How Not to Celebrate Liberty

American history can be described as an endless tension between the nation's ideals and its practices, with hypocrisy often winning out over principle – and those contradictions are most obvious when the nation celebrates its liberties while betraying them, both today and in the past, William Loren Katz notes.

By William Loren Katz

When the National Defense Authorization Act cleared Congress on Dec. 15, 2011, some critics noted the irony of the date, the 220th anniversary of the ratified Bill of Rights.

Instead of celebrating those old promises of "speedy" trials and no "cruel and unusual punishments," Congress sent a bill to President Barack Obama with language authorizing him and his successors to order indefinite detentions under draconian conditions. (Obama signed the NDAA into law on Dec. 31, though expressing "serious reservations" about those provisions.)

But it was not the first time that the United States has desecrated the anniversary of a founding document. A similar defiling of American principles occurred in 1876, during the centennial year celebrating the signing of the Declaration of Independence with its lofty commitment to "self-evident" truths, that "all men are created equal endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the Pursuit of Happiness."

In that celebratory year of 1876, powerful figures of the U.S. government sided with an unholy alliance of northern railroad builders and land speculators, unrepentant former southern slaveholders and assorted white supremacists, and their obedient lobbyists and media.

What followed was a severe and simultaneous assault on the basic rights of Native Americans and African-Americans, sending the country careening in a new direction.

This fateful change began in late June 1876 as Americans prepared a massive coast-to-coast July Fourth celebration. But as the bunting went up, as bands rehearsed and as corks began to pop, shocking news arrived from the Little Big Horn, a remote area in what is today southeastern Montana.

A force of about 2,000 Lakota and Cheyenne commanded by Sitting Bull, Crazy Horse and Rain In the Face had surrounded Lt. Col. George Armstrong Custer and a contingent of 226 men in his Seventh Cavalry. In a battle that became known as

Custer’s Last Stand, not one Bluecoat survived.

Though the U.S. reaction to Custer’s annihilation was one of righteous fury, the truth was that the dashing, brilliant and somewhat arrogant officer was not ambushed while on some peaceful mission. Instead, he was seeking to open the Black Hills of South Dakota to gold prospecting by whites. Custer also was set on teaching the Indians a lesson and making a media splash during the summer’s Presidential nominating conventions.

If facts and reason had ruled, the reaction of U.S. government officials would have been anger toward Custer. On his own, he chose to ignore the U.S. Treaty of 1868 stating that “no white person or persons shall be permitted” to “enter” the Black Hills.

Custer knew the Lakota loudly proclaimed this was their sacred ground. He was aware that President Ulysses S. Grant publicly pledged, “it is secured to the Indians.” Yet, Custer chose to ignore Sitting Bull’s flat warning, “If the whites try … I will fight.”

The dashing officer whom Native Americans called “Long Hair” relied on what he called “Custer luck.” And his “luck” may have survived the battle even though he didn’t. Instead of censure for his flouting of treaties and other government promises not to mention his exceptionally poor military judgment U.S. political leaders embraced Long Hair as a martyr to Indian savagery.

U.S. government officials rose not to castigate Custer but to demand revenge for this defeat of national power. Politicians cagily added, for the benefit of land-hungry easterners, it was time for Indians to surrender their lands. In the centennial Fourth of July celebrations, public grief mixed with greed, anger and glorification, and behind closed doors, leading politicians and generals planned to complete the grim work Custer had begun.

By mid-July, War Department orders nullifying the Treaty of 1868 sent General William Sherman riding off with a mandate to treat Lakota reservation families as belligerents or prisoners of war. By mid-August, U.S. officials demanded the Lakota surrender their Black Hills and Powder River lands. U.S. troops began a march that would not stop until the Wounded Knee massacre in December 1890.

Sitting Bull seemed to sense the inevitable outcome in 1877 when he spoke to fellow commanders at the Powder River Council. He began by recalling the earliest white invaders as “small and feeble when our forefathers first met them, but now great and overbearing.”

Then he began to speak of the whites’ character, explaining: “Strangely enough, they have a mind to till the soil, and the love of possession is a disease in

them. These people have made many rules that the rich may break, but the poor may not. They have a religion in which the poor worship, but the rich will not!

“They even take tithes from the poor and weak to support the rich and those who rule. They claim this mother of ours, the Earth, for their own use, and fence their neighbors away from her, and deface her with their buildings and their refuse.”

Sitting Bull reached a despairing conclusion: “We cannot dwell side by side. Only seven years ago we made a treaty by which we were assured that the buffalo country should be left to us forever. Now they threaten to take that from us also. My brothers, shall we submit? Or shall we say to them: ‘First kill me, before you can take possession of my fatherland!'”

End of Reconstruction

With some minor alterations Sitting Bull’s words could have been addressed to African-Americans of that era. In the southern states, African-Americans faced a powerful planter class committed to white supremacy and to regaining control of those they had recently enslaved.

Determined to cast off northern Reconstruction which had deployed federal troops to protect the rights of African-Americans, the plantation owners saw their chance in November 1876 when a disputed presidential election left the country in turmoil. A special federal commission equally divided between Democrats and Republicans reached a “bargain” that forever changed racial relations.

The commission awarded the White House to Republican candidate Rutherford Hayes who, in turn, promised to recall the last federal troops from the South. In that simple decision, the party of Lincoln which had emancipated the slaves and enacted three new constitutional amendments guaranteeing the rights of African-Americans handed the welfare of the former slaves back to their former masters.

Southern legislatures swiftly moved to install new rules of white supremacy that effectively nullified emancipation, made a mockery of the new amendments, and locked free women and men into a new form of slavery. For generation after generation and through two world wars a regional one-party white dictatorship governed the states of the old Confederacy. Black families were reduced to landless peasants.

Southern bigots who controlled the Democratic Party also used their political clout to advance white supremacy nationally. Southern politicians made sure no national anti-lynching bill passed Congress. A policy of official terror reigned. Night riders killed black leaders, attacked schools, churches and communities.

U.S. presidents after 1876 made no significant effort to ensure that the constitutional rights of people of color were enforced in the southern states (until the civil rights movement of the 1950s and 1960s).

Native Americans suffered a similar fate. The U.S. Supreme Court declared Indians “wards of the state” who must bow to rule by the U.S. cavalry and accept a culture imposed from outside. President Chester Arthur’s Secretary of the Interior indicated what was on the way when he announced that his plan for Native Americans would outlaw customs deemed “contrary to civilization” and ban traditional ceremonies, dances and songs.

In 1887, Congress mounted a multi-pronged attack on Indigenous life through Sen. Henry Dawes’s General Allotment Act. First, the law mandated the largest American property transfer in history. In less than half a century, Indigenous Americans lost two-thirds of what they still owned 90 million acres of land. Many became landless peasants in the home of their ancestors. Though some plots passed to eager white homesteaders, the largest gainers were railroad builders and unscrupulous speculators.

Sen. Dawes claimed to be speaking for a superior, wiser and triumphant Christian nation when he explained that his aim was to civilize and reform the “savages.” Indians had to “learn selfishness” and this meant “cultivate the ground, live in houses, ride in Studebaker wagons, send children to school, drink whiskey, and own property.”

In the name of a grand march toward white, Christian ideals and the sanctity of private property, the Dawes Act declared its goal of assimilation and education by requiring the end of Native American identity, religion and society.

The Act authorized placement of Native children in schools run by Protestant missionaries. In those schools, brother was separated from brother, sister from sister, and children were kept from those who spoke their language. Contacts that reinforced their parents’ heritage were banned. Severe punishment awaited anyone speaking a Native American language. Far from home and family, children were taught to embrace the values of Christianity and private ownership.

Lest pupils slip back to “Indian ways” with their parents during summers, they were apprenticed to Christian families in order to practice hard work, discipline and “American values.” In Indian schools or white homes, children often suffered abuse that was largely unreported and rarely corrected.

By 1889, Commissioner of Indian Affairs Thomas Jefferson Morgan exultantly announced a great victory over Native Americans their “socialism destroyed.” Then he offered new goals and new threats:

“The Indians must conform to ‘the white man’s ways’ peaceably if they will, forcibly if they must. They must adjust themselves to their environment and confirm their mode of living substantially to our civilization. … They cannot escape it, and must either conform to it or be crushed by it.”

As the Bureau of Indian Affairs moved to control Native American life in the West, southern planters pursued a similar path regarding African-Americans. The tools were legally imposed segregation and discrimination laws passed by state legislatures.

These laws were buttressed by a new form of slavery known as the “convict lease system” in which courts sentenced thousands of innocent men to labor for southern planters, mine companies, railroads and local governments. In addition, there was the extra-legal terror of lynching.

Southern legislatures quickly moved to deny African-Americans the right to vote, hold office, bring suit or testify against whites in court, serve on juries, or exercise other human rights. Independent farmers lost their land, communities lost schools, and the skilled and professional people of color were restricted to their own communities. Families and the young began to lose hope.

Then in 1896 in the Plessey case, the Supreme Court voted 8-1 to make segregation the “law of the land.”

In 1903, Justice Edward White, forever proud he rode with the Ku Klux Klan, wrote the majority opinion in the Lone Wolf (Kiowa) case. Indian treaties could be broken by Congress, he proclaimed, “if consistent with perfectly good policy toward the Indians.” Seven years later, White was elevated to Chief Justice where he lived out his life deciding what was legal and constitutional. He died in 1921.

Beginning in that fateful year of 1876, African-Americans and Native Americans learned again that the words of the Declaration of Independence and the Constitution did not apply to them.

One of the gifts I received as an historian was an attractively encased red, white and blue Centennial banner. In it, 1776 appears on the top left with 1876 on the top right, and a large “United We Stand” is the center. What irony!

This essay is adapted from William Loren Katz’s landmark book, *Black Indians: A Hidden Heritage* [New York, Atheneum Publishers, the revised and expanded 2012 edition] His website is WILLIAMLKATZ.COM

Web Sites Protest ‘Anti-Piracy’ Bills

Exclusive: An unprecedented protest is sweeping the Internet against proposed U.S. legislation that critics contend goes too far in punishing Web sites where copyrighted content might get posted. Wikipedia and other major Internet sites have blacked out pages as a warning of what the laws might cause, Lisa Pease reports.

By Lisa Pease

I watched in awe Tuesday night as the Web started to go dark. Sites around the Internet suddenly sported black backgrounds or big black redactions to protest SOPA, the Stop Online Piracy Act, and PIPA, the Protect IP Act. Both acts are designed to prevent online theft of intellectual property (from written works to software, music, video and types of content).

Wikipedia, perhaps the most visited site on the Internet, has blacked out the pages of most search results to display a message asking us to “Imagine a World Without Free Knowledge.” Dozens of other sites, like DailyKos, MichaelMoore.com and others are sporting black pages or blotches and links to online petitions to tell Congress not to pass SOPA and PIPA. Even the non-American-based *Reporters sans Frontieres*has blacked out the English version of its site, Reporters without Borders, in protest.

