

Subject: [NucNews] FW: A Banana Republic?

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Subject: A Banana Republic?

The American Empire: A Banana Republic?

by Francis Boyle

25 January 2002

Undoubtedly, the further expansion of the American Empire and Pax Americana abroad will require the further imposition of an American police state here at home. As the Romans discovered, an Empire is incompatible with a Republic. No point would be served here by reviewing the extensive literature that was generated during the Vietnam War comparing the United States with the Imperial Athenian Democracy during what Thucydides denominated the "Peloponnesian War" that really extended over 30 years. Yet the Bush Jr. administration is publicly and shamelessly promising us a war against terrorism without a conceivable end in sight. Not even the proverbial light at the end of the tunnel.

Bush Jr.'s Constitutional Coup D'État

From the Supreme Court's installation of Bush Jr. as President to the Ashcroft/Federalist Society post-September 11 regime of police state "laws," the politico-legal functioning of America is increasingly resembling that of a Banana Republic. Since September 11th, we have seen one blow against the U.S. Constitution after another. For example, Attorney General John Ashcroft unilaterally instituted the monitoring of attorney-client communications despite the Fourth Amendment ban on unreasonable searches and seizures without a warrant and the Sixth Amendment right to representation by Counsel. He just went ahead and did it, without even bothering to inform anyone.

Nearly 1200 aliens have been picked up and "disappeared" by Ashcroft and his Department of Injustice. The American People have no idea where most of these people are. They are being held on the basis of immigration law, not criminal law, for a period of detention which has not been defined. The phenomenon of "disappearances" is considered a crime against humanity by the Statute for the International Criminal Court.

It appears that many of these aliens have been deprived of their basic human rights to consular notification and access as set forth in the Vienna Convention on Consular Relations, which even the U.S. State Department concedes constitutes binding customary international law. Apparently Bush Jr.'s left hand does not care about what his right hand does. Yet another international convention to which the U.S. is a contracting party set at naught.

The one characteristic these detained foreigners have in common is that they are mostly Muslims, Arabs, and Asians. Everyone needs a scapegoat for the 11 September tragedy, and it looks like we have one, both at home and abroad. Thousands more aliens are being moved into the pipeline for the Ashcroft gulag.

Ashcroft is now planning to reinstate the infamous COINTELPRO Program, whose atrocities against the civil rights and civil liberties of the American People have been amply documented elsewhere.

It is just a matter of time before the Bush Jr. Leaguers unleash the newly-augmented powers of the FBI, CIA and NSA directly against the American People. And we already have 2 million Americans rotting away in prison -- the highest rate of incarceration in the world, a disproportionate majority of whom are Americans of Color. For People of Color the American Police State has already arrived!

Ashcroft's Police State

This brings the analysis to the Ashcroft Police State Act. There are no other words to describe it. While Bush failed to get a formal declaration of war that would have rendered him a constitutional dictator, clearly Attorney General John Ashcroft and his right-wing Federalist Society lawyers took every piece of regressive legislation off the shelf, tied it all into what they called an anti-terrorism bill, and then rammed it through Congress, giving it the appropriately Orwellian name of the USA Patriot Act.

According to one report, Ashcroft's first draft would have had Congress suspend the ancient Writ of Habeas Corpus -- the necessary prerequisite for creating a police state in the United States of America. Many Members of Congress publicly admitted that they did not even bother to read the Ashcroft Police State Act. Another Congressman said basically: "Right, but there's nothing new about that."

Interestingly enough the so-called liberal Democrats in the House and the Senate were willing to give Bush Jr. and Ashcroft more police state powers than the conservative Republicans in the House. But there are no real differences that matter between Republicans and Democrats when it comes to promoting America's "Manifest Destiny" to control the World and now Outer Space too.

Bush's Kangaroo Courts

It would take an entire law review article for me to analyze all the constitutional and legal problems with the Bush Jr.'s proposed military commissions. Here a cabal of Federalist Society Lawyers in the White House got President Bush to sign an Executive Order which, if implemented, would be widely recognized to constitute a grave breach of the Geneva Conventions and establish a *prima facie* case of criminal accountability against the President himself.

