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Drones, spies, terrorists, and second-class citizenship in Pakistan

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REVIEW ARTICLE

Drones, spies, terrorists, and second-class citizenship in Pakistan

The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions, by Columbia Law School Human Rights Clinic, New York, 2012

Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan, by Stanford Law School and NYU School of Law

Confront and Conceal: Obama's Secret Wars and Surprising Use of American Power, by David E. Sanger, New York: Crown Publishers, 2012

The Way of the Knife: The CIA, A Secret Army, and a War at the Ends of the Earth, by Mark Mazzetti, New York: Penguin Press, 2013

The Thistle and the Drone: How America's War on Terror Became a Global War on Tribal Islam, by Akbar Ahmed, Washington DC: Brookings Institution Press, 2013

Targeted Killings: Law and Morality in an Asymmetrical World, edited by Claire Finkelstein, Jens David Ohlin, and Andrew Altman, New York: Oxford University Press, 2012

'Drones: Myths And Reality In Pakistan', Asia Report no. 247, International Crisis Group, Brussels/Islamabad, May 2013

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This essay reviews seven recent books and reports that focus upon the use of US armed drones in Pakistan's Federally Administered Tribal Areas (FATA). This essay synthesizes a historical account of the program, critically interrogates key arguments and evidence advanced by the authors, and draws attention to the particular problems that confront those who live in the FATA and the second-class citizenship that the Pakistani state has bestowed upon them for reasons of domestic and foreign policy concerns. This review essay does not intend to be the final word on any of the ongoing policy debates. But it does hope to enable a wider audience to take part in these important deliberations.

Keywords: CIA; Datta Khel; drones; Haqqani Network; Osama bin Laden; Pakistan; Salala; Taliban

Introduction

The US Central Intelligence Agency (CIA) and the US Air Force developed the capacity to weaponize remotely piloted aerial vehicles, popularly known as ‘drones’, in the years prior to the terror attacks of 9/11 in effort to eliminate Osama bin Laden in his Afghan redoubt. However, for numerous reasons, it took the events of 9/11 to galvanize the Bush administration finally to approve the use of armed drones in what became the US-led ‘Global War on Terror’.¹ Analysts believe that the CIA first employed a weaponized drone on 4 February 2002 in an effort to kill bin Laden near the city of Khost, in Afghanistan’s Paktia province. The United States was in a state of declared war in Afghanistan. In what now seems unusual, Secretary of Defense Donald Rumsfeld, using the passive voice of government obfuscation, acknowledged the strike: ‘A decision was made to fire the Hellfire missile. It was fired.’² The United States expanded the use of armed drones to kill alleged terrorists and insurgents in Pakistan’s FATA. (The peculiarity of this region and the laws that govern it are discussed herein.) Subsequently, and consistent with the expanding scope of the global war of terror, the US intelligence and military agencies employed armed drones in Yemen, Somalia, Libya, and elsewhere. However, the most notorious of these theatres is the FATA in Pakistan which has been the site of the vast majority of US armed drone strikes since they began after 9/11.

As the covert use of drones has proliferated, so has the scholarly and policy-analytic literature seeking to understand various aspects of the armed drone program and its consequences. This essay critically evaluates several important recent writings on the covert armed drone program inclusive of think tank white papers, law clinic analyses, as well as single authored and edited volumes that address – to varying degrees – the US drone program in Pakistan. This literature dilates upon the legal framework –or lack thereof – for the drone program, the alleged civilian casualties that these drone strikes have claimed, the agency of Pakistanis in these drone strikes as well as larger questions about US strategy and actions within the context of the ‘Global War on Terror’. Unfortunately, many of these analyses pay inadequate attention to the legal specificities of Pakistan’s FATA and the peculiar governance structure that operates there or to the long and problematic history of civil–military relations in Pakistan that complicate notions of sovereignty. This essay does not intend to be the final word on any of the ongoing policy debates. But it does hope to enable a wider audience to take part in these important deliberations.

Introduction to the covert armed drone program in Pakistan

The first drone strike in Pakistan’s FATA was what some US officials call a ‘good will kill’ to eliminate a notorious Pakistani militant leader Nek Mohammad. Mark Mazzetti, in *The Way of the Knife* (pp. 108–9), recounts how on a hot June day in 2004, Nek Mohammad was killed by a drone while lounging in his mud compound in South Waziristan and speaking on a satellite phone with one of the

numerous reporters who frequently interviewed him. The Pakistani military claimed responsibility for the strike and the militant's demise. But that was the first lie in what would become a concatenation of unsustainable fictions.

In fact, the CIA executed the man even though he was not an al Qaeda operative and did not target the United States or its forces in Afghanistan. Nek Mohammad was an enemy of the Pakistani state responsible for killing Pakistani troops and humiliating the army after making and then breaking a peace accord with the Pakistan army. This was the CIA's first 'good will kill'. It inked, with Mohammad's blood, a secret bargain between the CIA and Pakistan's military and intelligence agency (the Interservices Intelligence Directorate (ISI)) that would grant the CIA access to Pakistan's air space and thus launch drone strikes to kill America's enemies. The ISI laid down the conditions of the covenant. CIA drones would be constrained to narrow 'flight boxes' in the FATA. This was to ensure that US spies would not have access to 'places where Islamabad didn't want the Americans to go: Pakistan's nuclear facilities, and mountain camps where Kashmiri militants were trained for attacks against India' (Mazzetti, p. 109). The ISI also insisted that the United States operate all drone flights in Pakistan under the CIA's covert-action authority (often referred to as 'Title 50' operations).³ This meant that the United States could never acknowledge that such strikes were taking place and 'Pakistan would either take credit for individual kills or remain silent.' Also, FATA's unique and archaic governance structure would facilitate this plausible deniability and obfuscate any details of the program. President Musharraf, who brokered the deal with President Bush, believed maintaining the ruse would be easy telling a CIA operative during the negotiations that 'In Pakistan, things fall out of the sky all the time' (p. 109).

Mazzetti reminds his readers that President Obama made several campaign promises to reverse some of the damage caused by President Bush's most noxious policies, including the prison abuse scandal at Abu Ghraib in Iraq, the detention facility in Guantanamo Bay for 'war criminals', the invasion of Iraq, and inattention to the 'good war' in Afghanistan. But Mazzetti also explains that, despite these promises to reverse course and restore American prestige and commitment to rule of law, in some ways Obama has embraced and even deepened his administration's commitment to those same Bush policies his supporter loathed and impugned. Mazzetti presents a compelling argument that this maiden drone strike in Pakistan's tribal areas, having taken place in the wake of reporting about abuses in the network of secret prisons run by the CIA, enabled the administration to move away from capturing terrorists to killing them. The drone program became in some measure a way of obviating the need for the controversial Guantanamo Bay detention facility. At its core, Mazzetti's book recounts how the drone program helped transform the CIA from an espionage service to a military organization while also explaining how US military forces, at the same time, became increasingly involved in espionage activities.

David Sanger's account of the drone program in *Confront and Conceal* supports many of the arguments of Mazzetti. However, Sanger's volume situates

the US covert drone program within a broader canvas of the unexpected aggressiveness with which the newly elected President Obama embraced the CIA to tackle an array of problems confronting US security interests – whether these be terrorism in Pakistan or elsewhere, Iranian and North Korean nuclear proliferation, the raid on Osama bin Laden, or the rise to power of the Muslim Brotherhood in Egypt among others. Sanger, evaluating the president's deep involvement in the CIA's operations across these theatres, concludes that 'Taken together, they are the expression of a strategy of confrontation and concealment, a precise, directed economy of force' (Sanger, p. xv). The other side of this putative 'Obama Doctrine' is that Obama has been far more hesitant to act when threats are posed to the international order but do 'not go the heart of America's own security' (p. xv).

For Sanger, the drone program in Pakistan is a manifestation of the Obama's administration's recognition of the limits of managing all of the security concerns in Pakistan. Early on the administration settled for a standard of 'Pakistan Good Enough', which was fundamentally about self-defense and mitigating the myriad dangers that Pakistan posed (Sanger, p. 134). Sanger identifies three components of this policy. The first was to help Pakistan keep its nuclear arsenal safe while 'improving the American ability to find and immobilize the weapons if that effort fails'. Second, it aimed to 'keep the Pakistani civilian government from being toppled, by the army or extremists'. Finally, it sought to 'keep up the pressure on insurgents and al-Qaeda operatives, mostly with drone strikes' (p. 134).

Sanger's essentially political assessment of the drone program provides a welcome respite from the lazy characterization of armed drone attacks as 'PlayStation' killing or 'killing by joystick' that so many commentators deploy.⁴ Sanger invokes the experience of pilots who contrast the dropping of bombs from a drone with dropping the same from a flying airplane when he or she 'could not see the faces of the people'. One pilot explained that [while piloting drones] I am much, much more aware of the human concerns in these situations' (Sanger, p. 257). Drone pilots – whose numbers are burgeoning – opined to Sanger that they come to learn 'almost know too much about their targets'. These pilots, who watch their targets for days before a strike, often see 'them play with their children or drop them at school'. One pilot, who was discomfited by such familiarity with the target, explained that it 'freaks you out . . . You feel less like a pilot than a sniper' (p. 257).

