

BOOK REVIEW

The Legitimacy of Drone Warfare: Evaluating Public Perceptions (Book Review)

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I. INTRODUCTION

What is drone scholarship for? Is it a race to draw and publish novel conclusions, or are we using the tools of our academic disciplines to learn something new about our world? If it is the latter, then we should appeal to the highest standards of rigor and precision of each of our fields of study. They are called “disciplines,” after all.

Social science experiment design is supposed to take us from a research question that needs answering, to a survey instrument that includes suitable proxies for that question, and ultimately to the conclusions based on corresponding answers to those proxy questions. But the devil is in the details. Are the survey questions really crafted in such a way that they can serve as proxies for the question the researchers set out to answer?

Paul Lushenko and Shyam Raman’s new book, *The Legitimacy of Drone Warfare: Evaluating Public Perceptions*, is a work of social science. At its heart is a survey instrument that Lushenko and Raman developed and then administered to an impressively large set of respondents, ultimately to learn something new about how respondents, specifically French and U.S. citizens, perceive the legitimacy of drone warfare.¹

However, the design of the survey instrument limits the merits of their findings. This is because the proxies in the survey instrument are not as closely aligned with the research question as they need to be. In other words, Lushenko and Raman’s study on the legitimacy of drone warfare has neither adequately defined “legitimate” nor “drone warfare.” In the absence of adequate definitions, any conclusions about the legitimacy of drone warfare should be met with skepticism.

The book purports to make four major contributions to the literature on drone warfare. First, the authors claim to deliver for the first time an empirically verifiable difference in how citizens of different countries, specifically citizens of the

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1. PAUL LUSHENKO & SHYAM RAMAN, *THE LEGITIMACY OF DRONE WARFARE: EVALUATING PUBLIC PERCEPTIONS* 1 (2024).

U.S. and France, perceive the legitimacy of drone warfare. Second, the authors claim to offer a novel definition of drone warfare. Third, the authors claim to deliver novel empirical data on the degree to which people perceive drone warfare as legitimate.² Fourth, and finally, the authors claim to show for the first time that the Obama Administration Presidential Planning Guidance took effect in 2011, two years before President Obama's 2013 public announcement of the policy change,³ and that this shift is observable in the empirical data on U.S. drone strikes in Pakistan.

In the sections that follow, I will trace the authors' arguments for the four contributions and evaluate the success of each.

II. FRENCH AND U.S. PERCEPTIONS OF DRONE WARFARE LEGITIMACY

The description of the differences in how U.S. and French citizens respond to various drone strikes is undoubtedly the strongest of Lushenko's and Raman's contributions. There are statistically significant differences in how U.S. and French respondents answered the question of legitimacy, elucidating their varying views on the legitimacy (or rightness or wrongness) of drone strikes.⁴

First, the authors found that both the French and the U.S. respondents find their respective countries' methods of drone warfare legitimate, even when the name of the country performing the strike is masked. The authors also found that, when civilian casualties do result from a strike, Americans are more likely to find the strike legitimate if there were multilateral (international) constraints on the strike. French respondents, by contrast, are more likely to find strikes conducted under multilateral constraints legitimate whether or not civilian casualties result from the strike.⁵ This is an important finding because it suggests that French and American respondents might have different underlying views about the role of multilateral constraints in military operations that have consequences far beyond the use of drone strikes. Lushenko and Raman should be commended for this contribution, not just for its own sake, but also as it may spur further study beyond the U.S. and France.

III. DEFINING DRONE WARFARE

Lushenko and Raman claim to have developed a novel definition of "drone warfare" against a backdrop of four categories of limitations they identify in previous definitions. First, they say, scholars conflate drone warfare with the uninhabited aerial platform. Second, scholars equate drone warfare with remote warfare. Third, scholars conflate the employment of drone warfare with the narrow mission of the targeted killing of terrorists. Fourth, in the discussion of drone warfare, scholars neglect to define "warfare."⁶

2. *Id.* at 34.

3. *Id.* at 51.

4. I address the distinction between legitimacy and rightness and wrongness in *Section IV*.

5. LUSHENKO & RAMAN, *supra* note 1, at 36.

6. *Id.* at 15.

A. *Definition by Description*

Given the limitations the authors identify in other scholars' definitions, attentive readers will expect the authors to provide a definition that manages to avoid these common pitfalls. Unfortunately, Lushenko and Raman attempt a definition through description that is even less helpful than the ones they criticize. A definition serves to create a category. It must do two things at once: it must include the things that ought to be included and exclude everything else. The authors come to their aspirational novel definition, saying, "we offer an original definition of drone warfare, which we argue is best understood as a function of observable and empirically testable strike attributes."⁷ Later, "we argue that drone warfare is best understood in terms of how countries combine different—tactical or strategic—uses of strikes with varying—unilateral or multilateral—constraints to help prevent unintended consequences, especially civilian casualties."⁸ This definition not only fails to capture the set of strikes that should be considered as "drone warfare," but also fails to exclude air strikes that are not conducted by drones.

A descriptive definition of a phenomenon is *extensionally adequate* if and only if it comprehensively captures real-world examples of the phenomenon.⁹ However, Lushenko and Raman's definition fails this extensionality test.

The authors built a taxonomy of drone strike attributes based on three variables, each of which has two possible values: (1) A strike is tactical or strategic; (2) a strike operates under unilateral or multilateral constraints; and (3) a strike produces an unintended civilian casualty or it does not.¹⁰ To prove that their descriptive definition is extensionally inadequate, all one would have to show is that there is at least one real-world drone strike that falls outside of their taxonomy.

The authors define "tactical" strikes as those (1) that take place in declared theaters of operation; (2) are discrete and hasty; (3) the purpose of which is near term and of limited military value; and (4) support ground forces, are under military control, deploy as expeditionary forces, and respect sovereignty.¹¹ They define "strategic" as those (1) that take place in undeclared theaters of operation; (2) are comprehensive and deliberate; (3) the purpose of which is long-term and broader military and/or political value; and (4) are under executive leaders' control, are not in support of ground forces, are launched from a global network of bases, and result in an erosion of sovereignty.¹²

Here is one example of a drone strike that falls outside of Lushenko and Raman's definition, based on their own accounts of "tactical" and "strategic" strikes. According to the Bureau of Investigative Journalism ("Bureau," the authors' preferred data source), in October 2016, the U.S. employed a precision strike against "senior al Qaeda leader Faruq al Qatari" in Afghanistan's Kunal

7. *Id.* at 14.

