



Written by [Thomas R. Eddlem](#) on October 17, 2011

Forbes Claims Ron Paul Was Wrong About the Fifth Amendment

Congressman Paul condemned the September 30 drone strike ordered by the Obama White House against Awlaki and fellow U.S. citizen Samir Khan, noting that the [Fifth Amendment](#) says that the U.S. government can't allow persons to "be deprived of life, liberty, or property, without due process of law." Paul added in [comments](#) the day of the killing: "I think what would people have said about [Oklahoma City bomber] Timothy McVeigh? We didn't assassinate him, who we were pretty certain ... had done it. Went and put through the courts then executed him. To start assassinating American citizens without charges, we should think very seriously about this."



Minter [claimed](#) in his October 13 article that Ron Paul's argument "contains a lot of pernicious nonsense" and that "While seemingly sensible, more due process is actually a dangerous and unconstitutional idea. President Obama, a former constitutional law lecturer at the University of Chicago, actually got the balance right." Minter [admitted](#).

Rep. Paul and other critics of the president, left and right, superficially seem to have a strong case. Al Awlaki was born in New Mexico, and Samir Khan, who co-edited al Qaeda's English-language recruitment magazine *Inspire*, hails from Charlotte, N.C. They were not charged with any crime in any court, let alone ... convicted by a jury and sentenced by a judge. Yet the Constitution's Fifth Amendment, Rep. Paul points out, expressly bars the federal government from depriving any person of his life without "due process of law." Q.E.D., Obama is guilty of unconstitutional murder.

But Minter [claims](#) that putting Awlaki and Khan — both killed in a drone strike September 30 — on an assassination list was justified because of several YouTube videos and pamphlets the two produced:

In the case of al Awlaki and Khan, they essentially put themselves on the list though their public actions and statements. They joined a known enemy of the United States, recruited others to carry out attacks, and supervised attacks against U.S. citizens. But this just pushes the question back a step. How does the government know these facts? In the case of al Awlaki and Khan, we have public statements on YouTube.com and elsewhere. Al Awlaki has publicly declared his membership in al Qaeda and has urged his followers to attack Americans world-wide. In the case of Khan, we have web links to his *Inspire* online magazine.

Richard Minter [added](#), "The Founding Fathers never considered the Fifth Amendment to be a check on the president's war-fighting powers." The only problem with Minter's argument is that the President



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has no constitutional war-fighting powers without an authorization from Congress. Under [Article I, Section 8 of the U.S. Constitution](#), only Congress can give the green light for war or other hostilities. That section of the Constitution says, "Congress shall have the power to ... declare war" in addition to the powers to "define and punish piracies and felonies committed on the high seas, and Offenses against the Law of Nations ... grant letters of marque and reprisal, and make rules concerning captures on land and water ... to make rules for the government and regulation of the land and naval forces." In other words, Congress holds all the war powers until it gives the President a green light.

Miniter [claims](#) that the idea that the Fifth Amendment limits the President doesn't exist because "no mention of this bizarre constitutional view appears in the *Federalist Papers*, the *Anti-Federalist Papers* or the constitutional convention debates, as far as I have been able to determine." Of course they wouldn't appear in any of those documents or debates because the Fifth Amendment hadn't been written when those documents were written and debates occurred. The Fifth Amendment was written in 1789, two years after the constitutional convention and a year after the *Federalist* and *Anti-Federalist Papers* were written.

Miniter [adds](#): "There is [sic] precisely zero mentions by any of the Founders that the Fifth Amendment is supposed to prevent the president from killing enemy combatants, even if they are U.S. citizens." Of course, there's also no case of U.S. citizens being targeted for death by Presidents during the time of the Founders.

But we do have the exact opposite example from George Washington during the Whiskey Rebellion. President Washington did [order](#) rebellious citizens to "disperse and retire peaceably to their respective abodes," and he did call out the militia to stop what he [labeled](#) "overt acts of levying war against the United States" during the Whiskey Rebellion. But that was only after Washington [received permission to use force from Congress](#) and had [sent a delegation](#) to meet with the violent insurgents in western Pennsylvania. And even after that, Washington used minimal force. He did not automatically try to "take out" any insurgents as Obama has done in the war on terror. After the Whiskey Rebellion ended, the [U.S. Senate applauded](#) Washington's "lenient and persuasive measures" that avoided unnecessary bloodshed.

In fact, when a man and a boy were killed by federal militia under Washington's command, Washington [ordered](#) both shooters arrested and handed them over to Pennsylvania state prosecutors. Washington did this even though the man had been killed while clearly resisting arrest. Judges later [ruled](#) that both shootings were accidental and set the militia members free, but Washington's example in the only two deaths under his command is a sharp contrast with Obama's assassination list today. As Thomas Slaughter noted in his [book](#) *The Whiskey Rebellion*, "Federal officials had hoped to instill fear among dissidents, but not necessarily to kill them; friends of order had no wish to open themselves to charges of oppression or to create martyrs useful to the political opposition."

Instead of taking "war" as a license to kill, George Washington arrested rebel insurgents during the Whiskey Rebellion. He then ensured that every one of the rebels who had been warring against the U.S. government received a [civilian trial](#). When two of the defendants in the Whiskey Rebellion were found guilty of treason and sentenced to death, Washington [pardoned](#) both offenders.

By way of contrast, Obama made [no attempt](#) to get the permission of Congress (which had given permission to go after only the actual perpetrators of the September 11 attacks in the 2001 [Authorization for the Use of Military Force](#) law) and made no known attempt to arrest Awlaki before killing him. Moreover, Obama ([supposedly the openness President](#)) has refused to release any



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information about Awlaki's guilt in actually planning a terrorist incident or any information about the [secret death panel](#) that supposedly condemned Awlaki.

Was Ron Paul wrong about the Fifth Amendment? No. *Forbes'* Richard Miniter was so wrong that he clearly did not know what he was talking about. But Miniter has a great deal of company in Washington and the neoconservative think-tanks that preach a lust for blood.

Photo of Anwar al-Awlaki: AP Images



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