

The Real American Exceptionalism: From Torture to Drone Assassination

How Washington Gave Itself a Global Get-Out-of-Jail-Free Card

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Global Research, February 25, 2015

[Tom Dispatch](#)

Region: [USA](#)

Theme: [Crimes against Humanity](#), [Police State & Civil Rights](#), [US NATO War Agenda](#)

“The sovereign is he who decides on the exception,” said conservative thinker Carl Schmitt in 1922, meaning that a nation’s leader can defy the law to serve the greater good. Though Schmitt’s service as Nazi Germany’s chief jurist and his unwavering support for Hitler from the night of the long knives to Kristallnacht and beyond damaged his reputation for decades, today his ideas have achieved unimagined influence. They have, in fact, shaped the neo-conservative view of presidential power that has become broadly bipartisan since 9/11. Indeed, Schmitt has influenced American politics directly through his intellectual protégé Leo Strauss who, as an émigré professor at the University of Chicago, trained Bush administration architects of the Iraq war Paul Wolfowitz and Abram Shulsky.

All that should be impressive enough for a discredited, long dead authoritarian thinker. But Schmitt’s dictum also became a philosophical foundation for the exercise of American global power in the quarter century that followed the end of the Cold War. Washington, more than any other power, created the modern international community of laws and treaties, yet it now reserves the right to defy those same laws with impunity. A sovereign ruler should, said Schmitt, discard laws in times of national emergency. So the United States, as the planet’s last superpower or, in Schmitt’s terms, its global sovereign, has in these years repeatedly ignored international law, following instead its own unwritten rules of the road for the exercise of world power.

Just as Schmitt’s sovereign preferred to rule in a state of endless exception without a constitution for his Reich, so Washington is now well into the second decade of an endless War on Terror that seems the sum of its exceptions to international law: endless incarceration, extrajudicial killing, pervasive surveillance, drone strikes in defiance of national boundaries, torture on demand, and immunity for all of the above on the grounds of state secrecy. Yet these many American exceptions are just surface manifestations of the ever-expanding clandestine dimension of the American state. Created at the cost of more than a trillion dollars since 9/11, the purpose of this vast apparatus is to control a covert domain that is fast becoming the main arena for geopolitical contestation in the twenty-first century.

This should be (but seldom is considered) a jarring, disconcerting path for a country that, more than any other, nurtured the idea of, and wrote the rules for, an international community of nations governed by the rule of law. At the First Hague Peace Conference in 1899, the U.S. delegate, Andrew Dickson White, the founder of Cornell University, pushed for the creation of a Permanent Court of Arbitration and persuaded Andrew Carnegie to build the monumental Peace Palace at The Hague as its home. At the Second Hague Conference

in 1907, Secretary of State Elihu Root urged that future international conflicts be resolved by a court of professional jurists, an idea realized when the Permanent Court of International Justice was established in 1920.

After World War II, the U.S. used its triumph to help create the United Nations, push for the adoption of its Universal Declaration of Human Rights, and ratify the Geneva Conventions for humanitarian treatment in war. If you throw in other American-backed initiatives like the World Health Organization, the World Trade Organization, and the World Bank, you pretty much have the entire infrastructure of what we now casually call “the international community.”

Breaking the Rules

Not only did the U.S. play a crucial role in writing the new rules for that community, but it almost immediately began breaking them. After all, despite the rise of the other superpower, the Soviet Union, Washington was by then the world sovereign and so could decide which should be the exceptions to its own rules, particularly to the foundational principle for all this global governance: sovereignty. As it struggled to dominate the hundred new nations that started appearing right after the war, each one invested with an inviolable sovereignty, Washington needed a new means of projecting power beyond conventional diplomacy or military force. As a result, CIA covert operations became its way of intervening within a new world order where you couldn't or at least shouldn't intervene openly.

All of the exceptions that really matter spring from America's decision to join what former spy John Le Carré [called](#) that “squalid procession of vain fools, traitors... sadists, and drunkards,” and embrace espionage in a big way after World War II. Until the creation of the CIA in 1947, the United States had been an innocent abroad in the world of intelligence. When General John J. Pershing led two million American troops to Europe during World War I, the U.S. had the only army on either side of the battle lines without an intelligence service. Even though Washington built a substantial security apparatus during that war, it was quickly scaled back by Republican conservatives during the 1920s. For decades, the impulse to cut or constrain such secret agencies remained robustly bipartisan, as when President Harry Truman abolished the CIA's predecessor, the Office of Strategic Services (OSS), right after World War II or when President Jimmy Carter fired 800 CIA covert operatives after the Vietnam War.

