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Government Supremacists: Neocons, the National Security New Dealers



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However, I think it still explains what is happening to our country right now. The assault on our Constitution and Bill of Rights has been a sustained and relentless attack over many years by fake "conservatives" and their Democratic fake opponents. Recent events, such as the enactment of the

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Military Commissions Act, are merely more of the same.

Dana Milbank's recent article "A War of Words: 'Declare' vs. 'Make' and Its Allies" correctly points out how John Yoo and the rest of the neo-conservative cabal, misquoting its originators, are engaged in a thinly veiled rewriting of our Constitution to turn Congress into a mere debating society and, at most, a rubber stamp.

But like most such commentators and like all of the great 9/11 federal court decisions, Milbank ignores the full scope of the pending destruction of our liberty by acting as if the only constitutional principle that is in danger is the separation of powers. From the *Pacific* and *Hamdi* cases (U.S. citizens declared enemy combatants) right down to the NSA spying controversy, the mainstream political and legal talking heads only debate whether Congress needs to give its approval before the president can act in these ways, and then whether Congress has given that approval.

While separation of powers is certainly important, our form of government is foremost one of limited and enumerated powers. That fact is further enshrined by an expressed Bill of Rights that both clarifies the limited nature of our federal government (through the Ninth and Tenth Amendments) and serves as a final shield to our lives, liberty, and property through its clear procedural protections. And it is that principle of limited powers and our Bill of Rights that is now on the execution block with the so-called opposition on the left acting as accomplices, since they only insist on their preference for a role for Congress and the courts in an otherwise totally unrestrained "wartime" federal government.

The Government Supremacists

The first step toward wisdom is to call something by its rightful name. Men such as John Yoo, Jay Bybee, Viet Dinh, and the other Bush legal theorists are not just executive supremacists who think that the president, as commander in chief, is unrestrained by Congress or the courts. They are, in fact, **government supremacists** who believe that our federal government (in whole or in part) when it claims to act in wartime, is entirely free of the restraints of the Bill of Rights, or of any of the other constraints within the main text of the Constitution, since those are "peacetime provisions only" and simply do not apply to the war on terror, because America is a battlefield and our government can treat us, the American people, precisely the same as it treats enemy aliens on a foreign battlefield. This underlying premise that U.S. citizens can be the "enemy" in wartime is the fundamental legal doctrine behind the detention of citizens as enemy combatants and the claimed power of the president to spy on the American people without a warrant.

A Dime's Bit of Difference?

The left and right differ only on what part of the federal government gets to decide when we are stripped of our constitutional protections. Certainly, many liberals disagree about particular policies, such as some of the provisions of the Patriot Act, the invasion of Iraq, rendition for torture, and the manner of confinement and treatment of abu Ghraib and Guantanamo. But we are concerned here with the constitutional law claim that we the people can be treated like the enemy at all. The right insists the president can do it entirely on his own, while the left insists that he must have the blessings of Congress and/or the courts before he spies on us, interns us in military briggs or concentration camps, tortures us for information (or renders us to a foreign nation to do that) or have us tried by a hand-picked military tribunal in a show trial before having us shot (if we get a trial). In the *Hamdi* decision, the Supreme Court agreed with the government and the opposition by ruling that, once accused of being an enemy combatant (terrorist), a citizen has none of the expressed protections of the Bill of Rights, such as a right to an indictment, to a jury trial with the presumption of innocence, to confront one's accusers, or the prohibition against compelled self incrimination (torture). But after finding that Congress has authorized such detention of citizens, the court then created a role for judges in this new system where the judges will "balance" our liberty against national security and grant us whatever minimal procedural protections they deem proper and expedient as the war on terror evolves (but never a trial by jury, and no presumption of innocence, of course).

With the federal government now nearly totally unrestrained by the Constitution, so long as it evokes national security, all that separates us from becoming the next addition to history's totalitarian parade of horrors is a matter of degree defined by whatever political checks remain (until a future catastrophic terrorist attack) with no other peaceful method left to us to bind down our own government, since the chains of the Constitution Jefferson urged us to use will have been destroyed.

Our nation is perilously close to becoming a democratic dictatorship where, as Alexis de Tocqueville warned, we may delude ourselves into believing we are free because from time to time we chose our otherwise unrestrained rulers. All other constraints on government power, save voting, will have been wiped away.

The Neo-Con National Security New Dealers

The neoconservatives have thus done the New Dealers and their heirs one better. Certainly from the time of the New Deal, the federal government has been freed from most of the chains of the Constitution through expansive readings of the power to regulate commerce, the destruction of the non-delegation doctrine, and the resultant de-facto federal police power used against us by unelected bureaucrats in administrative agencies. The Supreme Court also gutted the Tenth Amendment by declaring it an empty "truism" and nullified the Ninth Amendment by acting as if our rights came from the court rather than from God as the Founders believed. (What the court has the power to grant, it has the power to take away.)


However, the rest of the Bill of Rights remained as clear, written limits on federal power. The court has since chipped away at many of the remaining provisions, such as with the recent *Kelo* decision which made meaningless the Fifth Amendment takings clause. But the procedural protections that remain are still powerful constraints on government deprivation of life and liberty. Even with the New Deal and all of the assaults on the Bill of Rights since, government must still act according to a law (or at least a regulation), must still get a warrant in most cases, must still secure indictment with clear charges, and must afford us a jury trial with all of its ancient protections of the accused, such as presumption of innocence.

It is these last procedural protections of the Bill of Rights (along with the First and Second Amendments) that the neo-conservative government supremacists now seek to destroy to attain their dream of unrestrained, unlimited "war" power in a loosely defined war on terror, a war that will likely never end. And the loyal opposition only insists on a role for politicians and wilful judges in this murder of the Bill of Rights, trusting only in the god of democracy and the high priests on the federal bench to secure our lives and liberty. Our Constitution and our Bill of Rights have been largely abandoned by both the Republicans and the Democrats.

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-conservatives, also known as ave threat to our constitutional republic. Stewart Rhodes.

Posted by Stewart Rhodes at 10:11 PM 

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