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## RESEARCH ARTICLE

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### **Drone Warfare and the Obama Administration's Path-Dependent Struggles on Human Rights and Counterterrorism**

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#### ABSTRACT

*Why did the use of drone strikes proliferate during the first term of the Obama administration? This paper espouses two key preliminary and exploratory arguments. First, deploying theoretical insights from historical institutionalism, we argue that the Obama administration, despite its initial resistance to the existing counterterror agenda, found it extremely difficult to reverse the war on terror narrative and the institutions that emerged therefrom in US domestic and foreign politics. This continuation provided strong incentives to maintain militaristic approaches to counterterrorism, considering President Obama's inclination to continue the use of military power against terrorists. Second, upon realising the stickiness and institutional endurance of post-9/11 security agencies, Obama's opposition to war on terror-oriented policies motivated the administration to wage a supposedly more morally justifiable and effective counterterror strategy with the use of armed drones.*

**KEYWORDS:** Drones; War on terror; Obama; Human rights; Historical institutionalism

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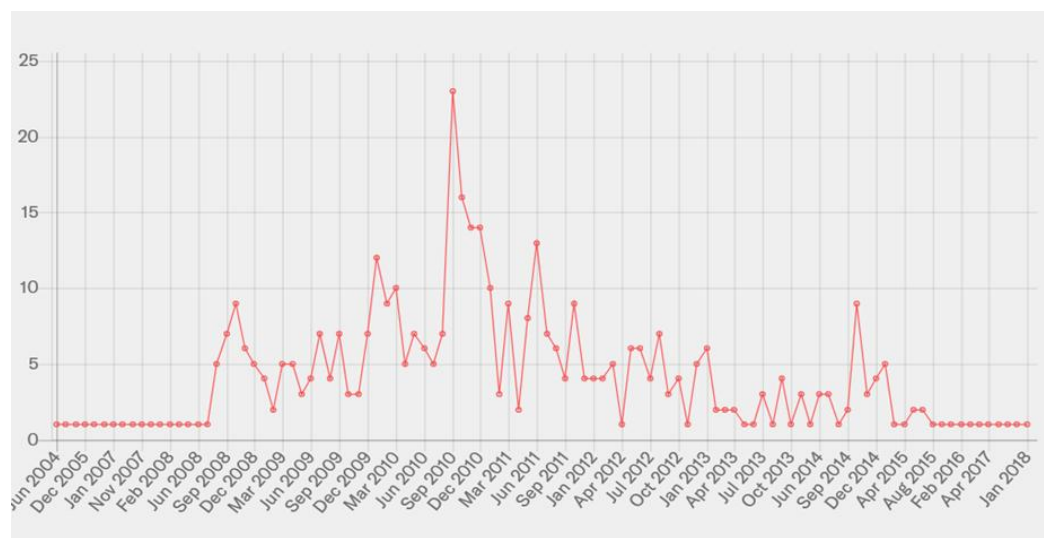
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## Introduction

During his presidential campaign, Barack Obama called for a military withdrawal from Iraq, the end of torture, the indefinite detention of suspected terrorists, the closing of Guantanamo Bay, and the abolition of the use of the term ‘war on terror’ (Davis 2011, pp. 165-189). In his widely-read essay in *Foreign Affairs*, Barack Obama, then a presidential candidate, argued that “to renew American leadership in the world, we must first bring the Iraq war to a responsible end [...] we cannot impose a military solution on a civil war between Sunni and Shiite factions [...] we must launch a comprehensive regional and international diplomatic initiative to help broker an end to the civil war in Iraq, prevent its spread, and limit the suffering of the Iraqi people” (Obama 2007, pp. 8-10). Consequently, the American public widely believed that President Obama intended to end the war on terror begun by the Bush administration after the attacks on September 11, 2001. Although Barack Obama’s campaign in 2008 did not explicitly advocate for drone strikes despite his critical opposition to the Bush administration’s war on terror, the graph below shows the drastic increase in the number of US drone strikes in Pakistan during the first term of the Obama administration (2009–2013):

**Figure 1. Number of US drone strikes in Pakistan.**



Source: *The Bureau of Investigative Journalism* (2019).

The US government dramatically expanded the use of drones, as shown by the data on the number of strikes and the geographical scope of drone operations (Fisk & Ramos 2016). Notably, several investigative journalists estimated that “there were ten times more air strikes in the covert war on terror during President Barack Obama’s presidency than under his predecessor, George W. Bush” (Purkiss & Serle 2017, p. 1). These strikes took place in Iraq, Afghanistan, Yemen, Somalia, and Pakistan (Birdsall 2018). Drone strikes are used for targeted killing, particularly through the use of precision strikes on suspected terrorists. The fact that the number of US counterterrorist drone strikes increased under the Obama administration defies the expectation that the administration wanted to end the war on terror.

Hence, this paper addresses the following puzzle: why did the use of drone strikes proliferate during the first term of the Obama administration? Our response to that puzzle constitutes two key preliminary arguments. First, deploying theoretical insights from historical institutionalism, we argue that the Obama administration, despite its initial resistance to the existing counterterror agenda, found it extremely difficult to reverse the war on terror narrative and the institutions that emerged therefrom in US domestic and foreign politics. This continuation provided strong incentives to maintain militaristic approaches to counterterrorism, considering President Obama’s inclination to continue the use of military power against terrorists. Second, upon realising the stickiness and institutional endurance of post-9/11 security agencies, Obama’s opposition to war on terror-oriented policies motivated the administration to wage a supposedly more morally justifiable and effective counterterror strategy.

This paper seeks to identify the conditions that facilitated the strong reliance on drone warfare, particularly by situating that strategy within the broader context of the continuation of the war on terror during Obama’s first term. This paper emphasizes the path-dependent role of post-9/11 state security institutions and the need for transforming a counterterror strategy that is more justifiable, at least from the perspective of the Obama administration. The first section reviews current debates on drone warfare and situates our argument within the scholarly literatures in

International Relations, US foreign policy, and security studies. The first discussion section reflects on how and why the war on terror continued during Obama's first term as President and argues the path-dependent effects of a militaristic policy agenda that gained traction after the 9/11 attacks. This analysis provides the context for the main argument discussed in the second discussion section of this paper: Drone strikes increased because the Obama administration pursued a war on terror that was, from its perspective, more strategically effective and legally justifiable. On the other hand, the Obama administration's expansion of the drone strikes program facilitated a global human rights crisis that killed thousands of lives. As such, Kenneth Roth of the Human Rights Watch (2017, p. 1) maintains that Obama has a "shaky legacy on human rights", particularly because "for all his promises – and a Nobel Peace Prize – the Obama presidency delivered more hope than change". Hence, this article underscores how militaristic and violent approaches to counterterrorism can generate a human rights crisis that all states must seek to avoid. In normative terms, every human being has an inherent and inviolable right to life that not even the US, as the most powerful state, should undermine for the sake of ambiguously defined geostrategic interests or national security.

