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Death by Reinterpretation: Dynamics of Norm Contestation and the US Ban on Assassination in the Reagan Years

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Abstract

Recent scholarship analyzes norm dynamics in the US context using the prohibition on assassination contained in Executive Order 12333 as the relevant norm. These studies argue that—before 9/11—the ban on assassination was largely uncontested and effectively constrained US foreign policy. In doing so, these studies overlook the impact of the Reagan administration on the evolution of the ban. This article establishes that the Reagan administration engaged in a concerted, and largely successful, effort to undermine the ban. The article relies on scholarship on norm contestation and norm robustness. The analysis identifies key features of the ban as a norm, including its ambiguity and executive character. It highlights the role and power of a cluster of US officials led by Central Intelligence Agency (CIA) Director William Casey. Crucially, the analysis traces the prominence of dynamics of contestation of the ban in the context of unconventional warfare and counterterrorism. In line with existing scholarship, the analysis finds cases of validity contestation, meaning contestation, and applicatory contestation. Contrary to existing scholarship, however, the analysis stresses the radical nature of actors' attempts to shrink the remit of the ban through applicatory contestation. This contestation was often made superfluous by the blurring—through meaning contestation—of the expectations set by the norm. A historically grounded analysis of contestation during the Reagan years provides a better understanding of how US officials (re)shaped the ban, establishing precedents for the legal, political, and discursive conventions surrounding assassination deployed after 9/11.

Résumé

De récentes recherches analysent les dynamiques des normes dans le contexte américain en s'appuyant sur la norme d'interdiction des assassinats ciblés figurant dans l'Executive Order 12333. Ces études soutiennent qu'avant le 11 septembre, l'interdiction des assassinats ciblés était largement incontestée et contraignait efficacement la politique étrangère américaine. Ce faisant, ces études négligent l'impact de l'administration Reagan sur l'évolution de cette interdiction. Cet article établit que l'administration Reagan s'est engagée dans un effort concerté et très réussi visant à saper cette interdiction. Il se base sur des recherches sur la contestation des normes et la robustesse des normes. L'analyse qu'il mène identifie des caractéristiques clés de l'interdiction en tant que norme, notamment son ambiguïté et son caractère exécutif. Elle met en évidence le rôle et le pouvoir d'un groupe d'officiels américains mené par le Directeur de la CIA, William Casey. Elle retrace surtout l'importance des dynamiques de contestation de l'interdiction dans le contexte de la guerre non conventionnelle et du contre-terrorisme. Tout comme les recherches existantes, cette analyse constate l'existence de cas de contestation de validité, de signification et d'applicabilité. Cependant, contrairement aux

recherches existantes, cette analyse met l'accent sur la nature radicale des tentatives menées par certains acteurs pour réduire le domaine de l'interdiction par une contestation d'applicabilité. Cette contestation a souvent été rendue superflue par le floutage—par une contestation de signification—des attentes établies par la norme. Une analyse s'appuyant sur l'histoire de la contestation qui est intervenue pendant les années Reagan permet de mieux comprendre comment les officiels américains ont (re)façonné l'interdiction en établissant des précédents lorsqu'ils ont déployé des conventions juridiques, politiques et discursives liées à l'assassinat ciblé après le 11 septembre.

Extracto

Trabajos recientes utilizan la prohibición del asesinato que contiene la Orden Ejecutiva 12333 como norma relevante para analizar la dinámica de las normas en el contexto de Estados Unidos. Estos estudios sostienen que, antes del 11S, la prohibición de los asesinatos era, en gran medida, indiscutible y limitaba de forma eficaz la política exterior de Estados Unidos. Al hacerlo, estos estudios pasan por alto el impacto de la Administración Reagan en la evolución de la prohibición. Este artículo establece que la Administración Reagan llevó a cabo un esfuerzo concertado, y en gran medida exitoso, para socavar la prohibición. El artículo se basa en los trabajos sobre la impugnación de normas y su solidez. El análisis identifica las características clave de la prohibición como norma, lo que incluye su ambigüedad y su carácter ejecutivo. Destaca el papel y el poder de un grupo de funcionarios estadounidenses liderados por el director de la CIA, William Casey. Esencialmente, el análisis rastrea la importancia de las dinámicas de impugnación de la prohibición en el contexto de la guerra no convencional y el contraterrorismo. En la misma línea que los trabajos existentes, el análisis encuentra casos de impugnación de validez, impugnación de significado e impugnación de aplicación. No obstante, a diferencia de los trabajos existentes, el análisis subraya la naturaleza radical de los intentos de los actores de reducir el ámbito de la prohibición mediante la impugnación de la aplicación. A menudo, esta impugnación se hacía superflua por la difuminación (mediante la impugnación del significado) de las expectativas que establece la norma. Un análisis con base histórica de la impugnación durante los años de Reagan permite comprender mejor cómo los funcionarios estadounidenses (re)configuraron la prohibición, estableciendo precedentes para las convenciones legales, políticas y discursivas en torno al asesinato, que se desplegaron después del 11S.

Introduction

Drone strikes and targeted killings are institutionalized and normalized elements of contemporary US counterterrorism policy and practice, renewing debates regarding the legality of targeted killings and whether they amount to assassination (Schmitt 1992; Melzer 2008; Alston 2011). In international relations (IR), international norm scholars use assassination as an analytical lens for evolving norms and meta-norms (Thomas 2000; Großklaus 2017). In the US context, the ban on assassination contained in Executive Order (EO) 12333 is the relevant norm.

Andris Banka and Adam Quinn (2018) and Simon Frankel Pratt (2018) agree that—before 9/11—the assassination ban was relatively uncontested.[1] From a time of "maximum force," Banka and Quinn (2018, 666) write, the ban underwent a process of norm erosion after 9/11. Post-9/11, Pratt identifies a process of norm transformation, combining political realignments (network synthesis) and technological developments (drones), with "convention reorientation" (relocating targeted killing from an assassination "convention" to war and counterterrorism "conventions") (Pratt 2018, 13–14). These studies mention developments in the Reagan years, but profoundly underestimate their impact on the ban's evolution (Banka and Quinn 2018, 677; Pratt 2018, 732–33).

1   See also Kutz (2014) and Jose (2017).

This article establishes that, to appreciate post-9/11 policies, we need a better account of the Reagan administration's approach to the ban. The Reagan administration engaged in a concerted, and largely successful, effort to undermine the ban. It created the political and legal space for the conduct of assassination, establishing clear historical precedents. The article relies on scholarship on norm contestation and norm robustness (understood as norm facticity and validity) (Deitelhoff and Zimmermann 2019). This scholarship highlights how processes of norm contestation can be analyzed along three main dimensions: the type of norm being contested, the actors engaging in contestation (and their power), and the type of contestation that prevails.

The article follows these three dimensions. It analyzes the origins and nature of the ban as a norm. It, then, provides an overview of the main actors contesting the ban, their position, and power. The main section traces dynamics of contestation emerging during the Reagan years and their consequences. The article finds instances of applicatory, meaning, and (more rarely) validity contestation. An analysis of actors' interventions also highlights that applicatory contestation can be as radical, which is detrimental to the robustness of the norm, as validity contestation. This has two implications. First, based on insights by Schmidt and Sikkink (2019), the article establishes that actors engaged in a fourth dynamic of contestation: covert—or "masked" (Sandholtz 2019, 140)—applicatory contestation. Second, it suggests that, as much as applicatory contestation might make validity contestation superfluous, by shrinking the remit of the norm (Brunnee and Toope 2019), successful meaning contestation—blurring the concept at the center of the norm and the expectations set by the norm—makes applicatory contestation superfluous.

Through a fine-grained account of contestation in the Reagan years, the article stresses the need for a more historically grounded approach to norm research. That is, we can only understand the nature, meaning, and stability of contemporary norms by looking back at key moments in which new meanings, categories of interpretation, and conventions emerged (Epstein 2008). In order to "zoom in" (Wiener 2018) on actors' practices and discursive interventions, this article requires a stronger engagement with archival material. The article offers an in-depth empirical analysis that focuses on the reform of the EO regulating the intelligence community, the CIA's engagement in paramilitary operations in Nicaragua and Afghanistan, the development of counterterrorism policy and of National Security Decision Directive (hereafter NSDD) 138, and the targeting of Libyan leader Muammar Gaddafi. The analysis concludes that the Reagan ad-

ministration, to use Schmidt's and Sikkink's (2019, 106) phrase, "struck at the core" of the ban itself, "in both discourse and practice." Long before 9/11, while implementation of the ban continued in EOs and lip service was paid to it, the norm's robustness had been (almost) fatally undermined.

