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Targeted killing in international relations theory: Recursive politics of technology, law, and practice

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ABSTRACT
As new technologies make possible new modes of war, they cause tension in the previously prevailing conceptual categories. This is evident, as the practice of targeted killing by governments has increased in frequency and prominence, largely due to the American use of armed drones around the world. The essays in this special issue explore how norms, rules, and laws that many people thought were settled have been roiled by new technologies of targeted killing. This includes rules on sovereignty, territory, due process, and the distinction between civilian and combatant. The essays sketch an implicit research program around the recursive relation between rules and practice. I draw these out into a more general model for scholarship at the boundaries between law and politics and between concepts and practices.

KEYWORDS Norms; practices; international rule of law; targeted killing; drones; laws of war

The advent of lethal drones in military operations has brought out new questions about targeted killing and has also reopened what many thought were settled issues in world politics. The United States and some other governments can now target individuals at a great distance with relative ease. The details and implications of this practice have become a hot topic in foreign policy and public debate, and create a tangled landscape of ethical, legal, military, and pragmatic policy issues. The essays in this special issue look into this tangle. They focus on how new military possibilities relate to existing rules and norms on war and killing, and how they may be remaking the world.

Military strategies often follow closely behind developments in technology and both changing technology and changing strategies in turn influence the rules of war. Targeted killing in war shows this well: It is a practice with a long history and some relatively stable expectations about its legitimate use. But the recent advent of militarized drones has radically reduced its cost and increased its effectiveness, and so its practical utility has changed dramatically. These changes are so dramatic that targeted killing appears today as basically
a new thing. Both users and targets of drones are coming to terms with how the weapon changes how they can act, as are people who live in areas under them. Drones are changing everyone’s sense of strengths, security, and vulnerability.

The essays in this collection consider these changes in relation to the conceptual and legal categories that organize the terrain of military operations for states. These categories—including what constitutes a “battlefield,” who is a “combatant” and who is not, and what “war” is—were largely honed by the methods of war of the first half of the 20th century and so their uncertain relevance to today raises significant questions. In what follows, I highlight how the essays here present various views on the directions of productive causality between practices of war and its rules and norms: Should today’s practices be made to fit into the rules inherited from yesterday, or should the rules be updated to accommodate today’s tactics? And if the answer is neither or both, then what does that look like?

Seen in this way, the new practices of targeted killing open a window into key questions of international relations (IR) theory around agents and structures and their connections. Through it, one can see the practical effects of competing frameworks of analysis in IR: Different ideas about the relation between rules, norms, and behavior are at work, as are different expectations about their power to constrain, to regulate, or to constitute states. This reveals an opportunity to reconsider how IR conceives of these concepts and their connections.

**International order and international rules**

Targeted killing by drones is now relatively easy at least for some governments. Twentieth-century rules have a hard time framing the new practice. The social understandings that were thought to define war, territory, sovereignty, and more seem to fit poorly around it. The engine behind these developments appears to be technological—specifically, advances in sensors and other devices that make armed drones possible.

Senn and Troy (2017) use these elements to motivate thinking further about the relationships among norms, behavior, and order in global affairs. They see contemporary global politics through English-School glasses that focus attention on the shared rules and norms that are thought to both regulate and constitute the existing international order. This is an order in two senses: It is a social system with stable expectations about behavior and also a pattern of behavioral regularity that follows from those expectations.

Among these, the rules that organize the possibilities for violence are most important and so the discussion centers on three sets of international laws and norms: *Jus ad bellum* rules define what constitutes a lawful (and thus legitimate) war; *jus in bello* rules regulate how weapons and strategies can be used in the context of war; and various specific obligations around the specific practice of targeting enemy leaders as individuals for killing.
Among commentators on these rules, a standard set of controversies has come to dominate: It is widely understood that (as Senn and Troy say) “a norm stigmatizing the targeted killing of state leaders developed [in the Westphalian system] as an element of the emerging order of sovereign states” (2017, p. 190) and thus that it is generally illegal to engage in summary execution, extrajudicial killing, and assassination. Outside of the battlefield, killing is murder; on the battlefield it may be lawful if the legal standards of jus in bello are met. The “fuzziness” around the recent return of targeted killing is a function of interpretive ambiguities around these key legal terms of battlefield, war, and the rest (Senn & Troy, 2017, p. 183).

