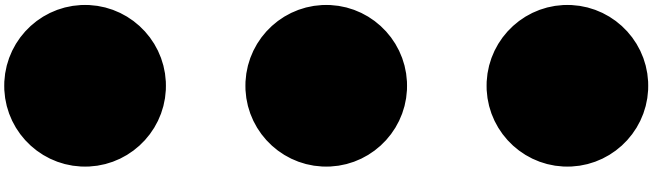
Written by **Joe Wolverton, II, J.D.** on May 11, 2023

Texas House Passes No-knock Raid Restrictions

The Texas House of Representatives last week passed legislation restricting the use of no-knock search warrants. The bill now goes to the state Senate for its consideration.

Here's a quick background of the measure, as reported by *Reason*:

> H.B. 504, which state Rep. Gene Wu (D–Houston) introduced last November, passed the House by a vote of 104–33. It would require that all applications for no-knock warrants be approved by the police chief or a supervisor he designates. Municipal court judges who are not state-licensed attorneys generally would not be allowed to approve no-knock warrants. The officers serving the warrant would have to be in uniform or "otherwise clearly identifiable" as police.



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In an interview with Houston Public Media published online, state Rep. Wu revealed his impetus for supporting the bill.

"No-knock warrants are really dangerous, they're just a bad policy," Wu said, as reported in the article. "There's no reason that you can't announce that it's the police coming into your door in the middle of the night.… Once the homeowners thought that their doors were being kicked down by home invaders, they started firing and the police responded in kind, and we simply can't have that."

While the bill being considered by the Texas state Senate defines no-knock raids pretty succinctly, the definition is not the issue. The biggest problem with this tactic — one so egregiously used that several states have curtailed or prohibited its use by law enforcement — is how often no-knock warrants have been used by police to devastating effect.

The first and most important thing to remember considering the controversy surrounding these raids by law enforcement is the black-letter text of the Fourth and Fifth Amendments. The Fourth Amendment reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment, in relevant part, reads:

> No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The deprivation by local law enforcement of the fundamental rights protected by these amendments is becoming increasingly common. There is nothing more fundamental to the pursuit of justice than due process, and there is no principle suffering from more sustained attacks on all fronts.

Due process is a concept with a very long and distinguished pedigree in Anglo-American jurisprudence.

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.

William Blackstone, one of the men most often quoted by our Founding Fathers, said that the denial of due process "would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation."

Alexander Hamilton, echoing Blackstone, defended the protections against denial of due process in the Constitution, insisting that there were "no greater securities to liberty and republicanism" in any other constitution.

In the case of *Huckle v. Money* (1763), the English court expressed the preeminence of the so-called castle doctrine: "To enter a man's house by virtue of a nameless warrant, in order to procure evidence, is worse than the Spanish Inquisition; a law under which no Englishman would wish to live an hour."

As the execution of these no-knock warrants typically — almost always — occurs at private homes, the centuries-old maxim of "a man's home is his castle" is made irrelevant when the police come not to execute the law, but to violate its most sacred and timeless tenets.

The Texas measure would, as explained earlier, allow for a very few, limited exceptions to the prohibition on no-knock raids.

One can reasonably imagine a situation where it would be illogical and contrary to public safety for law enforcement to announce themselves. However, breaking in to a home at 3 a.m. and throwing flash-bang ordnance in order to possibly find a person who allegedly sold meth to a meth addict being paid by police to give them tips is hardly one of those situations.

Finally, regardless of the procedure leading to the greenlighting of such a raid, this exercise of arbitrary and excessive force is carried out by police who these days are outfitted more like soldiers than law-enforcement officers, driving vehicles that look more like panzers than patrol cars.

Where the police were once the servants of the people and the law, often today's officers wield weapons that are more at home on a battlefield than a boulevard, and are employing tactics more appropriate to prosecuting a war than serving a warrant.

No-knock raids should be opposed by all Americans, as they are a significant denial of due process, the very protection of our rights from government infringement.

The bill is waiting for the state Senate to take up, and, if passed, from there will head to the desk of Governor Greg Abbott for his signature.