### **1. Our state of knowledge: causes of reliance on drone warfare**

This section reflects on the academic debate about drone warfare and identifies two distinctive strands of literature that explain why the Obama administration relied on drone strikes in counterterrorism. The first focuses on key political developments in the US' war on terror. We maintain that the perceived failures of the Bush administration's counterterror strategy motivated the Obama administration to maintain a militaristic policy stance to global terrorism, yet reforming such a policy agenda by making counterterrorism more strategically effective and legally justifiable. In doing so, the Obama administration resorted to bolstering the drone program in order to limit casualties in the US military, thereby making the war on terror more strategically effective, and offered political and legal justifications in ways that reframed the war on terror in a more legitimate way. The second strand of literature

stresses that the legal framework established under the Bush Doctrine was maintained by the Obama administration. This formed the core justification for the Obama administration's increased use of drone strikes. This section highlights some of the shortcomings in current understandings of the increase of drone strikes under Obama and explains where this paper contributes to the debate.

Within the literature pertaining to political developments in the war on terror, Walsh (2018) notes that the two wars in Afghanistan and Iraq had become lengthy and costly campaigns that produced few concrete results in terms of protecting the US from the threat of terrorism. Concerns about the domestic political costs of military casualties and the (financial) strains of both state-building operations led Obama to move to a different strategy to combat terrorists (Walsh 2018). Targeted killings enabled the US to continue the fight against terrorists while lowering the domestic political costs that this fight entailed. Kreuzer (2014) and Horowitz et al. (2016) furthermore point at a number of advantages of drones. First, American lives are not put at risk in operations because they are unmanned aircrafts. Second, drones are cheaper than soldiers or other aircrafts. Third, drones can be used for long-term surveillance. They are therefore more capable of identifying individual targets than F-16s or Apache helicopters and thus more accurate (Kreuzer 2014; Horowitz et al. 2016). Kindervater (2016) argues that the merger of surveillance technique with lethal striking made drones more capable of attacking dynamic targets, where conventional weapons focus primarily on fixed sites. This is a tactical benefit when the targets are individual terrorists. Byman (2013) maintains that drones are effective in counterterrorism because they contribute to the weakening of the chain of command and operational effectiveness of terrorist organisations by killing its leaders. Fourth, drone operations require a smaller military logistical footprint, while simultaneously broadening the geographical scope of counterterrorist operations. Reduced military presence abroad limits the anti-American sentiments that may motivate terrorists (Horowitz et al. 2016). In addition, Shelby (2017) points out that the public is generally aware of the benefits of drones. They support the use of drone strikes more than other alternatives, even in cases where the payoff

for the use of force is minimal. Sauer and Schörnig (2012) concur with Shelby that public support therefore enables and encourages the increased use of drone strikes (Sauer & Schörnig 2012; Shelby 2017). This led the Obama administration to increasingly rely on drones (Sauer & Schörnig 2012). In sum, the need to change important aspects the war on terror combined with the strategic advantages that armed drones offer, led to an increase in drone strikes. This was reinforced by a generally favourable public opinion.

The literature focused on the Bush Doctrine emphasises that the continuation of the Bush administration's legal reasoning under Obama is the main factor why drone strikes increased. Fisk and Ramos (2016) note that the Bush Doctrine, exemplified by the National Security Strategy 2002 and the Authorization for the Use of Military Force (AUMF), blurred the distinction between pre-emptive and preventive use of force (p. 5). The Bush administration argued that the US "must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries" (Fish & Ramos 2016, p. 10). This claim was used to justify the invasion of Iraq in 2003. Moreover, as Birdsall notes, it was applied to targeting individual terrorists on foreign territory, claiming that some states were 'unwilling or unable' to aid the US in self-defence against the imminent threat of terrorism (2018, p. 255). Existing international law was perceived to constrain the US capabilities in effectively repressing transnational terrorist networks like Al Qaeda. The Bush administration therefore claimed to be in 'armed conflict' with terrorism: Terrorists were treated as 'unlawful combatants' rather than criminals, denying them certain judicial protections while claiming they constitute imminent threats to national security. McDonald argues that the terror threat constituted a new type of war, particularly with its focus on non-state terror networks, "but waged, justified and defined primarily according to rules devised for inter-state politics and war" (2017, p. 26). While the Obama administration was widely perceived (at least initially) to be less supportive of a strong militaristic stance against terror networks, President Obama nevertheless maintained that the US was in armed conflict with terrorism and maintained the importance of the role of militaristic responses (Fairhead 2016; McDon-

ald 2017). It continued to invoke the concept of imminent threat as it was applied by the Bush administration to justify, among others, targeted killings. As Jason Ralph (2013, p. 46) notes, the administration consistently referred to the AUMF to justify its drone strikes. Harald Koh, a key legal advisor for the Obama administration, defended the administration's use of drone strikes by arguing that "a state that is engaged in an armed conflict or in legitimate self-defence is not required to provide targets with legal process before the state may use lethal force" (Koh 2010, p. 48). The continuation of key elements of the Bush Doctrine thus served to justify the Obama administration's drone policies.

The literature focused on strategic/political developments is compelling because it explains how drones served to perpetuate the war on terror while reducing the most contentious aspects of it. However, these scholars did not extensively focus on why the Obama administration continued the war on terrorism in the first place and the rationale for bolstering the drone program as a quintessential component of Obama's counterterror strategy. In contrast, the literature pertaining to the Bush Doctrine recognises that despite Obama's objections to the war on terror, many of its core features persisted. This enabled and justified the administration's drone policies. However, this literature offers no explanation as to why drone warfare became the quintessential military tactic of the Obama administration. This paper combines the explanatory power of both strands of literature by considering the patterns of continuity in the war on terror from Bush to Obama while also uncovering the justificatory premises that underpinned the Obama administration's unprecedented reliance on drone warfare. Furthermore, it considers which strategic and political changes motivated the Obama administration to increase its use of drones.

