

DEMOCRACY IN THE CROSSHAIRS:

Cyber Interference, Dark Money and Foreign Influence

November 1-3, 2018

[Home](#)
[Schedule](#)
[Haaga Lecture](#)
[Keynote Panel](#)
[Location](#)
[Participants](#)
[Required Readings](#)
[Background Readings](#)
[CERL Home](#)


DEMOCRACY IN THE CROSSHAIRS: CYBER INTERFERENCE, DARK MONEY AND FOREIGN INFLUENCE

International law has long recognized that some infringements of another state's sovereignty are sufficiently grave as to constitute a violation of international law, if not a *casus belli*. Recent cases of election interference, however, have more publicly exposed the uncertainty over the application of the general principle of non-intervention and whether attacks against democratic institutions would violate international law. Consider, for example, a cyber-attack from a foreign state that compromises the voting machines used during a democratic election. Contrast that cyber-attack with so-called "information warfare" that might involve the hacking of private correspondence and releasing it publicly via Wikileaks, or the use of social media and troll farms to spread disinformation and fake news. Add to this scenario large amounts of untraceable, illicit money transfers between an array of state and non-state actors intended to support these influence operations while making reliable legal or political attribution severely complicated. Do these infringements on the political process violate international law and if so, what should the necessary legal and political responses be?

There are a variety of legal considerations that must be addressed when answering these questions. Hacking and disclosure of private information might violate what many believe to be an international right to privacy, which is recognized by international human rights law (IHRL) but not upheld by U.S. courts. Also, the sovereign right to independence from any and all interference affirms that a nation has a right to conduct an election, without outside interference, in order to express its political will and create a representative government. Is it possible to determine, however, if and at what point acts of interference amount to a violation of sovereignty—or beyond that, an act of war? Finally, the laws of war arguably constrain some cyber-attacks, although only those that are sufficiently destructive to fall under that paradigm—cyber-based interference and disinformation campaigns do not cause physical damage, but they have sufficient power to destroy the legitimacy of an institution without the need for physical force. If acts of interference remain below the threshold of war, what mechanisms are available for objecting to clear violations of sovereignty as a result of foreign interference?

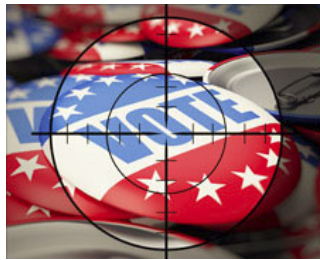
Even assuming that foreign interference in a democratic election is unlawful, there is then the added question of what actions a state might take in defense of its institutions. The traditional toolkit for international lawyers include retorsions and counter-measures. Are these the appropriate responses when a state is faced with information warfare? It may well be that foreign interference, like espionage and covert military operations, have become expected aspects of geopolitics requiring active counter-measures but which cannot be entirely prevented or deterred. Can the idea of an independent, insular election, confined to a single polity, be defended, or is it a relic of the past?

The conference will focus on these key themes:

- The historical roots of foreign interference
- Patterns of interference in domestic and foreign elections
- The legal status of cyber-based foreign interference
- Foreign Interference in the midterm elections
- The role of dark money in U.S and European elections
- The future of information warfare: warfare as we know it? Or a weaponization of information and free speech and free press principles

Attendance at the non-keynote sessions of this conference is by invitation only.

*There are two sessions open to the public.
Please see the "Keynote" page for more information.*



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[Required Readings](#)
[Background Readings](#)
[CERL Home](#)

Schedule

Thursday, November 1, 2018

At the University of Pennsylvania Law School

4:30 pm

6:00 pm

[Public Keynote Address](#) (Haaga Lecture): "Russian New Generation Warfare and the Threat to the Free World" by Lieutenant General H.R. McMaster, U.S. Army, Ret., former National Security Advisor, and Perry World House Distinguished Visiting Fellow

Moderated by Professor [Claire Finkelstein](#)

This event will take place at Penn Law in the Michael Fitts Auditorium

[Register for the Haaga Lecture HERE](#)

Friday, November 2, 2018

Unless otherwise indicated, all events will be held at the [National Constitution Center in Philadelphia](#)