This corrective is important. The public discourse around drones typically centers on the fact that they are 'unmanned'. This has given rise to a popular image of young men (rarely women), fighting a 'video game war'. This is a gross mischaracterization: drones are piloted even though they are piloted remotely. In *all* cases, US Air Force officers are responsible for launching weapons irrespective of whether the strike is executed under the auspices of the US Central Intelligence Agency, the Joint Special Operations Command (JSOC), or even the Department of Defense. This is why drone pilots prefer the expression 'remotely piloted' to 'unmanned'. In the case of Pakistan, US Air Force pilots conduct all drone strikes covertly (Title 50) under the CIA or JSOC. These strikes in Pakistan

are distinct from those drone strikes which the Department of Defense has conducted in the course of overt military operations (e.g. in Afghanistan or Iraq).⁵ Not only are drones very much ‘manned’, it actually requires more personnel to execute a drone sortie than does a conventional aircraft sortie. The Reaper, for example, requires 171 personnel for each Combat Air Patrol. This figure includes: ‘43 mission control personnel, including seven pilots and seven sensor operators; 59 launch, recovery and maintenance personnel (including six more pilots and sensor operators; 66 Processing Exploitation Dissemination personnel for intelligence and its support (including 14 more maintenance personnel) and three “other equipment” personnel’.⁶

There are two kinds of covert armed drone attacks: personality strikes and signature strikes. While the covert armed drone program has garnered domestic and international criticism generally, the increasing use of ‘signature strikes’ has been particularly controversial because such strikes are targeted at ‘men believed to be militants associated with terrorist groups, but whose identities aren’t always known’.⁷ Whereas personality strikes require the operator to develop a high level of certainty about the target’s identity and location, based on multiple sources such as ‘imagery, cell phone intercepts and informants on the ground’;⁸ operators may ‘initiate a signature strike after observing certain patterns of behavior’.⁹ Simply put, ‘The CIA had approval from the White House to carry out missile strikes in Pakistan even when CIA targeters weren’t certain about exactly who it was they were killing’ (Mazzetti, p. 290). In principle, when conducting signature strikes, the United States assesses that the individuals in question exhibit behaviors that match a pre-identified ‘signature’ (e.g. a pattern of observable activities and/or personal networks) that suggests that they are associated with al Qaeda and/or the Pakistani or Afghan Taliban organizations.¹⁰ In practice, Mazzetti notes that ‘the bar for lethal action had again been lowered’ (p. 290).

Because the identity of the target is unknown, even during and after the strike, it is possible that these persons are innocent civilians, a likelihood that both current and former US government officials concede (Stanford–NYU Law Schools, p. 33). While the Bush administration employed both personality strikes from 2004 and signature strikes from 2008 in Pakistan, the Obama administration has redoubled the use of both types.¹¹ Mazzetti, as well as the joint report of the legal clinics at Stanford and New York University Law Schools, recounts how this can go very, very wrong. Mazzetti details a 17 March 2011 attack on a target in Datta Khel in North Waziristan as an example of the ‘perils of this approach’ (p. 290). Dozens of men were killed. According to some of Mazzetti’s interlocutors, some US officials thought the strike had been botched. Others said that the ‘tribal meeting was in fact a meeting of senior militants, and therefore a legitimate target’ (p. 291). The Stanford–NYU Law School’s joint report provides much more details of this attack (pp. 57–62), but it does not consider the possibility that the tribal meeting included militants. Rather, the report presumes that those targeted were all innocent noncombatants. While it may be impossible to know for certain what happened in Datta Khel that day, what is certain is that

there is – and can be – no accountability under these rules. Whereas the United States routinely offers apologies and compensation for civilian casualties in Iraq and Afghanistan, the United States has no mechanism to recognize civilian harm much less make amends for the same in Pakistan.

Both Sanger and Mazzetti recount the history of the evolution of the drone program in Pakistan. In the early years after the Nek Mohammad killing, the United States used armed drone attacks sporadically. Between 2004 and 2007, there were only nine attacks. The Bush administration became increasingly convinced that drone attacks were an effective way to defeat the militants in Pakistan's tribal areas. In 2008 alone, the Bush Whitehouse launched 33 strikes. When Barack Obama assumed the presidency, he became ever more reliant upon armed drone strikes to achieve his strategic objective of defeating al Qaeda. In 2009 there were 53 drone strikes, in 2010, the 'year of the drone', there were 118 drone attacks, and in 2011, there were 70 drone attacks.¹² According to data from the New America Foundation, in 2012 there were 48 drone strikes and 13 in 2013 as of May.¹³

Curiously, despite the attention of the drone program in international media, the program, program in Pakistan is still technically covert. Accurate information about the program is thus very difficult to obtain, and even accounts in peer-reviewed journals contain many errors. US government officials are generally prohibited from even acknowledging any particular drone strike in Pakistan, despite the fact that drones are heavily reported in Pakistani and international media albeit with unreliable and unconfirmable details.¹⁴

The question of Pakistani sovereignty

Officials in both the Bush and Obama administrations have justified the CIA drone program by referencing both domestic and international law. Domestically, the 2001 Authorization for the Use of Military Force (AUMF) authorizes US counterterrorism operations to target and kill members of the Afghan Taliban, al Qaeda, and its affiliates wherever they may be. Congress passed the AUMF just days after the 9/11 attacks. This statute permits the US president 'to use all necessary and appropriate force' to pursue those parties responsible for the 9/11 terrorist attacks. With respect to international law, the Obama administration justifies the program with reference to the right to self-defense, as laid out in Article 51 of the United Nations Charter. The Obama administration asserts that because the United States is in a state of armed conflict with al Qaeda and associated forces, it is entitled to target them under the doctrine of self-defense.¹⁵

Critics reject this legal rationale. The Stanford–NYU Law Schools' report voices skepticism that killings carried out today can be justified by the AUMF of 2001. The authors of that report also take considerable issue with the mobilization of the UN principle of self-defense to justify the attacks. Perhaps the most valuable contribution of the Stanford–NYU Law Schools' report is the 'Legal Analysis' the authors provide in the fourth chapter (pp. 103–24). They question whether the

American drone program violates Pakistan's sovereignty, which hinges upon whether or not Pakistan has consented to the program and whether the United States is lawfully acting in self-defense. The report also asks 'when and which individuals may lawfully be targeted under applicable international human rights or humanitarian law' (p. 103). Irrespective of how one evaluates the legality of the use of force (*jus ad bellum*), the authors remind their readers that 'the use of force against a specific individual must also comply with either international humanitarian rights law (in the context of armed conflict) or international humans rights law (outside armed conflict)' (p. 103). The report also questions whether or not the drone strikes violate US law that prohibits assassination.

On the issue of Pakistani consent, many of the articles and volumes reviewed here concede in some measure that elements of the Pakistani state assented to the drone attacks at least in the past even if the state of current cooperation is unknown (e.g. Mazzetti, Sanger, Stanford and NYU Law Schools). The International Crisis Group suspects that elements of the Pakistani state remain complicit and rebuff those who take Pakistani public denouncements at face value. Following a three-day visit to Pakistan in March 2013, Ben Emmerson, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, made categorical statements that the US drone program violated Pakistan's sovereignty. While Emmerson met no government officials – civilian or military – he announced that there was no agreement on their drone use and that this official positions was buttressed by 'a thorough search of government records' (Crisis Group, p. 20). The International Crisis Group expressed dismay that Emmerson 'ignored evidence not only of tacit Pakistani consent during the Musharraf regime, as disclosed by then-Prime Minister Gilani in 2008 and again in 2010 and subsequently confirmed by Musharraf himself, but also of continued cooperation after Musharraf's removal in mid 2008, including the presumed role of Shamsi and Shahbaz airbases' (Crisis Group, p. 20). It would be exceedingly unlikely that Emmerson's team would ever be allowed to conduct a thorough search of Pakistan's governmental records.

Daniel Markey, a member of the Secretary of State's Policy Planning Staff from 2003–2007, agrees. He has explained that:

Musharraf's consent represented both that of the Pakistani military and its civilian government. Not only did he grant his consent, but initially, the Pakistani military tried to take credit for these kinds of attacks – claiming that they weren't the work of drones, but Pakistani air strikes. This wasn't a very credible claim on Pakistan's part, but it worked for a while because the strikes were initially much less frequent than they are now. And the misdirection helped the Pakistani government weather the domestic backlash.¹⁶

Musharraf did not follow through on any of his public complaints, confirming the mutual understanding that such protests were political drama for domestic consumption. Markey explains that 'One can only assume... that the private messages from the Pakistani government were different from their public messages.'¹⁷

Sanger suggests that this permission continued at least until 2011. One of his interlocutors explained that with respect to host-nation permission, ‘A country must expressly invite the United States to use drones to strike targets inside its territory – which was the case with Pakistan until the traumas of 2011 . . . or they must be employed in a country that is “unwilling or unable to suppress the threat”’ (Sanger, p. 258). Sanger further cites a ‘A senior intelligence officer who is responsible for overseeing the program [who] insists that the United States sticks to those rules’ (p. 258).

Most of the works evaluated in this essay question the degree to which Pakistan – or elements of the state – cooperate in contemporary drone strikes. In the wake of the November 2011 US–NATO attack on the Pakistani military outpost at Salala, Pakistan civilian and military stakeholders came under increasing pressure from a restive population to decrease cooperation with United States, including their facilitation of the drone program. In an effort to publicly punish the United States and appease increasing public outcry over the Salala episode, while making few actual changes to the status quo, Pakistan’s parliament forced the United States to cease operations at the Shamsi airbase. Shamsi, however, was only one of the bases that the United States used to stage drone strikes in Pakistan as the International Crisis Group report acknowledges. While political actors publicly question the army’s right to sell Pakistan’s sovereignty to the United States, US State Department cables released by Wikileaks show that many of Pakistan’s political elites are at most indifferent to drone strikes, and that many in fact support the program.¹⁸ It remains to be seen how the newly elected Pakistani government, under Prime Minister Nawaz Sharif and his Pakistan Muslim League-Nawaz (PML-N), will contend with the drone program.

