



Written by [Joe Wolverton, II, J.D.](#) on May 25, 2013

Obama Updates Drone War Policy, Due Process Still Not Included

In [a foreign policy speech at the National Defense University](#) on May 23, President Obama set out his “comprehensive counterterrorism strategy,” including a plan for the future development of the deadly drone war being waged throughout the Middle East and North Africa.

Pakistani media described the president’s promises to rein in the rain of missiles fired from U.S. drones as [too little too late](#).



The same could be said about Attorney General [Eric Holder’s admission](#) that four Americans have been assassinated on the order of the president.

In his address, the president reported that the United States has been “at war for over a decade.” This is an odd statement from a purported law professor who should know that [only Congress can declare war](#) and no such declaration has been made since the beginning of World War II.

Undaunted by his lack of constitutional understanding, President Obama went on to admit: “From our use of drones to the detention of terrorist suspects, the decisions that we are making now will define the type of nation — and world — that we leave to our children.”

This statement certainly qualifies as too little too late and begs the question: What of the decisions of the past twelve years? What message have our decisions sent to our children and to the world? As the president sits in the Oval Office with his advisors and looks over names of people deciding whether or not to order their summary execution, will the rising generation somehow come to view such lethal autocracy as unacceptable? Have the missiles fired from drones killing thousands — regardless of their nationality — made the world safer?

The answer to both questions is no.

Blowback is a very real consequence of the way consecutive presidential administrations have executed the “War on Terror.”

As [The New American has chronicled](#), the methods to the mayhem that is the drone war have bred far more enemies than they have eliminated. In fact, the thirst for vengeance created by the viciousness of the use of this deadly remote control force poses a threat not only a clear and present danger, but will likely prove to be a self-perpetuating, multi-generational menace to the safety of many liberty-seeking people worldwide.

President Obama insists that if the United States does not continue to “dismantle networks that pose a direct danger to us” then these groups will gain new ground “in countries like Libya and Syria.”

Beyond those foreign outposts of America haters, the president warns of the threat of homegrown terrorists, as well. The president said:

Whether it’s a shooter at a Sikh Temple in Wisconsin, a plane flying into a building in Texas, or the



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extremists who killed 168 people at the Federal Building in Oklahoma City, America has confronted many forms of violent extremism in our history. Deranged or alienated individuals — often U.S. citizens or legal residents — can do enormous damage, particularly when inspired by larger notions of violent jihad. And that pull towards extremism appears to have led to the shooting at Fort Hood and the bombing of the Boston Marathon.

In every instance, the response to these purported threats has failed to pass constitutional muster. Ultimately, this will be President Obama's legacy, regardless of the rhetoric.

In that regard, though, [much](#) of the [major media attention](#) to the speech has focused on the shift of responsibility for carrying out the kill orders from the CIA to the Defense Department. That type of coverage amounts to little more than picking the low-hanging fruit of this poisonous tree, when more good could be done by hacking relentlessly at its unconstitutional roots.

It matters less who pulls the trigger than why the trigger was ordered pulled in the first place. In the case of the United States of America, the [Fifth Amendment to the Constitution](#) mandates that "no person shall be deprived of life, liberty, or property without due process of law."

This amendment is a protection of a timeless principle of liberty and justice. In fact, due process as a check on monarchical power was included in the Magna Carta of 1215. This list of grievances and demands codified the king's obligation to obey written laws or be punished by his subjects. Article 39 of the Magna Carta says: "No freemen shall be taken or imprisoned or disseised [dispossessed] or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."□□

Over the years, the Magna Carta was occasionally revised and amended. In 1354, the phrase "due process of law" appeared for the first time. The [Magna Carta as amended in 1354](#) says: "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."□□ This fundamental restraint on the royal presumption of the power to lop off heads on command was incorporated by our Founders in the Bill of Rights, particularly in the Fifth Amendment.