The most surprising protester of all is Google. While other sites are largely funded by individuals on a donation basis, Google is a publicly held corporation. To see the single most used search engine in the world take up this cause is impressive. And while some are heartened by this, others, such as Creative America, think this is a bad sign. (Creative America is a front group for the major entertainment corporations seeking to protect their companies from the damage of piracy.)

As a content producer myself, I am fully in support of anti-piracy legislation that makes sense. But the large-scale protests are a clear sign that the legislation has gone too far. SOPA and PIPA do not target the content pirates. They target instead the sites where piracy has the ability to take place.

It would turn Web site developers into content police, and should they miss a step, it gives the U.S. government the power to shut down the site, force advertisers off the site, intercept payments to the site, and more.

What makes this kind of legislation such a bad idea is that anyone can then force a site they don’t like off the Internet simply by posting stolen content

there and pointing it out to the authorities. Suddenly, hidden hands could take down some of the most popular and useful sites by deliberately planting illicit material.

If you think that sounds paranoid, review the history of the FBI's COINTELPRO operations in the 1960s, where the FBI infiltrated and sabotaged peace groups (which J. Edgar Hoover thought were Communist efforts) and MHCHAOS, the CIA's own program to disrupt leftists and peace activists during the 1960s and 1970s.

Via YouTube today, you can watch some amazing documentaries that tell the truth about parts of history that we have not been accurately informed about via the mainstream media. For example, you can view a documentary in which British and Israeli leaders discuss how during the 1956 Suez Canal crisis, a three-state pact between Britain, France and Israel caused Israel to attack Nasser's Egypt to give Britain and France the excuse to seize control of the canal to "protect" the Egyptians from the Israelis.

If someone didn't want you to see this history, anyone could post illegal content, bring it to the attention of authorities, and essentially bring down the entire YouTube site via this legislation. All advertising revenue would be cut off. Internet providers in the U.S. would block the site. And the millions who make money from their little YouTube videos would suddenly be out of their own income streams.

A way to protect intellectual property needs to exist. But SOPA and PIPA are not that way. They go too far and don't offer appropriate steps for remediation. If someone has posted pirated content, that individual, not the site itself, should be held responsible.

I'm always shocked when people think nothing of copying an album for a friend, copying a DVD of a film and distributing it to others, and even giving out homemade copies of software that is not specifically designated as freeware. This is theft, and I call others on it. They say oh, my little copy is not hurting anyone's business. But when five million people are saying and doing the same thing, yes, they most definitely are.

I wish there was a way to stop *that* kind of piracy, because it really does cut into the ability of content producers to make a decent living at something people clearly find enjoyable or useful enough to steal. *But this legislation isn't it.*

If you have a site and want to join the protest today, see http://sopastrike.com/ for more information. And if you haven't signed a petition yet, why not?

Lisa Pease is a writer who has examined issues ranging from the Kennedy assassination to voting irregularities in recent U.S. elections.

The Gulag That Is Gitmo

Still under powerful neocon influence and fearing the old “soft on terror” label Congress has blocked President Obama’s efforts to close “the gulag at Guantánamo,” forcing Obama to retreat from his promise to Americans and an outraged world, as Marjorie Cohn notes.

By Marjorie Cohn

Travelers to Cuba and music lovers are familiar with the song “Guantanamera”, literally, the girl from Guantánamo. With lyrics by José Martí, the father of Cuban independence, “Guantanamera” is probably the most widely known Cuban song.

But Guantánamo is even more famous now for its U.S. military prison. Where “Guantanamera” is a powerful expression of the beauty of Cuba, “Gitmo” has become a powerful symbol of human rights violations, so much so that Amnesty International described it as “the gulag of our times.”

That description can be traced to January 2002, when the base received its first 20 prisoners in shackles. General Richard B. Myers, chairman of the Joint Chiefs of Staff, warned they were “very dangerous people who would gnaw hydraulic lines in the back of a C-17 to bring it down.”

We now know that a large portion of the 750 plus men and boys held there posed no threat to the United States. In fact, only five percent were captured by the United States; most were picked up by the Northern Alliance, Pakistani intelligence officers, or tribal warlords, and many were sold for cash bounties.

The Guantánamo story starts in 1903, when the U.S. Army occupied Cuba after its war of independence against Spain. The Platt Amendment, which granted the United States the right to intervene in Cuba, was included in the Cuban Constitution as a prerequisite for the withdrawal of U.S. troops from the rest of Cuba.

That provision provided the basis for the 1903 Agreement on Coaling and Naval Stations, which gave the United States the right to use Guantánamo Bay “exclusively as coaling or naval stations, and for no other purpose.”

In 1934, President Franklin D. Roosevelt signed a new treaty with Cuba that allows the United States to remain in Guantánamo Bay until the U.S. abandons it

or until both Cuba and the United States agree to modify their arrangement. According to that treaty, “the stipulations of [the 1903] agreement with regard to the naval station of Guantánamo shall continue in effect.”

That means Guantánamo Bay can be used only for coaling or naval stations. Additionally, article III of the 1934 treaty provides that the Republic of Cuba leases Guantánamo Bay to the United States “for coaling and naval stations.” Nowhere in either treaty did Cuba give the U.S. the right to utilize Guantánamo Bay as a prison camp.

It is no accident that President George W. Bush chose Guantánamo Bay as the site for his illegal prison camp. His administration maintained that Guantánamo Bay is not a U.S. territory, and thus, U.S. courts are not available to the prisoners there. But, as the Supreme Court later affirmed, the United States, not Cuba, exercises exclusive jurisdiction over Guantánamo Bay.

Amanda Williamson, a spokeswoman in the Red Cross’ Washington office, noted that prisoners at Guantánamo “have been placed in a legal vacuum, a legal black hole.” Amnesty International went further, noting an obvious gap between U.S. rhetoric and practice: “Given the USA’s criticism of the human rights record of Cuba, it is deeply ironic that it is violating fundamental rights on Cuban soil, and seeking to rely on the fact that it is on Cuban soil to keep the U.S. courts from examining its conduct.”

Although the Convention Against Torture, a treaty the United States has ratified, forbids the use of coercion under any circumstances to obtain information, prisoners released from Guantánamo have detailed assaults, prolonged shackling in uncomfortable positions, sexual abuse, and threats with dogs.

Mustafa Ait Idr, an Algerian citizen who was living in Bosnia when he was sent to Guantánamo, charged that U.S. military guards jumped on his head, resulting in a stroke that paralyzed his face. They also broke several of his fingers and nearly drowned him in a toilet. Mohammed Sagheer, a Pakistani cleric, claimed the wardens at Guantánamo used drugs “that made us senseless.”

French citizen Mourad Benchellali, released from Guantánamo in July 2004, said, “I cannot describe in just a few lines the suffering and the torture; but the worst aspect of being at the camp was the despair, the feeling that whatever you say, it will never make a difference.” Benchellali added, “There is unlimited cruelty in a system that seems to be unable to free the innocent and unable to punish the guilty.”

Australian lawyer Richard Bourke, who has represented many of the men

incarcerated at Guantánamo, charged that prisoners have been subjected to “good old-fashioned torture, as people would have understood it in the Dark Ages.” According to Bourke, “One of the detainees had described being taken out and tied to a post and having rubber bullets fired at them. They were being made to kneel cruciform in the sun until they collapsed.”

Abdul Rahim Muslimdost, an Afghan who was released from Guantánamo in April 2005, said he suffered “indescribable torture” there.

U.S. and international bodies have verified reports of torture and abuse. Physicians for Human Rights found that “the United States has been engaged in systematic psychological torture of Guantánamo detainees” at least since 2002.

FBI agents saw female interrogators forcibly squeeze male prisoners’ genitals and witnessed detainees stripped and shackled low to the floor for many hours. In February 2006, the United Nations Human Rights Commission reported that the violent force-feeding of detainees by the U.S. military at Guantánamo amounts to torture.

The very existence of the Guantánamo prison camp harms America’s international reputation. A January 2005 editorial in *Le Monde* concluded, “The simple truth is that America’s leaders have constructed at Guantánamo Bay a legal monster.” Moreover, it has created more enemies of the United States. Writing for the *New York Times*, Somini Sengupta maintained that Guantánamo Bay has been a setback in the war on terror insofar as it has “emerged as a symbol of American hypocrisy.”

The list of Guantánamo critics is a long one. Archbishop Desmond Tutu dubbed it a stain on the character of the United States. Former U.N. Secretary General Kofi Annan said the United States must close the camp as soon as possible.

The Economist called for the facility to be dismantled, described the treatment of the prisoners there as “unworthy of a nation which has cherished the rule of law since its very birth,” and claimed it “has alienated many other governments at a time when the effort to defeat terrorism requires more international co-operation in law enforcement than ever before.”

The National Lawyers Guild, Association of American Jurists, Inter-American Commission on Human Rights, and Amnesty International have all called for closing the prison camp and releasing or charging prisoners with criminal offenses in accordance with international legal norms.

In addition to legal and political problems with Guantánamo, there are enormous human costs to consider. Attorney Joseph Margulies has been to death row in six states and watched his client be executed. But as he noted, “I have never been

to a more disturbing place than the military prison at Guantánamo Bay. It is a place of indescribable sadness, where the abstract enormity of ‘forever’ becomes concrete: this windowless cell; that metal cot; those steel shackles.”

Indeed, Army Col. Terry Carrico, the first warden at Guantánamo, complained that when he was there, the men were held in “basically outdoor cages,” adding, “It’s what you would normally find in a veterinarian’s facilities to hold animals.” Carrico said “very few” of the men imprisoned during his tenure had useful intelligence. He favors closing Guantánamo, but doubts that will ever happen.

President Barack Obama said a year ago that he was committed to closing Guantánamo because it was a symbol that was “probably the No. 1 recruiting tool” on terrorist websites. But Obama signed the National Defense Authorization Act (NDAA), which bars any transfer of detainees to U.S. prisons, even for trial.

The act also restricts the President’s authority to transfer detainees to other countries. Of the 171 men remaining at Guantánamo, 89 have been cleared for release by a review conducted by the CIA, FBI, military, and Department of Homeland Security. But those men will likely die at Guantánamo because Obama refused to put the brakes on Congress’s use of the issue as a political football in the NDAA.

In a recent op-ed in *The New York Times*, Harvard lecturer Jonathan M. Hansen wrote, “It is past time to return this imperialist enclave to Cuba,” adding, “It has served to remind the world of America’s long history of interventionist militarism.”

Obama should heed Hansen’s words. For the abiding presence of the Guantánamo gulag is not simply illegal and immoral. It also continues to be a symbol of U.S. hypocrisy, and makes us a target for more terrorist attacks.

Marjorie Cohn is a professor at Thomas Jefferson School of Law and past president of the National Lawyers Guild. Her most recent book is The United States and Torture: Interrogation, Incarceration, and Abuse. See her blog: www.marjoriecohn.com. .