The Sharif government has tempered its opposition. Upon being designated prime minister, Sharif announced that he would negotiate with the Americans to end the program. After the May 2013 assassination of the Pakistan Taliban’s second in command, Sharif expressed ‘deep disappointment’.¹⁹ While in Washington DC, Sharif spoke about Amnesty International’s recent report on US drone strikes in Pakistan. Unexpectedly and publically, Sharif disagreed with the report’s controversial assertion that the United States is committing war crimes through the use of armed drones in Pakistan. Nonetheless, Sharif has repeated in public that he would like the United States to desist from using armed drones in Pakistan.²⁰

Despite Sharif’s insistence that the drones stop, American officials confirm that Pakistan’s military and intelligence agencies have approved of the strikes. The preferences of the military and intelligence agencies seem again and again to trump those of Pakistan’s elected officials. Speaking of this civil–military discord, Husain Haqqani, Pakistan’s former ambassador to the United States, explained that ‘the Pakistani ISI actually resisted US efforts to keep its own government in Islamabad informed . . . The ISI did not like Pakistani civilian officials finding out anything about their dealings with the United States about

armed Predator drones, but the US government wanted the civilian leadership to remain in the picture... [The ISI was in the habit of] protesting against the drones publicly while privately negotiating over whom the drones would target.²¹

Such recent reporting vindicates the suspicions of those analysts and organizations, such as the International Crisis Group, who have long suspected that some parts of the Pakistani state are complicit. Writing from an authoritative position on Pakistan's domestic politics and civil–military relations, the International Crisis Group observed that ‘even after the National Assembly – a body traditionally willing to do the military's bidding on national security issues – passed resolutions like the one in April 2012 that declared cessation of US drone strikes an official policy objective, Pakistan has not yet taken any concrete steps to challenge the program. It has not, for instance, lodged a formal complaint with the UN Security Council’ (Crisis Group, pp. 29–30). Equally important, the Pakistani government continues to deconflict the airspace which is required to permit the drones to continue operating in Pakistan. It should be recalled that drones do not simply ‘sneak in, bomb, and sneak out’. Rather, a mix of drones hovers at different levels of altitude in Pakistan for hours and even days. Deconflicting this airspace is important to prevent any conflict with civilian air traffic.

For those drone commentators who are unfamiliar with Pakistan, the public statements by politicians condemning the drones may be adequate evidence that the Pakistan state does not facilitate, much less approve, of these attacks. However, analysts who are more familiar with Pakistan understand that elected officials do not exercise control over national security policy. In fact, when democracy returned in 1990 following the death of dictator General Zia ul Haq and the electoral victory of Benazir Bhutto's Pakistan's People Party, the army ‘allowed Ms. Bhutto’ to become the prime minister provided that she agreed not to interfere in the affairs of the armed forces, which includes Pakistan's nuclear policy and key foreign policy relations with India, China, Afghanistan, and the United States among others.²² This remains the case. In July 2013, the official commission established by the Pakistan government to investigate the US raid on Osama bin Laden's safe haven in Pakistan, concluded that while constitutionally setting defense policy is the responsibility of the civilian government, ‘in reality... defence policy in Pakistan is considered the responsibility of the military and not the civilian government even if the civilian government goes through the motions of providing inputs into a policy making process from which it is essentially excluded.’²³

The reality that Pakistan's military and the intelligence agency control these levers of policy frustrates proponents of greater civilian control over the same. They, rightfully, argue that when the United States exploits such fissures in Pakistani governance, it serves to buttress the longer-term interests of the army and intelligence agencies. There is little doubt that they are correct. There is also little doubt that the United States would defer longer-term strategic goals such as

a civilian-controlled Pakistan over near-term counterterrorism goals. After all, no elected official will be pilloried before a Congressional inquiry about their failure to help Pakistan become democratic. But no elected official wants to confront the wrath of the American people or Congress as they did in the wake of 9/11.

Pakistan's 'crooked and deadly game'

Closely related to the issue of Pakistan's sovereignty is the question about Pakistan's ability and willingness to exercise the rule of law and take action against those militants operating in and from Pakistan. On this matter, the Stanford–NYU Law Schools' report concedes that 'in the absence of Pakistani consent, US use of force in Pakistan may not constitute an unlawful violation of Pakistan's sovereignty if the force is necessary in self-defense in response to an armed attack – either as a response to the attacks of September 11, 2001 or as anticipatory self-defense to mitigate threats posed by non-state groups' in the FATA (pp. 106–7). The report further points out that for this use of force to be lawful in Pakistan, Pakistan must also be shown to be 'unwilling or unable to take [the appropriate steps, itself, against the non-state group]' (p. 107). The Stanford–NYU Law Schools' report thus casts doubt upon whether contemporary drone attacks can be justified by reference to the events of 9/11. The authors are also doubtful about the resort to 'anticipatory' self-defense because it is unlikely that the majority of the drone strikes have averted attacks that are 'instant, overwhelming, and leaving no choice of means, and no moment of deliberation' (pp. 107–8).

Indeed, recent reporting casts doubt upon the US claims that drone strikes target al Qaeda and Taliban operatives or their associates to prevent imminent attack to the United States and its interests. Recent reporting by Jonathan Landay, based upon a privileged review of primary source materials, indicated that as many as '265 of up to 482 people who the US intelligence reports estimated the CIA killed during a 12-month period ending in September 2011 were not senior al Qaeda leaders but instead were "assessed" as Afghan, Pakistani and unknown extremists. Drones killed only six top al Qaeda leaders in those months, according to news media accounts.'²⁴ This is consistent with author interviews with American and Pakistani officials who concede that the US drones are killing 'Pakistani terrorists', such as Pakistani Taliban leaders (e.g. Nek Mohammad in 2004, Baitullah Mehsood in 2009, Waliur Rehman in 2013, among numerous others). What motivation does the United States have to eliminate Pakistan's enemies that pose no significant imminent threat to the United States?

I have long speculated that the US and Pakistan's intelligence agencies engage in a deadly exchange rate: the United States targets and eliminates Pakistan's foes so that it can have the opportunity to eliminate its own. The ISI fulminates domestic outrage to increase the price of American access to Pakistani air space. This is important because, as Mazzetti's account explains, in recent years US and Pakistani interests have increasingly diverged. At the beginning of

the war, both countries boasted fondly of their joint successes in targeting al Qaeda even while Pakistan preserved its ties to the Afghan Taliban and allied fighters such as the network of Jalaluddin Haqqani and India-oriented militants such as Lashkar-e-Taiba. However, as the war progressed and as American goals evolved to the point where they increasingly viewed the Afghan Taliban as the enemy rather than al Qaeda, the United States and Pakistan have essentially become locked in a proxy war. As both parties pursued different outcomes at the strategic level, both sought to achieve minimal non-negotiables from the other while increasingly viewing the other as the enemy.

It is from this perspective that the issue of Pakistan's sovereignty becomes very difficult to assess. It is well established that Pakistan has cultivated Islamist militancy from the earliest days of the state. The state has employed Islamist militants to prosecute Pakistan's proxy war with India over the disputed disposition of Kashmir and India's rising position in the international system since 1947. Pakistan has instrumentalized political Islam in Afghanistan since the mid 1950s and Islamist militancy there since the early 1970s. Yet it also the case that, in recent years, some of Pakistan's erstwhile allies have mobilized to target the state. The most prominent of these is a network of commanders who operate under the banner of the Tehreek-e-Taliban-e-Pakistan (Pakistani Taliban or TTP) and who have set their sights upon Pakistan's democracy. They have killed tens of thousands of Pakistanis including women and children, military and paramilitary personnel, police and other law-enforcement entities, bureaucrats and political figures alike.²⁵

Both Sanger and Mazzetti provide insights into the complex working relationship between American and Pakistani military and intelligence officials. Sanger recounts how US military officials, like Admiral Mullen, tried to sympathize with Pakistan's worldview and understand Pakistan's insistence that the United States betrayed Pakistan (p. 135). Mazzetti cites in this regard a CIA operative based in South Waziristan. This interlocutor explains that 'Operatives inside the ISI's Directorate C, the division of the spy agency for counterterrorism operations, often helped CIA officers hunt al Qaeda operatives... But these officers were sometimes at odds with the Pakistani spies of Directorate S, which had long been responsible for nurturing groups like the Taliban, the Haqqani Network, and Lashar-e-Taiba, which Pakistan has seen as critical proxies for its defense against India' (p. 168). It is ISI's Directorate S that helped the Americans arm the so-called mujahedeen during the Soviet war in Afghanistan and later facilitated the Afghan Taliban's rise to power during the 1990s. Since 2001, it 'has worked to see that various militant groups keep the focus of their violence inside Afghanistan, rather than turning their fury against Pakistan' (p. 168).

Whereas neither the report of the Stanford–NYU collaboration nor that of Columbia University Law School focuses on this aspect, the International Crisis Group report engages with this directly. The International Crisis Group considers that the Pakistan's military has a record of forging deals to appease some of Pakistan's Taliban groups and that these initiatives have 'have jeopardised the

safety of the communities those groups terrorise, including Shia and Bareilvi communities and women' (p. 30). The International Crisis Group (ICG) also observes that the military denies access to independent observers in FATA, precluding observers from collecting proof of human rights violations by militants. The ICG believes that 'The military's support to Afghanistan-oriented jihadi proxies, such as the al Qaeda linked Haqqani Network, as well as local Taliban groups, such as those headed by Maulvi Nazir and Hafiz Gul Bahadur, invites US drone strikes in the first place' and argues that 'Any successful and comprehensive counter-terrorism policy in FATA would have to address all these challenges candidly' (p. 30). The ICG also explains that whereas the national elected leadership had tried to be more assertive on the issues of oversight of counterterrorism and counterterrorism policies, their role remains limited with the dominant role played by the army (p. 30).

Pakistan routinely demonstrates that it is willing to crack down on terrorist groups that undermine its security while dexterously dodging repeated US requests to eliminate Pakistani and Pakistan-based militant groups that threaten the national interests and security of the United States, Afghanistan, and India among others. It should be noted that the United States has offered and Pakistan has accepted handsome remuneration for its cooperation in the war on terrorism. Between FY 2002 and FY 2013, direct overt US aid and (lucrative) military reimbursements total more than \$27 billion.²⁶ This duplicity undergirds the nature and dynamics of the US drone program in Pakistan. American officials demur from saying that the ISI (especially Directorate S) routinely orders lethal attacks on American and allied forces in Afghanistan, but as Mazzetti reports 'American electronic-surveillance net over Pakistan – and, more specifically, ISI headquarters – frequently intercepted phone calls between Pakistani spies and Haqqani Network operatives' (p. 168). While Pakistani officials publically deny the evidence altogether or write it off as the deeds of rogue ISI elements, they privately argue that Pakistan's needs assets like the Haqqani Network to protect Pakistan's western flank (pp. 168–9). It is difficult to dismiss the assessments offered by Mazzetti and Sanger that the ISI both helps and harms American interests at the same time.

