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**Schmittian Politics in the Age of Drones:
An Analysis of Obama's War on Terror**

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**Thesis submitted in accordance with the requirements for the
degree of Master of Laws by Research**

April 2016

39,936 words

Abstract: This thesis evaluates the Obama administration's use of drone strikes in the 'war on terror' in relation to what Carl Schmitt called the 'concept of the political'. After arguing that the Schmittian distinction between friend and enemy underlined Bush's war on terror, as did many scholars, I interrogate whether this is still true for Obama's war on terror. Obama's rhetorical legitimising strategy creates the appearance of difference to Bush, and is also far less overtly Schmittian; focusing instead on the legality and operational qualities of drone strikes. However, my analysis of the material and technological conditions of drone strikes shows that Obama misrepresents the nature of political relations in his war on terror. I uncover an alternative picture that highlights key paradoxes of the relation between user and receiver of force, the US military's treatment of civilian casualties, and the participation of technology and technological thought in producing these relations. I then map these analyses onto Schmitt's theory of the political division between friend and enemy in this 'age of technology'. Obama's 'enemy' is different to Schmitt's understanding and has also evolved in comparison with Bush's due to the approach taken to select the enemy in so-called 'signature strikes', and the role of technology in this process. The drive to annihilate the abstract enemy also extends well beyond Schmitt's understanding of defeat in war, and demonstrates the fine balance between hyperpoliticisation and transformed political relations. Based on the interpretation that the friend is formed in relation to political rhetoric, Obama's 'friend' grouping also evolves in comparison with Bush's. Thus, despite Obama's rhetoric making his war appear less Schmittian than did Bush, and the utilisation of the drone engendering some material and technological evolutions, Obama's war on terror is still tied to a Schmittian concept of the political.

Contents

Acknowledgments	iv
Introduction	1
One - Obama's 'Legal' War on Terror	15
<i>i. Rhetoric in Bush's and Obama's War on Terror</i>	16
<i>ii. Obama's Armed Conflict</i>	22
<i>iii. Drone Strikes in Self-defence</i>	29
<i>iv. Legitimate Targeting with Precise Weaponry</i>	41
Two - Behind the Rhetoric: the Conditions of Drone Strikes	50
<i>i. 'Legal' and 'Precise': Insulating the User of Force</i>	51
<i>ii. A Technical Process</i>	57
<i>iii. Intimate yet Detached</i>	64
<i>iv. Dominant and Safe</i>	70
<i>v. Dehumanising the Target</i>	76
Three - Schmittian Politics in Obama's War on Terror	83
<i>i. Schmitt's Concept of the Political in the Age of Technology</i>	85
<i>ii. The Political and Technology in Obama's War on Terror</i>	89
<i>iii. The Transformation of the Enemy</i>	91
<i>iv. The Transformation of the Friend</i>	103
Conclusion	120
Bibliography	123

Acknowledgements

I would like to thank my supervisor, Connal Parsley, for his enthusiasm towards my project, for his stalwartly guidance throughout, and for offering invaluable advice to an aspiring early career academic.

Introduction

This thesis analyses contemporary uses of force by the US government, and in particular the recent use of drone strikes to target ‘suspected terrorists’¹, in relation to what Carl Schmitt called the ‘concept of the political’.² This thesis argues that the underlying concept of the political has transformed since the Bush administration’s ‘war on terror’. Critical scholarship largely approached this war through the frame of Schmittian politics, and indeed the ‘concept of the political’ in Obama’s continuation of that war, this thesis suggests, remains essentially Schmittian—despite Obama’s very different political rhetoric, and important material evolutions in the technology used to exercise violent force. Yet these elements, and in particular the central participation of technology in the production of political relations, has transformed the nature of those political relations in Obama’s war, when compared with both Bush’s war and Schmitt’s historically situated understanding of politics.

This introduction first presents the factual background and existing scholarship that has given rise to this research. I examine how scholars approached Bush’s war on terror through a Schmittian lens, and some important differences between Schmitt’s and Bush’s contexts. Secondly, I introduce the central issues confronted by this thesis, with this historical and scholarly backdrop in mind: whether Obama’s change in rhetoric after the Bush administration, and increased use of the ‘drone’ to execute strikes,³ signals a

¹ Jack Serle, ‘Almost 2,500 Now Killed by Covert US Drone Strikes Since Obama Inauguration Six Years Ago’ *The Bureau of Investigative Journalism* (February 2 2015) <<https://www.thebureauinvestigates.com/2015/02/02/almost-2500-killed-covert-us-drone-strikes-obama-inauguration/>> accessed September 1 2015.

² Carl Schmitt, George Schwab (trans), *The Concept of the Political* (University of Chicago Press 1996)

³ Also known as an Unmanned Aerial Vehicle (UAV). ‘Drone’ or ‘UAV’ is used henceforth in this thesis.

departure from Schmitt's concept of the political. This also raises a key question regarding the participation of technology in the production of political relations given Schmitt's belief that 'technology' and the 'political' are antithetical domains.⁴ The third section identifies the literatures and debates to which this thesis contributes. This includes: scholarship on the legality of the pre-emptive use of force, debates on state rhetoric, critical engagements with state uses of drone strikes that address the relation between materiality and political power, and scholarship engaged with Schmitt's understanding of legitimacy, politics, and technology. In the final part of this introduction, I set out the narrative structure of this thesis, which unfolds over three chapters. The first chapter addresses Obama's legality-centric legitimising strategy in comparison with Bush's divisive rhetoric. The second chapter then evaluates the material and technological conditions of drone strikes 'behind' Obama's rhetoric, which reveals an alternative picture that highlights key paradoxes of the relation between user and receiver of force. The third chapter then considers these analyses in relation Schmitt's understanding of politics and technology; drawing the conclusion that there has been a transformation of the Schmittian political in Obama's war on terror.

The Schmittian Perspective on Bush's War on Terror

Schmitt believed that the 'political' can be reduced to the 'concrete and existential' distinction 'between friend and enemy'.⁵ The 'political' is therefore not present *everywhere* since it emerges only when a collective grouping identifies another grouping as an 'enemy'; making politics a fundamentally conflictual domain for Schmitt.⁶ Although *the*

⁴ Carl Schmitt, Matthias Konzett & John McCormick (trans) 'The Age of Neutralizations and Depoliticizations' (Dunker & Humblot 1963).

⁵ Schmitt, (n 2) 27.

⁶ *ibid*

Concept of the Political was originally published in 1932, 'Schmitt's critique is more relevant now than ever'.⁷ As we see below, this is true even when scholars assert that Schmitt would have disagreed with Bush's politics in the war on terror, or that the form of 'enemy' has changed. This resurgence of Schmittian scholarly approaches has occurred in spite of Schmitt's position within academia as a highly polarising figure, with some believing that the spectre of Nazism and the Holocaust 'should always haunt any invoking of Schmitt or Schmittian understandings of the political'.⁸ Such beliefs now appear to be located in the shadow of the broader recognition that Schmitt's work can help better understand contemporary state practices, and offers a tool for critiquing state exercises of power, particularly the US government's war on terror.

Schmitt's concept of the political has indeed been one of the dominant theoretical frames for understanding Bush's war on terror. According to Chantal Mouffe, Carl Schmitt's 'emphasis on the ever present possibility of the friend/enemy distinction and the conflictual nature of politics constitutes the necessary starting point' when analysing political action.⁹ Many scholars have since found Schmitt's notion of politics irresistible as the 'essential prerequisite of the existence of a people as a political community'.¹⁰ This has become increasingly so 'after 9/11' when 'interest in [Schmitt] ratcheted up again'.¹¹ The Bush administration's response to 9/11 reignited academic engagement with Schmitt's work generally¹², and specifically for his concept of the political.¹³ This relation between worldly

⁷ Chantal Mouffe, *On the Political* (Routledge New Ed 2005) 12.

⁸ Jef Huysmans, 'Know your Schmitt: a godfather of truth and the spectre of Nazism', (1997) vol 25 Review of International Studies, 323.

⁹ Mouffe, *Political* (n 7) 13-14.

¹⁰ Juha-Pekka Rentto, 'Carl Schmitt and the Tyranny of Values', in, Matilda Arvidsson, Leila Brannstrom, Panu Minkkinen (eds), *The Contemporary Relevance of Carl Schmitt* (New York Routledge 2016) 74.

¹¹ David Luban, 'Carl Schmitt and the Critique of Lawfare' (2010) vol 43 Case W. Res. J. Int'l L, 6.

¹² Schmitt's *Political Theology* (University of Chicago Press 2006), alongside Giorgio Agamben's *Homo Sacer* (Stanford University Press 1998) and *State of the Exception* (University of Chicago Press 2005), that build upon Schmitt's work, were central to the emergence of a post-9/11 body of literature on the use of emergency powers, and the 'exception'. See, for Instance: Alain de Benoist, *Carl Schmitt Today: Terrorism, 'Just' War, and the State of Emergency* (Arktos Media 2013).

events and the relevance of Schmitt is echoed in Žižek's remarks that, following the Cold War, 'Western imagination entered a decade of confusion and inefficiency, looking for suitable schematisations of the Enemy', and only after 9/11 'did this imagination regain its power by constructing the image of bin Laden, the Islamic fundamentalist, and al-Qaida, his 'invisible' network', meaning that today, 'tolerant liberal democracies remain *deeply Schmittian*'.¹⁴ Thus, Schmitt's concept of 'the political' is not only recognised for critiquing totalitarian states or wars of the 20th Century, but is equally useful when analysing contemporary state practices.

The focal point for analyses of the Schmittian nature of Bush's war on terror has primarily been the rhetorical representation of the 'friend' and 'enemy' groupings by the executive branch. Although scholars have also recognised that particular military strategies employed in Bush's war on terror are 'deeply embedded in the Schmittian concept of politics and the irreducibility of the friend-enemy distinction', this has been less a subject of analysis than the Bush administration's rhetorical construction of the political.¹⁵ For scholars like Žižek, Bush's representation of the war on terror offers an already visible form of what Schmitt calls the 'high points of politics', which are 'moments in which the enemy is, in concrete clarity, recognised as the enemy'.¹⁶ Mouffe recognises that Bush's rhetorical division sets the 'civilised world' against 'enemies of freedom', the latter of which

¹³ See, the essay collection based on a Schmittian perspective: Louiza Odysseos, Fabio Petito, *The International Political Thought of Carl Schmitt: Terror, Liberal War* (Routledge 2007).

¹⁴ Slavoj Žižek, 'Are we in a war? Do we have an enemy?' (2002) vol 24:10, London Review of Books. My emphasis.

¹⁵ Jason Ralph, *America's War on Terror* (OUP Oxford 2013) 11.

¹⁶ Schmitt, *Political* (n 2) 67.

was frequently identified as 'evil' by Bush.¹⁷ When he divides the world into these two camps of 'good' and 'evil', the frequent use of 'evil' can be said to devalue the enemy.¹⁸

Whilst this thesis agrees that Bush's war on terror is fundamentally Schmittian, Bush's friend-enemy distinction offers important differences from Schmitt's at the level of political relations. The dehumanising effect of Bush's war on terror is one such point of difference that is central to discussions regarding the political relations formed in and by the war on terror.¹⁹ Judith Butler's *Precarious Life* – a cornerstone of the critical debates surrounding the political relations formed in Bush's war on terror – recognises that the for Bush's 'enemy', 'dehumanisation occurs first', at the level of representation, 'and that this level then gives rise to a physical violence'.²⁰ Here, Butler shows how rhetoric can participate in the construction of the legitimacy of state force, an argument that I will follow in the first chapter of this thesis in a consideration of Obama's rhetorical strategy. But the specific dehumanising effect of Bush's rhetoric has also been a central source of objections to his mode of political thinking, which has been charged with attempting to render 'the requisite horrors of war tolerable'.²¹ Schmitt himself criticised the dehumanising potential of this type of political division; alluding to such a position in *Nomos of the Earth* in which he opposes wars fought for 'humanity' because they render the enemy the opposite of this universal category as the inhuman or 'unperson'.²² Consequently, Mouffe asserts that there is a 'profound misunderstanding' when conflating 'Schmitt's approach and the one promoted

¹⁷ Chantal Mouffe, 'Carl Schmitt's Warning on the Dangers of a Unipolar World', in Louiza Odysseos, Fabio Petito, *The International Political Thought of Carl Schmitt: Terror, Liberal War* (Routledge 2007) 147.

¹⁸ Whilst such literature does not necessarily directly engage with Schmitt's work, it does show the appeal of dividing the war on terror into the Schmittian camps of 'friend' and 'enemy'.

¹⁹ Jayne Mooney, Jock Young, 'Imagining Terrorism: Terrorism and Anti-Terrorism Terrorism, Two Ways of Doing Evil' (2005) vol 32:1 Social Justice.

²⁰ Judith Butler, *Precarious Life: The Power of Mourning and Violence* (Verso 2006) 34.

²¹ Kimberly Elliott, 'Subverting the Rhetorical Construction of Enemies through Worldwide Enfoldment' (2004) vol 27:2 Women and Language, 99.

²² Carl Schmitt, *Nomos of the Earth* (Telos Press Publishing 2003) 103. See also: Carl Schmitt, 'The Legal World Revolution' (Summer 1987) vol 72 Telos, 88.

by Bush's government', because Schmitt's division between friend and enemy was not drawn on the basis of ethics, so he would not have condoned 'Bush's use of moral categories' to form the friend-enemy division.²³ This stance reveals how Schmitt's theory might now be used to critique 'US imperialism and humanitarian war',²⁴ but importantly, it does not contradict the body of post 9/11 literature that locates Bush's war on terror as deeply Schmittian. Despite the recognition of a point of friction between Schmitt's beliefs and Bush's approach, scholarship evidently still locates the war on terror within a Schmittian political paradigm, albeit one characterised by a new moral form of division between friend and enemy.

In addition to the above juridico-conceptual point of distinction, scholars have equally tended to agree that the war on terror has presented key contextual differences from Schmitt's 20th century context, regarding the 'non-specific' form of the enemy.²⁵ Such differences are also important to this thesis. At odds with Schmitt's understanding of the enemy, which presumed identifiable collective groupings, debates on the war on terror centred on the non-specific 'figure' of 'terrorism' against which the US has directed its efforts.²⁶ James Maggio has asserted that under Bush 'terrorism' is 'a symbol that can be used and employed as a placeholder for 'evil' or 'enemy'".²⁷ Thus, scholarship broadly recognises that the war on terror no longer presumes that 'one fighting collective of people confronts a similar collective' as Schmitt's context led him to believe.²⁸ This characterisation remains a plausible challenge to the Obama administration's own 'war on

²³ Mouffe, *Unipolar World* (n 17), 147-148.

²⁴ Claudio Minca, Rory Rowan, *On Schmitt and Space* (Routledge 2015) 58.

²⁵ Athina Karatzogianni, Andrew Robinson, *Power, Resistance and Conflict in the Contemporary World*, (Routledge 2009) 104.

²⁶ The enemy becomes a less identifiable 'figure', see: Sara Brady, *Performance, Politics, and the War on Terror* (Palgrave Macmillan 2012) 89. Further, as Mouffe asserts, as the enemy becomes 'private'. (n 2), 148.

²⁷ James Maggio, (2007). *The Presidential Rhetoric of Terror: The (Re)creation of Reality Immediately after 9/11*. *Politics & Policy*, 822.

²⁸ Schmitt, *Political* (n 2) 28.

terror', which this thesis sets out to investigate. Such an engagement, again, does not confute the belief that Schmitt is key to understanding such political action, nor does it show Bush's, nor Obama's war on terror to be 'non-Schmittian'. On the contrary, this seems to show the irresistible relevance of Schmitt's work to contemporary state force, and it's evident appeal when seeking to better understand the war on terror and political relations therein; which in Schmitt's terms perhaps shows that we still 'cannot escape the logic of the political'.²⁹ Indeed, in this thesis, the changing and technologically-mediated nature of the 'enemy' in Obama's war on terror—as compared to both Schmitt's historically-specific understanding and Bush's rhetorical figure of 'terrorism'—is specifically analysed in relation to Schmitt's concept of the political.

Obama's 'Concept of the Political'

Against the historical backdrop of Bush's war on terror, and the scholarly attention this subject received in relation to Schmitt's concept of 'the political', this thesis seeks to confront whether the Obama administration's use of drone strikes signals a departure from a political paradigm defined by the friend-enemy distinction. I therefore turn my attention onto the concept of the political that grounds Obama 'war on terror', a war fought principally through medium of the drone.

In drawing attention to the legality, protective rationale, and technical proficiency of his drone strike program, Obama's rhetorical presentation of the use of force resonates much less overtly with the Schmittian division between 'friend' and 'enemy' than did Bush's war on terror. Further, the strong 'technological' character of Obama's 'war on terror' potentially signals a shift away from a Schmittian concept of the political, given the antithetical nature

²⁹ *ibid*, 79.

of political and technology identified in his work.³⁰ My thesis shows that Obama's use of drone strikes is not merely an example of a state using 'neutral' technology to facilitate political goals, because technology and technological thinking participate in the production of the political in Obama's war on terror. Specifically, the technological materiality of the Obama administration's use of force is relevant to both his state rhetoric, which is a non-trivial component of the political question of legitimacy, and the relations that force constructs between those who exercise that force and those who receive it.

A closer inspection of Obama's use of force allows us to contest the impression presented by his administration and will also show that the Schmittian political has not in fact been completely eschewed. Unlike in the Bush administration's war on terror, where the Schmittian form of political relations was largely identifiable through the rhetorical construction of the executive's communications dividing the world into those 'with us' or 'against us', this thesis suggests that Obama's rhetoric conceals far more than it exposes.³¹ To expose what is concealed, we 'read' the political relations that are constructed by the drone strike program itself, through an analysis of the material and technological conditions of the use of force. Doing so supports the view that Obama's use of force in practice is at odds with his administration's rhetoric and constructed narrative. The question that remains, then, is the precise relation of this new technology and corresponding form of technological thinking to the Schmittian concept of the political. Whilst at first glance Obama's use of force might be thought to depart from Schmitt's division between friend and enemy, it is argued that the use of drone strikes preserves yet transfigures this division despite key factual differences from Schmitt's conceptualisation.

³⁰ Schmitt, *Neutrisations* (n 4).

³¹ George Bush, 'Speech at Fort Hood, Killeen Texas' (January 3 2003).

The Scholarly Relevance of Obama's 'Schmittian' War on Terror

This thesis shares its theoretical positioning with that of scholars who aim to understand and evaluate contemporary events at the intersection between law, politics, and technology.³² Due to the interdisciplinary nature of this research, there are four bodies of literature from which this thesis draws, and to which it hopes to contribute in pursuing the above argument.

The first is scholarship on legal doctrine, specifically the legality of pre-emptive strikes and new counterterrorism techniques under international law.³³ In chapter one my thesis draws from and builds upon doctrinal approaches to law, in order to attain a deeper understanding of state practices. However, the 'legality' of such state action is not the most important question. The aim of the thesis is to better understand the political relations that are constructed through a multiplicity of elements, which include law, state rhetoric and technology. As such, the legal doctrinal component of this research is considered alongside other elements in order to attain a bigger picture of legitimacy, wherein 'law' and 'legality' are but constitutive components – albeit important ones.

The second body of literature with which this thesis engages is Schmitt's own writing, and secondary Schmittian analyses of the 'political' in a contemporary context. This includes literature that analyses contemporary state action through a Schmittian lens³⁴ whilst also engaging with two main ideas from within the Schmittian paradigm; legitimacy, and the relation between technology and the political. This thesis offers a contemporary application

³² For a recent collection, see: Jan Backmann, Colleen Bell, Caroline Holmqvist (eds), *War, Police and Assemblages of Intervention* (Routledge 2015).

³³ See, for example: Anders Henriksen, 'Jus ad bellum and American Targeted Use of Force to Fight Terrorism Around the World', (2014) vol 19:2 *Journal of Conflict & Security Law*.

³⁴ See, for example: David Pan, 'Carl Schmitt and Barack Obama on Political Identity in a Multi-polar World' *Telos* (August 10 2010).

of Schmitt's approach to legitimacy, whilst recognising the historically-specific nature of Schmitt's understanding.³⁵ The other strand of engagement is in relation to Schmitt's perspective on technology and technological thinking. This thesis takes a similar approach to contemporary scholars such as Jacques de Ville in 'Rethinking the Concept of the Political' (who uses Schmitt's work to examine the effect of technology on the modern partisan),³⁶ and Roberto Esposito in *Categories of the Impolitical*, where he draws from Schmitt's approach when recognising the possible effects of technological 'neutrality' on the political.³⁷ This thesis hopes to add to such scholarship in exploring the relation between technology and the political, and the participation of technology in the production of political relations, within Obama's war on terror.

The third body of literature with which this thesis engages is on rhetoric in relation to state power and legitimacy. A significant body of contemporary scholarship regards rhetoric as being important to the formation of the legitimacy of state uses of force, maintenance of state power, and diagnostic of its underlying conception of the political.³⁸ This body of literature on rhetoric also allows us to appreciate the tensive relation between what is said and what is done regarding state force. This thesis does not give either approach 'priority', but utilises both lines of enquiry to evaluate the US government's representations of the new 'war on terror' under Obama, and the underlying use of force in practice.

³⁵ Carl Schmitt, John McCormick, Jeffrey Seitzer (eds), *Legality and Legitimacy* (Duke University Press 2004).

³⁶ Jacques de Ville, 'Rethinking the Concept of the Political: Derrida's reading of Schmitt's 'The Theory of the Partisan', in Matilda Arvidsson, Leila Brannstrom, Panu Minkkinen (eds), *The Contemporary Relevance of Carl Schmitt* (New York Routledge 2016) 136-137.

³⁷ Roberto Esposito, Connal Parsley (trans), *Categories of the Impolitical* (Fordham University Press 2015).

³⁸ See, for example: Dwight Anderson, 'Power, Rhetoric, and the State: A Theory of Presidential Legitimacy' (1988) vol 50:2 *The Review of Politics*.

The fourth set of literatures is a developing body of critical engagements with state uses of drone strikes.³⁹ This includes theorists such as Derek Gregory, Markus Gunneflo, and Joseph Pugliese, each of whom seeks to confront the effects of the medium through which the use of force is executed, thus revealing and critiquing the paradigm shifts created by extensive use of the drone.⁴⁰ To the extent that these authors emphasise the importance of reading the material practices and conditions of the use of force, my work draws on and takes inspiration from the impulse to pay close attention to how materiality affects political relations. Although the remit of this thesis does not permit a direct engagement with them, this research resonates with a broader set of recent methodological approaches including Actor Network Theory (ANT) literatures and 'jurisdictional thinking'.⁴¹ Together, these methodologies have broadly motivated the approach taken in this thesis: to address the connection between materiality, practice and political power in analysing the conditions of the drone strike, and thus to better understand the political relations drone strikes engender.

Thesis Outline

The first chapter uses the Obama administration's rhetorical focus on 'legality' in its strategy for legitimising drone strikes, in order to present the point of maximal difference from Bush's war on terror. This is set out through an analysis of three conditions for legal and legitimate state uses of force in relation to Obama's rhetorical representation of drone strikes, which are: the requirements for an armed conflict in international law, the

³⁹ A recent exploration of the drone and drone strikes taking such an approach is Grégoire Chamayou, *Drone Theory* (Penguin 2015).

⁴⁰ See, for example: Derek Gregory, 'Drone geographies' (2014) vol 183 *Radical Philosophy*; upcoming book by Markus Gunneflo, *Targeted Killing: A Legal and Political History* (Cambridge University Press 2016); Joseph Pugliese, 'Prosthetics of Law and the Anomic Violence of Drones' (2011) vol 20:4 *Griffith Law Review*.

⁴¹ Shaunnagh Dorsett, Shaun McVeigh, *Jurisdiction* (Routledge-Cavendish 2012).

requirements for self-defence, and finally the belief that using force should result in minimal civilian casualties corresponding to legal requirements for the conduct of war. Each of these sections also examines Bush's rhetoric, with the aim of showing the contrast in the approach of each president. Accordingly, this chapter shows that Obama's rhetoric constructs an impression of legality by consistently asserting that the US government adheres to any relevant legal requirements; whilst maintaining that drone strikes are necessary by virtue of the need to protect civilians from terrorist attacks. This stands in contrast to Bush's rhetoric framing the war as one fought between good and evil, and his call that the law should not apply also to this exceptional scenario. However, although Obama's rhetorical approach seems a long way from the foundation of Bush's war on terror in a Schmittian political paradigm, I will later go on to show that the use of force presented through Obama's legitimising strategy is at odds with its underlying practice.

This 'underside' to drone strikes is the focus of the second chapter, which examines the material and technological conditions of the drone strike in order to reveal them as unsupportive of, or sometimes directly contradictory to, Obama's representations. It is through a supplementary analysis of these conditions, I suggest, and not only state rhetoric, that we must analyse the political relations in Obama's war on terror. Whilst the use of force is presented as legal and the drone is revered for its ability to strike with precision, these attributes in fact insulate the user of force and make killing easier; a fact that is implicated in the re-configuration of political and technological thought occasioned by the extensive use of drone technology in the use of lethal force. My analysis of the process of a drone strike and the turn toward 'efficiency' as a value indicate a heavily technological form of war. This analysis also reveals key paradoxes regarding the use of drone technology in state force. Despite a visual 'intimacy' with the target granted to the user of force, this arises within a highly 'detached' relation to that 'target', and merely

enhances the US military's ability to kill a suspect. There is also a second form of paradox that emerges from this investigation. Despite the rhetorical shift identified in the first chapter, this 'new' use of force is shown to offer a continuation and intensification of conditions found in 'old' US military practices. Consider the twin conditions of safety to the user of force and capacity to kill from afar, which have simply afforded the drone operator with a position of 'dominance' over the target. Together, these conditions result in the dehumanisation of the target. Thus, the second chapter concludes having challenged the veracity of Obama's account of drone strikes and uncovered in a preliminary way the nature of political relations in his war on terror.

The third chapter directly examines the transformation of the concept of the political underpinning Obama's 'war on terror' by examining the relation between the domains of politics and technology, and the friend-enemy grouping reconstructed from the reading of Obama's war on terror undertaken in the previous two chapters. The relation between the domains of politics and technology in Obama's war on terror is shown to engender a new form of the Schmittian political. Chief amongst the changes is the nature of the enemy. Although both Bush and Obama's enemy is within the paradigm of indefinite war, this attribute of Obama's enemy is a product of the technological form of war via the drone strike. This means that the condition of dehumanisation that is evident in both Obama's and Bush's war on terror is differently formed. I then turn to the 'friend' as the opposing side in the Schmitt's political duality, arguing that the friend is constructed in relation to David Pan's concept of a state's 'representational dynamic'. We look at the representational dynamic of Obama's war on terror in comparison with Bush's. Bush's moralistic framing of the choice between 'us' and 'them' is set against Obama's framing of the qualities of the medium being the only important question, as the drone is used to invoke the phenomenon of humane wars. Then, in line with the 'humane' underpinnings to

the use of force, it is argued that Obama cultivates a global political identity for his political 'friend' grouping more effectively than did Bush. Setting this humane frame of the 'friend' against the dehumanised enemy demonstrates what Schmitt presaged when humanity and other 'universal' ideals are evoked by one side in war.

Taking the arguments of these three chapters together, this thesis shows the survival and transformation of the Schmittian political in Obama's war on terror. The Obama administration's rhetoric provides an impression of difference to Bush's war on terror and seems to indicate a shift away from Schmittian politics. My analysis of the material conditions of drone strikes, however, questions this difference by accounting for the centrality of technological thought and key paradoxes inherent to drone strikes that shape the political relations in Obama's war on terror. When mapped directly onto Schmittian theory, we are able to see that the new form of 'war on terror' conducted via the drone strike remains tied to a Schmittian political paradigm, albeit in a way shaped by technology, technological thinking and the rhetoric that accompanies it.