## **2. Arguments and theory**

The core question that this paper seeks to address is this: why did the use of drone strikes increase during the first term of the Obama administration? We maintain two main arguments which are substantiated into two discussion sections. First,

the Obama administration found itself entrapped in the cobweb of post-9/11 security institutions that constitute the Global war on terror. Although Obama's presidential campaign inspired widespread hope that a strong militaristic response to non-state terrorism may be abandoned, the Obama-led White House found it difficult to reverse the counterterror narrative which identified terrorism as an exceptional threat to the US national security (Regilme 2019, p. 159). Furthermore, the Bush administration promoted the view that strong leadership on terrorism in the post-9/11 era was characterised by a militaristic approach to national security. The Obama administration found it difficult to successfully challenge these post-9/11 institutional structures and political expectations, as it did not want to risk being perceived as being weak on terrorism. Thereby, it continued to rely on a militaristic strategy against terrorism as it appears to be, at least for the Obama administration, an effective and legitimate response to the enduring threat of non-state terrorism.

Second, the Obama administration invested in the drone warfare strategy in an effort to reduce public disapproval of the war on terror policies (by minimizing the risks to the lives of US ground forces operating abroad), while continuing the Bush administration's militaristic approach to counterterrorism. The Obama administration continued to use force against terrorists in order to be perceived as politically determined to keep the US safe from terrorism. Simultaneously, the administration increasingly relied on drones to fight terrorists to reduce the most contentious aspects of that war. Notably, a high number of collateral damages emerged from the conventional ground wars in Iraq and Afghanistan and Bush's detention policies, which facilitated the horrific human rights abuses committed in Guantanamo Bay. Through the increased reliance on drones, the Obama administration sought to minimise the collateral human rights abuses brought by the Bush administration's war on terror while still seeking to reinforce his legitimacy through militaristic counterterror policies.



### *2.1. Theoretical framework*

In building our empirical arguments, we deploy the theoretical perspectives from the literature on historical institutionalism, which underscores the ‘stickiness’ of previously chosen policy choices in order to explain the continuity of particular political outcomes. The analytical concepts from historical institutionalist literature provide insights on how the war on terror became institutionalised in US politics. This made it extremely difficult for Obama to dismiss the war on terror narrative. The administration’s increased reliance on drone strikes thus represents a reform initiative in US counterterrorism policy within the confines of the existing policy trajectory of post-9/11 US foreign policy strategy.

In some cases, political institutions ‘lock in’ their position in social and political structures through self-reinforcing mechanisms. Institutional development begins at a critical moment in time, which historical institutionalists call a ‘critical juncture’ (Rixen & Viola 2016, p. 12). According to Rixen and Viola (2016), “critical junctures are exogenous decisions or events that interrupt long periods of stability and set institutions on one path of development rather than another”. We maintain that the 9/11 attacks constitute a critical juncture that enabled the Bush administration to drastically change US domestic- and foreign politics (Regilme 2018a, 2018b). The umbrella term used to label and justify this new political pathway became the ‘war on terror’. The war on terror pertains to a broad overarching political narrative created in response to the 9/11 attacks, which facilitated the creation of a wide panoply of governmental institutions, rules, strategies, and discursive practices – all of which focus on state security. In a lot of ways, state security through the war on terror became a normative political order, whereby politicians and government leaders invoke militaristic responses and state violence as the quintessential policy response to the perceived threat of non-state terror groups. The war on terror approach claims that the 9/11 attacks constitute a new kind of adversary on the part of the US, and therefore the laws of war and international human rights law on armed conflict do not apply to the counterterror policies of the Bush administration (Ralph 2013). In practice, such an approach bolstered the discretionary powers of

the US government in using its military forces and coercive apparatus in its counter-terror operations in ways that did not fully comply with treaty obligations on laws of war and armed conflict.

Historical institutionalists use the term ‘policy feedback’ as the process through which social and political processes facilitate institutional continuity (Pierson & Skocpol 2002, p. 6). Policy feedback is a political development which is set in motion by the existence of a particular political institution. This development entrenches and reinforces the institution’s position in the political ecosystem. An example of policy feedback in the case of the war on terror pertains to the creation of the Department of Homeland Security (DHS), which was created through the invocation of counterterror narratives and discourses, particularly by positing the importance of exceptionalist state security measures as necessary in repressing terror threats within the American homeland (Jackson 2011). The creation of the department enlarged the budget of the federal security apparatus and introduced new career opportunities. As such, thousands of jobs (directly or indirectly) became dependent on the continuation of the DHS. This policy feedback did not only ensure the continuation of the department itself. The war on terror narratives and discourses facilitated the continued legitimization of the existence of the DHS and many other post-9/11 security agencies. As the department continued to exist, so would its foundational narrative; policy feedback that resulted from war on terror policy entrenched the perceived necessary presence of post-9/11 state security institutions. Many critics have since pointed out that this narrative is misguided by demonstrating that terrorism is in reality a comparatively minimal security threat (Croft 2006; Lustick 2013; Bentley 2014). Nevertheless, policy feedback mechanisms made it difficult for the Obama administration to challenge the underlying assumptions on which major components of the US political system like the DHS functioned after the institutionalisation of the war on terror.

Policy feedback entrenches institutions in political systems and facilitates institutional continuity. Historical institutionalists call this effect ‘path dependence’ (Pierson & Skocpol 2002, p. 6). Path dependence does not mean that institutions

remain the same irrespective of the changing political environment in which they are situated. Institutional change is possible in two ways. Either a new critical juncture emerges which puts the political system on a very different pathway, or the existing institution changes gradually in ways that are 'constrained by past trajectories' (Thelen 1999, p. 387). While policy feedback constrains the scope conditions of political change, it could allow some incremental alterations. Thus, if policymakers endeavour to change institutions, they are constrained by existing institutional structures. Especially in the case of a particularly stable institution, policy makers are likely to define their goals and strategies in line with the prevailing institution rather than working against it (Jackson 2011).

Over time, the war on terror became firmly established as an institution. Therefore, the scope of political possibilities and intended policy changes intended by the Obama administration had to consider (or at least refer to) the state security-oriented discourses and pre-existing institutional apparatus that underpinned the War on terror: notably, that terrorism was an exceptionally immense threat to US national security; that the US continued to be in armed conflict with terrorist networks; and that military force was needed to counter the threat.