Legal framework for targeted killings

Many of the objections raised by drone foes are actually not drone-specific. For example, the issues of civilian collateral damage, the lawfulness of targeting killing, questions about Pakistani complicity and opposition would also arise if the United States used other means to eliminate its presumed foes or even to conduct 'good will kills' on behalf of the Pakistani state. Drone foes opine that there is an inherent immorality imposed upon such operations because the drone operator is so far removed from the battle space that she is exposed to virtually no risk. Drone foes argue that such asymmetric costs of war may increase the war-proneness of those states with such weaponry. In considerable measure,

these concerns are misplaced. After all, every since the advent of war, the attacker has sought to extend the distance between himself and the adversary whether through lances, bows and arrows, catapults, guns, artillery, standoff air-delivered munitions, cruise missiles launched from ships, and even missiles launched from submarines. The technology of drones itself is ambivalent. Drones can be used in search and rescue operations, provide disaster relief, help locate and identify persons in a natural disaster, provide an emergency communications system, and so forth. In contrast, the framework surrounding who may be killed and when persist whether the killing is done with an armed drone or with a sniper's rifle.

Many of the books and reports reviewed in this essay wrestle with the fundamental legal framework for these targeted killings through drones, and almost all of the items reviewed here lament that the US government has abjectly failed to make its case in a language and in a forum that could be democratically debated. This vexes US allies and even some US officials. American diplomats for example are frustrated by the US position on drones in Pakistan and the administration's refusal to 'move at least some of the program out into the open' because this 'is making it impossible to answer critics of the strikes who appear on Pakistani television several nights a week, charging that a strike has killed children or other civilians' (Sanger, p. 250). With the United States tying the hands of its diplomats from offering exculpatory information, the Pakistani Taliban and Pakistan's intelligence agencies win the propaganda war and sustain widespread – but by no means universal – Pakistani opposition to drone strike (p. 251).

The Obama administration has failed to answer even the most basic question: what makes a drone strike different from a targeted assassination, which is illegal under US law (Sanger, p. 253) ? Sanger and Mazzetti provide accounts of the Obama administration's induction of Harold Koh, a professor of law at Yale Law School, into the administration in 2010. He was tasked with clarifying standards on drone use. According to Koh, the use of drones in Afghanistan was legal because this was an internationally recognized armed conflict and drones could be used like any other weapon (p. 255). Koh also agreed that the United States could pursue high level al Qaeda operatives into Pakistan under the 2001 AUMF (pp. 255–6). However, what about the lower-level militants that the CIA's drones targeting with drones in Pakistan? According to Sanger, the CIA wanted maximal latitude as did John Brennan, the White House counterterrorism advisor. Brennan pushed for a 'judicious use of drones anyplace where al-Qaeda and its associates travel'. Brennan's view was important because it was often him that made the 'final call on authorizing specific drones strikes...' (p. 256). Koh was responsible for explaining how the Obama administration distinguishes between a 'lawful extrajudicial killing' and 'unlawful extrajudicial killing' (p. 257). According to Koh, the former is 'the result of a careful study to determine that the target is an active combatant who is fighting American forces or planning attacks' (p. 257). In contrast, the former killing 'takes place without the benefit of such careful determinations' (p. 257). Such a distinction is convenient because these

judgments are rendered by the US government without any hearings and without affording any opportunity to the person in the drone's sights to defend themselves.

Not surprisingly, this approach has failed to satisfy legal scholars and policy analysts alike. In effort to facilitate a more educated discussion about the legal framework for targeted killings, Claire Finkelstein et al. have edited a commendably balanced and comprehensive volume on targeted killings that draws from a conference on the same subject in April 2011. The authors in this volume have different disciplinary backgrounds, and consequently they approach the fundamental questions of the legal framework for targeting killings in often contradictory ways. The editors make no effort to harmonize the views proffered in their volume and they demur from offering their own assessment of the best way forward. Acknowledging that this effort 'will not end the discussion', the editors hope that the contributions in this volume 'will help raise it to a higher level' (Finkelstein et al., p. 27).

In considerable measure, the editors succeed. Essentially the authors wrestle with a fundamental set of questions. How should the laws of warfare respond to the changes in the nature of warfare? The laws of warfare that have evolved assume symmetry in conduct of war. That is, the strictures that govern soldiers of one side also bind those of the other irrespective of the inherent justice of either party. Thus American soldiers encountering Nazi soldiers and Nazi soldiers encountering American soldiers had equivalent rights to kill each other in World War II. However, modern warfare is asymmetrical. Instead of fighting co-belligerents from other states, states now wage war not with forces of a sovereign power but bands of non-state actors. While the principles that have guided war have been premised on symmetry, the principles of the War on Terror are inherently asymmetrical. The editors explain that while it is permissible to target members of al Qaeda, we reject their right to target us and we exempt al Qaeda's members from the protections that are traditionally extended to enemy combatants. This is reflected in the term often used for al Qaeda and other such groups: 'unlawful combatant' (Finkelstein et al., p. v). Finkelstein argues that 'the most crucial question for the modern theory of war, then, is whether the transformation from symmetrical to asymmetrical conceptions of military engagement is ethically and legally defensible. Should we see the concept of unlawful combatants, and all that this view expresses, as a justifiable adaption to the realities of modern warfare? Or should we see it as a corruption of the values of reciprocity that have for many years formed the moral core of permissible aggression in war? (p. v). Lurking within this debate is the ever-problematic question of who is a terrorist as the use of this term is 'almost always used to make a moral judgment about the acts and agents to whom the terms are applied' (p. 3).

A second question addressed by the authors in the volume is about the line between law enforcement and military action. Proponents of the law-enforcement model argue that terrorism should be dealt with as would any other kind of serious crime: that is, through police, prosecutors, timely trials in civilian courts,

the right to confront one's accuser, and other elements of due process of law. Those who support this model tend to reject 'the idea that the targeted killing of suspected or known terrorists is morally or legally permissible, apart from situations in which the targeted individual poses an imminent... threat to the lives of civilians and killing him is the only way to stop the threat...' (Finkelstein et al., p.6).

At the other end of the spectrum are the advocates of the armed-conflict model. They reject the law-enforcement model because they believe it is 'inadequate to deal with the threat of terrorism and that, instead, suspected and known terrorists should be treated as enemy combatants whose very tactics – targeting civilians – violate the laws of war and whose threat should be met, in large measure, by military means on the basis of principles appropriately applied during a time of war' (Finkelstein et al., p. 6). Proponents of this approach believe that terrorists are not simply enemies of the states they attacked but inherently unprivileged belligerents who have neither the legal or moral permission to kill anyone because they do not distinguish themselves from civilians. Moreover, they are war criminals because they deliberately target civilians. If they are captured, proponents of this option believe that they can be tried in military courts with a less rigorous adherence to due process. Under this framework, there is no legal or moral impetus to prefer capturing to killing and it is both morally and legally permissible to use lethal force against them even when the person does not pose an imminent threat (p. 6).

Some of the chapters in this volume are less accessible than others to readers who are not familiar with the laws of warfare and legalistic, Latinized expressions. After reading several of these chapters, it becomes clear that the proponents of these two models stand in irresolvable conflict. There is rarely a middle ground between those who advocate for law-enforcement approaches and those who prefer the militarized framework. Some of the authors propose a third way that modifies the rule of law model consistent with the specificities of modern asymmetric warfare while still retaining a preference for due process and rule of law. The deliberations in this volume are rich and are not rooted to one technology of targeted killing (e.g. drones). Instead, each of the authors earnestly struggles to reconcile the realities of modern asymmetric conflict with the democratic values that democracies have struggled to maintain and preserve.

The rich intellectual exchange that takes place across the 17 chapters in this volume is a regrettable reminder of how little effort has been put forth by the US government to justify the drone program in Pakistan or elsewhere and the extent to which it has sought to obfuscate as many details as possible about the program. Mazzetti recalls an interview with Richard Blee, who had headed the unit within the Counterterrorist Center at CIA tasked with hunting bin Laden. Blee had become taciturn about the program fearing that 'What had originally been conceived as a device the United States might use selectively was being abused' (Mazzetti, p. 319). Blee continued to explain that 'The pistons of the killing machine... operate entirely without friction.' He believed that 'Every drone

strike is an execution' and warned that if 'we are going to hand down death sentences, there out to be some public accountability and some public discussion about the whole thing'. After some pause, he continued, 'And it should be a debate that Americans can understand' (p. 319).

The Obama administration has simply failed to explain in any language comprehensible to the American and global publics the legal and moral difference between 'a sticky bomb the Israelis place on the side of an Iranian scientist's car and a Hellfire missile the United States launches at a car in Yemen from thirty thousand feet in the air? How is one an "assassination" – condemned by the United States – and the other an "insurgent strike"?' (Sanger, p. 245) The Obama administration, however, is not discomfited by the public angst and concern about America's actions across the world. In fact, Sanger believes that the White House is comfortable with this technology precisely because it 'mixes... precision, economy, and deniability...' (p. 246).

Lurking across every item reviewed in this essay is a palpable frustration with the White House's adamancy in keeping the drone program in Pakistan covert. The drone 'effort and the infrastructure of the drone campaign have become so sprawling that the official refusal to discuss the subject has become ludicrous – and has begun to hurt Obama's own arguments about why this is a preferable way to hunt down terrorists with minimal casualties' (Sanger, p. 249).

Sanger, echoing Blee's above-noted concerns, believes that Obama has simply failed in his duty to clarify his administration's actions, detail the consequences of those actions, or even offer a defensible legal framework for them. Obama has generally left these matters to others to debate, albeit with few reliable data and active imaginations that are haunted by the worst case scenarios. This preference for concealed confrontation 'has left a hole in the middle of the Obama Doctrine' and has precluded 'an opportunity to explain why America acts the way it does around the globe' (Sanger, p. 245).