It is emblematic of this particular war that right towards its very outset President George W. Bush personally incriminated himself under both international criminal law and United States domestic criminal law. The Bush Jr. administration has severely undermined the

integrity of the Four Geneva Conventions of 1949. By doing this, the Bush Jr. administration has opened up U.S. Armed Forces around the world to similar reprisals.

As a licensed attorney for 25 years, a law professor for 23 years and someone who has done a good deal of criminal defense work in U.S. Federal Courts, I am deeply disturbed by the insinuation of these White House Federalist Society Lawyers that America's Federal Courts established by Article III of the U.S. Constitution cannot hold accountable those responsible for the crimes of 11 September 2001. This is an insult to all Federal Judges, Federal Prosecutors, Federal Public Defenders and all the lawyers who are Officers of these Courts.

In one fell stroke these White House Federalist Society lawyers have besmirched and undermined the integrity of two Branches of the United States Federal Government established by the Constitution -- the Presidency and the Judiciary. So far the U.S. Congress has supinely gone along with the Bush Jr. police state agenda.

If and when these Bush/Ashcroft police state practices make their way to the U.S. Supreme Court, many of them will probably be upheld. After all, a 5 to 4 majority of the Supreme Court already gave the Presidency to Bush Jr. with questionable propriety. We need to seriously consider whether they would prohibit laws which would give Bush Jr. a Police State as well.

Philosophers have taught that a people get the type of government they deserve. If the American People permit the Bush Jr. Leaguers to impose a Police State at home in the name of furthering Pax Americana abroad, we will have deserved it by abnegating our responsibilities as citizens living in what is supposed to be a constitutional Republic with a commitment to the Rule of Law. The same thing happened to the Romans and to the Athenians. The United States of America is not immune to the laws of history. *Sic transit gloria mundi!*

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See Also:

- Rome Statute of the International Criminal Court
 - Part 2 - Jurisdiction, Admissibility and Applicable Law
 - Article 7 - Crimes against humanity, Paragraph 1:
For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - a. Murder;
 - b. Extermination;
 - c. Enslavement;
 - d. Deportation or forcible transfer of population;
 - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental

- rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i. Enforced disappearance of persons;
 - j. The crime of apartheid;
 - k. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- Vienna Convention on Consular Relations and Optional Protocols , U.N.T.S. No: 8638-8640, vol. 596, pp. 262-512, 4/24/63
- The Ashcroft police state bill, "USA Patriot Act" otherwise known as:
 - "H.R. 3162 To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes"**
 - cited as "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," 10/26/2001, Public Law No: 107-56.
 - Go to [http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR03162:\[TOM:/bss/d107query.html\]](http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR03162:[TOM:/bss/d107query.html]) and select the <Text of Legislation> link (at the bottom). If the above fails, go to: <http://thomas.loc.gov/home/terrorleg.htm> and select the <HR3162> link.
- Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating To The Protection Of Victims Of International Armed Conflicts (Protocol I)
 - (From Tufts University Edwin Ginn Library's Multilateral Conventions organized by subject)
- Regarding the **Federalist Society** see:
 - "The Federalist Society, The Conservative Cabal That's Transforming American Law" by Jerry Landay, *The Washington Monthly*, March 2000
<http://www.washingtonmonthly.com/features/2000/0003.landay.html>
 - Provocation 101, he Federalist Society on American's Campuses.
 - "The Federalist Society: From Obscurity to Power," People For the American Way, Aug 1, 2001
 - "Hijacking Justice - The Federalist Society, a Right-wing network of lawyers, judges and supporters, is undoing civil rights and other gains made through the courts," by George E. Curry & Trevor W. Coleman, *Emerge*, October 1999
<http://www.ratical.org/ratville/CAH/hijakjustice.html>
 - NARAL Memorandum to Interested Parties regarding Federalist Society, May 22, 2001
http://www.naral.org/mediaresources/fact/pdfs/federalist_memo.pdf
- A Coup against the American Constitution, Francis A. Boyle Interview, 11/14/01
- The Federalist Society: Hijacking Justice, by George Curry & Trevor Coleman, 10/99
- The F Word, Michael Ruppert, 11/20/01
- Kangaroo Courts: Boyle v Gonzales, Francis Boyle, 11/30/01
 - Boyle Interview: In Name of Security, Thousands Denied Constitutional Rights, 11/01

<http://www.ratical.org/ratville/CAH/fab012502.html>