soldiers to fight against Al Qaeda and affiliated groups, the Obama administration—picking up where Bush left off—has implemented a targeting program through the Central Intelligence Agency (CIA) using UAV’s or unmanned aerial vehicles, also known as drones. Drones have been in existence for quite some time, but from September 2001 to April 2012 the U.S. increased its drone inventory from 50 to 7500 drones. This increase was due to continuing growth in technology, better intelligence, and the current administration’s policy of a “light footprint” approach. This practically means conducting missions while leaving as little “collateral damage” as possible; the CIA has been instrumental in doing that. For the Obama administration and the CIA collateral damage is done to things other than the intended target, so things such as buildings, vehicles, and other structures are under this category. Civilian loss has also been added to the list of collateral damages that could arise from drone operations.

As of now, there are two drone programs, one belonging to the CIA and the other belonging to the Department of Defense (DoD). The program under the DoD only specializes in surveillance, while the CIA specializes in both intelligence gathering and the conduction of lethal operations. The president works closely with the CIA, giving the final go-ahead in every lethal operation. However, according to a Council on Foreign Relations special report, the public along with policy makers were becoming increasingly uneasy with the limited transparency for

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targeted killings. Some of those concerned included human rights organizations such as Amnesty International, Human Rights Watch, the American Civil Liberties Union, the Open Society Foundation and many others; these same groups sent a letter to President Obama inquiring upon the legal basis for U.S. targeted killing operations. In a response to mounting pressure from both government officials and other involved bodies, the Obama administration released a white paper called *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force.*

This paper, which was written by the Justice Department’s Office of Legal Counsel, asserts that through powers vested through both international and constitutional law the U.S. has the authority to use lethal drones based on the premises of imminent threat and self-defense. The white paper discussed different issues but some of the main points include: a description of the authority to use force in operations against Al Qaeda; considering whether a lethal operation against a U.S. citizen would be consistent with the Fifth Amendment's Due Process Clause; and explaining the concepts of "imminence," feasibility of capture, and compliance with applicable law of war principles.

In my first chapter, I will be focusing on the latter. The concept of “imminence” has become one of the most pressing terms in both academic and practical settings. Calling a threat

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5 Ibid.,


7 White Paper (noun): a government or other authoritative report giving information or proposals on an issue (Oxford dictionary).

imminent seems to mean that something is visible and inevitable. The way that the Obama administration and the OLC chooses to use imminent is quite different; imminent in the white paper context means that a threat is going to happen, however there is no clear line of trajectory or proof of actual attack. This use of imminence was also used during the Bush administration in order to justify attacking before a threat materialized, something expressly forbidden in the UN charter and other international law documents.

The use of force is an incredibly important factor to discuss; the OLC realizes that in international law, more expressly in UN charter article 51, states must not use force except in cases of self-defense, which is fulfilled once a threat becomes imminent according to the definition of international law. Then, the threatened state can launch a pre-emptive strike—a strike done in self-defense and usually manifest as a first strike in order to dismantle the threat. The United States’ main claim to the use of force is the Authorization for Use of Military Force, a document passed by Congress on September 14, 2001 and signed into law by President Bush on September 18, 2001. The document gives the President the powers to use force in all ways deemed imaginable against those who aided, forced, planned, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons. These pre-requisites are expansive, which was something done to ensure that the President would not be limited by other laws barring him from taking action. This has now spilled over into the CIA drone program in which the President makes the executive decisions on who to kill, an extension of the AUMF powers.

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On the other hand, this right to force only applies to constitutional law and is in direct contrast with the UN Charter’s use of force clauses, including the self-defense clause. This contrast is brought on by the fact that the United States Constitution reigns supreme in America, thus international law does not supersede constitutional law. Granted, the U.S. does place value on international statutes and norms. Nevertheless, the current drone policy stands in opposition to international established law. The OLC also cites the constitutional responsibility of the President to protect the nation, which is more of an implied power than a power explicitly mentioned, because the Constitution does not directly say that the president has this responsibility.

In the case of U.S. citizens who are senior members of Al Qaeda being killed abroad, the OLC has argued that lethal operations against said members remain constitutional under the law. Specifically due to the Supreme Court which has held that the military may constitutionally use force against a U.S. citizen who is a part of enemy forces. The focus on American deaths is due to the death of American citizen Anwar Al-Awlaki who was killed in a drone strike in Yemen on September 30, 2011. Many people including politicians such as Rand Paul fervently fought against the use of drones on citizens and also brought into question whether or not drones could be used to kill citizens on American soil, something that has not been rendered unconstitutional. Nonetheless, this point raises questions that will not be analyzed in this chapter.

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However, the interpretation of both constitutional and international law by the OLC enables the U.S. to wage what I will call “limitless war” in which there is neither a set zone of conflict nor an actual imminent threat in the way it is described in international law. Although this white paper and the OLC in general try to justify lethal drone operations using law, the OLC oversteps its legal interpretations on multiple occasions.

The Office of Legal Counsel, which was founded in 1934, is part of the Department of Justice. However, the OLC operates as a non-partisan independent group of lawyers who serve the executive branch. According to an article in the Harvard Law Review the OLC’s responsibilities include offering legal advice on proposed legislation and executive orders, mediating disputes among various executive branch actors and drafting the official opinions of the Attorney General.\textsuperscript{13} The power that the OLC has is quite extensive; attorney advisors within the OLC produce written opinions that become binding on the executive branch unless it is overruled by the President or the Attorney General\textsuperscript{14}. This means the that OLC is in some ways an executive branch “Supreme Court”, without the all-encompassing federal power. Nevertheless, the opinions of the OLC matter a great deal and are very important to the White House and its interest. This means, however, that the OLC can be put under a huge amount of pressure from the White House and is consequently never entirely neutral with regard to the President’s policies.\textsuperscript{15} This can of course pose a problem in how the OLC decides to interpret

\textsuperscript{14} Ibid.,
\textsuperscript{15} Ibid.,
law, especially when trying to expand the powers of the President. Some expansions that have happened recently include the torture memos\textsuperscript{16} and the white paper I am currently focusing on.

The expansions of power may also be done to appease the President, considering that he has a counsel of his own—the White House Counsel Office (WHCO). In addition to that, the OLC can be replaced by the WHCO if their opinions do not please the President. Nonetheless, the President chooses to ask the opinion of the legal counsel in order to create a balance and in theory have an opinion issued outside the realm of White House control.

Another problem with the OLC’s opinion making power revolves around the fact that the President has the full authority to run the OLC as he pleases. The independence that was mentioned before is an asset; therefore many Presidents choose to keep the OLC non-partisan by keeping the ranks equal. However, in the past years that has not been the case.\textsuperscript{17}

One must inquire if the OLC’s opinion can be trusted as a non-partisan one, in which the OLC shows reasonable and applicable evaluation of the law. From past events\textsuperscript{18} it would seem the OLC is only used, notably within the Obama administration, when it gives opinions that are in accordance with the views of the president, otherwise their opinions tend to be discarded. This could have led to the misinterpretations of imminent threat and their viewpoint on the sovereignty of other states and armed conflict. The OLC is too open for manipulation, which

\begin{footnotesize}
\textsuperscript{16} Torture Memos: The torture memos were opinions written by various actors within the OLC justifying or trying to find ways in which torture could be used as an interrogation technique.


\textsuperscript{18} Libya: In the case of the use of direct force in Libya, the OLC decided to give an opinion on whether or not it would be lawful for the U.S. to intervene.
\end{footnotesize}
means that one cannot trust their opinion fully. Nevertheless, their opinion is still important, along with the language that they use.

Outside of the OLC there are just as many supporters of the drone program as there are dissenters. These supporters include a great number of the American people. In a poll done by TIPP, a polling unit of TechnoMetrica Market intelligence, and Christian Science Monitor a total of 57 percent of Americans polled support drone strikes.19 This is continually supported by polls from Gallup, Pew Research and NBC that support the idea that a majority of Americans think drone strikes are effective. And most of these supporters agree that drone strikes are helping to win the conflict with Al Qaeda, yet one must still pursue goals legally, even president Obama cautioned against using military tactics as a rule. He said, “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”.20 As drone strikes continue, the legality of the strikes and consequently the success of the campaign are being questioned by people outside the United States. The questioning of the white paper’s legal language and definitions lies at the root of seeing whether or not the current drone program is legitimate under international law.

**DRONE WARFARE AND THE CONSTANT THREAT**

Since 2001 Al Qaeda has been categorized by the United States as an imminent threat, a threat that is always a constant danger. Moreover, Al Qaeda has been characterized as having global reach, which increases the danger it poses. In response to this the U.S. and the OLC specifically have chosen to redefine imminence in accordance with American interest. The new definition allows for Al Qaeda to be a constant threat and allows the U.S. to attack anywhere and

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19 Howard LaFranchi “American Public has few qualms with drone strikes, poll finds”. [www.csmonitor.com](http://www.csmonitor.com)

20 Ibid.,
at any time, as long as there is suspicion of terrorist activity. Unfortunately, this belief in attacking before the threat has materialized has led to the deaths of many people who had nothing to do with Al Qaeda, namely foreign citizens. I argue that by saying that imminence means that a threat is constant and sometimes nonmaterial; the U.S. awards itself too much power. Most states within the international community follow the rule of pre-emption; which is the ability to attack only when a threat has materialized and the state has no other choice but to disrupt the aggressor. Imminence, in the American sense, implies meanings and privileges that are not covered by international law.

The white paper suggests that through the implied powers of the presidency, the state has the ability to act if a threat is perceived as imminent.\textsuperscript{21} In the white paper Al Qaeda is characterized as the imminent threat;\textsuperscript{22} the “the” connotes a sense of perpetual threat. It gives the reader a sense of temporal urgency and an understanding that Al Qaeda is an issue that presents itself in the present. This perpetual threat, however, is not supported with evidence; it is assumed that Al Qaeda and its affiliates are continuously planning attacks against the United States. One must ask the question: “does this make sense?” As of now, the U.S. is facing a plethora of threats, including domestic terrorism, nuclear proliferation in Iran and North Korea, and the continued warfare that is going on in Syria. Although these threats are different in nature, they all have a common ground: they are threats and any one of these threats can be deemed imminent and harmful to the United States interest. North Korea for the past couple of years has been threatening to mount a nuclear attack against the United States. Yet, there have only been verbal


\textsuperscript{22} Ibid.,
warnings in response. If the threat of a state attack on our soil does not constitute an imminent threat, then what does?

According to the OLC and the Obama administration an attack does not only have to be imminent but violent. While the white paper did not explain the meaning of violent attack fully, one could postulate that an attack would have to be ready to be enacted and most likely there would have been some pre-meditated plan of attack. However, this was not the case with Baitullah Mehsud, a Pakistani Taliban Leader, who happened to make a fatal error. In August 2009 Mehsud was killed by a drone while on the rooftop of his father’s house. During this time Mehsud was giving himself an IV drip for his diabetes. Arguably, Mehsud was not doing anything incriminating other than being a member of Al Qaeda. The reason Mehsud was killed was due to his status as a HVT—High Value Target. High value targeting has been a part of American military strategy since the Cold War; however, this has only been against representatives of a state. The threat posed by an Al Qaeda operative or a co-belligerent is different in nature. The state leader or representative is easy to track and predict, while the leader of an amorphous group of non-state actors still remain unpredictable even to this day. This could be one argument in favor of calling Al Qaeda an imminent threat. Yet, the way in which the U.S. uses the word imminent invalidates any claim to legality or justification.