Senn and Troy aim to help matters by providing clear definitions of the terms and a typology of kinds of killing. The goal is to clear away the brush so that the underlying rules and norms that regulate how and when killing is acceptable can be revealed. They seem confident that these rules do in fact exist and that they can or should organize state behavior on this topic, and they imply that seeing them more clearly is a useful contribution to world order because it helps “mak[e] judgments about the legitimacy of specific acts of targeted killing” (Senn & Troy, 2017, p. 188).

The idea that international order rests on international rules and norms is a common one for both IR liberals and the English School. It is central to Bull’s (1977) account of the anarchical society; it animates Ikenberry’s (2011) account of the post-1945 liberal world order; it exists in the large literature on international law that sees the restraint on force as a key step toward global stability—Lauterpacht (1933) said that the “primordial duty of [international] law” is to spread the rule that “there shall be no violence”; O’Connell (2012) says that “law is valued for providing an alternative to the use of force in the ordering of human affairs. In this sense, all of international law is the law of peace” (p. 272).

Consistent with these traditions of thought, Senn and Troy invoke rules and norms as the background against which action takes place. They say that the “transformation [of targeted killing] is unfolding” taking place against “the background of ideas, norms, and rules that constitute the global international order” (Senn & Troy, 2017, p. 176). With these resources in view, they classify instances of targeted killing as legal or illegal, and as moral or immoral. They conclude that the killing of Saddam Hussein was legal but immoral: His status as head of state in a war satisfies the legal test for lawful targeting, but the illegality of the war in the first place makes it impossible to conclude that it was moral (p. 196). By contrast, they judge that the United States acted both legally and morally when it shot down Admiral Yamamoto’s airplane in 1943 given to his formal position in the Japanese military and the state of war that existed between the United States and Japan at the time.
The rules-as-background approach is worth addressing directly since it shapes the possible research that follows. It envisions rules and norms as benchmarks against which state conduct can be judged. It encourages researchers to see actors and their normative environment as standing apart from each other, at least at one point in time in which these judgments are made. This is well suited to research about compliance, in the sense that it permits a comparison between behavior and rule and it might identify a gap between the two. But it requires that rules and behavior (agents and structures) exist as separate variables, isolatable from each other, and this ends up narrowing the domain of applicability in ways that are directly relevant to the case at hand.

The dynamism that makes targeted killing so interesting today comes from the fact that the rules and norms around weapons and war are deeply implicated in the very practices and actors which they are designed to regulate. There is an obvious recursivity in the empirical material that needs to be comprehensible in the research design. The rules on war are at once regulative of state behavior and also the discursive resources by which governments (and others) justify and contest various policies. The use of these resources gives them their meaning and their political power. The rules and norms of war are not the background against which war choices are made by states; they are better seen as the normative material with which war choices are possible for states.

Senn and Troy (2017, p. 190) point in a direction beyond the “background” view when they hypothesize about the facilitating conditions that have made it possible for targeted killing to return in the first place. They suggest that leading states increasingly see their security threats as emanating from non-state actors rather than from rival states, and they see a shift toward human security as a paradigm for global order. These are normative changes in world politics of historic proportions that make it possible for governments to justify targeted killings today that in previous times might have been seen as illegal or illegitimate.

