



# Dear Rand Paul: Keep Fighting the Fight on Drones

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Over a month after Senator Rand Paul, R-Ky., delivered a 13-hour filibuster of John Brennan's nomination to head the CIA, questioning the legality of the president to kill an American on American soil, Paul appears to have backtracked. Appearing on Fox Business Channel with Neil Cavuto, Paul referenced the Boston Marathon bombing and [said](#) he has, "never argued against any technology being used when you have an imminent threat, an active crime going on." Paul continued, "If someone comes out of a liquor store with a weapon and \$50 in cash, I don't care if a drone kills him or a policeman kills him."

Paul's apparent openness to using such excessive lethal force against the "imminent threat" of theft drew a heap of condemnation among his most ardent pro-liberty supporters (and caused Paul to try walking back his comments). But to borrow a phrase from President Barack Obama, Paul's foot-in-mouth kerfuffle could provide a "teachable moment."

What the Beltway foreign-policy commentariat latched onto most after Paul's marathon filibuster was his grievance that a weapons- and surveillance-platform used against foreigners could be redirected back at American citizens. Unfortunately, Paul has run with that meme: hypothetical threat -mongering over drone-bombing cafés rather than a deep consideration of Congress's abnegation of its responsibility to constrain executive power.

[[See a collection of political cartoons on Congress.](#)]

Nobody is perfect, and I would wager Paul would admit the same of himself. But whatever one makes of [the excuses](#) he's made since his interview with Neil Cavuto,

Paul has been, to his credit, one of the few voices on Capitol Hill calling for a return to the traditional system of Madisonian checks and balances. [Lest we forget that he peppered his speech at CPAC](#) with admonishments over the powers wielded by our post-9/11 imperial presidents:

My question was about whether Presidential power has limits.

[...]

If we allow one man to charge Americans as enemy combatants and indefinitely detain or drone them, then what exactly is it our brave young men and women are fighting for?

Montesquieu wrote that there can be no liberty if you combine the Executive and the Legislative branches. Likewise, there can be no justice if you combine the Executive and Judicial branch into one.

[...]

Yes, the filibuster was about drones, but also about much more. Do we have a Bill of Rights or not? Do we have a Constitution or not and will we defend it?

[[See a collection of political cartoons on President Obama's drone policy.](#)]

To have a sitting U.S. senator directly impugn the constitutionality of America's bipartisan-foreign policy interventionist-love fest – much less have his censure greeted with rapturous applause – was nothing short of astounding. How quickly we forget the widespread support of the "everything goes in foreign policy"-era [under Vice President Dick Cheney](#), who in 2008, on the president's use of nuclear weapons, said, "He could launch a kind of devastating attack the world's never seen. He doesn't have to check with anybody. He doesn't have to call the Congress. He doesn't have to check with the courts."

Since 9/11, that bipartisan consensus has greased America's slippery slope from targeting al-Qaida senior leaders and their associated forces to transmogrifying the structure of the institutions dedicated to protecting our liberties. The [Founders](#) warned against one branch of government becoming too powerful for that very reason, particularly when it comes to the significant unilateral authority waged in times of war.

Today, our commander in chief, through a secretive decision-making process based on classified evidence, has declared the right to use lethal force against anybody, anytime, anywhere on earth. Although Paul's effort to shine a harsh light on targeted killings has thus far been commendable, he has squandered many opportunities to explain how we get back to the constitution-based system he champions. In this respect, the liberty movement has been right to hold his feet to the fire. Thus, here comes the "teachable moment."

As American University Washington College of Law professor Stephen I. Vladeck argues [here](#), and as my colleague Benjamin Friedman argues [here](#), and as Georgetown University Professor Rosa Brooks argues [here](#), it all comes down to

Congress reasserting its constitutional war powers, restoring some semblance of transparency, and rewriting the obsolete Authorization for the Use of Military Force. As these scholars made painfully clear this past [Monday at a Cato Institute policy forum on drones](#), it does not get much simpler than that.

Of course, powerful bureaucratic and political incentives push against such aspirations. But that is precisely why someone in Congress must argue repeatedly and consistently for why lawmakers must put an end the president's limitless power to wage war indefinitely. Enter, Senator Rand Paul.