Norms, Norm Contestation, and Norm Robustness

Early research on norms focused on their nature, establishment, and development. Scholars identified a norm life cycle from early emergence through tipping points, norm cascades, and internalization (Finnemore and Sikkink 1998). While instrumental in establishing norm research within IR, this scholarship was later subject to criticisms. First, this scholarship generally focused on the development and diffusion of "good" Western liberal norms (Großklaus 2017). Second, this literature focused on the role of (often Western) norm entrepreneurs. This silenced and infantilized non-Western subjects and norm receivers (Engelkamp, Glaab, and Renner 2014; Bloomfield 2016). Third, this literature treated norm life cycles as finite (McKeown 2009). Finally, while detailing a dynamic process of norm diffusion, early norm scholarship considered norms as relatively static and uncontested.

More recent norm scholarship has addressed these shortcomings. First, scholars have looked at the diffusion of "bad" norms and at the "dark side" of normative argumentation (Bob 2012; Heller, Kahl, and Pioiu 2012). Second, scholars have emphasized the agency of non-Western actors and called for a more systematic questioning of Western hegemonic value systems through a "contrapuntal" approach (Engelkamp, Glaab, and Renner 2014, 44). Third, some challenged the inevitability of global acceptance of norms. Shannon (2000) had detailed the importance of actors' incentives, interests, and perceptions in assessing whether to accept the prescription and the parameters (remit) of a norm. Collins (2013) showed how actors discursively support norms while refraining from implementation. Evers (2017) showed how actors engage in intentional and public transgression of norms to (re)establish their identity and place within international society. Bloomfield (2016) stressed the role of anti-preneurs who are unwilling to change the status quo and challenge the diffusion of norms. Fourth, McKeown (2009) expanded the norm life cycle and highlighted the possibility of norm erosion. Sandholtz and Stiles (2008) developed models of continuous norm change through multiple cycles influenced by a combination of technological developments and

argumentation. The literature on norm contestation departs from the insight that norms are constantly subject to change. While initially focusing on norm diffusion and localization (Acharya 2004), Acharya has more recently emphasized processes through which local actors adapt norms to local conditions, reshape norms to maintain autonomy, and "return" (modified) international norms (Acharya 2011, 2018).

Antje Wiener has played a prominent role in specifying and conceptualizing the process of contestation. Norms are inherently contested and contestable (Wiener 2009; Niemann and Schillinger 2017, 19). According to Wiener (2009), contestation is a dialogic process requiring the involvement of more than one actor and represents interventions expressing disapproval of the norm. Through their interventions—and based on their "normative-cultural baggage"—actors can reshape the "meaning-in-use" of norms. Norms, in turn, (re)shape actors' behavior (Wiener and Puetter 2009). While some scholars have criticized Wiener's notion of "normative and cultural baggage" (Niemann and Schillinger 2017; Collins 2019), others—and this is where the present article fits—have expanded on dynamics of contestation and their effects on norms.

Deitelhoff and Zimmermann (2013) initially analyzed the effects of contestation on a norm's validity, distinguishing between justificatory and applicatory contestation. First, through "justificatory" interventions, actors challenge the propriety of the norm (Deitelhoff and Zimmermann 2013, 5). Second, actors can engage in "applicatory" discourses challenging whether a norm applies in a certain context. The effects of contestation depended on the type and extent of contestation. Applicatory discourses, they wrote, reinforce a norm through "learning processes among addressees regarding the claims that a norm involves" (Deitelhoff and Zimmermann 2013, 14). The validity of the norm is undermined only when contestation is "radicalized" through repeated contestation and/or a shift toward justificatory discourses (Deitelhoff and Zimmermann 2013, 7).

More recently, the same authors have focused on norm robustness. Robustness depends on a norm's validity (looking at discursive interventions and intersubjective understandings) and facticity (looking at states' practices and the extent of compliance) (Deitelhoff and Zimmermann 2019, 6). When assessing robustness, the analysis should look at both discourse-based indicators (validity) and practice-based ones (facticity). Discourse-based indicators include the acceptance of the norm's legitimacy, the number of ratifications, as well as the nature and extent of third-party reactions in case of violation. Practice-based indicators include implementation of the norm, that is, its inclusion in relevant documents as well as actors' actions and compliance with the norm (Deitelhoff and Zimmermann 2019, 8).

Norm, Power, and Dynamics of Contestation: Analyzing Norm Robustness

Three main dimensions can be identified in the analysis of norms' robustness: the type of norm, the type of contesting actor and their power, and the type of contestation (Deitelhoff and Zimmermann 2019). The first dimension addresses the nature and character of the norm and the extent to which the norm has achieved a "legal" character and has been institutionalized, for example, by entering the courts system. Norms that have not achieved this status are more likely to be contested. This dimension also includes considerations regarding the level of specificity or vagueness of the norm. If a norm is vague and its remit is unclear, contestation is more likely (Deitelhoff and Zimmermann 2019, 10).

The second dimension looks at actor-based factors and focuses on who is contesting the norm. Deitelhoff and Zimmermann (2019) are skeptical that—relative to other factors—the power of the contesting actors significantly affects the robustness of norms. Others, however, have criticized a tendency within the norm scholarship to overlook dynamics and disparities of power (Epstein 2008). Sikkink (2013, 162) has shown how effective a "small group of powerful political operators" can be in undermining norms. While different scholars adopt different typologies, this article suggests that—at a minimum—three main types of power are relevant.

First, most international law scholarship agrees that power as a (material) resource influences the struggle for the law (Finnemore 2003, 5; Hurd 2017, 52). Material resources also give certain actors the "power of the critical moment and the capacity to both act and to argue in a manner that can help crystallize or catalyse" new meanings of norms (Hurrell 2003, 352). Second, an institutional and positional understanding of power is important. Domestically and internationally, the power to shape the law is exercised through institutions. Institutions create "'winners' and 'losers', to the extent that the ability to use the institution and, accordingly, collective rewards—material and normative—are unevenly distributed" (Barnett and Duvall 2005, 52). Panke and Petersohn (2016, 6) stress how the relative position of the actor in the normative field helps in shaping the evolution of norms. This is connected with the final, relevant form of power: discursive power, the power to shape understandings of norms and the ability to establish them as commonsensical (Epstein 2008). As Charlotte

Peevers ([2013](2013), 53) has argued, this power is also un-equally distributed. It creates discursive hierarchies, identifying who is allowed to "speak" and who is not. Peevers ([2013](2013), 55, 201) has stressed the importance of "legal advisers." "Cherry-picked" for their loyalty, they often find themselves in the position of facilitators "constructing intricate technical arguments which might reconstruct seemingly illegal policies as legal."

The third dimension looks at process-related factors and asks how the norm is being contested. The norm robustness literature highlights three main types of contestation: applicatory contestation, validity contestation, and covert (or masked) validity contestation. Applicatory contestation questions whether a norm applies in the specified (policy) context and impinges on the norm's remit. Validity contestation challenges "whether the normative claims are righteous" (Deitelhoff and Zimmermann 2019, 11). Schmidt and Sikkink (2019) have also suggested that actors can engage in covert— or "masked" (Sandholtz 2019, 140)—validity contestation. Actors seemingly engage only in applicatory contestation. However, their reliance on secret cooperation with third parties (to facilitate violations) and the establishment of legal instruments to protect violators amount to validity contestation (Schmidt and Sikkink 2019, 106).

It should be pointed out that Deitelhoff and Zimmermann (2019) seem to equate validity contestation only with an explicit and general challenge to the norm as inappropriate or not in line with an actor's moral compass. As Sandholtz (2019, 141) pointed out, this makes validity contestation rare. In the case of norms prohibiting a particularly controversial activity, such as the ban on assassination or torture norms, a public and explicit challenge to the norm seems unlikely. Empirically, this understanding sets an (almost) impossibly high bar for validity contestation. Too narrow a definition also creates a false dichotomy that reduces analytical acuity by either excluding from analytical purview important behavior or sees us trying to lump anything other than outright defense of the prohibited behavior as being applicatory contestation.

