

The National Security Presidency in the Post-9/11 World:

The First Term of President Obama

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I. Introduction

Presidential power and its use is a topic that has been debated for as long as the Presidency has been in existence. In the realm of national security, the presidency has assumed more power and responsibility as time has progressed. The modern national security arrangement was created after World War II in order to address the challenges of the Cold War. After the fall of the Berlin Wall, threats to national security increasingly came from non-state actors such as terrorist organizations. However, it took the events of September 11, 2001 to galvanize the American people to support a War on Terror. The president at the time, George W. Bush, orchestrated a restructuring of the national security apparatus in order to deal with the threats from Al Qaeda and other affiliated groups. In addition, President Bush asserted additional powers through a variety of means. This had the effect of greatly expanding the power and the scope of the national security state and the national security presidency in particular. (Ellis 226-240)

In 2008, Barack Obama was a presidential candidate from a different political party who had espoused many views opposing the actions and policies of the Bush Administration. His victory was one of the most important tests of the new and improved national security presidency. How would President Obama grapple with the powers of the office? In many ways, that question was answered by his actions far more than his renowned rhetoric.

II. Inherited Wars

When fighting a war, it is important to note that presidents “do not begin from scratch but instead inherit a legacy of approaches from their predecessors.” (Nelson 502) When

President Obama was inaugurated, he inherited the management of two wars from President Bush: Iraq and Afghanistan. In the new president's view, Iraq was the "dumb war" while Afghanistan was the "good war." Obama ended the "dumb war" by withdrawing U.S. troops from the country. At the same time, President Obama believed that President Bush had neglected the War in Afghanistan, and the Taliban had returned to being a significant threat once more. (Pfiffner 256)

There are several key issues with the War in Afghanistan. First, it has long been known as the "Graveyard of Empires" because of the lack of success of most invading armies in the country. Afghanistan tends to be quite tribal, and central governments have rarely had success in exercising authority throughout the country. In fact, the current Afghan government lead by President Karzai is widely perceived as being corrupt, ineffective, and at times illegitimate. Many scholars agree that building effective Afghan security forces will be the key to stability in the long-term. Another key to victory would be to provide an arrangement where the Taliban would lay down their arms and be incorporated into the Afghan government. Considering that the Taliban used to rule Afghanistan under an authoritarian regime, this outcome could be quite unlikely. (Billitteri)

President Obama was faced with a clear choice: escalate the war, attempt to maintain the status quo, or withdraw. After much deliberation within the Administration, Obama announced that he would order a surge of 30,000 troops into Afghanistan, but he would begin withdrawing combat forces in July 2011. After that point, responsibility would gradually be transferred to the Afghan government. This counterinsurgency strategy was quite similar to the one used to stabilize Iraq during the latter part of the Bush

Administration. Polling data showed that more than half of Americans were in favor of a timetable, and less than 10% felt that the situation in Afghanistan was improving. However, some politicians felt that having the timetable would undermine the purpose of the surge. Even after classified documents released by Wikileaks showed that little progress had been made in the nine year war, Congress still voted for a military spending package including the surge of 30,000 troops. Despite some bipartisan opposition, the President received exactly what he wanted from Congress with bipartisan support. (Katel) After all, "Congress would not deny funds to embattled American forces lest it be accused of failing to support the troops...." (Nelson 493)

Despite this surge, the war has continued to be a stalemate with diminishing prospects of victory. Even as President Obama has carried out a portion the troop withdrawal, the situation on the ground has become more difficult. Attempts to negotiate with the Taliban have not been successful. Desertion rates are high in the Afghan security forces, and about 89% of Afghan troops are illiterate. U.S. troops are showing signs of declining morale, and the high number of deployments and combat engagements has taken their toll on many. More Americans are turning against the war as it has progressed, and some politicians question whether it will turn into the next Vietnam. (Billitteri) One scary trend is the number of so-called "green-on-blue" attacks. This is where Afghan troops have shot and killed their U.S. trainers. This has led to suspensions of joint military operations between Afghan security forces and U.S. troops. These joint operations are vital to the training of the Afghan security forces. ("The Economist")

One of the key ironies of the War in Afghanistan is that the key sanctuaries for Al Qaeda and the Taliban are not found in that country. They are found in the lawless border

region of Pakistan that is outside of the central government's control. In order to overcome that obstacle, President Obama has ordered the increased use of drones on the battlefield. (Katel)

