

# The Erosion of Democracy and Freedom in America

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On December 8, 1941, President Franklin Roosevelt addressed the US Congress the day after the Japanese attacked Pearl Harbor. He said that “date....will live in infamy” because of what the naval and air forces of the Empire of Japan did. Two and one-half months later on February 19, 1942, FDR himself committed an infamous act signing into law Executive Order 9066 which authorized the internment of 120,000 Japanese civilians, two-thirds of whom were US citizens. These Americans committed no crimes and were only “guilty” of being of Japanese ancestry and thus by presidential edict were judged potential enemies of the state. Because of FDR’s action, these otherwise ordinary peace-loving Americans lost all their sacred constitutional protections including habeas corpus and their rights of trial by jury and to own and keep their property. They also lost all their other freedoms and were treated like criminals. They were sent against their will to concentration camps where they were interned for the duration of the war until 1946.

It should be noted no similar action was taken against white German Americans. It seems the Japanese then were more guilty of their skin color and race than their country of national origin. The US Supreme Court agreed in their 1944 landmark *Korematsu v. United States* decision in which a Court majority ruled military necessity justified their internment. Justice Frank Murphy and two other Justices disagreed denouncing the decision. In Justice Murphy’s dissent, he said this act amounted to the “legalization of racism.” It took until 1988 for the US Congress to undue this presidential act of infamy and High Court approval of it. It then passed Public Law 100-383 apologizing to those internees still living and their families, provided reparations for them (too late and far too inadequate), and created a public education fund to “inform the public about the internment of such individuals so as to prevent the recurrence of any similar event (ever again).”

Dare anyone suggest members of the 109th Congress have an immediate and urgent need for an industrial strength dose of its own re-education program. On two late September, 2006 days of infamy, the US House and Senate passed and sent to President Bush for his certain signature the Military Commissions Act of 2006 appropriately called “the torture authorization bill.” This clear unconstitutional act gives the administration extraordinary powers to detain, interrogate and prosecute alleged terror suspects and anyone thought to be their supporters. The law grants the executive branch (specifically President Bush) the extraordinary right to label anyone anywhere in the world an “unlawful enemy combatant” and gives him the legal right to arrest and incarcerate them indefinitely in military prisons. Persons liable will include anyone who even innocently contributes financially to a charitable organization thought to be associated with any nation or group the US believes supports terrorist or hostile actions against the US. On September 27 and 28, 2006, freedom and justice effectively died in the US, and no one will be secure anywhere in the world as long as this act is the law of the land. One day it will be repealed – if the republic survives long enough to do it which now is very much in question.

US citizens are not exempted from this law with one important exception – for now at least. Because of the June, 2004 Supreme Court *Hamdi v. Rumsfeld* decision, citizens of this country legally still retain their legal right to file a writ of habeas corpus if arrested and detained. This means they must be charged with a crime, be tried and allowed the right to appeal any conviction in a US court of law. But even this remaining right now hangs by a weak thread as the case of Jose Padilla shows. He's a US citizen who was seized at Chicago's O'Hare Airport having no weapons, declared an "enemy combatant" and held in military confinement with no ability to challenge his confinement in court. The Supreme Court refused to hear his case effectively giving the president the power to seize other citizens, subject them to the same abuse with no redress and thereby neutralize anyone's habeas rights.

But it may get even worse than that if, or more likely when, another major "terrorist" attack occurs on US soil, which some experts believe is a certainty. Congress could then suspend habeas rights for everyone or the president could do it by executive order in the name of national security. If it happens, democracy will likely give way to martial law, the suspension of the constitution, and echos of Benjamin Franklin's words at the close of the Constitutional Convention in 1787 will be heard. At that time, he reportedly said in answer to whether the nation now had a republic or a monarchy: "A republic, if you can keep it." We hardly need wonder what he'd say today.

