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# Drones, Balance of Power, and “Just War”: Assassination and Warfare in a New Century

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On September 30, 2011, in Yemen, Shaykh Anwar al-Aulaqi, an American-born Islamic cleric, was struck by missiles fired from an American drone. Al-Aulaqi—who frequently delivered radical speeches in colloquial English—had been designated an “operational [terrorist] leader”<sup>1</sup> by the U.S. government. Also in the car was another U.S. citizen, Samir Khan.<sup>2</sup> These were the first American citizens to be killed by a U.S. drone strike, though apparently no one connected to the operation knew that Khan, the editor of al-Qaeda propaganda magazine *Inspire*, was with al-Aulaqi that day. Khan was not an intentional target. Less than three weeks later, al-Aulaqi’s 16-year-old son, Abdulrahman al-Aulaqi (also a U.S. citizen), was also killed in Yemen by a U.S. drone strike that was targeting someone else.

The issues that arise surrounding drone strikes can be important topics for classroom discussion and inquiry. The subject not only impacts public policy, but determines our moral stand-

ing in the world. The C3 Framework asserts that “our democratic republic will not sustain unless students [know] the past; read, write, and think deeply; and act in ways that promote the com-

mon good.”<sup>3</sup> Teachers can prepare students for this responsibility by exploring the use of weaponized drones within a pedagogical framework called “just war” theory.

## PPG: New Policy for a New Weapon

While the president of the United States is the commander-in-chief of the armed forces, the power to actually declare war belongs to Congress (though no such declaration has been issued since 1942). After the Vietnam War, Congress passed the War Powers Resolution, which established that the president can send forces

abroad only in the case of a declaration of war or in a “national emergency.” The latter would require, from Congress, an “authorization for use of military force” (AUMF).<sup>4</sup>

In the wake of the September 11, 2001, terrorist attacks, Congress passed an AUMF that empowered the president to engage with a stateless, transnational enemy. This authorization, however, has led to almost 16 years of counterterrorism operations, including the use of lethal drones in 8 countries. The AUMF states:

[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.<sup>5</sup>

In effect, the 2001 AUMF grants the president extraordinary authority over war with no specific end date or oversight. The Bush and Obama administrations both argued that the AUMF provided the legal foundation for the ongoing use of drones, a position which has been adopted by Donald Trump.<sup>6</sup>

In 2013, the Obama administration released “written policy standards and procedures that [formalized the] rigorous process for reviewing and approving operations to capture or employ lethal force against terrorist targets.”<sup>7</sup> The Presidential Policy Guidance (PPG) was publicly released in 2015 (though parts of it had been redacted<sup>8</sup>) and provided a glimpse into the decision-making process. It did not resolve many of the thorniest questions around drone strikes. It does, however, provide teachers with a valuable resource for exploring how drones are used.

## The Perils of “Targeted” Killing

Drones present certain advantages that allow combatants to circumvent many of the traditional risks of warfare—drones are comparatively inexpensive and they don’t get tired, thirsty, or hungry. The first “targeted killings” with drones occurred in 2002, under George W. Bush, when the CIA killed six suspected members of al-Qaeda in Yemen.<sup>9</sup> These attacks have apparently been effective in disrupting terrorist operations. According to an official U.S. estimate, approximately 2,600 terrorists have been killed by targeted drone strikes. However, several human rights organizations think the number is much higher and includes civilian fatalities.<sup>10</sup>

Drone proponents point out that the risk to noncombatants is lower than with traditional air strikes. According to one study, the 2004–2013 civilian casualty rate from drone strikes in Pakistan was 28 percent—certainly lamentable, but lower than comparable casualty rates in other modern conflicts.<sup>11</sup> However, a 2016 review of the evidence asserted that the civilian casualty rate under the Obama administration was “in the hundreds or low thousands.”<sup>12</sup> The stigma of civilian casualties is compounded, to many critics, by the use of “signature strikes.” These rely on an algorithm-driven decision-making process, instead of human operators, and have their own distressing record of mishap.<sup>13</sup> Though drones may, in fact, be an effective deterrent to terrorism, they may also cause unintended, lasting hostility in nations where support for U.S. policies is crucially needed—a paradoxical outcome often termed “blowback.”<sup>14</sup>