In line with existing scholarship (Wolff and Zimmermann 2016; Bettiza and Lewis 2020), this article also considers meaning contestation. Applicatory contestation concerns the remit of the norms and the policy contexts in which the norm applies. Validity contestation occurs when actors question the appropriateness and morality of the norm (Sandholtz 2019). Meaning contestation occurs when actors maintain the form of a norm but work to reshape its content (Bettiza and Lewis 2020). Actors, in other words, try to (re)shape the intersubjective expectations set by the norm, by redefining the concept at the center of the norm and/or challenging expectations as to the behavior the norm requires from its addressees. This type of contestation is in full view in McKeown's (2009) discussion of the torture memos. US officials were not openly challenging the norm, saying "there should not be a norm against torture" (validity contestation). Neither were they—with few exceptions—trying to altogether remove counterterrorism from the remit of the norm by saying "we accept the norm, but it is not applicable in these counter-terrorism circumstances" (applicatory contestation). Instead, they were contesting meaning by saying, "the norm is valid and applicable, but what we are doing does not amount to torture, so our practice cannot be criticised or held accountable on this basis." Meaning contestation, in this process, helped actors to reintroduce elements of deniability and to blur lines of responsibility.

Dynamics of Contestation and the Assessment of Norm Robustness

Several authors understand these three types of contestation as different levels of intensity (Wolff and Zimmermann 2016; Bettiza and Lewis 2020). Validity contestation is seen as the gravest challenge to the robustness of the norm. Meaning contestation is assumed to represent an intermediate challenge. Applicatory contestation is seen as the mildest. Following Wiener, many authors maintain a positive understanding of applicatory contestation as a means to clarify the norm's remit (Deitelhoff and Zimmermann 2013, 7; Garcia-Iommi 2020).

This article challenges this consensus. It postulates that a positive view of applicatory contestation ignores the dimensions and extent of the applicatory interventions and the possibility that these interventions aim at dramatically shrinking the remit of the norm to allow the pursuit of previously prohibited policies. As Panke and Petersohn (2012, 723–24) write, through repeated applicatory contestation, a norm may degenerate "since its rules can hardly be applied to empirical circumstances anymore, which essentially impinges upon the very purpose of that norm." Similarly, Brunnee and Toope argued that extensive applicatory contestation might make validity contestation superfluous (Brunnee and Toope 2019, 74).

Due to the radical nature of applicatory contestation and building on Schmidt's and Sikkink's intuition, the analysis identifies a fourth dynamic of contestation: covert (or masked) applicatory contestation. Actors (at times secretly) aim at the complete removal of certain

activities from the remit of the ban. When this effort fails, actors "settle" for meaning contestation that blurs what actors can expect from each other and what the norm implies. This blurring of definitions, standards, and expectations—and the difficulties it establishes for the identification of violations—has effects similar to the removal of activities from the remit of the norm. Meaning contestation makes applicatory contestation superfluous.

Deitelhoff and Zimmermann (2018, 8) suggested that even "strategic applicatory contestation"—an effort to violate the norm by constraining its remit—contributes to the "stickiness" of the norm, since it "reactualizes a norm's claims by engaging others in deliberation ... and meaning making." In this view, the fact that actors pay lip service to the norm, regardless of their intentions, helps in reconfirming its robustness. From a theoretical point of view, this understanding seems to require ditching the dual focus on discourse- and practice-based dimensions developed by the norm robustness literature. At the empirical level, it requires accepting at face value public or ex-post statements made by policymakers. Lip service is a corrosive notion when it comes to norms. Far from reconfirming the norm, the paying of lip service should be questioned. Especially if accompanied by discourses that reshape it and practices that violate it, lip service undermines the robustness of the norm because it is about actors' intention to bypass the norm while ostensibly upholding it in a way that is deeply cynical of the norm. As Panke and Petersohn (2016, 4) recognize, the public reference to the norm may itself be strategic. Actors' may pay lip service to the norm, while creating the space to engage in practices previously considered prohibited.

The analysis that follows, then, details four main dynamics of contestation:

i) *Applicatory contestation* directly calls for (more or less) radical reshaping of the ban's remit, that is, for the removal of a policy area (e.g., counterterrorism) from the remit of the ban.

ii) *Covert applicatory contestation* (secretly) calls for the complete removal of activities from the remit of the ban, while (more publicly) settling for meaning contestation that guarantees similar results.

iii) *Meaning contestation* impinges on the concept at the center of the norm (e.g., what type of killing amounts to assassination) and, hence, on what can be expected from the norm's addressees.

iv) *Validity contestation* questions the righteousness and appropriateness of the norm.

As with any taxonomy, finding the perfect fit between type of contestation and the messy reality of international politics might, at times, be challenging. While some cases are clear-cut, others might represent boundary cases between types of contestation. And yet, such a distinction helps focus attention on what type of contestation gains the most traction, on how contestation is constructed, by whom, for what ends, and with what possible future consequences if the reinterpretation of the norm is accepted. Highlighting different types of contestation raises questions about the extent to which a norm is being challenged and about how different forms of challenge may be differentially harmful to the norm.

Combining these dynamics with the distinction between discourse-based (validity) and practice-based (facticity) dimensions permits to identify several interventions that can undermine a norm's robustness. Discursively, applicatory contestation can weaken a norm if it occurs frequently (radicalization) or if it decisively shrinks the remit of the ban permitting previously prohibited practices. Meaning contestation can weaken the norm through permissive (re)definitions of the concept at the center of the norm and through the blurring of responsibilities and of lines of authority often through the reintroduction of (plausible) deniability. Validity contestation weakens the norm through more or less explicit claims that the norm represents an obstacle to the conduct of foreign policy, and through open attacks on the norm. In terms of practice-based dimensions, a norm's robustness is undermined when actors adopt practices previously considered prohibited, establish legal instruments to protect norm violators, and shield or obfuscate their responsibility and accountability. As Sanders (2016) has shown, actors' reliance on "norm proxy wars"—the use of proxies to (deniably) engage in prohibited behavior—also weakens norms. Cumulatively, these processes can weaken and fatally undermine a norm.

Setting the Record Straight: Archives and Assassination in the Reagan Years

Focusing on the US ban on assassination as the relevant norm, this article follows other scholars in "transferring" insights developed for international norm and norm contestation to a domestic level of analysis (Finnemore and Sikkink 1998; Banka and Quinn 2018, 669). The article does not study the domestic application of international norms surrounding assassination, but the evolution of a domestic norm. Ratification and implementation of the norm can be understood as its reproduction in EOs. Relevant actors are US domestic actors including the

Executive, Congress, the media, the public at large, and civil society.

The analysis makes clear that dynamics of contestation among these actors happened with different degree of covertness or secrecy.[2] At times, contestation happened only among actors within the Executive. At others, contestation emerged in closed meetings in Congress. Rarely, contestation played out in the open, involving the US media and the broader public. The analysis suggests that secret contestation can be as detrimental to the robustness of the norm as more open efforts. As McKeown (2009, 14) has written, "suggesting that a norm can only be challenged by official public statements … limits our ability to conceive of the very types of challenges more likely to occur surrounding some highly salient norms: secretive ones." Furthermore, the Reagan administration did not exist in a bubble, such that the normative innovations that took place during its time were all wiped away when Reagan left office. Secret interventions and (re)interpretations set political, legal, and historical precedents for future administrations. The institutionalization—even covertly, among the personnel and via organizational learned behaviors—of new practices and meanings influenced the views and policies of its successors.

While much of the norm scholarship on assassination has tended to accepted public and ex-post statements (Banka and Quinn 2018; Pratt 2018), this article turns the attention toward the existence of discrepancies between what is said publicly and what is said privately (Reisman and Baker 1992; Schmidt 2008), between actors' discourse/rhetoric and practice, and between the reproduction of norms in official texts and the compliance with such norms (Collins 2013). This theoretical emphasis on the more covert dimensions of policymaking poses a methodological challenge, since these dimensions are often opaque.