#### Provisions in the Military Commissions Act

Some of the key elements of the Military Commissions Act are as follows:

- It annuls the right of habeas corpus for all non-US citizens and applies it retroactively to all current detainees at Guantanamo and elsewhere. Article 1, Section 9 of the US Constitution specifically says: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." This provision is now constitutionally null and void for all non-US citizens and nearly so for those of us who are.
- It empowers the president with authority to decide what constitutes torture, effectively legalizing this act of barbarism henceforth against any detainee anywhere including US citizens.
- It grants US officials, including CIA operatives, retroactive immunity from prosecution for having authorized the use of torture or directly committed acts of it.
- It prohibits detainees from invoking the protections of the Geneva Conventions or using them in any US court. These conventions are binding international laws and thus the supreme law of the land. No longer with the passage of this act.
- It gives the chief executive authority to interpret and apply the Geneva Conventions according to his sole judgment.
- It grants the president the right to convene military commissions to try "unlawful enemy combatants" and gives the chief executive broad latitude to decide on his sole authority whomever he wishes to so-designate and for whatever reason.
- It allows civilians to be tried by military commissions and not in a civilian court of law and

limits the rights of detainees to be represented by the counsel of their choice.

- It allows no guarantee trials will be conducted within a reasonable time.
- In violation of binding international law, it permits torture-extracted evidence to be used against the accused in a trial.
- It allows the use of classified evidence to be used but not to be made available to be challenged by defendants.
- It permits hearsay evidence and coerced testimony to be used.
- It allows military commissions to impose death sentences.
- It allows indefinite and secret detentions.

On September 21, 2001, Amnesty International faxed a letter to George Bush in the aftermath of the 9/11 attack. It urged the president to respect human rights and the rule of law in whatever response was to be undertaken. Specifically it said: "In the wake of a crime of such magnitude, principled leadership becomes crucial....We urge you to lead your government to take every necessary human rights precaution in the pursuit of justice." Five years later, Amnesty concluded "its appeal fell on deaf ears. The past five years have seen the USA engage in systematic violations of international law, with a distressing impact on thousands of detainees and their families." Amnesty cited the following violations:

- secret detentions
- enforced disappearances
- the use of torture and other cruel and degrading treatment
- outrages of personal dignity including humiliating treatment
- denial of habeas rights
- indefinite detentions without charges or trials
- prolonged detentions incommunicado
- arbitrary detention
- unfair trial procedures

Amnesty accused the Bush administration of hypocrisy saying that while claiming the US is a "nation of laws" adhering to the "rule of law," it practices the very policies it condemns. It said this administration's "interpretation of the law has been driven by its policy choices rather than a credible postulation of its legal obligations." It cynically interprets US and international law any way it chooses and as such acts outrageously and in contempt of all legal standards and norms. Amnesty also stated that by having passed the Military Commissions Act, the Congress has allowed thousands of detainees to remain in indefinite detention without charge or trial and to be legally subjected to the worst kinds of abuses. It said "Congress has failed these detainees and their families. Those defending human rights should be prepared for a long struggle."

## The Long Struggle to Save the Republic Has Begun

By its legislative action prior to recessing for the November congressional elections, the 109th Congress will forever live in infamy. It shamelessly sunk to its lowest yet depths in pledging its fealty to a morally depraved president who believes no one has the right to challenge his authority, champions the use of torture, defies constitutional and international laws and norms, (law or no law) conducts secret surveillance through warrantless wiretaps or any other means, and believes dissent is an act of terrorism. In brazen defiance of over 200 years of governance under the rule of constitutional law, this Congress and president have made a mockery of every norm and standard the Founders stood for and handed down to us for posterity – if we could keep it.

By their actions, this body has shaken the very foundation of the republic. It gave the president near-unlimited authority to act as he chooses in the name of national security as he defines it. It simply means the rule of law effectively has been abolished and ordinary people no longer have constitutionally protected rights. For now, US citizens still have the right of habeas corpus, but it, too, may be taken from us in the name of national security. How low we've now sunk in coming so far.

In his 1935 novel, *It Can't Happen Here*, Sinclair Lewis showed it most certainly can happen here. He wrote about a charismatic senator who becomes president, claims to be a reformer and a champion of the common man. It's all cover to hide his alliance with the corporate interests of his day and the support of religious extremists he appeals to. Instead of serving the people he denies them their rights. He then takes full advantage of the Great Depression economic crisis to support a strong military and pass unconstitutional laws during a national emergency. He further convenes military tribunals for civilians and calls dissenters unpatriotic and even traitors. Sound familiar?

Anyone reading this book will be scared wondering if it really can happen here. Anyone living in the surreal age of George Bush and his out-of-control extremist neocon administration knows it already has, and we haven't yet found a way to stop it. This is no time for complacency. We are all now "enemy combatants."

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