Debating civilian impacts

One of the most enduring questions about the US drone program in Pakistan are the suspicions about the massive loss of innocent lives. Indeed, many organizations including the New America Foundation, the Long War Journal of the Foundation for the Defense of Democracies, the Bureau of Investigative Journalism among others have all sought to track drone strikes and their outcomes. As well-intended as these efforts may be, the data are most certainly deeply flawed. While the United States typically takes the blame for the near total information blackout about who is targeted and with what outcomes, Pakistan is perhaps equally if not more so culpable. From the inception of the drone program, Pakistan insisted that it be covert. Recent reporting suggests while President Obama pledged to be more transparent in the drone program during his State of the Union address, his administration resists providing the Congress with a complete set of classified memos on the drone program. This also indicates that a

'key reason for that reticence . . . is that the documents contain secret protocols with foreign governments, including Pakistan and Yemen, as well as "case-specific" details of strikes'.²⁷

Despite recent calls that the covert drone program be moved from the CIA to the Pentagon for some countries, there has been no suggestion that the drone program in Pakistan will move to the Defense Department. This is most certainly aimed at protecting the Pakistani government and those elements within that continue to facilitate drone strikes while decrying the same. In addition, as will be explained below, the drone strikes are restricted to FATA. FATA is governed by a colonial-era legal regime that does not permit Pakistanis to travel there unless they have family ties. Foreigners cannot go there without explicit permission from the government. It is almost impossible for foreigners to go to FATA legally without the approval and even escort of Pakistan's military and intelligence agencies. (The author went on one such trip to South and North Waziristan in August 2010.) Pakistani newspapers report casualty figures based upon Taliban self-reports or even Pakistani government officials, and these figures are in turn picked up by international papers. There is rarely any attempt to confirm details independently and often the details of these accounts are contradictory.²⁸

While it is difficult to confirm media reports independently, it is not impossible as some claim (e.g. Stanford–NYU Law Schools). After all, Sebastian Abbot of the Associated Press did just that. Abbot dispatched a series of Waziristan-based stringers to independently investigate 10 of the reportedly deadliest drone strikes from the previous year and a half. The Associated Press team spoke with about 80 villagers at the sites and, contrary to the widespread perception that civilians – rather than militants – are the principal victims, the team was told that a 'significant majority [70%] of the dead were combatants'. Those figures were driven by one very deadly attack on 17 March 2011. When the Associated Press team excluded that extraordinary attack, they found that nearly 90% of the people killed were militants according to the villagers interviewed.²⁹

Increasingly, even drone foes are conceding that the civilian casualties may not be the principal reason to object to the drone program. The New America Foundation, based upon trend analysis of its own data on civilian casualties, accepts that 'it seems clear the civilian casualties have now dropped dramatically, thanks to more precision weaponry and greater care – and the casualties are far lower than if conventional bombs were dropped . . .' (Sanger, p. 250)

Irrespective of what the data say or cannot say, the specter of civilian casualties animates much of the advocacy work against drones. Unfortunately, not all of this research is empirically robust. Recently the law school clinics of Stanford University and New York University published their report (*Living Under the Drone*) in which the authors attempted to uncover and document the civilian cost of the US drone program in Pakistan's tribal agency of Waziristan. Parts of the report are to be commended, particularly when the subject stays within the remits of the authors: namely, legal dimensions. When the authors veer into social science research methodology, they make several fundamental and

avoidable empirical blunders. Worse yet, the authors evidence no understanding of these important errors and proceed to make claims about the ‘strategic effects’ of the drone program which their minimal, and highly problematic, sample of data cannot support. Because this report continues to receive accolades by those who have not assessed its methodology, it is worth reviewing their data collection and handling in some detail here.

First and foremost, this report is the result of advocacy-driven investigation. As the authors acknowledge, ‘In December 2011, Reprieve, a charity based in the United Kingdom, contacted the Stanford Clinic to ask whether it would be interested in conducting independent investigations into whether, and to what extent drone strikes in Pakistan confirmed to international law and caused harm and/or injury to civilians.’ (Stanford–NYU Law Schools, p. i) It is important to note that Reprieve, and its Pakistani partner organization The Foundation for Fundamental Rights (FFR), have been vigorous foes of the drone program and have argued forcefully for its termination. Thus at the inception of this project, the law schools were requested to conduct research on behalf of an organization that is fundamentally opposed to drones. With proper social science methods, the impact of this could have been mitigated. However, the researchers only compounded this problem of conflict of interest by allowing Reprieve and FFR to provide the research team with logistical support in Pakistan. In fact, the FFR ‘assisted in contacting many of the potential interviewees, particularly those who reside in North Waziristan, and in the difficult work of arranging interviews’ (p. i).

The report is based upon a meager 130 ‘interviews with victims and witnesses of drone activity, their family members, current and former Pakistani government officials, representatives from five major Pakistani political parties, subject matter experts, lawyers, medical professionals, development and humanitarian workers, members of civil society, academic, and journalists’ (Stanford–NYU Law Schools, p. 2). The authors concede that they did no interviews in North Waziristan or any of the other agencies comprising the FATA. Rather, they conducted their interviews during two separate trips to Pakistan in March and May 2012. All of the interviews were conducted in the twin cities of Islamabad and Rawalpindi, Peshawar, and Lahore. The authors claim that they conducted interviews with 69 ‘experiential victims’. These experiential victims claimed to be ‘witnesses to drone strikes or surveillance, victims of strikes, or family members of victims from North Waziristan’ (p. 2). The authors of the report readily concede that the ‘majority of the experiential victims interviewed were arranged with the assistance of the FFR, a legal nonprofit based in Islamabad that has become the most prominent legal advocate for drone victims in Pakistan . . . Some interviews also included a researcher from either Reprieve or the Foundation for Fundamental Rights’ (, p. 3). The sample from which the researchers base their conclusions is at best a convenience sample, riven with dependent-variable selection bias. While the interviewees were not compensated, they were provided with travel arrangements by FFR. While the authors do not concede this point, the presence of FFR and/or Reprieve likely influenced the

information provided since they provided the logistical support that enabled their travel.

Given that Reprieve and FFR are staunch drone foes, it is doubtful that the organizations would provide an unbiased selection of interview subjects for the study. In complete disregard of any scientific principle of sample selection, the authors of the report made no effort to solicit the views of pro-drone Pakistanis. Despite the persistent belief that such persons do not exist, polling data suggest sizeable minorities do support drone strikes if for no other reason than doing nothing is not an option for those who live under the tyranny of the militants in FATA. In addition, Pakistani newspapers do publish editorials by pro-drone Pakistanis.³⁰ Yet the report does not once consider those who believe that drones are a lesser evil than the militants ensconced in Waziristan and other tribal agencies of FATA.

While the authors were apparently oblivious to this fundamental conflict of interest and likely ensuing bias in their interview data, they nonetheless recognized that the presence of foreigners would compromise the data. After all, they explained that fear of retribution ‘from all sides – Pakistani military, intelligence services, non-state armed groups – for speaking with outsiders about the issues raised in this report’ (Stanford–NYU Law Schools, p. 4). Yet the authors were surprisingly willing to take every utterance by their interviewees at face value despite these challenges that they acknowledge. The authors further claim that that ‘The research team has made extensive efforts to check information provided by interviewees against that provided in other interviews, known general background information, other reports and investigations, media report, and physical evidence wherever possible. Many of the interviewees provided victims’ identification cards and some shared photographs of victims and strike sites, or medical records documenting their injuries. We also reviewed pieces of missile shrapnel’ (p. 5). All of this is reassuring except for the fact none of the research team are actually forensic or munitions experts and thus they cannot in fact prove that any of this damage to human life or property was due to drones. Moreover, they do not provide any actual example of independent confirmation of information provided orally by respondents. As the work of Sebastian Abbot attests, such actual independent confirmation is possible although it adds a layer of difficulty and cost to the exercise.

Expecting researchers to prove that persons who were killed actually existed in the first instance or to prove that that injury or death is due to drones may seem like an inappropriate request. Unfortunately, it is not. Pakistani media has reported that individuals and groups have circulated fraudulent photos of persons whom they alleged were injured by drones but were not.³¹ It is also relatively easy to obtain fake birth and death certificates in Pakistan through bribery.³² Finally, it should be understood that North Waziristan is not only afflicted by drones. Since the flight of the Afghan Taliban and their al Qaeda associates to Waziristan in late 2001, the residents of this tribal agency and others have been terrorized by these militants and their Pakistani allies who have sought to

establish micro-emirates of Sharia through the FATA and nearby areas. Suicide and other attacks at markets, sporting facilities, schools, military and paramilitary outposts have become common place. Pakistani Taliban have killed reporters, politicians, government officials, barbers, purveyors of CDs as well as anyone that they believe are working with the state or the Americans to hinder their reign of impunity.³³ In addition, Pakistani military and paramilitary organizations have also operated in the tribal areas. Oddly, the authors of this report assume that their interlocutors' experience of post-traumatic stress disorder and other disruptions to ordinary life is attributable solely to drones. The authors make no effort to consider other explanations for such observations much less attempt to disambiguate the potential sources of harm they experienced.

My critique of the research methods employed in this particular study should not be construed as a blanket critique of all efforts of this type. Indeed, it is critical that researchers try to break through the deliberate veil of opacity that the US and Pakistani governments have erected. However, it is also imperative that researchers do so with the most careful application of research methods and with the upmost attention to issues that could compromise the interviews and the data that may emerge.

Drones and the second-class citizens of FATA

The restriction of drone strikes within Pakistan to FATA (which comprises seven tribal agencies and six frontier regions) is important to understanding the drone policy problematic in Pakistan. This is for several often under-appreciated reasons. First, and foremost, Pakistan's constitution does not apply to FATA. Instead, FATA is governed by a colonial governance instrument called the Frontier Crimes Regulation, or FCR. As a consequence, foreign journalists are prohibited from traveling to FATA without the approval of the ministry of interior and/or an escort from the military and intelligence services. Even ordinary Pakistanis cannot legally visit the area unless they themselves have family ties there. Thus, it is extremely difficult to obtain accurate information from what has long been something of an informational black hole. These restrictions serve the Pakistani state's interests because it has long used FATA to host a dizzying array of Islamist militant groups operating in Afghanistan, India, and even Pakistan itself.³⁴ Some of Pakistan's most hardened Islamist militants as a consequence have found sanctuary in FATA.