Yet by fits and starts, the covert domain inside the U.S. government has grown stealthily from the early twentieth century to this moment. It began with the formation of the FBI in 1908 and Military Intelligence in 1917. The Central Intelligence Agency followed after World War II along with most of the alphabet agencies that make up the present [U.S. Intelligence Community](#), including the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and last but hardly least, in 2004, the Office of the Director of National Intelligence. Make no mistake: there is a clear correlation between state secrecy and the rule of law — as one grows, the other surely shrinks.

World Sovereign

America's irrevocable entry into this covert netherworld came when President Truman deployed his new CIA to contain Soviet subversion in Europe. This was a continent then thick with spies of every stripe: failed fascists, aspirant communists, and everything in between. Introduced to spycraft by its British “cousins,” the CIA soon mastered it in part by

establishing sub rosa ties to networks of ex-Nazi spies, Italian fascist operatives, and dozens of continental secret services.

As the world's new sovereign, Washington used the CIA to enforce its chosen exceptions to the international rule of law, particularly to the core principle of sovereignty. During his two terms, President Dwight Eisenhower [authorized](#) 104 covert operations on four continents, focused largely on controlling the many new nations then emerging from centuries of colonialism. Eisenhower's exceptions included blatant transgressions of national sovereignty such as turning northern Burma into an unwilling springboard for abortive invasions of China, arming regional revolts to partition Indonesia, and overthrowing elected governments in Guatemala and Iran. By the time Eisenhower left office in 1961, covert ops had acquired such a powerful mystique in Washington that President John F. Kennedy would authorize 163 of them in the three years that preceded his assassination.

As a senior CIA official posted to the Near East in the early 1950s put it, the Agency then saw every Muslim leader who was not pro-American as "a target legally authorized by statute for CIA political action." Applied on a global scale and not just to Muslims, this policy helped produce a distinct "reverse wave" in the global trend towards democracy from 1958 to 1975, as coups — most of them U.S.-sanctioned — allowed military men to seize power in more than three-dozen nations, representing a quarter of the world's sovereign states.

✘ The White House's "exceptions" also produced a deeply contradictory U.S. attitude toward torture from the early years of the Cold War onward. Publicly, Washington's opposition to torture was manifest in its advocacy of the U.N. Universal Declaration of Human Rights in 1948 and the Geneva Conventions in 1949. Simultaneously and secretly, however, the CIA began developing ingenious new torture techniques in contravention of those same international conventions. After a decade of mind-control research, the CIA [actually codified](#) its new method of psychological torture in a secret instructional handbook, the "KUBARK Counterintelligence Interrogation" manual, which it then disseminated within the U.S. Intelligence Community and to allied security services worldwide.

Much of the torture that became synonymous with the era of authoritarian rule in Asia and Latin America during the 1960s and 1970s seems to have originated in U.S. training programs that provided sophisticated techniques, up-to-date equipment, and moral legitimacy for the practice. From 1962 to 1974, the CIA worked through the Office of Public Safety (OPS), a division of the U.S. Agency for International Development that sent American police advisers to developing nations. Established by President Kennedy in 1962, in just six years OPS [grew into](#) a global anti-communist operation with over 400 U.S. police advisers. By 1971, it had trained more than a million policemen in 47 nations, including 85,000 in South Vietnam and 100,000 in Brazil.

Concealed within this larger OPS effort, [CIA interrogation training](#) became synonymous with serious human rights abuses, particularly in Iran, the Philippines, South Vietnam, Brazil, and Uruguay. Amnesty International [documented](#) widespread torture, usually by local police, in 24 of the 49 nations that had hosted OPS police-training teams. In tracking torturers across the globe, Amnesty seemed to be following the trail of CIA training programs. Significantly, torture began to recede when America again turned resolutely against the practice at the end of the Cold War.

The War on Terror

Although the CIA's authority for assassination, covert intervention, surveillance, and torture was curtailed at the close of the Cold War, the terror attacks of September 2001 sparked an unprecedented expansion in the scale of the intelligence community and a corresponding resurgence in executive exceptions. The War on Terror's voracious appetite for information produced, in its first decade, what the *Washington Post* [branded](#) a veritable "fourth branch" of the U.S. federal government with 854,000 vetted security officials, 263 security organizations, over 3,000 private and public intelligence agencies, and 33 new security complexes — all pumping out a total of 50,000 classified intelligence reports annually by 2010.