As explained before, “imminent” means that something is bound to happen or that an attack is inevitable; in order to counter against such an attack, a state has the right to launch what is called a pre-emptive strike. This strike is only allowed when a threat has materialized, e.g. a

23 Ibid.
state or non-state actor visibly launching an attack against another state. The way that the white paper uses “imminent” is in line with the Bush administration’s use of the word; in an address to the new graduates at West Point Military Academy Bush stated that if we wait for threats to fully materialize we will have waited too long.\(^{25}\) This was a defining moment, considering that the commander-in-chief was literally telling future military leaders that the U.S. will begin to take a preventive approach in the case of terrorism. This was seen by many scholars, including a professor at West Point, as a misinterpretation of the term imminence that international law supports. The imminence that international law supports is strangely drawn out in the description of the Homeland Security NTA system—National Terrorism Advisory—in which an imminent threat alert is explained to be a credible, specific, and impending threat against the United States.\(^{26}\) Yet, in the white paper the OLC states that for an attack to be imminent it does not require the U.S. to have clear evidence. This claim was preceded by the notion that by waiting the U.S. would not have sufficient time to attack.\(^{27}\) The NTAS definition and the OLC via the Justice Department definitions do not coincide and both departments are part of the executive branch. Granted, the right to self-defense is indeed a right set out by chapter VII of the UN Charter, however the right to self-defense was, at least within the context of its creation, meant for state-on-state violence. The question of applying self-defense in the face of an imminent threat in the case of non-state actors is an incredibly new school of thought. The white paper presupposes that many of our old standards can be used in the case of non-state actors which could lead into dangerous territory as one can already see.


The manipulation of imminent threat in itself is questionable, especially since the OLC has been known to approve erroneous opinions before, such as the torture memos. Jay S. Bybee of the OLC had written a memo to President Bush justifying torture and suggesting ways to torture Al Qaeda operatives while evading war crime laws. This practice of manipulation can cause some speculation on the OLC’s credibility and intent when defining imminent threat.

Another issue with the white paper’s meaning of “imminent threat” is the fact that it enables the government to attack anyone at any time, as we saw with Mehsud. Nevertheless, we must take into account that the targets that the OLC outlines as legal targets are high-value members and affiliates of Al Qaeda, yet the U.S. can get around this by labeling anyone as a high-value target or Al Qaeda affiliate. This gives the U.S. power to literally wage a global war, something that has been on the American security agenda for quite some time. The Obama administration has taken on many of the aspects of prevention that Bush enacted in the early 2000’s and has continued faithfully to follow in those footsteps. America has overextended its constitutional power into the realms of the international community. By staying true to the American definition of “imminent threat” we are stating that our national interest and law supersedes that of the international community, which is unlawful and stands in contrast to the OLC white paper. Imminent threat must be used in its original context as designated by international law, lest states choose to disregard the structures that were put in place to create order and peace in times of war.

\[\text{28 Ibid.}\]
The concept of “global war” was introduced right after 9/11; President Bush had declared Al-Qaida a terrorist organization of global reach, and that there must hence be a “global war”. One of the main tropes, especially surrounding the war on Al-Qaida, was the definition of what war meant when it came to fighting non-state actors. Non-state actors are inherently mobile since they do not belong to a state, but are an amalgam of different peoples with usually one outstanding view. As the morals of the organization spread, so do the number of enemies, who can cover vast amounts of space due to the focus on individual loyalty rather than state loyalty. The space that non-state actors cover is always part of the sovereignty or controlled territorial space of another governing body. As tensions rise, armed conflicts can ensue, thus disrupting the normal flow of sovereign rule; in the case of the war on Al Qaeda, and drone strikes within the white paper, both concepts have been drawn out and morphed to become expansive, while their actual definitions remain more focused. This becomes more important when looking at the “why,” which concerns imminent threat, the “where” which concerns sovereignty and armed conflict which concerns the “whom.” Imminent threat cannot stand alone considering the implications it has for where drone strikes can happen and even more importantly, who they kill.

One of the main issues with drone strikes and the white paper in general is the fact that according to both the executive and legislative branches, America has the ability to attack a threat in another country with or without the state’s consent. This, much like imminent threat, is based on the premise of self-defense. This premise is best defined in the United Nations Charter Chapter VII in which it states that nothing in the charter shall impair the inherent right of

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individual or collective self-defense if an armed attack occurs against a Member of the United Nations.\(^{31}\) This is at least the first clause of the article and this clause is the premise on which the U.S. is operating. However, this clause does not provide a state with the preventive power to act; the clause says, “occurs,” which means that the attack must be imminent or in the case of 9/11 had already happened. In the case of Al Qaeda and affiliate groups, drone strikes are legal due to the perpetual imminent threat that they pose. Nevertheless, the article does not specify where and for how long self-defense can take place. The ability to conduct a lethal drone operation within a state is not the reasoning of international law, but of U.S. legal thinking.

In one paragraph in the white paper, the OLC explains that conducting lethal drone strikes in other countries such as Pakistan, Somalia and Yemen are in accordance with international principles of sovereignty and neutrality;\(^{32}\) however the OLC does not cite any legal source that could have given that statement meaning. The OLC does cite common article 3 of the Geneva Conventions,\(^{33}\) which states that armed conflict can take place between a non-state actor and a state. However, according to the Asser Institute’s Centre of International and European Law,\(^{34}\) there are certain non-obligatory requirements such as an organized fighting force, the ability to uphold the statutes of the conventions and operation within a determinant area. Due to the nature of Al Qaeda as a non-state actor, an area of exact operation is incredibly hard to

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\(^{34}\) Ibid.
pinpoint. In either case, the U.S. is still teetering on a very dangerous precipice. Much like Iraq, the Obama administration has simply invaded the states that I have mentioned.

In any of the international conventions mentioned so far there has been no real provision for the territorial or political limitations on their reach. In the case of the drone campaigns happening in Yemen, Somalia and Pakistan, areas outside the area of conflict, there has been no real multilateral approach to combating Al Qaeda and affiliate forces. Most of the strikes, especially in the beginning of the drone program, were unilateral actions in which not only the targets were killed, but civilians as well. As one could possibly assume, the killing of civilians is within the realm of our so-called wartime powers of self-defense. In the last four months of 2011, the United States used drones to kill at least sixty people in Pakistan alone. This was done outside the area of armed conflict.

Armed conflict and sovereignty go hand-in-hand when it comes to discussions of the U.S.’s global war on Al Qaeda and just whether or not the U.S. has the international jurisdiction to wage war outside of the prescribed area of armed conflict. Mary Ellen O’Connell, in an effort to define armed conflict, prescribed these two criteria: (1) organized groups that are (2) engaged in intense fighting. As of now, the U.S. is in armed conflict with Al Qaeda, however, this definition does not extend into areas where the intensity of fighting is close to nonexistent. This would mean that the same wartime laws that apply in Afghanistan would not apply to countries such as Pakistan, Somalia or Yemen. However, the U.S. has taken a stance against O’Connell and her definition of armed conflict. In the white paper the OLC cites Mary Ellen


37 Mary Ellen O’Connell is an International Law Professor at the University of Notre Dame
O’Connell and discounts her view that this current armed conflict cannot lawfully extend outside of Afghanistan due to the level of intensity. The OLC continued on by saying that for the moment there has been little judicial or other authoritative precedent that speaks directly to the question of geographic scope. However, this has been stated by O’Connell on numerous occasions and the whole point of her defining what armed conflict means is to do exactly what the OLC said was lacking: to create some definition for armed conflict.

In response to the OLC O’Connell states that the first drone strike using hellfire missiles outside of Afghanistan in 2002—which killed six people, including a U.S., citizen—was found unlawful by a United Nations special rapporteur, the same institution that the OLC cites for justification within international law. According to the Bureau of Investigative Journalism, a non-profit British news organization, the U.S. drone program has taken the lives of over 3,000 to 4,500 people, including 200 children. And most of these deaths have taken place outside the area of “active hostilities,” as the OLC calls it. The U.S. cites the Authorization for Use of Military Force—AUMF—as one of the primary authoritative documents at the forefront of drone policy, but this creates an unequal balance in the realm of law. This law is not international but national, which means that its authority can only go so far. The OLC cites the fact that the AUMF itself does not set forth boundaries for geographic limitations for the use of force, well


40 Ibid.


42 Ibid.
of course it would not. Setting limitations on where the U.S. can and cannot fight would not be in the best interest of the country. By using the AUMF as an authority for international law, especially in terms of sovereignty and armed conflict, the OLC has biased its opinion since the AUMF was created for U.S. interest only, not for states such as Pakistan or Yemen.

According to the Council on Foreign Relations, host states, countries that currently contain Al Qaeda operatives, are becoming increasingly frustrated with U.S. drone policy. This frustration is due to continuous violations of sovereignty and disregard of international law. One of the countries that hosted drones was Pakistan until 2011 and as of now the Pakistani high court has condemned drone strikes in remote tribal regions also known as the FATA as illegal and a violation of human rights. This language is in total contrast to what the white paper considers as legal.

However, some scholars stand with and affirm the U.S.’s position on drone strikes; one such scholar is Gregory McNeal. McNeal asserts that countries such as Pakistan have in fact given the U.S. permission to use drone strikes during a meeting in which a Pakistani official gave a U.S. diplomat a note saying that tribal peoples welcomed drone strikes, thus furthering the American position. However, there must have been a disconnection in the legal reasoning of the

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45 Ibid.

46 The FATA: Federally Administered Tribal Areas are a semi-autonomous tribal region in North Western Pakistan.

U.S. or some sort of false interpretation of jurisdiction between Pakistan and the U.S. One point of contention could have originated from the way the U.S. interprets its war powers in international law. Many states, including Pakistan, view sovereignty within the international norm of state decision-making power, yet the U.S. does not concede to that notion within the international realm, especially during times of war. By using the concept of self-defense, the OLC invokes a different type of sovereignty in which decision-making power is meaningless under special circumstances and the state has more of a responsibility to protect or cooperate than make its own decisions. Hence the OLC’S reasoning pertaining to state sovereignty and Al Qaeda operatives.

This leads back to the idea that armed conflict can spread across any and every territory if deemed necessary; at least that is the way the OLC explains it. The OLC cites Richard A. Falk and his argument that in an international armed conflict a state has the right to attack belligerents in another state, if that state cannot sufficiently prevent said belligerents from acting.\(^48\) The OLC believes that also applies to non-international conflicts in which terrorist organizations may move their bases from one state to another.\(^49\) On the other hand, these conflicts are characterized by the mobility of the enemy; therefore one could say that Al Qaeda could potentially spread around the globe, consequently making the entire world an arena of war. This view also neglects the fact that some countries may not have the resources to keep certain unfavorable organizations, such as Al Qaeda, outside the realms of their state; nevertheless, this should not


mean the United States could violate a state’s sovereignty due to self-defense. With this in mind, one must also take into account that the Geneva Conventions do not have provisions for the amount of civilians lost that would probably be a product of such an expansion. Indeed, civilian loss is a part of war; nonetheless, there are precautions that states must take. In Convention IV civilians are afforded protections from inhumane treatment and attack; these are all rights that are for the government of armed conflict. Despite this, the United States chooses to disregard the conventions in favor of U.S. law, although U.S. law does not extend into international law, or the way armed conflict is supposed to proceed during times of war.

Nonetheless, constitutional and international law can complement each other and for the most part, laws tend to do that. Yet in this case armed conflict seems to be seen as something that is malleable and expansive. Keeping the definition of armed conflict vague is incredibly dangerous, which is why it is concerning that the U.S. rejected Mary Ellen O’Connell’s definition of armed conflict. Even the Asser Institute along with many other institutions has accepted her definition as a legitimate one.

While the U.S. claims that they are following all laws dealing with sovereignty, the majority opinion of the United Nations, as expressed by special rapporteur Ben Emmerson, on Pakistan sustains that drone strikes are illegal\(^\text{50}\) and in the case of Yemen, many civilians are starting to become either angry or fearful of U.S. drone strikes.\(^\text{51}\) According to an article done by The National, Yemeni officials have stated that the Yemen government did not allow the U.S. to


conduct random attacks in the country, though it has agreed to work with the U.S. in the fight against Al Qaeda.\textsuperscript{52} According to international law and the UN, a country \textit{must} explicitly state that another state may commit acts of war. Indeed, the Yemeni government conceded to helping the U.S. in the fight against Al-Qaida; however this help did not translate into violent attacks in Yemeni sovereign territory.

