

The Democratic Way of Killing: The President as Judge, Jury, and Executioner

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One wonders whether Americans felt pride when they discovered that, according to the New York Times, their president was “a student of writings on war by Augustine and Thomas Aquinas.” As a result, Barack Obama believes that “he should take moral responsibility” for U.S. policy, including killing anyone and everyone seen as a terrorist threat to the United States. Innocents around the world might be dying, but at least the man ordering their deaths was consulting some of the world’s greatest theologians.

National security adviser Thomas Donilon observed, “He’s a president who is quite comfortable with the use of force on behalf of the United States.”

Washington has spent years seemingly at war with Arabs and Muslims. Without equivalent weapons — nuclear missiles, carrier groups, air wings, and the like — Islamic radicals have turned to terrorism. Nothing justifies attacks on civilians, but failing to understand and respond appropriately guarantees more of the same in the future.

After spending years propping up foreign dictators, invading and occupying foreign lands, aiding other governments which do the same, and seizing, torturing, and killing perceived adversaries, the U.S. government has created a lengthy list of enemies. Unfortunately, the broader and more violent America’s response to terrorism, the more enemies Washington creates.

Moreover, it is vital to remember that America is supposed to be a constitutional republic. Terrorists win if they convince Americans to give up their liberties.

America is a geographic location. It is a people. It also is an idea, a community defined by a shared commitment to a free society. Sacrifice the latter and America will be profoundly changed. Yet that has been happening since 9/11.

Obama’s targeted assassination is another step down this treacherous road. Extreme assertions of authority, such as the claim that the president may kill whenever he believes necessary, threaten a liberal order. The danger is greatest when the targets are American citizens. However, the president has no authority to kill foreigners without extraordinary cause either.

Claims to the contrary raise questions about what America is. In the parody song “Obama That I Used to Know,” one of the singers observes, “Sometimes I think that a peace prize winner shouldn’t have a kill list.”

He does, however. And the decision to kill appears to be the president’s alone. The *Times*

ran a long story on the assassinator-in-chief and the regular White House meetings on whom next to kill. Although some 100 officials gather online by video conference, the president alone adjudges guilt and imposes punishment. There is no appeal or review. Rather like a Roman emperor, a thumbs down from the president means death, at least assuming the drone or SEAL team can find the target.

The Founders carefully limited the discretion of the president to start conflicts. He could defend against sudden attack, but that would not extend without congressional authority to launching a continuous series of preventive attacks in nations against which America is not at war. And the drone campaigns are war. For instance, at least 2,400 Pakistanis have been killed by drones since 2004.

No limits

After 9/11 Congress approved the Authorization for Use of Military Force. More general than a typical declaration of war, it nevertheless targeted specific people, most of whom are now dead or in captivity — those who “planned, authorized, committed, or aided” the 9/11 attacks. Today that measure is too distant in circumstance, time, geography, and people to authorize the administration’s multiple drone campaigns.

Moreover, secret military campaigns reduce political accountability. The practice moves foreign and defense policy into the shadows. One reason the Founders insisted on a congressional declaration of war was to encourage a full public debate over basic issues of war and peace. Raining missiles on another country from drones is the equivalent of war, yet it occasions little notice.

Complained Murtaza Hussain in *Salon*, “In the past governments have often found their ability to wage wars abroad constrained by the citizenry who have borne the brunt of the social pressures these wars inevitably create.” Today, however, Americans are scarcely aware of the multiple wars being fought in their name.

Moreover, undertaking a policy of promiscuous assassination transforms both the battlefield and the enemy. In a traditional conflict the opposing sides are reasonably clear: Anyone in uniform on a battlefield is a legitimate target. But in the “war on terrorism” no one wears a uniform and anyone anywhere can be a combatant, making the entire world, including the American homeland, a battlefield.