They suggest that normative changes have a causal impact on the rules themselves. They note that “although international law in substance remains conservative as to the reading of the rules on the use of force, actual practice indicates different” and these practices are relevant in understanding what the rules and norms are at present (Senn & Troy, 2017, p. 192). In effect, the practice of states may reveal the likely direction for evolution in the norms. This claim opens the way for new questions on international law and politics that go beyond rules in their regulative mode and considers their constitutive and productive capacities as well.

Much of the rest of the special issue develops this theme both conceptually and empirically. The essays explore how the international normative structure constrains, permits, legitimizes, and delegitimizes state violence against
targeted individuals. They share the premise that the old rules do not fit well onto the new practices, and they offer various answers to the questions of what this means and how it should be represented. Should the new behavior be forced to fit back into the old rules, or should the rules be changed to accommodate the new practice, or is the relation between rule and behavior not best understood in either of these ways?

In taking up the productive power of international rules and norms (by which I mean the behavior, ideas, and social forces that are made possible by them) the essays offer an alternative to more common discussions on either the legality or the wisdom of drones and targeted killing (for instance, Bergen & Rothenberg, 2014; Jaffer, 2016). These are well-worn conversations that are important in conversations about law or about morality, but there is a separate conversation to be had, evident in these essays, that uses the new pattern of targeted killing to reflect on the interaction between norms, behavior, and technology. The possibilities for state action have been expanded by new technology and the social understandings or political meaning and context of those possibilities is following in behind. With technology as independent cause, norms and practices are constitutive of each other.

The technological driver of these developments is set out by Haas and Fischer (2017) as they detail changes in the material tools available to governments and others. They predict essentially more of the same: We will see continual expansion of the availability of deadly drones to more governments and to other kinds of actors. Advances in sensor technology will make existing models cheaper and more sophisticated models possible, serving both the top and bottom ends of the “market” for drones. Their projection into the future is essentially that we will see more of the same: The world is on a path that will include more targeted killing by a greater number of agents with a greater degree of distance and anonymity. This is a plausible prediction but it stops short of addressing the political meaning and use of the technology.

The mutual implication of technology, ideas, and social structures is a well-worn topic. It appears in one form in Benedict Anderson’s (1983) account of the political and social consequence of the invention of the printing press. “Print capitalism” followed and made possible new social and political forms including nationalism as we know it. The change in meaning and interpretation is also central to Thomas Kuhn’s (1996) model of science and society:

Led by a new paradigm, scientists adopt new instruments and look in new places. Even more important, during revolutions scientists see new and different things when looking with familiar instruments in places they have looked before. It is rather as if the professional community had been suddenly transported to another planet where familiar objects are seen in a different light and are joined by unfamiliar ones as well. (p. 111)
Technological possibilities have a way of bringing into being social forms to make sense of them. Social institutions are dependent on their conditions of possibility and they are responsive to pressures of the society in which they are situated. They are probably therefore always somewhat backward looking in the sense that their shape reflects the influence of past needs and pressures, what Marx called “the struggles and wishes of the age” (1844). McLuhan (1994, p. 12) reflected on this when he said that “if it works, it’s obsolete,” sensing that the attempt to keep social institutions “up to date” would always be a failure. In IR, one might say that norms become topics of discussion only when changing circumstances make them ill-fitting to the needs of the day. As a consequence, a story about technological development is underdetermined with respect to its political impacts.

The other essays take the technological questions as background and address the changing political meaning of new practices of targeted killing. Großklaus (2017) suggests that IR literature has generally treated “norms” as an inherently progressive contribution to world order and human welfare. It assumes that if targeted killing is an undesirable policy, then there is probably an international norm against it. This view sees the strength of international norms as a good thing and the weakening of norms as regression. Großklaus argues for a more nuanced view that recognizes the mixed normativity of norms—that is, not only “progressive”—as well as their internal tensions, and their conflicts with other norms. These are on display, he says, in the way that activists and NGOs often invoke what he calls “liberal” norms that constrain states while governments make recourse to “sovereignty” norms that empower or insulate them. Both sets of norms have long histories and provide ample justification for competing policy positions, and their use reflects obvious strategic political choices.