### **3. Continuing the war on terror**

This section answers the question: Why did the Obama administration continue to depend primarily on military force to undermine the threat from global terror networks? We discuss in this section that the Obama administration was trapped in the war on terror, which primarily emphasized non-state terrorism as an exceptional threat to national security and subsequently provided a militaristic policy agenda. Domestically, this meant a drastic expansion of the state security apparatus, the expansion of highly secretive intelligence services, and the increasing reliance on private contractors for state security services (Priest & Arkin 2011). In post-/11 world politics, counterterrorism came to be defined as a war against terrorists using military force. This section first argues that the perception of the serious threat posed by terrorism was self-reinforcing and therefore difficult to reverse for the

Obama administration. In order to be perceived as politically determined to keep the US safe from terrorism, President Obama was inclined to continue to use military force against terrorists.

### *3.1. 9/11, the critical juncture*

To address public confusion, anxiety, and frustration, the Bush administration had to assure the public how the threat could be repressed by resorting to military force (Krebs & Lobasz 2009). The declaration of the war on terror was not a natural or neutral response to the attacks, considering that a multitude of policy options were plausible and could have been implemented instead. Although unlikely, the administration could have stated that the attacks represented a backlash against globalisation and as a violent response to the US' support of repressive regimes overseas. The attacks could have been labelled as 'horrific crimes,' as terrorist attacks were often labelled before 9/11. That designation would have legitimised domestic law enforcement operations as the appropriate response (Hodges 2011). In any case, the way the attacks were characterised determined how the US responded to it. The Bush administration labelled the attacks as 'acts of war against our country' and asserted that the US was at 'war with terrorism' (Bush 2001). This was not merely a metaphor. As Bentley notes: "The American response to 9/11 was constructed as a very specific form of conflict, where that form of conflict had significant implications for the structure of what would happen next" (2014, p. 92). In foreign policy, the war on terror meant that the US was at war with terrorist networks of global reach, thereby invoking the possibilities of deploying the full force of the US military and expansive global intelligence operations to counter the perceived threat of non-state terror networks. Notably, the war on terror implies some form of discretionary decision-making processes in determining non-state terror networks as the key targets for repression by the US military. This overarching yet ambiguous militaristic policy stance against loosely defined terror networks also facilitated various detention programmes such as the one in Guantanamo Bay and the two wars in Afghanistan and Iraq. It is now widely accepted that those policies

would simply not have been possible without the rhetorical discourses of the war on terror (Bentley 2014). The war on terror transformed many aspects of domestic US politics as well. The next section demonstrates how Bush's depiction of the terrorist threat within US borders justified the vast expansion of the security apparatus. Terrorism was not only portrayed as a foreign threat. At home, the War on terror meant increasing resolve against terrorism on all levels of governance and society.

The war on terror narrative gained traction because the Bush administration framed the 9/11 attacks as a direct attack on America's political order and its existential security as a democratic society (Lustick 2013). The administration capitalised on fear to rally broad national support for the drastic political changes in domestic- and foreign politics that it introduced. This is a phenomenon that Cramer and Thrall call 'threat inflation' (2009, p. 1). Threat inflation pertains to "the attempt by elites to create concern for a threat that goes beyond the scope and urgency that a disinterested analysis would justify" (Cramer & Thrall 2009). As Lustick (2006) points out, the chances of being killed by a terrorist attack in the US are very small. Nevertheless, the war on terror became such an all-encompassing narrative that "every national policy [...] must be evaluated on the basis of whether or not they contribute to victory in that war" (Lustick 2006, p. 18). Political opponents did not only rally behind Bush's policies but also adopted his rhetoric. Furthermore, virtually all reportage took up the discourse (Krebs & Lobasz 2009). The treatment of terrorism as an exceptional threat would continue even when many policies of the war on terror became heavily criticised. For the lasting impact of the war on terror narrative on US domestic- and foreign politics the 9/11 attacks were a critical juncture for drastic institutional change. Exactly how did the institutionalisation of the war on terror occur?

### *3.2. The war on terror in domestic politics*

Even if the Obama administration wanted to abandon the militaristic response to global terrorism and resorted instead to law enforcement-oriented policy strategy, it would have been difficult to overcome the enduring belief that terrorism

constituted an extraordinary threat to America's national security – much less to substantially change the policies based on that premise. The expansion of the security apparatus is a good example, as it demonstrates that inflated threat perceptions of terrorism were self-reinforcing. Inflated threat perceptions in turn justified the war on terror narrative as a self-evident discourse, including the policy framework it introduced to counter terrorism. The expansion of the security apparatus is a major reason why inflated threat perceptions of terrorism persisted throughout Obama's first term.

The expansion of the state security apparatus included the drastic reformation of existing law enforcement institutions such as the FBI, which made counterterrorism its top priority after 9/11. These changes resulted from the vast expansion of the federal budget on security and the introduction of new legislation such as the PATRIOT-acts, which gave law enforcement institutions more operational freedoms such as warrantless wiretapping (Lustick 2006). According to Lustick, these changes would not have been possible without the war on terror narrative as they required 'dangerous suspensions of civil liberties' (2013, p. 182). Moreover, the intelligence community dramatically expanded in response to the post-9/11 terror threats. As *The Washington Post's* Priest and Arkin (2011) show, around 1.271 government agencies and 1.931 private firms are employed in intelligence gathering operations, homeland security, and counterterrorism. Accordingly, almost a decade after the 9/11 terror attacks, nearly 900.000 individuals hold top-secret security clearances, and various counterterror and intelligence operations were conducted in 10.000 locations across the US. Moreover, the institutionalisation of the war on terror narrative that legitimised the expansion of security apparatus also included the drastic increase in the number of terror cases produced by law enforcement agencies. Inflated threat perceptions within law enforcement agencies created a tendency to treat any potential terrorism case seriously. This was famously expressed in the 'one-percent doctrine', which maintained that "the US government should act without respect to evidence of a threat, and only on the basis that it may be possible or even conceivable" (Lustick 2013, p. 182).