The methodology underlying this article was devised with these issues in mind. Primary, archival sources play a prominent role. While archives are understood to provide a database that is "reflective of what goes on behind the scenes" (Gaddis 1987, 12), shortcomings are inherent in qualitative research drawing on archival material. Archival material is often limited (McSherry 2005; Darnton 2017, 92) and the material available is often pre-selected and biased (Aldrich 2002, 148), es-

pecially in controversial areas of study. Several strategies are adopted to minimize potential biases and shortcomings. First, the analysis triangulates archival material with a wide range of sources, including the public statements of decision-makers, journalistic accounts, secondary sources (Welch 1993), and semi-structured elite interviews with journalists and former policymakers. Second, the analysis is explicit in identifying the source(s) underlying relevant claims (Darnton 2017) as well as in conducting an "explicit triage" of their strength (Lustick 1996). Overall, the account collects a series of "fingerprints" that runs across episodes of contestation and defines a credible "pattern" of evidence (McSherry 2005, xxviii–xxix).

The cases discussed do not aim to cover all aspects of Reagan's foreign policy. Based on the primary and secondary sources available, they represent a comprehensive account of moments in which actors debated assassination and the ban. The breadth of the cases permits a response to Großklaus's (2017, 261) criticism regarding the selective and anecdotal character of historical analysis within norm scholarship on assassination. The case selection follows Wiener's (2018) recommendation to zoom into specific moments to better explore how agents approached and contested norms. Through this approach and through the reliance on archival material, the analysis eschews the tendency to conduct superficial searches for "facts" that can confirm "present truths." Opting instead for a deep dive in search of richer "historical gems" (de Carvalho, Leira, and Hobson 2011, 755–56), the analysis provides a better exploration of the history, continuities, discontinuities, and contradictions in processes of norm contestation (Kinsella and Mantilla 2020). The analysis permits us to uncover the contested origins and the historical contingency of meanings and practices—like the targeted killing of terrorists—that today we consider part of accepted conventions (Pratt 2018). The three main dimensions identified in the norm robustness literature guide the rest of the analysis. The next section analyzes the ban on assassination as a norm. The following section assesses the actors involved and their power. Finally, the analysis highlights what dynamics of contestation emerged and their effects on the robustness of the ban.

The Ban on Assassination as a Norm

The origins of the US ban on assassination can be traced back to the 1970s Congressional inquiries into the activities of the CIA. After media revelations, and the publication of the Rockefeller Commission's report, assassination became an object of inquiry for the

2   The analysis will differentiate between contestation that happens "covertly," that is, secretly, from "covert" or "masked" contestation. Covert contestation will refer to actors' efforts to achieve one form of contestation (applicatory) while settling for another (meaning).

Senate Select Committee on Intelligence, better known as the Church Committee, from the name of its chairman, Senator Frank Church (D-ID). The Committee investigated not only cases in which US officials carried out the assassination attempt directly (such as the case of Fidel Castro), but also the US government's use of proxies to carry out assassination (such as the case of General Rene Schneider). The "Interim Report on the Alleged Assassination Plots involving Foreign Officials," recognized the existence of CIA's internal directives against assassination but called for the establishment of a law (or a statute) (Trenta 2018).

In line with insights from norm scholarship, the report found two main advantages in the establishment of a law. First, a stricter institutionalization of the norm against assassination, through legally binding measures, could remove decisions surrounding assassination from the sole control of the Executive, thus reducing the temptation of using this foreign policy instrument in the future. Second, a more explicit and detailed law would have restricted the Executive's space for contestation. It would have also undermined its ability to engage in the innuendos, circumlocutory language, euphemisms, and plausible deniability that had been rife in the 1950s and 1960s.

The Committee established clear criteria regarding the type of activity prohibited. Killing, attempting to kill, or conspiring to kill were all prohibited. The success of the assassination attempt was not a criterion to identify a violation. The report also stressed how the prohibition extended to the use of proxies. The report defined "political motivation" as the killing of an official for his/her political views, actions, or statements. In a prescient addition, it made clear that due to the "reality of international politics," the label of "foreign official" applied not only to officials of a foreign government but also to officials of an insurgent force, an unrecognized government, or a political party. Furthermore, the Committee established a clear binary distinction, between wartime and peacetime, as to when the prohibition applied. The only two situations in which the prohibition did not apply were a state of declared war or a use of military force in accordance with the War Powers Resolution (hereinafter WPR) (US Senate 1975, 283–84). The Committee did not intend the ban to apply in every foreseeable circumstance, but only identified two extreme exceptions—a new Hitler or a situation of "grave national emergency" not unlike the one confronted by President Lincoln (US Senate 1975, 285–86).

The Ford administration had tried to obstruct both the Committee's investigation and the publication of the Interim Report (Olmsted 1996; Trenta 2018). It successfully prevented the establishment of a statute through the publication of EO 11905, which only brought cosmetic changes to the powers of the intelligence community, in February 1976 (Trenta 2018). The EO contained a ban on assassination. Ignoring the criteria drafted by the Church Committee, however, the ban only read: "No employee of the United States Government shall engage in, or conspire to engage in, political assassination" (Ford 1976). There was no clarification as to what "political assassination" meant, who could be targeted, and the circumstances under which the ban applied.[3]

The origins of the ban and several of its features are important for the ensuing dynamics of contestation. First, both debates within the Ford administration and the Church Committee Report highlight that peacetime assassinations were the object of investigation and, hence, of the prohibition. Second, the ban's vagueness is readily apparent (Olmsted 1996). Indeed, the White House made an explicit decision to leave the ban vague to avoid constraining future administrations (Trenta 2018). As the norm scholarship suggests, a vague norm entailing "complex undefined concepts" and an unclear remit makes contestation more likely (Panke and Petersohn 2012, 725). Third, the record makes clear that the Ford administration understood the dangers posed by the "legalization" and institutionalization of the ban (Kissinger 1975; Trenta 2018). As Deitelhoff and Zimmermann (2019, 10) argued a norm's "legal character" can play "an important role in isolating it from challenge ... by strengthening its obligations."

Powerful Actors and Norm Contestation: Casey and his Secret Warriors

Beyond a norm's character and its lack of institutionalization, the power of the actors contesting the norm represents an important dimension in assessing robustness. The norm's addressees (US government intelligence agencies and covert operators) and the norm's subject (intelligence and covert action) skewed debates in favor of the Executive branch. Furthermore, the "executive" character of the norm established clear disparities between

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3   In 1978, the Carter administration reconfirmed the ban removing the word "political" in EO12036 (Carter 1978). According to the CIA associate general counsel, the removal could be interpreted as an effort to expand the remit of the ban, thus prohibiting any killing (Fredman 1997). This would amount to an applicatory intervention. Former members of the Carter administration suggested that, even in its tensest moments, the Carter administration did not consider assassination as a possible option (Quandt 2012).

the Executive and Congress when it came to the power of interpreting it. Even within the Executive, as factions battled over the ban, disparity in material, institutional, and discursive power between actors played a prominent part. They established in a privileged position a cluster of US government officials working with CIA Director William Casey.

The revamping of covert action and counterterrorism capabilities represented a key element in the 1980s Republican platform and in the Reagan administration's foreign policy agenda (Oseth 1985; Republican Party 1980). Reagan nominated Casey as Director of the CIA. Casey and Reagan shared the strong conviction that the CIA's capabilities had been "neutered" during the Carter/Turner era through hiring policies and stifling regulations (McManus 2016). As former Vice President Mondale (2016) put it, Casey's aim was to bring back the CIA to the era of unaccountability. Casey made sure to give his role and the Agency expanded material and institutional power. He accepted the role only after receiving from Reagan assurances regarding the power of the position. Under Casey, the director of central intelligence (DCI) became a cabinet-level position. This role guaranteed a stronger voice on budgetary and policy matters (Ranelagh 1987, 676). Casey's position and his relationship with the President also guaranteed institutional power, an ability to set the intelligence agenda, and to run a parallel foreign policy (Gates 1996, 286), as well as a dominant position in the relevant normative environment.

Within the Agency, Casey worked to change both personnel and the approach to rules and regulations. Casey recalled a high number of covert operatives phased out or retired during the 1970s (Prados 1996, 374). He scrapped a 130-page manual on covert action suggesting that agents simply use their "common sense" (Persico 1991, 230). During his confirmation hearings, while rejecting the accusation that he wanted to "unleash" the Agency, he made clear that too much oversight could hinder performance (US Senate 1981, 25–26, 41). As John Rizzo recalled, with the arrival of Casey, lawyers in the Agency understood that they had to write much broader and more aggressive intelligence findings (Rizzo 2014, 79). Casey named Stanley Sporkin as CIA's legal counsel. In line with Peevers's (2013) argument, Sporkin was a loyal adviser who had previously worked under Casey and viewed with contempt the Congressional inquiries of the 1970s (Woodward 1988, 161). Beyond the Agency—and in a clear historical precedent for the network synthesis identified by Pratt (2018)—Casey could rely on several like-minded officials such as the president, Secretary of State Alexander Haig (later

George Shultz), and National Security Council (NSC) staffers.