Ron Paul’s False Founding Narrative

Exclusive: Rep. Ron Paul and other right-wingers have lured many average Americans into their camp by creating a false narrative about America’s Founding, claiming that the drafters of the Constitution wanted a weak central government. But that’s not the real history, Robert Parry writes.

By Robert Parry

Ron Paul, the libertarian congressman from Texas who has topped 20 percent in the first two Republican contests, is fond of claiming that the U.S. Constitution was written "to protect your liberty and to restrain the federal government," thus making modern laws – from Social Security, to civil rights statutes, to health-care reform – unconstitutional. But that isn't really true.

While the framers of the Constitution in 1787 undeniably cared about liberty at least for white men they were also practical individuals who wanted a vibrant central government that would enable the new nation to protect itself both militarily and economically, especially against European rivals.

The broad powers that the Constitution granted Congress were designed to let this central government address national problems that existed then as well as others that would arise in the future. For instance, the Constitution gave control over interstate commerce to Congress in order to counter economic advantages enjoyed by foreign competitors.

Far from Paul's assertions that the Founders wanted a weak central government, the Founders at least those at the Constitutional Convention in Philadelphia understood that a great danger came from having a national authority that was too weak, what they had experienced under the Articles of Confederation, which governed the nation from 1777 to 1787.

The Articles of Confederation embraced the concept of state "sovereignty" and called the United States not a government or even a nation, but "a firm league of friendship" among the states. The Confederation's Article II declared: "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated." And very few powers were delegated to the federal government.

The result had been severe problems for the young country, ranging from the failure of states to make voluntary contributions in support of the Continental Army to opening regional divisions that foreign rivals could exploit.

So, in 1787, the framers of the Constitution – led by Gen. George Washington, James Madison and others in the Virginia delegation – scrapped the Articles and put forward a very different plan, eliminating state sovereignty and creating a strong central government with broad powers, including control over "interstate commerce."

The Commerce Clause wasn't some afterthought, either. It was part of the original proposal outlined on the Constitutional Convention's first day of substantive business on May 29, 1787. The Virginia delegation had one of its

members, Edmund Randolph, include it in his opening presentation.

Virginia's plan laid out the framework that would later become the U.S. Constitution, transferring sovereignty from the 13 original states to "we the people of the United States" as represented by a new national Republic.

Economic Strategies

Beyond giving the central government authority over the common defense, foreign policy and currency – as well as its own taxing power – the Founders also recognized the need to coordinate American commerce so it could compete effectively with Europe and other nations around the world.

James Madison's convention notes on Randolph's presentation recount him saying that "there were many advantages, which the U. S. might acquire, which were not attainable under the confederation such as a productive impost [or tax] counteraction of the commercial regulations of other nations pushing of commerce ad libitum &c &c."

In other words, the Founders at their most "originalist" moment understood the value of the federal government taking action to negate the commercial advantages of other countries and taking steps for "pushing of [American] commerce." The "ad libitum &c &c" notation suggests that Randolph provided other examples off the top of his head.

Historian Bill Chapman summarized Randolph's point in his teaching materials as saying "we needed a government that could co-ordinate commerce in order to compete effectively with other nations." So, from that first day of substantive debate at the Constitutional Convention, the Founders recognized that a legitimate role of Congress was to ensure that the nation could match up against other countries economically.

Though the likes of Ron Paul have worked hard in recent decades at constructing an alternative narrative claiming that the Founders envisioned a weak national government and were big supporters of states' rights that storyline is simply not supported by the history. Key framers of the Constitution even objected to adding a Bill of Rights to the original document, accepting the first 10 amendments only later as part of negotiations over ratification.

Yet, on Tuesday, celebrating his second-place finish in the New Hampshire primary, Paul told his cheering supporters that "the Constitution was written for a very precise manner. It was not designed to restrain the individual – not to restrain you – it was to protect your liberties and to restrain the federal government."

But that simply is a distortion of what the framers were up to. And for right-wingers who cite the Tenth Amendment as supposed support for their position, they should read the amendment's weak language on states' rights compared to what it replaced, Article II of the Articles of Confederation, which established the supremacy of the states.

After the Constitution wiped away the sovereignty of the states and established the supremacy of the federal government, the Tenth Amendment amounted to a minor concession to the anti-federalists, giving the states only ill-defined leftover powers.

Endorsing Obamacare

The Right's revisionist version of the nation's Founding isn't even accepted by serious conservative legal scholars, including one of the most right-wing members of the U.S. judiciary, senior Judge Laurence Silberman who was appointed to the influential U.S. Court of Appeals in Washington by President Ronald Reagan.

On Nov. 8, 2011, Silberman issued a ruling supporting the constitutionality of the Affordable Care Act, often called "Obamacare." In it, Silberman explained how the law and even its most controversial feature, the individual mandate requiring the purchase of health insurance coverage fit within the language of the Commerce Clause and within prior legal precedents.

"We look first to the text of the Constitution," Silberman wrote in his opinion. "Article I, § 8, cl. 3, states: 'The Congress shall have Power . . . To *regulate Commerce* with foreign Nations, *and among the several States,* and with the Indian Tribes.' (Emphasis added by Silberman).

"At the time the Constitution was fashioned, to 'regulate' meant, as it does now, '[t]o adjust by rule or method,' as well as '[t]o *direct.*' To 'direct,' in turn, included '[t]o prescribe certain measure[s]; to mark out a certain course,' and '[t]o order; to command.'

"In other words, to 'regulate' can mean to require action, and nothing in the definition appears to limit that power only to those already active in relation to an interstate market. Nor was the term 'commerce' limited to only *existing* commerce. There is therefore no textual support for appellants' argument" that mandating the purchase of health insurance is unconstitutional.

Silberman's opinion also examined decades of Supreme Court precedents that affirmed the power of Congress to establish regulations over various national markets.

“Today, the only recognized limitations are that (1) Congress may not regulate non-*economic* behavior based solely on an attenuated link to interstate commerce, and (2) Congress may not regulate intrastate economic behavior if its aggregate impact on interstate commerce is negligible,” Silberman wrote.

Neither limitation applied to the health-care law, Silberman noted, because medical insurance was clearly an economic activity and surely had sizable interstate implications.

As for the claim that people had a constitutional right not to participate in the purchase of health insurance, Silberman was not persuaded. For instance, he cited a Supreme Court precedent that a farmer who wished to raise wheat for his own consumption could still face federal restrictions because his production (and that of other likeminded farmers) could affect the overall supply of wheat and thus undermine federal policy regarding the wheat market.

Addressing National Problems

Silberman also recognized Congress’s power to address difficult national problems, like the tens of millions of Americans who lack health insurance but whose eventual use of medical services would inevitably shift billions of dollars in costs onto Americans who must pay higher insurance rates as a result, what courts have described as “substantial effects.”

“The shift to the ‘substantial effects’ doctrine in the early twentieth century recognized the reality that national economic problems are often the result of millions of individuals engaging in behavior that, in isolation, is seemingly unrelated to interstate commerce,” Silberman wrote.

“Its very premise is that the magnitude of any one individual’s actions is irrelevant; the only thing that matters is whether the national problem Congress has identified is one that substantially affects interstate commerce.

“It is irrelevant that an indeterminate number of healthy, uninsured persons will never consume health care, and will therefore never affect the interstate market. Broad regulation is an inherent feature of Congress’s constitutional authority in this area; to regulate complex, nationwide economic problems is to necessarily deal in generalities.

“Congress reasonably determined that as a *class*, the uninsured create market failures; thus, the lack of harm attributable to any particular uninsured individual, like their lack of overt participation in a market, is of no consequence.”

Silberman wrote that “Congress, which would, in our minds, clearly have the

power to impose insurance purchase conditions on persons who appeared at a hospital for medical services as rather useless as that would be is merely imposing the mandate in reasonable anticipation of virtually inevitable future transactions in interstate commerce."

He noted that since those challenging the health-care law "cannot find real support for their proposed rule in either the text of the Constitution or Supreme Court precedent, they emphasize both the novelty of the [individual] mandate and the lack of a limiting principle," i.e. some example of when the government could not require citizens to purchase a specific product.

Silberman acknowledged that "the Supreme Court occasionally has treated a particular legislative device's lack of historical pedigree as evidence that the device may exceed Congress's constitutional bounds," but added that "we are obliged and this might well be our most important consideration to presume that acts of Congress are constitutional" absent "a clear showing to the contrary."

Silberman also addressed the core political objection to the health-reform law, its supposed intrusion on individual liberty. He wrote: "That a direct requirement for most Americans to purchase any product or service seems an intrusive exercise of legislative power surely explains why Congress has not used this authority before but that seems to us a political judgment rather than a recognition of constitutional limitations."

He added: "It certainly is an encroachment on individual liberty, but it is no more so than a command that restaurants or hotels are obliged to serve all customers regardless of race, that gravely ill individuals cannot use a substance their doctors described as the only effective palliative for excruciating pain, or that a farmer cannot grow enough wheat to support his own family.

"The right to be free from federal regulation is not absolute, and yields to the imperative that Congress be free to forge national solutions to national problems, no matter how local or seemingly passive their individual origins."

Politicized Rulings

So, even a very conservative legal scholar examining the Constitution and precedents could not find a convincing argument to overturn "Obamacare" and that is because the Founders intentionally empowered Congress to address national economic problems. It was, as the Virginian delegation understood, one of the key reasons for the Constitutional Convention.

That does not mean, of course, that the partisan Republicans who currently control the U.S. Supreme Court might not overturn health-care reform anyway, to

deal a blow to Obama right before Election 2012.

Some of the Republican justices have shown before that they would twist the law for partisan ends, such as in December 2000 when they invoked the 14th Amendment to stop the counting of votes in Florida and thus hand the White House to their political favorite, George W. Bush.

It didn't matter that these Republican justices were turning their backs on their prior support for states' rights and their insistence on only following the "originalist" intent of those who wrote the Constitution and the amendments. What was at stake in Election 2000 was more important to them who would get to fill vacancies on the federal courts.

Thus, Republican justices William Rehnquist, Antonin Scalia, Clarence Thomas, Anthony Kennedy and Sandra Day O'Connor suddenly saw in the "equal protection clause" of the 14th Amendment an "originalist" intent by its post-Civil War authors to shield a white plutocrat like George W. Bush from variations in ballot standards in Florida.

That was especially odd for Scalia, who has argued forcefully that the 14th Amendment despite its language that no state shall "deny to any person within its jurisdiction the equal protection of the laws" does not protect the rights of women or gays because it was originally written to guarantee only the rights of black males.

However, when the power of the presidency was at stake and the possibility loomed that a Democratic president might make appointments that would leave the court's right-wing faction in the minority Scalia had a remarkable change of heart. [For details, see Consortiumnews.com's "Justice Scalia's 'Originalist' Hypocrisy."]