8. *Id.* at 16.

9. Anil Gupta & Stephen Mackereth, *Definitions*, STAN. ENCYCLOPEDIA OF PHIL., Fall 2023.

10. LUSHENKO & RAMAN, *supra* note 1, at 31.

11. LUSHENKO & RAMAN, *supra* note 1, at 19.

12. *Id.*

province.¹³ According to the authors' taxonomy, the targeted killing of Faruq al Qatari was neither tactical nor strategic. It was not tactical because it failed conditions (2), (3), and (4) of the "tactical" category. It was not discrete and hasty. The purpose was long-term rather than short-term. It was of significant military value, and it was not in support of ground forces. It was not strategic because it failed condition (1) of the "strategic" category. It did not take place in an undeclared theater of operations. And the attack on Qatari is not the only example. The Bureau's database on drone strikes in Afghanistan from 2015 to 2020 distinguishes between "force protection" strikes and "counter-terror" strikes, a distinction that probably maps to some degree onto the authors' distinction between "supporting ground forces" and "not supporting ground forces," condition (4) of their taxonomy. The Bureau is unable to determine the military purpose in the vast majority of cases. But in cases in which they do claim to know the military objective, fifty-nine strikes are employed for force protection reasons and thirty-one for counterterrorism purposes.¹⁴ Just over thirty-four percent of these strikes, therefore, occur inside the area of declared hostilities, Afghanistan, and are yet not employed in support of ground forces. On this very brief glance at available data, one-third of the drone strikes in Afghanistan from 2015 to 2020 fall outside of Lushenko and Raman's taxonomy of tactical and strategic strikes because, as the authors have defined the terms, these strikes are neither "tactical" nor "strategic." Thus, their descriptive definition of drone warfare fails the *extensional adequacy* test.

Not only does the authors' descriptive definition exclude drone strikes that should be included, but it also includes strikes that should be excluded. The observable and testable attributes the authors insist amount to a definition including the following: "how countries combine different—tactical or strategic—uses of strikes with varying—unilateral or multilateral—constraints to help prevent unintended consequences, especially civilian casualties."¹⁵ However, this descriptive definition of "drone warfare" equally applies to other forms of warfare, specifically, any airstrike carried out by any combat aircraft and crew. This is because nowhere in the authors' descriptive definition of "drone warfare" do they stipulate that drone warfare must be carried out by drones. For example, Abu Musab al-Zarqawi was targeted and killed in Iraq in 2006. On Lushenko and Raman's descriptive definition, we can discuss whether the strike was tactical or strategic (though this strike, too, defies their tactical/strategic distinction); the strike was carried out only with unilateral constraints, and it did not produce any civilian casualties. But it was not a drone strike. It was carried out by a flight of traditionally piloted F-16 Vipers. MQ-1 Predators found Zarqawi, but they did not strike him. The pilots of fighter aircraft did that.¹⁶

13. Jessica Purkiss & Jack Serle, *Al Qaeda Leader Killed in US Strike in Afghanistan*, BUREAU OF INVESTIGATIVE JOURNALISM (Nov. 11, 2016), <https://perma.cc/6GDZ-XYP4>.

14. *Afghanistan: US Air and Drone Strikes 2015 to Present*, BUREAU OF INVESTIGATIVE JOURNALISM (2024), <https://perma.cc/2ZV4-FKZ9>.

15. LUSHENKO & RAMAN, *supra* note 1, at 16.

16. John F. Burns, *U.S Strike his Insurgent at Safehouse*, N.Y. TIMES, June 8, 2006.

It might seem strange to raise this F-16 bombing attack as an objection to the authors' definition of drone warfare. But recall that the authors criticize earlier definitions for conflating "drone warfare" with the "unmanned aerial vehicle (UAV) platform itself" and equating "drone warfare to remote warfare." While such definitions have their drawbacks, they have at least attempted to capture what makes *drone* warfare different from any other kind of warfare. By attempting to define drone warfare descriptively through "observable and empirically testable strike attributes," and then defining these attributes in their taxonomy of "tactical" and "strategic" strikes without reference to the type of weapons systems employed, the authors have abstracted from perhaps the most important element of drone warfare: the drones. The F-16 attack on Zarqawi was not a drone strike, and yet, it can be described by the observable and testable attributes Lushenko and Raman use in their definition of drone warfare. Setting out to define "drone warfare" only with reference to characteristics of drone strikes is a risky proposition because any such descriptive definition will almost certainly apply to non-drone strikes as well. Lushenko and Raman's list of "observable and testable attributes" certainly does.

I hasten to add that the authors could have evaded this specific criticism by adding a single word to their descriptive definition. They might have said, "drone warfare is best understood as a function of observable and empirically testable *drone* strike attributes."¹⁷ The only explanation I can fathom for why the authors did not add "drone" to their definition is that they wanted to avoid conflating drone warfare "with the unmanned aerial vehicle platform itself,"¹⁸ as they have criticized other authors for doing.

On my reading, the authors have failed to deliver on their first promise, namely, a novel definition of "drone warfare." This matters to the broader scholarship because artificially constraining the universe of drone warfare only to the particular attributes in which Lushenko and Raman are interested threatens to create blind spots in data analysis. They make strong claims, as we will see, about how Americans view the legitimacy of drone warfare when it is used "strategically." But, because they have defined "drone warfare" too narrowly—in terms of specific, non-comprehensive strike attributes—they have needlessly excluded from their analysis the use of drones to conduct high-value targeting operations *within* areas of declared hostilities while also including operations that clearly are not drone strikes.

IV. EMPIRICAL DATA ON PERCEIVED LEGITIMACY OF DRONE WARFARE

The authors endeavor to fill a vacuum in the drone literature, namely, to provide empirical data on how citizens perceive the legitimacy of various uses of drone strikes. After a cursory reading of the book's six substantive chapters, readers might conclude that the authors achieved what they intended. Recall that the

17. LUSHENKO & RAMAN, *supra* note 1, at 14.

18. *Id.* at 15.

authors' taxonomy of drone strike attributes is based on three variables, each of which has two possible values: (1) A strike is tactical or strategic; (2) a strike operates under unilateral or multilateral constraints; and (3) a strike produces an unintended civilian casualty or it does not.¹⁹ Because there are three variables, each with two possible values, the variables yield eight possible scenarios ($2 \times 2 \times 2$) plus a control scenario, for a total of nine²⁰ (though the control is of limited research value, as we will see in *Section VI*). The authors present the scenarios to a sample of 1,823 respondents (914 American and 909 French).