Obama's 'Legal' War on Terror

In this chapter I argue that the Obama administration is focused on constructing an impression that the extensive use of drone strikes in the war on terror is legal. To secure an impression of 'legality', besides making this claim explicitly, the Obama administration rhetorically enhances the virtues of the drone and presents the use of force as 'necessary' in order to protect civilians. This signals a departure from Bush's divisive rhetorical representation of the war on terror, the exceptionalism arguably characteristic of Bush era politics, and resonates much less overtly with Schmitt's political division between 'friend' and 'enemy'.

First, I address the key role rhetoric plays in legitimising state practices, and in particular, its role in Bush's war on terror. This will enable an examination of the decisive differences of the Obama administration's rhetoric, which centres on legality as its legitimising strategy. This chapter therefore takes Obama's framing of the war on terror as its primary focus, and poses legality as central to Obama's non-Schmittian representation, thus signalling its clearest apparent difference from Bush's war on terror. This is set out over three sections, each of which addresses a condition for the legal state use of force outside its territorial jurisdiction. The first argues that the US government presents drone strikes as being part of an armed conflict rather than a series of law enforcement operations, since the latter would pose far greater restrictions on the attacking party, and would bring the legality of the US government's practices into contention. This strategy is set against the Bush administration's rhetoric that emphasised the exceptional circumstances faced by the US and the need to respond with force. The second section considers the legal requirements for the use of force in self-defence, arguing that the transition to a new form

of pre-emptive self-defence was cultivated by Bush and seemingly accepted into international law. The Obama administration accordingly draws attention to the legality of its pre-emptive actions and reinforces the necessity of protecting civilians against future attacks. Finally, I argue that the representation of the technological conditions of drone strikes introduces a discourse of the 'humane' into Obama's legitimising strategy because of its role in reducing civilian casualties, which is central to his presentation of that medium's positive relationship with the legal requirements of distinction and proportionality. Taken together, these three parallel conditions provide a clear picture of the Obama administration's rhetoric and its difference from Bush's representation of the war on terror.

i. Rhetoric in Bush's and Obama's War on Terror

Rhetoric is central to shaping the represented form of political life, acting also towards the legitimisation of state practices including uses of force. As Morris Zelditch and Henry Walker assert, 'every authority system tries to cultivate a belief in its legitimacy'.¹ Indeed, Bush and Obama's rhetoric shaped their respective legitimising strategies, which, when set against each other, reveal the point of maximal difference between their wars on terror. Whereas Bush's rhetorical framing of the war on terror indicates a Schmittian form of politics based on the division 'between friend and enemy',² for Obama legality is the most important attribute in his legitimising strategy. This chapter first identifies this sentiment of Bush's rhetoric before examining the contrasting strategy of Obama's 'legality'-centric rhetoric in greater detail.

¹ Morris Zelditch, Henry Walker, 'The Legitimacy of Regimes', in Shane Thye, John Skvoretz (eds) *Power and Status* (Advances in Group Processes, Volume 20), 217; Max Weber, *Economy and Society* (1968 California University Press) 213.

² Carl Schmitt, George Schwab (trans), *The Concept of the Political* (University of Chicago Press 1996) 26.

What is rhetoric? Aristotle defined rhetoric as ‘the faculty of observing in any given case the available means of persuasion’.³ Indeed, Peter Goodrich suggests that a ‘major portion’ of classical rhetoric ‘was concerned with persuasion as the primary function of language use or public speech understood in terms of its social, and hence also political, orientation’.⁴ This orientation has, at times, been acknowledged as dangerous or duplicitous: Quintilian suggests that a particular ‘vicious’ style of embellishment’ can disguise ‘vice in the name of virtue’⁵; perhaps indicating the transition of rhetoric ‘from the study of argument to the appreciation of ornament, from dialectics to aesthetics’.⁶ Precisely this embellishment is evident in the rhetorical construction of the ‘legality’ and general *virtues* of drone strikes seen throughout this chapter. Rhetoric ‘becomes a technique’ that can ‘seduce the subject and manipulate his emotions’ in various ways.⁷ Utilising this technique of ‘rhetoric’ to legitimise state practices is clearly not a new phenomenon, but rather follows a history of US government rhetoric in relation to its foreign policy that has ‘set aside whole worlds of fact and contained, when it did not encourage, some of the most disturbing events in American history’.⁸

Bush’s Schmittian Rhetoric

Bush’s rhetoric squarely positioned the war on terror within a Schmittian domain in which politics can be reduced to the distinction ‘between friend and enemy’.⁹ The Bush administration underlined this distinction consistently in its communications regarding the war on terror. On the one hand, the enemy – initially those responsible for 9/11 – became

³ Aristotle, Rhys Roberts (trans), *The Rhetoric*, (New York: McGraw-Hill, Inc. 1984) 24.

⁴ Peter Goodrich, ‘Rhetoric As Jurisprudence: An Introduction to the Politics of Legal Language’ (1984) vol 4:1 *Oxford Journal of Legal Studies*, 93.

⁵ Quintilian, *Institutio Oratoria*, 3.8.10-11.

⁶ Goodrich, (n 4) 105.

⁷ Piyel Haldar, ‘The function of the Ornament in Quintilian, Alberti, and Court Architecture’, in Costas Douzinas, Lynda Nead, *Law and the Image* (University of Chicago Press 1999) 124-125.

⁸ Philip Wander, ‘The Rhetoric of American Foreign Policy’ (1984) vol 70:4 *Quarterly Journal of Speech*, 339.

⁹ Schmitt, *Political* (n 2) 26.

enlarged to be 'terror' in general or even a 'totalitarian ideology'.¹⁰ It was thus a new unknown, and largely unidentifiable enemy. This was important as it can be said that such exceptional circumstances were used to justify new measures in response that were in fact in breach of international law. On the other hand, the enemy became more identifiable and more 'traditional' in the Schmittian sense when 'one fighting collectivity of people confronts a similar collectivity'.¹¹ For example, Osama Bin Laden was made this enemy's figurehead, whilst Saddam Hussein became loosely associated with 9/11 and equally as recognisable as 'the enemy'.¹² Bush offers a clear rhetorical friend-enemy grouping based on the construction of an ideological distinction that can be recognised both in general through the 'barbaric' ideology of terrorism, and specifically through individuals' representative of such ideology, who act against the *good* of America.¹³ Either way, the enemy can be understood in Schmitt's terms as 'the other, the stranger' and 'existentially something different and alien',¹⁴ and there is no middle ground when 'you are either with us or against us'.¹⁵ Here, Bush almost seems to be speaking with Schmitt's belief in mind, that: 'if a part of the population declares that it no longer recognises enemies, then, depending on the circumstance, it joins their side and aids them'.¹⁶ Thus, Bush's war on terror clearly takes the Schmittian form of friend against enemy. Within this Schmittian framing of the war on terror, it can be said that the quality of legality has little importance: as Donald Rumsfeld puts it, 'I'm not a lawyer. I'm not into that end of the business'.¹⁷ The Bush administration instead reiterated the need use force against this new form of enemy *despite* friction with

¹⁰ George Bush, 'Address to the Nation on the Fifth Anniversary of 9/11' (Washington DC, September 11 2006).

¹¹ Schmitt, *Political* (n 2) 28.

¹² George Bush, 'State of the Union Address to the 107th Congress' (Washington DC January 29 2002).

¹³ For the use of 'barbaric' to describe the enemy, see: George Bush, 'Address to the Nation on Operations in Afghanistan' (Washington October 7 2001).

¹⁴ Schmitt, *Political* (n 2) 27.

¹⁵ George Bush, 'You are Either With Us or Against Us' *CNN* (November 6 2001)

<<http://edition.cnn.com/2001/US/11/06/gen.attack.on.terror/>> accessed July 21 2015.

¹⁶ Schmitt, *Political* (n 2) 51.

¹⁷ Donald Rumsfeld, quoted in, Judith Butler, *Precarious Life* (Verso New York 2006) 50.

international law given the exceptional circumstances it faced; which is arguably why Schmitt's notion of the 'state of exception' became so applicable to Bush's war on terror.¹⁸

Obama's Rhetoric of Legality

Obama's turn towards emphasising the legality of drone strikes indicates a relation between 'legality' (or more precisely the impression of 'legality') and 'legitimacy' that was not seen under Bush. This is significant because it demonstrates the Obama administration's rhetorical departure from Bush in the context of the war on terror.

Carl Schmitt's analysis in *Legality and Legitimacy* – written in relation to the demise of the Weimar Republic in Germany – rejects Weber's division of legitimacy into the three sources: traditional, charismatic, and rational-legal,¹⁹ critiquing the rational-legal form of legitimacy on the basis that 'legality is neither necessary nor sufficient for legitimacy'.²⁰ Instead, in John McCormick words, Schmitt believes that legitimacy 'depends not on the overt compliance of those over whom authority is exercised but rather on their choice not to resist such authority', and legality is a non-essential component therein.²¹ This is because Schmitt sees the 'legal' to have become 'something 'merely formal' and in opposition to the legitimate'.²² Under this formula, 'legality' refers to the application of the words of the constitution, which in the current context would translate to international legal doctrine. By recognising Schmitt's belief in a 'separation of law and legal application', and the key role rhetoric plays in drawing attention to the 'legality' of the use of force, this chapter's analysis of Obama's legitimising strategy somewhat reflects Schmitt's belief that

¹⁸ See most prominently: Giorgio Agamben, *State of Exception* (University of Chicago Press 2005) 3-4.

¹⁹ Max Weber, *Economy and Society* (1968 California University Press).

²⁰ Eric Posner, Adrian Vermeule, 'Demystifying Schmitt' (University of Chicago 2011) 4.

²¹ John McCormick, in, Carl Schmitt, John McCormick, Jeffrey Seitzer (eds), *Legality and Legitimacy* (Duke University Press 2004) xxiv.

²² Carl Schmitt, *ibid*, 9-10.

'legality' on its own is not sufficient for legitimacy.²³ However, crucially, the 'legitimacy' of Obama's war on terror should not be understood as *in opposition to legality* as Schmitt believed, since maintaining an impression of legality through rhetoric is key to Obama's legitimising strategy. Obama recognises this role of 'legality' in *the Audacity of Hope*, in which he states that, 'the more international norms were enforced and the more America singled a willingness to show restraint in the exercise of its power [...] the more legitimate our actions would appear in the eyes of the world'.²⁴ Thus, in this contemporary context we in fact move away from Schmitt's understanding of legitimacy because legality is a cornerstone of Obama's represented war on terror.

Given this rhetorical focus on the legality of drone strikes, the strategy of the US government now largely reflects Weber's belief that, 'the most widely prominent form of legitimacy today is the belief in legality', thus contradicting Schmitt's explicit refutation of this assertion.²⁵ This is because the relationship between legality and legitimacy has to be rethought when the context changes. As Cicero remarks: one must 'adapt his speech to fit all conceivable circumstances'.²⁶ The setting of Bush's war on terror in the immediacy of the 9/11 attacks arguably enabled him to take a strongly divisive rhetorical stance in order to legitimise the killing of others. Obama's change in rhetorical strategy thus reflects Cicero's belief that one must adapt to the circumstances: the use of force is no longer in the immediacy of 9/11, and is also part of a broader attempt to give the impression that his administration adheres to international principles and respects human rights.²⁷ Indeed,

²³ *ibid*, 4.

²⁴ Barack Obama, *The Audacity of Hope* (New York: Three Rivers Press 2006) 308.

²⁵ Weber, quoted in, Schmitt, *Legality* (n 21), 9.

²⁶ Cicero, *Orator*, (Loeb Classical Library Online) para 123.

²⁷ Barack Obama, 'Obama's Speech to the United Nations General Assembly' *The New York Times* (September 23 2009) <http://www.nytimes.com/2009/09/24/us/politics/24prexy.text.html?_r=2> accessed September 29 2015.

Obama's rhetorical legitimising strategy related to targeted killings reflects this changing environment and definitively departs from Bush's strategy.

The US government's ability to shape this impression of legality is enhanced by the lack of negative commentary from judicial sources on the war on terror. Generally, US domestic courts have in fact opted to avoid interference with political matters of such nature. Indeed, the Supreme Court in *Haig v Agee* (1981) decided that 'matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention'.²⁸ Following this approach in relation to the killing of a US citizen by a drone strike in *Al-Aulaqi v Panetta* (2014), the court ruled that the issue was non-justiciable under the 'political question' doctrine.²⁹ Meanwhile, the US have not recognised the International Court of Justice's (ICJ) jurisdiction under the Statute of the International Court of Justice, Article 36(2), in relation to any challenge to the drone strike regime – and, 'where a state does not consent, the court cannot hear the matter'.³⁰ Thus, the ICJ cannot comment on the legality of drone strikes, and domestic courts are ultimately unwilling to do so. This means that the Obama administration can construct the impression of legality without substantive judicial challenge, or friction with contradicting judicial analysis.

The following three sections in this chapter now analyse Obama's legitimising strategy – with 'legality' at its centre – as a means to demonstrate the clear difference to Bush's represented war on terror, and seeming departure from the Schmittian political form. Each section relates to a key requirement for a state that wishes to use extra-territorial force that

²⁸ *Haig v Agee* (1981) 453 U.S. 280.

²⁹ *Al-Aulaqi v Panetta* (2014) 35 F.Supp.3d 56.

³⁰ *United States v USSR* (1954) ICJ Rep 103.

is regarded as legal under international law: that it is in an armed conflict, in self-defence, and adheres to the rules for the conduct of war.³¹

ii. Obama's Armed Conflict

This section argues that an important component in supporting the impression of legality is the Obama administration's argument that drone strikes are executed as part of an armed conflict rather than as a series of law enforcement operations. The significance of the use of force being framed as such will first be outlined. This is followed by an analysis of how the Obama administration creates this impression: locating drone strikes in the setting of the 'war on terror', which is supported by domestic judicial and legislative sources, and reinforced by the executive's explicit remarks that drone strike are part of an armed conflict. This section then turns to consider challenges to the legality of the CIA's role in this armed conflict, and the US executive's response which highlights the importance for the US government to form an impression of legality.

An Armed Conflict or Law Enforcement?

The Obama administration appears to recognise the importance of 'locating' its use of drone strikes within an armed conflict in order to create the impression of a legal war. For a state to use force outside its territorial jurisdiction, it must comply with the international law relating to armed conflicts or law enforcement operations.³² The distinction between the two is significant for the US. Were its targeted killings framed as 'acts of law

³¹ Anders Henriksen, 'Jus ad bellum and American Targeted Use of Force to Fight Terrorism Around the World', (2014) vol 19:2 Journal of Conflict & Security Law.

³² Law enforcement operations are regulated by international codes of conduct which limit the level of force law enforcement officials can use. See, for example: UN Code of Conduct for Law Enforcement Officials (1979), Article 3. Whereas, in an armed conflict a state using force has to comply with rules on the conduct of war held in the Geneva Convention. See section iv below for a full analysis.

enforcement', most if not all military strikes would be unlawful, because 'unlike in armed conflict, it is never permissible for killing to be the sole objective of an operation. Thus, for example, a 'shoot-to-kill' policy violates human rights law',³³ meaning that the US government would have to significantly minimise the level of force used, for US government drone strikes to be understood as part of a law enforcement operation, and still considered 'legal'.³⁴ The rigours of the enforcement paradigm would require the US government to alter their current policy and practice: the alternatives of capture or warnings are incompatible with the use of drone technology, since drones are unmanned. This raises further political problems, since it would require military personnel on the ground, far greater scrutiny regarding civilian casualties, and a shift away from the lethal intentions of Obama's targeted killing policy. Whereas, within an armed conflict paradigm, the US can still use its greater resources to implement lethal force in a way that can be framed as 'legal'. It is therefore important that drone strikes are presented as an armed conflict rather than law enforcement for this to occur.

A variety of scholars, news outlets and reporting organisations, however, have contested the notion that Obama's use of drone strikes is part of an armed conflict. Human Rights Watch have argued that the war on terror does not take place within a 'battleground' so the laws of war are simply 'not applicable',³⁵ whilst Grégoire Chamayou has argued that drone strikes in Yemen and Pakistan are outside the remit of any armed conflict, meaning the law of armed conflict would not apply.³⁶ Despite these claims that drone strikes amount to a sustained program of extrajudicial killing,³⁷ since 9/11 and more explicitly so since

³³ United Nations General Assembly, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston' A/HRC/14/24/Add.6 (May 28 2010) 11.

³⁴ *ibid*

³⁵ Human Rights Watch, 'Letter to Obama on Targeted Killings and Drones' (2010).

³⁶ Grégoire Chamayou, *Drone Theory* (Penguin 2015) 171.

³⁷ Michael Boyle, 'Obama's drone wars and the normalisation of extrajudicial murder' *The Guardian* (June 12 2012) <<http://www.theguardian.com/commentisfree/2012/jun/11/obama-drone-wars-normalisation-extrajudicial-killing>> accessed September 12 2015.

Obama came to office, the US government has maintained that the targeted killing of suspected terrorists takes place in an armed conflict. The basis for this interpretation is found in drone strikes' origins in the 'war' on terror, bolstered by concerted argument by the Obama administration regarding the legality of the armed conflict more generally.³⁸

The Impression of War

The representation of drone strikes as operating within the context of an armed conflict is corroborated by their framing as uses of force that form part of the post-9/11 'war' on terror. Specifically, the 'official-level rhetorical construction' of the 'War on Terror' by senior members of the administration has introduced and reinforced the idea that the use of force was part of a 'war'.³⁹ For instance, Donald Rumsfeld in the months following 9/11 stated that 'we did not start the war; the terrorists started it when they attacked the United States'.⁴⁰ Such rhetoric worked to 'cue a whole series of conscious and unconscious thoughts and feelings about September 11th'.⁴¹ This not only set the scene of armed conflict, but also positions the US as the innocent victim, and reluctant participant. This representation from senior members was taken up and replicated by military officials, one of whom stated that there 'should be no doubt, we are at war, and it is a world war. There is simply no other way to put it'.⁴² It can be said that this frequently used terminology of a

³⁸ In particular, see: Harold Koh, 'The Obama Administration and International Law', *The US Department of State*, (March 25 2010) < <http://www.state.gov/s//releases/remarks/139119.htm>> accessed February 11 2015.

³⁹ Joanne Esch, 'Legitimizing the "War on Terror": Political Myth in Official-Level Rhetoric' (2010) vol 31:3 *Political Psychology*, 358.

⁴⁰ Donald Rumsfeld, 'Rumsfeld Says Taliban to Blame for Casualties' (October 29 2001) <<http://www.usembassy-israel.org.il/publish/peace/archives/2001/october/103004.html>> accessed September 12 2015.

⁴¹ Robert Entman, 'Cascading Activation: Contesting the White House's Frame after 9/11' (2003) vol 20 *Political Communication*, 416.

⁴² Melshen quoted in, Richard Jackson, *Writing the War on Terrorism* (Manchester University Press 2005) 9.

'war' against terrorists supports the notion that the use of drones is part of an ongoing armed conflict rather than a series of police operations.⁴³

The rhetoric of armed conflict has also been enshrined in legislative instruments such as the *Military Commissions Act* (2006). In the process of setting up trials by military commissions, the US legislature gave clear indications that the ongoing use of force was an armed conflict, with such terminology consistently used to describe Bush's use of force in response to 9/11. Moreover, although domestic courts have mostly been unwilling to interfere with political matters concerning the war on terror as recognised above, in *Hamdan v Rumsfeld* (2006), the Supreme Court did confirm, albeit indirectly, the opinion of the Bush administration that the use of force in response to 9/11 is an armed conflict.⁴⁴ The Court also remarked that Obama's ongoing use of drones strikes are part of a non-international armed conflict (NIAC), supporting the US government's contention that, outside of Afghanistan, the US is not fighting against other sovereign states,⁴⁵ but a less concretely identifiable enemy, as the person(s) under international law 'who, either lawfully or unlawfully, engages in hostilities for the opposing side in an international armed conflict'.⁴⁶ This is again crucial for Obama in maintaining the impression of legal operations against so-called terrorists.

This apparent consensus that uses of force in response to 9/11 are within an armed conflict was reached prior to Obama taking office. His administration has subsequently shifted away from explicit usage of the phrase 'war on terror' whilst reaffirming that drone

⁴³ Charlie Savage, 'Obama's War on Terror May Resemble Bush's in Some Areas' *New York Times* (February 17 2009) <<http://www.nytimes.com/2009/02/18/us/politics/18policy.html>> accessed September 12 2015.

⁴⁴ *Hamdan v. Rumsfeld* (2006) 548 U.S. 557.

⁴⁵ The relevant treaty provision for a NIAC is Convention (III) relative to the Treatment of Prisoners of War, Geneva Convention (12 August 1949).

⁴⁶ ICRC, 'The relevance of IHL in the context of terrorism' (January 1 2011) <<https://www.icrc.org/eng/resources/documents/misc/terrorism-ihl-210705.htm>> accessed December 29 2015.

strikes take place in an armed conflict,⁴⁷ which supports the Obama administration's 'legal' representation. This approach is typified by US Department of State Legal Advisor Harold Koh when using the term 'armed conflict' throughout a speech in reference to the legality of the ongoing lethal responses to 9/11, whilst not once referring to the 'war on terror'.⁴⁸ The Obama administration presents a more direct legal argument in its legitimization of the use of drones, perhaps reflecting Costas Douzinas' belief that; 'whether a war is legal under international law remains of great importance'.⁴⁹

Although Obama continues to pursue Bush's global 'war' against individuals either deemed responsible for 9/11 or suspected as terrorists, the 'rhetoric of the two administrations is markedly different'.⁵⁰ This is particularly evident in Obama's shift away from the Manichean divide of Bush's war on terror, underlined through his 'recurring use of words such as evil' to describe the enemy.⁵¹ Instead, with the help of legislation and some judicial affirmations, Obama consistently reinforces that the use of force takes place within an armed conflict, and is therefore legal.

The CIA in this 'Armed Conflict'

Critics who perceive an incompatibility between the US government's targeted killing program and the requirements of an 'armed conflict' also raise direct challenges regarding the role of the CIA. Jane Mayer distinguishes between two US drone regimes, one that 'operates in the recognised war zones of Afghanistan and Iraq, and targets enemies of U.S. troops stationed there', and a separate CIA program 'aimed at terror suspects around

⁴⁷ Koh, (n 38).

⁴⁸ *ibid*

⁴⁹ Costas Douzinas, *Human Rights and Empire* (Routledge-Cavendish 2007) 213.

⁵⁰ Michael Desch, 'The More Things Change, the More They Stay the Same: The Liberal Tradition and Obama's Counterterrorism Policy' (2010) vol 43:3 *Political Science and Politics*, 425.

⁵¹ Entman, (n 41) 417.

the world, including in countries where U.S. troops are not based', to which Chamayou is referring in his comments above regarding the use of force outside of an armed conflict.⁵² If one accepts the Obama administration's framing of drone strikes as a part of an armed conflict, the legality of the CIA's role in executing targeted killings is squarely brought into question.⁵³ The CIA may be deemed unlawful combatants if they operate within a war zone without uniforms or insignia.⁵⁴ Against such arguments, how does the CIA legitimise its role in Obama's war on terror in conjunction with the wider strategy of the US government in presenting the war on terror as 'legal'?

The answer, which will not be surprising, is that the Obama administration present the CIA to carry out legal uses of force via the drone; underlining the significance of 'legality' within the US government's legitimising strategy. This approach signals a departure from the Bush administration's *exceptionalist* rhetoric, exemplified by then Secretary of State Condoleezza Rice's belief that the 'Geneva Conventions should not apply to terrorists like Al Qaeda',⁵⁵ and reiterated by Bush's remarks that 'captured terrorists cannot use the Geneva Conventions'.⁵⁶ Effectively, the Bush administration introduces the idea that law is not entirely relevant to this exceptional war against a new kind of enemy. In contrast, the Obama administration gives clear indications that it adheres to the relevant law. As current Defence Secretary Leon Panetta states: drone strikes are 'legitimate if we followed the

⁵² Jane Mayer, 'The Predator War What are the risks of the C.I.A.'s covert drone program?' *The New Yorker* (October 26 2009) <<http://www.newyorker.com/magazine/2009/10/26/the-predator-war>> accessed May 11 2015.

⁵³ *ibid*

⁵⁴ 'Unlawful/unprivileged combatant/belligerent' is understood as describing all persons taking a direct part in hostilities without being entitled to do so', in, Knut Dörmann, 'The legal situation of 'unlawful/unprivileged combatants', (2003) *International Review of the Red Cross* vol 85.

⁵⁵ Condoleezza Rice, 'Rice Refuses to Describe Detainee Abuse at Abu Ghraib As Torture' (January 19 2005) <http://www.democracynow.org/2005/1/19/rice_refuses_to_describe_detainee_abuse> accessed January 22 2016.

⁵⁶ George Bush, Address on the Creation of Military Commissions To Try Suspected Terrorists' (Washington, September 6 2006).

law',⁵⁷ and according to Panetta, the CIA do in fact fully comply with 'the legal requirements to ensure that we were *doing this carefully*'.⁵⁸ The notion that the program is in breach of international law is simply disregarded, by the assertion that if the CIA follow the law, then drone strikes are legitimate, as indeed, the CIA do.

However, it must be noted that the US executive does not deny the role of the CIA so as to shield the organisation from such legal challenges. As Derek Gregory recognises, 'ironically, we know much more about the impact of the CIA's 'secret war' than military operations in Afghanistan.'⁵⁹ This fact notwithstanding, on a case by case basis 'the line between the CIA and the military is deliberately blurred', meaning that it would be difficult in practice to challenge the legality of a specific CIA drone strike.⁶⁰ Thus, the US government's drone strike regime – whether military or CIA – may operate in friction with international law, yet is legitimised through the political justifications of such force, consistently supported by political assertions that regardless of such friction, these operations are 'legal'.

The rhetorical representation of the CIA's specific role in executing drone strikes is cohesive with Obama's broader strategy of embellishing *vice* with the *virtue* of legality. Whereas Bush's rhetoric defended breaches of international law given the exceptional circumstances requiring such measures, the Obama administration refute this assertion regarding the status of the use of force within an armed conflict and the role of the CIA therein. Obama's rhetoric therefore completely shifts away from Bush's rhetorical strategy

⁵⁷ Leon Panetta, 'My Mission Has Always Been To Keep The Country Safe' *NPR* (February 3 2013) <<http://www.npr.org/2013/02/03/170970194/panetta-my-mission-has-always-been-to-keep-the-country-safe>> accessed September 20 2015.

⁵⁸ Leon Panetta, quoted in, Sean Sullivan, 'Panetta Defends Drone Strikes' *Washington Post* (February 3 2013) <<http://www.washingtonpost.com/blogs/the-fix/wp/2013/02/03/panetta-defends-drone-strikes/>> accessed June 16 2015.

⁵⁹ Derek Gregory, 'From a View to a Kill: Drones and Late Modern War', (2011) vol 28:188 *Theory Culture Society*, 204.