It is one of the dirty secrets of the U.S. system that ultimately the Constitution means whatever a majority of the current justices on the Supreme Court says it means. Ideally, the court would be filled with honorable people who would put the law ahead of partisan interests, but that does not appear to be the current makeup of the court's majority.

So, it would not be surprising if the court's right-wing majority would overturn Judge Silberman's opinion even though it is based on a fair reading of the Constitution and the powers that the Founders granted to Congress. A chance to damage Obama's reelection hopes might prove too tempting.

After all, the larger goal of the American Right is not to uphold the ideals of the Founders, who wanted a vibrant central government, but to reverse government policies dating back to President Franklin Roosevelt's New Deal. The plan is to

return the United States to a pre-Depression “gilded age” of a society divided into a few haves and many have-nots.

The Right is engaged in an ideological war with the intent of making the rich richer and marginalizing the rest of us. Creating a false narrative about the American Founding is just a convenient way to get some ill-informed Tea Party types to vote against their own interests.

[For more on related topics, see Robert Parry’s *Lost History, Secrecy & Privilege* and *Neck Deep*, now available in a three-book set for the discount price of only $29. For details, click here.]

Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. His latest book, *Neck Deep: The Disastrous Presidency of George W. Bush,* was written with two of his sons, Sam and Nat, and can be ordered at neckdeepbook.com. His two previous books, *Secrecy & Privilege: The Rise of the Bush Dynasty from Watergate to Iraq* and *Lost History: Contras, Cocaine, the Press & ‘Project Truth’* are also available there.

The Enduring Shame of Guantanamo

On President Obama’s second full day in office, he promised to close the Guantanamo Bay prison, but then encountered fierce resistance from Congress, leading to a humiliating retreat underscored now by the prison’s tenth anniversary – and by renewed worldwide condemnation, as Nat Parry reports.

By Nat Parry

When the Guantanamo prison camp, originally dubbed by the U.S. military Camp X-Ray, opened in January 2002, the United States came under international criticism that was nearly unprecedented in its intensity.

Some of the loudest complaints came from the staunchest U.S. ally, the United Kingdom, where three cabinet ministers Robin Cook, Patricia Hewitt and Jack Straw expressed concern that international agreements about the treatment of prisoners of war were being breached. The U.N. High Commissioner for Human Rights, Mary Robinson, also objected to the camp and called on President George W. Bush’s administration to follow the Geneva Conventions.

In a Jan. 19, 2002, column in the British Independent, Robinson argued that because the Afghanistan conflict was of an international nature, “the law of

international armed conflict applies." She took issue with the administration's assertion that the prisoners were "unlawful combatants" and thus outside the protections of the Geneva Conventions.

European Union foreign policy chief Javier Solana said that despite the Sept. 11 atrocities,"changing our values and our way of life would be terrorism's first victory."

Amnesty International expressed concern about the tactics being used and the secrecy surrounding the camp. "Keeping prisoners incommunicado, sensory deprivation, the use of unnecessary restraint and the humiliation of people through tactics such as shaving them, are all classic techniques employed to 'break' the spirit of individuals ahead of interrogation," the human rights group said.

The International Committee of the Red Cross – in an unusual deviation from its practice of not publicly criticizing detaining governments – said the United States might have violated Geneva Convention rules against making a spectacle of prisoners by distributing pictures of the detainees being subjected to sensory deprivation, which were published worldwide.

British human rights attorney Stephen Solley said the treatment of the suspects was "so far removed from human rights norms that it [was] difficult to comprehend."

Seven years later, just two days into his administration, President Barack Obama's announcement that he would close the Guantanamo camp was greeted with international praise equally intense. An Executive Order Obama signed on Jan. 22, 2009, seemed to unambiguously mandate the closure of Guantanamo within a year:

"The detention facilities at Guantanamo for individuals covered by this order shall be closed as soon as practicable, and no later than one year from the date of this order. If any individuals covered by this order remain in detention at Guantanamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States."

Michele Cercone, spokesperson for the European Union Justice and Home Affairs Commission, said at the time that the commission "has been very pleased that one of the first actions of Mr. Obama has been to turn the page on this sad episode of Guantanamo."

UN High Commissioner for Human Rights Navi Pillay also praised Obama's Executive Order, saying that it was a good day for the rule of law. "The fact that President Obama has placed such a high priority on closing Guantanamo and set in motion a system to safeguard the fundamental rights of the detainees there is extremely encouraging," she stated.

"The United States has in the past been a staunch supporter of international human rights law, and this is one of the reasons that the regime that was established in Guantanamo has been viewed as so damaging," the High Commissioner added.

Now at Guantanamo's ten-year anniversary and nearly three years after President Obama's Executive Order there is a palpable sense of disappointment and betrayal from the human rights community. The United States is finding itself on the receiving end of now-familiar criticism of its indefinite detention policies, with human rights organizations and intergovernmental bodies renewing their complaints that for the past ten years, the U.S. has flouted international human rights standards in its practices at the notorious prison camp.

"Human Rights Watch opposes the prolonged indefinite detention without trial of terrorism suspects at Guantanamo Bay and elsewhere," said HRW in a statement on Jan. 6. The group reminded the U.S. of its obligations to prosecute terrorist suspects and to compensate detainees who have been wrongly imprisoned and mistreated over the past decade:

"The practice [of indefinite detention] violates U.S. obligations under international law. Human Rights Watch has strongly urged the U.S. government to either promptly prosecute the remaining Guantanamo detainees according to international fair trial standards, or safely repatriate them to home or third countries.

"We have also called for investigations of U.S. officials implicated in torture of terrorism suspects and for adequate compensation for detainees who were mistreated. Human Rights Watch will continue to press for compliance with these obligations. Failure to do so does enormous damage to the rule of law both in the US and abroad."

On the eve of Guantanamo's tenth anniversary, Amnesty International said, "Guantanamo has politicized justice internationally by portraying detainees as having no human rights." Amnesty has described the legacy of the Guantanamo Bay prison as a "decade of damage to human rights" not only in the United States, but across the world.

In a report released on Dec. 16, 2011, Amnesty stated:

“The USA speaks the language of human rights fluently on the global stage, but stumbles when it comes to applying human rights standards to itself. The Bush administration promised to put human rights at the centre of its counter-terrorism strategy, but singularly failed to do so. The Obama administration has promised the same thing, but the USA continues to fall short of this commitment, despite what were undoubtedly positive initial steps in the right direction.”

“From day one,” said Amnesty, “the USA failed to recognize the applicability of human rights law to the Guantanamo detentions.”

Ambassador Janez Lenarcic, the Director of the Organization for Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights (ODIHR), also expressed dismay over the failure to close the Guantanamo facility.

“Universal human rights standards require that the detention of terrorist suspects shall be accompanied by concrete charges and the persons detained under these charges shall be immediately informed of them and brought before a competent judicial authority,” Lenarcic said.

In a press release, ODIHR reminded the United States of its OSCE obligations:

“As a participating State of the OSCE, the United States has committed itself to respect human rights in the fight against terrorism and to ensure the right to a fair trial within a reasonable time before an independent and impartial tribunal. In the OSCE Bucharest Document of 2001, participating States expressed their determination to protect their citizens from security challenges such as terrorism ‘while safeguarding the rule of law, individual liberties, and the right to equal justice under law.’”

Lenarcic regretted that the practice of indefinite detention without trial has been codified into U.S. law with the recent adoption of the 2012 National Defense Authorization Act (NDAA). He called for a swift closure of the Guantanamo detention center and urged the authorities to prosecute promptly the remaining Guantanamo detainees in accordance with international fair trial standards, or release them.

Moazzam Begg, a 43-year-old British Muslim who was wrongly detained at Guantanamo for three years two of them in solitary confinement until British authorities negotiated his release in January 2005, is more despondent about the prospects of closing the prison camp.

“Gitmo will never close. That is a fantasy,” Begg recently told CNN. “I’ve stopped wishing for it. Even if it closes its doors, it will be only symbolic. The detainees who are still there will go somewhere else to be held and be

treated possibly worse, and still not get their time in court. And Gitmo, in a way, will always be open. It will be in my memory, in my head, just like everyone else who experienced that hell."

Colonel Morris Davis, a chief prosecutor at Guantanamo Bay during the Bush administration, concurs with Moazzam Begg, saying that Obama "doesn't have the balls" to close Guantanamo.

Nat Parry is co-author of *Neck Deep: The Disastrous Presidency of George W. Bush*.

Fleecing the Angry Whites

Exclusive: Subtly and not so subtly, Republican presidential contenders are playing the race card again, hoping to win over the votes of angry whites by implicitly blaming the shrinking of the middle-class on preferential treatment of blacks and other minorities, reports Robert Parry.

By Robert Parry

Since the days of Richard Nixon's "Southern strategy," the Republican Party has wooed angry whites with coded messages designed to play to racial prejudices and that pattern has come back strong in Campaign 2012 as the GOP seeks to rid the White House of a black Democrat.

Usually, the dog whistle comes in appeals to "states' rights" and allusions to "welfare queens," but sometimes the implicit becomes explicit, as occurred when former Sen. Rick Santorum blurted out, "I don't want to make black people's lives better by giving them somebody else's money. I want to give them the opportunity to go out and earn the money."

This comment was directed to white Republicans in Iowa, some of whom nodded knowingly, receiving the message that President Barack Obama wanted to take their hard-earned money and give it to shiftless blacks. It's a message as old as time in America and it apparently helped boost Santorum into a virtual tie with GOP front-runner Mitt Romney.

However, Santorum quickly came to regret his caught-on-video frankness, realizing that many Americans find such blatant appeals to racial prejudice offensive. So, he proceeded to lie about what he actually said, claiming absurdly that he never said "black people" that he "started to say a word" and

then “sort of mumbled it and changed my thought.”

The word, in Santorum’s revisionist tale, had come out something like “blah,” not “black.” Yet why the government would be so determined to give “other people’s money” to “blah people” was not explained. Perhaps so the “blah people” could buy snazzier wardrobes or snappier cars to make them less “blah.”

Thus, Santorum hoped he could have it both ways. The white racist voters in Iowa and in other states could hear that the ex-Pennsylvania senator wasn’t going to use government programs “to make black people’s lives better,” while non-racists were supposed to believe that he simply stammered out a word that sounded like “black,” but was really “blah.”

Not to be outdone, former House Speaker Newt Gingrich went beyond his usual disparaging of “food stamps” by adding a reference to the NAACP, in case some slow-witted whites didn’t get the racially tinged “food stamps” message. After all, many struggling whites also rely on food-assistance programs, indeed a much higher number than blacks.

Evil Guv-mint

These crude appeals to racial bigotry often framed as a well-meaning desire to help blacks by ending their “dependency” on government help fits, too, into the broader right-wing narrative, that the federal government and its do-gooder programs are what’s holding America back.