Another question about the use of drones revolves around what may seem like a semantic distinction—the difference between *war* and *assassination*. The George W. Bush administration rescinded Executive Order 12333, which had barred political assassination, arguing that it no longer had legal force, after September 11th, as applied to national self-defense.<sup>15</sup> The AUMF has created a foundation for targeted killings, which

have the same force and effect as assassinations. In February 2010, before the attack on al-Aulaqi, a memorandum written for the attorney general argued that “killings in self-defense are not assassination[.]” Moreover, the memo argued that al-Aulaqi’s citizenship did not automatically prohibit a lethal action—“being a U.S. citizen ... does not give a member of al-Qaeda a constitutional immunity from attack.”<sup>16</sup> This raises difficult questions: has a public desire for safety created a perpetual state of war with (and in) other nations? Have targeted killings been “normalized” into a tool of U.S. foreign policy? Are we comfortable with other nations utilizing similar tools and policies? And are we comfortable with such methods being applied to Americans?

## Teaching with the PPG and Just War Theory

The Presidential Policy Guidance is not only a mechanism for determining the use of drones, it is also a defense of that policy. Teachers can use it to help students determine whether or not the PPG is, as it claims, “consistent with the laws and Constitution of the United States.” With it, teachers and students can explore the changing nature of war powers in America: To what degree can the president foresee “any future acts of international terrorism”? Are there adequate checks and balances of power when a U.S. president orders a drone strike? Is it advisable (or even possible) to determine a concluding date to a president’s use of weaponized drones?

Teachers can begin with the PPG’s philosophical foundations. The conventions that govern the conduct of war between nations (including the UN Charter, The Hague and Geneva Conventions, and most international law and treaties) are rooted in a philosophical tradition known as just war theory. Its basic tenet is that for war to be considered moral, it must be *limited*. There are three broad components of just war: *jus ad bellum*, “justice before war” (conditions under which wars may

be initiated); *jus in bello*, “justice during war” (acceptable conduct in waging war); and *jus post bellum*, “justice after war” (requirements for a stable peace).<sup>17</sup> For the purposes of this activity, the first two components are most relevant. Students can analyze the process described in the PPG by comparing it with internationally recognized (and largely accepted) restrictions on war-making (see Handout B). By comparing these two handouts, students can analyze which elements of the drone program are rooted in just war tradition—and to what degree (see Teacher’s Key below).

Other just war concepts provide compelling avenues of inquiry for students. For example, an argument in favor of drones lies in the diminished risk to military personnel, which makes the use of drones easier to contemplate. But that raises a danger of not perceiving other risks clearly. Recent studies indicate that the presence of combat-related stress (PTSD, substance abuse, suicidal ideation) are roughly the same for drone operators as they are for traditional combat pilots.<sup>18</sup> Perhaps more alarmingly, there is not much more likelihood of success with a drone over more conventional means. According to one U.S. official, “[When] a drone strike kills more than

one person, there is no guarantee that those [others] deserved their fate ... it’s a phenomenal gamble.”<sup>19</sup>

### Collateral Damage: Two U.S. Citizen Fatalities

The deaths of U.S. citizens in drone strikes raise complex questions for teachers and students. For instance, students can consider whether or not the government’s arguments were adequate: was the attack on al-Aulaqi justified? After the attack, then-President Obama referred to al-Aulaqi as “the leader of external operations for [Al-Qaeda in the Arabian Peninsula (AQAP)],” saying he had been responsible for several terrorist operations, including a 2009 plot to blow up an airliner.<sup>20</sup> But Samir Khan, who died in the same attack, had not been designated a high-value target. Was it constitutional? Was it moral?

Anwar al-Aulaqi’s son Abdulrahman was killed (while attending a family barbeque) in a strike apparently meant for Ibrahim al-Banna, an Egyptian member of AQAP. According to a U.S. official, authorities “did not know that [al-Aulaqi’s] son was there” before the launch order was given.<sup>21</sup> Even though the younger al-Aulaqi was not targeted in the killing, he was officially labeled

EKIA, for “enemy killed in action” after the attack—a standard practice for bystanders killed in drone strikes.<sup>22</sup> Students might consider how this designation affects our conception of the victims of these attacks.