Where Großklaus (2017) emphasizes the availability of competing norms to endorse competing policies, Gregory (2017) emphasizes the opening that is created by the ambiguity inherent in any given norm. Gregory anchors his contribution on the distinction between civilian and combatant in the laws of war and the well-established norm (in law and beyond) that the rules for killing are different between the two categories. He observes that this invests the norm on targeted killing with all of the “ambiguity and uncertainty” that is contained in the idea of noncombatants (Gregory, 2017, p. 215). As Kinsella (2015) and others have shown, it is hardly self-evident who is a combatant and who is a civilian and so a rule on targeted killing that incorporates this distinction must also set itself the impossible task of identifying one from the other. Moreover, the practice of targeted killing erases the “reciprocity” between killer and target that Gregory sees as central to the conventional laws of war. As a consequence, he worries that the new targeted killing practice will lead to an ever-narrower specification of the people deserving protection under the rules on civilian immunity.
Jose (2017) looks directly at the new practices of targeted killing and wonders if they are constituting a new norm. She concludes that this may be happening, in the sense that “the practice of targeted killing is capable [emphasis added] of becoming a norm” (p. 254) but she points to a great deal of contestation over this development which points to the possibility that this outcome is not inevitable. She shows that the process of what one might call “normification” is worth more attention. She criticizes the “life-cycle” model of norms for its implicit teleology: It suggests a natural path of progression by which norms are made, expand, and die. Jose sees in the present case a strong argument for taking a more political view of this process, one that sees that norms are fought for, fought over, suppressed, imposed, and complicated. This is evident in her discussion of how Human Rights Watch and the U.S. government fought over their different interpretations of the normative environment for targeted killings, arguments which clearly were deployed in the service of legitimating competing policy choices. The two sides continue to actively shape whether the new practice becomes the new norm and with what content. They invoke norms in ways that are strategic in relation to the outcome that they prefer.

Jose’s (2017) contribution neatly poses the conceptual dilemma between norms and practices that is central to all of the essays: Does practice produce norms or do norms produce practice? The essays at times treat norms as if they are concretized practices and at other times treat practices as constrained by norms. Jose, for instance, says that when “norm entrepreneurs can consolidate support for their practice during these processes of contestation, the practice solidifies its status as a norm” (p. 243) and also that the value of fighting over a norm is that once it is in place, it channels behavior toward compliance rather than violation. The idea of norm is therefore consistent with both rule-following and rule-breaking behavior, and it becomes conceptually and empirically difficult to understand much about either state action or norms from behavioral observation alone.

**Changing norms and practices**

This is obviously an entry into a very old set of questions. It speaks to the relation between agent and structure that has been a central question for much of social theory. It relates also the recent advent of the “practice turn” in IR, which represents an effort to place practices in the intersection between agents and structures (Adler & Pouliot, 2011; Bourdieu, 1987). In the present volume, the issue is inescapable from the very start since the premise of the question at hand is that technology has brought into being new political possibilities which then have implications for social institutions like rules and understandings.
International law accommodates the changes in practice in at least two ways. First, as a formal matter, customary international law is understood by reference to the past practices of states and so changes in state practice may produce changes in their legal obligations. Customary law aggregates the behavior of governments in relation to a policy question—for instance, on diplomatic immunity or on the freedom of the high seas—and reads into these patterns of practice an implicit legal obligation to act this way. Second, more informally, international legal interpretation uses the statements and choices of governments to help illuminate the meaning of treaties and other black-letter laws for application in particular cases. These two processes ensure that the legal obligations of governments over time adjust to changes in the perceived needs and interests of states, especially strong states.¹

At this level of concept, there is nothing new about the advent of targeted killing through drones and its disruptive effect on the apparent norms of inter-state life. The social impact of technological change is about as big a topic as there is, and its manifestation in the context of military technology is a perennial theme in conversations about global order. Prevailing ideas about what is legitimate or lawful in war, who can legitimately or lawfully be targeted, as well as what limits, borders, and immunities need to be respected, are connected to the technological capabilities of their time. Changes in technology change the possibilities for action and so communicate changes in practices and ideas. Changes in practices and ideas change the demand and possibility for changes in technology.