Despite the impressive number and the international character of the survey respondents, the phrasing of the survey instrument raises two concerns. First, in important places, the survey instrument is ambiguously worded, and second, the survey instrument does not provide enough information to respondents for them to provide informed responses.

I will be the first to admit that I am not a trained social scientist and that I wade into this critique with some trepidation. I appeal to Fowler and Cosenza's chapter on survey questions in Bickman and Rog's handbook on social science research methods to ground my critique of the survey instrument. Fowler and Cosenza claim that, among other things, survey questions in the social sciences must meet "four basic characteristics," the first two of which are (1) questions need to be "consistently understood" and (2) respondents must have access to the information required to answer the question.²¹ However, Lushenko and Raman's survey instrument struggles to meet these basic requirements.

A. *Are the Survey Questions Consistently Understood?*

Throughout the survey instrument, Lushenko and Raman conflate questions about the legitimacy of a system with questions about the morality of a specific action. On my reading, this puts respondents in an untenable position: they cannot be sure which question they are being asked to answer. The confusion is rooted in two pairs of muddled distinctions. The first is whether a thing is legitimate and whether it is right or wrong. The second is whether the appropriate object of evaluation is a system (or institution or practice) or a discrete act (or event or decision).

In the instructions, Lushenko and Raman tell respondents that, "in this case, legitimacy is defined by how right or wrong you perceive the strike to be."²² Then in the scenario, respondents are given information about Country X's processes and practices, as well as a specific strike. Finally, in the specific questions, respondents are asked, "on a scale of 1 to 10, . . . how legitimate is Country X's use of the drone strike?"²³

19. LUSHENKO & RAMAN, *supra* note 1, at 31.

20. *Id.* at 102.

21. Floyd J. Fowler Jr. & Carol Cosenza, *The Sage Handbook of Applied Social Research Methods* 376 (Leonard Bickman & Debra J. Rog, 2nd ed. 2009).

22. LUSHENKO & RAMAN, *supra* note 1, at 99.

23. *Id.* at 103.

This series of interactions with respondents is objectively confusing. Let us begin with their application of the term, “legitimacy.” Ultimately, respondents are asked about the legitimacy of “Country X’s *use of the drone strike*.”²⁴ This application of “legitimacy” to a single action, event, or decision is a category error.

A brief survey of the broader literature on legitimacy suggests that “legitimacy” describes a process, institution, or system, rather than a specific action that takes place within or as a result of that system. For instance, in the discussions of the legitimacy of law, whether a person will voluntarily obey the law in a specific case can depend, at least in part, on how the person views the legitimacy of the criminal justice system as a whole.²⁵ The appropriate object of legitimacy, on this view, is not one specific case or instance, but rather the process or system in which the case is contextualized.

In another study, legitimacy is defined as “the right to power.”²⁶ Whether an institution has a right to power (legitimacy) is different from a value judgment about a specific decision or action that takes place within that institution. This definition is particularly salient to the discussion about Lushenko and Raman’s book because it is conceivable that a notional respondent might believe that some particular strike is morally (or legally) wrong, and yet at the same time hold that the state that conducted the strike has a “right to [the] power”²⁷ of drone strikes in the general sense. Or else, a respondent might hold that drone warfare, as a practice, is illegitimate, and yet, the respondent might hold that some specific drone strike is morally (or legally) permissible.

In another study, researchers sought to determine whether respondents’ views about the legitimacy of the criminal justice system affected their views on the morality of a specific defendant’s actions.²⁸ In this study, researchers evaluated respondents’ views on how “right or wrong” the defendant’s actions were, alongside an evaluation of how legitimate respondents perceived the criminal justice system.²⁹ Here again, the object of “legitimacy” is the system, while judgment about right and wrong is reserved for actions.

This is by no means an exhaustive review of the literature on legitimacy and morality, but even this summary suggests that judgments of legitimacy tend to apply to processes or systems, rather than individual decisions or outcomes. Lushenko and Raman conflate questions about systems with questions about discrete actions. They ask their respondents to determine whether specific events are legitimate after providing respondents with information about both the discrete

24. *Id.* (emphasis added).

25. Jennifer Barton-Crosby, *The Nature and Role of Morality in Situational Action Theory*, 19 EUR. J. OF CRIMINOLOGY 1283, 1427 (2022).

26. Tom R. Tyler et al., *Going Outside the Law: The Role of the State in Shaping Attitudes to Private Acts of Violence*, 45 J. LEGAL STUD. 201 (2012).

27. *Id.*

28. Avital Mentovich & Maor Zeev-Wolf, *Law and Moral Order: The Influence of Legal Outcomes on Moral Judgment*, 24 PSYCHOL. PUB. POL’Y & L. 5, 8 (2018).

29. *Id.*

event and the system. It is difficult to imagine that this approach would not confuse at least some percentage of their respondents.

Suppose their respondents could set aside any preconceptions of what “legitimacy” means or what is its appropriate object. Even if this was the case, Lushenko and Raman muddy the waters further by conflating legitimacy with morality. Recall their instructions to respondents: “in this case, legitimacy is defined by *how right or wrong* you perceive the strike to be.”³⁰

The only clue the authors provide as to why they equate “legitimacy” with “rightness or wrongness” immediately follows their introduction to the term on page 2. They first cite Pan et al.’s claim that “legitimacy is a sociological phenomenon and can only be meaningfully studied in the context of a society and the attitudes of individuals therein.”³¹ Immediately following this quotation, Lushenko and Raman write, “What this assessment suggests, then, is that the concept of legitimacy is often used interchangeably with cognate terms, including attitudes of acceptance, appropriateness, and rightfulness.”³²

However, this conclusion does not follow. First, as a matter of language, cognate terms are not used interchangeably. Second, Pan et al. claim that legitimacy must be studied within the context of individuals’ attitudes within a society.³³ Pan et al. do not claim that legitimacy is *equivalent to* individuals’ attitudes within a society.³⁴

In fact, in Pan et al.’s study on how the public perceives the legitimacy of social media content moderation processes, they find that “whether users agree with the decisions of the content moderation process has a greater impact on the legitimacy users attach to that process than the process itself.”³⁵ This finding alone shows that Pan et al. understand that there is a difference between a person’s perception of whether a process is legitimate and a person’s agreement with a specific decision. Yet, Lushenko and Raman, citing no authority other than Pan et al., have made the unlikely assumption that a person’s perception of legitimacy is the same thing as a person’s perception of “right or wrong.”

