The Limits of Drones, the Law, and Obama

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President Obama's recent speech at the National Defense University was billed as a major speech on US counterterrorism policy, especially on drones and Guantanamo. The New York Times was among those organizations that billed it as a significant change. Following the speech, debate arose over the true extent of that shift. Then came the Snowden release, and it suddenly seemed that what the President hadn't told us (about the NSA) was more interesting than what he had (about drones and Guantanamo). Seen in this light, Obama's speech is important, both because of what he says (and doesn't say) about drones and because of what his speech suggests about the weakness of the law compared with the power of the Presidency. This is a lesson we had supposedly learned under President Bush. Hence, the election of Obama, who promised a more responsible, transparent, and effective government. The sovereign power of the Presidency is such, however, that even qualities such as competence and responsibility may be made to serve foolishness.

Drones, the law, and Obama's leadership are intricately related, tied up as they are in the one man. The challenge of making sense of them is that Obama does not simply act in one way (none of us does). Obama is most widely known as the man of big ideas and soaring rhetoric. This is the point where the story of US reliance on drones begins. In the 2008 Presidential campaign, candidate Obama vowed to step up the fight against Al-Qaeda by making greater use of drones–especially in Pakistan. True to his word, Obama's Presidency has overseen a marked increase in the deployment of drones, especially in the Pakistani tribal areas. The policy, of course, has proven controversial in Pakistan, with our allies, and increasingly in the US, though sizable majorities continue to support Obama's aggressive use of drones overseas. Much of the internal criticism has focused on the legality of the targeted killing of an American citizen, following the killing of Anwar al-Aulaqi, the radical cleric then living in Yemen.

One might suspect that such appeals would resonate with the President given his training in constitutional law, but duties of the office work against a President being a champion of human rights. Jimmy Carter is an illustrative case in point. In Obama's Nobel Prize acceptance speech he spoke to how he was indebted to the likes of Martin Luther King, Jr. and how his Presidency was informed by King's powerful witness to nonviolent resistance, but that nonviolence could not have the only or last word given his responsibilities as President. He was sworn to defend the United States. "I face the world as it is, and cannot stand idle in the face of threats to the American people."

Obama may be most remembered for his inspiration, but it is his overriding sense of responsibility that has characterized his Presidency to date. Consider his early morning trips to Andrews Air Force Base to honor soldiers killed in action, his detailed orders for the troop surge in Afghanistan, and his overseeing the kill list in drone strikes. Obama is not unique in this regard, but he appears exceptional in his taking almost personal responsibility for duties associated with his role as Commander-in-Chief.

This sense of responsibility was on full display at the Defense University. Here in front of the cameras was the President of the United States speaking openly about a change in counterterrorism policy and articulating reasons for and against his policy. Speaking of the killing of al-Aulaqi, President Obama conveys the weight of such decisions:

Alongside the decision to put our men and women in uniform in harm's way, the decision to use force against individuals or groups–even against a sworn enemy of the United States–is the hardest thing I do as President. But these decisions must be made, given my responsibility to protect the American people.

At the same time, he recognizes that drone strikes are not a silver bullet:

Force alone cannot make us safe. We cannot use force everywhere that a radical ideology takes root; and in the absence of a strategy that reduces the well-spring of extremism, a perpetual war–through drones or Special Forces or troop deployments–will prove self-defeating, and alter our country in troubling ways.

The President calls for an engaged use of America's soft power to address "the underlying grievances and conflicts that feed extremism–from North Africa to South Asia."

Obama appears in the speech as one who believes in the power of reason and deliberation. He speaks of the need for debate and advises that that we need to hear the words of the protester who had just been marched out of the room:

The voice of [Medea Benjamin] is worth paying attention to. Obviously, I do not agree with much of what she said, and obviously she wasn't listening to me in much of what I said. But these are tough issues, and the suggestion that we can gloss over them is wrong.

But isn't "glossing over tough issues" exactly what President Obama is doing? What is the point of hearing the protester? Yes, the President is open on a few questions, such as the possibility of an independent oversight board in the executive branch. His words, however, if looked at closely, do not serve to welcome criticism. Just the opposite, I'm afraid. In citing opposing arguments, he is not genuinely wrestling with the complexities of the issue, but acting the part of the attorney or debater who acknowledges opposing evidence and then proceeds to overcome it. Obama's words appear crafted not to invite, but to wall off or defend against criticism. If he were genuinely open, he might at points appear contrite or self-critical, but far from acknowledging mistakes, he gives the appearance of being in command, confident that the policy is effective, legal, and moral.

Obama has been pressed, especially by the Left, about the legality of drones, but it should now be clear that the law–international or domestic–will not restrain Obama's reliance on drones. In this major speech he uses only a handful of sentences to dispense with the question of the legality of drone strikes in Pakistan or in killing Americans abroad. It is as if President Obama's training in constitutional law has made it harder for the law to restrain him. After all, who knows these questions better than he? The law is no match for the Presidency when the law is unclear, the President is convinced, and the public is supportive. For many, it was easy to think that President Bush's arrogance was due to his ignorance. President Obama has reminded us of the old lesson that knowledge may pose even greater dangers than ignorance. This is a hard lesson for a generation trained in rational choice theory. We have come to think that more knowledge equals better decisions. This assumption is at the heart of our debates over surveillance. Ironically, drones got their start as a surveillance tool.

Knowledge, however, is not wisdom. The wisdom of the ancient myth of the Fall is that none of us is immune from limits but that all are tempted to deny them. This is true of the characters of Adam and Eve, and through them it is possible to see that the temptation to deny limits is especially real for the powerful and well-intentioned. We have come to think of the post-Watergate presidency as limited by Congressional oversight, and there are real checks–especially in terms of a legislative agenda. As Commander-in-Chief, however, the President retains enormous power. Nowhere is this more clear than with drones. Obama's temptation to use drones has been virtually unchallenged by law, public opinion, or political opposition. Conscience, too, seems to have failed. Obama speaks of the troubling use of force, but nowhere does he bemoan the killing of innocents, of women, of boys and girls, of the aged and unsuspecting–of the terror visited upon villagers subjected to the constant presence of a drone buzzing overhead (see the Living under Drones report).

The President mentions none of this. Nor does he mention the fact that the use of drones has declined markedly since 2010 and done so in large part because the policy has proved counter-productive in the long-run–increasing rather than decreasing the number of terrorists.

In the speech President Obama appears to recognize that the long-term war against jihadism is a battle of hearts and

minds. The hard truth is that Obama's reliance on drones has sown seeds of resentment, inspired jihadists, and generated blowback.

There is something tragic about Obama's Presidency. A highly intelligent, perhaps even brilliant legal mind occupies the Presidency. This "enlightened" President inherited not a politics of reasoned debate, but of bitter partisan resentment. This is true on almost every issue; drones being one of the few exceptions. Given Republican hawkishness on drones, from where is a check on the President supposed to emerge? Both the law and public opinion appear weak before the competence of the Lawyer-in-Chief defending the Constitution from terrorists.

There is a cruel irony at work here. Obama's old pastor, Jeremiah Wright, was prophetic in his pronouncement about chickens coming home to roost. Bush's weak legacy in Afghanistan has served as a kind of trap for Obama's sense of competency. Rightly or wrongly Obama has resisted a long-term commitment to counterinsurgency, instead opting for the "light footprint" of drones. Drones, however, are too good to be true. In war all footprints leave their mark. There are costs to drones, huge costs that make anything other than their extremely rare use short-sighted. It may be that President Obama has learned this lesson, but his lack of candor makes this impossible to know. Now we can only hope that he has not learned the lesson too late.

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