\textbf{LOOKING FORWARD}

The power of the U.S. to wage war on a global scale without any limits steeped in evidence or the respect of sovereignty can pose a danger to all countries, including the United States. The U.S. has already started to lose its so-called “soft power,” especially among states that drones affect the most. Soft power is described as the ability to persuade someone or some state to do or believe something. In the case of Pakistan, the U.S. had used its soft power to persuade the Pakistani government to allow it to conduct drone strikes in the FATA region “the most dangerous region on earth”.\textsuperscript{53} Apparently in this region thousands of Taliban militants give sanctuary to Al Qaeda agents who are continuously plotting new 9/11’s every day.\textsuperscript{54} While this may be true, the fact remains that people other than the Taliban and Al Qaeda live in those areas. In the FATA region dozens of Al Qaeda leaders have been killed and John Brennan, director of the CIA, has insisted that targeted killings are the wisest and most ethical.\textsuperscript{55} However, one must

\textsuperscript{52} Abubakr Al-Shamahi. “US drones strain Yemeni’s dual loyalties.” \url{http://www.bbc.co.uk}

\textsuperscript{53} Hakim Almasmari . “US makes a drone strike a day in Yemen.” Accessed May 5th, 2013. \url{http://www.thenational.ae}


\textsuperscript{55} Ibid.
ask just how ethical and even more so, legal, are drone strikes. In this paper many different facets of the legality of drones have been presented and each of those led to the conclusion that the current legal language surrounding drones is either misinterpreted or too expansive, allowing for a limitless war. This limitless war that is being waged has resulted in the loss of American influence abroad and has cost many civilians their lives.

The Geneva conventions were created to stop the needless loss of civilian life during a state of war; conversely, when states choose not to follow those laws and choose to do otherwise, the war becomes much less humane than it already is. The war on Al Qaeda is one that can be justified. Nevertheless, when certain norms are breached, such as disregarding state sovereignty or spreading armed conflict across the world, relationships are strained, new and dangerous precedents are made, and the concept of “by any means necessary” becomes too real. The United States and the OLC must approach law with a balanced interest of the state and other foreign countries in mind. The consequential expansion of powers in the white paper was due the OLC’s need to please the president, not the need to review the law for the sake of justice. That is in itself dangerous, especially considering the amount of power the OLC holds, but at the same time the OLC along with the Obama administration delegitimizes their authority and credibility when they seek to maximize power. The Pakistani government has already responded to the drone strikes judicially, calling the strikes in the FATA region illegal; this was not due to the death of Al Qaeda operatives, but the death of hundreds of civilians along with continual violations of sovereignty.

In order to make drone strikes a more plausible mechanism of war, the U.S. must realize that its interests are not the only ones at stake; many of the states that Al Qaeda and its affiliates can be found in have their own interest and strategy for dealing with issues including terrorism.
The notion of sovereignty as responsibility, as in the responsibility to step in if a state has failed to protect its citizens or the global community, is temporary at best and cannot or at least should be used in the current atmosphere of today. In a system in which a globalized enemy can find refuge at any place and at any time, the implications for policing and over-stepping become greater. A plethora of states, the U.S. included, believe in the old Westphalian idea of sovereignty—sovereignty translated into power over designated territories. Along with this authority over land is the ability to choose; choice is incredibly important, especially within the international community. The current drone program under the CIA does not allow for that choice to happen. Most, if not all, of the piloting is done by U.S. operatives; that within itself can cause interest to become one-sided. A U.S. soldier, one could posit, would not have the same apprehensions as a Pakistani or Yemeni soldier would if civilians were present, hence the growing numbers of civilian deaths. Bi- or multilateral cooperation with states and institutions is imperative if the U.S. drone program wants to be received as a legitimate form of warfare.

There must also be more government involvement in the decision-making process of lethal drone operations; two of the three branches of government, the legislative and the judicial, have been totally isolated from the drone program for the last thirteen years. Only until recently has the executive branch provided some sort of justification to Congress for the lawfulness of killing Al Qaeda operatives, especially U.S. terrorists. Without these safeguards, the power to kill becomes too concentrated into one branch, and then things like the over-expansion of power can occur.

As the U.S. continues to rework and justify drone strikes against members of Al Qaeda and affiliates, the U.S. must realize that the decisions that they make today will influence the future decision-makers of tomorrow. In saying that, the Obama administration, Congress, the
Supreme Court, institutions such as the UN, and many others have to hold each accountable as we move into a new era of warfare, one where drones and other weaponized technologies are able to operate outside the normal bounds of law.
CHAPTER 2-

Global War and Biopower
A Conceptual Understanding of The War on Al Qaeda

33
INTRODUCTION

The OLC white paper and the various arguments within it raise some poignant questions in terms of the power of the state and the use of said power in war. In the previous chapter, I have taken a legal perspective to criticize the ability to declare an attack imminent without proof, to seemingly expand the President’s war powers and to expand war into a global campaign. In this chapter, I will go beyond the legal perspective and develop a broader philosophical perspective on these issues.

Using philosophical frameworks allows me to delve into and grapple with issues that are much less precise than those that may be presented in law. For example, in the first chapter, I spoke about sovereignty, imminent threat and global war, but all were definitions narrowly defined by international and constitutional law. The question of war powers and the effects they have on war within society and even how governance works are all questions that cannot be answered exclusively from a legal perspective. Thus, I was led to find a compelling framework in which my legal argument laid out in chapter one could be better explained on a more societal and political level.

During my quest I came across a book called Multitude: War and Democracy in the Age of Empire, which was written by two political philosophers: Michael Hardt and Antonio Negri. In this book they posit that a concept called biopower, originally coined by Michel Foucault, has become the main form of power in modern governance and has set the stage for a global state of war. Along with this idea of biopower, which I will define in the next section, comes the idea of politics as a form of war continued, hence both domestic and international government systems become war zones. This idea is the inverse of the Clausewitzian view of war and politics, which I will explain more in the coming sections. Lastly, Hardt and Negri introduce the idea of the
absolute, which encompasses biopower, global war and the state of exception. In past “War on Al Qaeda” rhetoric Americans have heard of the prospect of a continuous, expansive war that could have no end. As the United States approaches its fourteenth year in the War on Al Qaeda, one can begin to see how this rhetoric in some ways has created a space in which American conceptions of policy and security have been consumed by the absoluteness of the War on Al Qaeda.

Now, let me explain the order of the chapter. First, I will explore the major concepts that Hardt and Negri introduce. The main focus will be on their idea of biopower, along with other ideas such as the state of exception, global war and the absolute. The initial explanation of these terms will be of great importance once I start to connect them with real world events later on in the chapter. Most of the rhetoric used by politicians during the aftermath of 9/11 and even today uses the same language, which is why it is important to closely analyze the actual meanings of concepts such as global war and insurgency.

After my explanation of Hardt and Negri, I will go into the origin of the concept of biopower. In this section of chapter two I explain how Foucault developed his idea of biopower and why it is important in understanding Hardt and Negri’s take on biopower. Biopower in the Foucauldian sense is implemented through the “administration of life” or the “government of life.” By understanding the Foucauldian concept of biopower we will be able to understand the reasoning behind Hardt and Negri’s conceptualization of biopower and we will be able to connect it to the other ideas that they posit, such as global war.

Then, I go into the third section, which is a dialogue between Hardt, Negri and Foucault. This section seeks to compare Foucault’s idea of biopower with Hardt and Negri’s idea of power over life as well. Foucault saw the endpoint of biopower as being the optimization of life for
production, while Hardt and Negri views death as the most significant culmination of biopower. The optimization of life and the dealing of death both have profound implications, especially when it comes to war technologies such as drones. While not specifically mentioned, Hardt and Negri allude to the creation of mass killing and destructive weapons after World War II. Drones were created to combat the insurgency tactics used by Al Qaeda, while also protecting the lives of American soldiers. I will use examples such as the substitution of soldiers with drones to help foster understanding about the full force of biopower in relation to the War on Al Qaeda.

Finally, I end by moving away from just the purely theoretical and start to analyze real world documents and policy decisions within Hardt and Negri’s framework. This will serve as the penultimate conclusion to my analysis of the War on Al Qaeda. I introduce the language used by the United States government and compare that with the language used by Hardt and Negri. This allows for a better understanding of the goals, motives and actions taken by the executive and legislative branches in order to defeat Al Qaeda. I go over things such as the state of exception, national security, and drones as an instrument of biopower, and I also discuss how drones operate as instruments of biopower.

This second chapter will serve as the foundation and will hopefully clarify possible questions that may have been raised in the first chapter.
ON HARDT & NEGRI- GLOBAL WAR AND BIOPower

In my analysis of the War on Al Qaeda I will be using two political theorists, Michael Hardt and Antonio Negri. In their book, *Multitude: War and Democracy in the Age of Empire* they develop important ideas about how the U.S. view of national security changed with the rise of non-state actors and terrorism. The main sections I will be focusing on will be on global war, biopower, and asymmetrical warfare.

Hardt and Negri argue: “when the state of exception becomes the rule and when wartime becomes an interminable condition, then the traditional distinction between war and politics becomes increasingly blurred”.56 The state of exception is a condition in which the state’s leader gains military and police powers that surpass the standing law, in order to restore order to the nation. In becoming the rule, the state of exception upsets the balance of power not only in domestic relations, but international relations as well. The state of exception, which becomes the rule, changes the structure of relations between not only domestic citizens, but any other citizens that the country directly or indirectly deals with. This, along with the interminable condition of war, which focuses on the continuity of conflict, leads to different practices within war and also changes how state leaders see war themselves. This shift from the conventional war to unconventional wars central to Hardt and Negri’s conceptualization of how national security and state relations are shaped, especially in the twenty-first century. Hardt and Negri end their thought by saying that the perpetuity of war and the state of exception leads to a conflation of politics and war; so much so that the two can become synonymous with each other.

With war being a permanent social relation Hardt and Negri seek to re-analyze the common phrase from Clausewitz’s *On War*: “war is a continuation of politics by other means”\(^{57}\). Hardt and Negri argue the inverse: that “politics itself is becoming war by other means.” They go on to say “war (…) is becoming the primary organizing principle of society, and politics merely one of its means or guises”\(^{58}\). The idea that war is politics by other means presents itself as a conventional way of looking at warfare. With that comes the formation of forces, weapons and formal declarations of war. However, Hardt and Negri are pointing to the fact that war in general has become less and less conventional. What I mean by this is that as something operating outside of verbal politics, it still was given to certain sets of procedure and served as a last resort. The boundary was set and enemies were clear. As war began to become politics itself, the set procedures and ideas of warfare became unbound. War started spilling into rhetoric and political maneuvering, it consumed the old ways of dealing with the enemy, war was no longer a last resort, but a seemingly ever present option.

Hardt and Negri argue that in recent times, war has become “a permanent social relation”\(^{59}\). There are a few interesting points in considering Hardt and Negri’s language. The first is that war, to them, is something that is social. War is something that not only involves politics, but society as well. The violence, conflict and propaganda are all part of societal production. War being social also raises the point of it being a relation, albeit a negative one. War is another way for societies to communicate their wills outside of diplomacy and politics. In some ways, Hardt and Negri argue, it is the most ontological relationship that peoples can have with one another. It allows humanity to gain understanding of beingness through death. The destruction of another’s lifeforce it at once fleeting and perpetual, much like war itself. War is no

\(^{57}\) Ibid.,

\(^{58}\) Ibid.,

\(^{59}\) Ibid.
longer just proliferating through society, but has become the way in which we engage with each other, making itself a permanent structure in the world. Conflict permeates through day to day practices; from the restructuring of travel regulations, the creation of the Department of Homeland Security to drone attacks in Pakistan, Yemen and Somalia, conflict informs our daily lives.