Contestation, however, is by definition dialogical (Wiener 2009). During the Reagan years, a few actors opposed the administration's views on covert operations and on the ban on assassination. Within the CIA, several career officials and lawyers, who had lived through the inquiries of the 1970s, resented the move toward a more aggressive posture. Members of this faction included Deputy Director Admiral Bobby Ray Inman, John McMahon, who would replace Inman after his resignation, and other lower-ranking officials. Within the administration, however, these officials were in a subordinate position. The Reagan team always considered Inman an outsider. While respected within the Agency, McMahon was often ignored by Casey, who relied on direct contact with handpicked CIA officials in the field and with members of the NSC. When contestation emerged only within the Executive, these actors' views were dismissed. The same dynamic characterized contestation between Congress and the White House. The executive nature of the order and the administration's effort to evade Congressional oversight meant that Congress rarely objected to the administration's interpretations.

Contesting the Ban: The Reagan Administration's Struggle over the Ban on Assassination

The Ban Reconfirmed: The Struggle over EO12333

The first moment of contestation—overlooked in both norm scholarship and historical accounts—concerned the drafting of a new EO for the intelligence community. Aggressive political appointees and NSC staffers such as Ken DeGraffenreid and Donald Gregg called for a radically new approach to intelligence and altogether questioned the necessity of explicit restrictions. More reluctant CIA officials, including Inman, understood that the elimination of restrictions might expose the CIA to renewed scandals. After a draft of a new EO leaked, Congress intervened. At this early stage, the risk of violation of norms surrounding the intelligence community engendered third-party reactions. During the hearings, Inman testified that forces within the administration were pushing for an almost complete relaxation of restrictions on operations (Oseth 1985, 149–51).

To NSC staffers, Carter's EO represented an "attack on the intelligence agencies by an unholy alliance of smug, comfortable bureaucrats and those on the political left committed to radically curtailing our capabilities" (DeGraffenreid Undated). Only a short, aggressive

draft, Gregg wrote, could show the country and the world that the CIA was "out of the dog house" (Gregg 1981). During the review process, DeGraffenreid made clear that one of the main aims was the removal of "demeaning" language. These interventions can be understood as early efforts at validity contestation and highlight the administration's intentions in the realm of intelligence and covert operations. Actors questioned the appropriateness and suitability of norms, including the ban on assassination. DeGraffenreid provided an annotated version of the Carter order for internal deliberations. He challenged the prohibitions listed in the order since they unnecessarily constrained the intelligence community and presented it as something that needed to be kept on a tight leash. Next to the ban on assassination, he wrote "RR [Ronald Reagan] doesn't have to say this. I believe he won't either' (DeGraffenreid 1981). While Casey was—for political reasons—wary of a complete redraft (Casey 1981), Richard Allen, National Security Advisor, and the NSC pushed for a more radical removal of restrictions and restated that "gratuitously demeaning" language was not necessary (Allen Undated).

Contrary to the NSC's view, EO12333 published in December 1981 maintained the structure of Carter's order. The prohibition on assassination was also reconfirmed. In Deitelhoff's and Zimmermann's terms, this represented an implementation of the norm; one of the practice-based dimensions. The ban's inclusion in a revamped EO could be interpreted as a sign of the norm's robustness. At a closer reading, however, important differences with Carter's order emerge, signaling (at best) an equivocal endorsement. Section 2.11 read: "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination." To this, Section 2.12 added that "No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order" (Reagan 1981). The wording of this clause already amounted to applicatory contestation. The Carter order had extended this prohibition to all agencies of the US government, while the Reagan order only included agencies of the intelligence community. This implied agencies beyond the intelligence community were free to engage in prohibited activities. Two main pieces of evidence support this claim. First, the administration later tried to exploit a similar loophole in the Iran–Contra scandal suggesting that the NSC and its operatives could not be considered intelligence agencies and, hence, were not covered by the Boland amendment (Byrne 2014, 43). Second, the Reagan order blurred the lines of authority and responsibility that—in line with the Church Committee's view—had been clarified under Carter. The NSC could establish

independent subgroups to carry out intelligence-related activities and only the President's opinion—and not a broader policy review—was needed to assign "special activities" (covert action) to an agency other than the CIA (Reagan 1981).

The language of the order also showed crucial changes. First, the order abandoned the emphasis of restrictions and duties of Carter's order (Oseth 1985, 153). Second, the need for "propriety" of intelligence activities disappeared. The only requirement was the avoidance of explicit illegality (Oseth 1985, 158). A narrow focus on the more aseptic language of legality tends to remove decisions from the realm of politics and ethics, turning political and moral issues into legal technicalities (Hurd 2017). This shift, Peevers (2013) argued, opens the possibility of government officials asking for favorable legal opinions to avoid explicit illegality. As the analysis will show, Casey often relied on lawyers to make legal previously prohibited or controversial practices. In a memorandum to Reagan, Counselor Edwin Meese confirmed that the new order provided unprecedented flexibility (Meese Undated).

The CIA and Paramilitary Operations
Covert applicatory contestation: the meaning of the ban and the CIA's "murder manual"

According to Pratt (2018, 732), in the Reagan years, the existence of the ban diverted the CIA from engaging in paramilitary operations. The historical record tells a different story. Once the ban was (re)implemented, the first episode of public contestation surrounded precisely the Agency's paramilitary activities. Casey had selected Duane "Dewey" Clarridge as Chief of the CIA Latin America Division (Leogrande 1998, 116). Clarridge contacted John Kirkpatrick—a CIA contractor—to help in training the contras (Persico 1991, 417). Kirkpatrick prepared a manual in Spanish titled "Psychological Operations in Guerrilla Warfare." The controversy surrounded the section entitled: "Selective use of violence for propagandistic effects." The manual read: "It is possible to neutralize carefully selected and planned targets such as court judges, justices of the peace, police and state security officials, CDS [Sandinista Defence Committee] chiefs" and other targets. These should be chosen on the basis of their popularity and of the difficulty in replacing them (Leogrande 1998, 364).

The language of the manual exposed the administration and the CIA to a potential violation of the ban. First, the word "neutralization" seemingly called for the assassination of foreign officials. Second, the role and position of these officials made their "neutralization" a "political"

act. Finally, the CIA was asking third parties (the contras) to be involved in assassination, thus violating section 2.12. Several authors have dismissed the importance of the controversy surrounding the manual (Fuller 2017; Banka and Quinn 2018). Michael Schmitt concluded that, beyond the domestic politics of the controversy, the episode largely demonstrated an agreement among the political elite surrounding the ban on assassination on the terms set by the Church Committee (Schmitt 1992, 665). A review of archival records, however, highlights how different actors provided different interpretations to the ban, engendering heated contestation.

As news stories of the manual generated third-party reactions from Congress, the White House initially tried to argue that the manual had nothing to do with assassination. Reagan—who had admitted in a Presidential debate against Walter Mondale that the manual violated the provision in EO12333—backtracked, stating that nothing in the manual violated the ban (Leogrande 1998, 366). When completed, the CIA's Inspector General Report similarly suggested that neutralization did not refer to physical elimination. As Leogrande reported this strategy was disingenuous and it did not work (Leogrande 1998, 365). The White House, then, engaged more explicitly in meaning contestation, challenging the expectations set by the norm. Members of the administration clearly aimed at establishing a layer of plausible deniability. Initially, several high-level officials argued that the manual was the work of an "overzealous freelancer" (Dickey and Omang 1984). This proved false. Officials then argued that the author of the manual, while not a freelancer, was a low-level employee and nobody within the Agency had vetted the manual. This was also false. Regardless, through these statements, the Reagan team implied that the ban expected the US government to have explicit and direct control over the conduct of its employees and its proxies. The CIA and the administration, the argument went, did not have enough control over the drafting, vetting, and publication of the manual. Since US agencies were not directly and explicitly responsible for the manual, they did not *intentionally* violate the ban (Persico 1991, 418). This intervention did not suggest that the Contra war should have been excluded from the norm's remit. Instead, it reinterpreted the meaning of the norm.

