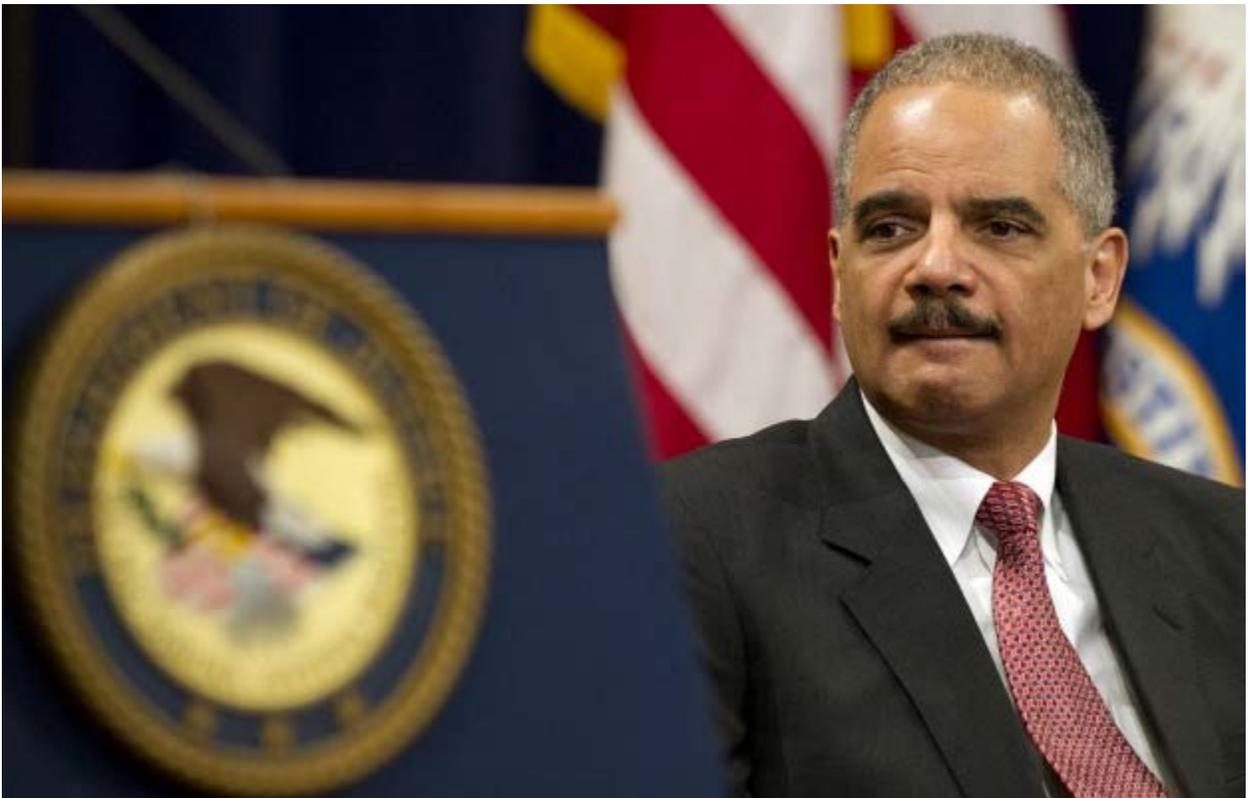


Obama's Kill Doctrine

BY JONATHAN TURLEY | MARCH 6, 2012

Trust us, Attorney General Eric Holder says -- we'll only assassinate Americans after administrative "due process." **That's not how the Constitution works, buddy.**



On Monday, March 5, Northwestern University School of Law was the location of an extraordinary scene for a free nation. U.S. Attorney General Eric Holder **presented** President Barack Obama's claim that he has the authority to kill any U.S. citizen he considers a threat. It served as a retroactive justification for the slaying of American-born cleric Anwar al-Awlaki last September by a drone strike in northeastern Yemen, as well as the targeted killings of at least two other Americans during Obama's term.

