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Overseas Drone Attacks Test Constitution's Precepts

By David Houghton
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We are occasionally reminded just how difficult it can be for Congress to keep tabs on what the executive branch does.

For example, President Obama has expanded the use of unmanned drone attacks by the CIA in Pakistan, Yemen and Afghanistan, a practice that has apparently succeeded on many occasions (although we're not told about the failures). It recently emerged that the administration regards the execution of terror suspects without due process or trial as legal, even if the suspect is a U.S. citizen.

News accounts estimate that four Americans have been killed overseas under this internal ruling, and it was disclosed earlier that Obama has a "kill list" of terrorist suspects. Obama has also authorized the indefinite detention of American citizens on suspicion of terrorist activity, using the National Defense Authorization Act of 2011. While these aspects of Obama's foreign policy make many in Congress uncomfortable, they have yet to find any real voice in protest.

There are at least three related issues here. Are drone attacks both legal and constitutional? Secondly, do they meet the moral standards that one would expect of American foreign policy? And thirdly, is the expanded use of drones advisable in a policy sense?

Those issues touch on other matters: Can the president be judge, jury and executioner? Does the U.S. government have the right to order the assassination of its own citizens overseas or at home?

The legality of drone assassinations is questionable. Back in 1975, the Church Committee – named after its chairman, the late Sen. Frank Church of Idaho –

uncovered evidence that the CIA had become not just an intelligence-gathering body – what it was originally intended to be – but a semi-paramilitary organization, as well.

Evidence came to light that the CIA had tried to kill Fidel Castro during the early 1960s, including some bizarre plots that would seem comical in another context. Some attempts at CIA assassination succeeded, however, including involvement in the death of the Congo's Patrice Lumumba in 1961.

Following these revelations, presidents took action to prevent this. In 1976, President Ford stated in Executive Order 11905 that “no employee of the United States Government shall engage in, or conspire to engage in, political assassination.” This has never been repealed.

According to President George W. Bush's administration, foreign leaders could be legitimately targeted, because its lawyers believed that the 1976 ban does not apply to wartime and the “war against terrorism,” and Obama has claimed the same view. If you look at the wording of the 1976 ban, though, it doesn't mention wartime or peacetime – it just bans assassination.

How about the morality question? While morality admittedly is in the eye of the beholder, there is arguably something un-American about the large-scale use of drones. The Church committee said that assassinating foreign leaders “violates moral precepts fundamental to our way of life” as well as “traditional American notions of fair play.” It also said such killings were “incompatible with American principle, international order and morality.”

No one seriously opposed the killing of Osama bin Laden, founder of al-Qaeda, and other individuals directly involved in the planning of the 9/11 attacks, but giving the president the power to sign off on preemptive assassinations of other individuals who *might* attack us in the future is extremely dubious, not to say contrary to the whole spirit of the U.S. constitutional checks and balances. And should presidents be able to target individuals for execution in countries we're not even at war with?

Even if we are to judge drone attacks both legal and moral, their political advisability is also questionable. Unannounced numbers of innocent civilians are said to have been caught in the crossfire during these attacks, leading to genuine anger in the countries concerned.

Is it worthwhile to kill, say, 50 innocent people to get one low-level al-Qaeda operative? How about 20 innocent people, or 10? We already have bin Laden, which was initially, at least, what the whole war in Afghanistan was about. Is it worth creating more anger and rage in already radicalized places such as Pakistan and Yemen to continue with these bombings? And is it worth handing nations like Iran the technology needed to build drones themselves? Several U.S. or Israeli drones are already rumored to be in Iranian hands.

There are real cost-benefit evaluations that have to be made, and such calculations should not be made by the CIA alone.

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