The war on terror discourses and policy strategies facilitated the drastic increase in law enforcement operations against suspected terrorists all over the US. The visibility of these operations reaffirmed the image that terrorism was an overwhelming threat. It confirmed, for example, that the increased funding of the security apparatus was warranted. However, according to Lustick (2013), from 2005 to 2009 federal prosecutors refused to seek indictments for 67% of all proposed terrorism cases. Terrorist threat perceptions were largely misguided considering the high number of failed lawsuits that came after the arrests. In reality the increase in terrorism cases reflected mostly an expansion of working capacity and operational freedom in the security apparatus instead of an increase in terrorism. Nevertheless, distorted threat perceptions encouraged politicians and the public to continuously support the expanded security apparatus. As such, over-productive law enforcement agencies reaffirmed the war on terror narrative. This made it difficult for policy makers to argue that expanded security apparatus was unnecessary. The policies that were justified by the war on terror narrative thus ended up serving as policy feedback for this narrative, which became increasingly difficult to dispute.

The high government spending on domestic counterterrorism also attracted other non-state institutions and social actors to focus on counterterrorism as a key policy agenda. According to Lustick, this created a political environment in which “any government agency, company, think tank, professional association, or university that has wanted more funding or more contracts was encouraged if not forced to exaggerate the scale of the terrorist threat and to exaggerate its capacity [...] to help counter that threat” (2013, p. 185). Instead of working against it, actors in the political system redefined their interests in line with the dominant institutional order. Consequently, a vast array of governmental institutions and private actors adopted the War on terror narrative and hundreds of thousands of jobs and careers became dependent on the continuation of the War on terror (Lustick 2006). The effect, as Jackson argues, was that “politicians, lobby groups or individuals who attempt to contradict its central narratives and assumptions are likely to gain little purchase and may even risk their careers” (2011, p. 400). The war on terror’s trans-

formative impact on the domestic political system made it difficult for the Obama administration to argue against the narrative that terrorism ought to be treated as an exceptional threat. Hence, the Obama succumbed to the path-dependent discursive and institutionalised militaristic practices it inherited from the Bush administration.

### *3.3. The war on terror in foreign politics*

Whereas the war on terror led to the drastic expansion of the security apparatus domestically, it was primarily defined as a military struggle in foreign policy. Militaristic approaches to counterterrorism redefined what it meant to be committed to advancing national security in the post-9/11 era. Furthermore, because many of these post-9/11 policy initiatives and state security agencies continued during Obama's presidency, this would have made it difficult to de-militarise US foreign policy abroad even if the administration wanted to.

The Authorization for the Use of Military Force (AUMF), one of the defining documents of the war on terror, stated that terrorist networks such as Al Qaeda and related organisations constitute an imminent threat to the US national security (Deeks 2016). Defining the 9/11 attacks as acts of war meant that the US could deploy militaristic tactics against terrorists. The Bush administration's declaration of war soon materialised into two major wars in Afghanistan and Iraq. Similar to domestic politics, inflated threat perceptions constituted the core justification for a completely different approach to counterterrorism, namely a global military operation against loosely defined terror groups. As such, the notion of 'war' (a physical, military struggle) became central to the expectation of how the US would counter terrorism in the post-9/11 era (Bentley 2014). In order to be perceived as an assertive leader, Bush invoked the necessity of war and military firepower, which were legitimised by the war on terror narrative. Thus, Bentley notes, "strong leadership came to be equated with the ability to act as a war president" (2014, p. 101).

Despite the detrimental consequences of the militaristic approach to human rights, the war on terror sets a new standard on what it meant to be committed to national security, at least from the perspective of the US security policy establish-



ment. As inflated threat perceptions of terrorism persisted in American politics throughout Obama's first term, the war continued to be regarded as necessary. Therefore, in order to be perceived as politically determined to keep the US safe from the threat of terrorism, Obama was inclined to continue to use the war on terror framework as a path-dependent basis for foreign policy, while ensuring that legal and political justifications support his counterterror policy initiatives.

President Obama's efforts to make his new counterterror strategies more legitimate and effective depended on the support and availability of existing post-9/11 institutions and practices such as drone operations, the rapidly expanding state security apparatus, and an enduring domestic public support for a strong militaristic stance against global terror networks. For instance, the Pew Research Center reported that the "the US public has consistently supported the use of drone strikes — and that support has been bipartisan", at a time when the Obama administration has dramatically expanded his drone program (Drake 2013). Particularly, in a February 2013 survey, 56% of total number of American respondents approved the drone program (only 26% disapproved it). If Obama abandoned the narrative that the US was in a war, he potentially risked being perceived as weak in comparison to Bush and he could have undermined his political legitimacy and chances for re-election. Declaring the war unnecessary would likely be perceived as a denial of the global terror threat.

The Obama administration found it difficult to immediately close Guantanamo Bay. On his second day in office Obama signed an executive order to close Guantanamo (Klaidman 2012). Yet, closing the detention facility eventually proved to be very challenging. There could be several reasons for this, and one factor pertains to the idea that the war on terror narrative had created a new status for prisoners of that war. Terrorists detained in Guantanamo were not regular criminals, considering that they did not have constitutional protections and they were imprisoned without a trial (Bentley 2014). Nor were they prisoners of war. They were deemed 'unlawful enemy combatants', a status created by the war on terror narrative. This

newly created status was used to justify torture and holding suspected terrorists indefinitely.

Closing Guantanamo meant that the prisoners held there would either be freed or transferred to civilian courts to be prosecuted as criminals instead of held as enemy combatants (Klaidman 2012). Freeing detainees was perceived as highly controversial as American military and intelligence personnel had taken big risks to capture terrorist suspects (Klaidman 2012). Many of them were widely believed to be a threat to the national security. On the other hand, in many cases, detainees could not be prosecuted in civilian courts as there was either insufficient evidence or the evidence was tainted by torture, which was problematic for legal prosecution. As many detainees could not be taken out of Guantanamo, Obama was inclined to continue the war narrative even though he objected to the policy: Without the war on terror policy frame, terrorists could not be discursively considered as enemy combatants. Thus, there were strong incentives to continue to use the framework of war as the basis of counterterrorism policy (Bentley 2014, p. 103). Even though the Obama administration stopped using the phrase ‘war on terror’, it essentially maintained the policy framework created by Bush. The continuation of war on terror policies thus functioned as policy feedback to reinforce the war on terror narrative. According to Bentley (2014, p. 96), this contradiction is noticeable in the 2010 National Security Strategy: “While this explicitly states that the US is no longer fighting the ‘war on terror’, it then continues to discuss the response to terrorist activity as an act of warfare; the world is still portrayed as a battlefield”.