One can consider the same concern from a different angle. If a person’s perception of legitimacy is the same as a person’s perception of right or wrong, then there would be no need to include in the instructions to respondents that “in this case, legitimacy is defined by how right or wrong you perceive the strike to be.”³⁶ If these two terms are broadly understood as synonyms, then there would be no

30. LUSHENKO & RAMAN, *supra* note 1, at 99. (emphasis added).

31. Christina A. Pan et al., *Comparing the Perceived Legitimacy of Content Moderation Processes: Contractors, Algorithms, Expert Panels, and Digital Juries*, 6 PROC. ACM HUM.-COMPUT. INTERACTION 1, 19 (2022).

32. LUSHENKO & RAMAN, *supra* note 1, at 2.

33. Christina A. Pan et al., *Comparing the Perceived Legitimacy of Content Moderation Processes: Contractors, Algorithms, Expert Panels, and Digital Juries*, 6 PROC. ACM HUM.-COMPUT. INTERACTION 2-3 (2022).

34. *Id.*

35. *Id.* at 3.

36. LUSHENKO & RAMAN, *supra* note 1, at 33 (note 3).

need to formalize their synonymy. If these two terms are not broadly understood as synonyms, then exposing respondents to both concepts of legitimacy and rightfulness, asking respondents to treat them as synonyms, and then asking questions about one term but not the other, is unnecessarily confusing. Lushenko and Raman set out to tell us something about how respondents perceive the legitimacy of drone warfare. Given this equivocation between legitimacy and morality, however, I am not sure they can tell us anything about it.

I am aware that a moral philosopher is reviewing a work of social science for an audience of legal scholars and policy practitioners. There are, no doubt, readers of this review who will insist that I am playing philosophical games with the language and reading too much into the question. Even so—if the critique above takes too seriously the distinctions between what words mean—there are still more concerns about Lushenko and Raman’s survey instrument.

B. Do Respondents Have Access to the Information Required to Answer the Question?

Recall Fowler and Cosenza’s second characteristic of social science survey questions: Respondents must have access to the information required to answer the question.³⁷ Another cause for concern in the survey instrument is that respondents are given far more information about Country X’s behavior than the targeted terrorist’s behavior. To see why this is problematic, we must look briefly at moral theory.

“Rightness and wrongness” can be interpreted in many ways by different readers. It is a credit to Lushenko and Raman that, rather than imposing a specific moral theory upon their respondents, they implicitly ask respondents to bring their own moral theory to the survey. Yet, no matter the moral theory respondents bring to the case, they are not given enough information about the target to make an informed decision about the strike’s “rightness or wrongness.”

First, a brief note about terminology: some moral philosophers have described various moral theories in terms of the degree to which they prioritize “right” over “good” or vice versa. This is an old debate in moral philosophy,³⁸ but I suspect that we can set it to one side for the purpose of this discussion. This is, first, because the respondents who have engaged with Lushenko and Raman’s survey instrument are unlikely to be familiar with these internecine philosophical debates and, more importantly, because the philosophical disagreement is merely about priority, not about whether the concept of “right” or “good” is excluded by any of the dominant moral theories. In other words, Lushenko and Raman’s use of the moral language, “right or wrong,” is unlikely to bias respondents toward one moral theory or another.

The difficulty, though, is that according to almost any moral theory, the rightness or wrongness of the drone strike may depend upon important facts about the

37. Fowler and Cosenza, *supra* note 21, at 376.

38. See DAVID ROSS & PHILIP STRATTON-LAKE, *THE RIGHT AND THE GOOD* 1 (1st ed. 2002).

targeted terrorist. But in all eight scenarios, respondents are told only that the target is “a terrorist.”³⁹ Is he (or she) a high-level terror leader or a mere foot soldier in the terrorist organization? Is he about to conduct a terror attack? If so, what harm is he expected to cause during this attack? Is the attack against the host nation’s military or police forces, or is it against the civilian population? Does Country X have time to find a less harmful means of preventing the attack, or does a failure to strike the target here and now ensure that the terrorist will conduct his forthcoming attack? Is the terrorist acting under duress in the face of terror network threats to his family? Has he joined the terror network because there was no other financial means of providing for his family?

These are difficult questions to answer, and in practice, they are neither answerable in totality nor can they be answered with certainty. Yet, they are questions that states employing drone strikes often do attempt to answer. At the very least, some of these are presumably questions that the two states under consideration, the U.S. and France, attempt to answer. Moreover, they are factors that are relevant to the question respondents were asked to answer: “On a scale of 1 to 10. . . how [right or wrong] is Country X’s use of the drone strike?”⁴⁰

When taking life in war, two questions are of crucial moral importance: (1) has the person killed given up his right not to be killed; and (2) how does the harm that will be prevented by killing this person compare to the harm that will be caused in killing him?⁴¹ The former is a question of right and the second is a question of consequences.

The question of whether the target has given up his right not to be killed, or conversely, whether he has become morally liable to be killed, depends upon several factors, and scholars disagree on which factors weigh most heavily. For example, for several decades, the reigning view among just war theorists was the view popularized by Michael Walzer in 1977.⁴² When a military organization goes to war, by virtue of its membership in that organization, soldiers (or sailors, marines, etc.) become liable to be killed in war. Thus, on this view, combatants on either side of a conflict are liable to be killed by combatants on the other side.

39. LUSHENKO & RAMAN, *supra* note 1, at 100-02.

40. *Id.* at 102. Of course, respondents are asked to answer the question, “how legitimate is Country X’s use of the drone strike,” but since respondents have been told that “in this case, legitimacy is defined by how right or wrong you perceive the strike to be,” I have replaced “legitimate” with “right or wrong.”

