

## The Enablers

Police State Powers granted by the US Congress in September 2001

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Four years ago, the United States was hit by a terrorist attack. Three days later, the U.S. Congress signed away the people's freedom, writing a blank check for tyranny to a ludicrous little man installed in office after the most dubious election in American history. Last week, the poisonous after-effects of this abject surrender took yet another sinister turn, as Bush factotums in the courts once again upheld the Leader's arbitrary power over the life and liberty of his subjects.

The joint House-Senate resolution of Sept. 14, 2001 — approved by a combined vote of 518-1 — gave President George W. Bush the most sweeping powers ever granted an American leader. Bush was authorized to use "all necessary and appropriate force" against any organization or individual that he alone declared was somehow connected to the Sept. 11 attacks. His arbitrary will would be the sole deciding factor. This timorous resolution was, in effect, a repeal of the Magna Carta: the nobles of the land giving back hard-won rights to a harsh, incompetent despot.

A few critical voices at the time — this column among them — noted the dangers of this panic attack among the political elite. "We must now trust that this man who can't hold his liquor will be able to hold near-absolute power without getting drunk on it," we wrote on Sept. 21, 2001. There was of course no basis for that trust, and it was immediately betrayed. The Bush Faction seized upon the congressional resolution as an "Enabling Act" justifying a broad range of unconstitutional measures, including torture, kidnappings, mass roundups, secret hearings, secret prisons, arrests without charge, indefinite detention, kangaroo courts, "extrajudicial killings" and, finally, aggressive war.

In a series of secret "executive orders" and Justice Department memos, the Bush Faction overturned the Constitution and established a new authoritarian principle of state: The president, they said, was not bound by any domestic or international law in his prosecution of the "war on terror." And this "war" — an inchoate, amorphous concept covering a multitude of sins — was founded upon the carte blanche of Sept. 14.

With Congress in headlong retreat from its responsibilities, the last bulwark against the floodtide of junta rule is the federal courts. But these, of course, are now packed with Bush Family retainers and Reaganite reactionaries, eager to serve the Leader. Last week, for the second time in three months, a Bush judicial minion under consideration for a Supreme Court post issued a key ruling upholding the president's dictatorial powers, The Washington Post reports.

First it was chief justice nominee John Roberts, who was already interviewing for a high

court seat when he pleased his masters by ruling that Bush had the arbitrary power to create his own parallel justice system — the “military tribunals” for his Terror War captives — and run it as he sees fit. Now comes Judge J. Michael Luttig, appointed by Bush I and one of Bush II’s leading candidates for the other open Supreme slot. Luttig has authored an appeals court decision that strikes even deeper at the dying hulk of American liberty, ruling that Bush can imprison U.S. citizens indefinitely without charge or trial. All the Leader need do is make a bald assertion of evil-doing, which the defendant is not allowed to challenge or dispute; indeed, the captive is not even allowed to appear in court.

This was the infamous case of Jose Padilla, the Chicago street punk seized in a blaze of publicity about a “dirty bomb” plot in 2002. When the “dirty” scenario was exposed as Bushist fantasy by U.S. intelligence, the feds then accused Padilla of vague plans to blow up apartment buildings somewhere. Whatever. Luttig, perhaps with judicial Valhalla in his sights, ruled that Bush could keep Padilla — and any other American arbitrarily designated an “enemy combatant” — in prison, without charges or trial, for the duration of the “war on terror.” And how long might that be? Vice President Dick Cheney told us in October 2001 that the war “may never end, at least not in our lifetime.” And the Leader himself declared on Aug. 7, 2002: “There’s no telling how many wars it will take to secure freedom in the homeland.” Not just indefinite but infinite detention, in other words.

So where did Luttig find the “authority” for this breathtaking despotism, which far outstrips any power held by King George III, the oppressor whose depredations sparked the American Revolution? Not in the legal code. Not in the Constitution. Certainly not in the Magna Carta. No, he cited the trusty Enabling Act of Sept. 14.

Let’s not forget one salient point. The federal government already possessed sufficient powers to find and punish all those involved in the Sept. 11 attack. (Indeed, so draconian were the government’s existing powers that Republican leaders spent the 1990s rightly resisting Bill Clinton’s attempts to expand them.) Just a few years before, the government had tracked, arrested, tried — in open court — and convicted an international band of Islamic extremists who had bombed the World Trade Center. And for decades, U.S. presidents have launched an endless series of military incursions in the name of defending American security.

Thus, the Sept. 14 resolution was not necessary for the government to respond with “all necessary and appropriate force” to Sept. 11. However, it was necessary — indeed, indispensable — for an unpopular, illegitimate regime to put its radical agenda of military aggression, unrestricted corporate predation and elitist rule into practice. No doubt we’ll see this Enabling Act invoked more and more as the unpopular Bushist Faction faces a rising tide of public dissent and dissatisfaction. Padilla may soon have plenty of company in his infinite legal limbo.

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