President Obama did not comment publicly on the death of Abdulrahman al-Aulaqi, although he was reportedly “surprised and upset.” Administration officials privately acknowledged the nature of the error, terming it “an outrageous mistake.” One acknowledged, “we killed three U.S. citizens ... two of them weren’t even targets. That doesn’t look good. It’s embarrassing.”<sup>23</sup>

### A Classroom Discussion

The redacted nature of the PPG makes determining the degree to which it is constitutional, or permissible under just war conditions, a challenge to unravel (see “Two Components of Just War Theory,” on p. 57). When a college-level social studies methods class discussed the topic, several students addressed the seeming conflict between the PPG and the condition of *proper authority*, especially in light of the Constitution’s original designation of war powers. The practical urgency associated with “targeted

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## Teacher’s Key: A Just-War Analysis of the Presidential Policy Guidance (PPG)

| Key Passage   | Questions; <i>Just War Theory</i>   |
|---|---|
| “Lethal action should be taken in an effort to prevent terrorist attacks against U.S. persons only when capture of an individual is not feasible and no other reasonable alternatives exist to effectively address the threat.”   | Is the action necessary? Is capture possible? <i>Jus ad bellum</i> — “Reserving war as a last resort”   |
| “CT [counter-terrorism] actions, including lethal action against designated terrorist targets, shall be as discriminating and precise as reasonably possible.”  | Is the risk to noncombatants minimized? <i>Jus in bello</i> — “discriminating between a combatant and civilian”   |
| Any department or agency ... may identify an individual for consideration [as a target], but only an operating agency or DOJ [Department of Justice] may formally request that a suspect be considered for capture or custody by U.S. personnel.” [This passage is not quoted in Handout A but can be accessed through the URL at the end of the Handout] | Who can make decisions to kill? Who is accountable? Have all legal/technical requirements been fulfilled? <i>Jus ad bellum</i> — “following proper authority” |

# Transcript of the Opening Page of the PPG

May 22, 2013

## PROCEDURES FOR APPROVING DIRECT ACTION AGAINST TERRORIST TARGETS LOCATED OUTSIDE THE UNITED STATES AND AREAS OF ACTIVE HOSTILITIES

This Presidential Policy Guidance (PPG) establishes the standard operating procedures for when the United States takes direct action, which refers to lethal and non-lethal uses of force, including capture operations, against terrorist targets outside the United States, and areas of active hostilities.

Any direct action must be conducted lawfully and taken against lawful targets; wherever possible, such action will be done pursuant to a [REDACTED] plan. In particular, whether any proposed target would be a lawful target for direct action is a determination that will be made in the first instance by the nominating department's or agency's counsel (with appropriate legal review as provided below) based on the legal authorities of the nominating department or agency and other applicable law. Even if the proposed target is lawful, there remains a separate question whether the proposed target should be targeted for direct action as a matter of policy. That determination will be made pursuant to the interagency review process and policy standards set forth in this PPG. The most important policy objective, particularly informing consideration of lethal action, is to protect American lives.

Capture operations offer the best opportunity for meaningful intelligence gain from counterterrorism (CT) operations and the mitigation and disruption of terrorist threats. Consequently, the United States prioritizes, as a matter of policy, the capture of terrorist suspects as a preferred option over lethal action and will therefore require a feasibility assessment of capture options as a component of any proposal for lethal action. Lethal action should be taken in an effort to prevent terrorist attacks against U.S. persons only when capture of an individual is not feasible and no other reasonable alternatives exist to effectively address the threat. Lethal action should not be proposed or pursued as a punitive step or as a substitute for prosecuting a terrorist suspect in a civilian court or a military commission. Capture is preferred even in circumstances where neither prosecution nor third-country custody are available disposition options at the time.

CT actions, including lethal action against designated terrorist targets, shall be as discriminating and precise as reasonably possible. Absent extraordinary circumstances, direct action against an identified high-value terrorist (HVT) will be taken only when there is near certainty that the individual being targeted is in fact the lawful target and located at the place where the action will occur. Also absent extraordinary circumstances, direct action will be taken only if there is near certainty that the action can be taken without injuring or killing non-combatants. For purposes of this PPG, non-combatants are understood to be individuals who may not be made the object of attack under the law of armed conflict. The term "non-combatant" does not include an individual who is targetable as part of a belligerent party to an armed conflict, an individual who is taking a direct part in hostilities, or an individual who is targetable in the exercise of national self-defense. Moreover, international legal principles, including respect for a state's sovereignty and the laws of war, impose important constraints on the ability of the United States to act...