Implications for future research

With all this in mind, the essays here help to advance new ways of thinking about norms and practices for IR. I suggest three lines of inquiry that emerge from these articles and that should shape a future research program on the politics of international norms and practices. I discuss first the particular politics that arise in the legal and normative regulation of military practices such as targeted killing, and then explore the methodological foundations suited to thinking about norms and behavior in dynamic relation, and conclude with a broad conceptual argument about “the international rule of law” as a conceptual, practical, and normative project.

First, as a question of practical international politics, the essays point to the ways that military practices are inseparable from the concepts and justifications that circulate around them. It is conventional to see international rules and norms as limits on the behavior of governments and these limits as a kind of constitutional structure for global order.

This is an unreasonably narrow conception of the contribution of international rules to state behavior. It makes more sense instead to see norms and rules as enabling and permissive as well as constraining, and this step
then opens scholars to the possibility that norms can encourage violence just as easily as limit it. Coates (2016) takes this approach in his recent book on American empire—he says,

In the early twentieth century, empire was itself an international norm that was part of, not external to, the law, and many of the “norm entrepreneurs” of that era worked to convince Americans of the benefits and moral necessity of empire. (p. 7)

This is also the approach taken by Kinsella (2015) as she charts the connection between civilian immunity norms and military strategies over time, which Gregory (2017) uses as well. A norm of “civilian protection” provides a positive justification for killing non-civilians, and the distinction between the two types of people is drawn by militaries and governments. It is no surprise, as Gregory notes, that this is becoming more permissive over time. This is brilliantly encapsulated by Peevers (2013) who sees “the function of the prohibition [on force] as a gateway to using force on justified grounds” (p. 7) and thus gives a new generation of scholars an opening through which to study rules and norms for their enabling power. This transforms the field of “law and politics” at the international level.

Second, the essays underline the fact that norms and behaviors need to be studied together, as an interactive process or practice. This requires a step away from the assumption that rules and behavior can be operationalized as distinct variables. Taylor (1993) provides a better model. He describes rules and rule-following as “dialogic” in the sense that they presume shared understandings among actors of the context and meaning of the rules and of their action. This is in contrast to monologic actions which are things that one can do entirely by one’s self. To relate to a norm, whether by following, contesting, or violating it, necessarily means engaging with how others understand it and the circumstances of the action that is being taken in relation to the norm. Others will then react to that action in light of their understanding of its meaning and of the norm and other resources that they see as relevant.

This attitude points toward research questions that ask about what it is that actors are trying to do with rules and norms (Hurd, 2017). It takes the view that international rules and norms are resources in the hands of agents. States and others use them in the pursuit of their goals. It recognizes the agency of actors toward norms and also the dependence of that agency upon a supply of norms and rules. It sees active agents in the context of normative environments, rather than actors as either fully socialized rule-following automatons or radically separate individuals outside of any social context. The essays here put this approach to work, although more implicitly than explicitly. They give evidence of the ways that governments and activists make strategic use of international norms in the pursuit of their objectives.
Norms are useful to actors because they carry political weight. They can be deployed as resources of power in disputes over what should be done. This attitude works against the "two-logics" approach of March and Olson that is invoked by Jose (2017) and others. Rather than separating state behavior into two distinct modes under the headings of "appropriateness" and "consequences," the dialogic approach encourages scholars to consider how strategic action is structured by the environment of norms, ideas, and rules in which actors find themselves. This environment makes action possible by giving agents the resources with which to explain and understand the possible choices for action. It gives a way to talk about power, interests, and norms together.