To conclude, the Bush administration capitalised on the fears of terrorism after the attacks on 9/11 in order to justify continued reliance on a militaristic approach. The path-dependent and self-reinforcing effects of expanding post-9/11 security apparatus, enduring public support for military force, and widespread perception of the severe threat posed by global terror networks demonstrate the lasting impacts of the Bush administration’s war on terror. As such, the Obama administration was inclined to maintain the narrative and policy frameworks created by the previous administration. An important causal factor was that inflated threat percep-

tions of terrorism were self-reinforcing. Domestically, the treatment of terrorism as an exceptional threat reaffirmed the view that terrorism should continue to be treated as such. At the international front, inflated threat perceptions continued to justify Bush's war framework as a warranted response to the terrorist threat, even if some policies that were justified by this framework were strongly criticised. In order to be perceived as politically determined to keep the US safe from terrorism, Obama had to continue to project himself as a war president. The US therefore continued to use force against terrorists during Obama's first term as president.

#### **4. The strong reliance on drone strikes**

This section focuses on the main research question: Why did the use of drone strikes increase during the first term of the Obama administration? Drone strikes increased because the Obama administration sought to provide a more compelling justification for the use of military force against terrorism, without necessarily abandoning the 'war on terror' policy frameworks and discourses he inherited from his predecessor. Historical institutionalism suggests that institutional change is possible either when a new critical juncture emerges, or existing institutions reform in ways that are substantially constrained by past trajectories. This section analyses how the reliance on drones was both the continuation of the war framework and the result of Obama's attempt to change the most contentious aspects of that war. Hence, we discussed how the drone warfare program emerged as a product of strategic and political choices made by the Obama administration. The reliance on drone warfare became an appealing policy choice for the Obama administration because of two key reasons. First, by relying on drone strikes, the Obama administration could wage war against a more precisely defined terrorist enemy while signalling an interest in self-constraint in that war, while also limiting the risks of deaths of US military forces on the ground. Second, the use of drones enabled the administration to present and pursue a purportedly justifiable mode of conducting the war on terror. While the administration maintained the same militaristic policy framework as the previous administration, the Obama administration provided more sus-

tained legal justifications in support of military force, despite its detrimental consequences to human rights.

#### *4.1. Self-constraint in the war against terrorists*

According to President Obama, some excessive policies that were justified by the war on terror narrative had alienated the Muslim world. Obama wanted to clarify that the US was not at war with Islam. Unless this perception was fundamentally changed, the US would not be able to win the war against terrorism (Klaidman 2012). Shortly after becoming president, Obama travelled to Cairo to deliver a much-anticipated speech, whereby he responded to misconceptions that Bush's policies had created: "America is not, and never will be, at war with Islam" (Obama 2009b). To Obama, one of the main errors of the previous administration had been the invasion of Iraq. The US had squandered the goodwill of the international community after 9/11 while fighting a disastrous war against the wrong enemy (Klaidman 2012). In response to the backlash emerging from detrimental costs of the global war on terror, Obama wanted to reduce the US military footprint and re-focus war efforts on the perceived right enemy. This policy change was expressed in the National Security Strategy 2010: "this is not a global war against a tactic—terrorism or a religion—Islam. We are at war with a specific network, Al Qaeda, and its terrorist affiliates" (TWH 2010, p. 20). President Obama had announced a troop withdrawal from Iraq in order to redirect efforts on Afghanistan, which he considered to be the real war on terrorism (McCrisken 2011). The troop increase in Afghanistan was announced within a limited timeframe. Troops would soon come home, but Obama argued it was crucial to increase military operations outside of the official warzones in order to paralyze Al-Qaeda operational capacities. In a speech at the West Point military academy, President Obama announced the implementation of "a strategy recognising the fundamental connection between our war effort in Afghanistan and the extremist safe havens in Pakistan" (Obama 2009a, p. 6). The strategy was "narrowly defined as disrupting, dismantling, and defeating Al Qaeda and its extremist allies" (Obama 2009a, p. 7).

To fight a more effective war against the 'real enemy', the US government required a military force that could be easily deployed globally. As early as 2002, as a state senator in Illinois, Obama strongly opposed the Bush administration's imminent military invasion of Iraq, but entertained the idea that militaristic options may be necessary in some conflicts: "I don't oppose all wars [...] What I am opposed to is a dumb war" (Sunday Independent 2012, p. 5). During his early months of his administration, President Obama argued during his December 2009 acceptance speech for the Nobel Peace Prize the following: "There will be times when nations acting individually or in concert will find the use of force not only necessary but morally justified" (Sunday Independent 2012, p. 5). Consequently, that moralistic justification of military violence was invoked as US forces were deployed in Libya, Afghanistan, Iraq, and elsewhere. Obama wanted to undermine Al Qaeda and affiliated networks while limiting American military footprint, which he believed was important to reducing tensions in the Middle East. That objective, from the perspective of the Obama administration, could be achieved through a bolstered drone warfare program. As McCrisken notes: "During the first year of the Obama administration there were 51 reported uses of unmanned Predator drones against targets housing alleged terrorists in Pakistan alone, more than the 45 used during the entire presidency of George W. Bush. In 2010 this number more than doubled to 118" (2011, p. 793). As the US was bolstering the fight against Al Qaeda on the Afghan-Pakistani border, affiliated organisation AQAP (Al-Qaeda in the Arabian Peninsula) was on the rise in Yemen (Klaidman 2012). In 2010, US intelligence officials also observed growing ties between AQAP and al-Shabab in Somalia. If Obama wanted to effectively undermine the Al Qaeda network, it became necessary to increase war efforts in Yemen and move military operations into Somalia. Obama avoided ground operations, as they risked forcing the US into another ground conflict. On the other hand, conventional airstrikes did not offer the precision Obama desired. As Klaidman (2012) notes, particularly in countries where the US was not officially at war, Obama wanted a surgical approach to the war on terror. His administration argued that drone operations are "exceptionally surgical and precise that they pluck

off terror suspects while not putting innocent men, women and children in danger” (Purkiss & Serle 2017, p. 4). US counterterrorism expert Brian Jenkins (2016) explained how Obama revamped the war on terror by bolstering pre-existing drone operations program and by consolidating executive power in order to manage effectively the burgeoning post-9/11 security institutions that were inherited from the Bush administration:

“Using drone strikes to kill terrorist commanders began with the previous administration, but became a major component of Obama’s counterterrorist efforts. The strikes enabled the United States to directly attack terrorist organizations without taking on counterinsurgency or nation-building missions. Drone strikes also remain directly under White House control. With advice from the intelligence community and military commanders, the president determines the target. As Obama has said, “I am pretty good at killing people”.