8:30 am

9:30 am

Sign-In and Continental Breakfast - **John C. Bogle Chairman's Room**

9:30 am

9:45 am

Welcome Remarks

9:45 am

11:00 am

Session 1—Historical Roots of Foreign Interference: The Framers and Their Efforts to Secure Democratic Independence
Moderator: [Professor Stanley Katz](#)

Concern over foreign interference in domestic institutions has deep roots in the history of liberal democracy. In the American context, the founding fathers held a deep regard for the dangers posed by foreign actors wishing to interfere in the domestic institutions of the young republic. To that end, the Constitution of the United States contained specific provisions that sought to ensure that the institutions which it set up would be protected from unwanted outside interference. The laws and regulations which followed the Constitution reflect this deep-seated aversion to foreign interference.

This session will discuss the historical roots of foreign interference and the foundations put in place to protect domestic institutions from foreign interference. The objective of this session is to unpack the intentions of the founding fathers and to place these intentions and their aversion to foreign interference in the context of contemporary political institutions.

11:00 am

11:30 am

Break

11:30 am

12:45 pm

Session 2—Patterns of Disinformation in Domestic and Foreign Elections
Moderator: [Professor Mitch Orenstein](#)

Recent elections throughout the world have been subjected to overt and covert foreign interference operations. These operations have been conducted by traditional state actors and by non-state actors who may or

may not receive material support or operational direction from a state sponsor. These foreign disinformation campaigns have exploited all domains of political, financial, and societal interaction. Their intent is often to damage and/or destroy the credibility and/or stability of the democratic processes they target. In some of the more notorious instances, it may be argued that these foreign disinformation campaigns have even sought to achieve a particular electoral outcome.

What patterns have emerged within the conduct of foreign disinformation and interference campaigns? The increasing importance of technology, social media, and digital media has changed the face of information warfare, whereby these everyday aspects of modern society act as a force multiplier significantly increasing the ease with which a foreign entity can influence an electoral process. The difference, however, between these modern operations and their predecessors may be less than they are the same. Drawing on the history of foreign interference, what lessons can be applied to current foreign attempts to influence the democratic electoral processes?

12:45 pm 2:00 pm Lunch - **Delegates Dining Room**

2:00 pm 3:15 pm Session 3— Cyber-Based Foreign Interference
Moderator: [Professor Michael Posner](#)

Cybersecurity and cyberwarfare have become increasingly relevant in recent years. In democratic elections, attention has focused on a spate of hacking attacks that seek to embarrass and undermine candidates, political parties, and institutions by stealing, manipulating, and releasing damaging material timed with the election cycle. Moreover, state and non-state political actors have taken to social media and digital news media outlets to create and disseminate fictitious or augmented stories intended to drive a particular political or cultural narrative. One could also see these acts as an attempt to electronically disrupt vital infrastructure, when infrastructure is defined widely to include the necessary political infrastructure for a country to function. In that regard, what we are seeing in democratic elections may represent an exploitation of technology that amounts to an act of war under international law.

This discussion will seek to understand foreign interference in democratic institutions in the context of the existing laws and norms governing international conflict and cybersecurity. One of the major questions at hand is at what point does an act of foreign interference amount to an act of war? Lawyers, politicians, and strategists alike have struggled with this question in the context of deliberate cyberattacks but have been similarly unable to come to a consensus. Is it possible to reconcile existing laws and norms with the advent of cyber-based foreign interference, or will new laws and institutions be required in order to curtail unwanted interference?

3:15 pm 4:00 pm Break

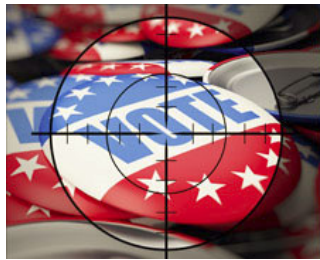
4:00 pm 6:00 pm **Public Keynote Panel**—"Foreign Interference in the Democratic Process: Countdown to the Midterms"
Moderator: [Trudy Rubin](#). Panelists: [Mr. Clint Watts](#), [Mr. Raymond Baker](#), [Mr. Shawn Turner](#), [Professor Mitchell Orenstein](#) and other distinguished guests

This event will take place in the F.M. Kirby Auditorium of the National Constitution Center.