The episode provided Congress with a political opening to clarify the meaning of the ban. The House Intelligence Committee's investigation, however, refused to provide any clarification and simply accepted the White House's interpretation that the "murder manual" episode amounted to negligence and lack of control more than willingness to violate the ban (US House of Representative 1985, 16). This acceptance could be interpreted

(as Schmitt does) as a proof of a consensus regarding the ban within the political elite. At a closer look, however, Congress's acceptance signaled power disparities in the contestation of the ban and papered over emerging views of key US officials that pointed toward radical (re)interpretations.

Contradicting the White House's argument about control, in a secret two-page letter to members of the House and Senate Intelligence Committees, Casey took full ownership of the manual. As he wrote, the discussion on "neutralization" referred to situation in which the guerrilla occupied a new town and resistance remained. The letter's language and its references to "guerrilla," "occupation," and "potential resistance" make clear that, in Casey's view, the situation in Nicaragua was one of unconventional warfare and insurgency (Casey 1984). Casey was introducing a third "hybrid" category, that of unconventional warfare in the dichotomy between peacetime and wartime (that is a use of force pursuant to a declaration of war or a WPR) established by the Church Committee. In this context, Casey argued, the ban on assassination did not apply, or—at a minimum—needed to be interpreted differently. The letter represented an aggressive applicatory intervention aimed at completely removing a large portion of the CIA's activities (paramilitary operations) from the remit of the ban.

Clarridge also engaged in contestation of the ban. His statements highlight the CIA's and the administration's intention to reshape the ban to permit controversial activities, as well as the deployment, at one time, of multiple types of contestation. In a secret briefing to Congress, Clarridge made three main points. First, Clarridge stated that he had control of the activities of the Contras. He argued that "his" rebels had been killing "civilians and Sandinista officials." This admission contradicted the White House's line, violated section 2.12, and exposed the administration's use of proxies to conduct policies in violation of the ban, thus weakening the norm (Sanders 2016). Restating Casey's argument, Clarridge also engaged in applicatory contestation by suggesting that in a context like the CIA's support for the Contras, these killings were normal (Dickey 1987, 257). Finally, contesting the meaning of the norm by reshaping the concept at the center of the norm (assassination), Clarridge added that the killing of these officials was political, but it did not violate the ban on assassination since a killing only amounted to assassination if it targeted a head of state (Dickey 1987, 257); something that contradicted the Church Committee's understanding.

Contrary to Schmitt's argument, these views show a clear divergence with the Church Committee's position. Furthermore, the evidence points to a new dynamic

of norm contestation. Actors within the Reagan administration engaged in covert (masked) applicatory contestation. Contrary to Deitelhoff's and Zimmermann's positive view of applicatory interventions, Casey's and Clarridge's applicatory interventions aimed at radically reshaping the ban through the exclusion of a large segment of CIA activities from its remit. These more aggressive interpretations were initially rejected as the White House settled for meaning contestation. Its argument regarding the US government's intent and level of control over proxies, as well as Congress's acceptance of it, (re)opened opportunities for deniability.

Settling for meaning contestation: the CIA, the Mujahedeen, and sniper rifles

A second round of contestation emerged, again, over the CIA's paramilitary activities, this time in Afghanistan. After a review of the Afghanistan policy in 1985, restrictions on US support for the mujahedeen were relaxed (Coll 2005, 127). For Casey, as Peter Schweizer noted, "operations against Soviet leadership ... were an important step up in the escalation of the war. So long as the Soviet elite were immune to attacks ... they would continue to back the war in Afghanistan." According to Schweizer, Casey proposed the targeting of sons of senior party officials (Schweizer 1994, 153). While this specific claim finds little confirmation, several sources agree that a key element of this new strategy was the targeting of specific and high-level Soviet officials and generals through the delivery of plastic explosives and precision weapons like sniper rifles. As Coll (2005, 136) writes, "the sniper program's advocates wanted to 'off Russian generals in series'."

Such proposal created two main problems. First, the elimination of these officials could be interpreted as assassination. The United States was not involved in a declared war or in a use of force sanctioned under the WPR. The generals were certainly foreign officials. They were not random Soviet officers, but high-level officials previously and precisely identified, and they were being targeted for political reasons including demoralizing the Soviet Union (Lundberg, Zelikow, and May 1999, 25). Second, while assassination does not impinge on the type of weapon used, the proposed weapons for these operations (explosives, sniper rifles, and night vision goggles) facilitated the covert targeting of specific individuals and, hence, could easily be labeled as assassination weapons, and this is how they were understood at the time (Coll 2005).

Once again, US officials engaged in covert applicatory contestation. Casey and like-minded agents in the field, such as Gus Avrakatos, argued that the ban did

not apply in the context of paramilitary operations. In such context, supplying rifles and explosives was no different than supplying other weapons of war. The actual killing was done by proxies, but this was also true of cases investigated by the Church Committee and violated Section 2.12. Lawyers within the CIA, as well as officials who had lived through the inquiries of the 1970s contested such a permissive interpretation (Crile 2002, 166). The debate did not impinge on the CIA's overall involvement in Afghanistan, but on the type of activities permitted.

Confronted with internal opposition, Casey requested a legal opinion to CIA and NSC lawyers regarding what made the provision of certain weapons different from the provision of others. CIA lawyers replied that the main difference was intent. While other weapons could have multiple uses, they suggested, it was difficult to argue that sniper rifles had any other use but assassination (Coll 2005, 135). This legal opinion enabled Casey and Avrakatos to avoid explicit illegality and to adopt a permissive interpretation of the ban based on intent. Casey replied to the CIA's lawyers: "if anyone asks don't tell them these are sniper rifles for assassination; tell them they are hunting rifles: that's our intent. What they choose to hunt is their decision, not ours" (Schweizer 1994, 208). This intervention represented a case of meaning contestation. It did not challenge the appropriateness of the ban and it did not aim at excluding the CIA's activities from its remit. Instead, it intervened on the expectations the norm set for the behavior of its addressees. This intent argument became a staple of the Reagan administration's effort to evade norms such as the UN Convention against Torture (McCoy 2006, 100, 122) and to break laws such as the Boland amendment (Kornbluh 1987, 56).

As in the Nicaragua case, a blank applicatory intervention completely removing paramilitary operations from the remit of the ban was rejected. Meaning contestation, however, made applicatory contestation superfluous permitting the US government to pursue its preferred policy by reintroducing deniability and blurred lines of responsibility. The permissive legal interpretation also allowed the CIA to undermine the norm's facticity and, hence, its robustness. US practice routinely showed noncompliance with the norm. The CIA was able to deliver the weapons to the mujahedeen with only cosmetic changes, to provide them with intelligence on the location and movement of the targets, and to conspire with other actors in the field who were engaging in assassination, as long as no specific directive or explicit demonstration of intent emerged (Crile 2002, 201). Furthermore, the episode also showed additional signs of the weakening of the norm's robustness. Instead of eliciting protests

and third-party reactions (from Congress), the administration's permissive interpretations found support among key Congressmen—such as Senator Gordon Humphrey, in charge of the Agency's budget for the operation—who were at the forefront of calls for the targeting of Soviet generals (Coll 2005, 127).

From Applicatory to Validity Contestation: The Ban and Counterterrorism
Applicatory contestation and neutralization as policy: Lebanon and NSDD138

In the realm of counterterrorism, contestation first emerged in the aftermath of the October 1983 Marine Barracks bombing in Beirut. After the attack, Casey called for the sidelining of concerns regarding assassination: "Every time a Mujahedin rebel kills a Soviet rifleman, are we engaged in assassination? This is a rough business. If we're afraid to hit the terrorists because somebody's going to yell 'assassination', it will never stop" (Persico 1991, 428). The intervention found broad support within the administration, particularly from Secretary of State, Shultz. In a National Security Planning Group (hereafter NSPG) meeting, Shultz argued that the administration should have stopped being afraid of "technicalities" and should have acted against terrorists (NSPG 1984). Similarly, Steve Rosen, an advisor to the NSC and the Pentagon, wrote to McFarlane that one of the main reasons for the Soviet success in the Third World had been their ability to "threaten political leaders." "While we do not wish to harm political leaders," the document continued, "we do wish to kill terrorists" (Rosen Undated).

