

Misreading the Fight over Military Detention: The Obama Regime Has No Constitutional Scruples

The amendment permits indefinite detention of US citizens by the US military

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During an interview with RT on December 1, I said that the US Constitution had been shredded by the failure of the US Senate to protect American citizens from the detainee amendment sponsored by Republican John McCain and Democrat Carl Levin to the Defense Authorization Bill.

The amendment permits indefinite detention of US citizens by the US military. I also gave my opinion that the fact that all but two Republican members of the Senate had voted to strip American citizens of their constitutional protections and of the protection of the Posse Comitatus Act indicated that the Republican Party had degenerated into a Gestapo Party.

These conclusions are self-evident, and I stand by them.

However, I jumped to conclusions when I implied that the Obama regime opposes military detention on constitutional grounds.

[Ray McGovern](#) and [Glenn Greenwald](#) might have jumped to the same conclusions.

An article by [Dahlia Lithwick](#) in Slate reported that the entire Obama regime opposed the military detention provision in the McCain/Levin amendment. Lithwick wrote: "The secretary of defense, the director of national intelligence, the director of the FBI, the CIA director, and the head of the Justice Department's national security division have all said that the indefinite detention provisions in the bill are a bad idea. And the White House continues to say that the president will veto the bill if the detainee provisions are not removed."

I checked the URLs that Lithwick supplied. It is clear that the Obama regime objects to military detention, and I mistook this objection for constitutional scruples.

However, on further reflection I conclude that the Obama regime's objection to military detention is not rooted in concern for the constitutional rights of American citizens. The regime objects to military detention because *the implication of military detention is that detainees are prisoners of war*. As Senate Armed Services Committee Chairman Carl Levin put it: Should somebody determined "to be a member of an enemy force who has come to this nation or is in this nation to attack us as a member of a foreign enemy, should that person be treated according to the laws of war? The answer is yes."

Detainees treated according to the laws of war have the protections of the Geneva Conventions. They cannot be tortured. The Obama regime opposes military detention,

because detainees would have some rights. These rights would interfere with the regime's ability to send detainees to CIA torture prisons overseas. This is what the Obama regime means when it says that the requirement of military detention denies the regime "flexibility."

The Bush/Obama regimes have evaded the Geneva Conventions by declaring that detainees are not POWs, but "enemy combatants," "terrorists," or some other designation that removes all accountability from the US government for their treatment.

By requiring military detention of the captured, Congress is undoing all the maneuvering that two regimes have accomplished in removing POW status from detainees.

A careful reading of the Obama regime's objections to military detention supports this conclusion.

(See

http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saps1867s_20111117.pdf)

The November 17 letter to the Senate from the Executive Office of the President says that the Obama regime does not want the authority it has under the Authorization for Use of Military Force (AUMF), Public Law 107-40, to be codified. Codification is risky, the regime says. "After a decade of settled jurisprudence on detention authority, Congress must be careful not to open a whole new series of legal questions that will distract from our efforts to protect the country."

In other words, the regime is saying that under AUMF the executive branch has total discretion as to who it detains and how it treats detainees. Moreover, as the executive branch has total discretion, no one can find out what the executive branch is doing, who detainees are, or what is being done to them. Codification brings accountability, and the executive branch does not want accountability.

Those who see hope in Obama's threatened veto have jumped to conclusions if they think the veto is based on constitutional scruples.

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