If only Washington got out of the way along with its regulations, its taxes on the rich and its social safety net then the entrepreneurial spirit of America would be revived and prosperity would spread from sea to shining sea, the right-wing message goes.

This message resonates with many Americans, especially whites, because it panders to their rose-colored personal mythologies that they and their parents climbed the economic ladder solely due to their hard work and grit. It’s always an easy sell for politicians to flatter people by saying “you made it on your own.”

Yet, for the vast majority of Americans, the reality is quite different. Especially after the Great Depression of the 1930s, the federal government took the lead in creating the social and economic framework that undergirded the nation’s later success.

Even right-wing icon Dick Cheney has acknowledged that the New Deal lifted his family from economic hardship into the middle-class and contributed to his own renowned personal confidence, which he ironically has put to use dismantling the

New Deal. [See Consortiumnews.com's "Dick Cheney: Son of the New Deal."]

Government activism also wasn't a deviation from the Founders' "originalist" intent, as the Right would have you believe. Decisive action by a strong central government to protect the nation's interests was precisely what the drafters of the Constitution had in mind.

The driving goal of the Constitutional Convention in 1787 was to create a vibrant federal system that could address national problems and make the new country competitive with and invulnerable to the then-stronger nation-states of Europe.

Contrary to Tea Party ideology, the Constitution was not about embracing states' rights. Instead, the Constitution eradicated states' sovereignty which had existed under the Articles of Confederation. The Constitution asserted the sovereignty of "we the people of the United States" and the national Republic, with the states relegated to a secondary status.

To understand what happened, all you have to do is examine the Articles of Confederation, which governed the new country from 1777 to 1787, in comparison with the Constitution, or read even popular histories of the Constitutional Convention like *Miracle at Philadelphia* by Catherine Drinker Bowen.

Gen. George Washington despised the notion of "state sovereignty," which the states had cited during the Revolutionary War and afterwards as an excuse not to contribute promised funds to the Continental Army. "Thirteen sovereignties," Washington wrote, "pulling against each other, and all tugging at the foederal head, will soon bring ruin to the whole."

It is true that some Revolutionary War leaders, such as Virginia's Patrick Henry, ardently opposed the Constitution, but they did so *because* they saw it as an infringement on states' rights. In other words, both proponents and opponents recognized what the Constitution's drafters were doing: creating a strong central government.

The Constitution, which was ratified by the 13 states in 1788, represented the most dramatic shift of power from the states to the national government in U.S. history.

Lost Battles

Still, ratification of the Constitution did not stop proponents of states' rights from resisting federal authority, especially in the slave-owning South.

But the battles over what the Constitution intended including President Andrew

Jackson’s facing down the Nullificationists in the 1830s, President Abraham Lincoln’s defense of the Union in the Civil War, and the desegregation of the South in the 1950s and 1960s were ultimately settled in favor of national sovereignty. Federal law prevailed over states’ rights.

Having lost those historic fights, the Right latched onto a new strategy: to confuse the American people by rewriting the nation’s founding history. The Right’s influential politicians and pundits began claiming that the drafters of the Constitution were opposed to a strong federal government and were big advocates of states’ rights.

For instance, last year on the campaign trail, Gov. Rick Perry, R-Texas, declared, “Our Founding Fathers never meant for Washington, D.C. to be the fount of all wisdom. As a matter of fact they were very much afraid of that because they’d just had this experience with this far-away government that had centralized thought process and planning and what have you, and then it was actually the reason that we fought the revolution in the 16th century was to get away from that kind of onerous crown if you will.”

Besides being 200 years off on when the Revolutionary War was fought, Perry had the larger point wrong, too. The Founders at least those who drafted the Constitution saw the gravest danger to the new country coming from disunity. They viewed a vibrant central government as a way to protect the young Republic from renewed encroachments from Europe’s monarchies, which otherwise could turn one state or one region against another.

The Tea Party’s revisionist history of the Founding also has required a gross exaggeration of the Tenth Amendment’s significance. It states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.”

While references to the Tenth Amendment draw cheers from today’s Tea Party crowds, its wording must be compared to the Confederation’s Article II, which says: “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated.”

In other words, the Constitution flipped the balance, stripping the states of their “sovereignty, freedom, and independence,” while granting broad powers to the national government, including over interstate commerce. The Tenth Amendment was essentially a sop to the anti-federalists, added three years after the Constitution was ratified.

The New Deal

The Founders’ “originalist” vision of a strong central government was vindicated in the 1930s when President Franklin Roosevelt led a national effort to recover from the Great Depression, which had been caused largely by lightly regulated “free-market economics.”

Roosevelt’s strategy, which involved large-scale development programs for modernizing the nation, such as the Tennessee Valley Authority providing electrification for much of the rural South, was carried forward by subsequent presidents, Republican as well as Democrat, through the post-World War II years.

President Dwight Eisenhower initiated the Interstate Highway project which improved the national transportation system; President John F. Kennedy launched the space program which achieved major technological breakthroughs; President Lyndon Johnson pushed medical programs and research that aided later pharmaceutical advances; and even the “failed” presidencies of the 1970s Richard Nixon, Gerald Ford and Jimmy Carter focused the United States on environmental safeguards and energy self-sufficiency.

During this era from the 1930s into the 1970s millions of Americans were lifted into the middle-class and others grew rich from exploiting the innovations that government projects made possible.

All companies benefited from the U.S. transportation infrastructure; many piggybacked onto the technological breakthroughs in electronics; the drug industry exploited taxpayer-funded research in the development of new medicines. It turned out that government could create jobs, especially through alliances with the private sector.

Indeed, it is fair to say that the great American middle-class was largely the creation of the federal government – from the New Deal, which guaranteed labor rights and created Social Security, to the GI Bill which sent World War II veterans to college, to more recent developments such as the creation of the Internet and GPS devices.

It was not until Ronald Reagan’s presidency in the 1980s that the political dynamic shifted. As Reagan declared that “government is the problem,” the role of Washington in the lives of Americans was demonized. Many middle-class Americans forgot how much they and their families had benefited from actions of the federal government.

The myth of self-reliance proved seductive. The government was recast as an instrument for helping the lazy at the expense of the productive. Through subtle and not-so-subtle messaging, white Americans were told that the government was hurting them to help undeserving blacks and other minorities.

Government regulations were redefined as meaningless red tape that penalized important innovations, such as the exotic "financial instruments" that Wall Street was devising to "revolutionize" the banking industry. The thinking was that the government just had to get out of the way and let industry "self-regulate."

It followed, too, that Reagan's economic theories, such as "supply-side economics," would evolve into gospel on the Right. Since the beloved Reagan more than halved the top marginal tax rates on the rich so they could invest in "supply-side" production and thus create more jobs many conservatives embraced this notion with religious zeal.

Today, Gingrich boasts about his role in helping to formulate and enact "supply-side economics" despite the fact that it has proved a crushing failure, as the American super-rich do little to create American jobs with their extra wealth. Indeed, U.S. corporations are sitting on trillions of dollars in capital because of a lack of consumer demand.

That lack of consumer demand has resulted from the decline in the American middle-class over the past few decades as Reaganomics has increasingly transformed U.S. society into one of extreme wealth and widespread want. In other words, the shrinking middle-class is proof that "supply-side" economics doesn't work, even as Republicans keep promoting it.

But the now-undeniable damage to the American middle-class inflicted largely by right-wing ideology creates a political problem for Republicans. Many voters may be hesitant to double-down on a bad bet.

So, it is perhaps not surprising that some of the current crop of GOP presidential candidates have turned again to more and more blatant appeals to racial prejudice. After all, racism is the primeval "wedge issue."

In this sour economic climate, more racist messaging like Santorum's opposition to giving money to "blah people" and Gingrich's endless allusions to "food stamps" can be expected as the Republican primary season rolls on.

Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. His latest book, *Neck Deep: The Disastrous Presidency of George W. Bush,* was written with two of his sons, Sam and Nat, and can be ordered at neckdeepbook.com. His two previous books, *Secrecy & Privilege: The Rise of the Bush Dynasty from Watergate to Iraq* and *Lost History: Contras,*

***Cocaine, the Press & 'Project Truth'* are also available there.**

A Betrayal of the Founders

Exclusive: Though voicing "serious reservations" about encroachments on civil liberties in a military authorization bill, President Obama signed the law anyway to avoid a nasty veto fight with Congress. But ex-CIA analyst Ray McGovern says courage, not timidity, is what's needed at such moments.

By Ray McGovern

President Barack Obama desecrated the Constitution that he and I swore to defend when he signed the National Defense Authorization Act of 2012, which includes language violating the Bill of Rights and other constitutionally protected liberties.

The NDAA affirms that the president has the authority to use the Armed Forces to detain any person "who was part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners."

Under the law, the president also may lock up anyone who commits a "belligerent act" against the U.S. or its coalition allies "without trial, until the end of the hostilities." The law embraces the notion that the U.S. military can be used even domestically to arrest an American citizen or anyone else who falls under such suspicion and it is "suspicion" because a trial can be avoided indefinitely.

Yes, I know that the Obama administration's allies got some wording put in to say that "nothing in this section is intended to limit or expand the authority of the President or the scope of the [2001] Authorization for Use of Military Force," nor shall the NDAA "be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States."

And there were some waivers stuck in to give the president discretion over whether to send someone into the gulag of the Military Commissions system possibly for the rest of a detainee's life, given the indefinite nature of what was formerly called the "war on terror" and what the Pentagon has dubbed the Long War.

It’s true as well that after signing the NDAA on New Year’s Eve, President Obama engaged in some handwringing. He expressed “serious reservations” about some of the law’s provisions and declared, “I want to clarify that my Administration will not authorize the indefinite military detention without trial of American citizens.” He added that he would interpret the law “in a manner that ensures that any detention it authorizes complies with the Constitution, the laws of war, and all other applicable law.”

But those who hoped that Barack Obama, the onetime constitutional law professor, would begin rolling back the aggressive assault on civil liberties that President George W. Bush began after the 9/11 attacks must be sorely disappointed.

Those existing laws including the original post-9/11 use-of-military-force authorization and the Military Commissions Act passed in 2006 and modified in 2009 opened the door for presidents to declare anyone of their choice, American citizen or non-citizen alike, an “enemy combatant” and to subject the person to military prison or even assassination.

Just think of U.S. citizens Jose Padilla (who was tossed into the Navy Brig in Charleston, South Carolina, for years) and Anwar al-Awlaki (who was murdered in a drone attack in Yemen in 2011). So, it’s not especially reassuring that President Obama insists that the new law doesn’t dramatically worsen the decade-long erosion of constitutional rights.

Sweeping Provisions

The American Civil Liberties Union also disputed Obama’s claim that the NDAA was essentially business as usual. “The statute contains a sweeping worldwide indefinite detention provision,” the ACLU said, without “temporal or geographic limitations, and can be used by this and future presidents to militarily detain people captured far from any battlefield.”