By that time, one of the newest members of the Intelligence Community, the National Geospatial-Intelligence Agency, [already had](#) 16,000 employees, a \$5 billion budget, and a massive nearly \$2 billion headquarters at Fort Belvoir, Maryland — all aimed at coordinating the flood of surveillance data pouring in from drones, U-2 spy planes, Google Earth, and orbiting satellites.

According to documents whistleblower Edward Snowden leaked to the *Washington Post*, the U.S. [spent](#) \$500 billion on its intelligence agencies in the dozen years after the 9/11 attacks, [including](#) annual appropriations in 2012 of \$11 billion for the National Security Agency (NSA) and \$15 billion for the CIA. If we add the \$790 billion [expended](#) on the Department of Homeland Security to that \$500 billion for overseas intelligence, then Washington had spent nearly \$1.3 trillion to build a secret state-within-the-state of absolutely unprecedented size and power.

As this secret state swelled, the world's sovereign decided that some extraordinary exceptions to civil liberties at home and sovereignty abroad were in order. The most glaring came with the CIA's now-notorious renewed use of torture on suspected terrorists and its setting up of its own global network of private prisons, or "[black sites](#)," beyond the reach of any court or legal authority. Along with piracy and slavery, the abolition of torture had long been a signature issue when it came to the international rule of law. So strong was this principle that the U.N. General Assembly voted unanimously in 1984 to adopt the Convention Against Torture. When it came to ratifying it, however, Washington dithered on the subject until the end of the Cold War when it finally resumed its advocacy of international justice, participating in the World Conference on Human Rights at Vienna in 1993 and, a year later, ratifying the U.N. Convention Against Torture.

Even then, the sovereign decided to reserve some exceptions for his country alone. Only a year after President Bill Clinton signed the U.N. Convention, CIA agents [started snatching](#) terror suspects in the Balkans, some of them Egyptian nationals, and sending them to Cairo, where a torture-friendly autocracy could do whatever it wanted to them in its prisons. Former CIA director George Tenet [later testified](#) that, in the years before 9/11, the CIA shipped some 70 individuals to foreign countries without formal extradition — a process dubbed "extraordinary rendition" that had been explicitly banned under Article 3 of the U.N. Convention.

Right after his public address to a shaken nation on September 11, 2001, President George W. Bush gave his staff wide-ranging secret orders to use torture, [adding](#) (in a vernacular version of Schmitt's dictum), "I don't care what the international lawyers say, we are going to kick some ass." In this spirit, the White House authorized the CIA to develop that global matrix of secret prisons, as well as an [armada of planes](#) for spiriting kidnapped terror suspects to them, and a [network](#) of allies who could [help seize](#) those suspects from

sovereign states and levitate them into a [supranational gulag](#) of eight agency black sites from Thailand to Poland or into the crown jewel of the system, Guantánamo, thus eluding laws and treaties that remained grounded in territorially based concepts of sovereignty.

Once the CIA [closed](#) the black sites in 2008-2009, its collaborators in this global gulag began to feel the force of law for their crimes against humanity. Under pressure from the Council of Europe, Poland [started](#) an ongoing criminal investigation in 2008 into its security officers who had facilitated the CIA's secret prison in the country's northeast. In September 2012, Italy's supreme court confirmed the convictions of 22 CIA agents for the illegal rendition of Egyptian exile Abu Omar from Milan to Cairo, and ordered a trial for Italy's military intelligence chief on charges that [sentenced him](#) to 10 years in prison. In 2012, Scotland Yard opened a criminal investigation into MI6 agents who rendered Libyan dissidents to Colonel Gaddafi's prisons for torture, and two years later the Court of Appeal [allowed](#) some of those Libyans to file a civil suit against MI6 for kidnapping and torture.

But [not the CIA](#). Even after the Senate's 2014 Torture Report [documented](#) the Agency's [abusive tortures](#) in painstaking detail, there was no move for either criminal or civil sanctions against those who had ordered torture or those who had carried it out. In a [strong editorial](#) on December 21, 2014, the *New York Times* asked "whether the nation will stand by and allow the perpetrators of torture to have perpetual immunity." The answer, of course, was yes. [Immunity for hirelings](#) is one of the sovereign's most important exceptions.

As President Bush finished his second term in 2008, an inquiry by the International Commission of Jurists found that the CIA's mobilization of allied security agencies worldwide had done serious damage to the international rule of law. "The executive... should under no circumstance invoke a situation of crisis to deprive victims of human rights violations... of their... access to justice," the Commission [recommended](#) after documenting the degradation of civil liberties in some 40 countries. "State secrecy and similar restrictions must not impede the right to an effective remedy for human rights violations."

