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From [Counter Punch](#) | Original Article

If the Constitution is to have any relevance, and if America is to remain a free society, then there is really no alternative: there must be a bill of impeachment drawn up and submitted in the House, and there must at least be a hearing on that bill in the House Judiciary Committee.

The disclosure, by NBC, of a so-called “white paper” by the White House offering the legal justification for the executing of American citizens solely on the authority of the executive branch and the president exposes a White House so blatantly in violation of the Constitution that it simply demands such a hearing.

As Juan Cole explains clearly in an essay in [Informed Comment](#), there are five ways that the white paper authorizing executive execution of Americans violates the Constitution. These, he explains, are:

1. There has to be an actual crime for there to be a punishment, and this paper authorizes execution without any crime.

2. If, as the letter suggests, the president’s authority to order executions without trial derives from the 2001 Authorization for Use of Military Force (AUMF) passed by the Congress, that would constitute a so-called *bill of attainder*, which he explains is a declaration that a certain

person or class of people (i.e. terrorists in this case) are *prima facie*

guilty of a crime. But as he notes, the Constitution specifically outlaws bills of attainder, saying in Article 1, Section 9, “No Bill of Attainder or ex post facto Law will be passed...”

3. The letter violates the separation of powers, according the president the powers of executive, legislature and judiciary.

4. The letter violates the Sixth Amendment in the Constitution’s Bill of Rights, which guarantees everyone the right to a “speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.” Needless to say, an execution ordered by the president skips all of this.

Reliance on the AUMF for presidential executions such as that of American citizen Anwar al-Awlaki and his 16-year-old son means that President Obama, like President Bush before him, is claiming that the whole world (including the US) is a battlefield, and that he therefore has the absolute authority as Commander in Chief, to kill anyone, anywhere in the world, that he deems to be an enemy or a threat. But such a concept is a complete violation of international law and sovereignty as defined by the UN Charter, a solemn treaty to which the US is a signatory, making it a fundamental part of US law.

There is no way around it. This president is a grave violator of the law and of the US Constitution. Like George W. Bush before him, it is incumbent upon the Congress to establish whether his transgressions rise to the level of an impeachable offense.

I know, as the author of the book [\*The Case for Impeachment\*](#) (St. Martin’s Press, 2006), that this is a stretch demand. President Bush and his consigliere Vice President Dick Cheney were both serially in violation of the law and the Constitution, and the Democrats who controlled both houses of Congress back then, despite the Quixotic efforts of myself and others like former Congresswoman Liz Holtzman and fellow journalist John Nichols, failed to challenge either of them. At the time, I wrote that failure to hold Bush and Cheney to account for their outrages would mean a subsequent president could commit the same crimes with impunity.

President Obama has proved me correct.

Even though the House is now under the control of the opposition party, there is not the slightest sign that any member of either the Republican or Democratic Party dares to put forward a bill of impeachment. Democrats are unwilling to challenge the head of their party, while Republicans, chastened by the disaster that their petty impeachment of President Bill Clinton caused them, are afraid to get burned again.

But make no mistake. The abuse of power — and the assumption by a president of the absolute, unchallengeable right to execute an American citizen, or anyone, actually, citizen or not — by a president is a big step towards tyranny which, if unchallenged, is hard to step back from.

President Clinton fatally undermined the ancient common law right of habeas corpus in 1995. Nobody challenged him because he said it was a matter of fighting “terrorism.” Bush and Cheney gave us war without end and a global battlefield to fight it in, again raising the boogeyman of terrorism. Nobody challenged them. Now Obama is executing American citizens on his own authority, and even claiming the right to delegate that authority to his subordinates in the Executive branch. Once again the excuse is terrorism.

If these keeps up, the idea of a free society will be gone entirely.

Terrorism is not the threat. Passivity in the face of encroaching tyranny is.

Remember, those ever-multiplying drones that are flying now all over Africa, Asia and the Middle East, spying on the activities of the peoples of many nations and blowing up men women and children by the hundreds, are already coming back here to America. Mark my words: just like the violations of our vaunted freedoms enumerated above, these drones, which will first be used to monitor and spy on our hitherto Constitutional protected activities, will eventually carry the same Hellfire missiles that have been blowing up men women and children in Pakistan, Afghanistan, Yemen, Libya and Somalia, and will begin blowing us up here in America too.

It's only a matter of time.

If you think that is hyperbole, just imagine back to the year 2000, and try to recall if you ever could have imagined the US as a nation where the president could just order the termination of an American citizen or a 16-year-old kid on his own whim, or maintain a lengthy "kill list" in the Oval Office.

Supreme Court Justice Antonin Scalia has famously declared that the Constitution is not a living document, but rather a "dead" one. In saying that, he was trying in his inelegant way to suggest that it should not be interpreted in the light of current society but only can be what its authors intended. If President Obama is not challenged by an impeachment effort for his violations of the Constitution, that document may be far more dead than even Justice Scalia imagines.