In other words, the ACLU is noting that since the United States relies on the principle of “laws, not men,” the assurance of any individual president that he won’t exploit an abusive legal power doesn’t mean that the next president won’t. The right thing to do in such a case is to veto legislation that contains that kind of unconstitutional provision, not simply sign it, promise not to use it, and express “serious reservations.”

Sure, if President Obama had exercised his veto, he would have been criticized in some corners as “soft on terror” and he would have undercut his political message about the need for bipartisanship amid the dysfunction of Washington. But compromising on the Constitution isn’t like adding a road project to secure

some congressman’s vote.

Fifty years ago, when I was commissioned a 2nd lieutenant in the U.S. Army, I took an oath to support and defend the Constitution of the United States against all enemies foreign and domestic. I knew that the oath carried no expiration date. Back then, I could not conceive of the possibility that one day this would pose a problem. I felt that we Americans were pretty much all on the same team. But how will I honor my oath in today’s circumstances?

The winter is getting cold and I am getting old. Still. Do I have enough integrity; do I have enough genuine love for my country to be a “winter soldier” and do what I can to stop this steady encroachment on liberties that many other soldiers fought so valiantly to establish and protect?

It is a challenge not wholly different from the cold reality faced 235 winters ago by George Washington’s army. The British had forced the army’s retreat from New York just months after the signing of the Declaration of Independence on July 4, 1776. Not only was the American cause at low ebb, but Gen. Washington faced the annual crisis caused by the expiration of the Continental Army’s period of enlistment. Some kind of success was desperately needed.

So Washington decided to cross the Delaware River at Christmas, surprise the defenders of Trenton, and seize it. Washington feared that what seemed like a desperate attack plan was unlikely to buck up troop morale, so he had his officers read to the troops an essay fresh from the pen of Thomas Paine, himself a soldier in Washington’s army.

Paine’s first words became the watchword of the attack on Trenton and are said to have inspired much of the uncommon bravery displayed that night and for the next five years: “These are the times that try men’s souls: The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands it now, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered.”

Blood on the Snow

The Delawar River was already running high with flowing ice on Christmas Day, when at 11 p.m. a heavy snow and sleet storm broke. Washington’s force did not reach the east bank until around 3 a.m. His soldiers then marched to Trenton, the ones without shoes leaving traces of blood on the snow. Though they reached Trenton hours later than Washington had planned, his troops still surprised and overwhelmed a garrison of Hessian mercenaries on the day after Christmas.

Capt. Alexander Hamilton commanded an artillery section. Capt. William Washington, second cousin to the commanding general, and Lt. James Monroe (yes,

that James Monroe) were wounded, the only American officer casualties. Two American soldiers were killed; and two others froze to death. The Hessian defenders suffered 20 killed and around 100 wounded, with 1,000 captured.

Not a major battle, you may be thinking. But remember, the effect of the Battle of Trenton was out of all proportion to the numbers involved and the casualties. The success at Trenton galvanized the American effort across the colonies and reversed the psychological dominance enjoyed by the British in the preceding months.

So why all this history? Because, remember, actions often have a larger impact, a greater significance, than numbers can impart. Bravery and ideas can touch the heart and focus the mind. They can inspire.

Perhaps you will sense the same hope I do in recognizing that this kind of thing can, and does, happen. And can happen again. What are required are integrity, courage, and imagination. Americans still can revive the spirit around the Battle of Trenton and start to turn the tide against a new tyranny.

We may have to leave some "blood on the snow," so to speak, but perhaps we owe that to the soldiers who had no shoes 235 Christmases ago. We are Washington's foot soldiers now, facing the resurgent face of tyranny. But there are already enough of us to defend our Constitution from all enemies, foreign and domestic.

Traitorous Law

Lawyers and historians may argue over whether the National Defense Authorization Act of 2012 is the deepest wound ever inflicted on the U.S. Constitution or just another debilitating cut. They may note that the United States has lost its way before from the Alien and Sedition Acts to Cointelpro.

But the NDAA strikes me as the most serious affront to American rights in my already pretty long lifetime. That, and the lifetime of my eight grandchildren, constitutes my horizon. Yet, why do so few of my neighbors understand the assault on the Bill of Rights that President Obama advanced with his signature?

Is it the old story of the frog that lets itself get slowly boiled to death because the water temperature is raised only gradually? Or is it that the law was signed on New Year's Eve when most Americans were distracted? Or perhaps because the following day, the journalists of the Fawning Corporate Media had convenient hangovers, excusing them for ignoring this latest dark turn in our nation's history.

Just as former CIA Director George Tenet protested to Scott Pelley on *60 Minutes* five times in five consecutive sentences, "We do not torture!" Obama may now

declare, “We don’t violate the Constitution!”

But where are our journalists now, this week in January 2012? Why aren’t they investigating how this travesty occurred and how curious it is that this steady encroachment on American rights continues even as U.S. intelligence agencies say al-Qaeda is on the verge of defeat with only a couple of “high-value targets” left from its core operation?

Shouldn’t this be the moment when the United States begins winding down this decade-long anti-constitutional state of siege rather than giving it new life and even expanding its reach? Is there a message here about the future, especially given the new neoconservative propaganda initiative associating al-Qaeda with Iran?

Secret Covenants

Behind closed doors, the law’s chief co-conspirators Sens. Carl Levin, D-Michigan; John McCain, R-Arizona; Lindsey Graham, R-South Carolina; and Joe Lieberman, I-Connecticut injected into the NDAA ambiguous language that could be applied by this president or the next to Americans who resist endless war against “associated forces” somehow linked to al-Qaeda or the Taliban.

All four of these co-conspirators are prominent supporters of harsher and harsher sanctions against Iran, actions that have put in place the dry kindling that awaits some spark to touch off a new conflagration in the Middle East.

Now that neocon operatives have “associated” al-Qaeda with Iran does that mean protesting a new war with Iran constitutes the kind of “support” that could prompt a long vacation at Guantanamo Bay? That may be too big a stretch, but it does seem odd that we’re having this debate after al-Qaeda has been reduced to a sliver of its past self and as the Obama administration seeks negotiations with the Taliban.

The media play, or lack thereof, is another back-story here. Painfully clear is the success enjoyed thus far by those determined to use artificially whipped up fear of “terrorism” in the same way Sen. Joe McCarthy used the dread of “communism” to deprive Americans of their constitutional rights.

Let it not be forgot that our Founders, one of whom (George Mason of Virginia, author of the Bill of Rights) grew up a stone’s throw from where I live, had the courage to declare how importantly urgent was the enterprise upon which they, and the foot soldiers of George Washington’s army, were embarked toward freedom.

In 1776, at a time when it seemed far more likely than not that they would hang at the end a rope, they formally declared their support for a common effort to

defeat tyranny. They declared: *"We mutually pledge to each other our Lives, our Fortunes and our sacred Honor."*

And we are the beneficiaries of their decision to risk all to ensure the blessings of liberty to us and our posterity. Are we, 235 years later, unable to recognize what is at stake? Do we lack the courage to act in the tradition of the Founders when government becomes destructive of these ends?

I came across the following on my bookshelf. It's nice. Anyone know what it's from? It reads: *We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.*

—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

THAT is how strongly our predecessor patriots from Virginia, Massachusetts and points south, north, and in between felt about all this. Many of them knew first-hand the evils of unchecked tyranny. THAT is why courageous foot soldiers were willing to mark the snow with blood from their feet as they marched on Trenton.

The Bill of Rights?

It is generally known that my former neighbor, George Mason, worked side-by-side with James Madison in crafting the Constitution. What is less known is that, when the draft was finished, Mason shocked Madison by refusing to sign the Constitution in 1787. His reason? He demanded that it contain a Bill of Rights.

Madison and other Founders pledged and honored their pledge to incorporate a Bill of Rights as the first Ten Amendments to the Constitution. They did so by riding through the towns and villages of the young country, making the case for a Bill of Rights, which was approved by Congress and ratified in 1791.

Can you visualize that in your mind's eye? How many of us can envisage riding horseback far and wide to persuade Carolinians and Vermonters alike that their liberty could not be assured without those Ten Amendments to the Constitution?

What about us? Can we not get up from our armchairs and do what we can to insist that those liberties be protected? How have we reached such a pass? Have we grown so inured to the repetition from our leaders, including both George W. Bush and Barack Obama, that keeping us "safe" is their first priority, that we have forgotten that the Founders risked everything for liberty, not for "safety"?

Madison already knew far too well what could pose the greatest danger to the Constitution. He recognized the inevitable effects on our liberties of "continual warfare" of the kind we have been waging for more than a decade now:

"A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defense against foreign danger, have been always the instruments of tyranny at home."

"Of all the enemies to public liberty war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few." [Or put in today's parlance, the 99 percent under the boot of the one percent.]

"The same malignant aspect in republicanism may be traced in the inequality of fortunes, and the opportunities of fraud, growing out of a state of war, and in the degeneracy of manners and of morals, engendered by both. No nation could preserve its freedom in the midst of continual warfare."

Speaking Out

While horses and sailing ships of the 18th Century are slower than today's newspaper delivery trucks and electronic news outlets, those riders and ship captains who delivered Thomas Paine's pamphlets up and down the colonies encountered a much less distracted, much more engaged and eager readership.

There was no competition from faux-news on TV, or in what pass for newspapers these days. There was not even any football. And for the Founders and their families, freedom and politics were not spectator sports. They knew all too well

how tyranny could be ushered in not only from overseas but also from behind closed doors.

Who has exposed Congress's latest poaching on our liberties and President Obama's hand-wringing decision to compromise those liberties? In fact some have, but you won't find them on U.S. network TV or even on most American cable channels.

You either have to know your way around the Internet, or purchase the kind of service that will permit you to see foreign-sponsored channels like PressTV, Aljazeera, and RT. Even Secretary of State Hillary Clinton has admitted that by watching Aljazeera and RT when she travels abroad, she has gotten used to better news coverage than she gets in Washington.

I have been keeping track: CNN domestic has been punctual in interviewing me every three and a half years. I have flunked out of Fox News altogether, although there have been a few rare occasions when a local Fox station invites me on to comment on a fast-breaking event. And forget the rest of the FCM.

So when someone from, say, PressTV, which is run by Iran, asks to interview me on a subject I know something about, I normally say yes if a convenient time can be arranged. On Monday, PressTV invited me to join two others (Dave Lindorff in Philadelphia and Don DeBar in New York) in a panel discussion of the implications of the President's signing of the NDAA.

I haven't a clue how many Americans might have been able to watch such a program on their TVs. But it is usually possible to access such programs on the Web, where many more may have already seen it, or can see it now. The interview touched on many things that I would have welcomed a chance to say on CNN.

It will be necessary to keep informed as we face down this resurgence of tyranny. Sunshine patriots will deceive themselves into thinking they can do that, while staying malnourished by the Fawning Corporate Media. You readers know better, right?