III. Drones, Kill Lists, and the death of Osama bin Laden

The Obama Administration has been fighting the War on Terror with a vigorous counterterrorism strategy. A new weapon on the battlefield known as drones or Unmanned Ariel Vehicles (UAV) has been a cornerstone in implementing this strategy. While the Bush Administration used these weapons as well, the Obama Administration has significantly increased their use in fighting Al Qaeda and the Taliban. In Pakistan alone, 45 drone strikes were ordered by the Bush Administration between 2004 and 2008 while at least 117 have occurred in President Obama's first term. However, the increased use of this technology is not without controversy. (Billitteri)

There are several logical reasons why drones have been more heavily utilized. Drones are very effective at surveillance and assaults in regions that are difficult to reach. Many of these drone strikes are conducted in the lawless border regions of Pakistan and are used to directly kill terrorist leaders there. In some situations, it might be the only weapon available that can accomplish the objective. However, there are doubts about the effectiveness of drone strikes. One is that it is a tactic for short-term gains instead of being an overall strategy. In addition, it might increase support for terrorist groups in affected regions while deceased leaders are easily replaced. (Billitteri)

There are several different ethical issues presented by the use of drones. First, the operators of the drones are ordering killings while safely sitting in an American military

installation. In many ways, they are quite removed from the battlefield. This makes it far less difficult for the U.S. military to use lethal force without consequences. The positive side is that drone strikes save the lives of American soldiers and tend to be more precise than conventional bombing or artillery. However, the New America Foundation estimated that around one third of the victims of these strikes have killed innocent civilians who were not enemy combatants. In some instances, drones have been used to strike the funerals of previous drone strike victims. It is estimated that about 2% of the targets killed were high ranking leaders in Al Qaeda and other terrorist organizations. Many of the non-civilian targets have been low-level or mid-level terrorists. Also, these weapons have encountered various technical issues as well which can affect their performance on the battlefield. While the accuracy of drone strikes have improved, the overall increase in total drone strikes means that the amount of mistakes has increased as well. (Billitteri)

Many of the drone strikes have taken place within the borders of other nations which the U.S. is not at war with. Despite the fact that the Pakistani central government does not effectively control some of the regions where the strikes are taking place, that nation has become more resentful of this violation of its sovereignty as time has progressed. Some scholars of international law believe that all of these drone strikes violate international law for precisely that reason. Some of these strikes have also occurred far away from traditional combat zones, so it begs the question of whether the entire planet could be considered a combat zone. (Billitteri)

Another issue is in regards to the enemy combatants themselves. The United States has a history dating back to the Cold War in targeted killings and extrajudicial

processes. While the Bush Administration conducted these targeting killings through drone strikes and other means, the Obama Administration has defended their legitimate use. In fact, they have expanded their use to include U.S. citizens Anwar Al-Awlaki, a senior leader of Al Qaeda in the Arabian Peninsula (AQAP). Who decides which individuals should be targeted? The obvious answer to that question is the Obama Administration, and they possess a secret “kill list” of such targets. (Pious 274-275, Billitteri)

Harold Koh, the State Department’s legal advisor, has justified that the Obama Administration “may use force consistent with its inherent right to self-defense under international law” under the Authorization for Use of Force (AUMF) of 2001. (Koh) The Administration uses the principles of distinction and proportionality in deciding how drone strikes are carried out. Distinction “requires that attacks be limited to military objectives and that civilians or civilian objects shall not be the object of the attack.” (Koh) Proportionality “prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, that would be excessive in relation to the concrete and direct military advantage anticipated.” (Koh) Claims that some drone strikes amount to extra-judicial killings are refuted by the following statement: “a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force.” (Koh) Despite the reasoning given by the Obama Administration, drones can be clearly characterized as an offensive weapon that can violate the sovereignty of other nations with ease. If drones can violate national sovereignty as an act of self-

defense, the use of Seal Team 6 to kill Osama Bin Laden would be a natural evolution of this line of thought.

The killing of Al Qaeda leader Osama Bin Laden by U.S. military forces and CIA operatives was perhaps the most memorable actions taken by the Obama Administration. However, the strike occurred deep inside of Pakistani territory. In many ways, it is a logical next step from the use of drone strikes across national boundaries. The primary difference was in the use of Seal Team 6 instead of drones to carry out the operation.