41. I am summarizing here the *ius in bello* principles of discrimination and proportionality under the just war tradition. Discrimination requires combatants to make a determination between who has given up their right not to be killed and who has not (and then to target only the former). Proportionality requires combatants to weigh the moral benefits that are expected to result from a considered military action against the moral costs. If the weighted moral costs exceed the benefits, then the considered military action is morally impermissible under the proportionality principle. *See, e.g.*, Seth Lazar, *War*, STAN. ENCYCLOPEDIA OF PHIL., Spring 2017. Philosophers broadly agree that these two principles are important but disagree as to how exactly they should be framed. This is a high-level overview and interested readers are welcome to read my other work for greater fidelity on how I understand these *ius in bello* principles.

42. MICHAEL WALZER, *JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* (1st ed. 1977).

Around the turn of the 21st century, a school of thought arose among just war scholars defying this view. On what is often called the “revisionist” account, what causes a person to give up her right not to be killed is the degree to which she causes a threat of unjust lethal harm. On this view, when German soldiers threatened Polish soldiers in 1939, the German soldiers gave up their right not to be killed because they threatened unjust lethal harm—they threatened to kill Polish soldiers who had done nothing to instigate the unjust attack. The Polish soldiers, by contrast, did not threaten unjust harm. Though they did pose a threat to German soldiers, theirs was a threat of just harm in defense against unjust aggression. The Polish soldiers, therefore, retained their right not to be killed. On revisionist views, combatants on two sides of a conflict do not meet on the battlefield as moral equals. Many individuals on the aggressor side of a conflict are liable to be killed. Most on the defending side are not.⁴³

Scholars across several disciplines have strong views about this distinction between traditionalism and revisionism in just war thinking. Conflicts between state actors and transnational terror organizations complicate matters even further. In Lushenko and Raman’s survey instrument, the target is not a traditional combatant, but a terrorist. On the traditionalist view, it is not as simple as saying that all combatants in war have given up their right not to be killed. It is not obvious that terrorists are morally equivalent to combatants. But in any event, whether it is morally permissible for a state to kill members of transnational terror organizations depends on the facts about the terrorists’ activities. Nevertheless, respondents in Lushenko and Raman’s study are not given any such information. Respondents know only that the cost of the strike is either one civilian casualty or none (depending on which scenario they were given), but they do not know what is to be gained by the strike. Therefore, they cannot compare the good achieved by the strike with the harm caused by it because they are told nothing more than that the strike will kill the terrorist.

Before I am accused of imputing to the respondents a level of just war sophistication we cannot (and should not) expect them to maintain, I hasten to point out that lay people rely upon balancing good and bad outcomes as much as just war theorists do. In the most general terms and for the most ordinary non-academic, morality depends upon tradeoffs. This is why ordinary people make “pros and cons” lists to help inform major life decisions—to include decisions of moral significance. This is why people adopt the language of economics to talk about whether, even in moral decision-making, the “benefits” “outweigh the costs.” People know in their bones—without studying just war thinking or collecting

43. Revisionist accounts of just war theory are individualist in the sense that it is facts about the individual, and not about the collective, that determine liability to harm. So, it might be the case that some German soldier in 1939 has contributed so little to the unjust harm the Wehrmacht causes that his contribution fails to rise to the level of liability to lethal harm. Likewise, there may be Polish soldiers who, as individuals, engage in atrocities that cause them to become liable to be killed. This is not because they are combatants, though, it is because they, as individuals, have threatened unjust harm.

survey data—that moral decision-making depends upon weighing the moral costs and benefits of action and inaction.

The survey instrument that the authors have devised prevents this kind of balancing in any meaningful way because it has not given respondents any indication of what is at stake. In other words, respondents are asked about the morality (labeled as “legitimacy” in the instrument) of killing a terrorist, but they are never told, “compared to what?”

Viewed through this lens, the variables the authors have introduced—falling primarily on the side of the state conducting the strike—are not just morally neutral but are likely to generate biased results in survey responses. Consider the description of a state’s strategic use of drones in the survey instrument: “Country X uses drone warfare as a strategy. This means that Country X’s political leaders frequently use drones for targeted killing in support of national military and political objectives, even if doing so erodes the sovereignty of other states.”⁴⁴

There are several concerns to raise here. First, this is not what “as a strategy” ordinarily means. Early in the book, when Lushenko and Raman define their theoretical approach, they say that “to the extent that scholars interrogate evolving patterns of drone warfare, they mostly . . . differentiate between the tactical and strategic uses of strikes.”⁴⁵ To my surprise, alongside Brunstetter and Boyle,⁴⁶ they cite me for this claim. I did not, however, distinguish between tactical and strategic uses of strikes. Instead, I distinguished between ethical concerns that apply to strategic-level decisions and those that apply to tactical-level decisions.

The ethical concerns in the remote warfare literature can be divided into two broad categories: one at the level of national foreign or military policy and the other at the individual unit or warfighter level. For simplicity, I refer to them as strategic-level and tactical-level concerns.⁴⁷

Using the tactical level and the strategic level as two different frames or lenses through which to evaluate the ethics of war is quite a different thing from insisting that the methods or means of warfare can be employed either for tactical purposes or for strategic ones. More generally, in national security literature, strategy is the broad approach adopted by senior leaders to influence the world around them. “Strategy is the ways by which nations, states, rulers, élites and others seek to shape their situation.”⁴⁸ “Strategy is not a document but a practice.”⁴⁹ Military strategy consists of the establishment of military objectives, the

44. LUSHENKO & RAMAN, *supra* note 1, at 99-100.

45. *Id.* at 2; *see also id.* at 16.

46. *See generally*, DANIEL R. BRUNSTETTER, JUST AND UNJUST USES OF LIMITED FORCE: A MORAL ARGUMENT WITH CONTEMPORARY ILLUSTRATIONS (1st ed. 2021); Michael J. Boyle, *Counterterrorism in An Era of Great Power Politics*, 66 ORBIS 184 (2022).

