

Reining in Obama and His Drones

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Global Research, December 01, 2012
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Region: [USA](#)

Theme: [Law and Justice](#), [Militarization and WMD](#)

Barack Obama, former president of the Harvard Law Review and a constitutional law lecturer, should go back and review his coursework. He seems to have declined to comport his presidency to the rule of law.

Let's focus here on his major expansion of drone warfare in defiance of international law, statutory law and the Constitution. Obama's drones roam over multiple nations of Asia and Africa and target suspects, both known and unknown, whom the president, in his unbridled discretion, wants to evaporate for the cause of national security.

More than 2,500 people have been killed by Obama's drones, many of them civilians and bystanders, including American citizens, irrespective of the absence of any "imminent threat" to the United States.

As Justin Elliott of ProPublica wrote: "Under Obama...only 13 percent (of those killed) could be considered militant leaders – either of the Pakistani Taliban, the Afghan Taliban, or Al Qaeda." The remaining fatalities, apart from many innocent civilians, including children, were people oppressed by their own harsh regimes or dominated by U.S. occupation of their country. Aside from human rights and the laws of war, this distinction between civilian and combatant matters because it shows that Obama's drones are becoming what Elliott calls "a counterinsurgency air force" for our collaborative regimes.

The "kill lists" are the work of Obama and his advisors, led by John O. Brennan, and come straight from the White House, according to The New York Times. Apparently, the president spends a good deal of time being prosecutor, judge, jury, executioner and concealer. But he does so quietly; this is no dramatic "thumbs-down" emperor.

Mr. Brennan spoke at Harvard Law School about a year ago and told a remarkably blasé audience that what he and the president were doing was perfectly legal under the law of self-defense. Self-defense that is defined, of course, by the president.

It appears from recent statements on The Daily Show that President Obama does not share the certitude boldly displayed by Mr. Brennan. On October 18, President Obama told John Stewart, and his audience, that "one of the things we've got to do is put a legal architecture in place, and we need Congressional help in order to do that, to make sure that not only am I reined in but any president is reined in terms of some of the decisions that we're making."

So in the absence of "a legal architecture" of accountability, do presidents knock off whomever they want to target (along with bystanders or family members), whether or not the targeted person is actually plotting an attack against the United States? It seems that way, in spite of what is already in place legally, called the Constitution, separation of powers

and due process of law. What more legal architecture does Mr. Obama need?

Obviously what he wants is a self-contained, permanent “Office of Presidential Predator Drone Assassinations” in the White House, to use, author, scholar and litigator Bruce Fein’s nomenclature. According to The New York Times, President Obama wants “ explicit rules for targeted killing.... So that a new president would inherit clear standards and procedures.” Mr. Fein notes that “clear standards and procedures without accountability to the judiciary, Congress, or the American people” undermine the rule of law and our democracy.

Indeed, the whole deliberation process inside the Obama administration has been kept secret, a continuing process of morbid over-classification that even today contains secret internal legal opinions on targeted killings. The government refuses even to acknowledge that a drone air force operates over Pakistan – a fact that everybody knows including the hundreds of injured and displaced Pakistanis. This drone air force uses, what The New York Times called, “signature strikes against groups of suspected, unknown militants.”

Predictably, these strikes are constantly terrorizing thousands of families who fear a strike anytime day or night, and are causing a blowback that is expanding the number of Al Qaeda sympathizers and affiliates from Pakistan to Yemen. “Signature strikes,” according to the Times, “have prompted the greatest conflict inside the Obama administration.” Former CIA director under George W. Bush, Michael V. Hayden has publically questioned whether the expansion in the use of drones is counterproductive and creating more enemies and the desire for more revenge against the U.S.

Critics point out how many times in the past that departments and agencies have put forth misleading or false intelligence, from the Vietnam War to the arguments for invading Iraq, or have missed what they should have predicted such as the fall of the Soviet Union. This legacy of errors and duplicity should restrain presidents who execute, by ordering drone operators to push buttons that target people thousands of miles away, based on secret, so-called intelligence.

Mr. Obama wants, in Mr. Fein’s view, to have “his secret and unaccountable predator drone assassinations become permanent fixtures of the nation’s national security complex.” Were Obama to remember his constitutional law, such actions would have to be constitutionally authorized by Congress and subject to judicial review.

With his Attorney General Eric Holder maintaining that there is sufficient due process entirely inside the Executive Branch and without Congressional oversight or judicial review, don’t bet on anything more than a more secret, violent, imperial presidency that shreds the Constitution’s separation of powers and checks and balances.

And don’t bet that other countries of similar invasive bent won’t remember this green-light on illegal unilateralism when they catch up with our drone capabilities.

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