President Obama's nearly daily approval of drone-delivered assassinations is an effrontery to over 650 years of our Anglo-American law's protection from autocratic decrees of death without due process of law. When any president usurps the power to place names on a kill list and then have those people summarily executed without due process, he places our Republic on a trajectory toward tyranny and government-sponsored terrorism.□□

Of course, it would be another matter if those targeted and executed by the president were armed enemy combatants — they were not. Were these suspected "militants" enemy soldiers captured during wartime, they would be necessarily afforded certain rights granted to POWs.

Those slated for assassination are not allowed any rights — neither the due process rights given to those accused of crimes nor the rights of fair treatment given to enemies captured on the battlefield. The White House has assumed all power over life and death and created *ex nihilo* a new category of individual — one deprived of all rights altogether.

In [a memo released earlier this year by the Obama administration](#), the Justice Department insists that such life or death decisions will be handled by "an informed, high-level official of the U.S. government."

In his [response to the president's policy speech](#), Senator Rand Paul (R-Ky.) referenced this process. "I'm



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glad the President finally acknowledged that American citizens deserve some form of due process. But I still have concerns over whether flash cards and PowerPoint presentations represent due process; my preference would be to try accused U.S. citizens for treason in a court of law,” Paul said.

The American Civil Liberties Union echoed that concern when it [wrote in its own response](#), “We continue to disagree fundamentally with the idea that due process requirements can be satisfied without any form of judicial oversight by regular federal courts.”

Both statements recognize that meetings in the White House — regardless of how “high-level” the attendees — are hardly sufficient to protect the due process rights of Americans. Due process requires that the suspected terrorist “co-belligerent” be charged with a crime, allowed to answer those charges, and defend himself against those charges before an unbiased judge in court.

The memo argues that such constitutional procedures must be by-passed in the name of national security, arguing that the safety of America is more important than the constitutionally protected rights of one individual. Furthermore, the memo claims that only those who pose an “imminent threat of violent attack against the United States” will be targeted.

When White House Press Secretary Jay Carney was asked by a reporter to explain how 16-year-old Abdulrahman al-Awlaki qualified for government-sanctioned murder according to the guidelines set forth in the memo, Carney was stumped. “I’m not going to talk about individual operations that may or may not have occurred,” he responded.

Now that the White House has admitted to killing the young al-Awlaki, what clever words will hid this perfidy now?

Abdulrahman al-Awlaki was killed in October 2011, and to date the Obama administration has never informed the country of any wrongdoing by this teenager, other than being related to a man (his father, Anwar al-Awlaki) who posted on the Internet anti-American videos that allegedly influenced others to commit crimes. A government-sanctioned assassination of such an individual is repugnant to all those who cherish life, liberty, and the due process that protects them.

An additional denial of due process came from the fact that no known attempt was ever made to capture this young man and take him into U.S. custody.

Of course, that could be because he might actually have ended up in a court of law if he had been apprehended; and President Obama, a former lawyer, knows that trials can be long, messy, and unpredictable. It is much quicker and cleaner just to launch a missile and kill someone without going through the hassle of due process.

Curiously, however, and without a hint of irony or sarcasm, President Obama said in his May 23 speech that he has a “strong preference for the detention and prosecution of terrorists.”

Certainly half of that statement is true. The president does have an abiding determination to detain prisoners. The prison at Guantanamo Bay, Cuba remains open despite his pre-election 2008 promise to shutter it should he become president.

As for the second half of his sentence, however, the president has repeatedly — whether himself or through surrogates — fought to keep accused terrorists out of U.S. courtrooms. And, regardless of his words, his actions testify of his preference for putting names on a kill list then ordering drone strikes to carry out the fatal fiat.

Finally, at the end of his address, President Obama eloquently called for a “refutation of fear.”



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Ironically, again, it is the very specter of harm from nameless, faceless “extremists” — whether “homegrown” or foreign — that he uses to justify the denial of due process.

Over and over, President Obama plays the fear card, believing that it trumps our dedication to honoring the Constitution and the timeless principles of liberty and justice that it is meant to preserve.

When it comes to reaffirming the fundamental right of due process and proclaiming an unswerving commitment to upholding our constitutional values regardless of the threat, President Obama’s speech was full of sound and fury signifying nothing.

Photo of President Obama at the National Defense University: AP Images

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