47. JOSEPH O. CHAPA, IS REMOTE WARFARE MORAL? WEIGHING ISSUES OF LIFE AND DEATH FROM 7,000 MILES 17 (2022).

48. JEREMY BLACK, MILITARY STRATEGY: A GLOBAL HISTORY vi (2020).

49. *Id.* at x.

formulation of military strategic concepts to accomplish the objectives, and the use of military resources to implement the concepts.”⁵⁰ “Strategy is a plan of action designed in order to achieve some end; a purpose together with a system of measures for its accomplishment”⁵¹ Even according to U.S. military doctrine, “military strategy is the creation, employment, and articulation of the military instrument of national power to achieve policy objectives.”⁵² On any of these definitions, to say that Country X is “using drone warfare as a strategy” is at best ambiguous and at worst nonsensical. The most reasonable interpretation is that Country X is using drone warfare as a part of its strategy. Brunstetter—whom the authors cite—explicitly says that the United States use of drones outside “hot” battlefields is part of a larger strategy: “Targeted killing by armed drones is part of a broader strategy of denying what counterterrorism experts refer to as safe havens.”⁵³ If this is right, then Country X is using drones, not *as* a strategy, but as part of a broader plan. More importantly, even when Country X employs what Lushenko and Raman call “tactical” drone strikes, they do so as part of a broader approach.

Lushenko and Raman might be right in that drones can be used either tactically or strategically, but this claim is not at all obvious. Further, the evidence they have marshaled to support their claim—citing Michael Boyle, Daniel Brunstetter, and myself—is insufficient to justify it.

Second, the respondents have been given no account of the rightness or wrongness of the terrorist’s actions. But here, without any subtlety at all, the respondents are told that Country X employs drones “even if doing so erodes the sovereignty of other states.”⁵⁴ This variable is overtly coded as “wrong” (as opposed to “right”). The authors of the scenarios have overtly primed their audience to associate the “strategic” use of drones with morally problematic uses of drones. Meanwhile, what military objective might be so significant as to motivate Country X to cross international borders “even if doing so erodes the sovereignty of other states?” Well, that determination would depend upon facts about the threat the terrorist poses. On such issues, Lushenko and Rama’s survey instrument is silent.

Someone will, no doubt, object here that cross-border drone strikes do erode sovereignty. Even if this is right, the biasing effect is in the framing. Suppose Lushenko and Raman told respondents that when Country X uses drone warfare as a strategy, “it attempts to limit the erosion of state sovereignty to the best of its ability.” This framing acknowledges the erosion of sovereignty, but it codes as morally right, biasing respondents in the opposite direction. I do not suggest that

50. Arthur Lykke Jr., *Defining Military Strategy = Ends + Ways + Means*, MIL. REV.: THE PRO. J. OF THE U.S. ARMY, May 1989, at 2, 8.

51. JOSEPH C. WYLIE, *MILITARY STRATEGY: A GENERAL THEORY OF POWER CONTROL* (John B. Hattendorf et al. eds., 2014).

52. JOINT CHIEFS OF STAFF, JOINT DOCTRINE NOTE 2-19, STRATEGY, II-1 (2019).

53. BRUNSTETTER, *supra* note 46, at 8.

54. LUSHENKO & RAMAN, *supra* note 1, at 99-100.

this framing is preferable. I suggest only that, especially given how little information respondents were given about the targeted terrorist's actions, information about Country X should be as morally neutral as possible. However, Lushenko and Raman did not provide respondents with a morally neutral framing.

Respondents are asked to make a moral determination about a single event on which they are given insufficient information to make such a determination. The information they are given is about Country X's general practices and is coded as morally negative.

The authors would have us accept that their novel survey instrument can tell us something about how the U.S. and French citizens view the legitimacy of drone warfare. An inspection of their survey instrument, however, reveals that by "legitimacy" they mean "perceived rightness or wrongness," and that they have already signaled the wrongness of Country X's actions in the prompt.⁵⁵ Therefore, their data reveals, not international views about the legitimacy of the strategic use of drones, but only how right or wrong respondents think a thing is once they have been told, however subtly, that it is wrong.

Ultimately, these shortcomings leave respondents in a difficult predicament. Respondents have received mixed signals about whether they are asked to evaluate Country X's general process for drone strikes or to evaluate this particular strike. This ambiguity arises first in the conflation of legitimacy (which should be applied to process as in Pan et al.) with "rightness or wrongness" (which can be applied to specific cases).⁵⁶ The ambiguity is amplified when respondents are given abundant information about Country X's process without being given any information at all about the moral stakes of the particular strike in question. The end result, I strongly suspect, is that information about Country X's process has a biasing or priming effect on respondents' views about the particular strike in question. In other words, respondents are probably answering questions about the legitimacy of Country X's general processes, rather than the specific strike in question.

V. OBAMA'S 2011 PRESIDENTIAL POLICY GUIDANCE

Lushenko and Raman do deliver on their claim to show, for the first time, that the shift in the Obama Administration policy governing direct action in Pakistan went into effect in 2011, two years before then-President Obama announced the Presidential Policy Guidance (PPG).⁵⁷ This discovery is made through a series of interviews with former high-ranking Obama Administration national security officials. The authors cite former Central Intelligence Agency Director, John Brennan; former National Security Advisor, Thomas Donilon; and the former Senior Director of Counterterrorism on the National Security Council, Luke

55. *Id.*

56. *Id.* at 47, 99.

57. *See id.* at 51; *see also* Doug Miller, *Obama's Speech on Drone Policy*, N.Y. TIMES (May 23, 2013), <https://perma.cc/ZC9Z-RY3M>.

Hartig.⁵⁸ As Lushenko and Raman explain, identifying the correct timeline for the major shift in policy helps, both their own research and the work of future researchers, to explain the phenomena in the data of the U.S. drone strikes in Pakistan. This is a major contribution to the literature, and Lushenko and Raman deserve credit for answering this question definitively. Unfortunately, rather than allowing this contribution to stand on its own as an important contribution to the literature, the authors attempt to take a few additional giant steps forward.

To demonstrate the significant effect of the Obama Administration PPG, Lushenko and Raman attempt to show that one can calculate how many terrorists would have been but were not radicalized, owing to the Obama Administration's policy shift. The first step in their argument is to note the reduction in civilian casualties following the Obama PPG. They use previously reported percentages of civilian casualties before and after the PPG and then run Monte Carlo simulations to generate an estimate that the PPG saved 284 civilian lives.