In the NSC, Oliver North had increased his institutional power by positioning himself at the forefront of the administration's fight against terrorism. North drafted a finding for a covert operation that called for the CIA to train teams hired by the Lebanese intelligence services who could hit targets inside Lebanon. Within the Agency, McMahon set out the stark choice imposed by the ban. "You better go back and tell those cowboys they can't have it both ways." He told Casey:

> If the president lifts the executive order banning assassination, we'll knock off terrorists. But if he keeps that one on the books, and we're bumping people off, do you know what happens when the shit hits the fan? It's the CIA's ass. To the rest of the world, it's not administration policy, it is not an NSC idea—it's those crazy bastards at the CIA. (Persico 1991, 429)

McMahon's objections were ignored. In line with Peevers's view of legal advisors, Casey told Sporkin, "Don't tell me it can't be done ... find me a legal way to do it" (Fuller 2017, 44). McMahon's opinion and Casey's effort make clear that the aim was to change the intersubjective meaning of the ban within the US government, in order to pursue the Executive's preferred policies. Sporkin developed a legal opinion that impinged on both the meaning and the application of the norm. First, in applicatory intervention, the opinion stated that the ban did not apply in the context of counterterrorism. Second, as to the meaning of the norm, and building on Clarridge's argument, the opinion stated that a killing only amounted to assassination if it targeted a head of state (Persico 1991, 429).

Having covertly contested the ban, the administration relied on proxies to violate the norm. On November 1, 1984, Reagan signed the still classified NSDD149 supporting Lebanon in its counterterrorism efforts and a finding authorizing the training of Lebanese teams (Naftali 2005, 148). On March 8, 1985, one of the CIA-trained teams exploded a car bomb near a building complex supposedly hosting Sheikh Mohammed Hussein Fadlallah. While some debate remains, primary and secondary sources help in establishing how the CIA identified Fadlallah as a political target (CIA DOI 1985) and supplied proxies with the information needed to localize him (Bird 2014, 334; Emerson 1988, 194). The attack missed the Sheikh but killed eighty civilians. Reagan rescinded the finding after the bombing. The policy, however, had been implemented and further demonstrated the US government's willingness to rely on proxies to conduct assassination and undermine the norm.

Beyond the CIA, North had also been working on a draft for a new NSDD. The draft recommended a policy of "neutralization" of terrorists. McMahon again argued that the draft demonstrated that North and Casey were oblivious to the scandals of the 1970s and to the scars that the inquiries had left in the Agency's institutional memory (Woodward 1988, 412). Memoirs of Reagan administration officials and recent scholarship argued that internal opposition caused the removal of "neutralization" from the final document and its substitution with a blander call for "proactive measures" (Shultz 1993, 654; Wills 2003, 83). In the text, declassified in 2010, however, neutralization features prominently. The document asked the DCI to step up intelligence cooperation with friendly governments and to develop capabilities for the "pre-emptive neutralization of anti-American terrorist groups" (Reagan 1984, 4). The directive also required the drafting of an intelligence finding that included "lawful measures" to "neutralize or counter terrorist organizations and terrorist leaders" (Reagan 1984,

4). In spite of the reference to "lawful measures," based on Sporkin's opinion, the assassination of terrorist leaders had become legal. Confirming Schmidt and Sikkink's (2019) argument regarding the efforts to protect norm violators, Reagan also signed a second NSDD still unnumbered and still classified. This directive provided "legal protection" to covert operatives involved in pre-emptive and self-defensive actions against terrorists, in case those actions violated US laws or EOs (Wills 2003, 87).

While these policy developments remained largely covert, several members of the administration including McFarlane, Casey, and Shultz conducted a series of public speeches (Fuller 2017). They argued for a more aggressive counterterrorism posture, as well as for the development of pre-emptive measures against terrorists (Shultz 1993, 647). In a dynamic not too dissimilar from the one identified by McKeown (2009) over torture norms, while not mentioning "assassination" explicitly, these public interventions started to justify and normalize something that—previously—had been contested: the pre-emptive use of force against (suspected) individual terrorists in peace time. The combination of secret policies that contradicted the norm and open processes aimed at justifying those policies undermined the strength and salience of the norm (McKeown 2009, 11). It also contributed to the establishment of the counterterrorism conventions identified by Pratt (2018).

Toward validity contestation: The assassination of heads of state and the raid on Gaddafi

Since the start of the administration, the US government and the CIA had been involved in efforts to remove Gaddafi through covert operations and through support to groups of Libyan exiles involved in coup attempts (Nouzille 2016). When some in Congress warned that one of these operations—code-named Tulip—violated the ban on assassination, Casey had relied on the earlier qualifications of the ban through the role of explicit intent. In an argument not too dissimilar from the one surrounding the sniper rifles, Casey had told the Senators that the purpose of the plan was to support those groups that wanted Gaddafi removed. "They might try to kill Gaddafi, but that was not the objective of the plan" (Stanik 2003, 103). On April 5, 1986, a bomb exploded at the *La Belle Discotheque* in Berlin. The United States identified Libya as the culprit. The archival record makes clear that—even before the attack—the administration had set its sight on the Libyan leader personally, thus targeting a head of state and contradicting even its own permissive interpretation of the ban.

One month before the bombing, at an NSPG meeting, Shultz forcefully argued that Gaddafi was "an en-

emy and a terrorist." "We should be ready to undertake action to hurt *him*, not just fire back," Shultz continued, "Our forces should *plaster him* and his military targets" (emphasis added). As other members of the administration raised concerns, Shultz replied that a better option would be if Gaddafi was "put in a box" (NSPG 1986). On April 8, North and the NSC prepared a memorandum stating that the US government had to be ready to take advantage of the likely political vacuum created by US air strikes (North, Teicher, and Stark 1986). On April 11, the CIA's Directorate of Intelligence similarly identified a strike on Gaddafi's residences as the only measure that could convince the Libyan leader that the United States is serious about "his removal" (CIA DOI 1986). The Joint Chiefs of Staff (JCS) had opposed the inclusion among the targets of the Azizia Barracks Compound, which hosted Gaddafi's residence, due to concerns regarding civilian casualties. This point seemingly confirmed Pratt's argument regarding the restraining effects of concerns regarding civilian casualties in the pre-drone era. In a memorandum to Reagan, however, National Security Advisor John Poindexter had argued that the high risk of "collateral damage" for some targets was worth the potential reward. The reward, Poindexter implied, was regime change (Poindexter Undated). Reagan overrode the JCS objections (Andrews 1996, 483).

The air strike, *Operation El Dorado Canyon,* took place on April 14. From archival material, it is clear that the NSC had clearly stepped up its intelligence collection efforts to obtain "near real-time data on Gaddafi whereabouts" (NSC 1986). After the Trans World Airlines (TWA) hijacking, during which the Israeli and US governments had worked together, a secret channel of communication and intelligence sharing was established (Bradlee 1988, 291), something that NSDD138 had recommended. This channel provided up-to-date information on Gaddafi's movements and location (Livingstone 1990, 271; Persico 1991, 498). The operation, initially planned for April 12, was delayed due to North's effort to get up-to-date information regarding Gaddafi's location (Bradlee 1988, 354). The raid started at 2 am, clearly aiming to hit Libyan officials in their sleep. As an Air Force officer reported, "There's no question that they were looking for Gaddafi. It was briefed that way ... the assassination was the big thing" (Hersh 1987). Former Senator Gary Hart (2016) confirmed that the "bombing raid on Libya was a clear effort to assassinate Qaddafi."

This evidence makes clear that the administration's practice violated the ban. However, relying on the meaning contestation of the previous months, US officials developed arguments that played on intent, publicly denying that killing Gaddafi was an explicit aim of the

operation (Gordon 1986; Reagan 1990, 519). Senior White House officials defended the strikes arguing: "We were striking at him personally, not that he was the target" (Cannon and Woodward 1986). The White House had also prepared a statement describing the possible death of the Libyan leader as "a fortuitous by-product of our act of self-defence" (Stanik 2003, 153). These public justifications hinted at the development of broader legal rationales.

