

The Supposed Legality of Murder

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Theme: [Law and Justice](#), [US NATO War Agenda](#)

War is legal, but pointing out its illegality is not mistaken; it's irrelevant and un-strategic. That's the argument I'm hearing from a number of quarters.

Chase Madar has a terrific new book on Bradley Manning in which he argues that many of the offenses Bradley Manning allegedly revealed through Wikileaks (the murder in the collateral murder video, the turning over of prisoners to be tortured by Iraq, etc.) are immoral but legal. When I pointed out to Madar that the Kellogg Briand Pact banned all war, that the U.N. Charter legalized only two narrow categories of war that our government does not meet (defensive wars and wars authorized by the U.N.), and that the Constitution of the United States bans wars not declared by Congress, Madar did not try to argue that I was mistaken. Instead he said it wasn't important to point out war's illegality, because Americans don't care; instead we have to point out its immorality. But if war's illegality is unimportant, why was its supposed legality important enough to develop as a significant part of a book? Why couldn't war's illegality be of help in the movement to oppose it on primarily moral grounds?

I attended a wonderful event on Saturday in Washington, D.C., a "Drone Summit" organized by Code Pink, the Center for Constitutional Rights, and Reprieve — terrific organizations all, some of the best. Included in the summit were speakers from organizations that have concerns about drones but do not oppose war. It's important to work with organizations and individuals who agree on the matter at hand, even if broad differences in world view divide you. I give great credit to every ban-the-drones or reform-the-drones organization that supports war or avoids the topic of war, yet works in coalition with antiwar groups. More credit and gratitude to them.

But many more people than attend one event in one city have these questions running through their minds, and the differences in viewpoint within the anti-drone movement may be helpful in forming one's own view.

One question plaguing me is how we will ever end the war crimes and the war atrocities and the war-driven abuses of civil liberties and human rights while continuing to dump \$1 trillion into war and preparation for war every year. It's hard to put numbers to these things, but if you chart the rise in military spending in the United States in recent years, you can chart the decline in civil rights along with it. I asked Hina Shamsi of the ACLU, which is always doing some of the most valuable work in opposing the symptoms of military spending whether the ACLU would ever oppose military spending. She replied that it would not, because that is a "political question," ironically the same answer the courts give the ACLU when it tries to learn information about U.S. war programs. My point wasn't that military spending was the same type of question as baseless imprisonment or torture or murder, but that as long as massive military spending goes on we will have a very hard time getting rid of those other

things.

David Glazier of Loyola Law School spoke brilliantly on the topic of how our nation or foreign nations might prosecute U.S. officials for war crimes. But he caught my attention by asserting that war itself is not a crime. Armed conflict is legal, he said. I asked how this squared with the Kellogg Briand Pact or the U.N. Charter, and he said that the “international legal community” had chosen to criminalize only “aggressive war,” that 9-11 was an attack, and that the Authorization to Use Military Force is a legal response to that attack. Are drone killings legal? According to Glazier we must examine each one to see whether it is proportional, militarily advantageous, etc. (And then, what? Build a movement of lawyers to object to the particular strikes we oppose?) This was not exactly Madar’s argument. Glazier was making a more-or-less legal case. But, of course, it is common practice to ignore the Kellogg Briand Pact — which banned all war, not aggressive war — and to pretend that U.S. wars comply with the U.N. Charter. But laws are written down so that they cannot be arbitrarily altered or erased by any “community,” and the notion that U.S. drone strikes are in compliance with the U.N. Charter is patently absurd. Why is it permissible to laugh at John Yoo’s legalization of torture but not at his legalization of wars, wars that are not defensive and not U.N. authorized?

And once you’ve legalized war in your mind, how do you stop yourself from approving of it?

This can be done, of course. There are many unjust laws that we oppose, work to change, yet admit the existence of. I’m on probation for having spoken in a Senate hearing. I consider that unjust but admit it exists.

Yet, all too often we see people focus so closely on the legality of particular war tactics that they approve of those tactics morally. Sarah Holewinski of the Campaign for Innocent Victims in Conflict said at the Drone Summit that U.S. drone strikes should be done “legally,” “responsibly,” and “appropriately.” Drones are better than other weapons, she said, as if we have no choice but to use some weapon or other. I asked her to explain, and she said that she meant that we should operate within international law. She praised the drone program in Afghanistan, and condemned that in Pakistan. When someone objected to drone killings in Afghanistan, she said “I didn’t create international law.” But she and most other people accept a pro-war interpretation of what international law says. And then they accept that what it says is good and just.

Also at the Drone Summit we were shown (primarily from Pakistan, but similar accounts have come out of Afghanistan): reports, photos, stories and hundreds of names of innocent children targeted and killed by U.S. drones, innocent men, women, and children killed, rescuers and funeral goers targeted and killed, people targeted and killed without attempting to identify them first, and revelation of false claims made to have killed the same supposedly important militant in multiple strikes, plus evidence that many more civilians have been killed than supposed militants (that is people alleged to be fighting in defense of their country, exactly what the United States so absurdly pretends to be doing when it kills with drones in Afghanistan, Pakistan, Yemen, or Somalia).

I don’t think we can do without attempts to apply pressure within the system of misgovernment here in Washington, D.C. We must have the FOIA requests. We must have the demand that legal justifications be invented for each new offense. Compelling Harold Koh to pretend that bombing Libya did not constitute either a war or hostilities was not

nothing. But it was not as valuable as would have been a massive, well-funded, organized movement against bombing Libya. Pressuring Obama to say whether Awlaki's 16-year-old son was a target or collateral damage is good. But it's not as good as impeaching and prosecuting Obama for having assassinated people. And it's not as good as an educational and organizational campaign that sees such action as morally just even if immediately unobtainable. We need the inside-game, just as we need whistleblowers if any such brave souls remain and can manage to make themselves heard.

But, our goal, our vision, our salvation cannot be and will not be transparent adherence to the "laws of war," any more than asking rapists to wear condoms will solve the problem of rape-crimes or rape-atrocities. The problems we are up against are these: military funding; military bureaucracy (Gareth Porter has reported on the CIA's purely bureaucratic motivation for expanded drone wars); love of technology for its own sake; racism; ignorance; secrecy; a democracy deficit; and acceptance of war as a legal, reasonable, and appropriate instrument of national policy.

Let's not regulate murderous flying robots. Let's create a world that gets along without them.

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