The second step of their argument suggests that if we can estimate how many civilian casualties were averted (which they have already done) and how many ordinary people become radicalized as terrorists because of a single civilian casualty, then we can estimate how many people would have been radicalized but for the Obama PPG. Lushenko and Raman claim:

Research also shows that each civilian casualty resulting from a poorly executed strike can engender twenty additional terrorists as a function of radicalization, which reflects the public's poor perception of legitimacy for drones.⁵⁹

For this claim, they cite Thomas Gregory. This claim about one civilian casualty generating twenty terrorists, though, is not a claim Gregory makes. Gregory's stated aim in the cited paper is not to validate claims about how many people are radicalized by civilian casualties at all. His intent is to show "how coalition forces sought to weaponize the counting of civilian casualties in Afghanistan between 2008 and 2014."⁶⁰ To support his argument, Gregory includes a PowerPoint presentation given by a U.S. Army Colonel from the International Security Assistance Force Afghanistan's (ISAF's) Counterinsurgency Advisory and Assistance Team (CAAT). The exact text from the slide appears as follows.

- Can win tactically but lose strategically
 - "CIVCAS is how we LOSE"
 - Insurgent math: -1 Civ + 20 INS⁶¹

58. LUSHENKO & RAMAN, *supra* note 1, at 51-2.

59. *Id.* at 59.

60. Thomas Gregory, *Calibrating Violence: Body Counts as a Weapon of War*, 7 EUR. J. OF INT'L SEC. 479, 479 (2022).

61. I interpret these abbreviations as follows. "CIVCAS" represents "civilian casualties;" "Civ" represents "civilians;" and "INS" represents "insurgents."

That is the depth of the rigor supporting the claim that one civilian casualty generates twenty terrorists—the claim that Lushenko and Raman ultimately use to conclude that the shift in policy “[averted] the radicalization and recruitment of up to 6,000 Pakistani citizens.”⁶²

Where to begin? First, it is a PowerPoint slide. Standards of rigor for Defense Department PowerPoint slides are quite different from those of peer-reviewed academic work. The slide, by itself, gives no indication of how the author arrived at the twenty-to-one ratio. Further, the claim that “research also shows,” along with the citation to Gregory’s peer-reviewed paper (a paper that does not use the slide as an authoritative source for the twenty-to-one ratio), gives readers a sense of academic rigor where there is none.

Second, the context of the PowerPoint slide’s claim is Afghanistan, not Pakistan. This distinction is important because the Obama PPG applied only to “areas outside the United States and areas of active hostilities.”⁶³ At the time the policy was introduced (2011) or publicized (2013), this would have excluded Afghanistan. Even if the Defense Department had developed a methodology to show that Afghans are radicalized at a rate of twenty insurgents per civilian casualty, it is not at all obvious that this number would equally apply in different socio-political contexts.

Third, the Department of Defense’s claim is about the radicalization of insurgents. Lushenko and Raman cite it as though Gregory has made claims about the radicalization of terrorists. The United States was engaged in a counterinsurgency conflict in Afghanistan as it attempted to defeat “the organized use of subversion and violence to seize, nullify, or challenge political control” there.⁶⁴ If the United States were ever engaged in counterinsurgency operations in Pakistan, the conditions of that counterinsurgency would have been different from those in Afghanistan. However, even this recognition is moot because Lushenko and Raman apply the slide’s claim about counterinsurgency to counterterrorism. Radicalization may function identically in both cases,⁶⁵ but the burden is on Lushenko and Raman to make that case rather than merely to assume it.

Lushenko and Raman’s claim is troubling because it combines dubious research methods with unjustified confidence. Scholars have been telling us for the last decade that drone strikes create more terrorists than they kill,⁶⁶ but this is

62. LUSHENKO & RAMAN, *supra* note 1, at 59.

63. *Procedures for Approving Direct Action against Terrorists Targets Located Outside the United States and Areas of Active Hostilities* (May 22, 2013), <https://perma.cc/X4H2-VWCW>.

64. JOINT CHIEFS OF STAFF, JOINT PUBLICATION 3-24, COUNTERINSURGENCY, ix (2021).

65. For example, Jonathan Gilmore describes the US’s adversary in Afghanistan as a “terrorist insurgency,” conflating the two groups. Jonathan Gilmore, *A Kinder, Gentler Counter-Terrorism: Counterinsurgency, Human Security and the War on Terror*, 42 SEC. DIALOGUE 21, 28 (2011).

66. Audrey Kurth Cronin, *Why Drones Fail: When Tactics Drive Strategy*, 92 FOREIGN AFFS. 44, 51 (2013); Sarah Kreps, *The democratic deficit on drones*, 32 INTEL. AND NAT’L SEC. 411, 418 (2017); SARAH E. KREPS, DRONES: WHAT EVERYONE NEEDS TO KNOW 29-32 (2016); S. Krishnan, *Drone Warfare*, 22 WORLD AFFS.: THE J. OF INT’L ISSUES 38, 43 (2018); Aqil Shah, *Do Us Drone Strikes Cause Blowback? Evidence from Pakistan and Beyond*, 42 INT’L SEC. 47, 52 (2018); JOHN J. KAAG & SARAH E. KREPS, DRONE WARFARE 44 (2014).

an extremely difficult proposition to prove. Some of those very same scholars who have argued for this “drone blowback” have also emphasized how difficult it is to verify empirically the significance of this blowback. The question is a “difficult one to answer.”⁶⁷ In the absence of actual data, “[arguments such as these are] mere speculation.”⁶⁸ Even those who suggest that “there is empirical evidence that drone use does increase the number of insurgents” can point only to broad trends in the size of terrorist organizations and not to a specific ratio of insurgents created per civilian casualty.⁶⁹

Lushenko and Raman claim to have solved this seemingly intractable problem, but they have done so by appealing to a Defense Department PowerPoint slide buttressed by the hand-waving language that “research also shows. . .” This is, to put it quite candidly, poor scholarship.

VI. A MISSED OPPORTUNITY IN THE CONTROL CONDITION

As has been the case since scholars first started debating the use of drones in war, there is a methodological limitation lurking beneath the surface. For all the ink that has been spilled evaluating the geopolitical implications, the legality, the public perceptions, the destabilizing effects, the global proliferation, and the morality of drones, not enough work has been done to distinguish between drone warfare and other applications of airpower. Far too often, scholars are eager to make a claim about “drone warfare” without explaining whether their conclusion applies uniquely to drone warfare or whether it is merely a claim about airpower more generally. The literature on drone warfare suffers, perhaps more than other areas in research on war, from a failure to answer the question, “compared to what?”