⁶⁰ Derek Gregory, 'The Everywhere War' (2011) vol 177:3 *The Geographical Journal*, 241.

in the war on terror towards a focus on its legality; reflecting Weber's belief that legitimacy is contingent on a belief in 'legality'.⁶¹ As the next section shows, this trend of a rhetorical difference and focus on legality is apparent even when Obama utilises similar techniques as Bush in the practice of war.

iii. Drone Strikes in Self-defence

In this section it is argued that Obama draws attention to the supposed legality and necessity of pre-emptive drone strikes in order to further support this presentation of the use of force as legal. This rhetorical representation occurs despite perceived incompatibilities between the US government's use of drone strikes and the requirements for self-defence under international law. In the immediate aftermath of 9/11, the Security Council recognised that the US could use force under Article 51 of the UN Charter.⁶² However, through a brief overview of the components of section 51, and on closer inspection of Obama's targeted killing program, it is shown that the US government's use of force far exceeds these requirements. Significantly, the Obama administration rhetorically constructs the appearance that drone strikes are necessary due to the changing nature of the threat they serve to counter, their conflict with dominant understandings of self-defence in international law notwithstanding.

Requirements for Self-defence

It is important to set out the requirements of self-defence at international law in order to go on to evaluate the points of friction with Obama's drone strike program. However, it is unnecessary to dwell on the requirement that the state seeking to use self-defence must

⁶¹ Weber, (n 25).

⁶² UN Security Council, 'Resolution 1368' (September 12 2001).

be the victim of a significant attack or use of force, because, in Resolution 1373, the Security Council has deemed the attacks of 9/11 to be significant enough to warrant self-defence.⁶³

The second requirement demands that the state against which force is used must be responsible for the original attack. This does pose a challenge to Obama's representation of current uses of lethal force as 'legal'. Whilst initial evidence was released to show a close connection between al Qaeda and the Taliban which supposedly supported the use of force in Afghanistan in accordance with Article 51,⁶⁴ the use of force via drone strike under the Authorization for Use of Military Force (2001) has since become global, having spread to Yemen, Pakistan, Iraq, and Somalia.⁶⁵ When the use of force goes beyond the territorial jurisdiction of the original perpetrating state, the US has two options for rendering its 'self-defence' lawful. The US can first obtain permission from the host state.⁶⁶ The strikes undertaken in Yemen have the permission of the Yemeni government,⁶⁷ as Obama confirmed in a letter to the speaker of the House of Representatives.⁶⁸ There is also a similar level of cooperation between US and Pakistani governments, as the Pakistani government has supposedly consented to drone strikes executed by the US on their territory.⁶⁹ If there is no such consent, or, in Harold Koh's terms, if there is unwillingness or inability 'of those states to suppress the threat the target poses', the US, Koh asserts, can

⁶³ United Nations Security Council, 'Resolution 1373' (September 28 2001).

⁶⁴ 'The UK's Bin Laden dossier in Full' *BBC News*, (October 4 2001)
<http://news.bbc.co.uk/1/hi/uk_politics/1579043.stm> accessed June 15 2015.

⁶⁵ US Department of Justice, 'Legal Authorities Supporting the Activities of the National Security Agency described by the President' (2006).

⁶⁶ United Nations Draft Articles on State Responsibility (G.A. Res. 56/83, art. 20, U.N. Doc. A/RES/56/83 (Dec. 12, 2001)) art 20.

⁶⁷ 'Wikileaks Files Reveal Secret US-Yemen Bomb Deal' *BBC News* (4 December 2010)
<<http://www.bbc.co.uk.chain.kent.ac.uk/news/world-middle-east-11918037>> accessed 29 November 2014.

⁶⁸ Barack Obama, 'Presidential Letter - 2012 War Powers Resolution 6-Month Report' (June 15 2012)
<<http://www.whitehouse.gov/the-press-office/2012/06/15/presidential-letter-2012-war-powers-resolution-6-month-report>> accessed 29 November 2014.

⁶⁹ Mark Mazzetti, Jane Perlez, 'C.I.A. and Pakistan Work Together, Warily' *The New York Times*
<<http://www.nytimes.com/2010/02/25/world/asia/25intel.html>> accessed 29 November 2014.

invoke its right to self-defence under Article 51 of the UN Charter.⁷⁰ This circular guarantee that the US can intervene in any location without violating international law claims support from the assertion that there is no authority to suggest that ‘when one of the parties to an armed conflict plans and executes operations from a base in a new nation, an operation to engage the enemy in that location cannot be part of the original armed conflict’.⁷¹ Therefore, the Obama administration offers assurances regarding its targeted killing regime in relation to self-defence that are located centrally within the language and domain of international law.

The third component for self-defence in international law offers the most significant point of difficulty for the US government, and has necessitated a specific rhetorical strategy on the part of both the Bush and Obama administration. The right to use self-defence requires that the armed attack to which the act of self-defence is a response must be underway, or else there must be clear evidence that there are more attacks planned by the intended target. Under the oft-cited customary law existing prior to the enactment of the UN Charter – the Caroline Doctrine – the party wanting to use self-defence is not necessarily required to wait for that attack to occur. Self-defence may be exercised pre-emptively if the need for it is in that ‘instant, overwhelming, and leaving no choice of means, and no moment for deliberation’.⁷² However, the Caroline Doctrine’s interpretation of self-defence is arguably incompatible with the Charter of the United Nations (1945). On a prima facie reading of section 51 of the Charter of the United Nations, which states that nothing shall impair a state’s right to self-defence ‘if an armed attack occurs against a Member of the United

⁷⁰ Koh, (n 38).

⁷¹ Department of Justice White Paper, ‘Lawfulness of Lethal Operation Directed Against a US Citizen who is a Senior Operational Leader of Al-Qa’ida or an Associated Force’ (November 8 2011) <msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf> accessed 16 September 2015.

⁷² Letter from Mr. Webster to Lord Ashburton, (August 6 1842), in, Lori Damrosch, Louis Henkin, *International Law: Cases and Materials* (Gale Cengage 2009).

Nations', self-defence ought not to be available where an attack is merely *expected to occur*. Debates have subsequently emerged as to whether the charter is exhaustive of the situation in which self-defence can be used, or whether self-defence can be used pre-emptively and thus the customary law the Caroline Doctrine exemplifies, prevails. Whilst a full analysis of this debate is beyond the scope and requirements of this thesis, it is nonetheless important to consider the arguments of each side in order to understand where drone strikes are situated within this debate, and how the US government legitimises this position.

Proponents of a right to pre-emptive self-defence – including in the case of drone strikes, according to many commentators⁷³ – rely upon an expansive reading of Article 51. The 'inherent right' to use force is understood as referring to earlier customary law that allowed self-defence to be anticipatory.⁷⁴ The term 'armed attack' is read expansively to include the planning, logistics and preparation stages for an attack.⁷⁵ Moreover, in a similar reliance upon the 'inherent right', it has been argued that the Charter does not remove any right found previously under customary law. Judge Stephen Schwebel's dissenting judgment in the Nicaragua case supports this view, in which he states that 'I do not agree that the terms or intent of Article 51 eliminate the right of self-defence under customary international law, or confine its entire scope to the express terms of Article 51'.⁷⁶ On this interpretation the right to pre-emptive self-defence would prevail despite the wording of the UN Charter.

⁷³ See, for example: Henriksen, (n 31).

⁷⁴ John Cohan, 'Formulation of a State's Response to Terrorism and State Sponsored Terrorism' (2002) vol 14:1 Pace International Law Review.

⁷⁵ Lucy Martinez, 'September 11th, Iraq and the Doctrine of Anticipatory Self-defence' (2003) vol 72 UMKC Law Review.

⁷⁶ Justice Stephen Schwebel's dissenting judgement in Case Concerning Military and Parliamentary Activities in and against Nicaragua; *Nicaragua v United States of America* (1986) ICJ Rep 347.

Contrastingly, those who take the prima facie reading of Article 51 see that the only exception to force included in the UN Charter was not a 'novel development' and thus, in line with customary understandings in 1945, 'self-defence was understood to be justified only in case of an attack by the forces of a state'.⁷⁷ The veracity of the argument that the pre-emptive right present in customary law supersedes subsequent international treaties, is also challenged due to its conflict with the very nature of the UN Charter. Why would the drafters 'create this regime', so goes the challenge, 'if the article was intended to be merely a declaration of the customary law?'.⁷⁸ Accordingly, the 'natural and logical conclusion' is that under the rule of *jus cogens*, the 'treaty will prevail'.⁷⁹

Setting a New Standard of Pre-emptive Self-defence

Although the above discussion shows that there appears to be 'no clear agreement on the legality of the doctrine' regarding pre-emption, I here argue that pre-emptive killing in supposed self-defence by drone strikes exceeds both understandings of legal self-defence set out above.⁸⁰ This is because of the notion of 'imminence' central to the use of both 'personnel strikes' and 'signature strikes'. As discussed in more detail below, both major kinds of targeted killing by drone strikes are at odds with recognised standards of self-defence in international law, contrary to the Obama administration's rhetoric that tends to emphasise their legality.

Despite the ongoing use of force at times being presented as part of the war against *the perpetrators of 9/11*, the 'attacks on 11 September 2001 can no longer serve as a basis for

⁷⁷ Ian Brownlie, *International Law and the Use of Force by States* (Oxford Scholarship Online 2012), 280.

⁷⁸ James Mulcahy, Charlie Mahony, 'Anticipatory Self-Defence: A Discussion of the International Law' (2006) vol 2:2 *Hanse Law Review*, 235.

⁷⁹ *ibid*

⁸⁰ *ibid*

an American right to self-defence', because, put simply, 9/11 is not an ongoing armed attack.⁸¹ As Obama himself has said, al-Qaeda and associated forces have 'not carried out a successful attack on our homeland since 9/11'.⁸² Instead, as Obama also recognises, drone strikes are a way to 'prevent terror'.⁸³ By this very understanding, drone strikes are executed in pre-emption of potential future threats are therefore a continuation of Bush's military strategy in the war on terror. The Bush administration's strategy to 'stop rogue states and their terrorists' clients⁸⁴ formed the basis of what has become known as the 'Bush Doctrine'.⁸⁵ This doctrine's creative interpretation of self-defence – acting pre-emptively against supposed 'threats' – is evidently now key to Obama's use of drone strikes. In fact, the Obama administration has markedly increased the number of pre-emptive strikes compared to the Bush's administration.⁸⁶ As Jeremy Scahill remarks, whilst the pre-emptive use of force in the war on terror was introduced by Bush, it was 'ultimately legitimised and expanded' by Obama.⁸⁷ Thus, Obama's 'rhetorical imprecision' discussed in the next section 'obscures' this reality that 'behind the fog is the Bush Doctrine'.⁸⁸

The US government's own understanding of 'immanence', that establishes whether a strike can go ahead, itself demonstrates the inherently pre-emptive nature of 'self-defence' in Obama's war on terror. The policy that a drone strike is executed if an attack against the US is 'immanent' appears to conform to the Caroline Doctrine's requirement that self-

⁸¹ Henriksen, (n 31).

⁸² Barack Obama, 'Speech on Drone Policy' (National Defense University May 23 2013) <http://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html?_r=0> accessed June 19 2015.

⁸³ *ibid*

⁸⁴ George Bush, 'U.S. National Security Strategy' (New York, June 1 2002).

⁸⁵ Stanley Renshon, *National Security in the Obama Administration* (New York Routledge 2010) 32-37.

⁸⁶ Jack Serle, 'Almost 2,500 Now Killed by Covert US Drone Strikes Since Obama Inauguration Six Years Ago' *The Bureau of Investigative Journalism* (February 2 2015).

<<https://www.thebureauinvestigates.com/2015/02/02/almost-2500-killed-covert-us-drone-strikes-obama-inauguration/>> accessed December 15 2015.

⁸⁷ Jeremy Scahill, *Dirty Wars* (Nation Books 2014) 516.

⁸⁸ Michael Gerson, 'In Search of the Obama Doctrine' *The Washington Post* (March 31 2011)

<https://www.washingtonpost.com/opinions/in-search-of-the-obama-doctrine/2011/03/31/AFz56JCC_story.html> accessed October 2 2015.

defence must be 'instant, overwhelming, leaving no choice of means and no moment of deliberation'.⁸⁹ However, the US government's definition of 'imminence', found in a Department of Justice White Paper, shows a far more expansive understanding of the term. The paper states that 'the US government may not be aware of all al-Qaeda plots as they are developing and thus cannot be confident that none is about to occur', so immanence does not 'require the United States to have clear evidence that a specific attack on US persons and interests will take place in the immediate future'.⁹⁰ This is a circular, self-justifying argument whereby the US may carry out strikes if a plot is known, but can also do so if there is not a known plot; which is why the US's interpretation has been termed 'Orwellian'.⁹¹ This notion of immanence certainly surpasses even the widest reading of pre-emptive self-defence by establishing that strikes can be executed against targets that may not even pose a threat. When directed by such understandings of 'self-defence', both personnel and signature strikes exceed the remit of self-defence outlined above.

Whether a particular drone strike comes within the remit of 'self-defence' will always depend to some degree on the threat to which the strike was a response, and the precise basis on which the use of force was considered necessary. But, I suggest, in neither so-called 'signature strikes' which target individuals based on characteristics associated with 'terrorist behaviour', nor 'personnel strikes' which target known individuals on a 'kill-list', can the US's targeted killings be cogently argued to fall within the remit of self-defence in international law.⁹²

⁸⁹ US Secretary of State Daniel Webster (April 24 1841), in, Caroline Case, 29 British and Foreign State Papers (1841) <http://avalon.law.yale.edu/19th_century/br-1842d.asp> (accessed 14 September 2015).

⁹⁰ US Department of Justice, (n 67).

⁹¹ Rosa Brooks, 'Hate Obama's Drone War?' *Foreign Policy* (February 15 2013)

<<http://foreignpolicy.com/2013/02/15/hate-obamas-drone-war/>> accessed September 13 2015.

⁹² Spencer Ackerman, 'Inside Obama's Drone Panopticon: A Secret Machine with no Accountability', *The Guardian* (April 25 2015) <<http://www.theguardian.com/us-news/2015/apr/25/us-drone-program-secrecy-scrutiny-signature-strikes>> accessed December 29 2015.

The killing of Anwar Al-Aulaqi provides an example of the incongruence of personnel drone strikes with orthodox legal interpretations of self-defence. The drone strike that killed Al-Aulaqi and two others, led to a legal challenge against the US government in *Al-Aulaqi v Panetta* (2014), on the basis that the killings violated the US Constitution's guarantee of due process under the Fifth Amendment.⁹³ The US government's defence revealed that the strike was undertaken because Al-Aulaqi 'posed a continuing and imminent threat of violent attack against the United States' and 'it was not feasible to capture him'.⁹⁴ The US government's central claim against Al-Aulaqi was that he 'helped oversee the 2010 plot to detonate explosive devices on two U.S. bound cargo planes'.⁹⁵ This would in fact suggest that the killing of Al-Aulaqi was a punishment, and therefore part of a law enforcement operation, which, since there had been no trial, would amount to an extra-judicial killing. On the one hand, this underlines the importance to the Obama regime of framing drone strikes as part of an armed conflict and for judicial opinion not to confute this classification. Yet it also shows the transition of self-defence to its current pre-emptive character. Given the US government's current definition of 'immanence', the uses of force via drone strikes appears to far exceed even an expansive understanding of the right to self-defence under international law.

This situation is perhaps even clearer in the case of so-called 'signature strikes'. Whereas personnel drone strikes target a known individual, signature strikes, as Klaidman explains, target individuals or 'groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose identities aren't known'.⁹⁶ Thus, as is shown

⁹³ Al-Aulaqi, (n 29).

⁹⁴ *ibid*

⁹⁵ *ibid*

⁹⁶ Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (Harcourt 2012) 41.

clearly in the example in the following chapter, signature strikes by their very nature involve a form of lethal force that is not determined by the immanence of the threat an individual or group poses, but is merely based upon their appearance or 'profiles'.⁹⁷ It is thus reasonable to contend that signature strikes regularly exceed the principles of self-defence even under the most expansive reading of Article 51, as this form of lethal force is not undertaken when there is 'no choice of means, and no moment for deliberation'.⁹⁸ These two forms of drone strikes indicate the difference between current US military practices in the war on terror and previously dominant understandings of self-defence, since the US now primarily execute 'pre-emptive' strikes against suspected terrorists. It follows that 'one can reasonably conclude that the emerging threat doctrine conflicts with both the UN Charter and also the pre-Charter customary law'.⁹⁹

Legitimising the Shift to a New Standard of Self-defence

Bush and Obama's legitimised this departure from orthodox interpretations of the UN Charter in different ways. Bush's original justification for pre-emptive force recognised the newness of the situation and the corresponding need to act differently from before. Following this, Obama then utilises Bush's pre-emptive self-defence innovation in drawing attention to the legality of his administration's use of force. But as we will see below, Obama also departs from Bush's rhetorical stance by putting forward justifications that are particular to his use of drone strikes. This creates the impression of a well-judged and considered response to threats faced, which can be seen as a response to the criticism that Bush's wars were ill-judged and imprecise, backed by a manichean world view.¹⁰⁰

⁹⁷ This is key to the specific form of Obama's 'enemy', addressed fully the third chapter.

⁹⁸ Damrosch, Henkin, (n 72).

⁹⁹ Mulcahy, Mahony, (n 78).

¹⁰⁰ Robert Patman, 'Globalisation, the New US Exceptionalism and the War on Terror' (2006) vol 27:6 Third World Quarterly.

According to Bush, it was necessary to adapt the concept of an imminent threat because:

Rogue states and terrorists do not seek to attack us using conventional means. The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack.¹⁰¹

Here, Bush justifies the shift away from the customary law approach to pre-emptive strikes. The requirement to act despite uncertainty in regards to the imminence or whereabouts of the attack is due to the potential significance of the threat faced. Bush reinforces that the new enemy does not adhere to *normal* practices of war, whilst simultaneously reminding the public of the surprise and unconventional nature of 9/11, which may be repeated without pre-emptive military intervention.

Bush's justifications for pre-emptive self-defence subsequently become engrained in post-9/11 security approaches. By the time Obama takes office, it appears unnecessary for him to make direct justifications regarding this approach to self-defence as it has become a common feature of 'western' security discourses. Paul Wilkinson, for instance has identified the need for pre-emption when new 'terrorism groups are based on transnational networks of cells, preparative cells, affiliated groups and support networks' which 'have multinational composition'.¹⁰² The security threats now faced by Western states are represented as less identifiable and more dispersed than those mounted by previous enemies, which is why pre-emptive attacks are simply the new form of self-defence.

¹⁰¹ George Bush, 'U.S. National Security Strategy: Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction' (New York June 1 2002) <<http://2001-2009.state.gov/r/pa/ei/wh/15425.htm>> accessed June 15 2015.

¹⁰² Paul Wilkinson, 'Observations on the New Terrorism', (June 2003) Foreign Affairs Committee of the House of Commons <<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmfaaff/405/3060302.htm>> accessed July 15 2015.

Indeed, as Ulrich Beck has stated, it is 'precisely because of the uncontrollable nature of risks that pre-mediation is culturally so appealing'.¹⁰³ Following from Bush's consistent assertion of this necessity to act first since 9/11, Obama's rhetoric is squarely located within this discourse of pre-emption. It can be said that this setting helps to give the US administration a 'carte blanche to conduct war wherever it 'anticipates' its suspect targets might lurk'.¹⁰⁴

Although both president's uses of force and communications are both located within this pre-emptive frame, Obama's precise rhetorical representation of pre-emptive self-defence is subtly, and at times explicitly different to Bush's. Because Bush effectively lays the foundations for an apparently more timely response to threats with pre-emptive self-defence, the Obama administration can focus upon the legality of this use of force without Bush's archetypal fear-based rhetoric. On the one hand, the Obama administration utilises the language introduced by Bush to support the represented legality of drone strike operations. As State Department Legal Advisor Harold Koh asserts, targeted killings 'will depend upon considerations specific to each case, including those related to the imminence of the threat'.¹⁰⁵ The language Bush deployed is here used by Koh to reiterate the war on terror's legality. On the other, Obama does not use the same divisive *war-like* language that Bush did, explicitly shown in his call that 'we must take the battle to the enemy, disrupt his plans and confront the worst threats before they emerge'.¹⁰⁶ Obama instead consistently asserts that the use of force is always 'in last resort' and in 'self-defence' so 'America's actions are legal'.¹⁰⁷ Here, the Obama administration's

¹⁰³ Ulrich Beck, 'Cosmopolitanized Nations: Re-imagining Collectivity in World Risk Society' (2013) vol 30:2 Theory, Culture & Society, 15.

¹⁰⁴ Joseph Pugliese, 'Prosthetics of Law and the Anomic Violence of Drones', (2011) vol 20:4 Griffith Law Review, 933.

¹⁰⁵ Koh, (n 38).

¹⁰⁶ Bush, (n 101).

¹⁰⁷ Obama, *Drone* (n 82).

representation of pre-emptive self-defence in the war on terror is markedly less conflictual than Bush's and robustly more legalistic and considered.

This 'considered' dimension to Obama's rhetoric is underlined by his administration's focus on the operational qualities of the drone program perhaps intentionally set against the view that Bush's wars were ill-judged and fought with a lack of intelligence.¹⁰⁸ Bush's own framing of his decision to invade Iraq supports this argument, as he states that 'we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud'.¹⁰⁹ Contrastingly, Obama's rhetoric is tailored to justifying his targeted killing program via the drone. This creates the impression of a 'considered' and well-measured form of self-defence. Obama represents the use of force in such a way that it appears to aptly respond to the nature of the enemy being fought against: he states that the threat has 'shifted and evolved from the one that came to our shores on 9/11', as it is today 'more diffuse' with al-Qaeda affiliates now reaching beyond several state borders.¹¹⁰ Following improved cross-country 'intelligence' measures, the US military are then able to narrowly target these enemies, rather than requiring unnecessary troop deployment in such areas.¹¹¹ This rhetorical strategy therefore supports the specific use of drone strikes to respond to this new form of enemy. Obama avoids Bush's war-like language of targeting the enemy before they target 'us' without the relevant evidence if necessary. He instead constructs the impression of a reasonable and practical strategy backed by intelligence. This juxtaposition suggests that under Obama there has been a departure from the blindly fought wars backed by American exceptionalism in the Bush era.¹¹² Thus, although the

¹⁰⁸ Gregory Britton, 'September 11, American 'Exceptionalism' and the War in Iraq', (2006) vol 25:1 *Australasian Journal of American Studies*.

¹⁰⁹ George Bush, Speech in Cincinnati (October 7 2002).

¹¹⁰ Obama, *Drone* (n 82).

¹¹¹ *ibid*

¹¹² Andrew Neal, 'Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security and the War on Terror' (Routledge 2009).

Obama administration's pre-emptive practices can certainly be criticised in the same vein as Bush's were, Obama's rhetorical style and focus creates a point of contrast to Bush's war on terror.¹¹³

In conclusion to this section, Obama's rhetoric relating to the threats faced by the US supports the transition away from conventional understandings of self-defence, in a rhetorical form that attempts to protect the impression of legality. Central to the legitimisation of this shift in practice, is a line of public communications that disguises *vice as virtue* by reenforcing the need to respond with force appropriate for the new threats of the globalised world, and in a way that is 'legal'. Thus, it is apparent that the US has a key role in determining the scope of its own practices due to the seeming malleability of international law. This demonstrates the way in which the 'words of the constitution [or in this instance international law principles] gain meaning and authority as shared political meaning'.¹¹⁴ This is crucial for the rhetorical turn away from Bush's divisive strategy. But it is also apparent that below this *embellishment* is an evolution of Bush era practices that constructs political relations in ways unseen through the Obama administration's rhetoric.

iv. Legitimate Targeting with Precise Weaponry

This final section argues that the Obama administration emphasises the technical qualities of the drone, apparently in response to criticism from media reports regarding the precision of drone strikes in relation to norms regarding the issues of 'distinction' and 'proportionality'

¹¹³ See, for example: Douglas Kellner, 'Preemptive Strikes and the War on Iraq: A Critique of Bush Administration Unilateralism and Militarism', in Joseph Peschek, *The Politics of Empire: War, Terror and Hegemony* (Routledge 2005).

¹¹⁴ Shaunnagh Dorsett, Shaun McVeigh, *Jurisdiction* (Routledge-Cavendish 2012) 59.

in the use of lethal force.¹¹⁵ This element of the rhetorical representation of the drone strike supports the impression that the use of force is legal and humanely executed. On this basis, Obama frames the method used to fight the war on terror and the political problem of *civilian casualties* differently from Bush. This impression of a humane use of force directly contradicts the 'dehumanising' effect of drone strikes exposed in the following chapter.

Media Criticism

Media reports increasingly highlight the failure of the US's targeted killing program to adhere to the requirements of international law, which have made a great deal of the high number of civilian casualties.¹¹⁶ How does the Obama Administration respond to these contestations and maintain the legitimacy of the drone campaign? As we see below, the Obama administration asserts that targeting is proportionate and considerate of civilians at all times. The drone is praised for its precision, and presented as having been chosen as the best option for reducing casualties when executing necessary lethal action. But the Obama administration also denies or contests the accuracy of casualty figures, whilst accepting the simple fact that civilian casualties are inevitable in war despite their best efforts in avoiding such consequences.

¹¹⁵ Shane Scott, 'Drone Strikes Reveal Uncomfortable Truth: U.S. Is Often Unsure About Who Will Die' *New York Times* (April 23 2015) <http://www.nytimes.com/2015/04/24/world/asia/drone-strikes-reveal-uncomfortable-truth-us-is-often-unsure-about-who-will-die.html?_r=0> accessed December 30 2015.

¹¹⁶ Spencer Ackerman, '41 men targeted but 1,147 people killed' *The Guardian* (November 24 2014) <<http://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147>> accessed September 3 2015.

Mainstream media outlets, and specialised campaigns have criticised the lack of judicial accountability for the ‘civilian casualties’ caused by drone strikes.¹¹⁷ The sheer number of casualties, too, has been grounds for concern: the Bureau of Investigative Journalism (TBIJ) reports that in Pakistan alone, from 2004 up to 2015, between 416 and 959 civilians were killed by US drone strikes.¹¹⁸ This indicates that US drone strikes may be in breach of the rules of proportionality and distinction. The rules of ‘distinction’ and ‘proportionality’ under international law relate to the treatment of civilians in war, and restrict what and whom an attacking state can target. The rules of proportionality aim to protect the civilian population, but only to a certain degree as the Geneva Convention prohibits force ‘which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be *excessive* in relation to concrete and direct military advantage anticipated’.¹¹⁹ Distinction then requires a state using force to ‘at all times distinguish between the civilian population and combatants, and between civilian objects and military objectives’, and to ‘direct their operations only against military objectives’.¹²⁰

Precise and Proportionate

As these principles indicate, the presence of civilian casualties can certainly undermine the impression of legality. As such, when the US government asserts that it exercises a great deal of care to avoid civilians it can be seen as part of a broader attempt to show that the war on terror is now a legal war. The Obama administration creates the impression that its

¹¹⁷ Christopher Rogers, ‘Civilian Harm and Conflict in Northwest Pakistan’. *Washington, DC: Campaign for Innocent Victims in Conflict* (2010).

¹¹⁸ Serle, (n 86).

¹¹⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 51(5)(b). (‘PAGC PI, 1977’ hereinafter).

