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American Lockdown State

By Tom Engelhardt

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Consider Inauguration Day, more than two weeks gone and already part of our distant past. In its wake, President Obama was hailed (or reviled) for his “liberal” second inaugural address. On that day everything from his invocation of women’s rights (“Seneca Falls”), the civil rights movement (“Selma”), and the gay rights movement (“Stonewall”) to his wife’s new bangs and Beyoncé’s lip-syncing was fodder for the media extravaganza. The president was even praised (or reviled) for what he took pains not to bring up: the budget deficit. Was anything, in fact, not grist for the media mill, the hordes of talking heads, and the chattering classes?

One subject, at least, got remarkably little attention during the inaugural blitz and, when mentioned, certainly struck few as odd or worth dwelling on. Yet nothing better caught our changing American world. Washington, after all, was in a lockdown mode unmatched by any inauguration from another era — not even Lincoln’s second inaugural in the midst of the Civil War, or Franklin Roosevelt’s during World War II, or John F. Kennedy’s at the height of the Cold War.

Here’s how NBC Nightly News described some of the security arrangements as the day approached:

“[T]he airspace above Washington... [will be] a virtual no-fly zone for 30 miles in all directions from the U.S. capital. Six miles of the Potomac and Anacostia Rivers will be shut down, with 150 blocks of downtown Washington closed to traffic, partly out of concern for car or truck bombs... with counter-snipers on top of buildings around the capital and along the parade route... [and] detectors monitoring the air for toxins... At the ready near the capital, thousands of doses of antidotes in case of a chemical or biological attack... All this security will cost about \$120 million dollars for hundreds of federal agents, thousands of local police, and national guardsmen from 25 states.”

Consider just the money. It's common knowledge that, until the recent deal over the renewal of the George W. Bush tax cuts for all but the richest of Americans, taxes had not been raised since the read-my-lips-no-new-taxes era of his father. That's typical of the way we haven't yet assimilated the new world we find ourselves in. After all, shouldn't that \$120 million in taxpayer money spent on “safety” and “security” for a single event in Washington be considered part of an ongoing Osama bin Laden tax?

Maybe it's time to face the facts: this isn't your grandfather's America. Once, prospective Americans landed in a New World. This time around, a new world's landed on us.

Making Fantasy Into Reality

Bin Laden, of course, is long dead, but his was the 9/11 spark that, in the hands of George W. Bush and his top officials, helped turn this country into a lockdown state and first set significant portions of the Greater Middle East aflame. In that sense, bin Laden has been thriving in Washington ever since and no commando raid in Pakistan or elsewhere has a chance of doing him in.

Since the al-Qaeda leader was aware of the relative powerlessness of his organization and its hundreds or, in its heyday, perhaps thousands of active followers, his urge was to defeat the U.S. by provoking its leaders into treasury-draining wars in the Greater Middle East. In his world, it was thought that such a set of involvements — and the “homeland” security down payments that went with them — could bleed the richest, most powerful nation on the planet dry. In this, he and his associates, imitators, and wannabes were reasonably canny. The bin Laden tax, including that \$120 million for Inauguration Day, has proved heavy indeed.

In the meantime, he — and 9/11 as it entered the American psyche — helped facilitate the locking down of this society in ways that should unnerve us all. The resulting United States of Fear has since engaged in two disastrous more-than-trillion dollar wars and a “Global War on Terror” that shows no sign of ending in our lifetime. (See Yemen, Pakistan, and Mali.) It has also funded the supersized growth of a labyrinthine intelligence bureaucracy; that post-9/11 creation, the Department of Homeland Security; and, of course, the Pentagon and the U.S. military, including the special operations forces, an ever-expanding secret military elite cocooned within it.

Given the enemy at hand — not a giant empire, but scattered *jihadis* and minority insurgencies in distant lands — all of these institutions, which make up the post-9/11 National Security

Complex, expanded in ways that would have boggled the minds of previous generations (as would that most un-American of all words, “homeland”). All of this, in turn, happened in a poisonously paranoid atmosphere in Washington, and much of the rest of the country.

Even if you ignore that Inauguration Day no-boating zone or the 30-mile no-fly zone (the sort of thing the U.S. once imposed on enemy lands and now imposes on itself), consider those “thousands of doses of antidotes in case of a chemical or biological attack.” Just about nothing on this planet is utterly inconceivable, but it’s worth noting that, as far as we know, the national security bureaucracy made no preparations for an unexpected tornado on Inauguration Day. Given recent extreme weather events, including tornado warnings for Washington, that would at least have been a plausible scenario to consider.