In looking at the current situation with the War on Terror or known under the Obama administration as the “War on Al Qaeda”, one can see the shift in war as a continuation of politics into politics being a guise of war. War has become the rhetoric by which states, especially the U.S. are inspired. War brings the nation together under a perpetual narrative of conflict. The organization of institutions and even the creation of institutions have been centered on war and security. According to Hardt and Negri, “what is distinctive and new about the claim that politics is a continuation of war is that it refers to power in its normal functioning, everywhere and always, outside and within each society”. The power to which Hardt and Negri are referring is political power and the fact that political power has the ability to foist itself upon society in ways in which other forms of power cannot. To describe this idea more in depth Hardt and Negri turn to Michel Foucault. They note: “Michel Foucault goes so far as to say that the socially pacifying function of political power involves constantly reinscribing this fundamental relationship of force (...) and reinscribing too in the social institutions, systems of economic inequality, and even spheres of personal and sexual relations”.

Political power permeates all forms of life and produces the permanent social relation of war. And considering that war is politics, one can assume that war not only begins to encompass the rhetoric of society, but also the physical institutions that govern them. This would be sustained by the continual reinscribing

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60 Hardt and Negri, *Multitude*, 13
61 Ibid.,
of force; this reinscribing is an act of production, which coincides with Hardt and Negri’s perspective that “war is a regime of biopower”. Biopower, which will I will explain soon, is basically power over life. Life can be considered both one’s life force and the day-to-day activities that constitute it. So, this regime of biopower, being more systemic, manifests itself through the permanent social relation of war.

This regime of biopower for Hardt and Negri is tending towards something they call the absolute. The word absolute in itself connotes a sense of completeness or totality, which is a recurring theme for Hardt and Negri. The fact that the permanent social relation of war is systemic in the sense of regime one could see how biopower through war could be considered an absolute condition. War, according to Hardt and Negri, has always been considered a “fundamental element of social life”. However, being an element of something and being the totality of something is completely different. War was again more along the lines of the Clausewitzian view of politics and warfare. War was an element of life, not itself a way of life. It was a part of society in the sense that occasional wars were inevitable, but peace soon afterwards was also a constant expectation. Along with that, war was “fundamental” as in it was a natural part of society and at the same time it was also needed. Arguably, it helped to maintain the balance of power and reinforce nationalism; but as Hardt and Negri posit war did not “rule over life”. Society did not focus on war as a constant.

What made war become absolute was “the technological development of weapons that made possible for the first time mass and even global destruction”. The production of technologies to exercise power over life is both incredible and concerning. Likewise,

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62 Ibid.
63 Hardt and Negri, Multitude, 18
64 Ibid.,
65 Ibid.,
66 Ibid.,
technologies that specialize in mass death also foster a feeling of impending danger and further the idea of the absolute. The absolute transforms war into something that is perpetually imminent. Weapons of mass destruction only exacerbate the politics of today and considering the idea that war has become politics, one must recognize the danger of having weapons that can eliminate entire populations in minutes. The fact that some of these technologies are global have only helped to further worsen the global state of war, especially in recent years.

Hardt and Negri argue that “the capacity of genocide and nuclear destruction touches directly on the very structure of life, corrupting it, perverting it”. The “very structure of life” is an interesting phrase especially when looking at the destructive force of advanced weaponry in the post-World War II era. The structure of life encapsulates a couple of things which can all be summed up using biopower. The institutions that society has created, mores and traditions, and the life force of humanity are all at stake when such tactics are used in war. In the Clausewitzian form of conventional warfare, battle was out in the open and the structures of life were, for the most part, free from the terrors of war. These new technologies enable sovereign powers to disrupt and shape biopower according to their will. For Hardt and Negri, “the sovereign power that controls such means of destruction is a form of biopower in this most negative and horrible sense of the term, a power that rules directly over death--the death not simply of an individual or group but of humanity and perhaps indeed all of being”. One could say this sounds rather dramatic, however in realizing the true potential of biopower as death, instead of producing life, biopower becomes the realization of war itself.

67 Ibid.
68 Hardt and Negri, Multitude, 19
The concepts of biopower and the global state of war are incredibly complex, but pertinent to the way the U.S. views its war with Al Qaeda. The rhetoric of a “global war” and the reshaping of national security serve as prime evidence for Hardt and Negri’s theories.

**THE ORIGIN OF BIOPOWER–FOUCAULT AND THE RULING POWER**

In focusing on the term biopower and the way Hardt and Negri choose to use it, one must first consider the origin of the word in order to gain some understanding of such an abstract concept. Michel Foucault, French philosopher and theorist, first coined the term in the chapter “Right of Death and Power over Life” in *The History of Sexuality, Vol. 1*. The chapter gives a broad chronological account of how biopower came to be and why is it important for people to understand in the modern context of the state.

Foucault begins by saying that “one of the characteristics privileges of sovereign power was the right to decide life and death”. For Foucault this authority over life and death only existed in ancient times, mainly in monarchical regimes. This type of ancient sovereign power existed before the idea of any authoritative parliamentary or democratic legislative body. The king had complete authority over his subjects; the idea of rights or due process either fell to the king’s discretion or did not exist at all.

After what scholars call the “classical” age, however, this power relationship changed and became less absolute. The power to decide life and death became a reactionary power. Foucault says that “it was no longer considered that this power of the sovereign over his subjects could be exercised in an absolute and unconditional way, but only in cases where the sovereign’s very life was in jeopardy: a sort of right of rejoinder”. While still being under the sovereign’s

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69 Michel Foucault, *The History of Sexuality, Vol. 1*(New York: Pantheon Books) 131
70 Foucault, *Sexuality*, 135
rule, the subjects gain agency as the power shifts over, in some way, to the people. The sovereign is no longer the occasional harbinger of death, but a permanent guardian of life. While the right to respond to attempts on the sovereign’s life is selfish, one must recognize that the lives of the subjects are directly connected to the life of the sovereign. By attempting to hurt the sovereign, the offender in turn hurts his people as well. Foucault goes on to say: “if he were threatened by external enemies who sought to overthrow him or contest his rights, he could legitimately wage war, and require his subjects to take part in the defense of the state”. There is still decision making happening here, a change in the normal life of the sovereign’s subjects. The external threat is also trying to decide life and death, so the people, willing or not, must fight to affirm their sovereign’s power. Foucault also uses the word “legitimate”, which denotes some sense of law or process that happens before the people become involved.

Foucault continues by expounding upon the evolution within the sovereign’s power to take life and let live. This evolution, deemed “deduction” by Foucault, is described as “a subtraction mechanism, a right to appropriate a portion of the wealth, a tax of products, goods and services, labor and blood, levied on subjects”. Foucault refers to this as a mechanism, a tool or operation that performs a task. This task is a traditional one to say the least. It is, as Americans know it, a form of administrative government. Yet, this deduction is still taking away from life, in both the physical and non-physical sense, for Foucault “power in this sense was essentially a right of seizure: of things, time, bodies, and ultimately life itself”. Again, choice rests with the sovereign. Life revolves around the will of an administrator and is formed by the goals and whims of the ruler. This ultimately takes away from the subjects’ life because their life is not theirs to live, they are simply temporary vessels.

71 Ibid.
72 Foucault, Sexuality, 136
73 Ibid.,
Foucault suggests, however, that “Deduction has tended to be no longer the major form of power but merely one element among others working to incite, reinforce, control, monitor, optimize and organize forces under it”. In this illustration of deduction one forms a different picture of what seizure looks like. The focus is on controlling life, not destroying it. Taking life becomes less profitable than harvesting and producing it. Foucault states that “there has been a parallel shift in the right of death or at least a tendency to align itself with the exigencies of a life-administering power and to define itself accordingly.” Death would become taboo or an extreme in which only worst offenses or situations could warrant such a reaction; thus, the “ancient right to take life or let live was replaced by a power to foster life or disallow it to the point of death”. To disallow life is to stop investing in it, making the person equally responsible for preserving their own life. Agency once again finds itself back into the hands of the subjects. Yet, it is still the sovereign or in this case, the administrator’s prerogative to control life because “now it is over life, throughout its infolding, that power establishes its dominion; death is power’s limit”. Death is not the goal of power, but it could be the endpoint. Here Foucault begins to set up the framework for Hardt and Negri’s conception of what and how biopower applies to them. Foucault introduces death as the final limit of power, but as a productive administration, this limit must never be reached. Hardt and Negri are focusing on war, which presents this limit as a necessary end in order to reach the Foucauldian form of biopower.

In his thought evolution of power Foucault introduced two categories of control: one being the disciplines and the other being regulatory control. For Foucault the discipline is “an

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74 Ibid.,
75 Ibid.
76 Foucault, Sexuality, 138
77 Ibid.
anatomo-politics of the human body”  

which focuses on the “human body as a machine”. The body, the physical material of its anatomy, becomes a political object in this new way of power through life-administration. The human body is in every sense “disciplined” to produce in the fashion of an automaton in order to increase output and maximize economic profitability. In ancient times power was found in the sovereign and his right to kill and let live, then it was found in his ability to protect himself, further down the line it became about fostering life and now the administrator has taken the place of the sovereign and has applied power to more external goals. The disciplining, the creation of “docile bodies,” is imperative to bringing about such a form of power.

Thus, according to Foucault, there is a politicization of life itself, which extends to the whole population. This type of power also becomes paramount in not only controlling bodies, but also forming an efficient administration. Some of the more specific examples of the politicization of life Foucault cites are “propagation, births and mortality, the level of health, life expectancy”  

which focuses on policy and the creation of standards to optimize the human condition in order to allow human bodies to be effective producers. In fostering life, variables become increasingly important and avoiding death even more so. With these two techniques of deploying power, institutions began to materialize and power expanded beyond one mere individual into an entire system, an entire way of life. Power would become invisible or at least non-evident in daily life.

According to Foucault, “this biopower was without question an indispensable element in the development of capitalism”; thus, biopower for Foucault is an administering of life and the

78 Foucault, Sexuality, 139
79 Ibid.,
80 Ibid.
81 Foucault, Sexuality, 141
development, or best put, optimization of it. It is power over life in a more economic and governmental sense, a step away from Hardt and Negri understands of it. Death becomes a non-option or if needed, the gravest solution. It defeats the whole purpose of capitalism and profit. Taking away from production would be detrimental to an administrative society. Biopower becomes about the collection, control and valorization of human capital. Power becomes less something to be exerted than to be embedded implicitly among the system that administers.

After going over biopower in the Foucauldian sense, I will now bring Foucault and Hardt and Negri into dialogue with each other, especially in terms of biopower. As I have said, biopower to all three scholars have some similarities, but for Foucault, biopower is the ability to administer life, politically and socially. By contrast, Hardt and Negri focus on death as the epitome of power over life.

**COMPARING HARDT, NEGRI AND FOUCAULT’S IDEA OF BIOPOWER**

Hardt and Negri posit that in order for U.S. counterinsurgency strategy to work there must be a focus on an “unlimited form of dominance that involves all dimensions, the full spectrum of power”.

There are forms of power that present themselves as viable options when trying to control and retard human behavior: coercion, persuasion, and manipulation, but undoubtedly they all have a limit to what they can accomplish. All three forms influence choice, but do not control it and choice leads to action. So, in order to control action and choice, one must control the life of the enemy, which then becomes unlimited due to the encompassing character of life itself. Life can be considered in two different models: one being the life force of a human being and the other being the day-to-day happenings that represent daily life. Foucault creates this dichotomy in *The History of Sexuality* by explaining the evolution of sovereign

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82 Hardt and Negri, *Multitude*, 53
power. In former times, the sovereign had the “right to decide life and death”\textsuperscript{83} while in modern times, sovereign power comes in the form of life-administration. Life-administering is an act, one done for Foucault by an unknown sovereign. This act best shows itself in politics and the business of economics. The power to decide or take life is focused on the destruction of one’s physical control through death. However, life-administration seeks to control both the physical and life activities of a person. So not only does biopower seek to control the political life of bodies, but also the social behaviors and interactions as well. This biopower shapes the lives of those in the system through laws and regulations.