¹²⁰ PAGC PI, 1977, art. 48.

targeted killing regime is carefully executed in a way that is proportionate and always mindful of the possibility of civilian casualties. As Obama states, 'there must be near-certainty that no civilians will be killed or injured — the highest standard we can set',¹²¹ a representation that closely mirrors the requirements of proportionality outlined in the Additional Protocol of the Geneva Convention above. Panetta reinforces the notion that the US take great care to avoid civilians by stating that, 'as a Catholic [...] I was making life-and-death decisions [...] you gotta make sure that we really are focused on somebody who is, you know, who is a direct threat'.¹²² Whereas Panetta seeks to represent the practice as being *morally considered*, Koh more closely follows Obama's approach by asserting that drone killings are coherent with international law standards of proportionality. He states how the 'planning and execution' is rigorously guided by principles of proportionality 'to ensure that such operations are conducted in accordance with all applicable law'.¹²³ Effectively, questions of proportionality are met by the depiction of the drone strike as directed by considerations of civilians on the ground, constructing the impression of a use of force that is both legally regimented and morally guided. In short, there is a consistent foundation of 'legality', which is bolstered by the executive's concerted representations of the principles underpinning targeted killings in Obama's war on terror.

The drone's perceived precision supports this impression that the numbers of civilian casualties are reduced due to the use of the drone. This is shown in the suggestion that drones are capable of pinpointing a particular target; putting '*warheads on foreheads*',¹²⁴ and, as a US Lieutenant-Colonel has claimed, the US can now 'control collateral damage to a much greater degree' through not being restrained by fuel shortages or crew

¹²¹ Obama, *Drone* (n 82).

¹²² Panetta in, Sullivan (n 58).

¹²³ Koh, (n 38).

¹²⁴ Anna Mulrine, 'Warheads on Foreheads', *Air Force Magazine* (2008) vol 91:10, 44-47.

tiredness.¹²⁵ The drone's perceived precision entails that the US government can assert that they achieve 'military objectives efficiently and humanely because they limited collateral damage'.¹²⁶ I interrogate the true effect of this belief in 'precision' in the second chapter. Nevertheless, it is clear that by consistently presenting the medium as enabling civilian casualties to be minimised, the Obama administration strengthen its key claim that drone strikes are legal.

This support for the medium of the drone is reinforced by Obama's strategy comparing drones against alternative weaponry. Although drones are beset by possible inaccuracy, Obama emphasises that 'conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage'.¹²⁷ So the drone is the most humane and civilian friendly option when 'measured against' other US foreign policy adventures, such as Vietnam, where 'hundreds of thousands of civilians died in a war where the boundaries of battle were blurred', and Iraq and Afghanistan, where 'despite the extraordinary courage and discipline of our troops, thousands of civilians have been killed'.¹²⁸ Thus, on the one hand, this technique presumes the necessity of lethal force. On the other, the drone's lethality is made relative by comparing the medium with other uses of force that have resulted in high numbers of civilian casualties; which helps emphasise the drone's virtues.

¹²⁵ Afshin Rattansi, "Knowing When to Say When": Meet Lt. Col. Chris Gough: Killing by Drone and Proud of It', *Counterpunch*, (2–4 April 2010) <<http://www.counterpunch.org/rattansi04022010.html>> accessed 17 December 2014.

¹²⁶ Sarah Kreps, John Kaag, 'The Use of Unmanned Aerial Vehicles in Contemporary Conflict: A Legal and Ethical Analysis' (2012) vol 44:2 *Polity*.

¹²⁷ Obama, *Drone* (n 82).

¹²⁸ *ibid*

Distinction

But because drone strikes do at times kill civilians, in order to maintain an impression of legality, the Obama administration also utilises the exception to the rule of distinction that ‘civilians’ become legitimate targets when ‘they take a direct part in hostilities’.¹²⁹ This possible transition of the civilian into a legitimate target allows the attacking state force some scope to argue that a given civilian death was a legitimate target, and therefore helps the US government to maintain the impression that the use of drone strikes are legal.

The lack of clear distinction between who is and who is not a civilian therefore forms a line of defence for Obama in response to such claims. Obama states in practical and non-emotive language that ‘there’s a wide gap between U.S. assessments of such casualties and nongovernmental reports’,¹³⁰ but he does not explain the source of this discrepancy. It is unclear whether it concerns the definition of casualties as civilians, or whether he simply contests the number of civilian casualties drone strikes cause. This taciturn approach withholds from critics any clear ground on which to impugn the administration’s ‘assessments’. Nonetheless, in the same speech, Obama does recognise the existence of civilian casualties from drone strikes, presenting them as ‘a risk that exists in every war’; thus normalising them as an inevitable byproduct of conflict in general rather than a fault of the particular use of drones or US foreign policy.¹³¹ Essentially, where war is fought in locations with civilians, and particularly when war is fought predominantly in the air, the distinction between legitimate target and civilian is inevitably unclear. Despite this concession, Obama reaffirms Koh’s line of argument that ‘only legitimate objectives are

¹²⁹ PAGC PI, 1977, art. 51(3).

¹³⁰ Obama, *Drone* (n 82).

¹³¹ *ibid*

targeted',¹³² stating that 'we only target al Qaeda and its associated forces'.¹³³ The US military's broad understanding of a legitimate target to include any 'military aged male' (spoken of in military dialect as a 'MAM') shows how the US government can make such assertions regarding the legitimacy of their targeting practices.¹³⁴ This use of 'MAM' has a similar *guilty by association* glaze as the contention that civilians forfeit their right to protection when they 'refuse to separate themselves from the local population'.¹³⁵ In both instances, the blurring between civilian and legitimate target is evident, in a way that attempts not to offend the principle of distinction. The 'civilian' casualty is transformed into a legitimate target; again helping to support the Obama administration's assertion that drone strikes are 'legal'.

Difference to Bush

On this basis Obama takes a completely different approach to Bush when addressing the problem of civilian casualties. Although Bush did also emphasise the effectiveness of US military technology, this is simply to emphasise the ability of the US to win the war, claiming that 'expensive precision weapons defeat the enemy'.¹³⁶ The consequence of civilian casualties appears to be of less importance to Bush, as it is a topic rarely directly addressed in his public communications. When Bush does however confront the issue of civilian deaths this demonstrates the clear difference to Obama's approach set out above. He first places the blame elsewhere, illustrated in his assertion that: 'Saddam Hussein has placed Iraqi troops and equipment in civilian areas, attempting to use innocent men,

¹³² Koh, (n 38).

¹³³ Obama, *Drone* (n 82).

¹³⁴ Kristina Benson, "'Kill 'em and Sort it Out Later.'" Signature Drone Strikes and International Humanitarian Law' (2014) vol 27 Global Business & Development Law Journal, 47.

¹³⁵ Amitai Etzioni, 'Unmanned Aircraft Systems: the Moral and Legal case', (2010) vol 57 Joint Forces Quarterly, 66-71.

¹³⁶ Bush, *107th* (n 12).

women and children as shields for his own military — a final atrocity against his people'.¹³⁷ Evidence of civilian casualties is utilised as a rhetorical tool against the enemy. In further contrast to the Obama's approach, civilian casualties are used as one of several indications of a well fought war, shown in his remarks that 'a year later, high profile terrorist attacks are down, civilian deaths are down, sectarian killings are down'.¹³⁸ Put simply, while Bush does not offer any real show of care for such deaths, Obama has clearly moved from this position by recognising the importance of civilian casualties in media reports, and their role in challenging the representation of a legal war: putting the issue at the forefront of his communications.

This section has illustrated that Obama's representation of the drone's technical qualities supports the attempt to form an impression of a legal war. Targeted killings are represented to be regimented by relevant legal requirements, and are carefully undertaken so as to only strike legitimate targets. The medium of the drone significantly helps towards such ends by supposedly minimising collateral victims thanks to its 'precision'. Obama's representation of the use of force therefore corresponds to the legal requirements for the conduct of war. This shows Obama's clear transition away from Bush's rhetorical approach in his war on terror.

Conclusion

This chapter has explored the Obama administration's strategy for legitimising drone strikes in order to demonstrate the difference between Bush's and Obama's war on terror at the point of representation. Contrasting with Bush's strategy, the Obama administration

¹³⁷ George Bush, 'Bush Speech in Full' *BBC* (March 20 2002)

<<http://news.bbc.co.uk/1/hi/world/americas/2866715.stm>> accessed March 1 2016.

¹³⁸ George Bush, 'State of the Union Address to the 110th Congress' (Washington DC January 28 2008).

rhetorically constructs the impression that the war on terror now adheres to international law and is considerate of civilian casualties in areas targeted. This is distinctly unlike Bush's representation of the war on terror that focused on the exceptional circumstances faced by the US, and also does not appear to be similarly Schmittian. This argument has been developed through an analysis of three conditions for legitimate state force in relation to the Obama administration's rhetorical strategy. The first condition examined was the importance of drone strikes being in an armed conflict as opposed to a law enforcement operation. The Obama administration consistently presents the use of force to be within an armed conflict, which is supported by judicial and legislative sources. Here we saw the difference to the Bush administration's calls that the law should not always apply in the war against terrorists. The second condition analysed was the requirements for self-defence, which showed one of the key points of friction between conventional interpretations of international law and the use of drone strikes in practice. The US government's shift towards pre-emptive self-defence following 9/11 was shown to be embellished by rhetoric focusing upon the necessity of the use of force in response to the new form of threat facing the US. Obama thus followed Bush's line of rhetoric whilst adding a more robust 'legal' dimension. The third and final condition related to challenges regarding the precision of the drone, and the rules of distinction and proportionality. The Obama administration emphasises the legality of its practices and the related avoidance of civilians. This strategy was shown to be completely different to Bush's approach that simply passed the blame of civilian casualties onto the enemy. Taken together, the picture formed by political rhetoric in relation to these three parallel conditions conceals the nature of the political relations in Obama's war on terror. It is the task of the following chapter to question this impression and uncover what it conceals, through an analysis of the material and technological conditions of drone strikes.

Behind the Rhetoric: the Conditions of Drone Strikes

The previous chapter showed that the Obama administration's rhetorical focus on the legality of state force, the precision of the drone, and care taken to avoid civilian casualties in the war on terror, reveals the point of maximal difference in comparison to Bush's war. This chapter's analysis of the material conditions of drone strikes shows that Obama's rhetoric misrepresents the nature of political relations in his war. The third chapter then directly maps this analysis onto the Schmittian problem of the political, the friend-enemy distinction, and the age of technology.

This chapter reveals an alternative impression of drone strikes to that created by Obama's rhetoric. This is achieved through five sections evaluating different components of the US military's drone strike practices. Whereas the first chapter identified the legality of the use of force and precision of the medium as attributes that support the US government's legitimising strategy, in the first section I argue that each individual decision regarding the 'legality' of an operation and 'precision' have the effect of insulating human operators from the consequences of targeted killings, and accordingly facilitating the use of force. These attributes suggest that we are seeing a war shaped by the admixture of technological and political thinking; a possibility that is considered directly in the final chapter. The second section shows that the drone strike is a technical process in which 'efficiency' is the most important 'value' and the US military are simply tasked with ensuring the successful execution of a strike. The third section then unhinges Obama's assertion that care is taken to avoid civilian casualties, and in doing so reveals a paradox of the drone's material conditions. That is: whilst the US military operators can see individuals on the ground

clearly thanks to the optical qualities of the drone, because of the mediation of such technology combined with the environment in which this occurs – directed by a suspicion of individuals observed – this is an inherently *detached* form of intimacy. The fourth section then evaluates the position of dominance granted to the user of force over the target, which shapes the relation between user and receiver of force. This condition also indicates that the war on terror takes the form of a police operation, which contradicts the Obama administration’s assertion that the US executes drone strikes within an armed conflict. Finally, the fifth section argues that the combined conditions of technological thinking, dominance and detached intimacy inherent to drone strikes dehumanises the target; confuting the Obama administration’s representation of drone strikes as a humane use of force. This second chapter concludes having challenged the veracity of Obama’s account of his war on terror and provided an alternative impression of its practices. My analysis below is therefore vital in order to understand the transformed concept of the political in Obama’s war on terror.

i. ‘Legal’ and ‘Precise’: Insulating the User of Force

It all began with the leitmotif of precision, of surgical, mathematical and punctual efficacy, which is another way of not recognising the enemy as such [...] The isolation of the enemy by all kinds of electronic interference creates a sort of barricade behind which he becomes invisible.¹

This section scrutinises the US government’s framing of drone strikes as ‘legal’ and ‘precise’. In contrast to the first chapter that addressed the legality of the drone strike regime in general, here, the issue raised is how each individual authorisation proceeds. First, the legality of each individual strike is shown to be inherently directed by military objectives. The drone strike’s technical and material conditions are then shown to shape

¹ Jean Baudrillard, *The Gulf War Did Not Take Place* (Indiana University Press 1995) 43.

political relations behind the embellishment of legality. The 'legal' authorisation of a strike, and 'precision' during its execution insulate drone operators from their own role in the execution of a strike. On the one hand, operators are insulated from political, ethical or legal decisions, and on the other, operators are insulated from the consequences of poor targeting given the supposed precision of the drone. This creates two forms of *distance* between user of force and target, and this makes killing easier for the user of force.

Legality

The US government requires each drone strike to have legal approval for it to be 'actioned', yet in Obama's war on terror this approval appears to be heavily directed by military objectives.² As many as four lawyers, known internally as 'Judge Advocates' (JAs), are present 24/7 in operative locations in order to approve lethal force at any time.³ A JA can approve a strike if the requirements of three sets of rules are met: the Law of Armed Conflict (LOAC), specific instructions for that operation (known internally as 'Spins'), and Rules of Engagement (ROE).⁴ The JA's role is to ensure that each operation does not violate these rules. It is the relation between ROE and LOAC that indicates that these rules are procedural requirements heavily defined by military objectives.

More precisely, given the JA's role in drafting both the ROE and LOAC, the JA's determination of a strike's 'legality' is arguably influenced by military objectives required to draft the ROE. The US Air Operations Centre (AOC) outlines the general principles of ROE, including the role of the JA in the drafting stages. ROE has two primary objectives of

² Pratap Chatterjee, 'How Lawyers Sign off on Drone Strikes' *The Guardian* (June 15 2011) <<http://www.theguardian.com/commentisfree/cifamerica/2011/jun/15/drone-attacks-obama-administration>> accessed September 10 2015.

³ *ibid*

⁴ Air Operations Center (AOC), 'Standard Operating Procedure', Chapter 9 <<http://fas.org/man/dod-101/usaf/docs/aoc12af/part09.htm>> accessed September 20 2015.

preventing ‘fratricide’ and ‘balancing competing interests’.⁵ If for example ‘the ROE are too constrained they bind war fighters who can then not get the job done’, therefore they must be ‘tactically sound, flexible, understandable, and enforceable’.⁶ The JA is required to be ‘familiar with mission and operational concepts, planning, nomenclature, capabilities and constraints, and battlefield operating and weapons systems’ in order to draft the ROE, and ensure the aforementioned requirements are met.⁷ The JA is therefore acclimatised within the military arena and familiarised with the rationale behind the use of force. The subsequent ‘rules’ are claimed to impose limitations upon commanders.⁸ However, given the definition of its intentions and considering what the JA has to take into account in drafting said rules, it is more accurately a *procedural requirement*. Nonetheless, the role of the JA in determining the remit of ROE for each operation entails that these ‘rules’ and the following strike can subsequently be presented as *legally authorised*.

The JA are then tasked with ensuring each operation complies with LOAC, and this exposes the true meaning of a strike’s ‘legality’. The JA must determine whether each target ‘makes an effective contribution to the enemy’s military capability and whether its capture, destruction, or neutralization will result in a definite military advantage under the totality of the circumstances’.⁹ Given the JA’s necessary awareness of military operations to draft the ROE, their consideration of military and strategic information is likely to influence their consideration of each operation’s legality. For instance, the US military’s understanding of a *definite military advantage* may direct the ‘necessity’ component of the LOAC. The JA familiarise themselves with operational information in relation to an attack that is believed to be necessary in military terms, and then make a ‘legal’ decision as to

⁵ *ibid*

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

⁹ *ibid*

whether the attack will result in a definite military advantage, with the information required for each deriving from the US military who have the primary intention of using force. This dual role of the JA in deciding upon the ROE and ensuring that legal requirements are followed, shows that such legal approval is entangled with the military's strategic requirements. Arguably this means that military strategy directs such considerations, and are weighted in favour of the attacking side; having affinity with the user of force's rationale for executing a strike. Concurrently, drone strikes can consistently be determined as legal since it is 'possible to make plausible legal argument justifying each and every US drone strike', regardless of the veracity of such claims.¹⁰ One may therefore plausibly ask whether 'legality' offers any meaningful restraints here or whether it is a mere procedural requirement? Ultimately, it does appear as though the legality at the heart of Obama's legitimisation of his war on terror is preordained by the nature of this approach to thinking about legality.

Legality does not shape or restrict the US military's use of force in the war on terror when it is a mere procedural requirement that satisfies the US executive branch that an appropriate 'legal authority' has authorised a strike. Because this occurs prior to its execution, it can be said that drone operators are effectively absolved of undertaking an evaluative role. Operators are still connected to the operation, but the legal authorisation means that evaluative thinking regarding their actions – whether it is political thinking grounded in a particular ideology or view of the enemy, or legal and ethical judgements regarding the use of force – is unnecessary. Notwithstanding the complexity surrounding the visual evaluation of a target, as explored in section three below, the user of force can simply implement a 'legal' strike against a target that is already identified as *legitimate*.

The effect of this environment is shown in the comments of a drone pilot who states that

¹⁰ Rosa Brooks, 'Drones and Cognitive Dissonance', in Peter Bergen, Daniel Rothenberg (eds), *Drone Wars* (Cambridge University Press 2015) 246.

‘whatever the case may be, there was a reason that person was targeted’.¹¹ This perception insulates the user of force from their own role in bringing about the consequences of the use of force. Thus, the lack of deliberation required from military personnel effectively makes the use of force easier. Operators only have to make technical decisions principally regarding the functioning of the missile; underlining the distance or *barricade* created, *behind which the target becomes invisible*.¹² Ultimately, the relation between the user of force and the drone minimises politically evaluative thinking regarding the use of force, its effects, and the nature of the target. The human drone operator, it can be said, is therefore simply an extension of the technology used to execute the will of those who decide to approve the use of force.

Precision

Human operators are also insulated from the consequences of drone strikes at the stage of its execution given this predominant role of the drone in supposedly enabling precise targeting to occur. Precision – whether a true feature of the weaponry in use or an attribute enhanced in military and political communications to form an impression of military practices – constructs a particular environment for the user of force. According to Koh, the precision of the drone ensures that ‘only legitimate objectives are targeted and that collateral damage is kept to a minimum’, and this, if we recall from the previous chapter, helps the Obama administration create the impression that a high level of care taken to avoid civilians in areas targeted.¹³ Military personnel also rhetorically emphasise the technical precision of the drone toward such ends. US Air Force general counsel Charles

¹¹ Drone Pilot Interviewed by Daniel Rothenberg, ‘It Is War at a Very Intimate Level’ in, Peter Bergen, Daniel Rothenberg (eds) *Drone Wars* (Cambridge University Press 2015) 116.

¹² Baudrillard (n 1).

¹³ Harold Koh, ‘The Obama Administration and International Law’, *The US Department of State*, (March 25 2010) < <http://www.state.gov/s//releases/remarks/139119.htm> > accessed February 11 2015.

Blanchard's comments exemplify this rhetorical approach as he asserts that 'these new technologies' ensure 'the use of military force is only directed against legitimate military targets and in a manner designed to minimise collateral damage'.¹⁴ Framing the medium of violence as objectively achieving the desired outcome and precluding unintended consequences has effect of alleviating the human operator of the responsibilities that come with targeting. Moreover, this perception arguably makes the use of force easier since the drone technology itself appears to take responsibility for the strike. This is demonstrated in Blanchard's assertion that 'technology has actually raised the bar' meaning that 'we rarely have civilian casualties'.¹⁵ Operators need not be concerned with the nature of the target when the 'hallmark' of Obama's 'counterterrorism efforts' has supposedly been its 'ability to be exceptionally precise, exceptionally surgical and exceptionally targeted'.¹⁶ Ultimately, this focus on technology in military discourses obscures the role of the human operator in each drone strike.

The US government's drone strike program therefore typifies the way 'moral argument and force support each other harmoniously so that the old distinction between just ends and just means of violence [...] is no longer relevant'.¹⁷ Technical and military values replace deliberation over the nature of the target, and the question of whether to use force at all. Although we know that there are longer-term effects from drone strikes such as Post Traumatic Stress Disorder¹⁸, at the point of a strike, the 'marvels of military technology' engender an environment in which the human operator becomes insulated from the effects

¹⁴ Charles Blanchard, 'This Is Not War by Machine' in, Peter Bergen, Daniel Rothenberg (eds) *Drone Wars* (Cambridge University Press 2015) 122.

¹⁵ Charles Blanchard, 'Drones, Remote Targeting and the Promise of Law' (February 24 2011) <<http://www.ustream.tv/recorded/12909598>> accessed September 20 2015.

¹⁶ Jay Carney, 'White House Press Briefing' (January 31 2012) <<https://www.whitehouse.gov/the-press-office/2012/01/31/press-briefing-press-secretary-jay-carney-13112>> accessed October 4 2015.

¹⁷ Costas Douzinas, *Human rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish 2007) 259.

¹⁸ Rebecca Hawkes, 'Post-Traumatic Stress Disorder is Higher in Drone Operators' *The Telegraph* (May 30 2015) <<http://www.telegraph.co.uk/culture/hay-festival/11639746/Post-traumatic-stress-disorder-is-higher-in-drone-operators.html>> accessed January 30 2016.

of killing innocent civilians.¹⁹ This is because, at the moment force is executed, there is a suspended 'connection between the doer and the deed'.²⁰ The doer merely implements this legal use of force against a legitimate target with a precise weapon. This echoes Jean Baudrillard's comments on the Gulf War that serve as the epigraph to this section. Killing a human is no longer recognised *as such* when it is carried out cleanly by precise weaponry; showing how technical proficiency mediates the relation between user of force and receiver and makes the use of force markedly easier.

Drone operators are insulated from the execution of a lethal strike at two key stages in an operation: behind the legality of the operation prior to a strike which is heavily shaped by US military strategic requirements anyway, and by the precision of the drone at the point of a strike. Operators are therefore somewhat displaced both at the point of deciding on the target, and striking the intended target. This has the effect of negating deliberation over the target and creating a distance between military operators and target which facilitates the act of killing. These attributes of US drone strike operations also contribute towards the making of a highly technical 'political' undertaking.

ii. A Technical Process

'The beaming procedure is complex, and because the panel operates on joint control only, we must rehearse the sets of established measures with the utmost care'.²¹

This section argues that the primary concern for the US military in each drone operation is ensuring the strike is successfully and efficiently executed; signalling the admixture of

¹⁹ Douzinas, (n 17) 263.

²⁰ Joseph Pugliese, 'Prosthetics of Law and the Anomic Violence of Drones' (2011) vol 20:4 Griffith Law Review, 935.

²¹ Don DeLillo, *Human Moments in World War III* (1984).

political thinking – which, for Schmitt, is grounded in the distinction between friend and enemy – with a technical mode of thinking. This section shows that technical thinking plays a pervasive role throughout the execution of US military drone strikes. A thorough investigation of what is meant by technology or technical is beyond the scope of the thesis, and in this chapter I abide by Schmitt's understanding of the term. 'Technical' is therefore understood as practices that are centred on the process and the application of technology, taking from Schmitt's concept of 'technological thinking' as the belief that 'the absolute and ultimate neutral ground has been found in technology'.²² This approach is applied in my analysis of the stages involved in the drone strike's kill-chain below, which shows that the drone strike is a technical use of force in which the key concern for operators is ensuring a killing is successfully and efficiently executed. This is followed by an examination of ways in which the 'value' of efficiency shapes US government drone strike practices. This underlines that, in Obama's war on terror, the procedures and principles guiding military practices in relation to the drone are highly 'technical'.

The Killing Process

The kill-chain is the formal structure that the drone strike process takes in each operation, which shows the technical form of operations in Obama's war on terror. A US military handbook outlines the kill-chain as a process of 'Find - Fix - Finish - Exploit - Analyse - Disseminate' as sequential stages for military personnel to follow.²³ According to Michael Flynn, 'exploit' and 'analyse' were added to the '3F' model to introduce a new structure that begins 'the cycle over again by providing leads, or start points' for a new operation.²⁴

²² Carl Schmitt, Matthias Konzett & John McCormick (trans) 'The Age of Neutralizations and Depoliticizations' (Dunker & Humblot 1963) 90.

²³ United States Joint Forces Command, Commander's Handbook for Attack the Network, (Suffolk Virginia May 2011) V1-7

²⁴ Michael Flynn et al., 'Employing ISR' (2008) vol 50: 3 JFQ, 57.

General Stanley McChrystal believes that the simplicity of the ‘five words in a line’ (excluding ‘disseminate’) belies ‘how profoundly it would drive our mission’.²⁵ Indeed, this model plays a significant role in directing the targeted killing process, such that each drone strike adopts its replicable structure, offering benefits of increased efficiency. Further, the inclusion of ‘exploit’ and ‘analyse’ following a strike reiterates the drive to make the drone strike program more efficient as a whole, as each killing can act as the start of the next operation. As we see below, the US military can be said to systematise this mode of killing, and give focus to the technical process rather than the effects of the use of force.

The first stage of the killing process involves data collection on potential targets, or what is understood as ‘developing a target’ in a Pentagon presentation.²⁶ The Distributed Common Ground System, based at Langley Air Force Base in Virginia, is principally responsible for this first stage.²⁷ But because new technologies are capable of finding a target based on pre-determined features of individuals, these individuals can be determined as a ‘suspect’ or ‘target’ for the operational team.²⁸ For instance, drones can operate with a ‘bloodhound mode’ which is capable of identifying particular traits or features when flying over locations meaning that the drone can identify an individual prior to a human’s observation of the same location.²⁹ For the US military, tracking time prior to a strike, and thus the overall time of a strike, can be minimised. This drive towards streamlining and improving the process of finding a target does nothing to improve the user of force’s ability to avoid civilian casualties. For instance, each of the reported seven strikes needed to kill US target Baitullah Mehsud may have been ‘efficient’, but in the

²⁵ Jeremy Scahill, ‘Find, Fix, Finish’ *The Intercept* (October 15 2015) <<https://theintercept.com/drone-papers/find-fix-finish/>> accessed October 20 2015.

²⁶ Cora Carrier, ‘The Kill Chain’ *The Intercept* (October 15 2015) <<https://theintercept.com/drone-papers/the-kill-chain/>> accessed October 20 2015.

²⁷ US Air Force, ‘Air Force Distributed Common Ground System’ (August 31 2009) <<http://www.af.mil/AboutUs/FactSheets/Display/tabid/224/Article/104525/air-force-distributed-common-ground-system.aspx>> accessed April 1 2015.

²⁸ Arnie Heller, ‘From Video to Knowledge’, *Science and Technology Review*, (April/ May 2011) 6.

²⁹ Peter Singer, *Wired for War* (Penguin Books, New York 2011) 81.

process they killed 164 civilians.³⁰ Consequently, it can be said that Obama's war on terror is evidently shaped by the reach of technology and driven by a technological form of thinking, rather than the ethical concern for civilians that in the previous chapter we saw emphasised by Obama.

