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Obama Copying Bush-era Detention Policies

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The neo-conservative *Wall Street Journal* published two editorials February 9 about the Obama administration's progressive lurch back toward the blatant Bush-era attack on the Bill of Rights, titling a house editorial "[Dick Cheney's revenge.](#)"

The theme of the editorial was that Obama has adopted Cheney's policies on national security, and that this was a good thing and evidence that Obama had matured in office [because](#) “political and security realities are forcing Mr. Obama's antiterror policies ever-closer to the former Vice President's. In fact, the President's changes in antiterror policy have never been as dramatic as he or his critics have advertised.”

A companion op-ed by columnist William McGurn [trumpeted](#) “This weekend, Americans were treated to something new: Barack Obama defending his war policies by suggesting they merely continue his predecessor's practices. The defense is illuminating, not least for its implicit recognition that George W. Bush has more credibility on fighting terrorists than does the sitting president.”

McGurn's words were deceptive, as Obama [was talking primarily about](#) Bush policies before 9/11 – and not after 9/11 – [in the conversation McGurn mentioned](#). But for the most part, the *Wall Street Journal's* assessment of Obama copying the Bush administration's attacks on the Bill of Rights hit the mark.

President Obama opened his presidency with a pledge to close Guantanamo Bay prison within a year, but the *Wall Street Journal* has noted: “Mr. Obama's deadline has come and gone, and Guantanamo remains open.” Obama has indeed continued to detain those at Guantanamo without trial, even though many of those tortured there have proven to be innocent like Omar Deghayes. (Deghayes was permanently blinded by his American torturers. See video below.)

The *Wall Street Journal* and President Cheney have long cheered the kind of “enhanced interrogation” torture that Deghayes endured. Moreover, they oppose the criminal trials that would have segregated innocents like Deghayes from the actual terrorists at Guantanamo. The *Journal* noted that Obama's reluctance to close Guantanamo was due “in part [to] political opposition from Americans — including many Congressional Democrats — who understandably do not want terrorists in their backyards.”

Understandable, they wrote. Maybe it has become “understandable” to the new totalitarian inhabiting the White House, since the *Journal* correctly noted that after Obama took office “the Justice Department quietly went to court and offered the same legal arguments the Bush Administration made, among them that the President has the power to detain enemy combatants indefinitely without charge.” There will be more innocents tortured under Obama like the innocents under Bush, such as Omar Deghayes, [Khalid el-Masri](#) of Germany, and [Maher Arar](#) of Canada. The names will be different, but the injustice will be the same.

The Constitution is not unclear about what the federal government is prohibited from doing. The [Fifth Amendment](#) prohibits indefinite detention without charges explicitly: “No person shall ... be deprived of life, liberty, or property, without due process of law.” The [Sixth Amendment](#) requires a jury trial (even if it's in a military court): “In all criminal prosecutions, the accused shall enjoy 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.” That means the trial must take place in New York City, where the crime of the September 11 attacks was committed.

Some people claim that the protection of basic rights in the U.S. Constitution applies only to citizens, and that this justifies indefinite detention of foreign detainees who are essentially outside of the protection of the law. But if they ever took the trouble to read the U.S. Constitution and the Bill of Rights, they'd find that they do not grant rights but protect rights that everyone — citizens and foreigners — already have because those rights were endowed by their Creator. The Constitution and Bill of Rights were written to limit the government, and the restrictions on the government are categorical. Those restrictions use absolute words like “all criminal prosecutions” and “no person,” not leaving an exception for “citizens” only.

The *Wall Street Journal* takes a step further and advises Obama to turn the United States into a full-fledged Soviet Republic, [stressing](#) that jury verdicts should have no impact on whether the U.S. should continue to hold detainees:

In the event of an acquittal or an overturned conviction, it would be entirely legitimate under the laws of war to continue holding KSM and the others as enemy combatants. But this

would defeat the moral rationale of a trial and require the Administration to explain why it was continuing to detain men whose guilt it had failed to establish in court.

The *Journal* is also impressed with Obama's acceleration of Bush administration war-mongering. "He has also ramped up drone strikes against al Qaeda and Taliban operatives in Pakistan," the *Journal* noted, turning the Bush administration's two wars in the Middle East effectively into four wars.

The *Wall Street Journal* [summarizes](#) the issue not as one where politicians are bound to follow the Constitution and its unequivocal mandate to give everyone in prison a trial, but rather in terms of crass political party manoeuvrings: "As long as George W. Bush and Dick Cheney were responsible for keeping Americans safe, Democrats could pander to the U.S. and European left's anti-antiterror views at little political cost. But now that they are responsible, American voters are able to see what the left really has in mind, and they are saying loud and clear that they prefer the Cheney method."

The *Journal* gets most of it wrong. Those who love the Constitution's protection of basic rights are not all on "the Left" or "Democrats" — indeed, many on the Left have no problem violating such protections when they are in power, as the Obama administration demonstrates. But in one respect, they are talking about an irrefutable truth. Obama is no better than Bush in following the strict dictates of the U.S. Constitution, and is in some ways worse. Obama has indeed favored the unconstitutional Cheney method thus far.