Second, each agency is governed by a government representative known as a 'political agent'. The political agent works with tribal elders, called maliks, who collaborate in part due to their desire to retain their privileged status and in part due to payments received from the government via the agent. The political agent is responsible for administrative duties and ordinary law and order. At his discretion, he can refer a civil dispute to a council of maliks (*jirga*), which decides how the dispute should be resolved. The political agent's decree is final and binding and no judicial appeal is available. Perhaps the most controversial aspect of the FCR is

the wide-scale coercive powers it affords the state for ‘controlling, blockading, and taming a “hostile and unfriendly tribe.”’³⁵ These coercive powers include ‘collective punishment’, under which the state is authorized to seize ‘wherever they may be found, of all or any of the members of such tribe, and of all and any property belonging to them or any of them’ for any offense committed by one or more members of a tribe. The state can even banish or exile an individual or group of individuals from an agency altogether.³⁶ In effect, entire communities can be ousted from their homes, fined, and have their revenues and properties seized or even forfeited altogether, ‘simply because a murder or culpable homicide was committed or attempted in their area’.³⁷ Because ‘the application of collective punishment . . . disregards individual culpability and identifies the innocent with the guilty’ and violates numerous provisions of Pakistan’s own constitution, the applicable provisions have been struck down by Pakistan’s high courts, with no effect.³⁸ The FCR is also inconsistent with several international conventions to which Pakistan is a signatory, including the Universal Declaration of Human Rights, which affords everyone the right to an effective remedy by competent national tribunals and protection from arbitrary arrest, detention, and exile.³⁹

Despite the fact that Pakistan’s own high courts have demanded that the FCR be repealed, no government has ever done so. In fact, the state has long made use of the coercive powers it provides. In 2004, the Pakistan army, under the leadership of army chief and President Pervez Musharraf, used collective punishment to roust foreign Islamist militants in Waziristan. They used and threatened to use home demolition, the seizure of businesses, and the forfeiture of other properties and assets to persuade locals to surrender foreigners living among them. During Pakistan’s military operations in FATA, which began in 2002 and continue today, the army has denied individuals and specific tribes access to major roads that prevented them from escaping the conflict and reaching humanitarian aid.⁴⁰

These aspects of FCR, which render Pakistanis who live in FATA ‘lesser citizens’, have enormous and nearly universally unacknowledged implications for the US use of armed drones in FATA. As noted above, under the FCR an entire family or clan can be punished just because one member has granted terrorists sanctuary in his home. This clause has been used to justify the Pakistani air strikes and draconian army operations that have caused enormous civilian casualties and forced displacement. As of March 2013, the United Nations reports that there are still some 758,000 persons who have been internally displaced due to ongoing security operations in FATA as well as parts of Khyber Pakhtunkhwa.⁴¹ Part of the unrecognized legitimizing discourse surrounding the use of armed drones in FATA is the unfortunate fact that residents of FATA are second-class citizens, and the legal regime under which they are governed permits the state to ignore individual innocence and guilt. The United States exploits this predicament, but Pakistan perpetuates it by sustaining a legal regime that discriminates between the citizens of the so-called ‘settled areas’, where the constitution applies, and those lesser citizens under the rule of the FCR.

There is a third, equally unappreciated, aspect of the tribal areas: because FATA is governed under the FCR, it has no police forces; instead, paramilitary, military, and tribal militia forces keep order. Thus the arrest of militants, collection of evidence, and subsequent prosecution in Pakistan's courts is not a viable option in FATA. (In contrast, high-value targets captured in the rest of Pakistan are tried under Pakistani law or, in some cases, remanded to the United States.) Thus while law and order approaches may be infinitely preferable to the use of armed drones, successive Pakistani governments have closed this route by choosing to defer bringing the area and its people fully under Pakistan's constitution.⁴² Thus the only alternatives to doing nothing to combat the militants in FATA, who operate against international forces in Afghanistan and who are responsible for killing some 43,000 Pakistanis since 9/11, are devastating and indiscriminate Pakistani military operations or special forces raids into Pakistani territory by Afghanistan-based troops.⁴³

American and Pakistani officials understood that the FCR would frustrate the ability of foreign and even Pakistani journalists to learn about the drone program, allowing both states to cultivate confusion about its origins. Indeed, in the early years, the Pakistan military actually took credit for the attacks, which they said were conducted with conventional attack aircraft (e.g. F-16s and attack helicopters).

Of thistles and drones?

Whereas there is a growing consensus that reforming FATA and extending full citizenship to the people who live there is a necessary if insufficient condition to ameliorate the problems of lawlessness and militancy there, Akbar Ahmed advocates for the opposite. Ahmed, whose claim to fame is that he served for two years as a 'political officer' in Waziristan in 1979 and 1980 and who is now a professor at American University in the School of International Service, believes that only by restoring the old colonial system can order be maintained. For Ahmed, the image of the drone is a metaphor for American hubris, power, and warmongering, and stumbling from error to terror in its war on 'tribal Islam'. The thistle in turn is a metaphor for a category of persons he posits to be resilient 'tribal Muslims'.

Much of the volume is dedicated to impugning Americans for being foolhardy, culturally ignorant, simpletons who reflexively resort to violence to handle problems they cannot understand. It should be noted that Ahmed's own 'in-country' expertise is dated. By his own admission, he has not been to Waziristan since he vacated his position as political agent.⁴⁴ Whereas he lampoons Americans for their caricatures of the Muslims they fight in Afghanistan, Iraq, and Pakistan and elsewhere, Ahmed's own depictions of the 'tribal Muslims' are hardly more sophisticated. Writing of the Americans and their drones in FATA, Ahmed explains that 'For all that these thistle-like tribes knew, the Americans who arrived in their midst could have come from Mars,

a reaction not unlike that captured by the 2011 Hollywood film *Cowboys and Aliens*, set in the Old West of the nineteenth century . . . To the tribesmen, the Americans who came from nowhere in flying machines no one had seen before and abruptly disappeared with their catch were seen as aliens . . .’ (p. 5). Whereas for Ahmed, the Pashtun is a rustic with no desire other than to remain far from the reaches of the state, more thoughtful analysis posits the Pashtun as one of the most globalized communities of Pakistan whose diaspora expands from Southeast Asia, Central Asia, Southwest Asia, and onward to Europe and North America.⁴⁵

In this third and final book in a trilogy, he examines ‘relations between the United States and the Muslim World’ (Ahmed, p. 34). Here, he develops a concept called ‘tribal Islam’ and the concomitant ‘tribal Muslim’ which is over-determined by their tribes’ ‘segmentary lineage’ systems (p. 15). Ahmed’s confidence in the changeless categories of tribes and tribalness is frustratingly out of touch if not outright Orientalist.⁴⁶ This ostensible tribal Muslim identity comes with a ubiquitous ‘code of honor’ whether the individual is from Somalia, Yemen, Chechnya, or Waziristan. This ‘honor code’ dictates individuals’ actions and reactions alike and often puts the individual into conflict between the demand for revenge as dictated by tribal codes of honor and the requirement to remain peaceful as required by Islam. Akbar’s entire volume reduces millions of Muslims to a category of ‘tribal Muslims’ who have no legitimate place that is integrated within a modernizing and globalizing world. Akbar even locates ‘Bin Laden’s dilemma’ in this very construct of ‘balancing tribal and Islamic identity. He writes that ‘Bin Laden’s quandary was painfully apparent: he must either abjure his tribal identity [Yemeni], with its emphasis on honor and revenge, or his Islamic one, with its categorical prohibition of suicide and the killing of innocents’ (p. 97).

Few chapters epitomize Ahmed’s romanticization of Pakistan’s colonial past and his own legacy position as political agent in FATA as the second chapter, ‘Waziristan: ‘The Most Dangerous Place in the World’. This chapter is festooned with rodomontade and braggadocio. He explains how he mobilized the colonial-era FCR to bring a wanted brigand, Safar Khan, to justice who was hiding on ‘the same border as bin Laden’ (Ahmed, p. 43). Needless to say, that is not where bin Laden was hiding: rather, in a cantonment town of Abbottabad in Pakistan’s Khyber Pakhtunkhwa Province near Pakistan’s famed military academy at Kakul. Ahmed actually has the hubris to compare his quest for Safar Khan to the search for Osama bin Laden. He explains that he was able to ‘get his guy’ by appealing to tribal honor and thus earned their loyalty. Ahmed explains that ‘After lengthy negotiations, Safar [the miscreant] was promised a fair trial by jirga in Baluchistan, where his crimes were committed, if he surrendered to me. I assured him that I would also speak with the political agent in Zhob [in Balochistan] to see that he was treated fairly under tribal custom, but I could only do this if he came to me unconditionally. The exchanges were thick with the words “trust” and “honor”. Safar agreed. In January 1980, accompanied by the

leading Wazir and Mehsud *maliks* (elders), Safar formally surrendered to me . . .’ (p. 45). Ahmed believes that had the United States operated as he had in 1978–1980, America’s global war on tribal Islam would have been avoided.

Ahmed’s idyllic fondness for the repressive colonial era is out of touch with contemporary critics who believe that the only way to pacify the region is by integrating the residents of FATA and making them fully enfranchised citizens of the state. The recent Crisis Group report is clear that only way to proceed is by ‘incorporating FATA into the constitutional mainstream, abolishing the Frontier Crimes Regulations (FCR, 1901) and replacing it by the Pakistan Penal Code, Criminal Procedure Code and Evidence Act’ (Crisis Group, p. v; see also pp. 28–34). The Human Rights Commission of Pakistan has denounced the FCR as a ‘bad law nobody can defend’, except it would seem Akbar Ahmed.⁴⁷

Ahmed’s actual discussion in ‘Drones over Waziristan’ is an inelegant and uncritical rehash of the various reports on the putative civilian casualties cited elsewhere in this essay (Ahmed, pp. 83–5). For Ahmed, the use of drones ‘has thwarted any prospects of peace between Pakistan and the tribes of Waziristan’ (p. 81). Of course, Ahmed does not reflect upon the numerous peace deals that the Pakistan army sought to forge with the Pakistan Taliban that were broken before the ink was dry and which never resulted in peace.