Lawyers in the Reagan administration developed two main arguments to justify the attack. The first argument was developed at the time of the strike by Abraham Sofaer, State Department Legal Counsel, but made public only in later years. It established that Qaddafi's position as head of state did not guarantee him "legal immunity" from being attacked when present as a proper military target (Vlasic 2000, 101). As Vlasic correctly argued, this view implied that—as long as the United States portrayed a strike as an attack against a military target and not as an attack against a leader that might be present at that target—the policy was legitimate and did not violate the ban (Vlasic 2000, 101). This view built on Casey's intent argument. This intervention can be understood as a boundary case between meaning and applicatory contestation. Understood narrowly, the interpretation challenges the meaning of the term assassination suggesting that for a killing to amount to assassination it required an explicit intent and an explicit directive to kill an individual, needless to say this is unlikely. Understood more broadly, it could imply that—as long as the military is involved—no killing can amount to assassination.

A memorandum by Sofaer at the time of the strike also developed a second argument. It defined the strike against Libya as a self-defensive and pre-emptive military measure against an "ongoing pattern of attacks," in line with Article 51 of the UN Charter. This definition had several consequences. First, it excluded the raid from notification requirements imposed by the WPR, a development that further blurred the distinction between assassination in peacetime and in wartime highlighted in the Church report (Sofaer 1986). Second, it established clear historical precedents for the use of force against states sponsoring terrorism as well as for self-defense against "ongoing" threats; precedents that would be used by the Clinton, Bush, and Obama administrations (Vlasic 2000, 102; Trenta 2017). Third, this justification can be understood as a radical (and successful) applicatory contestation. Sporkin had argued for the exclusion of counterterrorism from the remit of the ban (applicatory contestation) and that the neutralization of terrorists in self-defense did not amount to a violation of the ban on assassination since

the ban only protected heads of state (meaning contestation). Sofaer and State Department lawyers now suggested that the consequences of a counterterrorism strike conducted in (pre-emptive) self-defense could not violate the ban on assassination, even if these consequences included the killing of a head of state (Canestraro 2003, 25). The administration had successfully excluded counterterrorism from the remit of the ban on assassination.

With few exceptions, the Reagan administration's arguments and interventions weakening the ban had engendered little reaction from Congress. In the realm of counterterrorism, some in Congress seemed willing to go beyond the administration's policies. After the raid, Senators Robert Dole (R-KS) and Jeremiah Denton (R-AL) proposed a bill to expand the President's power to strike against terrorists without prior Congressional consultation. Questioning the righteousness and the appropriateness of the ban, the bill explicitly superseded it. It gave the President full authority to use force in counterterrorism operations, and openly authorized the assassination of a head of state personally involved in terrorism (US House of Representatives 1986, 105). While the bill did not go past the Committee stage, this public effort at validity contestation certainly signaled a radicalization of contestation and the weakened status of the norm.

Conclusion

Recent scholarship has argued that the ban on assassination effectively constrained US foreign policy until 9/11 (Banka and Quinn 2018; Pratt 2018). In making this argument, scholars have tended to overlook the Reagan administration's role in undermining the robustness of the ban. This article has focused on developments within the Reagan years to highlight the heated contestation of the ban on assassination and the legal, linguistic, and political maneuvers that weakened its prescriptions. Interventions of members of the administration undermined the norm's robustness in both its discourse-related dimensions and practice-related ones. Agreeing with existing scholarship, the analysis has found that US officials engaged in three main types of contestation: applicatory, meaning, and validity contestation. The article also argued that applicatory contestation can be as "radical" as other forms of intervention. For this reason, actors often "covertly" called for applicatory contestation while settling for meaning contestation.

Through extensive reliance on archival material, the analysis showed how, in the realm of insurgency and counterinsurgency, actors settled for meaning contestation by intervening on the concept at the center of the norm (assassination) and on the expectations set by the

norm. Through the Nicaragua and Afghanistan rounds, it was understood that direct control of proxies, as well as an explicit intent and directive to assassinate were required before attributing a violation of the ban to US agencies. Meaning contestation made applicatory contestation (that is an explicit removal of these activities from the remit of the ban) superfluous.

In the realm of counterterrorism, contestation rapidly radicalized with frequent and extensive interventions and a slide toward validity contestation. Counterterrorism was progressively removed from the remit of the ban and the "neutralization" of terrorists in self-defense became an acceptable policy option. At the time of NSDD138, administration officials argued that the ban only protected heads of state. When this interpretation clashed with the administration's aim of targeting Gaddafi, the ban was again reinterpreted. Far from constraining foreign policy, the ban was given more and more permissive interpretations that allowed the pursuit of the sought-after policy. Policymakers maintained a veneer of respect for the norm—through its implementation in EOs and paying lip service to it—while eviscerating its substance. These interventions and their public reverberations also engendered validity contestation questioning the appropriateness of the ban and normalizing the use of force against individuals and terrorists. Zooming in on norm dynamics in the Reagan years has permitted us to recover the key moments when conventions regarding the use of force, counterterrorism, and assassination were first established and to better appreciate the continuities with the post-9/11 normative environment.

This analysis offers two main avenues of further research. At the empirical level, this article sits in between two existing interpretations regarding the ban on assassination. The article questions arguments that the ban represented an effective constraint on the conduct of US foreign policy until 9/11. While challenging this interpretation, the article rejects the view that the ban never represented an obstacle to the conduct of US foreign policy (Ulrich 2004). This article, instead, has established that, by the end of the 1980s, the robustness of the ban had been severely undermined. The political space and legal precedents had been created for the pursuit of assassination in the realms of unconventional warfare and counterterrorism. As to counterterrorism, policy documents and public pronouncements contributed to the legitimation of strikes against terrorists. A practice that was contested at the start of the Reagan era, as McMahon's protestations made clear, had been normalized. The process detailed above, then, seems to combine forms of norm erosion detailed in the literature. The multiple rounds of contestation had radically modified its meaning and weakened its prescriptions. The increased prominence of counterterrorism and normalization of previously prohibited practices pushed the norm toward obsolescence. Combined with the embryonic development of a new norm surrounding the legitimacy of targeting terrorists, contestation in the Reagan years signaled if not the death of a norm, at least its slide into irrelevance (Sandholtz 2019; Garcia-Iommi 2020, 82).

A provisional exploration of the George H. W. Bush and Clinton years seems to confirm this argument. At the start of the George H. W. Bush administration, a memorandum of law, penned by Hays Parks, from the Office of the Judge Advocate General at the Department of the Army, built on Sofaer's self-defense argument to clarify the meaning of the ban. The memorandum stated that overt or covert uses of force against "another nation, a guerrilla force, or a terrorist or other organization" do not constitute assassination if they are carried out in self-defense to protect US interests (Parks 1989, 1). Precedents set under the Reagan administration resurfaced during the Clinton administration's hunt for Bin Laden. First, the administration relied on the "intent" argument developed by Casey. In October 1998, the administration clarified that military commandos or undercover agents could use "lethal force" against the leaders of an organization that threatens American interest, as long as no specific order to kill a specific individual emerged (Jackson 1999, 678). Second, the administration accepted the precedents regarding the legitimacy of pre-emptive strikes in self-defense against terrorists (9/11 Commission 2004, 132; Clarke 2004). Third, in the aftermath of *Operation Infinite Reach*, the administration relied on the argument regarding the targeting of infrastructure (Woodward 2018)—as opposed to leaders present at that infrastructure—developed by Sofaer. NSC spokesman David Leavy argued that—in the fight against terrorist groups—"infrastructure" and "command and control" are "justifiable targets" and such "infrastructures" are often "human" (Vlasic 2000, 102). Overall, as Clinton's National Security Advisor Sandy Berger explicitly testified, the administration accepted the self-defense and infrastructure precedents (Clarke 2004, 200). To be sure, scholars have identified a certain reticence among US officials (especially in the Clinton years) in using assassination as an instrument of foreign policy. Such reticence, however, had seemingly more to do with a changed international context, potential international and domestic criticisms, the risk of civilian casualties, and a lack of capabilities, than with the ban itself (Vlasic 2000; 9/11 Commission 2004; Clarke 2004). Further research could help in establishing whether even in

administrations after Reagan's the ban was not as decontested and constraining as the existing norm literature implies. At the theoretical level, the article has shown that, in most cases, the interpretation put forward by actors in a "small group of powerful political operators" prevailed over alternatives. The article sets the stage for further research on how power and the distribution of power shape the evolution and outcomes of contestation, especially for domestic norms.

Acknowledgments

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