



Written by [Joe Wolverton, II, J.D.](#) on January 8, 2013

## Forget Due Process: 15 Dead in Pakistan from U.S. Drone Attack

Another day in Pakistan brings another day of skies torn by screaming Hellfire missiles launched from U.S. drones.

Early Sunday morning, a barrage of missiles obliterated villages in the tribal region of South Waziristan. [Reports indicate](#) that 10 “militants” were killed and five others were injured in the attack.

The [Express Tribune quotes a regional government official](#) saying that 10 missiles were fired at three separate “militant compounds” in the Babar mountains in the Shak Toi area of South Waziristan.



According to the story in the *Express Tribune*, the victims were allegedly members of the Punjabi Taliban, an organization affiliated with the Tehreek-e-Taliban Pakistan (TTP) and al-Qaeda.

In a statement to the *Tribune*, an unnamed security official reported that among the dead was 26-year-old Wali Muhammad, “senior aide to TTP commander Qari Hussain.”

And, as has become standard operating procedure for the aftermath of a U.S. drone attack, the corpses have been neither accurately numbered nor named.

“We are trying to ascertain the identities of the others but the bodies have been burnt very badly,” the unidentified official said in the *Express Tribune* report. He added that “the death toll may rise, given that there were more militants present in the compounds.”

Sunday’s strike was the third such attack of the new year. On January 3, seven “militants” were killed in the Wana subdivision of the Sara Kanda area.

Earlier that day, five other purported threats to U.S. national security were assassinated by agents of the federal government in a drone strike in the Mir Ali area of North Waziristan.

There are so many problems — moral and legal — with this administration’s obsession with murder by remote control that it is hard to know where to begin.

First, while the president and his surrogates poison the well with words such as “militant” and “terrorist,” the wise will not drink the Kool-Aid. Not a single victim of these drone attacks has ever been charged with a crime or given the opportunity to answer the allegations made regarding his potential threat to the national security of the United States. That is called due process and it is as dead as the thousands of people killed on order of President Obama.

There is a salient question that the president would likely laugh at were it to be posed to him: Where is the constitutional authority for creating and issuing these kill orders?

The presidential presumption of authority to issue an autocratic order of a lethal drone strike rightly worries many constitutionalists and friends of liberty. Many critical questions remain unasked and



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unanswered.

For example, why can't these alleged "terrorists" be tried in our federal court system? For decades those accused of terroristic crimes have been formally charged with those crimes, had those charges heard before an impartial federal judge, and been permitted to mount a defense to those crimes.

In fact, a survey of such trials conducted by [Human Rights Watch](#) reported that "Federal civilian criminal courts have convicted nearly 500 individuals on terrorism-related charges since 9/11."

Add to this the story of Timothy McVeigh, who was [executed in June 2011](#) for the Oklahoma City bombing, the worst terrorist act on American soil until 9/11. Extending the full panoply of due-process rights — including a trial in federal court — did not allow McVeigh or other convicted terrorists to evade justice. Furthermore, the purpose of protecting and providing civil liberties to those accused of crimes is not to set the guilty free, but to avoid punishing the innocent who are wrongly accused of crimes.

And should the president suggest that alleged evildoers cannot be apprehended, he should be reminded that "public enemy number one" Osama bin Laden was reportedly tracked and overtaken by a U.S. special operations team. Why could other less high-value targets not be similarly found by the military? Although bin Laden was reportedly killed in the raid, there is every reason to believe that a team skilled in this type of operation could have captured him alive if those had been the orders they were following.

Once in the custody of the United States, these suspects could be brought to stand trial for their alleged crimes. This would preserve, protect, and defend the fundamental concept of due process, one of the pillars of liberty upon which our Constitution is built.

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 that says in relevant part: "No person shall ... be deprived of life, liberty, or property, without due process of law."

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 despotic 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 — but 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



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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 rights altogether.

Since 2006, there have been [2,623 people killed in Pakistan](#) without charge, trial, or recognized legal and constitutional justification.

Although Pakistan has demanded that the United States cease the drone attacks within its sovereign borders, the Obama administration has ignored this request; in fact the number of drones in the air, missiles fired by them, and the body count all continue to increase under orders issued by Barack Obama.

The acceleration of the drone war in Pakistan (and Yemen, Afghanistan, and North Africa) is irrefutable evidence that President Obama holds the governments of those nations in such low regard that he believes he needs neither their permission nor their assistance. The president's unrestrained use of unmanned drones to target, track, and kill those branded as enemies of the state is unlikely to abate despite the crescendo of criticism at home and abroad of his administration's serial assassination program.

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