In the sixth chapter (‘How to Win the War on Terror: Stopping a Thousand Genocides Now’), Ahmed expresses disgust with the legions of ‘instant terror experts’ that have misguided the excessive use of American power (p. 305). However, he does not situate himself among these instant terrorism experts although he surely should be. His book *Resistance and Control in Pakistan*⁴⁸ has been recycled and republished under various titles since 9/11 when demand for information about Pakistan’s FATA surged. Ahmed himself has been an active participant in the ‘belt way bandit’ talk circuit where he has explained to his audiences (which has included this author on occasion) that his experience from 1978 to 1980 remains relevant today. Without any sense of irony, he writes that ‘The American lack of understanding of the forces at play in Muslim tribal societies was puzzling considering the resources diverted to the armies of expert and the countless think tanks to study the terrorist problem set as it was in tribal societies’ (p. 317).

With breathtaking guile, Ahmed laments that ‘anthropology’s moment came and passed swiftly. Anthropologists were unsuccessful in fielding an authoritative name on par with public intellectuals’ (Ahmed, p. 319). As Ahmed must surely know, the military sought to engage anthropologists and even integrate them into the military structure in Iraq and Afghanistan. However, and Ahmed omits this fact, the American Anthropologist Association issued a formal statement in October 2007 officially opposing this initiative.⁴⁹ With this formal denouncement of this program actual anthropologist feared that participating would ruin any prospects for academic employment. As such, the program was never able to attract the kind of expertise that it required and ultimately failed in its most capacious goals.

The absurdity of Ahmed's thesis in *The Thistle and the Drone* is captured in his elegiac for his 'Waziristan model' in which 'ordinary people along with their tribal elders are mobilized to support the administration in marginalizing criminals in order to make them ineffective... When the model works, no problem in the field is too great to resolve' (Ahmed, p. 338). Again, without any sense of self-awareness, he proclaims that 'modern society needs to understand the context and history of conflicts and not impose an artificial external frame or ideology onto them' (p. 348). Yet this is exactly what Ahmed does.

Implications and the future of drones over Pakistan?

While many of the pieces of analysis and scholarship reviewed here disagree on many points, they all tend to agree on one: there must be more transparency. After all, if the CIA cannot positively identify who has been killed in any given signature strike, how can the CIA assess the degree to which this strike advanced US interests? If the United States cannot acknowledge any particular drone strike, how can it acknowledge mistakes in which innocents have been killed and how can it attempt to make amends? Similarly, how can the United States continue to use 2001-era legislation to kill persons today without any transparency or recourse to law. These are questions that even proponents of the drone program ask.

Increasing judicial and Congressional frustration with the official secrecy surrounding the otherwise extremely visible program, as well as nagging questions about the degree to which drone strikes are covered by the 2001 Authorization for Use of Military Force, have prompted Obama officials to consider shifting the program from the CIA to the Department of Defense.⁵⁰ The CIA-conducted drone strikes are a covert action falling under Title 50. Should the Department of Defense assume control, the program would come under Title 10 and would be carried out as a clandestine activity. Although the two are often conflated, the distinction between clandestine and covert action is important. A covert action is one in which the involvement of the sponsoring government is meant to remain secret. A clandestine activity, on the other hand, is intended to remain a secret, but should it be revealed it can be publicly acknowledged.⁵¹ If the drone program came under Title 10, US officials could, in principle, discuss them. But while there may be more transparency under Title 10, such activities actually receive less oversight than those carried out under Title 50, which are under the purview of the intelligence committees of both the House and the Senate. Thus it remains unclear whether transferring the drone program to the Department of Defense will have a significant effect on the transparency of the program.⁵² In the end, this may well be a moot discussion because the Pakistanis would no doubt kill the program unless it remained covert at least in Pakistan.

This gives rise to a disquieting set of questions that simply cannot be answered. If the CIA is conducting 'good will kills' of Pakistani militants in exchange for access to Pakistani airspace and the chance to eliminate America's enemies, are these 'good will kills' legal unless there is an explicit document

whereby Pakistan has assented to such good will kills? Whose permission is adequate? That of the military, the intelligence services, the prime minister, the parliament?

The current guise of the program also undermines the development of civilian control over Pakistan's military. Pakistan's army and ISI seems to be perpetual beneficiaries of this program: the United States kills their enemies, while they take neither credit nor blame. At the same, Pakistani politicians who protest the drones but have no ability to stop them appear continuously ineffective to the Pakistani voter who largely loathes the drone program. This perceived incompetence in turn buttresses the army's claim that politicians are feckless and unable to protect Pakistan thus providing the continual justification for the army to dominate the portfolios of defense and national security.

Even after carefully reading these varied works, this author is left genuinely pondering what are the alternatives to drones in Pakistan's tribal areas? Both the International Crisis Group and the Human Rights Commission of Pakistan agree that the FCR is part of the problem. Equally they agree that the citizens of FATA are denied basic human rights, and the Pakistani state as well as the militants are intimately connected to the culture of violence that has ensnared and terrorized many of FATA's residents. If the state is unwilling to give up its commitment to Islamist militants as tools of foreign policy, end the FCR, and render FATA's residents fully enfranchised citizens with access to police, courts, and other institutions of rule of law, how can the problem of Islamist terrorism in FATA end? This problem is not restricted to Pakistan as these militants operate in South Asia and beyond. Equally important the militants there have killed tens of thousands of Pakistanis in the last decade. Oddly, the use of US armed drones in FATA may actually save more Pakistani lives than Americans. How ironic it would be if American drone pilots are violating their own laws to kill Pakistani terrorists who mostly kill Pakistanis while angry Pakistanis denounce the program in disbelief that this could possibly be true?

Notes

1. See *Frisbee*, 'Weaponizing the Predator UAV'.
2. Quoted in John Sifton, 'A Brief History of Drones: With the invention of drones, we crossed into a new frontier: killing that's risk-free, remote, and detached from human cues', *The Nation*, 7 February 2012. <http://www.thenation.com/article/166124/brief-history-drones#ixzz2V4xA1E9V>.
3. *Wall*, 'Demystifying the Title-10 Title 50 Debate'.
4. See e.g. Brent Sadler, 'CNN gets rare up-close look at Predator drones', *CNN.com*, 9 June 2006. <http://www.cnn.com/2006/WORLD/asiapcf/06/09/sadler.predator.btsc/>; Nicola Abé, 'Dreams in Infrared: The Woes of an American Drone Operator', *Spiegel Online*, 14 December 2012. <http://www.spiegel.de/international/world/pain-continues-after-war-for-american-drone-pilot-a-872726.html>.
5. Elizabeth Bumiller, 'A Day Job Waiting for a Kill Shot a World Away', *The New York Times*, 29 July 2012. <http://www.nytimes.com/2012/07/30/us/drone-pilots-waiting-for-a-kill-shot-7000-miles-away.html?pagewanted=all&r=0>.

6. See Winslow Wheeler, 'The MQ-9's Cost and Performance', Time.com, 28 February 2012. <http://nation.time.com/2012/02/28/2-the-mq-9s-cost-and-performance/#ixzz2V73HzPye>. Winslow adopted these figures from 'slide 4' of 'The Way Ahead: Remotely Piloted Aircraft in the United States Air Force', briefing slides presented by Lt. Gen. Dave Deptula, Deputy Chief of Staff, Intelligence, Surveillance and Reconnaissance, undated, at http://www.daytonregion.com/pdf/UAV_Rountable_5.pdf. The slide cites 168 people but the data on the slide indicate 171; 177 for surge purposes' (f.n. 11, Winslow).
7. Adam Entous, Siobhan Gorman and Julian E. Barnes, 'US Tightens Drone Rules', *Wall Street Journal*, 4 November 2011, accessed at online.wsj.com/article/SB10001424052970204621904577013982672973836.html?mod=WSJ_hp_LEFT_TopStories, 9 May 2013.
8. Greg Miller, 'CIA Seeks New Authority To Expand Yemen Drone Campaign', *The Washington Post*, 18 April 2012, accessed at http://articles.washingtonpost.com/2012-04-18/world/35453346_1_signature-strikes-drone-strike-drone-program, 9 May 2013.
9. Columbia Law School, 'The Civilian Impact of Drones', 32–3.
10. Micah Zenko, 'Reforming US Drone Strike Policies', January 2013, accessed at <http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736?co=C009601>, 9 May 2013; 'The Civilian Impact of Drones'. Behaviors that the CIA may interpret as probative of involvement with hostile forces include traveling in convoys of vehicles that behave similarly to fleeing al Qaeda or Taliban; presence in areas that seem to be terrorist training camps; and participating in what the CIA adjudges to be militant gatherings, perhaps because they are armed and so forth. See Cora Currier, 'How Does the US Mark Unidentified Men in Pakistan and Yemen as Drone Targets?' ProPublica, 1 March 2013, accessed at <http://www.propublica.org/article/how-does-the-u.s.-mark-unidentified-men-in-pakistan-and-yemen-as-drone-targ>. On the CIA targeting Pakistani Taliban members as well as al Qaeda and the Afghan Taliban, see Jonathan Landay, 'Obama's drone war kills 'others', not just al Qaida leaders', McClatchy.com, 9 April 2013, accessed at <http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html#storylink=cpy>.
11. Entous, Gorman, and Barnes, 'US Tightens Drone Rules'; Cora Currier, 'Everything We Know So Far About Drone Strikes', ProPublica.com, 5 February 2013, accessed at <http://www.propublica.org/article/everything-we-know-so-far-about-drone-s-trikes>.
12. See also Peter and Tiedemann, *The Year of the Drone*.
13. New America Foundation, 'The Drone War In Pakistan', updated June 2013. <http://natsec.newamerica.net/drones/pakistan/analysis>.
14. Acting US Ambassador to Pakistan met with anti-drone Code Pink activists in November 2011. Even discussing the existence of the program and the possible outcomes of the strikes cause Hoagland to remark that 'I probably just, you know, got into big trouble with what I just said.' 'Acting US ambassador to Pakistan met with Code Pink, discussed "classified" drone casualty counts', *The Daily Caller*, 5 November 2011, accessed at <http://dailycaller.com/2012/11/05/acting-us-ambassador-to-pakistan-met-with-code-pink-discussed-classified-drone-casualty-counts/#ixzz2EJ4GxBjr>. However, in April 2013 the Obama Administration offered its first detailed justification of a program it had previously refused to discuss. See Charlie Savage, 'Top US Security Official Says 'Rigorous Standards' Are Used for Drone Strikes', *The New York Times*, 30 April 2013, accessed at http://www.nytimes.com/2012/05/01/world/obamas-counterterrorism-aide-defends-drone-strikes.html?_r=0.
15. Masters, 'Background: Targeted Killing'.