[https://www.justice.gov/oip/foia-library/procedures\\_for\\_approving\\_direct\\_action\\_against\\_terrorist\\_targets/download](https://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download)

# Two Components of Just-War Theory

## ***Jus Ad Bellum*** (“Justice Before War”)

*Just cause:* Self-defense from external attack; defense of others from external attack; protection of innocents from repressive regimes

*Right intention:* A nation must fight only in defense of its just cause, not for an undefended justification

*Proper authority/public declaration:* A war can be launched only by legitimately recognized national authority

*Last resort:* A state may resort to war only if it has exhausted all peaceful alternatives to resolving the conflict (like diplomatic negotiation)

*Probability of success:* A state may act only if there is a reasonable likelihood of victory, to prevent futile bloodshed

*Proportionality:* A state must, prior to war, weigh the *universal* goods (e.g., vindicating a just cause), against the *universal* evils to result (e.g., casualties)

## ***Jus In Bello*** (“Justice In War”)

*International prohibition of certain weapons:* No chemical, biological weapons, or nuclear weapons

*Discrimination and non-combatant immunity:* Soldiers may only target those who are “engaged in harm”—combatants, not civilians

*Proportionality:* Allows only the force proportional to the desired goal (“weapons of mass destruction” are typically out of proportion)

*Benevolent quarantine for prisoners of war (POWs):* Soldiers who surrender are immune from further harm and should be returned in exchange for the opposing state’s POWs

*Mala in Se:* “Evil in themselves”—the use of weapons, tactics, and methods that are unequivocally immoral

*No reprisals:* A state can’t violate *jus in bello* if the other state does so first

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killing” seems to require speedy action by the executive branch, with minimal input or oversight. Several students were strongly opposed to vesting authority in a small group of individuals whose work is beyond public view.

One student was adamant that drones represented a clear break with the condition of *discrimination* between civilians and those “engaged in harm.” The death of the teenaged Abdulrahman al-Aulaqi was less an aberration than an indication of an integral flaw. How can one justify, she argued, a policy that kills people whose crimes might occur in the future, but are not clearly *imminent*? Another student demurred, stating that the use of drones amounted to national self-defense, a basic element of *just cause*. A third pointed out that the father, Anwar al-Aulaqi, had made himself a target primarily through speeches advocating harm to U.S. citizens. Should there have been a trial for this man? As a U.S. citizen, did al-Aulaqi’s exercise of free speech serve as a *de facto* death sentence? All students acknowledged that the moral complexity surrounding drones was both a difficult challenge for citizens (and for teachers) to navigate, as well as a rich opportunity for critical student inquiry.

### “The Policy is Assassination”

Drones routinely transcend international borders, using a process that has been largely closed to public view. A major consideration for students and teachers relates to their long-term effectiveness. Will drones help end lingering, seemingly perpetual conflicts in Afghanistan and Iraq? Are they, as required by just war theory, weapons of last resort and self-defense? And, perhaps most importantly, do they create more enemies than they eliminate? One anonymous U.S. official said, “Drones are a tool, not a policy ... the policy is assassination.”<sup>24</sup> From a distance, drones create the impression of precise, clinical warfare.

For those closer to the impact of such weapons, this impression is misleading, even false. Whether or not drones are permissible under just war theory is an issue that students today need to evaluate. In an era where technology is racing ahead of our ability or inclination to scrutinize its moral applications, grappling with complex issues in the classroom becomes even more vital. 🌐

### Notes

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2. Al-Aulaqi was born in Las Cruces, New Mexico, to Yemeni parents. Khan was born in Saudi Arabia to Pakistani parents but raised in New York and North Carolina.
3. National Council for the Social Studies (NCSS), *The College, Career, and Civic Life (C3) Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K-12 Civics, Economics, Geography, and History* (Silver Spring, Md.: NCSS, 2013).
4. The War Powers Resolution is available at [www.loc.gov/law/help/war-powers.php](http://www.loc.gov/law/help/war-powers.php).
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7. White House Office of the Press Secretary, “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities” (May 23, 2013), [www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism](http://www.whitehouse.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism)
8. The full title of the document is “Procedures for Approving Direct Action against Terrorist Targets Located Outside the United States and Areas of Active Hostilities, May 22, 2013.” A full copy of the document is available at [www.justice.gov/oip/foia-library/procedures\\_for\\_approving\\_direct\\_action\\_against\\_terrorist\\_targets/download](http://www.justice.gov/oip/foia-library/procedures_for_approving_direct_action_against_terrorist_targets/download).
9. “CIA ‘Killed al-Qaeda Suspects’ in Yemen,” BBC News (November 5, 2002), <http://news.bbc.co.uk/2/hi/2402479.stm>.
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12. Conor Friedersdorf, “The Obama Administration’s Drone-Strike Dissembling,” *The Atlantic Monthly* (2016), [www.theatlantic.com/politics/archive/2016/03/the-obama-administrations-drone-strike-dissembling/473541/](http://www.theatlantic.com/politics/archive/2016/03/the-obama-administrations-drone-strike-dissembling/473541/).
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