Certainly, a biological or chemical attack is a similarly imaginable possibility. After all, it actually happened in Tokyo in 1995, when followers of the Aum Shinrikyo cult set off Sarin gas in that city’s subway system, killing 11. But the likelihood of any conceivable set of Islamic terrorists attacking those inaugural crowds with either chemical or biological weapons was, to say the least, microscopic. As something to protect Washington visitors against, it ranked at least on a par with the (nonexistent) post-9/11 al-Qaeda sleeper cells and sleeper-assassins so crucial to the plot of the TV show “Homeland.”

And yet, in these years, what might have remained essentially a nightmarish fantasy has become an impending reality around which the national security folks organize their lives — and ours. Ever since the now largely forgotten anthrax mail attacks that killed five soon after 9/11 — the anthrax in those envelopes may have come directly from a U.S. bioweapons laboratory — all sorts of fantastic scenarios involving biochemical attacks have become part and parcel of the American lockdown state.

In the Bush era, for instance, among the apocalyptic dream scenes the president and his top officials used to panic Congress into approving a much-desired invasion of Iraq were the possibility of future mushroom clouds over American cities and this claim: that Iraqi autocrat Saddam Hussein had drones (he didn’t) and the means to get them to the East Coast of the U.S. (he didn’t), and the ability to use them to launch attacks in which chemical and biological weaponry would be sprayed over U.S. cities (he didn’t). This was a presidentially promoted fantasy of the first order, but no matter. Some senators actually voted to go to war at least partially on the basis of it.

As is often true of ruling groups, Bush and his cronies weren’t just manipulating us with the fear of nightmarish future attacks, but themselves as well. Thanks to *New Yorker* journalist Jane Mayer’s fine book *The Dark Side*, for instance, we know that Vice President Dick Cheney was always driven around Washington with “a duffel bag stocked with a gas mask and a biochemical survival suit” in the backseat of his car.

The post-9/11 National Security Complex has been convulsed by such fears. After all, it has funded itself by promising Americans one thing: total safety from one of the lesser dangers of our American world — “terrorism.” The fear of terrorism (essentially that bin Laden tax again) has been a financial winner for the Complex, but it carries its own built-in terrors. Even with the

\$75 billion or more a year that we pump into the “U.S. Intelligence Community,” the possibility that it might not discover some bizarre plot, and that, as a result, several airliners might then go down, or a crowd in Washington be decimated, or you name it, undoubtedly leaves many in the Complex in an ongoing state of terror. After all, their jobs and livelihoods are at stake.

Think of their fantasies and fears, which have become ever more real in these years without in any way becoming realities, as the building blocks of the American lockdown state. In this way, intent on “taking the gloves off” — removing, that is, all those constraints they believed had been put on the executive branch in the Watergate era — and perhaps preemptively living out their own nightmares, figures like Dick Cheney and former Secretary of Defense Donald Rumsfeld changed our world.

The Powers of the Lockdown State

As cultists of a “unitary executive,” they — and the administration of national security managers who followed in the Obama years — lifted the executive branch right out of the universe of American legality. They liberated it to do more or less what it wished, as long as “war,” “terrorism,” or “security” could be invoked. Meanwhile, with their Global War on Terror well launched and promoted as a multigenerational struggle, they made wartime their property for the long run.

In the process, they oversaw the building of a National Security Complex with powers that boggle the imagination and freed themselves from the last shreds of accountability for their actions. They established or strengthened the power of the executive to: torture at will (and create the “legal” justification for it); imprison at will, indefinitely and without trial; assassinate at will (including American citizens); kidnap at will anywhere in the world and “render” the captive into the hands of allied torturers; turn any mundane government document (at least 92 million of them in 2011 alone) into a classified object and so help spread a penumbra of secrecy over the workings of the American government; surveil Americans in ways never before attempted (and only “legalized” by Congress after the fact, the way you might backdate a check); make war perpetually on their own say-so; and transform whistleblowing — that is, revealing anything about the inner workings of the lockdown state to other Americans — into the only prosecutable crime that anyone in the Complex can commit.

It’s true that some version of a number of these powers existed before 9/11. “Renditions” of terror suspects, for instance, first ramped up in the Clinton years; the FBI conducted illegal surveillance of antiwar organizations and other groups in the 1960s; the classification of government documents had long been on the rise; the congressional power to make war had long been on the wane; and prosecution of those who acted illegally while in government service was probably never a commonplace. (Both the Watergate and Iran-Contra scandals, however, did involve actual convictions or guilty pleas for illegal acts, followed in some of the Iran-Contra cases by presidential pardons.) Still, in each case, after 9/11, the national security state gained new or greatly magnified powers, including an unprecedented capacity to lockdown the country (and American liberties as well).