Hardt and Negri suggest that biopower “threatens us with death but also rules over life”.\textsuperscript{84} Death, also serves as a tool of subjugation and as a threat, which tries to reproduce certain behaviors that are deemed acceptable by the powers that be.

In the case of the War on Al Qaeda, we see drones as an instrument of biopower, as administrators of death. Jeh Johnson, Secretary of Homeland Security, echoed this in his address to the Oxford Union. In this address, he argues that there will be a tipping point, “a tipping in which so many of the leaders and operatives of al Qaeda have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States, such that al Qaeda as we know it, the organization that our Congress authorized the military to pursue in 2001, has been effectively destroyed”.\textsuperscript{85} This statement is biopower at its best for all three scholars. Foucault would point out the life-administering aspects of what the American government is trying to do in terms of al Qaeda. The government is seeking to change a behavior and ultimately produce a human being that would be more acceptable to the status quo. However, if such

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\textsuperscript{83} Foucault, \textit{Sexuality}, 135
\textsuperscript{84} Hardt and Negri, \textit{Multitude}, 94
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conditioning is not possible then the only plausible use of biopower would be the use of death as a final control against al Qaeda. This, for Hardt and Negri, is the ultimate culmination of biopower.

Hardt and Negri also talk about how counterinsurgency strategies have to be formed in order to possibly compete with guerrilla fighters or in this case, insurgents. Hardt and Negri suggest that “the dominant power (...) must adopt counterinsurgency strategies that seek not only to defeat the enemy through military means but also control it with social, political, ideological, and psychological weapons”. The reason for this is best viewed through Foucault, who says: “Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity”. It is no longer enough kill to the opponent; there must be a regulation of the spaces in which their bodies operate. If not, then danger could still exist. In many ways the War on Al Qaeda has become a war of biopower; Al Qaeda seeks to use terrorism to control the actions and militaristic choices of the American people and government, while the U.S. seeks to control, regulate and possibly destroy Al Qaeda. The social, political, ideological and psychological are all processes and concepts that inform how human beings carry out life, the way they behave and what behaviors should be reproduced. By infiltrating the aforementioned realms the dominant power, being America, would seek to kill Al Qaeda as a viable option, as a way of life.

The idea of the “global War on Al Qaeda” also falls in line with Foucault’s belief that war is fought on “behalf of the existence of everyone”. George Bush’s speech to Congress and the nation on September 20th, 2001 furthered this idea by bringing not only national security to

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86 Hardt and Negri, Multitude, 52
87 Foucault, Sexuality, 137
88 Ibid.,
the forefront of American politics, but personal security as well. Security becomes a notion important enough for the masses to engage and exert their might through the extinction of life. However, at the same time even the act of getting the masses to rise and stand is a form of life-administering, a positive form of biopower. Foucault also uses the word “purpose” which is important to understand when it comes to trying to understand the meaning of biopower.

Biopower is not just an unseen concept, but it is government, it is the ruling body that creates the space for life processes, such as politics, in order for them to play out. Foucault argues: “It is as managers of life and survival, of bodies and the race, that so many regimes have been able to wage so many wars, causing so many men to be killed”. To manage something is an incredible type of power to hold, especially over the lives of men. And survival, which in a Foucauldian sense would be avoiding death and being productive, is the purpose of biopower. Bodies most live in order to be productive, however what happens when productivity is lost? Death becomes much more realistic as an option for control.

We can see that in Jeh Johnson’s “tipping point” which I will revisit later on in the chapter. Capture or the ideological defeat of Al Qaeda is not enough to guarantee the life necessity of the masses. In conventional war, the only reassurance needed was the loss of the opposing state(s) and possibly economic constriction of the offending states. Hardt and Negri said it this way: “war was an element of social life”. War was not the state of a nation absolutely. To describe war as an element almost makes it seem to be something that is sporadic, almost eccentric. This directly coincides with Foucault and his evolution of biopower. The sovereign waged war according to his whim or during times of perceived threat to himself.

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89 Ibid.
90 Hardt and Negri, Multitude, 18
However, when an entire population is threatened nothing could create a sense of security other than a complete exertion of biopower, death.

For Hardt and Negri, “war has always involved destruction of life, but in the twentieth century this destructive power reached the limits of pure production of death, represented symbolically by Auschwitz and Hiroshima”.\textsuperscript{91} Death in both instances had goals that dealt with the exertion of power over a people and both examples represented the extremes at which biopower could be exercised. The destruction of life has always been a consequence of sovereign power, yet it was never as mass-produced as those two instances. Hardt and Negri went on to say that “the capacity of genocide and nuclear destruction touches directly on the very structure of life, corrupting it, perverting it”.\textsuperscript{92} This type of violence does not fall in line with Foucauldian biopower which promotes positive biopower through the protection and support of life for the purposes of production optimization.

\textit{THE CONCEPTUAL AND THE REAL- THE ROLE OF BIOPOWER IN THE WAR ON AL QAEDA & NATIONAL SECURITY}

In order to protect the U.S. from a global threat such as Al Qaeda, global war would have to be the only viable option. The U.S. would have to use all of its resources to ensure global security. However, as I said before, the U.S. during this time had only been at war with state actors, so now a new way of governance would have to come about. This new form of governance would have to give the U.S. certain powers and privileges that would allow it to successfully adapt its strategy to the rule of law. Hardt and Negri attribute this new form of governance to the state of exception.

\textsuperscript{91} Ibid.,
\textsuperscript{92} Ibid.,
As I discussed earlier (p. 27), the state of exception is a modus operandi of the government, namely the head of state, in which police powers and military powers become merged in martial law. The state of exception is only supposed to last for a short time, or at most throughout the duration of a war. Yet, when wartime becomes perpetual or as Hardt and Negri call it “an interminable condition,” the combination of police and military powers becomes the rule; in conjunction with advanced weapons that have nigh-unlimited mobility, such as drones, the state of war becomes absolute. Absoluteness in this sense then encompasses time and place. Which in terms of security is what is intended; Al Qaeda and its affiliates, as terrorist groups, have the ability to be omnipresent and invisible. This capability must be reciprocated in equal manner. The state of exception and the concept of global war make the absolute.

The Authorization for the Use of Military Force or the AUMF is a prime example of how the U.S. shaped policy to respond to Al Qaeda; along with that, the AUMF shows how global war and the state of exception manifest themselves in policy. The AUMF states that terrorist acts “continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States” (AUMF). The U.S. government calls such acts carried out by Al Qaeda “unusual and extraordinary”; which would suggest that such unfamiliarity, especially during the passage of the bill on September 18, 2001, was beyond what America could comprehend. Thus, the need for global war became a necessity. Along with global law enforcement capabilities; the nature of the AUMF itself is expansive and unending; which within the framework that Hardt and Negri propose can perpetuate war and make it global and continuous. In order to illustrate said frameworks they use images of life and the body.

As I said before in the preceding section, to Hardt and Negri war beforehand “was an element of social life; it did not rule over life. Modern war was dialectical in that every negative
moment of destruction necessarily implied a positive moment of the construction of social order”. War was a part of life, but not life itself. Wars were made to be ended; in some way war was akin to homeostasis of the body in the sense that war sought to restore balance and then would disintegrate into peace. In peace, destruction and reconstruction were in conversation with each other; the enhancement of life after abhorrent destruction was a given. The Civil War and WWI and II are prime examples of the dialectical relationship between destruction and creation in war. After the Civil War the Union immediately welcomed the southern states and many confederate officers had a place in the new unified military, in WWI the League of Nations was created along with the hope of European peace outlined in Woodrow Wilson’s fourteen point plan and finally WWII led to the creation of the United Nations and the reconstruction of Europe. Now things have changed. There are no plans to rebuild infrastructure in the current war on Al Qaeda; if anything there is only an assurance that the war against Al Qaeda will continue indefinitely. And as long as war continues, the ability or even the idea to reconstruct after war will remain just that, an idea. Continued destruction has been normalized in this new era of absolutism.

One could view this absolutism as an antithesis to Clausewitzian war. In On War Clausewitz famously states that war is a continuation of politics by other means. However, Hardt and Negri argue the inverse by saying that politics has become a continuation of war by other means. War is no longer the last resort but the global norm. The normalization of war paved the way for the absolute that Hardt and Negri speak of. As I said in the previous paragraph destruction has become the main point of war and the dialectical relationship between war and the rebuilding of social life has been broken. Clausewitzian war only seeks to disarm the enemy

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93 Ibid.,
and compel the enemy to do one’s will. Yet both points are focused on ending the war; peace is the main goal. Yet, the very nature of the absolute presupposes that peace is not possible and the only way to at least lessen the probability of an attack is to wage global war. This form of war however seeks to produce a set of docile bodies through the exertion of power.

This absoluteness is also due to “the technological development of weapons that made possible for the first time mass and even global destruction”. The developments of weapons that have the capacity to lay waste to entire countries have made war a perpetual reality. Even in peace, war is always a constant threat. The Cold War is a perfect example of the absolutism of modern war. War until then had been something that erupted and then came to a close; however this was the first war that led to a perpetual fear of war, even when the world seemed to be in a time of peace. Since the Cold War, where the idea of deterrence became the center of American strategy, technologies have been created to help further American military power and to help bolster the efficacy of deterrence.

One of those technologies, unmanned aerial vehicles, also known as drones, has become the preferred weapon in the fight against Al Qaeda. Drone warfare has become the new absolute. The drone is a product of the American state of exception and the absolutism of the war on Al Qaeda. The use of human forces can only allow the American government to do a limited amount of surveillance and preventive strikes against Al Qaeda, however the ability of drones to not only survey for countless hours, but to literally be present anywhere around the globe allows drones to be the appropriate choice for the war on Al Qaeda. Drones, according to sources such as Human Rights Watch, Amnesty International, UN special rapporteur Ben Emmerson and

94 Ibid.
others, have caused an extensive amount of damage to civilians and infrastructure in countries such as Pakistan, Somalia, and Yemen.

This capability, along with other weapons, has not only solidified the absolutism that Hardt and Negri diagnose, but it has also led to the expansion of global war. This expansion isn’t just territorial, but also includes the expansion of the concept of the “enemy”. Since anyone can become a member of Al Qaeda, anyone can be an enemy, including American citizens and foreign civilians. The relationship between the term enemy and the expansion of global war will be explored later on. The capability of near-unlimited mobility and attack power would be termed by Hardt and Negri is an example of biopower. This biopower extends to physical bodies, be they friendly or not. Biopower in this sense can manifest itself to be as subtle as using scare tactics to regulate behavior to the actual act of taking away life itself. In remembering the previous sections it is important to revisit Hardt and Negri’s idea that death is the most negative and extreme form of biopower. Power over life could be the control of society and mores, yet power over death is more about the immediate destruction of an individual, it is not a lasting control. The war on Al Qaeda has become a campaign against the very ontological being of Al Qaeda.

In other words, the war on Al Qaeda has become a war against the very being of Al Qaeda members. This is not a war of ideals, but a war of eradication. Time and time again both the Bush and Obama administrations have talked about the complete destruction of Al Qaeda. The destruction constitutes both physical and ideological inexistence within the global realm. Jeh Johnson put it this way: “I do believe that on the present course, there will come a tipping point – a tipping point at which so many of the leaders and operatives of al Qaeda and its affiliates have
been killed (…) has been effectively destroyed”.\textsuperscript{95} This “tipping point” is biopower. By killing or capturing enough Al Qaeda members America will have successfully eradicated Al Qaeda completely, or at least that is the idea.

As Foucault, Hardt and Negri have said, biopower is a social construct. It is meant to control societies; thus, this idea of a “tipping point” is the ultimate goal of both ideas of biopower. It optimizes life by eradicating an amorphous and perpetual threat, saving the American people, while also dealing death to the perceived enemy. And the best way to do that, according to the Obama administration, is through the use of drones.