Indeed, the very ease of drone assassinations undermines any safeguards on their use. Warned Amos Guiora and Laurie Blank in the *Guardian*, “A ‘flexible understanding of imminence’ ultimately produces an approach that can only be defined as ‘kill all the bad guys.’ If everyone who constitutes ‘a bad guy’ is automatically a legitimate target, then careful analysis of threats, imminence, proportionality, credibility, reliability, and other factors simply goes out the window.” A 2004 United Nations report raised similar concerns: “Empowering governments to identify and kill ‘known terrorists’ places no verifiable obligation upon them to demonstrate in any way that those against whom legal force is used indeed are terrorists, or to demonstrate that every other alternative has been exhausted.”

Are there any limits on government, especially executive, power?

This president recognizes none. Indeed, the Obama administration’s policy seems to be to

kill first and consider other options second. The Bush administration kidnapped and tortured, but at least its mistakes could, and occasionally were, remedied by the victim's release. That option is not available with targeted assassinations.

Admittedly it isn't easy to grab possible enemies in tribal Pakistan or Yemen, and the administration claims that some adversaries have been identified and then arrested and imprisoned by local authorities. Yet the sheer number of assassinations raises the question whether the United States really has so many deadly enemies.

Politics is never far in the background. In the *New Yorker* Steve Coll pointed to evidence "suggesting that the Obama Administration leans toward killing terrorism suspects because it does not believe it has a politically attractive way to put them on trial." Indeed, the entire program is surrounded by political spin. Noted Dennis Blair, the administration's first director of national intelligence, "It is the politically advantageous thing to do — low cost, no U.S. casualties, gives the appearance of toughness. It plays well domestically, and it is unpopular only in other countries. Any damage it does to the national interest only shows up over the long term."

Unfortunately, that damage can be extensive.

The first is moral. The United States has a basic ethical obligation to minimize the deaths of noncombatants. Obviously, that is difficult when the combatants live and train among civilians. However, most people recognize that terrorism is outrageous precisely because it targets innocents. To be just, counterterrorism must seek to avoid the same consequence, even if unintentional. In discussing the Obama drone program, the *Times* cited the possibility of "explicit intelligence posthumously proving" people to be innocent, but as yet, alas, there is no medical procedure to posthumously unkill them.

The administration acknowledges the duty to avoid noncombatant casualties and claims that few, if any, civilians have been killed recently. However, such claims deserve to be treated with skepticism. We now know that many nonterrorists — some innocent civilians, others Taliban foot-soldiers — were arrested, detained, tortured, and imprisoned as if they were terrorists.

Moreover, in Pakistan the United States has relied on "signature" strikes, which, according to the *Times*, aimed not at "named, high-value terrorists" but instead "targeted training camps and suspicious compounds in areas controlled by militants." Internal administration critics, reported the *Times*, "complained to the White House that the criteria used by the C.I.A. for identifying a terrorist 'signature' were too lax. The joke was that when the C.I.A. sees 'three guys doing jumping jacks,' the agency thinks it is a terrorist training camp, said one senior official. Men loading fertilizer could be bombmakers — but they might also be farmers, skeptics argued."

Such attacks obviously are no joke for those killed. Washington is following a similar policy in Yemen, where the administration has undertaken "Terrorist Attack Disruption Strikes." At least they are supposed to be based on more-stringent standards than are "signature" attacks. However, the administration apparently still does not even know the names of those it is killing.

Creating terrorists

Of course, no one really knows how many of those killed by drone strikes (or other means) are terrorists, enablers, or innocents. Obviously, real terrorists have an incentive to overstate civilian losses, but locals respond to administration claims with incredulity.

Moreover, Washington uses definitions to assert a peerless record. Reported the *Times*, the administration “in effect counts all military-age males in a strike zone as combatants, according to several administration officials, unless there is explicit intelligence posthumously proving them innocent. Counterterrorism officials insist this approach is one of simple logic: people in an area of known terrorist activity, or found with a top Qaeda operative, are probably up to no good.” So living next to, riding with, or talking to a possible terrorist entails the risk of a death sentence.