As such, drones became the weapon of choice for the Obama administration. The presumed precision of these weapons was firmly in line with Obama’s determination to wage war on global terror networks while limiting the risks to the lives of US military agents. As investigative journalist Jeremy Scahill argues:

“The use of private companies like Blackwater for sensitive operations such as drone strikes or other covert work undoubtedly comes with the benefit of plausible deniability that places an additional barrier in an already deeply flawed system of accountability. When things go wrong, it’s the contractors’ fault, not the government’s” (Boggs 2011, p. 119).

Hence, the use of drone warfare, in cooperation with contracted private companies, allows the US federal government to escape from any form of culpability amidst the increasing number of civilian casualties that were killed by US drone strikes. Thus, by resorting to drone strikes, the Obama administration could minimise legal culpability in two ways: (1) limit the number of American lives being killed abroad by sending killer drones rather than American military agents that could have been de-

ployed for on-the-ground operations abroad, and (2) outsource some drone operations programs to US private contractors for some form of plausible deniability for the collateral damages. By relying on drone warfare, the Obama administration hoped to demonstrate self-constraint in the use of American power, yet depended on the discursive and institutional structures that were inherited from its predecessor.

#### *4.2. Emphasising the rule of law and human rights*

Another issue with Bush's war on terror policies was the perceived disregard of the US government's human rights obligations and the rule of law, particularly when such counterterror operations have deployed abusive and morally despicable tactics such as torture and indefinite detention of terrorist suspects. It was difficult for Obama to close the detention centre in Guantanamo Bay. Nevertheless, the administration believed that these policies undermined US' moral authority in the struggle against terrorism. As the National Security Strategy 2010 states: "some methods employed in pursuit of our security have compromised our fidelity to the values that we promote" (TWH 2010, p. 21). Furthermore, the administration argued that the policies had become a potent recruitment tool for Al Qaeda. Obama wanted to wage a war on terror that was not only more effective, but also more morally justifiable and conform the rule of law. The increased use of drone strikes was an important way in which the administration hoped to achieve this for a number of reasons.

First, although Obama failed to close Guantanamo Bay, no new detainees were transferred therein during his tenure. As it became increasingly difficult to capture and detain terrorists, drone strikes were more often used to kill terrorist targets in the battlefield. That strategy does not necessarily suggest that the Obama administration explicitly made the decision to replace detention policies with lethal striking – although some have argued this (Mazzetti 2013). At least publicly, the Obama administration claimed to prefer capturing terrorist suspects over killing them (Klaidman 2012). However, as President Obama attempted to move away from re-

lying on detention and interrogation of suspected terrorists, this “would foreclose important tactical avenues in the war on terror. The inability to detain terror suspects was creating perverse incentives that favoured killing or releasing suspected terrorists over capturing them” (Klaidman 2012, p. 126). Therefore, the ambition to reduce one of the most controversial aspects of Bush’s war on terror facilitated an increase in drone strikes. Instead of expanding Bush’s controversial detention policies, the Obama administration launched covert drone operations that were expected to attract less domestic public outcry (in the US) than detaining Al Qaeda operatives. Although individual drone operations were covert and therefore not known to the public, the administration wanted to be transparent about the justifications for that policy. Rather than undermining the role of sophisticated legal justifications for militaristic policy actions, as the Bush administration did, Obama wanted to send a clear signal that the rule of law stood at the centre of the new counterterrorism strategy (Klaidman 2012). Harold Koh, legal advisor to the State Department, became the public face of the drone program. Koh played an important role in ensuring that the administration’s military actions conformed with the laws of war. Similar to Bush’s detention policies or the invasion of Iraq, drone strikes were legitimised through the promotion of the war on terror narrative and political discourses and the need for military force as the only effective response to global non-state terror networks.

While the Obama administration’s drone program tried to limit human rights abuses brought by the Bush administration’s detention policies, drone attacks were framed to be a more precise way of conducting warfare. During his first term, President Obama emphasized why drone operations effectively curtailed the significant threat of terrorism – the policy that eventually led to the dramatic increase of dead casualties because of drone strikes. At the start of his second term, faced with pressures to comply with the government’s human rights obligations, Obama vowed to use drone strikes when a specific threat was ‘continuing and imminent’, which was a much more nuanced transformation from the old policy of drone de-



ployment in response to a supposedly significant threat (Spetalnick & Rampton 2013, p. 4)

The Obama administration stressed the accuracy of drone strikes and the thorough vetting procedure behind every targeted killing. Using the administration's official term 'targeted strikes', the Obama-led White House argued that drone operations aimed only at particular individuals who are usually described as 'senior members' of Al-Qaeda (Zenko 2012). Besides Herald Koh, John Brennan would also publicly advocate the use of drones. As former head of the CIA and former director of the DHS, Brennan had been involved in the war on terrorism from the beginning. Brennan argues that the Obama administration's "counterterrorism efforts outside of Afghanistan and Iraq are focused on those individuals who are a threat to the United States", which was also echoed by US Attorney General Eric Holder, who maintained that drones "target specific senior operational leaders of Al Qaeda and associated forces" (Zenko 2012, pp. 12-13). At the American Society of International Law, Koh defended the use of force with drones by stating: "using such advanced technologies can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimised in carrying out such operations" (Koh 2010). This argument was repeated by Brennan in a speech at the Wilson Center in 2012 when he argued that:

"Targeted strikes conform to the principles of distinction, the idea that only military objectives may be intentionally targeted and that civilians are protected from being intentionally targeted. With the unprecedented ability of remotely piloted aircraft to precisely target a military objective while minimizing collateral damage, one could argue that never before has there been a weapon that allows us to distinguish more effectively between an al-Qaida terrorist and innocent civilians" (Brennan 2012).

Subsequently, Brennan concluded: "it is hard to imagine a tool that can better minimize the risk to civilians than remotely piloted aircraft" (Brennan 2012). According to Klaidman, Koh would often respond to criticisms from the human rights community by saying: "I would have preferred targeted killings to Hiroshima"

(2012, p. 203). These communications conveyed the message that instead of waging large-scale ground wars or treating terrorist suspects inhumanely at Guantanamo, the administration was interested in fighting a supposedly ‘cleaner’ war with discursive pretension of concern for human rights and the rule of law. Because military operations outside of the official combat zones were so sensitive, an elaborate set of permissions was required to authorise targeted killings. In many instances, proposed operations would not even be taken up the chain to the president if there was a reasonable chance that civilians would be killed (Klaidman 2012). Obama became so intimately involved with drone policy that “he personally signed off on each kill or capture operation conducted in Yemen and Somalia” (Klaidman, p. 205).