As America argues for the preciseness of drones, Hardt and Negri contest that when individualized violence is pushed to the extreme, hence targeted killing, this violence becomes biopower in the form of torture; this torture can also be seen as terrorism; terrorism is the modus operandi that has plagued U.S. military strategists and political leaders since the campaigns in Iraq and Afghanistan began. Targeted killing was a tactic used by the American military in order to disrupt the top-down operations of Al Qaeda at least that was how it was used in the beginning; however targeted killing has become an instrument to suppress Al Qaeda operations as a whole. Targeted killing is a response to terrorism in a very psychological form. Targeted killing is a direct relationship of power between the American military and individual enemies. Drones have become a form of torture much like terrorism. It inspires a sense of trepidation among the ranks of Al Qaeda in much the same way Al Qaeda’s terrorism tactics have instilled fear within the United States. According to the \textit{Washington Post}, targeted killings “have forced -al-Qaeda operatives and other militants to take extreme measures to limit their movements in

\textsuperscript{95} Wittes, “Jeh Johnson Speech at The Oxford Union”, Lawfare
Pakistan, Afghanistan, Yemen, Somalia and other places.\(^{96}\) Constant fear is a form of torture and thus a form of biopower.

Hardt and Negri view the concepts of global war, the absolute, and biopower through the overarching theme of security. They observe that there has been a shift from defense to security within politics.\(^{97}\) Defense in itself is reactionary and based upon a set criterion that justifies action. By contrast, with security there is a sense of proactivity, of actively seeking ways to deter and prevent threats. Hardt and Negri put it this way: “security requires rather actively and constantly shaping the environment through military and/or police activity”.\(^{98}\) Surveillance and the consequent targeted killings that accompany them are security in its finest form. As Hardt and Negri assert, security is a form of biopower in the sense that security seeks to reshape and produce social life at its most general global scale.\(^{99}\) Security, especially defined within previous National Security strategies, has been aimed at the destruction of Al Qaeda and lessening their influence across the globe. By openly bringing death to Al Qaeda’s doorstep and actively exerting power over life, security is reinforced through fear and possibility of death. Death then serves as a deterrent, thus solidifying American security.

In looking at drones as a form of security or enforcer of security, taking the place of field soldiers, one has to view drones as more than simple machines. The expansion of drone operations to include targeted killing is a response to the unorthodoxy of insurgency and asymmetric warfare. For a long time, with just ground forces which included spies, soldiers and informants war efforts could only go so far. While still operating on a global field, ground forces


\(^{97}\) Hardt and Negri, *Multitude*, 20

\(^{98}\) Ibid.,

\(^{99}\) Ibid.
can only conduct intelligence gathering for a limited time, especially within a network as amorphous as Al Qaeda. The prospect of conducting targeted killings using ground forces would also seem unconventional. Drones, on the other hand, can target and successfully kill more than one enemy during an operation; drones can also gather intelligence for an undefined amount of time. These capabilities have become increasingly more desirable in the war against Al Qaeda.

Drones have become the instrument of biopower in technological form. Both police and military powers are able to be carried out at a very low cost while affording the government maneuverability and global reach; this global reach allows for the regulation of life abroad and ultimately transforms not only the way Al Qaeda operatives live, but the way both domestic and foreign civilians live as well.

When looking at how one should view the transformation of war in the 21st century, Al Qaeda and technology become synonymous with ideations of global security. Using Hardt and Negri’s framework allows for a comprehensive analysis of the advent of global war and the perpetual state of exception that has become commonplace within U.S. politics today. With the advent of policies such as the AUMF and the Office of Legal Counsel’s white paper on the legality of drones, which I will discuss in chapter three, one has to grapple with such questions in an intellectual way.

Global War is not something that is merely conceptual. It exists as a part of America’s national security strategy. For the past twelve years the U.S. has changed the way in which it fought the war, however it has not changed the political objective of the war, which is a global one; the destruction of the Al Qaeda network completely. With that being said, the U.S. had to adapt to the insurgency tactics of Al Qaeda, which for a military built on conventional strategic
and tactical principles was a feat in itself. However, this new unconventional war has led to the expansion of technology as a more efficient and cost effective way of fighting insurgencies. Drones, armed drones, have come to the forefront of American war fighting. One could say that this was bound to happen; drones were being used since the late 1970’s, yet not at the capacity they are being used now. In an article written by Frank Strickland called “The Early Evolution of the Predator Drone” he quotes a man by the name of James “Jim” Woolsey, who says, “We have slain a large dragon. But now we live in a jungle filled with a bewildering variety of poisonous snakes. And in many ways, the dragon was easier to keep track of”. This quote speaks directly to the frame of thought that is reflected today in American ideations of global war, exception and the use of drones as an offensive-defensive counterinsurgency weapon. Woolsey said that America, after the fall of Russia, the large dragon, lived in a world where small dangers would pose a threat to security. Woolsey was right. Dangers did exist that were unseen and were hard to keep track of especially with human limitations.

Another interesting part of Woolsey’s statement was the idea of “keeping track”. This idea of tracking enemies was not new, yet the difficulty in which it would be to track small actors was. This “keeping track” also serves as a form of biopower, and embodies the idea of the state of exception and also the idea of global war. The need to constantly survey enemies is in line with the absolute, which encompasses all things that were just mentioned. Widespread surveillance can lead to not just state surveillance, but global surveillance as we have seen in the current conflict against Al Qaeda. Another, near inevitable possibility and truth that comes from Woolsey’s statement is also the potential for mass or targeted killing. Once a certain machine, as

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we have seen with the drone, gains a certain amount of global reach, and surveillance allows for omnipresence, then it is only reasonable for a government to aspire to equip such machines with weapons from a strategic point of view. In 2002 the Department of Defense was already making plans for weaponized drones. These drones, both autonomous and teleoperated, would begin to take the place of both fighter pilots and ground forces; which would also, at this current time, help the transition of the Joint Force 2020. Joint Force 2020 will be a military that will be smaller, but with a more swift and powerful response; this move towards the Joint Force exemplifies Hardt and Negri’s idea of global war and the permanent social relation it creates with the world at large.

Hardt and Negri present an idea of the gray zone that would be useful in understanding drone expansion and the evolution of war strategy against terrorist. The gray zone, as defined by Hardt and Negri, is “the zone in which counterinsurgency efforts must be effective, both combating and controlling the indefinite and often unknown enemy, but it is also the zone in which the dominant military power is most vulnerable to attack in an asymmetrical conflict”. The gray zone has spread from state to state as Al Qaeda operations have expanded into different regions of the world. And as Al Qaeda spreads, new grey zones present themselves along with the challenges that come with them. Drones, however, dispel any sense of unknowing according to the U.S. military and national security officials. Equipped with the ability to collect hundreds of hours of intelligence along with being able to be anywhere at any time effectively neutralizes the concept of the gray zone.

The gray zone would conceivably be a hindrance in the implementation of biopower. This area presents itself as a vulnerable area to the enemy and can disrupt plans in forcing certain

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101 Hardt and Negri, *Multitude*, 52
behaviors to take effect. The imposing power, in this case the United States, would be open to the exertion of biopower itself, especially if human soldiers are involved. Arguably this could have been one of the main reasons why the War on Al Qaeda has been so hard to end. However, at this point drones have more than made up for any deficiencies that may have arose during the earlier stages of the war. Combating one form of biopower with another; terrorism seeks to produce certain behaviors while counterinsurgency seeks to do the same, but in the name of the masses. In the end, however, it only perpetuates violence that ultimately begins to affect citizens in target countries such as Pakistan, Yemen and Somalia. In my third chapter I will focus on how biopower informs the lives of citizens in target countries and how the loss of sovereignty and imminent threat affects their lives.

In looking at biopower, the absolute and global war through both philosophical and practical lenses one can begin to see how these concepts shape the lives of everyone implicated in this war. The importance of drones as an instrument of biopower is also a pertinent point to keep in mind especially as I move into the third chapter. The drone serves as a reminder of both ideas of biopower. It preserves the lives of soldiers so they can be more productive and shape the world of an entire country just by being present.
CHAPTER 3-
DRONES IN PUBLIC SPACES
INTRODUCTION

In this last and final chapter I will talk about the actual societal effect of global war and the drone strikes that have come out of it. In chapter one I spoke about the dangers of bending or violating law in order to expand the territorial war powers of the United States across the globe. This limitless war not only affects the way the United States approaches war, but also opens the door for what I talk about in the second chapter, the negative use of biopower. As Hardt and Negri said, biopower in its worst and most destructive form manifests itself as death, even as biopower presents itself as the ultimate protector of life. Now, if one applies both ways of thinking about societies affected by drone strikes, one can begin to see an interesting dichotomy; a dichotomy in which power over life and the administration of death come hand-in-hand. This dichotomy of biopower best shows itself in the way citizens react and adapt to drone strikes.

In the first section of my chapter I will look at three different cases from the report “Between a Drone and Al-Qaeda” which was conducted by Human Rights Watch at the end of 2013. It is important to discuss actual situations in which the effects of biopower and global war have reshaped the lives of those who are caught in this seemingly perpetual war. Recognizing the fact that the enemy, Al Qaeda, is amorphous and able to blend in with citizens can make tracking high-profile Al Qaeda members somewhat difficult. As the use of drones has by the United States military and intelligence forces have increased, the lives of those in target countries have been changed forever. I will also include some thoughts of how drones affect public space and argue the importance of recognizing where and when drone strikes should ideally happen in the context of public and social spaces.

I will use the concept of biopower as a foundation for exploring the effects of the aforementioned case studies. Thus, I will provide a more succinct illustration of how negative
biopower and the optimization of bodies coincide with global war.

In my second section I will explore how the image and presence of the drone serves as a proxy of American power in order to produce certain behaviors. While, of course, the effect of the presence of drones and drone threats is supposed to induce fear in Al Qaeda operatives, undoubtedly such fears are not just limited to Al Qaeda itself. This problem of terror is one that must be discussed if we are to understand why drones in particular pose a problem in these areas. Yes, drones are more precise than other weapons such as warhawks, F15’s and other fighter planes. However, when dealing with an amorphous enemy, identifying and separating them from the civilian populace becomes almost impossible, and recent mistakes on part of the United States government have cost many civilians their lives.

THE CASE OF YEMEN

The first case documented by Human Rights Watch (HRW) in their report was a strike in which five men were killed. HRW reports that “the strike killed four of the men instantly, hurling their body parts across the ground.” The report argues that, “Yemen’s Defense Ministry described three of the men as members of Al Qaeda in the Arabian Peninsula (AQAP), the Yemen based armed group that has been fighting the Yemeni government, and which the United States calls the most active affiliate of Al-Qaeda. The men were killed, it said, while “meeting their fellows”. Yet as HRW reports these “fellows” were actually “respected members of their community” and had no ties to Al Qaeda, in fact they were meeting with AQAP because of their provocative denunciations of Al Qaeda’s activities. Now, proponents of drones would call this an understandable, but unfortunate event. The other side of the argument is that this is just one of the effects of having a limitless war in which civilians cannot even conduct business.

103 Ibid.
without the threat of death. The idea of an imminent threat looming and the possibility of attack led to the deaths of two community leaders who opposed AQAP. The efforts of the United States’ enemy of global reach, meaning Al Qaeda can inhabit and appear in any part of the globe due to its organizational nature. Unlike Obama’s proposed policy of “capture first,” what we see here is a direct use of biopower and the consequences of global war.

Global war, as Hardt and Negri suggested, along with biopower and the state of exception make up the absolute. Hence war becomes a permanent social relation. Instead of gathering more intelligence, this permanent social relation of war created the space in which the U.S. could react without actually seeing any action. War and its weapons have become the medium of communication between the Yemeni government, AQAP, and Yemeni civilians. Thus, seeing and knowing become synonymous with each other and the amorphous nature of non-state actors, specifically Al Qaeda, become conflated with the identity of civilians. Thus, a drone pilot or agent allows space for mistakes. While this of course might bring into question the legality of such strikes, it would be worth approaching the problem by looking at how citizens are affected in terms of social and public space. Though I will be discussing these terms through my own framework, I want to acknowledge the fact that some of my ideas have been influenced by the Hannah Arendt’s definition of the public.