Ray McGovern works with Tell the Word, a publishing arm of the ecumenical Church of the Saviour in inner-city Washington. He served as an Army infantry/intelligence officer and then a CIA analyst for a total of 30 years and is now on the Steering Group for Veteran Intelligence Professionals for Sanity (VIPS).

What Your Support Meant in 2011

As you know, Consortiumnews.com relies almost exclusively on the support of our readers. So, as 2011 ends, we wanted to express our thanks and present a selection of the important articles from the past year that your donations helped make possible.

Though we invite you to explore the Web site more fully and to check out the "In Case You Missed These Stories" archive below we have grouped more than 80 stories in broad categories that reflect some of our notable work in 2011:

Democratic Ideals:

"How I View the American Crisis" by Robert Parry, suggesting history can point to future strategies. (April 17, 2011)

"McGovern Reflects on Truth-Telling" by Ray McGovern, noting the role of honesty in a democracy. (April 18, 2011)

"Questioning Obama's Americanism" by Robert Parry, challenging the tactic of portraying the President as un-American. (April 29, 2011)

"Making the US Economy Scream" by Robert Parry, looking at the Republican style of politics. (June 3, 2011)

"Is Obama to Blame for America's Mess?" by Robert Parry, assessing the President's responsibility for what went wrong. (Sept. 3, 2011)

"Resetting the American Narrative" by Robert Parry, describing how the debate over "free markets" could be revised. (Sept. 8, 2011)

"Moneyball: the Value of Reason" by Lisa Pease, looking at the deeper message underlying a popular movie. (Sept. 29, 2011)

"Three Pillars of a Revived Republic" by Robert Parry, looking past the Occupy encampments. Dec. 2, 2011

Foreign Policy and War:

"Obama Should Read WikiLeaks Docs" by Ray McGovern, suggesting the president could learn some key facts. (January 3, 2011)

"Reagan's Epoch Shatters in Egypt" by Robert Parry, noting an end of authoritarian era. (February 4, 2011)

"America's Stay-at-Home Ex-President" by Ray McGovern, noting human rights

complexities to George W. Bush's travels. (February 8, 2011)

"Standing Up to War and Hillary Clinton" by Ray McGovern, explaining why he protested Secretary of State Clinton's speech. (February 23, 2011)

"How to Read Gates's Shifts on the Wars" by Ray McGovern, assessing the Defense Secretary's new skepticism. (March 2, 2011)

"NATO Pushes 'Regime Change' in Libya" by Peter Dyer, exposing the West's strategy in the Libyan civil war. (April 22, 2011)

"Trying 'Shock and Awe' in Libya" by Robert Parry, describing NATO's strategy of high-tech intimidation. (April 27, 2011)

"Petraeus: A Threat to CIA Analysis" by Ray McGovern, critiquing President Obama's selection of Gen. Petraeus to run the CIA. (April 28, 2011)

"Finishing a Job, Obama Gets Osama" by Robert Parry looking back on George W. Bush's failures. (May 2, 2011)

"Politics of Revenge and Submission" by Phil Rockstroh, lamenting how the American republic had to die to get bin Laden. (May 5, 2011)

"The Curious Bush/Bin Laden Symbiosis" by Robert Parry, tracking the odd way the two adversaries helped one another. (May 7, 2011)

"Netanyahu Sets Limits for Obama" by Robert Parry, describing the audacity of the Israeli prime minister in the Oval Office. (May 21, 2011)

"Cheering Netanyahu's Intransigence" by Robert Parry, marveling at how Congress groveled before the Israeli prime minister. (May 25, 2011)

"Netanyahu's Pyrrhic Victory" by Daniel C. Maguire, questioning the long-term success of the Israeli prime minister's arrogant visit. (May 27, 2011)

"The Reality of Robert Gates" by Paul R. Pillar, challenging the myth that has surrounded the Defense Secretary. (May 28, 2011)

"The Mysterious Robert Gates" by Robert Parry, contesting the Defense Secretary's record as a straight-shooter. (May 31, 2011)

"Gen. Keane Keen on Iran Attack" by Ray McGovern, describing a confrontation with an Iran war hawk. (June 5, 2011)

"Gaza and American Security" by Ray McGovern, explaining his decision to challenge Israel's blockade of Gaza. (June 18, 2011)

“More US Soldiers Die in Vain” by Ray McGovern, recognizing the harsh reality in the mounting death toll from America’s two misbegotten wars. (August 7, 2011)

“Orange Jumpsuits / Double Standards” by Robert Parry, contrasting the harsh treatment of London looters with benign neglect of UK/U.S. war criminals. (August 25, 2011)

“New War Rationale: Protect Civilians” by Robert Parry, questioning the rationale for NATO’s “regime change” intervention in Libya. (August 27, 2011)

“Why Do All Hail Gen. Petraeus” by Robert Parry, examining the myths surrounding the new CIA director. (Sept. 1, 2011)

“Israel’s Window to Bomb Iran” by Ray McGovern, warning of a likely escalation in hostilities sooner rather than later. (October 3, 2011)

“Petraeus’s CIA Fuels Iran Murder Plot” by Ray McGovern, revealing how the new CIA hierarchy pumped up a buffoonish plot. (October 13, 2011)

“The Tale of Two Assassination Plots” by Robert Parry, contrasting the alarm over a dubious Iranian scheme and disinterest in a real Chilean one. (October 14, 2011)

“Is Mitt Romney a Neocon Purist?” by Robert Parry, noting how the Washington Post chided Romney for some deviations. (October 15, 2011)

“Ending the Iraq Catastrophe” by Robert Parry, reflecting on the promised exit of U.S. combat forces from Iraq. (October 21, 2011)

Sen. McCain’s Libyan Two-Step” by Morgan Strong, investigating John McCain two-faced approach toward Muammar Gaddafi. (October 28, 2011)

“An Iraq-WMD Replay on Iran” by Robert Parry, observing how some of the usual suspects from the Iraq fiasco are back pushing a conflict with Iran, Nov. 8, 2011

“DÃ©jÃ vu Over Iran A-Bomb Charges” by Robert Parry, recalling the parallels between the furor over Iraq and now Iran, Nov. 10, 2011

“Iran Nuke Report: Little New, Big Impact” by Paul R. Pillar, noting the absence of much new in much-touted allegations about Iran, Nov. 11, 2011

“NATO’s Law of the Jungle in Libya” by Peter Dyer, explaining how NATO wrote its own rules in achieving “regime change” in Libya, Nov. 11, 2011

“No Room for Smugness on Iran” by former CIA analyst Elizabeth Murray, tracing how the neocons conned the U.S. regarding Iraq and are back on Iran, Nov. 16,

2011

“Slanting the Case on Iran’s Nukes” by Robert Parry, exposing the secret political agenda of the new leadership of the UN atomic energy inspectors, Nov. 21, 2011

“Are Americans in Line for Gitmo?” by Ray McGovern, examining another draconian “war on terror” law. Dec. 3, 2011

Economics and Domestic Policy:

“Budget Crisis? Duh, Tax the Rich” by Robert Parry, examining the one option that Washington politics forbids. (February 24, 2011)

“Republicans Embrace ‘Greedy Geezers’” by Robert Parry, observing a cynical ploy to split the retired and near-retired. (April 25, 2011)

“The Robber Barons Are Back!” by Aerik Vondenburg, retracing the restoration of an unequal gilded age. (April 30, 2011)

“How Greed Destroys America” by Robert Parry, analyzing how tax cuts incentivized destructive greed. (June 28, 2011)

“Spain’s Battle Against Austerity” by Pablo Ouziel, giving a front-line look at what’s in store for Western societies as banks are pampered and people pay the price. (August 7, 2011)

“The Dangerous Reagan Cult” by Robert Parry, tracing modern-day Republican extremism back to the anti-government rhetoric of Ronald Reagan. (August 16, 2011)

“Jesus: Redistributionist-in-Chief” by Rev. Howard Bess, contrasting the Gospel message with right-wing Christianity. (Sept. 4, 2011)

“The Dark Legacy of Reaganomics” by Robert Parry, recounting how Ronald Reagan’s policies damaged America. (Sept. 20, 2011)

“The One Answer: Tax the Rich” by Robert Parry, explaining why raising taxes on the rich would solve so many problems at once. (Sept. 26, 2011)

“Occupying the Heart of the Beast” by Phil Rockstroh, reporting from Zuccotti Park with the Occupy Wall Street protests. (October 5, 2011)

“Reagan’s Greed Is Good Folly” by Robert Parry, explaining how Ronald Reagan’s economics devastated the middle class. (October 5, 2011)

“Free Market v. Government Intervention” by Robert Parry, noting Republican

confidence in rejecting President Obama's job plan. (October 12, 2011)

"Looming Crisis of Climate Chaos" by Richard Lee Dechert, warning that time is running out to address global warming, Nov. 7, 2011

"Would Jesus Join the Occupy Protests" by Rev. Howard Bess, putting the new opposition to greed in a religious context, Nov. 26, 2011

Historical Context:

"Justice Scalia's 'Originalist' Hypocrisy" by Robert Parry, dissecting Antonin Scalia's double standards on judicial philosophy. (January 5, 2011)

"The Power of False Narrative" by Robert Parry, observing how systematic lies can change history. (January 7, 2011)

"The Violence of Deformed Christianity" by Rev. Howard Bess, reflecting on how today's Christianity tolerates violence. (January 14, 2011)

"Ronald Reagan's 30-Year Time Bombs" by Robert Parry, describing the delayed havoc that President Reagan wrought. (January 28, 2011)

"Ronald Reagan, Enabler of Atrocities" by Robert Parry, marking Reagan's 100th birthday with some inconvenient truth. (February 6, 2011)

"Recalling the Slaughter of Innocents" by Ray McGovern, remembering a U.S. bombing raid that killed Iraqi women and children. (February 14, 2011)

"Kicking the Vietnam Syndrome" by Robert Parry, recalling the Persian Gulf "victory" that won Americans back to war. (February 28, 2011)

"Inside America's 'Adjustment Bureau'" by Robert Parry, comparing the movie to how reality is really manipulated. (March 14, 2011)

"A Two-Decade Detour into Empire" by Robert Parry, describing how cover-ups in the early 1990s distorted U.S. history. (March 31, 2011)

"Spy vs. Spy: the First Patriots Day" by Robert Parry, giving the larger context of Paul Revere's ride. (April 18-19, 2011)

"Jimmy Carter's October Surprise Doubts" by Robert Parry, noting the ex-president's questions about how his reelection was spoiled. (May 12, 2011)

"Halberstam's 'Best-Brightest' Blunder" by James DiEugenio, reflecting on how a historical narrative was botched. (May 17, 2011) And Part Two.