What it means to be in such a post-legal world — to know that, no matter what acts a government official commits, he or she will never be brought to court or have a chance of being put in jail — has yet to fully sink in. This is true even of critics of the Obama administration, who, as in the case of its drone wars, continue to focus on questions of legality, as if that issue weren't settled. In this sense, they continue to live in an increasingly fantasy-based version of America in which the rule of law still applies to everyone.

In reality, in the Bush and Obama years, the United States has become a nation not of laws but of legal memos, not of legality but of legalisms — and you don't have to be a lawyer to know it. The result? Secret armies, secret wars, secret surveillance, and spreading state secrecy, which meant a government of the bureaucrats about which the American people could know next to nothing. And it's all “legal.”

Consider, for instance, this passage from a recent *Washington Post* piece on the codification of “targeted killing operations” — i.e. drone assassinations — in what's now called the White House “playbook”: “Among the subjects covered... are the process for adding names to kill lists, the legal principles that govern when U.S. citizens can be targeted overseas, and the sequence of approvals required when the CIA or U.S. military conducts drone strikes outside war zones.”

Those “legal principles” are, of course, being written up by lawyers working for people like Obama counterterrorism “tsar” John O. Brennan; that is, officials who want the greatest possible latitude when it comes to knocking off “terrorist suspects,” American or otherwise. Imagine, for instance, lawyers hired by a group of neighborhood thieves creating a “playbook” outlining which kinds of houses they considered it legal to break into and just why that might be so. Would the “principles” in that document be written up in the press as “legal” ones?

Here's the kicker. According to the *Post*, the “legal principles” a White House with no intention of seriously limiting, no less shutting down, America's drone wars has painstakingly established as “law” are not, for the foreseeable future, going to be applied to Pakistan's tribal borderlands where the most intense drone strikes still take place. The CIA's secret drone war there is instead going to be given a free pass for a year or more to blast away as it pleases — the White House equivalent of Monopoly's get-out-of-jail-free card.

In other words, even by the White House's definition of legality, what the CIA is doing in Pakistan should be considered illegal. But these days when it comes to anything connected to American war-making, legality is whatever the White House says it is (and you won't find their legalisms seriously challenged by American courts).

Post-Legal Drones and the New Legalism

This week, during the Senate confirmation hearings for Brennan's nomination as CIA director, we are undoubtedly going to hear much about “legality” and drone assassination campaigns. Senator Ron Wyden, for instance, has demanded that the White House release a 50-page “legal” memo its lawyers created to justify the drone assassination of an American citizen, which the White House decided was far too hush-hush for either the Congress or ordinary Americans to read. But here's the thing: if Wyden got that bogus document, undoubtedly filled

with legalisms (as a just-leaked 16-page Justice Department “white paper” justifying drone killings is), and released it to the rest of us, what difference would it make? Yes, we might learn something about the vestiges of a guilty conscience when it comes to American legality in a White House run by a former “constitutional law professor.” But we would know little else.

Once upon a time, an argument over whether such drone strikes were legal or not might have had some heft to it. After all, the United States was once hailed, above all, as a “nation of laws.” But make no mistake: today, such a “debate” will, in the Seinfeldian sense, be an argument about nothing, or rather about an issue that has long been settled.

The drone strikes, after all, are perfectly “legal.” How do we know? Because the administration which produced that 50-page document (and similar memos) assures us that it’s so, even if they don’t care to fully reveal their reasoning, and because, truth be told, on such matters they can do whatever they want to do. It’s legal because they’ve increasingly become the ones who define legality.

It would, of course, be illegal for Canadians, Pakistanis, or Iranians to fly missile-armed drones over Minneapolis or New York, no less take out their versions of bad guys in the process. That would, among other things, be a breach of American sovereignty. The U.S. can, however, do more or less what it wants when and where it wants. The reason: it has established, to the satisfaction of our national security managers — and they have the secret legal documents (written by themselves) to prove it — that U.S. drones can cross national boundaries just about anywhere if the bad guys are, in their opinion, bad enough. And that’s “the law”!

As with our distant wars, most Americans are remarkably unaffected in any direct way by the lockdown of this country. And yet in a post-legal drone world of perpetual “wartime,” in which fantasies of disaster outrace far more realistic dangers and fears, sooner or later the bin Laden tax will take its toll, the chickens will come home to roost, and *they* will be able to do anything in our name (without even worrying about producing secret legal memos to justify their acts). By then, we’ll be completely locked down and the key thrown away.