For me the public is a space where people can be recognize and interact with each other. This can include anything from business transactions to a wedding ceremony. For Arendt “everything appears in public can be seen and heard by everybody and has the widest possible publicity”. This idea of everything being seen is exacerbated by the nature of drones and their ability to be present at any moment in time. Imagine or actually realize the repercussions of having a technology such as drones monitoring public spaces. Considering the fact that most

drone strikes take place within open areas such as neighborhoods or places of business, one could see drone strikes could pose a problem for civilians and their agency. In a fairly recent report conducted by Micah Zenko, Douglas Dillon Fellow at the Council on Foreign Relations, called *Reforming U.S. Drone Policy* Zenko brought attention to the definitive difference of drones compared to other weapons. In the report he states, “drones allow for sustained persistence over potential targets (...) And unlike manned aircrafts or raids, drones fly directly over hostile territory” (Zenko 17).105 Drones are, in designated areas, always present in the public spaces. Drones represent a monitor or police of such a space. Drones, not just by being machines, but by being symbols of biopower manifest the police state that the state of exception creates. Civilians, at once, are aware of the consequences of war, but at the same time there is something more going on. War doesn’t always precipitate a loss of freedom, but only when the idea of protecting the “polis”, which is the political community, becomes the complete prerogative of the state. The state seeks to not only wage war, but rid society of its freedom, especially within the public. In the case of the War on Al Qaeda we see the creation of a world polis that can be regulated and governed through law.

The connection between public space and political agency is important when looking at the drone strikes against citizens. In looking at the idea of the public and the concept of global war one may posit that war has always been public; it takes place in spaces in which media can ultimately reach and make the realities of war heard around the world. In ancient times the sovereign's messenger or general would deliver a report to the king; war has always been a public spectacle, especially in recent years. The rise of media during the Second World War and Vietnam made war public and part of the people’s political prerogative. In Bush’s address to the

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nation and joint Congress he spoke out into the public; he introduced the war and the enemy as part of a national narrative, thus juxtaposing the U.S. against the “other” (Al Qaeda) to make the public narrative even clearer. The other, being Al Qaeda, is not only a political enemy, but a public and social enemy as well; hence, the rise of discrimination against Muslims in America and subsequently abroad. By making the enemy a public one, the Bush administration opened the door to a plethora of mistakes that have unfortunately affected civilians in the worst way possible.

Global war has exacerbated both the public and social consequences of war. In past wars arguably one could say that the demonization of the enemy was a lot less difficult, mainly because they wore uniforms. Our enemies were more of a political foe than a social danger, yet Al Qaeda, as an organization of “global reach” whose fighters do not wear uniforms and can appear and act anywhere at any time, Al Qaeda, already being the other, took on a image of not just radicalism, but evil. This sparked a new kind of war which ultimately had to bring about a new response and structure to the military. With this newfound structure, remained the social stigma of the Muslim terrorist, especially among those who lived amongst terrorists. This has ultimately allowed for the socialization of the enemy to be conflated with the identity and image of, say, the average everyday Yemeni citizen.

In targeting Al Qaeda members one of the main pluses of drones is intelligence gathering. Making a mistake, such as mistaking a convoy of wedding goers for Al Qaeda should not happen. Intelligence gathering should allow for the differentiation of the enemy from regular civilians; drones are supposed to be the antithesis of insurgency, meaning that covert tactics such as civilian assimilation should not work. Public spaces for citizens of a sovereign state should be safe, as in; it should be safe to conduct business in the open without fear of death. This inability
to conduct business characterizes this next case study. The two men, Salim bin Ali Jaber, a cleric and father, and Walid bin Ali Jaber were conducting business as a representatives of their community when AQAP members in their village called upon them to meet. Salim bin Ali Jaber responded to the AQAP member’s invitation to meet out of general security for himself and other community members. Here we see how the socialization of the enemy ultimately allowed for the mistake of assuming that Salim and Walid were Al Qaeda members. Which of course, ended in a drone strike.

The strike eviscerated both Salim Jaber and his cousin, Walid Jaber. According to Faisal Jaber, a family member of the two victims, “Now when villagers see these images (...) they think of America”. This, of course, is a symptom of global war within the context of the social and public realms. Biopower, according to Foucault, seems to only be exercised politically, but Hardt and Negri take a slightly different approach. As I discussed in the previous chapter, they, staying true to the roots of biopower, posit that war in this era has become an inversion of Clausewitizian war, thus politics is war. Yet, in the same case they assert that ‘war has become a regime of biopower, that is, a form of rule aimed not only at controlling the population but producing and reproducing all aspects of social life”. Whenever those villagers think of the United States, they think of drones and death. The Yemenis are constantly monitored by drones and the threat of death doesn’t remain too far off.

The case of Salim and Walid Jaber is just one of example of how the United States’ use of drones as warfighters has affected the social and public lives of foreign citizens. However, this case also shows us some of the problems that can arise from the OLC white paper. The overextension of constitutional legal authority and vague definitions of imminent threat and

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106 Human Rights Watch “Between a Drone and Al-Qaeda” 8
107 Hardt and Negri, Multitude, 13
sovereignty, coupled with the idea of global war, has created spaces in which participating in the public could mean death. This, at least, from what one can gather from the Obama administration, is not the point of drone attacks. Drones are supposed to be a move towards a cleaner and safer way of fighting insurgents; they were supposed to be at the forefront of counterinsurgency operations. Yet, continual cases such as that of Jaber’s continue to happen. And when incidents such as this happen they are not officially recorded by, in the case of Yemen, the Yemeni government or the U.S. government. If there is a record, victims are written off as collateral damage. Efficiency and precision cannot help when a drone pilot, who has limited intelligence and a socialized image of the enemy, strikes in order to bring the United States one step closer to their “tipping point”.

Another case involved alleged Al Qaeda member Hamil-al Radmi and four other men, none of whom were closely associated with Al Qaeda except through Hamdi. Hamdi, who according to HRW was “one of Wessab’s influential figures, moving openly throughout the area”. Hamdi, while seen as a legitimate target also seemed to have garnered some respect amongst the citizens of Wessab, which is a city in Yemen. It is interesting that Human Rights Watch chose to include the fact that Hamdi was “moving openly”. One could see this as a slight towards drones and the lack of mobility they can inspire among the populace. This spatial mobility was exercised in the earlier case when the Jabers met with AQAP. As a citizen of a sovereign country one would rightly expect to move around freely, it is a political right. Hamdi, albeit an alleged terrorist, was exercising that right and so were the citizens that were with him. Human Rights Watch further reports that “Al-Radmi was killed as his vehicle approached the outskirts of his village, Mathab, after mediating local disputes in the community of Bani

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108 Human Rights Watch “Between a Drone and Al-Qaeda” 30
Hafs”. If we go back to the OLC white paper and their definition of imminent threat it would seem that the killing of Hamdi is completely within the legal rights of the United States. However, I would like to bring attention to the after-effects of such a strike. Many say that these strikes are precise; however they are far from clean. The fact is that these strikes happen within the public, thus the effect ripples throughout the community.

The effect of seeing a drone strike does not represent the efficiency and precision of a clean operation. One of the civilian accounts of Hamdi’s and his associate’s death was this, “There was no moon and I didn't even have a flashlight. I saw my son, charred, in the front seat. … I didn’t even know that he was driving for Hamid that day”. This civilian happened to be the father of the driver. It is safe to assume that at times people may be ignorant of a person’s association. In this case it could have very well been a case of association rather than actually aiding and abetting a member of Al Qaeda. Again, the permanent social relation of war rears its face. This very moment is the culmination of both Hardt and Negri’s global war and the state of exception, along with the OLC’s stance on lawfulness of drone strikes. While the reach of constitutional law may seem far off and the concepts of Hardt, Negri and Foucault abstract, it is moments like these that allow us to put both the abstract and the concrete in perspective when looking at the War on Al Qaeda. While Obama has stated that a perpetual war is not in the United States’ interest, he has continually pushed the drone campaign in order to try to reach his “tipping point”.

The father of Hamid’s driver said he saw, “my son, charred”. Hamid was not the only one however; a number of community members witnessed this happen due to the public nature of the drone strike. The brother of one of the body guards had this to say about the scene, “His

\[109\] Ibid.,
\[110\] Ibid.,
\[111\] Ibid.,
(Emad’s) legs were cut off from the knee down and there was a lot of blood coming from his mouth. We saw later that his stomach was bleeding as well and his eyes were burned” (30).\textsuperscript{112} This is the price of war, but what’s even worse is that the United States is not at war with a state, but an entity; an association of people with no uniform. There are no boundaries, only gray zones, which are zones in which the United States must exert the full force of biopower in order to maintain control. This control unfortunately comes at a price.

Another account of the Hamid strike goes into the general reaction to the strike; Qaed al-Farimi said that “people were going to their roof tops and screaming (...) some ran out of their houses and some ran out of their basements”\textsuperscript{113} In the end, these strikes are happening in populated areas, many of which contain families. The images and fear that Yemeni citizens experience may produce certain behaviors, but these behaviors are being informed by negative conditioning. The drone campaign in Yemen is truly an administration of death. The idea of citizens running to their rooftops screaming and some running out of their houses shows the true realities of war. Yet, places like Yemen aren’t even designated areas of conflict. But due to OLC reasoning, places like Wessab and Mathab are fair game. They are treated as gray zones by both Yemeni and American officials.

What’s even more concerning is the fact that Yemeni and American officials seemingly do not implement capture strategies as often as they plan drone strikes. One government official who knew Ramdi said that, “I could even have gone to his house to arrest him” yet, “he had never received any order for al-Ramdi’s arrest”.\textsuperscript{114} Killing off an alleged terrorist does send a bigger message to Al Qaeda than an arrest; however the message, being part of the public realm, is sent to all. In the case of Ramdi there have been plenty of disputes among officials and locals

\textsuperscript{112} Ibid.
\textsuperscript{113} Human Rights Watch “Between a Drone and Al Qaeda” 32
\textsuperscript{114} Ibid.
around Ramdi’s connection to AQAP; but one thing is certain, most people had no idea about his alleged affiliation to AQAP, which according to HRW does not fit into the modus operandi of AQAP leaders.

Lastly, there is the case of the Salim and Ali al-Qawli. This case is especially alarming when looking at the specifics of the story and the lack of restraint in regards to the killing of two unidentified targets. As I said before, members of the community may not know another person’s affiliation with a terrorist organization such as AQAP, thus I would posit that such citizens should not be held accountable for their ignorance. Yet the Obama administration clearly thinks otherwise. The story of the al-Qawli brothers is one of chance and bad luck. According to Human Rights Watch, “On January 23, 2013, one or more missiles launched from a drone killed four people traveling in a sports utility vehicle (SUV) on a back road toward the town of Sanhan (...) two of the passengers were alleged AQAP members. Neither was believed to be of high rank. The two other men in the vehicle were cousins who by all accounts were civilians”.

The two men were taxi drivers among other things. According to Human Rights Watch, Ali al-Qawli was a 34-year old father of three and an elementary school teacher, while his cousin, Salim al-Qawli, was a college student and driver of the SUV. Salim al-Qawli borrowed the SUV in order to raise money for his family.

The al-Qawli cousins had been offered 10,000 rials ($47 in US) to take them to Sanhan, a forty-five minute drive from where they were currently stationed. Of course, they jumped at the offer. Most likely, the AQAP members were not menacing and gave off an amicable disposition. While this point may seem minor, it is incredibly important, especially for critics who would suggest that the al-Qawli cousins should have suspected foul play. In any case the

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115 Human Rights Watch “Between a Drone and Al Qaeda” 38
116 Ibid.
cousins accepted the fare and went on to do their job. As the al-Qawli cousins entered Sanhan, they were killed by a volley of three drone strikes. Muhammad al-Qawli, the father of Ali al-Qawli, said this about the drone strike: “the bodies are so charred I can’t recognize them”. Is this justice? No. Is this the consequence of the AUMF, imminent threat, and the loss of sovereignty? It seems so. Citizens lack the freedom to conduct day-to-day business in order to support themselves and their family. Even if they could inquire upon a person’s affiliation, I doubt that any real operative would reveal the fact that he is a terrorist. So, people conduct business as usual without asking questions and at one time or another possibly implicate themselves, unknowingly, in a situation which they cannot control. However, this does not mean that the freedom to do business or to conduct assemblies should be limited because of terrorist activity. The public space which citizens inhabit should be kept safe from the influence of Al Qaeda, not torn apart by it. The United States government seeks to protect the U.S. citizens by killing terrorists before an attack happens, but in many of these cases AQAP members were not actively engaging in terrorist activities.