John Kaag and Sarah Kreps asked themselves this question in their 2014 book, *Drone Warfare*: “[t]he concern with drone strikes does not indict the drone technology itself but rather . . . ‘the parameters of the war in which they’re being used.’ . . . The question is whether the United States is authorized to engage in armed attacks against these targets at all.”⁷⁰ Before Kaag and Kreps made declarations about drones, they asked themselves, compared to what? I was critical then because I couched their conclusions as commentary on “drone warfare” even though, by their own admission, the proper object of their critique was not grounded in drones at all but in U.S. foreign policy. But at least they asked this question, compared to what, and provided readers with the answer.

If drone warfare represents a salient category in any academic discipline, it does so only because there is some meaningful differentia that distinguishes it

67. SARAH E. KREPS, *DRONES: WHAT EVERYONE NEEDS TO KNOW* 32 (2016).

68. Aqil Shah, *Do U.S. Drone Strikes Cause Blowback? Evidence from Pakistan and Beyond*, 42 INT’L SEC. 47, 52 (2018).

69. See, e.g., S. Krishnan, *Drone Warfare*, 22 WORLD AFFS.: THE J. OF INT’L ISSUES 38, 43-44 (2018); MICAH ZENKO, *REFORMING U.S. DRONE STRIKE POLICIES* 10-11 (2013).

70. JOHN J. KAAG & SARAH E. KREPS, *DRONE WARFARE* 85-86 (2014).

from other forms of airpower.⁷¹ Lushenko and Raman's observation that we cannot talk about "drone warfare" without defining "warfare" is an insightful one. But there is another step to take. If scholars want to say something meaningful about *drone* warfare, they must show in what ways their conclusions apply to drone warfare *while they do not apply* to warfare more broadly. If they cannot show this distinction, then they are not commenting on drone warfare *qua* a specific category, but only on drone warfare *qua* warfare more generally. Lushenko and Raman set out to tell us how the public perceives the legitimacy of the narrow species of drone warfare, but they have failed to ask the most important question: is there a difference between how the public perceives the legitimacy of drone warfare and how the public perceives the legitimacy of aerial warfare more broadly?

This is clearest in their control condition. The control condition is supposed to provide a baseline for comparison.⁷² We can work backward from the control instrument to determine what is under investigation. If the difference between the control and the treatment group is that the former was not exposed to the feature, Y, and the latter was, then we can conclude that the researcher wants to learn something about the effects of the feature, Y.

Now consider Lushenko and Raman's control. Alongside the eight scenarios that were distributed to respondents, the control survey informed respondents that "Country X uses drone warfare to kill terrorists abroad. Given this information, consider the following scenario: Country X conducts a drone strike in Country Y against a terrorist."⁷³ Then, based on this information, respondents are asked the same question the other respondents are asked, "how legitimate [right or wrong] is Country X's use of the drone strike." In the statistical analysis of responses, the legitimacy score from the control group is used as the baseline against which to compare responses to the eight substantive scenarios.

Working backward, can we determine what is under investigation in Lushenko and Raman's study? The difference between the treatment group and the control group *is not* the presence or absence of drone warfare. Instead, it is the presence or absence of Lushenko and Raman's three binary variables: (1) strategic or tactical; (2) unilateral or multilateral constraints; and (3) civilian casualties or not. If this is the difference between the treatment and the control, then this is what is actually under investigation. Lushenko and Raman cannot tell us anything new about what respondents think about drone warfare because they didn't ask, "compared to what?" All they can tell us is how respondents perceive distinctions between strategic and tactical, between unilateral and multilateral constraints, and between the presence or absence of civilian casualties, whether the precipitating event was a drone strike or any other means of warfare.

71. I have in mind Aristotle's definitions of genus, species, and differentia. See, e.g., Paul Studtmann, *Aristotle's Categories*, THE STANFORD ENCYCLOPEDIA OF PHIL. (Edward N. Zalta & Uri Nodelman eds., 2021), <https://perma.cc/ZK3P-ZBYW>; A. T. BÄCK, ARISTOTLE'S THEORY OF PREDICATION 151 (2016).

72. CATHERINE S. TAYLOR, VALIDITY AND VALIDATION 9-10 (2013).

73. LUSHENKO & RAMAN, *supra* note 1, at 102.

Lushenko and Raman make no attempt to isolate drone warfare from other applications of airpower. We cannot determine from their survey instrument how Americans perceive “over-the-horizon” uses of *drones*, but only how they perceive “over-the-horizon” uses of air power. Likewise, we cannot determine how French citizens perceive juridical *drone* strikes, but only how they perceive juridical air strikes.

I eagerly await the scholarship that finally begins to tell us how people understand drone warfare compared to other means of warfare available to strategic-level (and, indeed, operational-level) decision-makers. This book cannot answer this question because it does not ask. Until scholars ask respondents, not just about their views on drone warfare, but about the differences between their views on drone warfare and other kinds of warfare, any conclusions we draw about drone warfare will be feeble and frail.

VII. CONCLUSION

From its beginning, the drone literature has been plagued by biases and misconceptions. Over time, through some improvements in government transparency, interdisciplinary study, and a broadening set of contributors to the field, the community of researchers on these issues has worked through the growing pains. The kind of empirical work Lushenko and Raman have taken on is crucial and serves the broader community of researchers across disciplines by helping us to understand how citizens perceive, understand, and respond to drone warfare. However, this is difficult work. Lushenko and Raman should be commended for taking on such a task. Ultimately, the experiment design suffers from its important limitations—specifically, its conflation of legitimacy with morality; the narrow scope of its descriptive definition of drone warfare; and its failure to compare drone warfare with other means of warfare. As a result, readers will gain few novel insights into how citizens understand the legitimacy of drone warfare. There are two important exceptions: *The Legitimacy of Drone Warfare* does provide meaningful differences between U.S. and French citizens, and it does show that the Obama Administration PPG went into effect in 2011 and not 2013. But these are small gains relative to the book’s stated goals. I hope that their ambitious aims, and perhaps even this review, will help other researchers to identify the research questions and survey instruments that will develop this scholarship further.