[Register for the Public Keynote Panel HERE](#)

6:00 pm 7:00 pm Reception - **The Monaco Hotel - Rooftop, Vapor Pavillion**

7:00 pm 8:30 pm Participant Dinner - **The Monaco Hotel - Lafayette North, Ballroom**
Keynote presentation by [Dean Elizabeth Rindskopf Parker](#)



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[Haaga Lecture](#)
[Keynote Panel](#)
[Location](#)
[Participants](#)
[Required Readings](#)
[Background Readings](#)
[CERL Home](#)

Participants

[Raymond Baker](#)

President, Global Financial Integrity

[Paul Barrett](#)

Deputy Director, NYU Center for Business and Human Rights

[Hon. Harold Berger](#)

Senior Partner and Managing Principal, Berger Montague PC

[Vivian Berger](#)

Nash Professor of Law Emerita, Columbia University; CERL Executive Board

[Professor Hannah Bloch-Wehba](#)

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Professor of Business, Technology & Strategy, Queensland University of Technology; Nonresident Senior Fellow, Brookings Institution

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[Professor Jeffrey Green](#)

Professor and Director of Andrea Mitchell Center for the Study of Democracy, University of Pennsylvania

[Paul Haaga, Jr.](#)

Board of Directors, National Public Radio; CERL Executive Board Chair

[Professor Richard Harknett](#)

Professor and Department Head of Political Science, University of Cincinnati

[Professor Richard Immerman](#)

Professor and Edward Buthusium Distinguished Faculty Fellow in History Emeritus; Emeritus Marvin Wachman Director, Center for the Study of Force and Diplomacy, Temple University

[Stanley Katz](#)

President Emeritus, American Council of Learned Societies; Lecturer with rank of Professor of Public and International Affairs, Princeton University.

Eileen Kenney	CERL Director of Engagement
Professor Young Mie Kim	Professor at the School of Journalism and Mass Communication, University of Wisconsin-Madison
Sheila Krumholz	Executive Director, Center for Responsive Politics
Professor Susan Landau	Bridge Professor of Cyber Security and Policy at the Fletcher School of Law and Diplomacy and the School of Engineering, Department of Computer Science, Tufts University
Professor William Laufer	Julian Aresty Endowed Professor; Professor of Legal Studies & Business Ethics, Sociology, and Criminology; Director of the Carol and Lawrence Zicklin Center for Business Ethics Research, University of Pennsylvania
Professor Duncan MacIntosh	Chair, Department of Philosophy, Dalhousie University; CERL Executive Board
Professor Ryan Maness	Assistant Professor of Cyber Conflict and Strategy Defense Analysis Department Naval Postgraduate School
Daniel Medina	Director of Strategic and Technical Engagements, Glasswall Solutions Inc.
Professor Christopher Morris	Professor of Philosophy, University of Maryland; CERL Executive Board
Michael Noonan	Director of the Program on National Security, Foreign Policy Research Institute (FPRI)
Professor Jens David Ohlin	Vice Dean and Professor of Law, Cornell Law School; CERL Executive Board
Professor Mitchell Orenstein	Department Chair of Russian and Eastern European Studies; Professor of Political Science, University of Pennsylvania
Professor Eric Orts	Guardsmark Professor; Professor of Legal Studies and Management, Wharton School
Maia Otarashvili	Research Fellow and Manager of the Eurasia Program, Foreign Policy Research Institute (FPRI)
Professor Michael Posner	Jerome Kohlberg Professor of Ethics and Finance; Director of the Center for Business and Human Rights, NYU Stern School of Business
Megan Reiss	Senior National Security Fellow, R Street Institute
Dean Elizabeth Rindskopf Parker	Dean Emerita, University of the Pacific McGeorge School of Law
Connie Rosati	Professor of Philosophy, University of Arizona; CERL Executive Board
Trudy Rubin	Columnist, <i>Philadelphia Inquirer</i>
Matthew Shabat	Glasswall Solutions, U.S. Strategy Manager

[Shawn Turner](#)

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Senior Counsel, Brennan Center for Justice

[Clint Watts](#)

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Senior Fellow at the Center For Cyber and Homeland Security, George
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[Christopher Welsh](#)

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[Paul Welsh](#)

Vice President of Business Development, Analytical Graphics, Inc.;
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[Jules Zacher](#)

Attorney; CERL Executive Board