What's even more extraordinary is that this claim, which would be viewed by the Framers of the U.S. Constitution as the very definition of authoritarian power, was met not with outcry but muted applause. Where due process once resided, Holder offered only an assurance that the president would kill citizens with care. While that certainly relieved any concern that Obama, or his successor, would hunt citizens for sport, Holder offered no assurances on how this power would be used in the future beyond the now all-too-familiar "trust us" approach to civil liberties of this administration.

In his speech, Holder was clear and unambiguous on only one point: **"The president may use force abroad against a senior operational leader of a foreign terrorist organization with which the United States is at war -- even if that individual happens to be a U.S. citizen."** The use of the word "**abroad**" is interesting because senior administration officials have previously asserted that the president may kill an American anywhere and anytime, including within the United States. Holder's speech does not materially limit that claimed authority, but stressed that "our legal authority is not limited to the battlefields in Afghanistan." He might as well have stopped at "limited" because the administration has refused to accept any limitations on this claimed inherent power.

Holder became highly cryptic in his assurance that caution would be used in exercising this power -- suggesting some limitation that is both indefinable and unreviewable. He promised that the administration would kill Americans only with **"the consent of the nation involved or after a determination that the nation is unable or unwilling to deal effectively with a threat to the United States."** He did not explain how the nation in question would consent or how a determination would be made that it is "unable or unwilling to deal" with the threat.

Of course, the citizens of the United States once consented on a relevant principle when they ratified the Constitution and later the Bill of Rights. They consented to a government of limited powers where citizens are entitled to the full protections of due process against allegations by their government. That is clearly not the type of consent that Holder wants to

revisit or discuss. Indeed, he insisted that "**a careful and thorough executive branch review of the facts in a case amounts to 'due process.'**"

Holder's new definition of "due process" was perfectly Orwellian. While the Framers wanted an objective basis for due process, Holder was offering little more than "**we will give the process that we consider due to a target.**" And even the vaguely described "**due process**" claimed by Holder was not stated as required, but rather granted, by the president. Three citizens have been given their due during the Obama administration and vaporized by presidential order. Frankly, few of us mourn their passing. However, due process appears to have been vaporized in the same moment -- something many U.S. citizens may come to miss.

What Holder is describing is a model of an imperial presidency that would have made Richard Nixon blush. If the president can kill a citizen, there are a host of other powers that fall short of killing that the president might claim, including indefinite detention of citizens -- another recent controversy. Thus, by asserting the right to kill citizens without charge or judicial review, Holder has effectively made all of the Constitution's individual protections of accused persons matters of presidential discretion. These rights will be faithfully observed up to the point that the president concludes that they interfere with his view of how best to protect the country -- or his willingness to wait for "**justice**" to be done. And if Awlaki's fate is any indication, there will be no opportunity for much objection.

Already, the administration has successfully blocked efforts of citizens to gain review of such national security powers or orders. Not only is the list of citizens targeted with death kept secret, but the administration has insisted that courts do not play a role in the creation of or basis for such a list. Even when Awlaki's family tried to challenge Obama's kill order, the federal court declared that the cleric would have to file for himself -- a difficult task when you are on a presidential hit list. Moreover, any attorney working with Awlaki would have risked being charged with aiding a terrorist.

When the applause died down after Holder's speech, we were left with a bizarre notion of government. We have this elaborate system of courts and rights governing the prosecution and punishment of citizens. However, that entire system can be circumvented at the whim or will of the president. The president then becomes effectively the lawgiver or lifetaker for all citizens. The rest becomes a mere pretense of the rule of law.

Holder was describing the very model of government the Framers denounced in crafting both the Constitution and Bill of Rights. James Madison in particular warned that citizens should not rely on the good graces and good intentions of their leaders. He noted, "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." The administration appears to have taken the quote literally as an invitation for unlimited authority for angels.

Of course, even those who hold an angelic view of Obama today may come to find the next president less divine. In the end, those guardian angels will continue to claim to be acting in the best interests of every citizen -- with the exception, of course, of those citizens killed by them.