

The Iran/Contra Affair and the Nature of U.S. Democracy

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LAURENCE ROBERT KOWALEWSKI, MAY 3 2011

'The Iran/Contra Affair demonstrated the true nature of democracy in the United States'. Discuss

"Whatever else may be said of Ronald Reagan, he quickly showed that the reports of the death of the Presidency were greatly exaggerated"[1], no President has used the office of the Executive in a more regal, imperial and ordained manner than Ronald Reagan. His use and abuse of the institution to pursue his own ideological doctrine whilst brazenly flaunting the checks and balances of the American political system highlight crippling flaws in more than just the triumvirate, we must ask the fundamental question of whether the concept of democracy is a viable one at all. We will first focus on the Iran-Contra scandal itself, the immediate fallout and wider implications before positing the scandal into the wider framework of Executive abuse and its correlation (or lack of) with the concept of democracy. The unique revelations of the 'Wikileaks' cables also allow us the opportunity to examine the two sides of the debate between secrecy and transparency, and assess the "tension[s] between these two requirements for democratic statecraft"[2] in its most contemporary terms.

The mass of information regarding the complex machinations of the Iran-Contra scandal means that any brief summation will only scratch the surface, but a succinct rendition of the barest facts are in order:

"The worst scandal of the Reagan era broke out with the revelation...secretly supplied arms to Iran in an effort to free U.S. Hostages and had illegally diverted funds from these arms sales to Contras in Nicaragua."[3]

Aside from the infamously murky issue of Presidential knowledge and involvement, the ostensible facts here are damning enough: subterfuge, lies and outright illegalities. These are just the first, immediate level of crimes in this case; the list descends into a rank free for all of instituted drug smuggling, violence, money laundering and myriad other clearly unethical dealings[4]. Reagan's mercurial "ability to divorce himself from the actions and consequences of his own administration"[5] shielded and insulated him from the immediate fire in the aftermath, but the conclusive proof of his hands-on involvement is not hard to find. The words of his close associate and the Counsellor to the President on Policy (among other roles) Edward Neese are illuminating and damning: "He [Reagan] said, 'I don't want to pull out our support for the Contras for any reason, this would be an unacceptable option, isn't there something I could do unilaterally?'"[6] 'Unilaterally': never has a word been so completely, overwhelmingly denunciative to the basic tenants of constitutional democracy. On a system that is fundamentally based on checks and balances between the branches, the certain intent of the Executive to eviscerate the checking powers is nothing short of dictatorial. James Madison's authority on the matter is rightly revered and eerily prescient: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands.....may justly be pronounced the very definition of tyranny."[7]

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The very fact of the President's insulation from the direct blame raises another integral question, again painful to the democratic principles underlying the system: if the President can dodge democratic accountability, does democratic accountability even exist? "The nature of these operations...establishes a subterranean component to U.S. foreign policy that is quite at odds with the rest of American Society"[8]. The existence of autonomous agencies, with their own purse and sword under the control of the Executive coupled with the fluid definition of what constitutes terms like 'warfare' and 'military action' has left the whole area of foreign affairs out of the reach of Congress and the public alike and firmly in the hands of the imperial presidency. Senator Inouye's famous summation of the cover-up is pertinent, "There exists a shadowy Government with its own Air Force, its own Navy, its own fund-raising mechanism, and the ability to pursue its own ideas of the national interest, free from all checks and balances, and free from the law itself." [9] The 'reaction' of Congress to the scandal will form our next point of inquiry.

So far we have focused on the attempts of the Executive to keep Congress out of the picture, which naturally implies some kind of innocence on the part of Congress; how can it enforce its will if it is not in the loop? The place where Congress can at once put a check on the rampant imperialism and punish the illegalities committed by those in the power of the Executive is in the process of review. A process that has the ability to at once punish and reform, and under ideal direction is capable of restoring the prestige and constitutionality to the concept of democracy.

"From the beginning, the incomplete and ineffectual outcome of the inquiry [Report of the Congressional Committees Investigating the Iran-Contra Affair] was predictable." [10] Instantly our faith in the power of review is destroyed, and with it any hope Congress had of restoring its dignity and subsequently the dignity of the democratic institution. The fundamental failing of the commission's report was that it barely scratched the surface; a fatal flaw when the factors that led to the scandal were endemic, "the avenues of inquiry would be limited to immediate acts of deception and lawlessness opposed to an in-depth examination of the historical, ideological, and institutional foundations of the scandal." [11] The depth of the incision of the investigators work was so shallow that while they deduced simple observations such as:

"The crimes of the Reagan administration derived from an imperial president who "created or at least tolerated" an environment where "disdain for the law" and "pervasive dishonesty" became routine bureaucratic procedure" [12]

Their lack of call for institutional reformation led them to miss the fundamental, glaringly obvious conclusion to be drawn from this whole debacle, "all of this evidence leads to inevitable conclusion: covert action is antithetical to American-style democracy". [13] To bring us back to the discussion of the 'true nature' of democracy, we can deduce only negative outcomes. The executive, through the medium of these 'shadowy organizations' will indulge in any deception, outside of Constitutional bounds, to further its ideological aims and Congress will be impotent in the face of it due to their acquiescence to the 'Stare Decisis' to the imperialism of the Executive.