After an individual is established as a target – whether through inclusion on the US government's 'kill list', or following identification in an operation – the process leading to a strike against that individual follows an established chain of communication.³¹ Military or CIA analysts compile a file on the threat of a particular target which is reported to contain the following sentence on each occasion: based 'on the above [evidence], we believe (Mr. X) poses a current and ongoing threat to the United States and therefore meets the legal criteria for lethal action pursuant to the Presidential Finding'.³² In the case of personnel strikes, meaning those taken against known individuals, members of the executive branch known as 'the Principals Committee', then examine the file.³³ Once the administration authorises a strike, and the JA adjudge the operation to adhere to the LOAC and ROE, 'Mr. X' then becomes a legitimate target, and the drone crew can execute the strike. There is a *efficient quality* to the drone strike given this attention on the replicable process to which the target on each occasion is merely an interchangeable end product. The ensuing 'actioning'³⁴ stage of a lethal strike is then an inherently technical process in itself, as shown in the recollections of a former drone pilot:

³⁰ Spencer Ackerman, '41 Men Targeted but 1,147 People Killed' *The Guardian* (November 24 2014) <<http://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147>> accessed December 13 2015.

³¹ Dana Priest, William Arkin, 'Inside the CIA's 'Kill List'', *Frontline* (September 6, 2011), <<http://www.pbs.org/wgbh/pages/frontline/iraq-war-on-terror/topsecretamerica/inside-the-cias-kill-list/>> accessed January 9 2015.

³² *ibid*

³³ Currier (n 26).

³⁴ Currier (n 26), see 'Pentagon Presentation' slide.

I'll set the laser on a spot, you'll see a box pop up, and what it does is lock in those pixels as we are circling, then the computer will figure out the trajectory, the distance and the speed and come up with an estimated time that it will take for the missile to impact. The pilot will get all the clearances that are necessary to fire, he'll release the missile and I'll guide it on to its target.³⁵

The pilot is focused on ensuring the correct use of technology and need not deliberate over the nature of the target, which has already been established as a threat that must be removed. A drone pilot's comments defending drone strikes as being no less intimate than manned planes in fact supports my suggestion that drones are mainly a technical use of force. In his words, 'you still have worry about the traditional things that concern pilots, like altitude de-confliction and airspace de-confliction. In addition, you need the ability to manage and disseminate information and deal with different scenarios with other individuals and other aircraft'.³⁶ This description almost mirrors Don DeLillo's ironic take on the 'human' moments in the next world war, which serves as the epigraph to this section. Instead of demonstrating the intimate nature of drone strikes as the pilot intended, this description in fact supports the argument that drone strikes create a technical form of killing in which attention is given above all to the successful application of technology. The execution of a human 'threat' thus has deep parallels with the execution of a 'cyber' threat in Lockheed Martin's kill chain as there is little focus upon the human element of the target in the 'disseminate' stage.³⁷ This exemplifies the nature of war when technical proficiency partly displaces 'human' considerations regarding the target and the broader consequences of each strike. Indeed, as Derek Gregory remarks, the UAV kill-chain

³⁵Former Drone Operator speaking, video by Omer Fast, *What the Drone Saw*, (25th July 2013) <<http://www.theguardian.com/artanddesign/video/2013/jul/25/drone-iwm-contemporary-omer-fast-art-video>> accessed June 15 2015.

³⁶ Rothenberg, (n 11) 113.

³⁷ Lockheed Martin, 'Cyber Kill Chain' <<http://www.lockheedmartin.co.uk/us/what-we-do/information-technology/cyber-security/cyber-kill-chain.html>> accessed 29 November 2014.

results in the killing of an individual becoming an 'abstract, purely technical exercise'.³⁸

Human operators are principally required to think about the technical aspects of the process at each point in the kill-chain, and this engenders a form of killing that appears to be completely devoid of evaluative thinking regarding such action or its effects.

Efficiency

The drive to compress the time necessary to complete the kill-chain gives a more complete picture of the technical nature of the drone strike process, and the primacy of a 'technological' form of thinking in Obama's war on terror. As Greg Miller explains, 'the Obama administration has spent much of the past year codifying and streamlining the processes' of operations.³⁹ Efficiency thus appears to be a key value in Obama's war on terror; directing all drone strike operations. As the US Air Force Centre for Strategy and Technology outlines, the kill-chain can now take less than 45 minutes, with this to be reduced to 'seconds by the year 2025'.⁴⁰ This gives a clear indication of the turn towards making military practices more efficient in the ongoing war on terror.

The location of the JA's within the air force bases from which drone strikes are directed and executed helps improve the time efficiency of each strike, and underlines the importance of the *time taken* as the key measure of a successful strike.⁴¹ The lawyer's inclusion within the operational team helps negate the effects of legal deliberation on the time of an operation and also increases the potential to execute a strike when operations

³⁸ Derek Gregory, *Lines of Descent*, (Open Democracy 2011), 32. <<https://www.opendemocracy.net/derek-gregory/lines-of-descent>> accessed June 30 2015.

³⁹ Greg Miller, 'Plan for Hunting Terrorists Signals U.S. Intends to Keep Adding Names to Kill Lists' *The Washington Post* (October 23 2012) <http://www.egr.msu.edu/classes/ece390/ayresv/WashingtonPost_23Oct12.pdf> accessed December 12 2015.

⁴⁰ Julian Cheater, 'Accelerating the Kill Chain Via Future Unmanned Aircraft' (April 2007) Blue Horizons Paper, Centre for Strategy and Technology.

⁴¹ Derek Gregory, 'From a View to a Kill: Drones and Late Modern War', (2011) vol 28:188 *Theory Culture Society*, 194.

are time sensitive due to the movement of the target.⁴² Occurring *in the event*, both in terms of the airforce base and the timeframe of a mission, such legal considerations minimises possible delay that could result from having to wait for external judicial authorisation before a strike can be executed.

This general push to streamline the process of a drone strike entails that parallels can be drawn with the efficiency, 'standardization and mass production' central to Fordist style production lines.⁴³ This similarity is shown in reports from drone pilots that a strike takes 'up to 17 steps—including entering data into a pull-down window—to fire a missile'.⁴⁴ When such importance is given to the steps taken to execute a strike, the effects of such action are arguably neglected. Indeed, as a drone pilot remarked while in the process of targeting innocent civilians in a drone strike that will be analysed in detail below:

'remember: killchain!'⁴⁵ Ultimately, the use of force in Obama's war on terror is highly technical as such procedural steps, and the broader goal of efficiency, direct its targeted killing operations.

The technical nature of the kill-chain, together with the Obama administration's focus on improving the time efficiency of each strike, and the US military's fetishisation of procedural steps, shows that 'technological thinking' plays a key role in Obama's war on terror. There is a clear focus on the replication of pre-determined 'steps' and the point of execution is an abstract, technical exercise.

⁴² AOC, (n 4).

⁴³ Richard Coopey, Alan McKinlay, 'Power without knowledge? Foucault and Fordism, c.1900–50' (2010) vol 51:1 Labor History, 109.

⁴⁴ Christopher Drew, 'Drones Are Weapons of Choice in Fighting Qaeda' New York Times (March 16 2009) <http://www.nytimes.com/2009/03/17/business/17uav.html?_r=1&hp> accessed June 29 2015.

⁴⁵ US Central Command, 'Drone FOIA - Uruzgan Investigation Documents' (Part 26 of 28) <https://www.aclu.org/files/dronefoia/uruzgan/drone_uruzgan_attachtabA_part_26_FOIA_10-0218.pdf> accessed June 20 2015, 18.

iii. Intimate Yet Detached

We now turn to address the relation between user of force and target that belongs to this technical process. I approach this topic, and apply the preceding sections, through a consideration of the visual elements of the targeting process; using a transcript detailing the process of a drone strike from the point of view of the user of force to do so.⁴⁶ This first helps uncover that the mediation of the drone allows operators to experience an ‘intimacy’ with individuals on the ground. Lilie Chouliaraki’s notion that ‘mediation connects us by delivering intimacy’ is therefore true for drone operators.⁴⁷ However, the user of force is simultaneously detached from those being observed since such intimacy is used to enhance their ability to kill from their spatially distant operational position. This creates a detached intimacy; a form of ‘*intimacy at a distance*’.⁴⁸ As I then argue, such intimacy is located within an environment of suspicion; obscuring operators from finding anything other than a ‘legitimate’ target. Thus, the medium of the drone simply enhances the US military’s ability to ‘find’ and strike against perceived threats, and contrary to Obama’s rhetoric the drone does not thereby improve the user of force’s ability to avoid civilian casualties.

⁴⁶ See: David Cloud ‘Anatomy of an Afghan War Tragedy’, *Los Angeles Times* (April 10 2011), <<http://articles.latimes.com/2011/apr/10/world/la-fg-afghanistan-drone-20110410>> accessed June 20 2015. The complete transcripts are available at: US Central Command, ‘AR15-6 Investigation, 21 February 2010, U.S. Air-to-Ground Engagement in the vicinity of Shahid Hassas, Uruzgan District, Afghanistan’. Specifically of concern to this chapter was; ‘Drone FOIA - Uruzgan Investigation Documents’ (Part 26 of 28) <https://www.aclu.org/files/dronefoia/uruzgan/drone_uruzgan_attachtabA_part_26_FOIA_10-0218.pdf> accessed June 20 2015.

⁴⁷ Lilie Chouliaraki, *The Spectatorship of Suffering* (Sage Publications 2006) 22.

⁴⁸ *ibid*, original emphasis.

Detached Intimacy

Thanks to the capabilities of drone technology, the movements of targets as far away from drone operators as 7,000 miles can be tracked at length and in considerable detail.⁴⁹ For the user of force – whose eyes are a matter of inches from the screen, on which objects thus no longer appear thousands of miles distant – an impression of 'optical proximity' mitigates the true physical distance between drone operators and targets.⁵⁰ This visual position of the user of force, combined with the scenario in which the US military follow suspects for several hours, has led commentators to assert that drone strikes create an intimate experience for the user of force.⁵¹ Derek Gregory has said that the drone strike operator is highly immersed in their operations and this creates a virtual relationship which is 'palpable and pervasive', unlike other forms of force,⁵² whilst Mark Bowden effectively summarises this belief, stating that 'war by remote control turns out to be intimate'.⁵³ However, a transcript documenting the user of force's experience of a drone strike and the target, to which I will turn shortly, shows that it is more accurate to say that the material conditions of the drone create a form of *detached intimacy*.

The transcript covers the operations of a Predator drone crew responsible for protecting a US Special Operations 'A-Team' in Khod in the Uruzgan District of Afghanistan. The drone crew, physically situated in Creech Air Force Base in Nevada, were using the Predator to follow a convoy of three vehicles that was nearing the A-Team. The drone crew's main objective became identification of the convoy as a target when the A-Team, hearing of two

⁴⁹ Elisabeth Bumiller, 'A Day Job Waiting for a Kill Shot a World Away' *The New York Times* (July 29 2012) <http://www.nytimes.com/2012/07/30/us/drone-pilots-waiting-for-a-kill-shot-7000-miles-away.html?_r=0> accessed March 1 2016.

⁵⁰ Derek Gregory, 'Drone Geographies', (January/ February 2014) vol 183 *Radical Philosophy*, 9.

⁵¹ John Williams, 'Distant Intimacy: Space, Drones, and Just War' (2015) vol 29:1 *Ethics & International Affairs*.

⁵² Gregory, *Drone Geographies* (n 50) 9.

⁵³ Mark Bowden, 'The Killing Machines', *The Atlantic*, (14 September 2013).

vehicles in the nearby area, requested that they ‘destroy the vehicles and personnel’.⁵⁴ To do so, the Predator crew needed to visually confirm that the target posed an imminent threat. The drone crew immediately attempted to do so as the pilot asks the camera operator if he can see a rifle. The operator responds that he ‘can’t really tell right now, but it does look like an object’.⁵⁵ The Predator crew then informs the ground crew that more information is required in order to make a ‘positive identification’.⁵⁶

From the outset of the account, it is evident that the operators utilise the ‘voyeuristic intimacy’ produced through the drone so as to improve the possibility of using force against the individuals below.⁵⁷ Indeed, the pilot’s observations that *individuals are praying* is even met by remarks that ‘this is their [Taliban] force’ and praying ‘is what they do’.⁵⁸ Here we can see how the drone effectively closes the distance between ‘spectator and spectacle’.⁵⁹

The operator is then able to relay the information gathered to other members of the crew, and in response, the pilot states that he hopes ‘we get to shoot the truck with all the dudes in it’, and the camera operator also calling it a ‘sweet target’.⁶⁰ Individuals on the ground arguably become mere ‘operative images’, no longer people when they are ‘part of an operation’.⁶¹ *Optical proximity* – closeness to full-motion video feeds – is simply a means through which to enhance the possibility of using lethal force. The intimacy is fundamentally *detached* because its purpose is to improve the possibility of killing those individuals in a manner that inherently lacks intimacy given the spatial divide and technical

⁵⁴ US Central Command, (n 46).

⁵⁵ *ibid*

⁵⁶ *ibid*

⁵⁷ Matthew Power, ‘Confessions of a Drone Warrior’ *GQ* (October 23 2013).

⁵⁸ US Central Command, (n 46).

⁵⁹ Chouliaraki (n 47), 22.

⁶⁰ US Central Command, (n 46), specifically point 3:17.

⁶¹ Harun Farocki, ‘Phantom Images’ (2004) vol 29 Public, 17.

form of killing that ensues. The Predator crew's summary of observations underline this detached form of intimacy when it is said that 'our screeners are currently calling 21 MAMs [military age males], no females, and two possible children',⁶² with 'children' being clarified as 'not toddlers. Something more towards adolescents or teens'.⁶³ As a result, the drone crew concludes that they have made a positive identification due to 'the weapons we've identified and the demographics of the individuals'.⁶⁴ Moreover, the pilot amended the initial identification, now stating that 'our screener updated only one adolescent, so that's one double-digit age range'.⁶⁵ The A-Team operator responds that '12 or 13 years old with a weapon is just as dangerous'.⁶⁶ Unsurprisingly, this operational and visual intimacy that the drone operators experience is again utilised to enable the crew to execute a strike. On the basis of the drone crew's presented 'observations', the strike was indeed subsequently executed, with Hellfire missiles directly hitting the first and third vehicles, killing 23 civilians.⁶⁷

Following the strike, the crew's observations change significantly. The intelligence coordinator identifies women and children, and the pilot states that a 'lady is carrying a kid', which the intelligence coordinator confirms; there is 'a baby, I think, on the right. Yeah'.⁶⁸ The camera operator now also recognises that individuals are younger than adolescents. The pilot radios back to the A Team that since the engagement 'we have not been able to PID [positively identify] any weapons'.⁶⁹ The camera operator reassures the

⁶² US Central Command, (n 46), Point 3:08.

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ *ibid*

⁶⁷ Cloud, (n 46).

⁶⁸ US Central Command, (n 46)

⁶⁹ *ibid*

other crew members that whilst they had struck the wrong target, there was 'no way to tell from here'.⁷⁰

This account shows that the imaging technology of the drone may be seen to give an illusory or false impression of certainty, which is why the operators were wrong in their initial identifications. It is possible that this can be rectified through technological improvements, such as clearer images, sharper definition, and improved colour rendering. However, the vision technology used seems to render clear and precise enough images to avoid such fatal errors of decision making. This fact is evident even in this transcript, since operators are able to identify characteristics such as the brands of vehicles in the convoy, and they recognise that some of the targets are wearing jewellery, both prior to and following the strike.⁷¹ Thus, instead of the image not being sufficiently clear for operators to make decisions regarding the identities of individuals below, it appears that drone operators are affectively conditioned by their task and its technology into identifying *false positive* targets. Therefore it can be cogently claimed that more efficient technology cannot rectify this situation and may make targeting produces more erroneous and the targets more likely to be civilians.

An Environment of Suspicion

US military personnel operate drones in what can be termed as an environment of suspicion, which conditions the approach taken to the use of force. It is first significant that the user of force accepts their role of purposively searching for a target, or executing a strike against a predetermined target. In her consideration of the nature of personal responsibility, Hannah Arendt hopes that there is a 'human faculty' which 'is not bound by

⁷⁰ *ibid*

⁷¹ *ibid*, point 3:08.

standards and rules under which particular cases are simply subsumed, but on the contrary, produces its own principles by virtue of judging activity itself'.⁷² This would at least require a thought independent from that determined by the question of the 'legality' of the use of force, which seems, in the case just described, to be absent from the process of target confirmation. But besides this failure of the individual human faculty to question standards and rules of the use of force, the environment in which drone strikes operate arguably conditions the decision making of human operators. As Arendt asks: how can an individual 'tell right from wrong' if that person's 'whole environment has prejudged the issue?'⁷³

A 'techno-cultural hermeneutics of suspicion' defines this environment in which drone strikes are located; making technology a mere facilitator of lethal force.⁷⁴ The operators' task is directed to a strong degree by suspicion of individuals on the ground, as every unknown is a possible threat. A US Pentagon department study gives an indication of this approach in US military practices generally, especially given that enemy 'leaders look like everyone else; enemy combatants look like everyone else; enemy vehicles look like civilian vehicles; enemy installations look like civilian installations'.⁷⁵ The drone crew's operation outlined above reflects this approach in practice. The crew's observations of the convoy, particularly when praying, express the suspicion-led practices of Obama's war on terror. These considerations seem to confirm that regardless of improvements made to imaging technology, the user of force's role is to kill individuals perceived as suspects on the basis of ambiguous visual signifiers, irrespective of whether there is any incontrovertible evidence that they are a threat. Optical proximity is clearly an asset that is

⁷² Hannah Arendt, Jerome Kohn (eds), 'Personal Responsibility Under Dictatorship' in *Responsibility and Judgement* (Schocken Books 2003) 27.

⁷³ *ibid*, 18.

⁷⁴ Gregory, *Drone Geographies* (n 50), 10.

⁷⁵ US Department of Defence, 'Defence Science Board Summer Study' (Washington December 2004) 154.

utilised to improve the possibilities of identifying and killing a target. It is highly likely that any improved imaging technology will facilitate more targeted killings, rather than having a positive effect of, for instance, reducing the number of civilians killed.

Contrary to Obama's call that the drone helps avoid civilian casualties, this section has illustrated that the drone merely enhances the US military's ability to undertake a strike, regardless of the presence of civilians on the ground.⁷⁶ The mediation of the drone creates a detached intimacy between drone operators and individuals observed in areas targeted. The physical distance between the two parties is mitigated by the drone, yet this only helps operators achieve their goal of finding and targeting suspects within an environment of suspicion. As this chapter now moves to show, this characteristic of the drone has significant implications for the asymmetrical relation between user of force and target.

iv. Dominant and Safe

Drones are a combination of the new and the old: a new aerial surveillance and killing system with capabilities previously not offered by conventional air power, coupled with an older cosmic view of air mastery through technological speed, verticality, and vision.⁷⁷

According to Costas Douzinas, the conflicts of Kosovo and Afghanistan were not 'wars but a type of hunting' in which 'one side was totally protected while the other had no chance of effectively defending itself or counter-attacking'.⁷⁸ This indicates an asymmetrical

⁷⁶ See Chapter One, 'Legitimate Targeting with Precise Weaponry'.

⁷⁷ Tyler Wall, Torin Monahan, 'Surveillance and Violence from Afar: The Politics of Drones and Liminal Security-Scapes' (2011) vol 15:3 *Theoretical Criminology*, 241.

⁷⁸ Douzinas, (n 17) 262.

'dominance' that also arguably characterised Bush's war on terror.⁷⁹ Obama's war on terror fails to break from this lineage of military dominance from above, as the conditions of the drone ensure the user of force holds such a position over its target. This dominance – resulting from the capacity to kill and safety of the user of force – grants operators the *godlike* power spoken of by Douzinas,⁸⁰ and also suggests that the US government's use of drone strikes typifies the paradigm of war as a police operation.⁸¹

In *War and Cinema*, Paul Virilio says that, 'from the original watch-tower through the anchored balloon to the reconnaissance aircraft and remote-sensing satellites, one and the same function has been indefinitely repeated, the eye's function being the function of a weapon'.⁸² The drone follows this history of technological progression that utilises visuality as a tool. Drone operators are in a position of complete power over the life of another: capable of viewing and executing the target from a 'vertical' video perspective at a safe distance. This capacity is believed to give a sense of god-like power.⁸³ As one drone operator has put simply; 'sometimes I feel like a God hurling thunderbolts from afar'.⁸⁴

Paul Virilio has said that a 'constant search for ideal weightlessness is at the heart of problems of domination'.⁸⁵ The drone strike's dual qualities of aerial dominance and position of safety for the attacking side seems to resolve this search. The drone enables the body of the user of force to be removed from the physical space above the target

⁷⁹ See, for example: Douglas Kellner, 'Preemptive Strikes and the War on Iraq: A Critique of Bush Administration Unilateralism and Militarism', in Joseph Peschek, *The Politics of Empire: War, Terror and Hegemony* (Routledge 2005).

⁸⁰ Douzinas, (n 17) 266.

⁸¹ Giorgio Agamben, 'The Sovereign Police' in Brian Massumi (eds), *The Politics of Everyday Fear* (University of Minnesota Press 2003) 61-64.

⁸² Paul Virilio, *War and Cinema: Logistics of Perception* (Verso 1989) 3.

⁸³ Chad Harris, 'The Omniscient Eye: Satellite Imagery, "Battlespace Awareness" and the Structures of the Imperial Gaze' *Surveillance & Society* 4 (2006).

⁸⁴ Quote taken from Benjamin Noys, 'Drone Metaphysics' (May 2014) 21st Century Research Group in the College of Arts, University of Lincoln.

⁸⁵ Paul Virilio (trans M Degener), *Negative Horizon* (London Continuum 2005) 43.

without losing the killing capabilities of manned planes. This position draws parallels with Plato's Ring of Gyges, in which a shepherd Gyges finds a gold ring that makes him invisible.⁸⁶ Gyges cannot be defeated with this power, so he kills the king and takes the throne. Whilst Plato used this story as a thought experiment to reflect on the effect of having power over other humans, we can now see this position of power in reality, evidenced in the produced 'invisibility' granted to the user of drones.

Such a capacity does not however mean that the use of force is more considered and less erratic than manned aircraft due to the operator's ability to observe for as long as necessary without risk. On the contrary, evidence shows that the US executes a significant number of strikes in order to *successfully strike* one known individual; killing high numbers of civilians in the process and confuting the Obama administration's assertion that drones are precise or indeed humane.⁸⁷ Moreover, as the users of force are not at risk, the drone can maintain its position over the target following a strike. With this ability, the US military target people coming to help the wounded in what is known as a *double tap*.⁸⁸ It is arguably because the user of force is afforded this dominant position of control over life and death within an environment of suspicion that this power to use such force is habitually exploited.⁸⁹ This trait of utilising this dominant position and techniques such as the double-tap exemplify the *godlike* experience of drone operators.

The nature of this position of dominance impacts upon the civilians below. As Amedeo Policante recognises, 'those about whom life-or-death decisions are made, as they scurry

⁸⁶ Plato, *The Republic* (Penguin Classics 1987) Book II.

⁸⁷ Spencer Ackerman, '41 men targeted but 1,147 people killed' *The Guardian* (November 24 2014) <<http://www.theguardian.com/us-news/2014/nov/24/sp-us-drone-strikes-kill-1147>> accessed September 3 2015.

⁸⁸ Tara McKelvey, 'Drones Kill Rescuers in 'Double Tap', say Activists' *BBC* (October 22 2013).

⁸⁹ Ackerman, (n 87).

below, have – like any being faced with the gods – no recourse or appeal’.⁹⁰ The target is – without capacity to choose otherwise – in a position of submission, contrasting with the dominant position of the US military. These conditions result in a form of ‘exterminatory violence’, whereby ‘the targeted human subject is reduced to an anonymous simulacrum that flickers across the screen and that can effectively be liquidated into a ‘pattern of death’ with the swivel of a joystick’.⁹¹ With this description, Joseph Pugliese effectively captures the juxtaposition of the unprotected individual, with the technologically dominant and safe military operator.

The geographical distance between user of force and attacked location in particular is what ‘insulate[s] pilots and allies from direct harm while subjecting targets to ‘precision’ scrutiny and/or attack’.⁹² Thus, the drone affects a ‘clean war’; a term Baudrillard used as a commentary on the shift away from a type of war that seeks principally to kill the enemy, towards a process of controlling the enemy with efficient technologies that make war as bloodless as possible.⁹³ The foreclosing of a violent retaliation against US military operators entails that this clean bloodless position is granted to drone operators. Further, the drone allows this *clean* position in war to spread beyond the drone’s operational team by reducing the number of US ground troops in operative locations, or removing them altogether. This echoes what James Der Derian has referred to as ‘virtuous war’, founded on ‘the technical ability and ethical imperative to threaten and, if necessary, actualise violence from a distance – *with no or minimal casualties*’.⁹⁴ Here, the use of the term ‘virtuous’ to describe a war that is *clean* for one side seems contradictory, inverting the

⁹⁰ Amedeo Policante, ‘Game of Drones: Cubicle Warriors & the Drudge of War’ (2012) *Nyx* 7 ‘Machines’, 113-114.

⁹¹ Joseph Pugliese, *State Violence and the Execution of Law: Torture, Black Sites, Drones* (Routledge 2014) 193-194.

⁹² Wall, Monahan, (n 77) 250.

⁹³ Baudrillard, (n 1).

⁹⁴ James Der Derian, ‘Virtuous War/ Virtual Theory’ (Oct 2000) vol 76:4 *International Affairs*, 772.

traditional notion of virtue being associated with bravery and sacrifice.⁹⁵ Instead, the virtuousness of war attaches to the minimisation of casualties; equated with *clean* or *bloodlessness*.

So the drone strike offers a form of 'war', which is more precisely a 'safe' mode of killing; clearly departing from the classic Clausewitzian notion of warfare being an heroic duel.⁹⁶ Indeed, drawing parallels between drone use and lethal poison – which was historically outlawed from war – Chamayou asserts that drone strikes are a unilateral form of killing; removing the supposedly mutual right or capacity to kill from war.⁹⁷ This lack of parallel between drone killings and previous forms of war is arguably because this dominance is demonstrative of a more recent transformation of war into a 'police operation', as recognised by Agamben.⁹⁸ Moreover, Mark Neocleous believes that if the term 'police' is understood in line with Foucault's use of the term as the 'general process of administration, security and order', then 'war and police are *always already* together'.⁹⁹ This conflation – whether ever-present or a modern phenomenon – is a prominent feature of the US government's current use of drone strikes. This brings into question the binary distinction between law enforcement and armed conflicts, as well as Obama's framing of the use of force as the latter, as examined in the first chapter.¹⁰⁰ It can be said that Obama's hunt to kill strategy is costumed as 'war' so as to avoid the restrictions imposed on lethal law enforcement operations in international law which are based upon the presumption that the 'prosecutor' has 'much greater resources at his or her disposal'.¹⁰¹ Significantly, the US government is able to exploit and sustain this form of military dominance by

⁹⁵ Grégoire Chamayou, *Drone Theory* (Penguin 2015) 97-99.

⁹⁶ Carl von Clausewitz, *On War* (OUP Oxford 2008).

⁹⁷ Chamayou, (n 95) 158.

⁹⁸ Agamben, (n 81).

⁹⁹ Mark Neocleous, 'Air Power as Police Power', in Jan Backmann, Colleen Bell, Caroline Holmqvist (eds), *War, Police and Assemblages of Intervention* (Routledge 2015) 166; 175 (original emphasis).

¹⁰⁰ See Chapter One, part Three, 'Armed Conflict or Law Enforcement?' for a full discussion on this area.