IV. Detainees, Trials, and Guantanamo Bay

Some of the most important campaign promises made by President Obama were on the subject of detainees held by the Bush Administration. The detention facility at Guantanamo Bay was viewed as a stain on the reputation of the United States due to the activities conducted there. On his second day, he signed an executive order stating that the detention center would be closed within one year or earlier if practicable. (Pfiffner 249)

Another executive order banned “enhanced interrogation techniques” from being used by the CIA as well as humane treatment of prisoners under the Geneva Conventions. He confined interrogation practices to what is laid out in the Army Field Manual. This anti-torture executive order was largely successful in implementation. (Pfiffner 249) At the same time, the Obama Administration has shielded many former Bush Administration officials and agents from prosecution on the grounds of torture conducted in the past. (Pyle 867-880)

Attorney General Eric Holder had the desire to go farther with a liberal policy agenda which included trying terrorists in Article III courts. Holder believed that the Article III courts were the best venue to try terrorists because they are far more established and tested when compared to military commissions. In addition, European nations might be more willing to extradite terrorists to the U.S. if they were certain that due process would be guaranteed. Holder was able to convince President Obama to delegate the power to execute this strategy to him, and he acted soon enough. On Christmas Day 2009, Umar Farouk Abdulmutallab was captured trying to blow up an airplane with a bomb in his underpants. Despite strong criticism from Republicans, he decided to prosecute him in a criminal court anyway. Then, he went a step farther when he decided to prosecute 9/11 mastermind Khalid Sheikh Mohammed (KSM) in federal court. It was to happen in New York City because that was where the alleged crime occurred. (Pfiffner 249-251)

The KSM trial did not happen because there was an enormous backlash from the public. It is important to note that Holder was not the only person advising the president on these issues. Several of the key White House political advisors, especially Chief of Staff Rahm Emanuel, favored a more conservative and politically sensitive approach from the beginning. He did not want these national security issues to endanger the Administration's domestic policy agenda. The political pressure applied in particular by Senators Lindsey Graham, John McCain, and Joseph Lieberman was so great that the Obama Administration backed down. Graham offered to help the Administration with the closure of Guantanamo Bay if they backed down on the KSM trial. That also factored into both Obama's and Emanuel's calculus. (Pfiffner 252)

If Guantanamo Bay was closed, a similar facility would have to be set up in a different location for the remaining detainees. (Jost) In fact, Bagram Air Base in Afghanistan is being used as an alternative site to hold new detainees from multiple countries. This site makes it easier to resist Habeas Corpus petitions. (Pyle 877) Even so, the primary replacement facility would probably have to be within the United States, and a state prison in Illinois was considered as a possible option. Despite Senator Graham's offer, Congress passed a provision of a defense authorization bill banning any Guantanamo Bay detainees from entering the United States. The President reluctantly signed the bill into law. This has the effect of removing civilian trials as an option because those trials would be held within the U.S. Military commissions, the more politically favored way of handling terrorists at the time, became the venue of choice. (Jost)

Guantanamo Bay will be open for the foreseeable future, but the Obama Administration has taken certain steps to manage the situation. They have transferred at least 67 detainees to other countries out of the 240 held when he took office. A review board consisting of six representatives from the State Department, the Department of Defense, the Justice Department, the Department of Homeland Security, the Director of National Intelligence, and the Joint Chiefs of Staff was set up to review all detainees that cannot be tried in a court or released. So far, 48 detainees have fallen into this category. Even though this is an improvement in process, the Obama Administration is still allowing indefinite detention of detainees at Guantanamo Bay. The executive order written to close Guantanamo Bay did not succeed. (Jost)

V. Libya

As the Arab Spring unfolded, many regimes in the Middle East and North Africa came under threat. In some cases, the government fell quickly and without significant outside intervention. That was not the case in Libya where Dictator Muammar Qaddafi fought his opposition quite ruthlessly. In response, the United Nations Security Council eventually passed Resolution 1973 which authorized a ban on all flights made by the Libyan government in order to protect civilians. However, this resolution prohibited the use of ground forces in Libyan territory. (Fisher 177-178)

Initially, President Obama informed Congress that the U.S. would only have a limited role in the enforcement of this resolution. As the situation unfolded, it became clear that regime change in Libya was the primary goal. In addition to enforcing the resolution, U.S. military forces deployed weapons including drones to destroy ground targets not associated with Libya's air capabilities. In effect, these actions exceeded the authority of Resolution 1973. (Fisher 178)