16. Daniel Markey comments transcribed in Ritika Singh, 'Lawfare Podcast Episode #20: Daniel Markey on US-Pakistan Terrorism Cooperation and Pakistan's Extremist Groups', 27 September 2012, accessed at <http://www.lawfareblog.com/2012/09/daniel-markey-on-u-s-pakistan-terrorism-cooperation-and-pakistans-extremist-groups>.
17. Singh, 'Lawfare Podcast Episode #20'.
18. Inter alia, John Reed, 'Pakistan Boots US From Drone Base', *Defensetech.com*, 30 June 2011, accessed at <http://defensetech.org/2011/06/30/pakistan-boots-u-s-from-drone-base/>; 'US-Pak intelligence cooperation continues', *The Dawn*, 23 January 2012, accessed at <http://dawn.com/2012/01/23/us-pak-intelligence-cooperation-continues/>; Chris Woods, 'CIA drones quit one Pakistan site – but US keeps access to other airbases', *The Bureau of Investigative Journalism*, 15 December 2011, accessed at <http://www.thebureauinvestigates.com/2011/12/15/cia-drones-quit-pakistan-site-but-us-keeps-access-to-other-airbases/>; 'Pakistan Helps US Drones Campaign: Reuters', *HuffingtonPost.com*, 22 January 2012, accessed at http://www.huffingtonpost.com/2012/01/22/pakistan-us-drones-campaign_n_1221774.html; 'US embassy cables: Pakistan backs US drone attacks on tribal areas', *The Guardian*, 30 November 2010.
19. 'Nawaz Deeply Disappointed by Drone Strike', *The Dawn*, 31 May 2013. <http://beta.dawn.com/news/1015193/nawaz-deeply-disappointed-by-drone-attack-pml-n-wants-us-to-give-peace-a-chance>.
20. Murtaza Ali Shah, 'US Drone attacks not war crimes; to end soon: Nawaz', *The News*, 25 October 2012. <http://www.thenews.com.pk/Todays-News-13-26261-US-drone-attacks-not-war-crimes;-to-end-soon-Nawaz>.
21. Husain Haqqani quoted in Michael Hirsh, 'Pakistan Signed Secret 'Protocol' Allowing Drones', *National Journal*, 23 October 2013. <http://www.nationaljournal.com/white-house/pakistan-signed-secret-protocol-allowing-drones-20131023>.
22. Khan, *Eating Grass*, 227–8.
23. *Abbottabad Commission*, Report, 159.
24. Jonathan Landay, 'Obama's drone war kills 'others,' not just al Qaida leaders', *McClatchy.com*, 9 April 2013. <http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html#storylink=cpy>.
25. Fair, 'The Militant Challenge in Pakistan'.
26. Kronstadt, 'Direct Overt US Aid'.
27. Michael Hirsh and Kristin Roberts, 'What's in the Secret Drone Memos: Sources say Obama won't release them because of classified agreements with foreign governments', *National Journal*, 22 February 2013. <http://www.nationaljournal.com/nationalsecurity/what-s-in-the-secret-drone-memos-20130222>.
28. C. Christine Fair, 'The Problems with Studying Civilian Casualties from Drone Usage in Pakistan: What We Can't Know', *The Monkey Cage*, 17 August 2011. <http://themonkeycage.org/2011/08/17/the-problems-with-studying-civilian-casualties-from-drone-usage-in-pakistan-what-we-can%E2%80%99t-know/>.
29. Sebastian Abbot, 'AP Impact: New Light on Drone War's Death Toll', *Associated Press*, 26 February 2012. <http://news.yahoo.com/ap-impact-light-drone-wars-death-toll-150321926.html>.
30. See Fair, Kaltenthaler, Miller, 'The Drone War'.
31. See 'Right-Wing Bigots Circulating Fake Pictures of Drone Victims to Deflect Attention from Taliban's Attack on Malala', *Defense.pk.org*, 12 October 2012. <http://www.defence.pk/forums/national-political-issues/212780-right-wing-bigots-circulating-fake-pictures-drone-victims-deflect-att.html#ixzz2VHNrcdis>; Sarah Khan, 'Islamist Bigots Circulating Fake Pictures of Drone Victims to Deflect

- Attention from Taliban's Attack on Malala', *Let Us Build Pakistan*, 12 October 2012. <http://criticalppp.com/archives/229851>.
32. 'Conwoman Faked Own Death from Dehydration in Remote Pakistan Hospital to Claim £2m Life Insurance', *Mail Online*, 20 January 2011. <http://www.dailymail.co.uk/news/article-1348882/Rozeena-Butt-faked-death-Pakistan-claim-2m-life-insurance.html#ixzz2VHQ3WilR>. Pakistanis routinely face corruption in securing birth and death certificates among other public services. For a general overview of corruption in Pakistan, see Transparency International-Pakistan, 'National Corruption Perception Survey 2011', 28 December 2011. <http://www.transparency.org.pk/report/ncps2011/ncps2011.pdf>.
 33. See Pakistan Commission for Human Rights, *State of Human Rights in 2012*.
 34. Haqqani, *Pakistan*; Rubin, *The Fragmentation of Afghanistan*; Hussain, *Pakistan and the Emergence of Islamic Militancy*; Swami, *India, Pakistan and the Secret Jihad*.
 35. Osama Siddique, 'The Other Pakistan: Special Laws, Diminished Citizenship and the Gathering Storm', 5 December 2012, accessed at <http://dx.doi.org/10.2139/ssrn.2185535>.
 36. Gulman S. Afridi, 'FCR's Collective Responsibility', *The Dawn*, 2 January 2012, accessed at <http://dawn.com/2012/01/02/fcrs-collective-responsibility>.
 37. Siddique, 'The Other Pakistan', 11.
 38. Afridi, 'FCR's Collective Responsibility'.
 39. Aamenah Yusufzai, 'Bringing Justice to FATA', *Dawn.com*, 23 November 2010, accessed at <http://blog.dawn.com/2010/11/23/bringing-justice-to-fata>. Technically aspects of the FCR have been amended via a presidential order in August 2011. However, none of these have been implemented. Chaudhry, *The Frontier Crimes Regulation*.
 40. Yusufzai, 'Bringing Justice to FATA'; Khan, 'FATA'. Surprisingly the FCR was critically discussed in US Department of State, '2004 Country Reports on Human Rights Practices – Pakistan'.
 41. UN Office for the Coordination of Humanitarian Affairs, 'Humanitarian Dashboard – Pakistan'.
 42. White, 'The Shape of Frontier Rule'.
 43. Like many databases, the Pak Institute for Peace Studies is not always clear about what sorts of attacks it tallies and what criteria it uses to code different kinds of violence. These numbers are taken from their annual reports from 2008 and 2011. They reported that 7107 Pakistanis had been killed in 2011; 10,003 in 2010; 12,632 in 2009; 7997 in 2008; 3448 in 2007; 907 in 2006; and 216 in 2005, for a total of 42,310. Pak Institute for Peace Studies, *Pakistan Security Report 2008*, *PIPS Security Report 2009*, *Pakistan Security Report 2011*, Pak Institute for Peace Studies, 'Civilian Casualties'.
 44. Interview with Akbar Ahmed by Steve Inskeep, 'How The 'War On Terror' Became A War On "Tribal Islam,"' *NPR Morning Edition*, 12 March 2013. <http://www.npr.org/2013/03/12/174080047/how-the-war-on-terror-became-a-war-on-tribal-islam>.
 45. See e.g. Nichols, *History of Pashtun Migration*.
 46. His volume includes a picture of tribal children with the additional explanatory note 'some without shoes' (Ahmed, p. 13) and an archaic images that compare a photo depiction of 'Pashtun tribesmen' (circa nineteenth century) to that of a stone relief of Alexander the Great (Ahmed, p. 16). The images conjure a sense of timelessness in FATA, where people live as they have lived since before the arrival of Alexander the Great. Such ahistoric understanding is nonsensical to a modern scholar of the region.
 47. Human Rights Commission of Pakistan – Peshawar Chapter, *FCR*.
 48. Ahmed, *Resistance and Control in Pakistan*.
 49. See American Anthropological Association, 'Executive Board Statement'.

50. Greg Miller and Karen DeYoung, 'Administration Debates Stretching 9/11 Law to Go After New Al-Qaeda Offshoots', *The Washington Post*, 6 March 2013. http://articles.washingtonpost.com/2013-03-06/world/37500569_1_qaeda-drone-strikes-obama-administration.
51. Wall, 'Demystifying the Title 10–Title 50 Debate.'
52. Spencer Ackerman, 'Little Will Change If the Military Takes Over CIA's Drone Strikes', *Wired.com*, 20 March 2013, <http://www.wired.com/dangerroom/2013/03/military-drones>.

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