Drone warfare represented the enduring legacy of war on terror policies. While the US remained at war with terrorism, the Obama administration sought to implement incremental strategic changes in the way it deployed drone strikes and maintained the large state security apparatus he inherited from the Bush administration. Notably, drone operations, which Obama argued to be more accurate and discriminatory in targeting terrorists, constituted one of the two other key pillars of his revamped war on terror: those two pillars included the reliance on the cooperation of foreign governments’ ground forces as well as the expansion of electronic surveillance (Stern 2015, pp. 64-66). In contrast to his predecessor, who launched the war on terror without attempting to provide sustained legal justifications, Obama tried to situate counterterrorism within the bounds of allegedly consistent legal reasoning. That was the case when “he established new decision-making procedures within the executive, had new justifications for the legality of measures drawn up and, with the involvement of Congress, succeeded in creating a new statutory basis for existing practices” (Thimm 2018, p. 12). Building on the wide-ranging state security institutions that the Bush administration built in response to the 9/11 attacks, the Obama administration reinforced intensive vetting of targets of drone strikes in an effort to ensure the precision of such operations:

“It is the strangest of bureaucratic rituals: Every week or so, more than 100 members of the government’s sprawling national security apparatus gather, by secure video teleconference, to pore over terrorist suspects’ biographies and recommend to the president who should be the next to die. This secret “nominations” process is an invention of the Obama administration, a grim debating society that vets the PowerPoint slides bearing the names, aliases and life stories of suspected members of Al Qaeda’s branch in Yemen or its allies in Somalia’s Shabab militia” (Becker & Shane 2012, pp. 56-57).

Meanwhile, the use of drones enabled Obama to present himself as an effective war president. A clear example is the killing of Anwar Al-Awlaki, who was an American citizen who had become a prominent figure of AQAP in Yemen. As a propagandist, he had inspired among others the Christmas Day Bomber, who nearly managed to blow up an airplane above Detroit on 25 December 2009. The failed attack was a shocking reminder that the US remained under threat of terrorism. In response to the events, Obama invoked militaristic discursive rhetoric similar to Bush: “We are at war. We are at war against al Qaeda, a far-reaching network of violence and hatred that attacked us on 9/11, that killed nearly 3,000 innocent people, and that is plotting to strike us again. And we will do whatever it takes to defeat them” (McCriskin 2011, p. 788). One and a half years later, a drone strike had killed Awlaki. Obama proudly announced: “The death of Awlaki is a major blow to Al Qaida’s most active operational affiliate”. Furthermore, he concluded: “The death of Awlaki marks another significant milestone in the broader effort to defeat Al Qaida and its affiliates” (Obama 2011). The drone war had allowed the administration to continue Bush’s war in a way that was sold as more constrained and morally acceptable.

Despite such incremental institutional changes in the war on terror, the US government killed hundreds, if not thousands, of civilians through drone strikes. By his third year in office, Obama had killed more terrorist suspects than had even been detained in Guantanamo Bay (Klaidman 2012). Attempting to stop its reliance on the presence of US forces abroad and other contentious war policies of his predecessor, President Obama refocused his administration’s resources and political

capital on drone strikes, which essentially retained the enduring militaristic approach to US foreign policy abroad. Consequently, Obama's war on terror has undermined the quality of democratic governance and respect for human rights. For instance, the Obama administration subverted transparency and accountability by discouraging whistle-blowers and covering up information about the war on terror, thereby making it structurally difficult for investigative journalists to scrutinise the detrimental consequences of US military operations abroad (Greenwald 2013). That is particularly the case when the White House did not make any clear policy stance on many legislative initiatives that call for greater transparency in the conduct of drone operations. Even former policy advisers of the Obama administration expressed their disappointment in the failures of the war on terror, including former State Department official (under Secretary Hillary Clinton's leadership) and renowned International Relations scholar Anne Marie Slaughter, who argued that:

“The idea that this president would leave office having dramatically expanded the use of drones - including [against] American citizens - without any public standards and no checks and balances [...] that there are no checks, and there is no international agreement; I would find that to be both terrible and ultimately will undermine a great deal of what this president will have done for good...I cannot believe this is what he wants to be his legacy” (Greenwald 2013, p. 17).

## **Conclusion**

This paper maintained two main arguments. The first argument addressed a critical gap in the literature on drone warfare by demonstrating that the Obama administration was trapped in the war on terror policy framework, expansive post-9/11 state security apparatus, as well as considerable and enduring US domestic public support for strong militaristic stance against terrorism. Indeed, historical institutionalist insights provided useful concepts to understand how the Obama administration adopted counterterror narratives and policy paradigms in ways that made them purportedly more legitimate and strategically effective than the way they were used by the preceding administration.

Using historical institutionalist insights, we show how the Obama administration reduced the US military footprint and limited Bush's detention policies by relying instead on drone strikes. Concurrently, the Obama-led White House seriously considered the transnational nature of the terrorist enemy and decided to use force in a way that could be argued as purportedly more compliant with the government's view of its human rights obligations and other legal considerations. At the same time, the use of drones enabled President Obama to convincingly present himself as a war president in a way that could further bolster his political legitimacy amidst an American public that is largely supportive of militaristic responses to global terrorism.

Our analysis contributes to scholarly and policy debates in various ways. First, we provide a theoretically grounded explanation for the politics of continuity and change in American foreign security policies, particularly on drone strikes. The overarching structures of post-9/11 security establishment severely weakened the optimism and moral ambitions that fuelled Obama's presidential campaign, which once sought to undo the damages of the Bush administration's war on terror. Second, our analysis demonstrates the explanatory power of historical institutionalist insights in understanding contemporary puzzles in foreign policy analysis. While such insights are usually employed in comparative politics, scholars of International Relations and foreign policy analysis could benefit from deploying a historical-institutionalist approach as one of the several toolkits in understanding two key processes: the interactions between broad institutional structures vis-à-vis the political agency of particular actors and the patterns of continuity and change of policy paradigms over time. Most importantly, the US drone warfare programme has led to the death of civilians, and it is important that state responses should focus on addressing the structural causes of violence, including poverty and inequalities, rather than investing in militaristic approaches that undermine the right to life of individuals caught in the midst of war.

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