¹⁰¹ Larry May, 'Targeted Killings and Proportionality in Law' (2013) vol 11 *Journal of International Criminal Justice*, 52.

transferring such inequality of resources into a 'war' domain. This means that 'politically and juridically', the person subjected to the use of force via the drone is 'no longer positioned, in any sense of the term, on the same ground as oneself'.¹⁰²

This section has explored how the user of force is afforded a position of dominance via the drone, which shapes the asymmetrical relation between user of force and target. Although 'dominance' of the attacking side is not an original phenomenon – arguably a key characteristic of the US government's practices in the 'war on terror' under Bush – the conditions of drone strikes in many ways strengthen this position.¹⁰³ This dominant attribute for the attacking party in war is the apotheosis of 'air power as police power'.¹⁰⁴ Therefore, this impression of the operational conditions of the drone strike is incongruent with Obama's representation in the previous chapter. A more accurate reading following this analysis is that Obama's drone program is a continuation of unilateral military-police practices through a new medium; with a technologically superior state force exploiting its position of dominance to kill anyone regarded as a threat from a safe location. Thus, it can be said that the most noticeable difference between the counterterrorism policy of Bush and Obama is 'the shift in tone and the promises of engagement'.¹⁰⁵ We will revisit this shift in tone again in the next chapter, but for now we turn to look at how the conditions of the drone strike addressed so far dehumanise the target.

¹⁰² Chamayou, (n 95) 166.

¹⁰³ Kellner, (n 79).

¹⁰⁴ Neocleous (n 99) 164.

¹⁰⁵ Greg Miller, 'Obama Lets CIA Keep Controversial Renditions Tool' *Chicago Tribune* (June 31 2009).

v. Dehumanising the Target

'With their virtues they want to scratch out the eyes of their enemies; and they elevate themselves only that they may lower others'.¹⁰⁶

This final section of this chapter shows that the conditions of drone strike operations dehumanise their target. The particular process of a drone strike creates an environment that facilitates dehumanisation. In particular, the viewing conditions of the use of force shape the military operator's dehumanising characterisation of the enemy. This section therefore further destabilises the Obama administration's representation of drones examined in the previous chapter as the dehumanising effects of the drone strike contradicts the impression of a humane counterterrorism program.

Aditya Sakorka believes that dehumanisation of the so-called 'terrorist' has the effect of facilitating 'the execution of broad counterterrorism measures in multiple contexts'.¹⁰⁷

Indeed, as Jayne Mooney and Jock Young explain, the way the 'other' is contrasted with the Western subject through various social and economic factors in post-9/11 anti-terror discourse facilitates violence to the extent that 'dehumanisation allows the actor to render the other as outside, or on the periphery of humanity'.¹⁰⁸ Thus, the very framing of the 'war on terror' may dehumanise others, as seen in Bush's post 9/11 rhetoric, particularly his call for a crusade against the *evil* perpetrators of the attacks,¹⁰⁹ and more generally via news media accounts of the war on terror that use 'metaphors that linguistically frame the enemy

¹⁰⁶ Friedrich Nietzsche, *Thus Spoke Zarathustra* (Dover Publications 2000) 62.

¹⁰⁷ Aditya Sakorka, 'Dehumanisation and Terrorism' *Open Democracy* (November 28 2012) <<https://www.opendemocracy.net/opensecurity/aditya-sakorkar/dehumanisation-and-terrorism>> accessed January 12 2015.

¹⁰⁸ Jayne Mooney, Jock Young, 'Imagining Terrorism: Terrorism and Anti-Terrorism Terrorism, Two Ways of Doing Evil' (2005) vol 32:1 *Social Justice*, 119.

¹⁰⁹ George Bush, 'Remarks by the President Upon Arrival' *The White House* (September 16 2001).

in particular ways'.¹¹⁰ Dehumanisation may therefore take various forms, but each minimises the worth of the other: demonising and stripping them of human value which, in Bush's war on terror, arguably facilitated violence against such individuals. This understanding of dehumanisation is here applied to the above reading of drone strikes, showing that Obama's enemy is dehumanised at the level of military practices as the technology in use conditions the economy of violence.

The procedure of a drone strike, requirements of drone operators therein, and environment in which this occurs shapes the relation between user of force and target, and creates a foundation for dehumanisation. Although the drone strike described above shows military operators recognising human actions such as praying, and characteristics such as their age in their search for a target, it can be said that the user of force experiences that force's recipient as a target simply possessed of these traits. The difference is significant. Despite displaying 'human' characteristics quite vividly, individuals below become mere targets for the purpose of the operation. Due to the technical nature of this operation, once the operators receive confirmation that a strike can go ahead, 'enemy threats—real or imaginary, human or machine—become precise grid locations'.¹¹¹ A drone operator's account of his role supports this argument, as he remarks: 'you get to a point in the target's life cycle that you are following them, you don't even refer to them by their actual name', and according to him, this practice 'contributes' towards 'dehumanizing the people before you've even encountered the moral question of "is this a legitimate kill or not?"'¹¹² Regardless of the 'human' actions that lead operators to attribute individuals with their 'target' status, this is abstracted from them once they are recognised in this context

¹¹⁰ Erin Steuter, Deborah Wills, 'Discourses of Dehumanization: Enemy Construction and Canadian Media Complicity in the Framing of the War on Terror' (2009) vol 2:2 *Global Media Journal*, 7.

¹¹¹ Ken Robins, Les Levidow, 'Socializing the Cyborg Self: The Gulf War and Beyond' in, Chris Hables Gray (eds), *The Cyborg Handbook* (Routledge 1995) 121.

¹¹² Anonymous drone operator, in, Jeremy Scahill, 'The Assassination Complex' *The Intercept* (October 15 2015) <<https://theintercept.com/drone-papers/the-assassination-complex/>> accessed December 12 2015.

as the next recipient of a strike. The enemy's transformation into a *grid location* shows how individuals are 'abstracted from their human context' via the drone strike and predominantly technical operational procedures.¹¹³ Thus, the nature of drone strike practices facilitates the dehumanisation of the target because it fragments the connection between 'doer' and 'deed',¹¹⁴ so that human operators 'remain differentiated and proximate, at least culturally if not physically'.¹¹⁵

Indeed there is also such physical distance accompanying the non-physical form of *barrier*, meaning that no individual operator in the process is made to come in contact with the target. Kristin Sandvik and Kjersti Lohne recognise that physical distance also 'plays a role in the processes of dehumanisation'.¹¹⁶ Arguably, the military's framing of the target such a distance can lead to dehumanisation. Now that the carrier of weaponry flies at an altitude of 20,000 feet,¹¹⁷ and given that the pilot is now physically separate from that carrier, the pilot's physical remove has 'never been greater than [it is] in contemporary drone warfare'.¹¹⁸ The process of killing from afar in drone strikes entails that drone operators can only see their victim from a certain perspective. As Benjamin Noys remarks, this is why there is 'no 'face' for the victims' as victims 'do not come into face-to-face contact with their killer' and 'their faces don't appear' visually on operator's screens.¹¹⁹ The 'process' of a strike reinforces this lack of encounter as each human operator has a set role and duties, so, as Gregory recognises, 'the personal' is distributed amongst 'senior officers, military lawyers, image analysts and ground commanders' in a way 'that for most crews it

¹¹³ Robins, Levidow, (n 111).

¹¹⁴ Pugliese, *Prosthetics of Law* (n 20) 935.

¹¹⁵ Wall, Monahan, (n 77) 246.

¹¹⁶ Kristin Sandvik, Kjersti Lohne, 'The Rise of the Humanitarian Drone: Giving Content to an Emerging Concept' (2014) vol 43:1 Millennium: Journal of International Studies, 155.

¹¹⁷ National Journal, 'Report: Military Alignment to Emphasise Drones and Special Forces' (January 26 2012)

¹¹⁸ Sandvik, Lohne, (n 115) 155.

¹¹⁹ Benjamin Noys, 'Drone Metaphysics' (May 2014) 21st Century Research Group in the College of Arts, University of Lincoln.

also becomes more *impersonal*'.¹²⁰ This lack of encounter may not necessarily be a new phenomenon in aerial warfare but does show how the encounter between the user of force and the target is restricted, especially when accompanied by the abstraction of the human target into a mere grid location once a strike is authorised. The user of force's experience a drone strike is therefore restricted to seeing through screens at air force bases. Significantly, the perspective entails that operators see the target from a vertical perspective.¹²¹

These viewing conditions shape the type of dehumanising characterisations of drone strike victims. Chief among these is the US military's frequent use of the term 'bugsplat'.¹²² It is as if drone operators have continued what the media were charged with doing in the war on terror via the similar 'use of dehumanising animal metaphors' to frame the recipient of force.¹²³ The CIA use the term 'bugsplat' to describe a successfully launched missile from a drone that reaches the intended target.¹²⁴ The US military also use 'bugsplat' as the 'official term' when a drone strike hits a human target, whether civilian or otherwise.¹²⁵ The term derives from the effectual impression of killing from above, where the view of the human target following a strike can give the sense of an insect being crushed.¹²⁶

When military personnel use the term 'bugsplat', it degrades its victim, doing so by 'inserting them within the field of a cartoonish pop culture where, as disposable figures, their deaths are scripted as mere comic mishap'.¹²⁷ But the term also underlines the nature

¹²⁰ Gregory, *Drone Geographies* (n 50) 9-10.

¹²¹ 'A giant art installation targets predator drone operators' <<http://notabugsplat.com>> accessed July 2 2015.

¹²² 'Out of the Blue: A Growing Controversy Over the Use of Unmanned Aerial Strikes' *The Economist*, (30 July 2011), <www.economist.com/node/21524916/print> accessed February 11 2015.

¹²³ Steuter, Wills, (n 110) 13.

¹²⁴ *The Economist*, (n 122).

¹²⁵ Jennifer Robinson, 'Bugsplat': The ugly US drone war in Pakistan' *Aljazeera* (November 29 2011) <<http://www.aljazeera.com/indepth/opinion/2011/11/201111278839153400.html>> accessed July 3 2015.

¹²⁶ *Not a Bugsplat*, (n 121).

¹²⁷ Pugliese, *Prosthetics of Law* (n 20) 952.

of the relation the drone engineers between user of force and victim more generally. It represents the vivid effects of human prowess over the passive, lesser *creature* below, emphasising their 'inevitable defeat'.¹²⁸ The human target is reduced to a bugsplat through their 'relation' with the technologically superior opposition, the latter of which remain unaffected by the transition of the target from living human to an 'entomological waste'.¹²⁹ The CIA and military operators are characteristically human; the target is characteristically an insect. Sam Keen identified a possible rationale of this degrading form of dehumanisation as; 'the lower down in the animal phyla the image descends, the greater the sanction is given to the soldier to become the exterminator of pests'.¹³⁰ This ease of killing following such dehumanisation shapes the relation between user of force and target in Obama's war on terror, and is explored further in the following chapter.

The dehumanising effect of drone strikes offers the clearest picture of difference between the Obama administration's representation and the conditions of the use of force in practice. Dehumanisation it is not only unsupportive of the the US government's constructed impression, but too contradicts the very notion that drone strikes are somehow an improvement on alternative aerial methods of warfare gone before, or that the medium offers a positive change for civilians in areas targeted. Instead, a process driven by technological thought in which a position of dominance is afforded to the user of force dehumanises and reduces the target to the status of a mere *bugsplat*, reflecting Nietzsche's comments that serve as the epigraph to this section.

¹²⁸ Michael Hardt, Antonio Negri, *Multitude: War and Democracy in the Age of Empire*, (Harvard University Press 2004) 92.

¹²⁹ Pugliese, *Prosthetics of Law* (n 20) 952.

¹³⁰ Sam Keen, *Faces of the Enemy: Reflections of the Hostile Imagination* (New York Harper Collins 1991) 60-61.

Conclusion

Through an examination of the material conditions and practices of US military drone strikes, this chapter has uncovered the nature of the disconnect between the Obama administration's representation of drone strikes in the previous chapter and the use of force in practice. In doing so, it has also identified in a preliminary way the nature of the political relations in Obama's war on terror. This was achieved through five stages of analysis. First, the attributes of 'legality' and 'precision' of US military drone strike practices were shown to have the effect of insulating human operators and facilitating the use of force without the need for deliberation over the nature of the target. Second, the US military's focus on ensuring a successful and efficient strike is executed shows that killing via the drone is a technical process directed by 'technological' thinking. The third stage analysed a particular instance of a drone strike to challenge the US government's assertion that care is taken to avoid civilian casualties. The user of force's visual proximity with the target creates an 'intimacy', but this is a detached form of intimacy given the spatial distance between user of force and target, and suspicion-orientated environment of the user of force. Improved sight of individuals below thus merely enhances drone operator's killing capabilities. Fourth, the dominance present in this analysis of the one particular strike was seen as characteristic of the visual capabilities and safe positioning of the drone crew in juxtaposition with the unprotected position of the target. This dominant position indicates a continuation of military practices in Bush's war on terror and typifies the trend of police operations being concealed as wars. The fifth stage showed that the conditions considered thus far in the chapter dehumanise the target; epitomised in the military use of the term bugsplat to describe the victim of a strike. This chapter's analysis of the conditions of drone strikes ultimately confutes the Obama administration's representation of drone strikes. The nature of political relations formed through drone

strikes examined in this chapter can now be mapped directly onto the Schmittian problem of the political guiding this thesis.

Schmittian Politics in Obama's War on Terror

The introduction to this thesis established that Bush's war on terror was centred on the division between friend and enemy. The first chapter looked at the role of legality in Obama's legitimising strategy in comparison with Bush's divisive rhetoric that showed the point of maximal difference between Obama and Bush's wars of terror, and Obama's apparent transition away from a Schmittian form of politics. The second chapter interrogated the veracity of this impression, and in doing so problematised the nature of political relations in Obama's war on terror. This revealed key paradoxes resulting from drone strikes including the detached intimacy of operators, the central role of technical thinking and the 'unprecedented intertwining' of 'politics and technology' in the execution of Obama's war on terror.¹ In this chapter, these elements are mapped onto the Schmittian problem of the political in this *age of drones*. I will consider the relation between user of force and target, the effect of technological thinking, and the Obama administration's representation of drone strikes in order to interrogate the concept of the political in Obama's war on terror, and its difference from Bush's. In particular, I suggest that technological thinking and the material conditions of drone strikes transfigure the enemy into a form different from that of Bush's war, whilst Obama's rhetoric constructs an ideological 'friend' grouping that is also different from Bush's. Crucially, my analysis shows that there has been a transformation of the political in Obama's war on terror by its admixture with technology and technological thinking. Political relations in Obama's war on terror do not exist independently of technology, and technology does not simply intensify

¹ Roberto Esposito, Connal Parsley (trans), *Categories of the Impolitical* (Fordham University Press 2015) 36.

political intentions when mastered since political relations are partly *produced by technology*.

Schmitt believed that politics is reducible to the distinction between friend and enemy, which has the effect of leading to conflict between states.² Yet he was cautious that the 'neutrality' of technology and technological thinking posed a threat to the political.³ This relation between politics and technology in Schmitt's thinking and the possibility of hyperpoliticisation, is addressed first in this chapter, since it is vital to understanding the concept of the political in Obama's war on terror. This is followed by an analysis of this relation in connect with the technological and the Schmittian political. I argue that the antithetical relation between politics and technology in this context has the effect of transforming the concept of the political; a process adverted to by several post-Schmittian scholars. The transformation of the enemy then becomes a central focus of this chapter. The enemy in Obama's war on terror, like Bush's enemy, is abstract and located within the phenomenon of indefinite war along the trajectory envisaged by Hardt and Negri.⁴ However, through an analysis of the so-called 'signature strike', I show that the specific and technologically determined quality of this abstractness is what distinguishes Bush and Obama's enemies. This difference means that dehumanisation of the enemy under Bush is engendered by his rhetoric, whereas under Obama dehumanisation is a function of techno-military practices. It is then argued that the Obama administration and US military seek to annihilate this abstract enemy. Here we are able to see the fine balance between new Schmittian political relations and *hyperpoliticisiaton*.

² Carl Schmitt, George Schwab (trans), *The Concept of the Political: Expanded Edition* (University of Chicago Press 2008) 26.

³ Carl Schmitt, Matthias Konzett & John McCormick (trans) 'The Age of Neutralizations and Depoliticizations' (Dunker & Humblot 1963).

⁴ Michael Hardt, Antonio Negri, *Multitude: War and Democracy in the Age of Empire*, (Harvard University Press 2004).

Because the Schmittian political is based upon the distinction between enemy and friend, this chapter then considers the concept of the 'friend' and the conditions of its formation. Based on an interpretation of Schmitt's work that the formation of political relations extends beyond the execution of the decision, I argue that the friend grouping forms in relation to the representational dynamic of Bush's and Obama's war on terror. We will therefore revisit some of my analysis undertaken in the first chapter in order to understand the difference between Bush and Obama's friend groupings. The representational dynamic of Obama's war on terror is different from Bush's, since it centres on the reasonableness of the solution and belong within a discourse of humane warfare. It is then argued that Obama is better at constructing a 'universal' identity for his friend grouping than Bush and offers a more worldly impression of the use of force. This particular form of the friend, together with the manifestation of the enemy, shows the transformation of the Schmittian political in Obama's war on terror.

i. Schmitt's Concept of the Political in the Age of Technology

Schmitt believed that the political emerges on the actualisation of the 'enemy' by the sovereign,⁵ meaning that the distinction is, in Mark Neocleous' terms, 'concrete and existential rather than metaphorical or symbolic'.⁶ Given that the Schmittian political is grounded upon this division, the utopian scenario of a 'completely pacified globe' would for Schmitt be 'a world without the distinction of friend and enemy and hence a world without politics'.⁷ In *the Concept of the Political* (1927), Schmitt does not contemplate this possibility further, reinforcing that the 'phenomenon of the political' can only be understood

⁵ George Schwabb, in, Carl Schmitt, George Schwab (trans), *Four Chapters on Political Theology* (University of Chicago Press 2006) xxiv.

⁶ Mark Neocleous, 'Friend or Enemy? Reading Schmitt Politically' (1996) vol 79 *Radical Philosophy*, 14.

⁷ Schmitt, *Political* (n 2) 35.

in the context 'of the friend-and-enemy grouping' regardless of implications for 'morality, aesthetics, and economics'.⁸

However, in *the Age of Neutralisations and Depoliticisations* (1929), Schmitt sees Europe to be 'wandering' from a 'conflictual domain' to a 'neutral' one in which the 'absolute and ultimate neutral ground has been found in technology', as it supposedly 'serves everyone' whilst providing 'no criterion for evaluating' its usages or effects.⁹ Schmitt appears to be cautious of the resulting neutralising effect of technology, that can mean 'a silk blouse and poison gas' become indistinguishable.¹⁰ It follows that 'everything is neutralised', and the 'confusion becomes unspeakable' when 'the very nature of what real is, is called into question in the age of technology'.¹¹ Thus, there is a 'powerful qualitative difference' with the age of technology in comparison to previous epochs since its neutrality offers the 'very principle of depoliticisation'.¹² In particular, as John McCormick's reading of *Neutralisations* suggests; Schmitt believed the 'truly compelling problem posed by the primacy of the technical in the modern world is *not* the machines that characterise technology so much as the way of thinking and the spirit that creates and continues to drive those machines'.¹³ Effectively, Schmitt distinguishes between 'the machine-specific realm of technology which is 'dead,' and the intellectual-spiritual realm of technicity which is very much 'alive'.¹⁴ We come to the question of whether technology is strictly neutral or 'dead' shortly given its impact upon the nature of the enemy grouping, but the key issue for this chapter, as it was for Schmitt, is the effect of a technological way of thinking in Obama's war on terror on the concept of the political.

⁸ *ibid*

⁹ Schmitt, *Neutralisations* (n 3).

¹⁰ Carl Schmitt, G.L Ulmen (trans), *Roman Catholicism and Political Form* (Westport: Greenwood 1996) 14.

¹¹ John McCormick discussing Schmitt's 'Northern Lights', in, *Carl Schmitt's Critique of Liberalism Against Politics as Technology* (Cambridge University Press 1997) 89.

¹² Esposito, (n 1) 36.

¹³ John McCormick, *Carl Schmitt's Critique of Liberalism Against Politics as Technology* (Cambridge University Press 1997) 44.

¹⁴ *ibid*

Technological thought certainly poses a challenge to the survival of the Schmittian political in modernity for both Schmitt and scholars who follow his direction of thought.

Technological thought is different to technology as the broader state of being 'immersed within the spirit of technicity' due to the 'belief that the absolute and ultimate neutral ground has been found in technology'.¹⁵ Alex Thompson argues that 'a succession of depoliticising tendencies have dominated European politics and thought, seeking to subsume the properly political' with the age of technology being the latest in this procession.¹⁶ As 'technological thinking' became the central intellectual domain of the twentieth century, it gave rise to the 'liberal drive towards depoliticisation and neutralisation'.¹⁷ Schmitt almost seems supportive of the possibility this neutrality brings: unlike 'theological' or 'moral' questions, 'purely technical problems have something refreshingly factual about them'.¹⁸ Nonetheless, 'normative or ethical concerns' are 'suffocated by the insidious and ever-expanding power of technological' thought, making it the 'villain of political form'.¹⁹ Thus, the divide between friend and enemy that makes phenomena 'political' for Schmitt may even be called into question when it is subsumed by the ever more dominant discourse that runs 'counter to the very principle of political difference that provided its most fundamental grounds'.²⁰ Crucially for this thesis, Schmitt believed that society's ability to avoid this technological age's 'depoliticising' effect will depend upon 'which type of genuine friend-enemy groupings can develop on this new ground'.²¹ Alternatively, the depoliticisation of the technological age may in fact provide the grounds for 'maximum politicisation' because at this point technology is 'fully at the mercy

¹⁵ Schmitt, *Neutralisations* (n 3) 90.

¹⁶ Alex Thompson, *Deconstruction and Democracy* (A&C Black 2007) 153.

¹⁷ Claudio Minca, Rory Rowan, *On Schmitt and Space* (Routledge 2015) 192.

¹⁸ Schmitt, *Neutralisations* (n 3) 91.

¹⁹ McCormick, (n 13) 203.

²⁰ Minca, Rowan, (n 17) 115.

²¹ Schmitt, *Neutralisations* (n 3) 95.

of the forces that manage it'.²² The politics of friend and enemy would become accentuated when joined with the neutrality of the technological age; holding the 'greatest potential for *repoliticisation*'.²³ Thus, there are two possible outcomes envisaged by Schmitt and Schmittian scholars. The first is that new friend-enemy groupings form on this *technological ground*. The second is that the neutrality of technology means that everything becomes political and we reach a point of hyperpoliticisation. There appears to be a fine line between these two possibilities, and Obama's war on terror, and in particular the form of the enemy analysed below, is a prime example of the precarity of this balance.

As the following sections will soon show, we do see an evolution of the political by the admixture of technology in Obama's war on terror, but it is not just a case of political forces mastering technology. Technology in use and technological thought transfigure the enemy grouping, showing the formation of new friend-enemy groupings that Schmitt envisaged notwithstanding the fine balance with the point of hyperpoliticisation. However, taking the specific example of drones in the use of lethal state force, technology is not completely 'neutral' as Schmitt and others following his work believed. This is because the technology in use shapes the corresponding manifestation of the enemy, treatment of the enemy, and the resulting type of war. Whereas Schmitt believed that political relations exist independently of technology, and technology is then mastered by political forces, here political relations are partly produced and shaped by technology.

²² *ibid*

²³ Alex Thompson, *Deconstruction and Democracy* (A&C Black 2007) 153, my emphasis.

ii. The Political and Technology in Obama's War on Terror

Technology in use contributes towards the production of political relations in Obama's war on terror and it is perhaps not as 'neutral' as Schmitt claimed.²⁴ Technology, however 'inert', is always part 'of institutions, tumbling in their mixed status as mediators',²⁵ and technology directs the type of mediation to a strong degree. A silk blouse and poison gas are thus not the same after all: poison gas will only be a particular kind of *mediator*, used to produce and shape particular relations. An human actors' ability access to such technology further contradicts the notion that it is 'neutral'. Drone technology does not *serve everyone* but only those, such as the US government, who have access to drone aircraft. Thus, the very ability to use poison gas or a drone against an enemy that does not have the same ability will affect the type of political relations that are possible between these two groups. A prime example of this examined in the previous chapter is the dominant position of operators over the unsuspecting victim below, which is only made possible thanks to the US military's access to the drone.

But technology mediates political relations beyond such facilitation of political goals. Indeed, as we also saw in the previous chapter, when technology such as the drone is in use it not only intensifies political intentions but produces certain kinds of political relations. 'Of course persons use technological instruments,' Judith Butler reminds us, 'but instruments surely also use persons (position them, endow them with perspectives, establish the trajectory of their actions); they frame and form anyone who enters into the visual or audible field'.²⁶ This recognition that *dead* technology affects various changes in persons (and relations between persons too) is crucial to understanding how the

²⁴ Schmitt, *Neutralisations* (n 3) 95.

²⁵ Bruno Latour, 'On Technical Mediation - Philosophy, Sociology, Genealogy', *Common Knowledge* vol 3 (1994) 46.

²⁶ Judith Butler, *Frames of War: When Is Life Grievable?* (Verso, London and New York 2010) xi.

technology of the drone shapes relations between user of force and recipient of force. This is important: the drone manipulates the user of force's experience of the enemy by creating the vertical position from which they speak of killing humans as 'stepping on ants'.²⁷ These conditions accordingly give shape to the form of the enemy in Obama's war on terror. This arguably shows that Schmitt was wrong when he said that technology 'can do nothing more than intensify peace or war'.²⁸ Technology not only intensifies but *produces* certain kinds of political relations.

Technological thinking also participates in the production of political relations in Obama's war on terror. As we saw in this previous chapter, operators are abstracted from the act of killing due to the perceived predominance of drone technology in selecting and appropriately targeting the enemy, creating the illusory impression that the drone cannot hit the wrong target. The operator merely executes the 'legal' use of force against a legitimate target with precise weaponry. Here technological thinking – *the absolute belief in technology* – partly produces the political by mediating the relation between user of force and target. Further, the pre-determined choice of target and technical nature of the process – which was examined in the analysis of the kill-chain in chapter two – entail that time efficiency and the propensity to simply execute a successful strike drive the process. Although the political decision was also not a problem Schmitt believed the soldier ever encounters,²⁹ here we also see the admixture of the technological with the political that Schmitt envisaged. Consequently, the only 'problems' for the soldier in Obama's war on terror are of a 'purely technical nature', for instance, over entering the correct coordinates

²⁷ Ed Pilkington, 'Life as a drone operator: 'Ever step on ants and never give it another thought?' *The Guardian* (November 18 2015) <<http://www.theguardian.com/world/2015/nov/18/life-as-a-drone-pilot-creech-air-force-base-nevada>> accessed November 23 2015.

²⁸ Schmitt, *Neutralisations* (n 3) 95.

²⁹ Schmitt, *Political* (n 2) 34.

for the drone's missile.³⁰ This presence of technological thought engenders the type political relations in Obama's war on terror. Thus, we can see what Schmitt meant when he said that the age of technology will produce new friend-enemy groupings. Crucially however, the above instances show technological thought to participate in the production of the political.

