

The Criminalization of Justice: Is a Policy a Law? Is Murder Murder?

By [David Swanson](#)

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According to the Associated Press:

“An American citizen who is a member of al-Qaida is actively planning attacks against Americans overseas, U.S. officials say, and the Obama administration is wrestling with whether to kill him with a drone strike and how to do so legally under its new stricter targeting policy issued last year.”

Notice those words: “legally” and “policy.” No longer does U.S. media make a distinction between the two. Under George W. Bush, detention without trial, torture, murder, warrantless spying, and secret missile strikes were *illegal*. Under Obama they are *policy*. And policy makes them “legal” under the modified Nixonian understanding that if the President does it as a policy then it is legal.

Under the U.S. Constitution, the laws of the nations in which drone murders take place, treaties to which the U.S. is party, international law, and U.S. statutory law, murdering people remains illegal, despite being policy, just as it was illegal under the less strict policy of some months back. The policy was made stricter in order to bring it into closer compliance with the law, of course — though it comes nowhere close — and yet the previous policy remains somehow “legal,” too, despite having not been strict enough.

Under that previous policy, thousands of people, including at least four U.S. citizens, have been blown to bits with missiles. President Obama gave a speech last year in which he attempted to justify one of those four U.S. deaths on the basis of evidence he claimed to have but would not reveal. He made no attempt to justify the other three.

The new policy remains that the president can murder anyone, anywhere, along with whoever is near them, but must express angst if the person targeted is a U.S. citizen.

The idea that such lunacy can have anything to do with *law* is facilitated by human rights groups’ and the United Nations’ and international lawyers’ deference to the White House, which has been carried to the extreme of establishing a consensus that we cannot know whether a drone murder was legal or not unless the president reveals his reasoning, intention, motivation, and the details of the particular murder.

No other possible criminal receives this treatment. When the police read you your rights, you are not entitled to object: “Put those handcuffs away, sir! I have a written policy justifying everything I did, and I refuse to show it to you. Therefore you have no grounds to

know for certain that my justification is as insane and twisted as you might imagine it to be based merely on what I've done! Away with you, sir!"

The loss of a coherent conception of law is a grievous one, but that's not all that's at stake here.

Numerous top U.S. officials routinely admit that our drone wars in the Middle East and Africa are creating more enemies than they kill. General Stanley McChrystal, then commander of U.S. and NATO forces in Afghanistan said in June 2010 that "for every innocent person you kill, you create 10 new enemies." Veterans of U.S. kill teams in Iraq and Afghanistan interviewed in Jeremy Scahill's book and film *Dirty Wars* said that whenever they worked their way through a list of people to kill, they were handed a larger list; the list grew as a result of working their way through it. The wars on Iraq and Afghanistan, and the abuses of prisoners during them, became major recruiting tools for anti-U.S. terrorism. In 2006, U.S. intelligence agencies produced a National Intelligence Estimate that reached just that conclusion.

We are shredding the very concept of the rule of law in order to pursue a policy that [endangers](#) us, even as it helps to [justify](#) the erosion of our civil liberties, to [damage](#) the natural environment, and to [impoverish](#) us, as it [kills](#) many innocent people. Maybe they've secretly got drones doing the thinking as well as the killing.

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