Our analysis has so far been rather one-sided in condemning Executive excess, so let us now consider the specific problem of democratic Executive foreign policy in the problematic historical timeline that it resides in. "The transaction of business with foreign nations is Executive altogether, it belongs, then, to the head of the department..." [14] these words of Jefferson's seem to grant impunity to the actions of Reagan and his subsidiaries, but we can delve deeper into the constitutive philosophy behind the sculpting of the American Constitution for more insight. The works of Rousseau, Locke and Hobbes form the cornerstone of the founding philosophy of the United States [15] and the tension between the powers of the Executive (although the terminology differs, the meaning is the same) and the fact that it is part of a democratic whole is one that is apparent in all the writings. "For Hobbes, "the sovereign" is an office rather than a person, and can be characterized by what we have come to associate with executive power and executive authority." [16] Herein lies the key problem with Reagan's use of the Executive, he represented a person, rather than an office. This is not to say that he was the sole source of the undemocratic ideas and malevolent manipulation, but his subsidiaries that he used—the NSC and the CIA—are elements that are not tethered by the democratic principles that hold the Executive to the democratic constitution. Working outside of the system, criminality is usually the result.

The use, abuse and manipulation of the need for secrecy are something that is intrinsic to all of the matters underlying every facet of the Iran-Contra scandal. "The percentage of documents censored after review for

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declassification increased from 10 percent in 1983 to 75 percent in 1984”[17] This strangulation of information, is what helped to foster the air of impunity for the Reagan administration and its subordinate agencies, for democracy to work, a distinct level of transparency is required. The issue of secrecy is one of the most basic defences that the Executive uses to promote its monopoly of the arena of foreign affairs, and there are a few other key issues in the defensive arsenal of the Executive, namely the structural efficiency, political consistency and incorruptible nature of the Executive[18] The Iran-Contra scandal in one fell swoop eviscerates every single one of these mythical defences, and subsequently the myth that the Executive is best to deal (undemocratically) with foreign affairs.

“Enhanced congressional access to better information would partially relieve Congress’ problem of ineffective tools [to limit the executive]”[19]. Special attention must be paid to the content of this extensive and chastising report by Harold Hongu Koh, and its linkages to the current Wikileaks revelations; the democratic minefield that ensues is at once revealing and shocking. To focus on Koh’s piece, we have an all-encompassing look at the systemic failings of all the branches of government, “Three institutional factors, Executive initiative, Congressional Acquiescence, Judicial tolerance”[20] creating a “systematic failure within America’s foreign policy apparatus”[21] resulting in “misguided people violating ineffective laws”[22]. The following pages of the report focus in on the specific factors that allowed these lapses, such as the unregulated forms of warfare and the inability of any legislation to have any meaningful effects on the Executive’s imperialism. Focus is also given to the abject failing of Congressional review and what should have been the effects of the failed legislation, such as the 1947 National Security Act, “...support from both Congress and the public, giving each access to all information necessary to evaluate the actions legality”[23], Koh’s recommendations to stop some similarly grave case of Executive abuse happening again extol the virtues of information accessibility[24] and also enforce the strength of the Judiciary[25]. These all seem like reasonable suggestions and Koh should be commended on producing such a penetrative study and also for proposing a panacea for the disease of Executive abuse.

“[I]t is the considered view of this administration... that targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles (UAVs), comply with all applicable law, including the laws of war.”[26] This quote from Harold Koh (after ascending to the Obama administration’s upper echelons) is endorsing the practice “of what has become known as the “unitary executive theory” – the idea that the US constitution gives the president power above all else, even the US Congress.”[27] What could possibly have happened in the intervening decade that Koh’s vociferous attack on Reagan’s Imperialism could have turned into a glowing acclamation of Obama’s? The answer is found in one of the most infamous quotes of all U.S. President’s: “When the President does it, that means it is not illegal”[28] When Koh is in the administration, that means it is not imperial.