Here we have seen how technology and technological thought participate in the production of political relations in Obama's war on terror. Contrary to Schmitt's belief, technology in general, and drone technology in particular, appears not to be completely neutral, for two reasons: first, because it participates in the production of political relations, and second, because access to such technology is not equal. Technological thinking also mediates the relation between user of force and target. Drone technology and technological thought therefore transforms political relations beyond merely accentuating political intentions. Indeed, as the next section explores in detail, the enemy in Obama's war on terror is shaped by the technological nature of the use of force.

iii. The Transformation of the Enemy

Thus far I have suggested that technology contributes towards the nature of the Schmittian political in Obama's war on terror. This section will examine more specifically how the technological form of drone strikes constructs an enemy that is different from Schmitt's. This is explored through a comparison with Bush's enemy. First, we will see that Bush and Obama's enemies are different from Schmitt's understanding of the enemy because they are abstract and belong to an indefinite war, meaning that it is not a determinate identifiable grouping. Second, I will consider the different way in which this indefinite

³⁰ Schmitt, *Neutrisations* (n 3).

enemy is constructed in Bush's and Obama's wars, resulting in important differences in the quality of the enemy. This rhetorical basis of defining the enemy in Bush's war took centre stage, and it is through such language that the enemy is considered to be constructed abstractly. In contrast, Obama's change in strategy and extensive use of signature strikes is crucial to the construction of the enemy; meaning that his enemy is produced in the exercise of the use of force. Obama's enemy is abstract since it is now based upon supposedly common traits of 'terrorists', and is frequently selected by an algorithm. Because of these changes, the enemy is dehumanised differently under Bush and Obama. Finally, I argue that the US military are driven by a 'need' to annihilate the enemy. Thus, the enemy is expansive and abstract and is then sought to be made into nothing. Here I uncover the fine balance between 'hyperpoliticality' and the technologically-produced political.

From Schmitt's Enemy to the Indefinite Enemy

For Schmitt, the enemy is the necessary figure in the formation of the 'political', and it 'exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity'.³¹ This form of the enemy reflects the nature of wars at the time of Schmitt's writing; fought by the armies of nation states, with the purpose being the 'existential negation' of the other.³² Schmitt believed that the sovereign decision³³ directed 'the distinction of friend and enemy' and is made prior to the military execution of war against the predefined 'enemy', meaning that it is 'no longer a political problem which the fighting soldier has to solve'.³⁴ Therefore, the political enemy is not the result of private feuds between individuals, but is 'solely the public enemy', so it is not necessarily 'morally evil or

³¹ Schmitt, *Political* (n 2) 28.

³² *ibid*, 33.

³³ George Schwab, in, Schmitt, *Four Chapters* (n 2) xxiv.

³⁴ Schmitt, *Political* (n 2) 34.

aesthetically ugly' – as was Bush's enemy – but simply those who are to an extent 'existentially something different'.³⁵ Similarly Schmitt opposed wars fought in the name of 'humanity' because they lead to the belief that the enemy is inhuman, and must be annihilated.³⁶ For Schmitt, dehumanisation and the reduction of the enemy through moral argument have no place in the formation of the political. As Claudio Minca and Rory Rowan assert, Schmitt distinguishes between a 'real' enmity 'tied to a concrete situation, in which the warring parties recognise each other as legitimate political adversaries, and an 'absolute' enmity that 'respects no limitation'.³⁷ These conditions of the Schmittian enemy, and corresponding nature of war, provide the basis for the key differences with the manifestations of the enemy in Bush's and Obama's war on terror.

As we saw in the context of contemporary scholarly interpretations of Bush's friend-enemy distinction identified in the introduction to this thesis, differences of context do not preclude contemporary wars from being understood as Schmittian. Schmitt in fact recognises the different manifestations of the enemy that came before his work, in the thinking of Hegel, Hobbes and Marx, and builds upon these interpretations with a vision of conflict in his present time.³⁸ Equally, this thesis recognises that there are key differences between Schmitt's and Obama's enemies. This however does not necessarily suggest a non-Schmittian concept of the political, but instead reflects Schmitt's belief that the enemy is formed existentially and not based on any pre-consigned norms or values.³⁹ As such, despite this analysis showing Obama's enemy has transformed, it is still manifest through the Schmittian idea of an existential negation of the other, indicating the value of Schmitt's thoughts when adapted for what can be seen as our increasingly technological 'present'.

³⁵ *ibid*, 27.

³⁶ Carl Schmitt, *Nomos of the Earth* (Telos Press Publishing 2003) 103.

³⁷ Minca, Rowan, (17) 82.

³⁸ Schmitt, *Political* (n 2) 63.

³⁹ *ibid*

A key difference between Schmitt's concept of the enemy and Bush and Obama's enemy is that the latter two are located within the paradigm of indefinite war fought against an indefinite enemy. Scholars in fact developed the notion of an indefinite war in close connection to Bush's post-9/11 war on terror.⁴⁰ Michael Hardt and Antonio Negri recognise that we have 'proceeded from metaphorical and rhetorical invocations of war to real wars against indefinite, immaterial enemies' and this results in a 'new kind of war' in which the limits 'are rendered indeterminate, both spatially and temporally'.⁴¹ Bush's call to 'rid the world of the evil-doers' does indeed reflect this type of indefinite war structured around *rhetorical invocations*.⁴² When the enemy is 'created by language [it] is not reality but construct, something conditioned and assembled'.⁴³ Bush's particular rhetorical construction of the enemy takes on a distinctly moral quality. This means that, on the one hand there is no identifiable enemy as such, and on the other, this 'enemy' is infinitely identifiable. This rhetorical basis of defining the enemy ultimately means that the use of force is not strictly important in defining the enemy; rather, self-alignment with the Bush administration – including its uses of force – is the key. Although Bush's call that 'we are in a conflict between good and evil' almost mirrors the Schmittian dichotomy of friend and enemy,⁴⁴ the abstract and indefinite character of the enemy resulting from this rhetorical construction goes against Schmitt's belief that the enemy is always tied to a 'real combat situation'.⁴⁵ This difference in clarity of the enemy demonstrates the dissimilarity between Bush's indefinite enemy and Schmitt's enemy.

⁴⁰ Hardt, Negri, (n 4).

⁴¹ *ibid*, 14.

⁴² Todd Purdum, 'Bush Warns of a Wrathful, Shadowy and Inventive War' *the New York Times* (September 17 2001) <<http://www.nytimes.com/2001/09/17/us/after-attacks-white-house-bush-warns-wrathful-shadowy-inventive-war.html?pagewanted=all>> accessed December 1 2015.

⁴³ Erin Steuter, Deborah Wills, *At War with Metaphor: Media, Propaganda, and Racism in the War on Terror* (Lexington Books 2009) xv.

⁴⁴ George Bush, 'West Point Commencement' United States Military Academy, New York (June 1 2002).

⁴⁵ Schmitt, *Political* (n 2) 49.

From Bush's Enemy to Obama's Enemy

Notwithstanding the clear differences between Bush's and Obama's rhetoric as discussed in the first chapter, the indefiniteness of war and abstractness of the enemy remain as central features in the war on terror. To a degree Obama's war continues along the same trajectory as Bush's, since Obama too speaks of his enemy in abstract terms, albeit without the same strong moralistic parameters as Bush; being 'those who want to kill us'.⁴⁶ Although this lack of precise identifiability may well add to the perpetual nature of war, as this section now examines, the true extent of the indefiniteness and abstract form of Obama's enemy is ultimately produced in the military practices of his war.

Although Bush's enemy lacked the identifiable parameters that Schmitt gave to his 'enemy', the military operations within Bush's war on terror were methods to rid the world of such enemies. It can be said, therefore, that Bush's war mirrored Schmitt's belief that war follows enmity since the abstract quality of Bush's enemy precedes war. In contrast, under Obama, war is not only a way to find the enemy, but also to *produce* the enemy. This is different to the production of enemies when drone strikes radicalise people and create greater opposition to its foreign policy, which occurs at a different time and is a consequence of American foreign policy in general.⁴⁷ Instead, the drone strike analysed in the second chapter demonstrates this transformation of the order that enmity and war occur. Rather than an insignia or uniform dictating the choice of the enemy prior to a given operation, the US military *find and construct* the enemy in the exercise of war. Schmitt's understanding that 'war follows from enmity' and 'war is the existential negation of the

⁴⁶ Barack Obama, 'Speech on Drone Policy' (National Defense University May 23 2013) <http://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html?_r=0> accessed June 19 2015.

⁴⁷ Glen Greenwald, 'The 'War on Terror' - By Design - Can Never End' *The Guardian* (February 4 2013) <<http://www.theguardian.com/commentisfree/2013/jan/04/war-on-terror-endless-johnson>> accessed January 25 2016.

enemy' has to be rewritten as it is here the *technological practice of war that produces the enemy*.⁴⁸ The point at which a new individual 'enemy' is targeted in signature strikes is itself the moment at which it is included within the 'enemy' grouping. This technologically-mediated moment is perhaps one of the 'high points of politics', which are for Schmitt the 'moments in which the enemy is, in concrete clarity, recognised as the enemy'.⁴⁹ Nonetheless, as this section now shows, this point at which an enemy becomes 'concretised' in each individual strike does not make the enemy less vague or abstract overall.

Obama's use of signature strikes is central to the construction of the abstract enemy. Signature strikes 'permit the CIA and JSOC [Joint Special Operations Command] to kill without requiring them to know who they kill'.⁵⁰ These targeting procedures entail that military personnel select the individual target for a strike based on visually identifiable traits; and the enemy is an embodiment of such traits. The US military's choice of a target based upon an individual's appearance adds to this manifestation of the enemy grouping in each operation.⁵¹ As a US Department of Defence report shows, the US military finds great difficulty in pinpointing Obama's 'enemy' in practice, since 'enemy leaders look like everyone else' and 'enemy combatants look like everyone else'.⁵² Despite such confusion, individuals are targeted for having certain characteristics that are understood to be *like* those of the 'enemy'. This approach to selecting the enemy arguably allows US military personnel's presumptions regarding what an enemy *should look like* to determine the targets of air strikes. This is exemplified in two drone strikes reported by TBIJ to have

⁴⁸ Schmitt, *Political* (n 2) 33.

⁴⁹ *ibid*, 67.

⁵⁰ Spencer Ackerman, 'Inside Obama's Drone Panopticon: A Secret Machine With No Accountability' *The Guardian* (April 25 2015) <<http://www.theguardian.com/us-news/2015/apr/25/us-drone-program-secrecy-scrutiny-signature-strikes>> accessed January 30 2016.

⁵¹ *ibid*

⁵² US Department of Defence, 'Defence Science Board Summer Study' (Washington December 2004) 154

killed civilians by targeting ‘men who had been judged as al Qaeda based on their observed patterns of behaviour’.⁵³ Here, as is the case for all signature strikes, the operational crew’s observations determine who and on what basis an individual is added to the enemy grouping. Despite operator’s having this element of ‘choice’, it appears to be true as it was for Schmitt that the decision on the enemy is not a problem for the drone operator.⁵⁴ This is due to the lack of political thought required of operators, accompanied by the increasingly autonomous nature of drone strikes.⁵⁵ The operator’s ‘choice’ is merely an extension of the Obama administration’s decision to execute signature strikes on the basis of an expanded scope of what constitutes a threat. However, the key point of difference from Schmitt remains: the enemy resulting from such practices is ‘abstract’ as it is consistently redefined, has no clear foundation or predetermined ‘identity’, and is unknown until the point of a strike. The enemy prior to the strike is extremely vague, and at the point of strike is ‘concretised’ in a particular target, but not made less vague overall. This is entirely different from the Schmittian idea of an identifiable collective that precedes the point of war, and pushes at the limit of a Schmittian political paradigm.

This construction of an abstract enemy due to the technological form of drone strikes is reinforced by the increasingly algorithmic quality of the drone strike process whereby, ‘algorithms are being enlisted to out-compute terrorism and calculate who can and should be killed’.⁵⁶ For example, as Jane Mayer remarks, an algorithm can determine whether a ‘school, hospital, or mosque is within the likely blast radius of a missile’.⁵⁷ Key decisions regarding the enemy target are therefore ‘weighed by a computer algorithm before a lethal

⁵³ Jack Serle, ‘Drone War Report, January – June 2015’ *The Bureau of Investigative Journalism* (July 1 2015) <<https://www.thebureauinvestigates.com/2015/07/01/drone-war-report-january-june-2015-controversial-signature-strikes-hit-yemen-and-pakistan/>> accessed January 12 2016.

⁵⁴ Schmitt, *Political* (n 2) 34.

⁵⁵ Peter Singer, *Wired for War* (Penguin Reprint edition 2007) 127.

⁵⁶ Susan Schuppli, ‘Deadly Algorithms’ (September/October 2014) vol 187 *Radical Philosophy*.

⁵⁷ Jane Mayer, ‘The Predator War’ *The New Yorker* (October 26 2009) <<http://www.newyorker.com/magazine/2009/10/26/the-predator-war>> Accessed October 22 2015.

strike is authorised'.⁵⁸ This is an inherently technological mode of determining the enemy as the 'political' is shaped by and entrusted to the computing capabilities of the US military. When the enemy is determined by 'coding sequences' there is an even greater scale of abstraction than in Bush's morally defined enemy.⁵⁹ The enemy is not only unknown until the point of a strike, but the point of a strike itself is shaped by a computer system. Here we can clearly see the strong role of technology in the production of the political, and how this new technological ground engenders the enemy's abstract form.

This transformation of the abstract form of the enemy under Obama entails that dehumanisation has a different texture from Bush's dehumanisation of the enemy. Notwithstanding this difference, Schmitt would have opposed both forms of dehumanisation, since he was of the opinion that the enemy in a political conflict 'does not cease to be a human being'.⁶⁰ As we addressed briefly in the introduction to this thesis, in Bush's war on terror dehumanisation manifests itself via his rhetorical framing of the enemy. Most prominently, Bush consistently frames the terrorist enemy as evil in speeches after 9/11, in which he rhetorically demonises the enemy and strips them of human traits as 'this is an enemy without conscience'.⁶¹ In Schmitt's words, Bush can therefore be seen to transcend the limits of the political framework by degrading 'the enemy into moral and other categories'.⁶² Bush arguably frames the enemy by such moral divisions to render, for the public, 'the requisite horrors of war tolerable'.⁶³ The public audience is therefore a participant in this dehumanised construction of the enemy that occurs via public communications and is dispersed by various forms of media.

⁵⁸ *ibid*

⁵⁹ Schuppli (n 56).

⁶⁰ Schmitt, *Political* (n 2), 54.

⁶¹ George Bush, 'President Bush's Speech on the War on Terrorism' *Washington Post* (November 30 2005) <<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/30/AR2005113000667.html>> accessed February 28 2016.

⁶² Schmitt, *Political* (n 2), 36.

⁶³ Kimberly Elliott, 'Subverting the Rhetorical Construction of Enemies Through Worldwide Enfoldment' (2004) vol 27:2 *Women and Language*, 99.

Dehumanisation in Bush's war on terror therefore occurs at a different temporal point to the use of force against the enemy, and is arguably used to facilitate such violence. This is entirely different to the dehumanisation of the enemy in Obama's war on terror.

The fundamental difference is that it is the technological form of war executed via the drone that dehumanises the enemy in Obama's war on terror. Obama does not employ dehumanising rhetoric as Bush infamously did, so this particularly public form of dehumanisation is absent. However, the enemy is still dehumanised, albeit on a different scale and at a different point in the process of the 'war'.

As we saw in the previous chapter, the lack of encounter between user of force and target and the dominant position granted to operators are material conditions that participate in this dehumanisation of the enemy. The 'godlike' dominant position determines this specific kind of dehumanisation, as the nature of targeting via the drone results in the characterisation of that target: framed as an *ant* prior to a strike and reduced to a mere bugsplat following the impact of a missile. This demonstrates the effect of the technology in use and technological thinking on the form of political relations including the dehumanisation of the enemy.

Annihilation of the Enemy

To recap what we have seen so far in this section: Obama's enemy is fundamentally abstract, and is produced and dehumanised in the exercise of his administration's drone strike program. It is now argued that the Obama administration seek to completely annihilate this abstract enemy. That is: the US military are tasked and seek to reduce the enemy – whatever form it may take in each operation – to nothing. Schmitt in fact distinguished a form of war that compels enemies to retreat to their borders with the *last*

war fought for humanity in which the enemy must be ‘utterly destroyed’.⁶⁴ Obama’s war on terror is therefore considered as a form of the latter. In fact, it can be said that to ‘defeat’ the political enemy is to annihilate any trace of ‘terrorism’. This reveals the fine balance between the technological form of the political and hyperpoliticisation, and a tension between this example of contemporary war and the classic Schmittian understanding of war.

The technological thought grounding the military practices of Obama’s war on terror conditions the drive to annihilate the enemy. As we addressed in the first section of this chapter, with the help of algorithms, military operators simply need to follow an established technical procedure to kill each enemy, and this can be replicated indefinitely until that enemy is annihilated. Thus, when combined with the lack of any requirement for evaluative thinking—which was, as we saw, already a feature of warfare in Schmitt’s paradigm—the centrality of technological thinking engineers an environment in which the enemy is not only defeated but *utterly destroyed*.

It is unsurprising then, considering this technical nature of drone strike operations, that the annihilation of the enemy is extremely methodical. There is a combination of the intent to reduce the enemy to nothing with the technical procedure of the method. This is shown in the comments of former CIA analyst Bruce Riedel who speaks of the CIA’s role as a process of ‘cutting the grass before it grows out of control’, meaning they have to ‘mow the lawn all the time’.⁶⁵ Whereas for Schmitt the enemy was defeated when it is ‘compelled to retreat to his borders only’,⁶⁶ in the war on terror, ‘defeat’ comes in the form of ensuring that all threats, or individuals that may become threats, are completely annihilated. It is

⁶⁴ Schmitt, *Political* (n 2), 36.

⁶⁵ Bruce Riedel quoted in, Avery Plaw, Matthew Fricker, Carlos Colon, *The Drone Debate* (Rowman & Littlefield 2015) 80.

⁶⁶ Schmitt, *Political* (n 2) 36.

therefore a prime example of the type of war that 'respects no limitation'.⁶⁷ Indeed, as outgoing Pentagon General Counsel Jeh Johnson remarked; the end of the war on terror will be the point when 'al-Qaida' is 'effectively destroyed'.⁶⁸

Interestingly, this paradigm of war as a means to annihilate the enemy coincides with the feature of Obama's enemy examined above in this section: that it is made inherently abstract, vague, and non-identifiable given the approach taken by the US military in signature strikes. That is: *maximum abstraction coincides with the maximum need to annihilate*. The enemy is in a sense made without limits and then made into nothing in this process. It appears then, that a point of hyperpoliticisation has perhaps been reached, since the 'political' is no longer confined to a particular place or time, and the need to annihilate extends well beyond Schmitt's understanding of defeat in war.

Notwithstanding this arguably paradigmatic shift, it can be argued that Obama's war on terror is still based upon the distinction between friend and enemy, and the Schmittian political is formed at the point at which the enemy is identified as such. The distinction between hyperpoliticisation and a transformed Schmittian political is therefore fragile in this current context. This fine balance is apparent because Obama's war on terror in many ways transcends the limits of Schmitt's original understanding of the political as a result of key material evolutions; crucially including the abstract quality of the enemy. However, as seen in this chapter, the war against this enemy can still be understood with a Schmittian lens, albeit one that recognises such material differences. Thus, the political is certainly complicated in comparison with Schmitt's understanding, but it remains Schmittian to a degree.

⁶⁷ Minca, Rowan, (n 17) 82.

⁶⁸ Jeh Johnson, 'US Official Points to End of 'War on Terror' *Al Jazeera* (December 1 2012) <<http://www.aljazeera.com/news/americas/2012/12/20121210645962539.html>> accessed June 1 2015.

This precarious balance between hyperpoliticality and a transformed contemporary Schmittian political seen here is a consequence of the technological form of war, the abstract quality the enemy, and subsequent 'need' to annihilate it. These features are arguably now unexceptional in contemporary war; evidenced in western state's strategy in their war against the so-called Islamic State, and accompanying assurances from heads of state including Obama that they will *destroy* this enemy.⁶⁹ Thus, it can be said that we are witnessing a paradigmatic shift in the 'Schmittian' form of war in general, and Obama's war on terror simply signals the beginning of this change.

This section has examined the technological form of the enemy in Obama's war on terror and its differences to Bush's enemy. Obama's abstract enemy has a different texture and is formed on a different scale to Bush's since it is produced in the military practices of war, while the dehumanisation of the enemy too occurs at the level of military practice. It is evident that the technological mode of war shapes the abstract form of the enemy and the political relations formed with that enemy. The second key transformation examined was in relation to the approach taken to defeat the enemy, which is more precisely a process of annihilation. This drive for maximal annihilation combined with the maximal abstraction of the enemy demonstrates the fine balance between hyperpoliticisation, and an evolved, technological form of political relations. Interestingly, the characteristics of Obama's war that create this fine balance is arguably becoming an increasingly common feature of contemporary war in general. This transformation of the concept of the political in comparison with Schmitt's understanding continues in the next section in which we examine the 'friend' grouping in Obama's war on terror.

⁶⁹ Everett Rosenfeld, 'Obama: We will destroy ISIS and Anyone Else who Tries to Harm Us' (December 6 2015) <<http://www.cnn.com/2015/12/06/obama-we-will-destroy-isis-and-anyone-else-who-tries-to-harm-us.html>> accessed March 15 2016.

iv. The Transformation of the Friend

So far in this chapter we have identified how the Schmittian political in Obama's war on terror survives but is transformed by the technological conditions inherent to the drone strike. As we have seen, the specific conditions for the use of force construct a specific kind of abstract enemy. Equally, the specific character and discourse of Obama's and Bush's war create different political 'friend' groupings. Therefore, turning to this *other side* of the Schmittian political paradigm, this chapter now evaluates how the construction of the friend has transformed in Obama's war on terror in comparison to Bush's in order to better understand the degree to which the Schmittian form of politics has evolved.

Schmitt believed that 'all essential concepts are not normative but existential' and can 'only be understood in terms of concrete political existence'.⁷⁰ Here, I understand the *concrete existence* of the Schmittian 'friend' to be formed in relation to the Bush and Obama administrations' rhetorical framings of the use of force. The previous section positioned Bush's rhetoric against the military practices of Obama's war since these are the points at which the enemy can be seen *in concrete clarity*.⁷¹ Moreover, it was particularly importantly to focus on the military practices in Obama's war given the significant changes to the enemy grouping resulting from the increased use of signature strikes therein. In this section however, both president's rhetoric is the appropriate subject of analysis since I argue that their differences construct the corresponding Schmittian friend grouping. To explain this approach, the discussion first locates itself in the context of scholarly understandings of the Schmittian 'friend'. David Pan's interpretation of the Schmittian

⁷⁰ Schmitt, *Neutralisations* (n 3) 134.

⁷¹ Schmitt, *Political* (n 2) 67.

'decision' is used as a way to think about the production of the friend via political communications.⁷² Then following the trend of the thesis so far, this section will take Obama's rhetoric its primary focus, with Bush's used as a key point of comparison. Bush's moral form of political division is juxtaposed with Obama's far more practical sounding rhetoric as the technological form of war feeds into the rhetorical construction of the friend. This representation of drone strikes invokes the modern phenomenon of 'humane warfare'. It is argued that this creates an appeal to reason: the implicit question for this global public is now whether to support this humane type of 'war'. This section then argues that Obama is better at constructing a global identity for his political 'friend' in comparison to Bush. Setting this analysis against the previous section's analysis of the enemy, allows us to see the dehumanised figure of the enemy in contrast with the 'humanity' of the representationally constructed friend.

The Construction of the Friend Grouping

David Pan argues that the Schmitt's notion of the 'decision' – namely the decision separating norm and exception – is not limited to the point of a sovereign 'command', but 'must be taken as part of a representational dynamic in which the decision sums up a view of the past that can establish itself within the popular imagination'.⁷³ For instance, as we saw in the first chapter, the Bush administration evoked the memory of 9/11 in order to justify the use of force in retaliation. Aligning with Pan's analysis, it is here argued that the friend grouping cannot be abstracted from this *representational dynamic* of the use of force. That is: the rhetorical means through which a particular ideology or politics may

⁷² David Pan, 'Carl Schmitt and Barack Obama on Political Identity in a Multi-polar World' *Telos* (August 10 2010).

⁷³ *ibid*

'establish itself as part of a broader worldview within popular consciousness'.⁷⁴ As this section will show, the Obama administration's rhetoric depicting the drone strike as the only reasonable method to protect civilians, and Bush's emphasis of US military strengths, are prime examples of the representational dynamic of each of their wars. It is argued that such variances in their representational dynamics appeals to different popular imaginations; which create the evolving form of the 'friend' in the war on terror.

Schmitt's *Concept of the Political*, and subsequent literatures on Schmittian politics, have focused far less on the nature of the 'friend' grouping than on analyses of the 'enemy' since the actualisation of the enemy forms the essence of Schmittian politics.⁷⁵ It is even argued that Schmitt simply 'allowed his notion to the enemy to generate his idea of the friend'.⁷⁶ Thus, scholarship broadly understands the friend to be the grouping opposed to the existential form of the enemy in each concrete scenario.⁷⁷ This remains a crucial feature of Obama's war by drone strike, and it remains true that it is 'not necessary that those people who share a relation of political friendship even know one another'.⁷⁸ Thus, although to connect the question of the friend to the *representational dynamic* of the use of force may on first sight appear to depart from the classically Schmittian understanding of the friend (in which nationally demarcated political groupings play a defining role), it is in fact still Schmittian.⁷⁹ We can see this clearly in the following section when Obama claims that he is protecting universal liberal ideals by using force against an exceptional minority who want to damage such beliefs. Obama's rhetoric can be seen as a means to create a worldview to which the use of force appeals beyond nation state groupings, and an enemy

⁷⁴ *ibid*

⁷⁵ George Schwab in, Schmitt, *Political* (n 2) 14.

⁷⁶ Tracey Strong in, Schmitt, *Political* (n 2) xxiv.

⁷⁷ Minca, Rowan, (n 17) 82.

⁷⁸ Andrew Norris, 'Carl Schmitt on friends, enemies and the political' (1998) vol: 112 Telos.

⁷⁹ Schmitt, *Political* (n 2).

against whom the use of force is deemed necessary; hence displaying a Schmittian form of political duality when the 'friend' is connected to this representational dynamic.

The Friend of 'Humane' Warfare

As has been well covered in this thesis, Bush rhetorically separated the world into two camps of those who are 'with us' or 'with the enemy'.⁸⁰ This plain use of a Manichean form of politics forced a choice for the global public, and this was reiterated consistently in Bush's post 9/11 rhetoric. The choice, it seemed, should be obvious: 'either you're with those who love freedom, or those who hate innocent life'.⁸¹ This is the essence of the representational dynamic of Bush's politics; the rhetorical means through which his ideology establishes itself as part of a 'broader worldview'.⁸² Bush's representational dynamic is clearly moralistic and divisive: there is no middle ground, since if you are not with us then you are by default therefore against us, and with the evil enemy. Pan argues that the representational dynamic of politics directly relates to the decision, and here it can be seen to do so by facilitating the decision to use force against the evil enemy.⁸³

By contrast, Obama shifts away from this rhetorical diametric and this creates a key difference between the two presidents' Schmittian 'friend' grouping. It can be said that unlike Bush, Obama does not force the public into a choice over being with him in this war on terror. He does assert the legitimacy of using force but he does not restrict the public's option to remain neutral like Bush did by suggesting that one's lack of choice in fact positions you with the enemy.⁸⁴ Instead, Obama represents the drone strike in such a way

⁸⁰ George Bush, 'Speech at Fort Hood, Killeen Texas' (January 3 2003).

⁸¹ *ibid*

⁸² Pan, (n 72).

⁸³ Pan, (n 72).

⁸⁴ Obama, *Drone* (n 46).

as to situate it within the modern phenomena of humane warfare. This impression of a humane war is cultivated via Obama's presentations of the technical qualities of the drone. It appears to be a reasonable solution to threats facing civilians everywhere; as if there is no other option available for the public.

