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Freedom and the Omnipotent Power to Assassinate

by Jacob G. Hornberger

April 23, 2015

As a kid growing up, did you ever think you'd live under a government that had the omnipotent power to assassinate you and every other American citizen? If you heard about some communist regime or other totalitarian government wielding the omnipotent power to assassinate its own citizens, you wouldn't be surprised. But I'll bet that the vast majority of Americans never thought they would end up living under a governmental structure that had that sort of power over the citizenry.

That's certainly not the type of governmental structure that the Framers brought into existence with the Constitution. The federal governmental structure that the Constitution brought into existence was one whose powers were limited to those enumerated in the Constitution itself. The power to assassinate people, Americans or foreigners, was not among those enumerated powers.

The American people were skeptical and distrustful about the powers of the new government. They had had experience with a government that engaged in brutal actions against its own citizens. They were concerned about the same sort of thing happening again. That's why they insisted that the Constitution be amended immediately after its approval. Among the

amendments were the Fourth, Fifth, Sixth, and Eighth Amendments, which prohibited the federal government from killing people, Americans or foreigners, without according them long-established procedural rights and guarantees, such as trial by jury, due process of law, and right to counsel.

And then came the 9/11 attacks. President Bush simply issued a decree stating that he and his national-security establishment—i.e., the military and the CIA—now automatically wielded the omnipotent power to assassinate both Americans and foreigners.

Ironically, when Nicolas Maduro, the president of Venezuela, recently sought extraordinary, emergency powers in response to President Obama's decree that Venezuela now posed a grave threat to U.S. "national security," he asked the Venezuela legislature to grant him such powers. Ironically, Adolph Hitler did the same thing after the terrorist attack on the Reichstag. He went to the German legislature to make his case for giving him extraordinary powers to wage the war on terrorism.

Not Bush. He said that since America now had its own war on terrorism, he didn't need congressional approval for assuming and exercising the power to assassinate. He simply announced that he now had such power over the American people and others around the world. Of course, he exercised such omnipotent power through his military forces and his CIA forces.

Bush's omnipotent power to assassinate Americans and foreigners was passed to President Obama. It will be also passed to Hillary Clinton, Jeb Bush, or whoever is elected president in 2016.

The federal judiciary has made it clear that it has absolutely no intention of interfering with the national-security state's power to assassinate people. The Supreme Court calls the "political question doctrine," a doctrine that, needless to say, is not found in the Constitution and is simply a way to avoid interfering with the operations of the most powerful branch of the federal government — the national-security branch.

The members of Congress certainly aren't going to interfere with the president's power to assassinate Americans. The Pentagon could threaten to cancel military projects in their district. And taking on the CIA is something that the members of Congress have absolutely no interest in doing.

One might say: “But Jacob, the government isn’t assassinating multitudes of Americans or rounding them up, putting them into concentration camps, and torturing them. They’re only doing such things to a very small number of Americans. And they’re doing it as part of national-security operations to keep us safe. The rest of us are still living in a free society because while they wield the power to assassinate us, they’re not exercising the power except on a tiny few.”

Suppose that after 9/11, Americans immediately amended the Constitution to nullify the First Amendment. Immediately after the nullification became effective, the government enacted a law that said that anyone who criticized the government would receive the death penalty. For the past decade, however, only a handful of people have been executed for criticizing the government. Millions more have continued to criticize the government without being rounded up and executed.

Would you feel that you lived in a free society under that type of law? Would you say, “Jacob, of course we’re free because the government isn’t enforcing the sedition law except on just a handful of critics”?

Simply because the government wasn’t exercising its power to punish all the critics wouldn’t mean that that’s a free society. Everyone would have to factor into his decision-making the fact that the government wields the power to execute people for criticizing the government and that it could begin exercising its powers in a widespread manner on a moment’s notice.

Thus, as our American ancestors understood so clearly, the genuinely free society is not one in which the government wields the power to execute people for criticizing the government but exercises such power wisely and judiciously. The genuinely free society is one in which the government lacks the power to punish people for criticizing the government.

That’s why the Constitution failed to grant the federal government the power to kill or otherwise do bad things to people for criticizing the government. It’s also why our ancestors made certain that the First Amendment was enacted — to make sure that federal officials got the point.

The same principles apply to the government’s post-9/11 power to assassinate Americans. No matter how wisely and judiciously such power might be exercised, the mere wielding of such power is what totalitarian regimes do, not governments in free societies. The genuinely free society is one in which the government lacks the power to assassinate. That’s why the Constitution fails to delegate to the federal government the power to assassinate people, even in matters relating to “national security.” It’s also why our ancestors made certain that the Fourth,

Fifth, Sixth, and Eight Amendments were enacted — to make certain that federal officials got the point.