Third-party casualty figures vary widely, but most contradict the administration. The website Long War Journal, New America Foundation, and the London-based Bureau of Investigative Journalism have estimated that the number of noncombatants killed in Pakistan alone ranges from 138 to 832. Innocent deaths may be inevitable in war, but killing hundreds of noncombatants is morally abhorrent.

Moreover, killing innocents will create additional terrorists. Noted the *Times*, “Drones have replaced Guantanamo as the recruiting tool of choice for militants.” The Pakistani Taliban had little interest in America until Washington began targeting the group’s members. Faisal Shahzad, the U.S. citizen who attempted to set off a bomb in New York City’s Times Square, received assistance from the Pakistan Taliban.

Yet the administration has been expanding its kill list. The *Times* cited Baitullah Mehsud, head of the Pakistan Taliban, “whose group then mainly targeted the Pakistan government.” The administration decided “that he represented a threat, if not to the homeland, to American personnel in Pakistan,” but targeting him may have turned him into a threat to the homeland as well.

Much the same has happened in Yemen, where U.S. officials admitted, “There were times when we were intentionally misled, presumably by [former president Ali Abdullah] Saleh, to get rid of people he wanted to get rid of,” one unnamed official told the *Washington Post*. Washington is now targeting Yemenis who at most pose a threat to Americans in Yemen — who, not coincidentally, are supporting the authoritarian regime against which many Yemenis are fighting. Reported the *Post*, “A growing number of attacks have been aimed at lower-level figures who are suspected of having links to terrorism operatives but are seen mainly as leaders of factions focused on gaining territory in Yemen’s internal struggle.”

There are many bad people in the world, but most have no desire to attack Americans. If the United States targets them, however, they have a compelling reason to reconsider. If they do, Washington then would fire more missiles on them, reinforcing the cycle. That should not surprise U.S. officials: Americans would react badly if a distant country, say China, was killing their neighbors in the name of fighting terrorism — even if those killed really were terrorists. And some day, as the global balance of power shifts, Americans might suffer such attacks on the basis of the precedent set by their government.

Washington’s de facto war also destabilizes target nations. Of course, it is possible that countries such as Pakistan and Yemen would be in worse shape with more terrorists absent the steady stream of drone attacks. Yet both those countries have deteriorated as U.S. strikes have increased. Pakistan is a nuclear-armed state that is perennially on the brink.

Washington is widely reviled there.

Writing from Yemen, author and political activist Ibrahim Mothana warned that because of the drone strikes “a new generation of leaders is spontaneously emerging in furious retaliation to attacks on their territories and tribes. This is why [al-Qaeda in the Arabian Peninsula] is much stronger in Yemen today than it was a few years ago. In 2009, A.Q.A.P. had only a few hundred members and controlled no territory; today it has, along with Ansar al-Sharia, at least 1,000 members and controls substantial territory.”

The Obama administration’s desperate attempt to eradicate every last radical operative, whether dangerous or not, could have regrettable consequences. Warned Michael Boyle in the *Guardian*, Obama has allowed “short-term tactical victories against terrorist networks to overwhelm America’s wider strategic priorities and leave its relations with key governments in a parlous state.” If Pakistan implodes, Washington might find itself chasing loose nukes as well as violent jihadists.

Osama bin Laden and his followers never had a chance of winning the military side of the war on terrorism. But they did triumph when they caused Americans to give up some of their most important freedoms and adopt an even more interventionist foreign policy, which inevitably creates more hostility and encourages more terrorism — and which in turn encourages Americans to sacrifice more of their liberties. Barack Obama has reinforced both trends. That very likely isn’t the kind of change that many of his supporters expected in 2008.

It’s nice to know that Obama reads Aquinas and Augustine. It would be better if he renounced the autocratic authority to engage in targeted killings and ended U.S. government meddling around the globe. Unconstrained executive power undermines both Americans’ liberty and their humanity.

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