The exigent appeal in Koh’s aforementioned report was for informative transparency so it is surprising that Koh’s views on the Wikileaks’ revelations are also very much in the party line, and a far cry from his preaching of administrative pellucidity; “[Wikileaks has] endangered the lives of countless individuals”[29]. It is perhaps unfair to tarnish him in light of the Wikileaks cables, as their brazen manner of revelation is perhaps counter-intuitive to some notions of democracy (although the claim of endangerment is one that can be argued), but we can look at Wikileaks as the other side of the coin to Reagan’s imperialism. The necessities of statecraft require some level of secrecy. Reagan abused this and the results were the Iran-Contra scandal. In response, Wikileaks offers the maximum level of transparency, and the results are diplomatic breakdown and a negation of the Executive secrecy that is sometimes a necessity. The American political system cannot function on a firm democratic footing in either scenario; democracy can only be revived by restoring the balance between the two.

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[1]Arthur M. Schlesinger, JR., *The Imperial Presidency*, (First Mariner Books, New York, 2004) p437

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[2]Clay Shirky, 'Wikileaks and the Long Haul', (Monday, December 6th, 2010), <http://www.shirky.com/weblog/2010/12/wikileaks-and-the-long-haul/>

[3]Paul Boyer, *'Reagan as President: Contemporary Views of the Man, His Politics, and His Policies'*, (Ivan R. Dee, Chicago 1990) p221

[4]Report By The Committee On Foreign Relations, U.S. Senate, *'Drugs, Law Enforcement and Foreign Policy'* (DIANE Publishing, 2004) p35

[5]Arthur M. Schlesinger, JR., *'The Imperial Presidency'*, (First Mariner Books, New York, 2004) p439

[6]Edward Nesse in The Corbett Report, *'Know Your History: Iran Contra'*, 17.44, available on iTunes

[7]James Madison, *'The Particular Structure of the New Government and the Distribution of Power Among Its Different Parts- Federalist 47'*, (New York Packet Wednesday, January 30, 1788)

[8]Peter Kornbluh, *'The Iran-Contra Scandal: A Post Mortem'*, World Policy Journal, Vol. 5, No. 1 (Winter 1987/1988) p140

[9]Senator Daniel K. Inouye at the Iran Contra Hearings (1987)

[10]Peter Kornbluh, *'The Iran-Contra Scandal: A Post Mortem'*, World Policy Journal, Vol. 5, No. 1 (Winter 1987/1988) p130

[11]Ibid p.130

[12]Ibid p.145

[13]Ibid p.146

[14]Thomas Jefferson, *'Opinion on Power of Senate'* 1790 ME 3:16

[15]Constitutional Rights Foundation, *'Bill of Rights in Action'*, (Spring 2004) <http://www.crf-usa.org/bill-of-rights-in-action/bria-20-2-c.html>

[16]Stephen B. Smith, *'Introduction to Political Philosophy, Lecture 14 – The Sovereign State – Hobbes, Leviathan'*, (Yale University: Open Yale Courses) <http://oyc.yale.edu> License: Creative Commons BY-NC-SA

[17]Arthur M. Schlesinger, JR., *'The Imperial Presidency'*, (First Mariner Books, New York, 2004) p 445

[18]Larry N. George, *'Tocqueville's Caveat: Centralized Executive Foreign Policy and American Democracy'*, Polity, Vol.22 No.3 (Spring 1990) p425

[19]Harold Hongu Koh, *'Why the President (Almost) Always Wins in Foreign Affaris: Lessons from the Iran-Contra Scandal'*, The Yale Law Journal, Vol. 97, No.7 (June 1988) p1331

[20]Ibid p1258

[21]Ibid p1258

[22]Ibid p1260

[23]Ibid p1282

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[24]Ibid p1328

[25]Ibid p1335

[26]Harold Koh, in 'ASIL Keynote Highlight: U.S. Legal Adviser Harold Koh Asserts Drone Warfare Is Lawful Self-Defence Under International Law', (27th March, 2010) http://insidejustice.com/law/index.php/intl/2010/03/26/asil_koh_drone_war_law

[27]Pratap Chatterjee, 'Wikileaks v the imperial presidency's poodle', (The Guardian, 29th of November) <http://www.guardian.co.uk/commentisfree/cifamerica/2010/nov/29/the-us-embassy-cables-wikileaks?INTCMP=SRCH>

[28]Richard Nixon in interview with David Frost (19 May 1977); printed in *The New York Times* (20 May 1977)

[29]Pratap Chatterjee, 'WikiLeaks v the imperial presidency's poodle', (The Guardian, 29th of November) <http://www.guardian.co.uk/commentisfree/cifamerica/2010/nov/29/the-us-embassy-cables-wikileaks?INTCMP=SRCH>