



Drone Policy Must Include Checks and Balances

Benjamin H. Friedman: February 6, 2013

The question—whether Obama has gone too far in his drone policy—has the wrong subject. By assuming that the policy is Obama's, we endorse the imperial presidency so bolstered lately by fear of terrorists. In a democracy where presidents administer laws passed by Congress, drone policies are ours. And Obama has gone too far in exercising war powers because Congress let him.

Asking if Obama has gone too far in his drone policy is sort of like asking if eternity is too long or hell too hot. The president, as we see in the summary Justice Department memo published this week by NBC News, claims unchecked power to kill anyone, even U.S. citizens, that he says is a leader of al Qaeda or an associated group.

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Reporting on the memo has focused on the standard the president uses to decide whom to kill. This concern misses the real danger: the absence of checks and balances.

Courts, the memo argues, should not interfere in the president's evaluation of due process rights, which he extinguishes by labeling you a terrorist. The memo rejects temporal and geographic limits on strikes (except its claim, inconsistent with its overall logic, that the United States is off limits). Though the memo cites Congress's 2001 authorization of Military Force as authority for strikes, it follows the Bush administration in offering the presidency's "inherent power" to defend the nation as additional authority. The implication is that congressional say-so for war isn't necessary for the president to use drones at will. Nor does the administration want to debate this reasoning—they are litigating to block those documents' release.

[See a collection of political cartoons on Congress.]

So a president, consulting with officials he can fire, is using a secret process that he can change to kill whomever he wants, wherever he wants, whether or not there is a war on, by saying the words al Qaeda. The only real restraint on this power is democratic: If the president uses the power against too many Americans, political resistance will mount. The main problem with this set-up is it makes for bad policies. The constitution divides

war powers not just to protect liberties but also to force debate and compromise. At best, open debate between branches can threaten myths and reveal faulty reasoning about war. At worst, it does little harm besides slowing war, a problem here only if U.S. drone wars are too hard to start.