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Empire Nearing Its End?

by Alan Bock, April 13, 2009

Anyone who thought that as president Barack Obama would begin to roll back the breathtaking expansion of power arrogated to the executive branch under the Bush-Cheney administration should have been disabused of the notion by now. And despite the new president's expansive view of what the central government should be doing domestically – running the auto industry and banking, seizing more control of the rest of the financial sector, bailing out auto parts suppliers, changing our energy mix dramatically, expanding government responsibility for health care to unsustainable levels, and quite a bit more – he is finding, as most recent presidents have, that foreign affairs offers more opportunities to expand and exercise unaccountable power.

It wouldn't be surprising, however, perhaps because of the magnitude of the ambitions on display and because the foreign and domestic forces capable of pushing back are already in place, if it is in foreign affairs that the American empire most dramatically runs headlong into reality, is forced to acknowledge the limits of military power (perhaps not as dramatically as in the instance of the Somali pirates, however that turns out), and crashes on the rocks. Foreign and domestic issues are related, of course, but so far it is in foreign policy that President Obama has most notably embraced the Bush precedents and even sought to expand them. And it is there that disappointment and disillusionment are most likely to hit – not immediately, perhaps, but soon enough.

To be sure, Obama has announced that he plans to close the Guantanamo prison camp, a perhaps overemphasized but nonetheless important symbol of the tendency of decisions taken without much thought beforehand to lead to obvious and embarrassing abuses. But closing the camp in a satisfactory manner will not be easy. And Obama and Attorney General Eric Holder have said they are renouncing torture, although it seems to be the case that they have not renounced extraordinary rendition or the thoroughly un-American (or at least illiberal) power to detain certain people indefinitely without charges, albeit with a label other than the Bush administration's sloppy "enemy combatant".

It is not possible for an outside observer to be sure whether or not the Obamaites had planned to finesse some Guantanamo closing complications [simply by moving prisoners](#) to the vast and probably more abusive prison camp at Bagram airbase in Afghanistan, although that certainly appears to be the case. The administration in February did argue that it [agreed with the Bushies' contention](#) that U.S. courts had [no jurisdiction there](#). It is encouraging, however, that they are getting [some pushback](#) from the judicial branch, in the form of a ruling from District Judge John D. Bates that at least some prisoners at Bagram have ancient right of habeas corpus to challenge their imprisonment.

It is on matters [that most bother](#) those who still think civil liberties should be accorded some measure of respect, however, that the Obama administration has been most disappointing – [or predictable](#), depending on your view of the proclivity of politicians of any stripe to expand their power wherever and whenever they see an opportunity. It is also in these areas that other branches of government – mainly the judicial branch – are inclined to push back, having already begun to do so in a modest way and on some of the very same issues as during the Bush-Cheney era.

It is also likely to take a while to determine the outcome of Obama's domestic initiatives, especially since economic issues in an economy this size are complicated enough that it is difficult to trace cause-and-effect lines in unambiguous ways that are likely to evoke agreement from scholars and policy analysts of various ideological predilections. If, as [some forecasters predicted as much as a year ago](#), the current recession bottoms out around the end of this year regardless of what the government does, but leads to an [anemic rather than a robust recovery](#), what effect would that have on Obama's political fortunes and the willingness of people to let him keep accumulating power? The only prediction I'm willing to make is that partisan analysts will be clashing daily on cable news to sell their interpretations. But which will win, I don't pretend to know.

We already know, however, that the U.S. military, with an \$800 million destroyer and no plan until [it resorted to old-school methods](#), looked [like a pitiful giant](#) against four [ostensible pirates](#) in a lifeboat as long as [said pirates held a U.S. captain hostage](#). In some ways it is becoming clearer, even before the "surge" in Afghanistan has been fully implemented, that it is likely to fail, given the fact that the Taliban are an indigenous force and the United States and NATO are not. And [even if Iraq is wound down](#) successfully, enough people understand that the U.S. [surge in troops was only a minor factor](#) in the reduction of violence over the last year or so – a reduction that could prove troublingly fragile – that most Americans still believe the war was an unwise venture that should not be repeated. The [tolerance for an Afghan war is likely to be shorter](#) than it was for Iraq, especially among people who have been Obama supporters and thus willing to suspend criticism for [at least a time](#).

In the area of civil liberties, especially due process cases, the Obama administration is stuck defending Bush-era precedents. That it has chosen to do so has disappointed a few of its erstwhile supporters, though fewer than one might have wished. But the judicial branch has already become accustomed to pushing back against the Bush administration and seems prepared to do so with Obama as well.

Thus in the case of Fadi al-Maqaleh, the [Obama people essentially wanted](#) to proceed as if those imprisoned at Bagram – under an especially broad definition of "enemy combatant" that might well include selling food to actual combatants – had [no shred of habeas corpus rights](#). But Judge Bates quoted Alexander Hamilton (himself arguably the most authoritarian of the

founders) in Federalist 84, to wit: "Confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less striking, less public, and therefore a more dangerous engine of arbitrary government." And he gave at least those captured outside Afghanistan whom the U.S. government had wanted to "disappear" into Bagram the right to challenge the constitutionality of their imprisonment.

The Obama administration has likewise echoed the Bush line in the case of *Mohammed v. Jeppesen Dataplan*, now before the 9th Circuit federal appellate court. The plaintiffs allege that they were seized by American personnel and stripped, blindfolded, and shackled to the floor of an airplane as they were taken to other countries to be tortured. The Bushies argue that the whole complaint should be dismissed because litigating it would expose state secrets and clue in al-Qaeda members to the kind of treatment they should prepare themselves for if captured. The Obamaites have used precisely the same argument.

The Obamaites have similarly used [.pdf] the state-secrets argument in challenges to the so-called Terrorist Surveillance Program, the National Security Agency program of unwarranted wiretapping of U.S. residents and citizens on U.S. soil. This defense is likely to fail, but it is at least chilling that the Obama administration, after campaigning that it would busy itself correcting Bush-era excesses in the violation of civil liberties, is instead continuing and perhaps compounding these violations.

The courts are already accustomed to pushing back against outlandish claims of unaccountable executive power in the national security arena, and they might well become even bolder, especially in denying mostly bogus claims regarding state secrets. And as the Obama administration seeks yet another \$83.4 billion supplemental appropriation –the latest of 17 – to conduct the Iraq and Afghanistan wars, and as Defense Secretary Gates finds that even modest reforms to the process of acquiring unnecessary and overpriced weapons systems in a defense budget that has increased 43 percent since 1998 is made almost impossible by institutional lethargy and various Iron Triangles, disillusionment with defense spending and empire is likely to settle in.

It may be that disillusionment with the absurd war on drugs will become politically significant before most of the American public tires of the war on anyone who bothers us or poses a real or imagined threat to politically connected big businesses. But we are approaching the limits of power, and that day is coming.