Finally, this also gives a new twist to the idea of the "international rule of law." If behavior that contradicts the rule is sometimes interpreted as remaking the rule as opposed to violating it, then what is left of the rules-based system that so enthralled liberal IR scholars (see, for instance, Ikenberry, 2011)? This an idea that is popular but it does not fit well to a dialogic world in which rules and practices are co-constitutive. The essays here imply a way out of this problem with a more careful idea of the role of law and norms in world politics.

The international rule of law is widely endorsed and even celebrated—Thompson called it "an unqualified human good" (as cited in Chimni, 2012, p. 291). Watts (2000) defines it in this way:

The rule of law in international affairs involves the existence of a comprehensive system of law, certainty as to what the rules are, predictability as to the legal consequences of conduct, equality before the law, the absence of arbitrary power, and effective and impartial application of the law. (p. 7)

Law provides rules that specify the appropriate conduct for governments and governments are expected to limit themselves to conduct that is permitted. If they break the rules, they will be identified as rule-breakers and suffer some kind of loss as a result. It does not require that the laws be effectively enforced but it does require that violations be identified as such and as something distinct from compliance. This is commonly seen as having a progressive normative slant, as it limits state power and protects individuals and other weak actors (Elsig, Hoekman, & Pauwelyn, 2016, p. 3).

This is a popular premise in IR, but the essays in this issue help to show some of its limits. The use of rules and norms is endemic in IR. They are invoked to support specific political goals as actors justify and contest and interpret the world. These political effects are manifest around drones and targeted killing and are the central themes of these essays. Rules and norms do more than define appropriate and inappropriate conduct. They also distribute outcomes, power, and agency among actors, and these is no reason a priori to assume that this distribution is morally, politically, or consequentially better than any distribution that might follow from some other set of rules and
norms or from some non-rules-based ordering system. McBride (2015) has this in mind in her book *Mr. Mothercountry*, where she says that “the rule of law is better understood as an invariably messy, contingent, and incomplete process or practice” (p. 1). The co-constitution of rules and practices in IR makes this concept of the rule of law between countries inescapable.

Together, these three features provide a foundation for an approach to international politics that is attentive to the political productivity of international rules and norms. Rather than asking whether governments are following the rules, it asks what is made possible by these rules. This highlights the fact that rules and norms empower some and disempower other actors, constitute some acts as legitimate or meaningful at the expense of others, and lead to outcomes that favor some over others. It brings a new realism to the study of IR.

**Conclusion**

The targeting capabilities that make it possible to kill individuals from afar are enormously consequential for politics, both local and global. They increase the capacities of those who have the ability to deploy them and so affect the distribution of political power among individuals and institutions around the world. By making new things possible, the new technology presents the framework that governed earlier technology with previously unthought-of challenges.

This collection takes this up as a pressing issue both as a substantive question of international politics and as a set of methodological challenges faced by scholars. Together, the essays help to show that the conventional way of thinking about norms in IR theory has never made much sense: Norms are neither laws of “appropriate” behavior that are imposed upon states, nor are they the mathematical aggregation of individual acts into a general tendency. They are instead reasons for action and when put to use, they become the resources that agents need in order to act, as well as to explain, justify, and contest their actions. The essays here open the door to a new stream of IR scholarship that joins conceptual sophistication with grounded empirical evidence to reconsider the social–political bases for action in world politics.

**Note**

1. These processes are amplified in some international legal traditions, such as the New Haven school and critical legal realism, that see a specific need for international rules to follow the policy preferences of governments. This accommodation is treated as a good thing in the New Haven tradition and as either neutral or nefarious in the critical tradition.

**Disclosure statement**

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Notes on contributor

Ian Hurd is an associate professor of Political Science at Northwestern University. His work is on the politics and practice of international law and legalization and his new book is *How to do things with international law* (Princeton University Press 2017). In 2017, he is a visiting scholar at the American Bar Foundation in Chicago.

Reference list