The Bush years also brought Washington's most blatant repudiation of the rule of law. Once the newly established International Criminal Court (ICC) convened at The Hague in 2002, the Bush White House "[un-signed](#)" or "de-signed" the U.N. agreement creating the court and then mounted a sustained diplomatic effort to immunize U.S. military operations from its writ. This was an extraordinary abdication for the nation that had breathed the concept of an international tribunal into being.

The Sovereign's Unbounded Domains

While Presidents Eisenhower and Bush decided on exceptions that violated national boundaries and international treaties, President Obama is exercising his exceptional prerogatives in the unbounded domains of aerospace and cyberspace.

Both are new, unregulated realms of military conflict beyond the rubric of international law and Washington believes it can use them as Archimedean levers for global dominion. Just as Britain once ruled from the seas and postwar America exercised its global reach via airpower, so Washington now sees aerospace and cyberspace as special realms for domination in the twenty-first century.

Under Obama, drones have grown from a tactical Band-Aid in Afghanistan into a strategic weapon for the exercise of global power. From 2009 to 2015, the CIA and the U.S. Air Force

deployed a drone armada of over 200 Predators and Reapers, [launching](#) 413 strikes in Pakistan alone, killing as many as 3,800 people. Every Tuesday inside the White House Situation Room, as the *New York Times* reported in 2012, President Obama [reviews](#) a CIA drone “kill list” and stares at the faces of those who are targeted for [possible assassination](#) from the air. He then decides, without any legal procedure, who will live and who will die, even in the case of [American citizens](#). Unlike other world leaders, this sovereign applies the ultimate exception across the Greater Middle East, parts of Africa, and elsewhere if he chooses.

This lethal success is the cutting edge of a top-secret Pentagon project that will, by 2020, deploy a [triple-canopy space “shield”](#) from stratosphere to exosphere, patrolled by Global Hawk and X-37B drones armed with agile missiles.

As Washington seeks to police a restless globe from sky and space, the world might well ask: How high is any nation’s sovereignty? After the successive failures of the Paris flight conference of 1910, the Hague Rules of Aerial Warfare of 1923, and Geneva’s [Protocol I](#) of 1977 to establish the extent of sovereign airspace or restrain aerial warfare, some puckish Pentagon lawyer might reply: only as high as you can enforce it.

President Obama has also adopted the NSA’s vast surveillance system as a permanent weapon for the exercise of global power. At the broadest level, such surveillance complements Obama’s overall defense strategy, announced in 2012, of cutting conventional forces while [preserving](#) U.S. global power through a capacity for “a combined arms campaign across all domains: land, air, maritime, space, and cyberspace.” In addition, it should be no surprise that, having pioneered the war-making possibilities of cyberspace, the president did not hesitate to [launch](#) the first cyberwar in history against Iran.

By the end of Obama’s first term, the NSA could sweep up billions of messages worldwide through its agile surveillance architecture. This included hundreds of [access points](#) for penetration of the Worldwide Web’s fiber optic cables; ancillary intercepts through special protocols and “backdoor” software flaws; supercomputers to crack the encryption of this digital torrent; and a massive data farm in [Bluffdale, Utah](#), built at a cost of \$2 billion to store yottabytes of purloined data.

Even after angry Silicon Valley executives [protested](#) that the NSA’s “backdoor” software surveillance threatened their multi-trillion-dollar industry, Obama [called](#) the combination of Internet information and supercomputers “a powerful tool.” He insisted that, as “the world’s only superpower,” the United States “cannot unilaterally disarm our intelligence agencies.” In other words, the sovereign cannot sanction any exceptions to his panoply of exceptions.

Revelations from Edward Snowden’s cache of leaked documents in late 2013 indicate that the NSA has conducted surveillance of [leaders](#) in some 122 nations worldwide, 35 of them [closely](#), including Brazil’s president Dilma Rousseff, former Mexican president Felipe Calderón, and German Chancellor Angela Merkel. After her forceful protest, Obama agreed to exempt Merkel’s phone from future NSA surveillance, but [reserved the right](#), as he put it, to continue to “gather information about the intentions of governments... around the world.” The sovereign [declined to say](#) which world leaders might be exempted from his omniscient gaze.

Can there be any question that, in the decades to come, Washington will continue to violate national sovereignty through old-style covert as well as open interventions, even as it insists

on rejecting any international conventions that restrain its use of aerospace or cyberspace for unchecked force projection, anywhere, anytime? Extant laws or conventions that in any way check this power will be violated when the sovereign so decides. These are now the unwritten rules of the road for our planet. They represent the real American exceptionalism.

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