Specifically, one level of Obama's rhetoric draws the public's attention to the protective purpose of drone strikes to underline the rationale behind the use of force. The phenomenon of a state framing its uses of force as a 'humanitarian' mission or for 'protection' in order to give such violence 'a moral veneer' is not new,⁸⁵ as evidenced by Bill Clinton's framing of NATO's intervention in Yugoslavia; identifying the use of force as a form of humanitarian assistance.⁸⁶ As Christopher Coker remarks: a feature of modern war is that 'the West is trying to make it more humane, to put humanity back in the picture'.⁸⁷ Obama's targeted killing practices follows such an approach by embellishing his use of the drone with the justification of protection; representing the 'idea of wars for humanitarian purposes, of military invasions to save people'.⁸⁸

The seemingly paradoxical yet commonplace principle of killing to protect mirrors Jean-Hervé Bradol's disquieting assertion that 'the construction of a 'better world' inevitably comes at a price – the lives of others'.⁸⁹ The drone appeals to those who believe in the narrative of a *better world* where there are fewer terrorists threatening the lives of innocent civilians, and fewer innocent civilians killed when targeting terrorists. By framing his drone strike regime in such a manner, Obama embraces the underlying logic of the

⁸⁵ Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish 2007), 254.

⁸⁶ Bill Clinton, 'National Security Strategy' (December 1 1999) <<http://nssarchive.us/national-security-strategy-2000-2/>> accessed March 1 2016.

⁸⁷ Christopher Coker, *Humane Warfare* (Routledge-Cavendish New York 2001) 111.

⁸⁸ Douzinas, (n 85) 244.

⁸⁹ Jean-Hervé Bradol, 'The Sacrificial International Order and Humanitarian Action', in Fabrice Weissman, *In the Shadow of 'Just' Wars*, (C. Hurst & Co. Publishers 2004) 5.

Responsibility to Protect (R2P), a doctrine that has received increased use and scholarly attention in recent years; most prominently in relation to Libya and Syria.⁹⁰ As recognised by Rosa Brooks, R2P 'is equally applicable to terrorism'.⁹¹ Framed as it is, the US's drone strike programme is consistent with R2P as a form of intervention exercised when states are unwilling or unable to address the threats that terrorism poses. Indeed, as Obama remarks: to do 'nothing in the face of terrorist networks would invite far more civilian casualties'.⁹² Koh's language equally mirrors the rationale of R2P, as he states that the US will take into account the 'willingness and ability of those states to suppress the threat'.⁹³ Thus, the Obama administration's representation of drone strikes aptly fits within the paradigm of protective intervention beyond that state's territory. This element of its representational dynamic serves the significant purpose of shaping the form of the ideological friend in Obama's war on terror in correlation with such contemporary western ideals of the use of force.

However, as we saw in the first chapter, Obama goes further than stating the need to protect civilians by also emphasising that the method used is humane. The attention Obama gives to the technical qualities of the drone reflects Judith Butler's belief that the US president's thinking is 'mainly strategic, if not wholly technical'.⁹⁴ This is a significant rhetorical turn nonetheless because it draws the public's attention away from the ends by presuming the legitimacy of the target; reflecting the technological nature of the present in which a 'belief in precision technology' helps 'justify the techno-scientific violence of the

⁹⁰ See: Spencer Zifcak, *The Responsibility to Protect after Libya and Syria*, (2012) vol 13:1 Melbourne Journal of International Law.

⁹¹ Rosa Brooks, 'Hate Obama's Drone War?' *Foreign Policy* (February 15 2013)

<<http://foreignpolicy.com/2013/02/15/hate-obamas-drone-war/>> accessed September 15 2015.

⁹² Obama, *Drone* (n 46).

⁹³ Harold Koh, 'The Obama Administration and International Law', *The US Department of State*, (March 25 2010) < <http://www.state.gov/s//releases/remarks/139119.htm>> accessed February 11 2015.

⁹⁴ Nathan Schneider, Judith Butler. 'A Carefully Crafted F**k You.' An Interview with Judith Butler' *Guernica* (March 2010).

West'.⁹⁵ When such a technological approach to war becomes important, this arguably signifies the point when the West abandons 'the most crucial consideration in every war and implicitly accept its legitimacy' due to the 'marvels of military technology'.⁹⁶ And this is perhaps why the Obama administration's embellishment is heavily focused on emphasising the perceived 'marvels' of the drone; taking inspiration from the modern phenomenon whereby 'the ugliness of war' is 'concealed by euphemism'.⁹⁷

Obama gives the impression that the medium is technically proficient to the extent that the US is capable of acting humanely in the execution of a strike by avoiding civilians in areas targeted. The protective rationale is therefore supported by the reasonableness of the method. The Obama administration's rhetorical strategy positioning the far less indiscriminate 'precision' bombing of the drone against the 'bombardment' of previous *peace keeping missions* arguably reflects this capability and the West's drive to make war 'humane'. Whereas 'bombardment' and weapons of mass destruction run 'counter to what the West is trying to do',⁹⁸ the very terminology of 'precision' associated with drone strikes offers a more humane depiction of war.⁹⁹ This style of embellishment was presaged by Schmitt¹⁰⁰ and is critiqued by contemporary scholars¹⁰¹ for being just as lethal and indiscriminate as violence that is not veiled with such nomenclature. Nonetheless, by doing so, Obama can emphasise the differences and qualities of this new medium.¹⁰² As we have seen under Bush the appeal to humanity was moralistic; for the 'good' of his

⁹⁵ Tyler Wall, Torin Monahan, 'Surveillance and violence from afar: The politics of drones and liminal security-scapes' (2011) *Theoretical Criminology* vol 15:3, 247.

⁹⁶ Douzinas, (n 85) 263.

⁹⁷ Coker, (n 87) 31.

⁹⁸ *ibid*, 23.

⁹⁹ Obama, *Drone* (n 46).

¹⁰⁰ Schmitt, *Nomos* (n 36) 103.

¹⁰¹ Douzinas, (n 85).

¹⁰² Obama, *Drone* (n 46).

'crusade',¹⁰³ and this created a dichotomy that dehumanised the other. Thus on the surface Bush's rhetoric does not fit comfortably within the domain of humane warfare, instead showing the disquieting diametric Schmitt anticipated when wars are fought for 'universal' ideals.¹⁰⁴ Moreover, even if one agreed with the 'good' of Bush's 'cause', the destructiveness of his methods provided a crucial point of opposition to his war.¹⁰⁵ By contrast, Obama's appeal arguably amounts to a more defensible way of making the war a war for humanity since it positions the technological qualities of his methods against the ineffective quality of previous methods. It is an effective appeal to reason since the choice for the global public is made simple: whether to support a humane solution to threats in which less civilians are killed. The use of language examined above is therefore a non-coincidental linguistic turn through which the Obama administration introduces a register of 'military humanism' more appropriate to contemporary uses of force.¹⁰⁶

In addition to protecting the world from terrorism, and civilians from non-precise weaponry in areas targeted, Obama also holds up the drone for its ability to save military lives. Obama rejects the alternative of troop deployment to combat terrorism as 'the results would be more U.S. deaths, more Black Hawks down'.¹⁰⁷ This underlines the qualities of the drone in juxtaposition with other less effective military interventions. This is significant when considering the opposition to previous US military operations. As Tina Managhan has argued, the rhetoric and sheer patriotism surrounding the 'war on terror' restricted opposition as unpatriotic.¹⁰⁸ Thus, dissent to the wars in Iraq and Afghanistan was instead

¹⁰³ Peter Waldman, Hugh Pope, "Crusade' Reference Reinforces Fears War on Terrorism Is Against Muslims' *The Wall Street Journal* (September 21 2001) <<http://www.wsj.com/articles/SB1001020294332922160>> accessed January 12 2016.

¹⁰⁴ Schmitt, *Nomos* (n 36) 103.

¹⁰⁵ Mary Buckley, *The Bush Doctrine and the War on Terrorism* (Routledge 2006) 159.

¹⁰⁶ Noam Chomsky, *The New Military Humanism: Lessons from Kosovo*, (London Pluto Press 1999).

¹⁰⁷ Obama, *Drone* (n 46).

¹⁰⁸ Tina Managhan, 'Grieving Dead Soldiers, Disavowing Loss: Cindy Sheehan and The Im/possibility of the American Antiwar Movement' (2011) vol 16:2 *Geopolitics*.

expressed as support for troops, and opposition to the rising number of troops killed.¹⁰⁹ Unlike troop deployment, the drone works with this dissent by reducing the number of military casualties. Consequently, contrary to Schmitt's contention, the state no longer needs to 'demand from its own members the readiness to die' in order to 'kill enemies'.¹¹⁰ Rather, the drone helps achieve what seems to be emerging as a component of a well-fought war; the saving of US military lives. Together with Obama's call that the drone helps save civilians, both in the west and areas targeted, this shows how his administration's representational dynamic is cohesive with 'humane' ideals of war. This is an impression of humane warfare built upon the reasonableness and proficiency of the method rather than simply the asserted virtues of the 'cause'. It can be said, therefore, that the position of dominance examined in the previous chapter is in fact enabled by a complex of factors, not only the point of view enabled by drone technology, but also the control of discourse which is made possible because of Obama and his administration's reverence of the drone's features examined here.

To recap what we have seen so far in this section: Obama's rhetorical enhancement of the drone, supposedly enabling the military to pinpoint those who are a threat to innocent civilians, and 'not the people they hide among',¹¹¹ creates a far less divisive form of politics in comparison to Bush's strategy. Therefore, Obama arguably does better than Bush to locate his war within the contemporary phenomenon of humane warfare by making 'all the right noises to that audience'.¹¹² The 'friend' grouping is no longer those individuals who are explicitly *with* Obama, but encompasses all those who support the more humane way of war instead of methods that result in greater losses of life. On the basis of this transformation alone, it can be said that Obama's representational dynamic engenders a

¹⁰⁹ *ibid*

¹¹⁰ Schmitt, *Political* (n 2) 46.

¹¹¹ Obama, *Drone* (n 46).

¹¹² Roger Bate, 'Obama's Nobel Prize for Rhetoric' (2010) vol 30:2 Economic Affairs, 88.

more credible collective political identity than did Bush's. This quality of Obama's communications is what this chapter now turns to address directly and in greater detail; arguing that Obama does better than Bush to create a collective political identity and appeal to a global political subject.

Obama's acceptance speech for the Nobel Peace Prize is a prime example of Obama's rhetorical departure from Bush early in his presidency; an award that also helped to create the impression that US military practices are backed by global approval. In order to understand the significance of the committee's choice, it is worth noting that Obama's first two authorised drone strikes came three days into his presidency and killed 12 civilians.¹¹³ This arguably shows that the principles represented by a presidency are in many ways what matter: as Roger Bate remarks, 'if you seem to care and say the right things, it doesn't matter if you don't actually achieve anything worthwhile'.¹¹⁴ Obama used the acceptance speech to express these principles underpinning his foreign policy; articulating the rationale for using force in last resort. He recognises that state violence can be necessary, as a 'non-violent movement could not have halted Hitler's armies. Negotiations cannot convince al Qaeda's leaders to lay down their arms', so to say that 'force may sometimes be necessary is not a call to cynicism – it is a recognition of history', as a result, he asserts that 'instruments of war do have a role to play in preserving the peace'.¹¹⁵ Obama's speech assumed the inevitability of violence and posed a role for war in creating peace, and the slightly ironic location in which it was delivered arguably has a significant strategic purpose. Obama used his platform as the winner of the Nobel Peace

¹¹³ Alice K Ross, Chris Woods, Sarah Leo, 'The Reaper Presidency: Obama's 300th drone strike in Pakistan', *The Bureau of Investigative Journalism* (December 12 2012) <<https://www.thebureauinvestigates.com/2012/12/03/the-reaper-presidency-obamas-300th-drone-strike-in-pakistan/>> accessed November 15 2015.

¹¹⁴ Bate, (n 112) 88.

¹¹⁵ Barack Obama, 'Remarks by the President at the Acceptance of the Nobel Peace Prize' (Oslo Norway December 10 2009).

Prize to justify the use of force that he was to implement as US President, and this gives an example of the way the friend grouping is shaped in his war on terror. Because Obama frames the continuation of the war on terror with such a resonant comparison between Hitler and al Qaeda as the Nobel Peace Prize winner, the potential appeal of the use of force transcends national political demarcations. Like the enemy of World War II, this enemy is *everyone's enemy* because it offends universal liberal ideals; which underlines the apparent inevitability of the lethal strategies Obama pursues. But again, in contrast to Bush he does not force the global public into a choice.

Instead, Obama gives overt assurances to protect a general way of life rather than 'mere physical existence'; explicitly displaying the 'homogenous form of identity that both allows for the transcendence of private, physical life and opens the possibility of a particular form of violent conflict'.¹¹⁶ Obama forms this *homogenous identity* rhetorically by claiming that 'we all basically want the same things; that we all hope for the chance to live out our lives with some measure of happiness and fulfillment for ourselves and our families'.¹¹⁷

Obama's approach resonates strongly with Schmitt's belief that 'representation rests on a people existing as a political unity, as having a type of being that is higher, further enhanced, and more intense in comparison to the natural existence of some human group living together'.¹¹⁸ Indeed, he attempts to create a collective 'we' that transcends not only natural existence but also national and religious divisions, thus elevating the universal 'human' identity of the political 'friend'. It can be said, as Pan does, that Obama's rhetoric 'clearly tries to deny this specific character of liberalism in order to claim that liberalism is in fact 'something irreducible that we all share''.¹¹⁹ This universalism of the liberal principles underpinning Obama's use of force is reiterated by his claim that the enemy's

¹¹⁶ Norris, (n 78).

¹¹⁷ Obama, *Nobel* (n 115).

¹¹⁸ Carl Schmitt, *Constitutional Theory* (Duke University Press 2008) 243.

¹¹⁹ Pan, (n 72).

belief system has little support as it's 'ideology is rejected by the vast majority of Muslims, who are the most frequent victims of terrorist attacks'.¹²⁰ This contrasts with Bush's divisive assertion that the 'terrorists' directive commands them to kill Christians and Jews'.¹²¹ Obama points to a supposedly universal way of life which only the enemy rejects. This is the collective and potentially global political identity which Obama rhetorically forms to open the possibility of a violent response against its collective enemy.

Obama then frames his administration's practices in response in such a way as to reflect these liberal ideals, which reinforces his difference from Bush and underlines the appeal of his war on terror to a global political subject. As we saw above, Bush provided a 'high resonance framing' of his war through 'recurring use of words such as evil'.¹²² Alongside this demonisation of the enemy Bush enhanced the US military's ability to end his *crusade* victoriously. He boasted that the military has 'every resource, every weapon, every means to assure full victory for the United States and the cause of freedom'.¹²³ From this language we can see clearly how commentators such as John Inkberry came to the conclusion that the US were aiming for 'unilateral world domination through absolute military superiority'.¹²⁴ But it can be said in retrospect that Bush's representational dynamic in fact limited the reach of his 'friend' grouping, and that Obama seeks an approach that is not similarly limited. Obama breaks from Bush's approach of amplifying the US military's ability to win the war on terror, utilising the 'enormous good will' that 'greeted his election,

¹²⁰ Obama, *Drone* (n 46).

¹²¹ George Bush, 'Address to the Joint Session of the 107th Congress' United States Capital, Washington (September 20 2001).

¹²² Robert Entman, 'Cascading Activation: Contesting the White House's Frame after 9/11' (2003) vol 20 Political Communication, 417.

¹²³ George Bush, Remarks at a Welcoming Ceremony for the Chairman of the Joint Chiefs of Staff (Arlington, Virginia October 15 2001).

¹²⁴ John Inkberry, *Foreign Affairs*, September-October 2002. Anatol Lieven, *London Review of Books* (October 3 2002).

rhetorically distancing himself at every opportunity from his predecessor'.¹²⁵ Indeed, Obama seems receptive of the hegemonic character of America's actions under Bush and counters this perception by recognising the cost of war beyond the loss of American military personnel, stating that:

In today's wars, many more civilians are killed than soldiers; the seeds of future conflict are sown, economies are wrecked, civil societies torn asunder, refugees amassed, children scarred. I do not bring with me today a definitive solution to the problems of war.¹²⁶

Obama here gives attention to the true cost of war outside of the US and explicitly makes it his intention to combat these wrongs. This contrasts with Bush's strategy of consistently pressing the need to act definitely with force *despite* such consequences.¹²⁷ Obama also recognises the errors of his own administration's military practices to date, in a speech described as a 'masterclass' by a 'skilled politician'.¹²⁸ He does not justify civilian casualties in relation to US military gains made, instead recognising that 'for the families of those civilians [killed], no words or legal construct can justify their loss. For me, and those in my chain of command, those deaths will haunt us as long as we live'.¹²⁹ As discussed in the previous section, Obama only then speaks about the drone's qualities to assure his audience that the US are in fact capable of minimising such loss of life and it is only used sparingly. This sentiment underpinning the use of force can be juxtaposed with Bush's call that the US's military actions are 'designed to clear the way for sustained, comprehensive

¹²⁵ Stanley A. Renshon, *National Security in the Obama Administration: Reassessing the Bush Doctrine*, (Routledge 2009) 199.

¹²⁶ Obama, *Nobel* (n 115).

¹²⁷ Michael Termini, *Exceptionalism and the George W. Bush Presidency: A New Extreme Taken at the Expense of the International Rule of Law* (VDM Verlag Dr. Müller 2009).

¹²⁸ Glenn Greenwald, 'Obama's Terrorism Speech: Seeing What You Want To See', *The Guardian* (May 27 2013) <<http://www.theguardian.com/commentisfree/2013/may/27/obama-war-on-terror-speech>> accessed October 8 2015.

¹²⁹ Obama, *Drone* (n 46).

and relentless operations to drive them out and bring them to justice'.¹³⁰ Obama thus engineers two fundamental shifts in focus: global civilian life rather than US victory becomes key to his war on terror, which is bolstered by the technological precision and reasonableness of the method. These differences are arguably crucial for cultivating greater appeal from a global subject since Obama speaks directly beyond the US citizenry, and unlike Bush, no longer forces a value choice that pays no attention to the destructiveness of the method.

Obama's rhetoric clearly orientates his recipient audience differently to Bush's by constructing the impression that drone strikes are a considerate form of political action and unlike the exceptionalism characteristic of Bush's war on terror.¹³¹ Using Pan's words, it can be said that Obama's 'representational process' gathers 'up of elements of the past into a new order that offers genuine meaning to the recipients'.¹³² There is a sense of worldliness to the principles represented as underpinning Obama's war on terror: looking to the past he recognises his administration's own errors, shifts away from focusing on the loss of American lives, and accepts the narrower, non-unilateral role that the US must take in correcting previous military failures. This is markedly different from Bush's approach of enhancing the prowess and strength of the US military to bring about victory in a war of good against evil. Despite the reality that 'Obama's speeches have very little to do with Obama's actions',¹³³ this new global outlook underlines the way Obama's representation of the war on terror can resonate better with a contemporary global public in comparison to Bush, and in turn can create a collective political identity.

¹³⁰ George Bush, 'Address to the Nation' *BBC News* (October 7 2001)

<<http://news.bbc.co.uk/1/hi/world/americas/1585153.stm>> accessed February 20 2016.

¹³¹ Douglas Kellner, 'Preemptive Strikes and the War on Iraq: A Critique of Bush Administration Unilateralism and Militarism', in Joseph Peschek, *The Politics of Empire: War, Terror and Hegemony* (Routledge 2005).

¹³² Pan, (n 72).

¹³³ Glenn Greenwald, 'Obama's Terrorism Speech: Seeing What You Want To See', *The Guardian* (May 27 2013) <<http://www.theguardian.com/commentisfree/2013/may/27/obama-war-on-terror-speech>> accessed October 8 2015.

This section has shown that under Obama the choice for the global subject is no longer simply one of value – between ‘good’ and ‘evil’ – but predominantly method – between the humane qualities of the drone against more destructive and costly alternatives. Obama therefore effectively evokes the contemporary ideal of humane warfare. But Obama also attempts to construct a collective political identity by claiming that a universal way of life is protected with the use of force, which is supported by the supposed reasonableness of the method, and recognition of American foreign policy failures. There is a worldliness unseen in the hegemonic character of Bush’s rhetoric, and on this basis it can be said that Obama is more adept at constructing a global political ‘friend’. When this ‘humane’ and liberal ‘universal’ identity of the ‘friend’ grouping is set against the enemy that was examined above, we can see exactly what Schmitt presaged when he said that evoking humanity lent itself to a ‘surprising dialectic’ that dehumanised the ‘other’.¹³⁴ The enemy is indeed dehumanised, while the friend is tied to a ‘universal’ understanding of humanity from which only the enemy is excluded. Thus, despite Obama avoiding Bush’s dehumanising language there is a similar duality that was evident in Bush’s war on terror, albeit on a different scale.

Conclusion

As I claimed in the introduction to this thesis, we ‘cannot escape the logic of the political’.¹³⁵ Indeed, as I have argued here, Obama’s war on terror is still grounded in the Schmittian concept of the political, but the role of technology, technological thinking and material conditions of US drone strikes, and the specific rhetorical strategy of the Obama administration, have transformed the precise form of the ‘political’.

¹³⁴ Schmitt, *Nomos* (n 36) 103.

¹³⁵ Schmitt, *Political* (n 2) 79.

This chapter has analysed the relation between the antithetical domains of politics and technology in Obama's war on terror, and the nature of the friend and enemy using Bush's war on terror as point of comparison to understand the transformation we have witnessed under Obama. I argued that technology and technological thinking participate in the production of the political in this technological age of drones. The effect of this transformation was best seen in my analysis of the enemy grouping, which was a central focus of this chapter. Bush's and Obama's enemies as analysed in this chapter differ from Schmitt's understanding of the enemy based upon the historical context of his writings. Bush's and Obama's enemies are situated within an indefinite war, and have an abstract form. But the quality of Obama's abstract enemy demonstrates the technological form of political relations via the drone strike. Whereas Bush's enemy is based on his rhetorical divide between good and evil, Obama's enemy is produced in the event of a signature strike; determined by the appearance of individuals in areas targeted and directed to a strong degree by algorithms. This change in war means that the dehumanisation of the enemy arises differently in Bush and Obama's wars on terror. Under Bush, dehumanisation is a product of a certain rhetorical frame given to the enemy. In contrast, dehumanisation in Obama's war is a product of this technological form of the drone strike. This type of dehumanisation also contributes towards the goal of annihilating the 'abstract' enemy. Here we saw the technological nature of the political in the war on terror, and the fine balance between the two possibilities of a new type of friend-enemy grouping and hyperpoliticisation when the decision over the enemy occurs 'everywhere' and the US then seek to annihilate it.

Turning to the friend grouping that opposes the enemy, this chapter argued that Bush's and Obama's 'friend' grouping is formed in relation to the representational dynamic of the

war on terror. We therefore looked at differences in the nature of their rhetorical framing of the use of force to demonstrate the transformation of the political 'friend'. First moving away from Bush's rhetorical divide between good and evil, Obama suggests the key choice is in regard to the medium. He emphasises the technological qualities and reasonableness of the solution meaning that only those who want to harm civilians are killed. The choice is no longer one of value but method. This framing is arguably far more appropriate than Bush's rhetoric for situating the war on terror within the phenomenon of humane warfare. We then looked in more detail at the collective identity Obama attempts to create with this representation of the use of force. His focus on the reasonableness of the method is bolstered by the rhetorical creation of a universal political identity that the war on terror is fought to defend, and a more worldly appreciation of the effects of the use of force in comparison with Bush. The supposedly universal ideals of 'humanity' and 'liberalism' are therefore central to the created identity of the political 'friend'. When this 'friend' was juxtaposed with the dehumanised enemy, the diametric caused by invocations of universal ideals that Schmitt warned against was brought sharply into focus.

The 'political' in Obama's war on terror is still therefore based on the Schmittian division between friend and enemy. Although the nature of these groupings are ultimately different from those Schmitt originally envisioned, it is a prime example of the new type of friend-enemy grouping that Schmitt believed would arise from this age of technology.

Conclusion

In this thesis I have developed an understanding of the political relations underlying the practices of Obama's war on terror through a Schmittian perspective. I have done so by first examining Obama's legitimising strategy in comparison to Bush's. The contrast between the two president's strategies gave the impression that Obama's war on terror was different to Bush's and less overtly Schmittian. In the second chapter I then uncovered the relations between user of force and target, unseen in such state rhetoric, produced by the drone strike's material and technological conditions. Here we were able to see the characteristics of the political relations 'behind' such rhetoric, including: the technical nature of each operation, the dominance of the user of force, the paradox of intimate proximity and technology's effect of dehumanising the target. Finally I mapped these attributes of the relations onto a Schmittian perspective of the 'political' and 'technology'. This Schmittian lens, accompanied by the analysis of the first two chapters, has enabled us to 'read' the political relations in Obama's war on terror and their differences in comparison to Bush's war on terror.

Schmitt said that the political – being the choice over friend and enemy – would change in the age of technology. What we established in the introduction to this thesis is that notwithstanding factual differences, Bush's war on terror was still fundamentally tied to a classic Schmittian political paradigm. Whereas, Obama's complete utilisation of drone technology abstracts the war on terror far further from the classic Schmittian concept of the political. Here we are arguably witnessing both what Schmitt meant by the 'technological age' and the nature of political relations therein. Two of the key transformations we have seen are: the indefiniteness and abstract nature of the enemy, which is now a quality

formed in the military practices of Obama's war on terror, and that, in this process, the enemy is dehumanised and driven towards a point of annihilation.

This analysis revealed that technology is not simply at the mercy of political forces, since politics and technology intertwine and engender the particular form of political relations seen in Obama's war via the drone. This analysis also told us something important about the process of hyperpoliticisation adverted to by Schmittian scholars. That is: in the context of Obama's war on terror there is a thin line between a new political based on this technological ground and hyperpoliticisation. Because of the Obama administration's approach taken to find the enemy, there is ultimately no predefined enemy as such nor a 'grouping' from which each singular enemy is taken. The process of annihilation of this enemy then completely extends beyond Schmitt's understanding of defeat in war. This arguably creates the appearance that, instead of the choice of the enemy emerging at a specific time or place, it is 'everywhere' and this is therefore 'hyperpolitical'. Yet there is still such distinction; the choice of the enemy is still made, and so the Schmittian political, albeit in a transfigured form, is still visible.

We also saw the transformation of the Schmittian 'friend' in my analysis that took inspiration from Pan's interpretation of the representational dynamic of the Schmittian decision. This enabled us to see how the 'friend' is formed in this age in which 'war' is no longer fought between separate nation states, and rhetoric plays a crucial role in garnering support for its war on terror. By contrast with Bush's divisional and dehumanising rhetoric, Obama claims the status of a humane war via his presentation of the technologically proficient and reasonable method. Moreover, Obama arguably creates a more effective 'humane' and 'liberal' collective identity for the political friend than did Bush. When we consider this this 'friend' together with the dehumanised enemy, we can see the diametric

presaged by Schmitt when universal ideals are claimed by one side, whilst also displaying a transfigured form of friend against enemy. Therefore despite material, technological and rhetorical changes, the Schmittian division between friend and enemy remains in Obama's war on terror.

By taking a Schmittian perspective of the political in this context, I was therefore able to coax out the particular qualities of Obama's war on terror, and the key role rhetoric, technology and technological thinking plays in bringing about these changes. Thus, even if one disagrees with Schmitt's belief that politics is always a conflictual domain involving a decision over the enemy, such a theoretical frame still helps to understand the paradigm shift we have witnessed in comparison to Bush's war on terror, and the more general shift in the nature of political relations formed in modern 'war' via the drone.

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