Under the U.S. Constitution, Congress has the power to declare war instead of the President. Since World War II, it has been quite common for the U.S. to not formally declare war against an enemy. At times, Congress has passed an authorization to use military force in these kinds of situations. In regards to the Libya situation, Congress took no such action. Instead, the Obama Administration asserted that the UN Resolution 1973 was their authorization for taking action in Libya. Then, they transferred control over the operation to NATO where the U.S. would play a supporting role. NATO does not operate independently and receives a large degree of support from the United States. (Fisher 178, 183)

There is one law passed by Congress which addresses this kind of situation: the War Powers Resolution. This law was a response to some of the issues surrounding the Vietnam War as well as President Nixon's unilateral bombing campaign in Cambodia. It was passed after overcoming a veto from President Nixon. Under the War Powers Resolution, the President is required to notify Congress within 48 hours of "committing troops to combat" as well as bring American troops home after 60 days if Congress has not authorized the use of military force. Nixon insisted that this act was unconstitutional, and many presidents after have disregarded the legislation. (Ellis 233-234) The War Powers Act also prevents the use of treaties as a substitute for Congressional authorization. Therefore, the U.N. Charter does not give the U.N the authority to declare war for the United States. (Fisher 179-180)

Interestingly enough, President Obama did report to Congress on the use of military force in Libya within the prescribed 48 hour deadline of the War Powers Act. However, the conflict lasted longer than the 60 days allowed by the law without an authorization from Congress to use force. Under the law, the president would have been required to withdraw all military forces from the conflict within the 30 days after the 60 day period. That did not happen. The Libya intervention continued with U.S. support until NATO operation concluded. (Fisher 178-183)

VI. Analysis and Conclusions

Obama was the candidate of hope and change. He is also a Nobel Prize winner, and a former constitutional law professor. In regards to national security, continuity is a better term than change to describe his actions and policies. Christopher Pyle of Mount

Holyoke College believes that President Obama “is squarely in the Nixon-Bush tradition of presidential power.” (Pyle 867) Throughout his first term, several themes continue to persist.

Many voters probably assumed that President Obama would reign in the powers assumed by the Bush Administration. However, President Obama is very much a continuation of this trend towards a stronger national security presidency. Why is this? Richard Pious of Columbia University may have the answer:

In the post 9/11 America, the president is expected to be protector in chief. No president can afford to disappoint the American people. The prospect of more terrorist attacks, let alone the possibility of the use of weapons of mass destruction by terrorists on American soil, raises the stakes for each president and his administration. (Pious 284)

In the Cold War, the President was responsible to protect the American people from Communism. These days, it is to protect the American people from terrorism. A President’s reputation in this area is crucial to keeping this issue off the table in the national discourse. Obama knew that he could probably count on support from the left because they had nowhere else to go. He could give them symbolic victories such as the executive orders reversing Bush Administration policies. At the same time, moving to the center on national security issues would soften opposition from the right. (Pious 284-284) No President wants to be called soft on terrorism. Such effective accusations could easily sink a president’s reelection efforts, especially for a Democrat. For Obama, the killing of Osama Bin Laden decisively strengthened his reputation on national security. Other actions such as drone strikes serve a similar purpose.

The National Security Presidency has become far more powerful relative to the other two branches of the federal government. The Obama Presidency has proved once again that Congress does not have powerful leverage over the president in many cases.

Congress approved funding for Obama's Afghan surge, and the War Powers Act did not stop the president from ordering a military intervention in Libya. Drone strikes and covert actions in other nations are further examples of the power to launch a unilateral attack anywhere in the world. If "deployment is destiny," (Nelson 493) then drone deployments might represent the future of U.S. military conflicts in the War on Terror and beyond.

A primary source of presidential power comes from the executive order. Executive orders are presidential directives that shape how the president's powers are enacted. They are "both powerful and constrained" and have the "force of law." (Nelson 473-474) In the absence of legislation from Congress or a court ruling, the power to undo an executive action implies the power to take such as action. It is interesting to note that President Obama attempted to use the power of executive orders to undo unilateral executive actions taken by the Bush Administration. A future president could have the authority to issue executive orders to the excesses of both Presidents Bush and Obama just as he or she could reject those excesses entirely. (Nelson 474, 483)

There will always be a temptation to abuse power wherever it exists. As an aide to President Kennedy said, "Everybody believes in democracy-until they get to the White House." (Nelson 482) At the end of the day, this comes down to an issue of trust. Do we trust our president to use power judiciously? Hopefully, the American people will demand a higher standard from their presidents on the use of unitary executive power.

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