The moral high ground that this war began on has taken a horrible turn with the rise of drones and the transformation of foreign citizens into “collateral damage”. Biopower and the abuse of law have opened Pandora’s Box, and there doesn’t seem to be any hope hiding in the darkness for citizens in countries such as Yemen, Pakistan, and Somalia. While I have only been focusing on Yemen, many of the cases that I have cited have happened in the two aforementioned countries at more or less the same rate. The violence that has been perpetuated by the drone program has arguably done nothing to reach the Obama administration’s tipping point. The idea was to curb Al Qaeda recruitment rates by killing off major and minor operatives, while also striking fear into living Al Qaeda members. This would in turn limit how they operate and

[117] Human Rights Watch “Between a Drone and Al Qaeda” 39
hopefully produce docile bodies that could be regulated. Yet, as we can see, this is not the case.

For citizens to be treated as bodies, to have their sovereignty threatened by ever-present warfighters and to ultimately be conditioned to act in relation to drones was not the moral and just war that CIA director Panetta and president Obama were talking about. What has happened in Yemen is that global war and the state of exception have reached beyond the general zone of combat and has turned the country into a gray zone. Yemen is indeed a gray zone; AQAP is prevalent and active within the region, but it does not seem that the United States needs to establish its presence in the same way that Hardt and Negri suggest in their explanation of the gray zone. If anything, I would argue that the these pseudo-war zones are 1) the product of a limitless war founded on law and 2) the consequence of a perpetual war set out in ideology and fear. In the end, that is what concepts such as global war and imminent threat are born of. And the effects that they have on the societies implicated living in such fear are usually not proportional. This is the issue with drone warfare. It is not necessarily the drone that is the problem: it is the environment that the drone creates and the way the United States uses drones to administer death.

The permanent social relation of war that policies such as the OLC white paper creates allows for the United States to create environments that are centered around death and production rather than education, freedom and politics. The past three cases that I have discussed are just small illustrations of what law and biopower have wrought in foreign societies that are not at war. Al Qaeda’s amorphous nature has taken its toll on not just the United States, but citizens who have been socialized into the faceless body of Al Qaeda. The threat of death is far too common for them to ignore and accept the possible positive reasons for the presence of drones in Yemen.
THE PUBLIC SPHERE AND BIOPOWER: THE PEOPLE PROTEST

Recognizing that biopower is a system of control and constitutional authority is a tool for the U.S. government to exert power overall at any time, Yemenis have taken to the streets to not only show their discontent with the current drone policy, but to also reclaim their public sphere. In recent news, a drone strike happened on December 12\textsuperscript{th} of last year that has allegedly killed at least eleven civilians. NBC’s Michael Isitoff wrote an article titled “US investigates Yemenis’ charge that drone strike ’turned wedding into a funeral” that discussed the details of the attack. After some correspondence with U.S. officials, NBC solicited this response from Caitlin Hayden, White House National Security Staff spokesperson: “Before we take any counterterrorism strike outside areas of active hostilities, there must be near-certainty that no civilians will be killed or injured (…) And when we believe that civilians may have been killed, we investigate thoroughly”.\textsuperscript{118} This statement released by Hayden leaves little consolation to the myriad of families that have been affected by the Obama’s administrations limitless war and push to exert power over Al Qaeda. Unlike the past case studies in which most officials, when they did choose to speak, remained anonymous this instance has been addressed with an official response, however general it may be.

It is interesting to look at Hayden’s language in the first part of her previous statement; she says “there must be near –certainty that no civilians will be killed or injured”.\textsuperscript{119} Near-certainty does not seem to be the case and even if it was the fact that Hayden did not advocate for complete complete certainty reveals a crucial flaw. The near-certainty that Hayden is alluding to

\textsuperscript{119} Michael Isikoff “US investigates Yemenis' charge that drone strike ’turned wedding into a funeral.”
allows for travesties such as the wedding attack or the al Qawli drone strike. Denying that these things happened does not allow for the United States to save face and even though U.S. citizens may agree with the government, the most important voices to be heard in this war are those who are suffering most, which in this case are the Yemeni people.

The United States must listen and actively witness the protests that are happening in Yemen today. As the United States moves to build a more positive world image, working with Yemenis, not just the government will become imperative.
CONCLUSION
In conclusion, we have looked at three frameworks in which to view the War on Al Qaeda and the rise of drones. In the first chapter we discussed how using legal language the U.S. created a platform in which to wage a limitless war; one that if coupled with drones would further damage international law and concepts of sovereignty. The OLC ultimately decided to argue for the use of force and legitimized the basis of “global war” by alluding to the President’s constitutional war powers and the right to self-defense outlined in the UN Charter. However, as I said before, the language and authority of both constitutional and international law was loosely interpreted and taken out of context. Law, which is one of the most important balances in war, is for all purposes being manipulated for the sake of U.S. authority and power.

In looking at legal language and keeping line with wisdom and morality, I would assert that revisiting the definitions of “imminent threat” and the AUMF. Imminent threat for the OLC is given a wide range of meaning, which was a purposeful act, in order to only satisfy Obama’s needs, but to also work in accordance with the AUMF which gives the U.S. sweeping war powers and arguably police powers. Granted the U.S. is at war with an enemy who can appear, plan and attack at anytime and anywhere, that does not mean the U.S. can do the same. Non-state actors are different in character from states for a reason and the U.S. must accept that when creating policy and strategy. Trying to expand our power base to the point where sovereignty does not matter is an issue that cannot be ignored and should not be allowed to continue. Law and the rules of sovereignty apply to all states. And yes, governments have been complacent with U.S. drone strikes so far, however as civilian deaths rise, state patience is starting to grow thin.

In order to truly realize a drone campaign that would legally not impose our own law over those of others we must interpret the, especially constitutional war powers with as much scrutiny as possible, not for just for U.S. interest. If the Obama administration and the
Presidential posterity choose not to then the U.S. risk the loss of not only legal legitimacy, but moral clarity as well. And while ideas of justice may seem to cloud legality, I would argue that morality and ethics must be coupled with law to balance against pure practicality. Like president Obama said, “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. This separation of legal practicality and philosophical morality must become implicit within the drone campaign and the developing policies that are being created as the campaign against Al Qaeda continues.

In the second chapter I spoke about the concepts of biopower, global war, the absolute, the state of exception and the gray zone. Biopower is the foundation for all of the other concepts put forth by myself using the framework of Foucault, Hardt and Negri. The absolute as described by Hardt and Negri creates a “permanent social relation” within the surrounding world. War becomes the means of communication and brokering in the world stage. Looking back, we can see this with the OLC’s choice of language in the white paper and how war was the deciding factor in how they chose to define certain terms. War, specifically global war, also became the deciding factor in how the OLC viewed sovereignty.

As the War on Al Qaeda continues the absolute, the permanent state of war persists, will continue to shape how the U.S. behaves and views not only terrorist, but citizens of other countries. Part of Obama’s strategy in reaching the “tipping point” is to discourage civilians from joining the cause. By policing, under the authority of exception, Obama and his administration is trying to produce bodies that will forsake the path of Al Qaeda and remain allies of the United States. In all three undesignated war zones—Pakistan, Somalia and Yemen—we can see that in some ways, the administration of death is working. People, especially Al Qaeda members are
being conditioned to react to drones. Biopower, along with the idea of war as being a permanent social relation poses real problems, ones that further the already wide-spread issues evident in legal documents such as the white paper and AUMF. The reason Foucault, Hardt and Negri are important is because the U.S. has been echoing similar language and exhibiting behaviors that correlate with the ideas posited by those three scholars.

When looking at the language first used by Bush and then by Obama and his administration one can be taken aghast by how relevant biopower is in the War on Al Qaeda. The need to use mass killing machines such as drones in order to easily administer death to an enemy that is not uniformed and can assimilate anywhere is pertinent when looking at why the U.S. moved towards drones as viable warfighters. Also, from a Foucauldian point of view, biopower is being exercised by optimizing the U.S. bodies—soldiers in this case—and destroying the capacity for the enemy to realize any sort of action. But the problem with exercising biopower in war against a non-state actor is that civilians will be inevitably implicated. And drones, as precise they are, only use missiles to destroy their enemies; which means that civilians, who Al Qaeda members live among, can easily be socialized into being an enemy during a strike.

In looking back at the final chapter it is incredibly important to think about the societal effects of drone strikes and how they encroach upon the political agency of citizens. For the third chapter I decided to focus on Yemen due to the consistent number of drone strikes that continue to happen there. Pakistan and Somalia in comparison have had few major drone strikes in the past 7 months. Since Yemen continues to feel the sting of death and fear that drones foster, I thought it wise to focus on the Yemeni people and their ability to exercise agency. Drones being ever present directly or indirectly influence the behavior of citizens, especially ones that have

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been affected by drone strikes in one way or another. Their ability to move and exert their agency in the public space becomes severely limited due to fear of death and association. In all three of the case studies civilians died to due to the assumption of association with AQAP. Even in the most recent incident a Yemeni wedding procession was thought to be an AQAP convoy. The socialization of civilians and even the transformation of Al Qaeda into the other have turned the original mission of the Obama and Bush administrations on its head. Instead of leading civilians away from Al Qaeda, they continue to push them towards the path of terrorism and for some, they choose protest.

The wedding procession that was reported to be attacked by drones ended on a somber note with the bodies being buried in the village of Radda with survivors holding up a sign in Arabic that said, “America spills blood”. Either through joining AQAP or by taking to the streets, the Yemeni people are exerting their political agency and trying to take back their space. As deaths continue to rise in Yemen, the United States would be wise to listen, even if the U.S. does not officially take responsibility for the strikes. If Obama and his posterity truly want the War on Al Qaeda to end, then they will have to abandon the “tipping point” and should go back to using high-value targets as their measure for drones. The “tipping point” allows for too much death to go unchecked and really leaves no room for dialogue with those who are actually suffering, the so-called collateral damage.

The United States has plenty to reconsider in how it wants to use biopower and law to help tip the balance in their favor against Al Qaeda. Instead of focusing on death, the U.S. should limit its use of drones, especially in areas such as Yemen. Instead what should be the main focus is figuring out strategies to combat Al Qaeda through humanitarian efforts and providing training for Yemeni military and police officers. Showing that the United States is invested in the security

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121 Michael Isikoff “‘US investigates Yemenis’ charge that drone strike ‘turned wedding into a funeral.’”
of Yemen and its people is important; however the Yemeni public space must remain safe and free from foreign regulation. Al Qaeda is constantly forming illustrations of the United States as the aggressor, the spiller of blood. In recognizing this, the United States must also focus on capturing rather than the unnecessary killing of Al Qaeda members or alleged members. If not, protest will continue and dismay will continue to rise. Many scholars and reporters have noted the United States lack of willingness to capture Al Qaeda operatives.

As the War on Al Qaeda continues I would hope that the U.S. will come to create concrete drone legislation and more oversight from both domestic and international institutions will increase in prevalence. Oversight will become even more pressing when other state powers begin to use weaponized drones on a regular basis. Oversight and multilateral cooperation will hopefully counter the misuse of law to expand power, the use of death as a productive agent and also help refocus attention on the civilians who suffer through the war. This paper has attempted to shed light to some of the reasons why the U.S. should rethink its drone campaign and I am sure the dialogue will continue.
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