"Drug War's March of Folly" by Richard L. Fricker, measuring the disaster of the

four-decade war on drugs. (June 22, 2011)

"The Lie Behind the Afghan War" by Robert Parry, debunking one of the "known facts" about the U.S. role in Afghanistan. (June 24, 2011)

"Inside the October Surprise Cover-up" by Robert Parry, examining Bush Sr.'s White House records about 1980 mystery. (July 12, 2011)

"October Surprise Evidence Surfaces" by Robert Parry, disclosing proof of what Republicans knew about a secret trip. (July 14, 2011)

"US Lost Its Way From Omaha Beach" by Robert Parry, reflecting on how America's bravery in liberating Europe has been betrayed by subsequent actions. (August 10, 2011)

"Truth Still a Casualty at Dieppe" by Don North, reflecting on the press propaganda that surrounded a World War II catastrophe. (August 18, 2011)

"Dick Cheney: Son of the New Deal" by Robert Parry, reflecting on the irony of how this right-wing icon found success. (Sept. 16, 2011)

"Tea Party Gets the Constitution Wrong" by Robert Parry, exposing the sloppy historical analysis from the Right. (Sept. 18, 2011)

"Taking a Bush Secret to the Grave" by Robert Parry, exposing a three-decade-old secret about the identity of George H.W. Bush's key October Surprise alibi witness. (Sept. 27, 2011)

"Would the Founders Back Health Law?" by Robert Parry, examining "original intent" about American competitiveness. (Sept. 29, 2011)

"Rick Perry's Revolutionary War History" by Robert Parry, debunking the Republican Right's early American narrative. (October 12, 2011)

"Intriguing Shakespeare Author Mystery" by Lisa Pease, examining the complex history of the movie, "Anonymous." (October 21, 2011)

"Unmasking October Surprise Debunker" by Robert Parry, exposing the dangerous biases of Steven Emerson. (October 30, 2011)

"Richard Nixon's Darkest Secret" by Robert Parry, tracing a new Archive disclosure into Nixon's heart of darkness, Nov. 11, 2011

"Clint Eastwood's Dishonest J. Edgar" by James DiEugenio, filling in the many historical gaps of the new movie on J. Edgar Hoover. Nov. 30, 2011

"The Lost Opportunity of Iran-Contra" by Robert Parry, reflecting on a moment

when the course of U.S. history might have changed. Dec. 1, 2011

Media Ethics:

"NYT's Keller Disparages Assange" by Coleen Rowley, disputing the New York Times' dissing of WikiLeaks' Julian Assange. (February 6, 2011)

"How the US Press Corps Lost Its Way" by Robert Parry, reflecting on the death of press corps "dean" David Broder. (March 11, 2011)

"Through the US Media Lens Darkly by Robert Parry, assessing the biased coverage of the Middle East. (March 18, 2011)

"Neocons Spin Two Lost Wars" by Robert Parry, describing how neocons won't acknowledge the disasters in Iraq and Afghanistan. (June 8, 2011)

"Three Deadly War Myths" by Robert Parry, examining how false narratives keep America at war. (June 9, 2011)

"Who Are These People?" by Robert Parry, marveling at the limited Iraq War mea culpa of the New York Times' Bill Keller. (Sept. 12, 2011)

"On Libya, Now They Tell Us" by Robert Parry, noting the Big Media's belated admissions about the dark side of the Libyan rebels. (Sept. 15, 2011)

"Falling for New Neocon Propaganda" by Ray McGovern, commenting on how a Washington Post columnist gets snookered again. (October 22, 2011)

"Switching Focus from Iraq to Iran" by Ray McGovern, citing how the Washington Post's neocon editors still spoil for a fight. (October 23, 2011)

"The Warning in Gary Webb's Death" by Robert Parry, recalling the wretched behavior of the Big Media toward a truthful reporter. (Dec. 9, 2011)

If you want to help us continue our work in 2012 a crucial election year please consider a tax-deductible donation either by credit card online or by mailing a check. (For readers wanting to use PayPal, you can address contributions to our account, which is named "consortnew@aol.com.").

Bush's Grim Vision

From the Archive: After 9/11, President George W. Bush expanded his powers to

act unilaterally abroad and encroach on constitutional rights at home, a process that Congress continues in the just-approved National Defense Authorization Act of 2012. Nearly a decade ago, Nat Parry examined Bush's grim vision.

By Nat Parry (Originally published on June 21, 2002)

In the nine months since Sept. 11, George W. Bush has put the United States on a course that is so bleak that few analysts have as the saying goes connected the dots.

If they had, they would see an outline of a future that mixes constant war overseas with abridgment of constitutional freedoms at home, a picture drawn by a politician who once joked, "If this were a dictatorship, it would be a heck of a lot easier so long as I'm the dictator."

The dots are certainly there. Bush's speech at West Point on June 1, 2002, asserted a unilateral U.S. right to overthrow any government in the world that is deemed a threat to American security, a position so sweeping that it lacks historical precedent.

"If we wait for threats to fully materialize, we will have waited too long," Bush said in describing what he calls a "new doctrine" and what some acolytes have dubbed the "Bush Doctrine."

In a domestic corollary to this Bush Doctrine, Bush is asserting his personal authority to strip even U.S. citizens of due-process rights if he judges them "enemy combatants." With Vice President Dick Cheney and Attorney General John Ashcroft warning critics not to question Bush's policy, it's not too big a jump to see a future where there will be spying on dissenters and limits on public debate, especially now that Ashcroft has lifted restrictions on FBI surveillance activities.

That possibility would grow if the Republicans succeed in regaining control of the Senate and place more of Bush's conservative political allies in the federal courts. [Both prospects did materialize after the congressional elections in 2002.]

Bush's grim vision is of a modern "crusade," as he once put it, with American military forces striking preemptively at "evil-doers" wherever they live, while U.S. citizens live under a redefined Constitution with rights that can be suspended selectively by one man.

Beyond the enormous sacrifices of blood, money and freedom that this plan entails, there is another problem: the strategy offers no guarantee of greater

security for Americans and runs the risk of deepening the pool of hatred against the United States.

With his cavalier tough talk, Bush continues to show no sign that he grasps how treacherous his course is, nor how much more difficult it will be if the U.S. alienates large segments of the world's population.

Goodwill Lost

One of the most stunning results of Bush's behavior over the past nine months since the 9/11 attacks has been the dissipation of the vast reservoir of goodwill that sprang up toward the United States. In cities all over the world, people spontaneously carried flowers to the sidewalks outside U.S. embassies and joined in mourning for the more than 3,000 people murdered in New York, at the Pentagon and in Pennsylvania.

I joined a kind of pilgrimage in Copenhagen, Denmark, as people carried bouquets, a New York Yankees cap and other symbols of sympathy to the U.S. Embassy. More substantively, governments around the globe opened their files to help U.S. authorities hunt down those behind the murders.

European nations, which earlier had been alarmed by Bush's tendency toward unilateralism, hoped the inexperienced president would gain an appreciation for multilateral approaches toward addressing root causes of global problems and finding ways to create a more livable world. Some Europeans, for instance, thought Bush might reverse his repudiation of the Kyoto agreement, which seeks to curb global warming and avoid economic dislocations that would follow dramatic climate changes.

Bush, however, appeared to have learned the opposite lesson. He grew more disdainful of international opinion. He seemed intent on throwing America's weight around and demanding that other nations follow whatever course he chooses.

As for global warming, his administration accepted the scientific evidence that human activity is contributing to a dangerous heating of the planet, but he continued to favor "voluntary" approaches to the problem and opposed collaborating with other nations to limit emissions to retard those trends.

On the war against terrorism, Bush has asserted that he will judge whether another country is "with us, or you are with the terrorists." [Sept. 20, 2001] If a country picks the wrong side, Bush will decide when, how or if that country's government will be overthrown. Bush started with Afghanistan before fingering the "axis of evil" states: Iraq, Iran and North Korea. His supporters have lobbied to expand the list to add nations as diverse as Syria, Saudi

Arabia, Pakistan and Cuba.

Bush's actions have alarmed traditional U.S. allies in Western Europe. To them, the first clear post-Sept. 11 signal that Bush still had little interest in multilateral cooperation was his disregard of international concerns over the treatment of prisoners locked in open cages at Camp X-Ray on the U.S. military base at Guantanamo Bay, Cuba.

Bush drew criticism from the United Nations High Commissioner for Human Rights when he effectively waived the Third Geneva Convention's protections of prisoners of war. The Bush administration announced that contrary to the Convention's provisions, the United States would unilaterally declare which Guantanamo prisoners qualify for POW status and which POW protections they would enjoy. [See Consortiumnews.com's Bush's Return to Unilateralism, Feb. 18, 2002]

Since then, the administration has ignored or renounced a string of international agreements. Bush formally withdrew from the Anti-Ballistic Missile Treaty, which had been a bulwark of arms control since 1972. He flouted the nuclear non-proliferation treaty by pointing nuclear warheads at non-nuclear states. He breached World Trade Organization rules by erecting tariffs for foreign steel.

Targeting Individuals

Beyond those policy rebuffs to multilateralism, Bush went on the offensive against individual U.N. officials who have not conformed to his administration's desires. These officials, who insisted on holding Bush to standards applied to other leaders around the world, soon found themselves out of jobs.

U.N. High Commissioner for Human Rights, Mary C. Robinson, was the first to experience the administration's displeasure. The former Irish president's efforts had won acclaim from human rights groups around the world. But her fierce independence, which surfaced in her criticism of Israel and Bush's war on terror, rubbed Washington the wrong way. The Bush administration lobbied hard against her reappointment. Officially, she was retiring on her own accord.

The Bush administration also forced out Robert Watson, the chairman of the U.N.-sponsored Intergovernmental Panel on Climate Change [IPCC]. Under his leadership, the panel had reached a consensus that human activities, such as burning fossil fuels, contributed to global warming. Bush has resisted this science, which also is opposed by oil companies such as ExxonMobil. The oil giant sent a memo to the White House asking the administration, "Can Watson be replaced now at the request of the U.S.?"

The ExxonMobil memo, obtained by the Natural Resources Defense Council through the Freedom of Information Act, urged the White House to “restructure U.S. attendance at the IPCC meetings to assure no Clinton/Gore proponents are involved in decisional activities.”

On April 19, 2002, ExxonMobil got its wish. The administration succeeded in replacing Watson with Rajendra Pachauri, an Indian economist. Commenting on his removal, Watson said, “U.S. support was, of course, an important factor. They [the IPCC] came under a lot of pressure from ExxonMobil who asked the White House to try and remove me.” [Independent, April 20, 2002]

The next to go, on April 22, 2002, was Jose Mauricio Bustani, the head of the Organization for the Prohibition of Chemical Weapons [OPCW]. Bustani ran into trouble when he resisted Bush administration efforts to dictate the nationalities of inspectors assigned to investigate U.S. chemical facilities. He also opposed a U.S. law allowing Bush to block unannounced inspections in the United States.

Bustani came under criticism for “bias” because his organization had sought to inspect American chemical facilities as aggressively as it examined facilities of U.S.-designated “rogue states.” In other words, he was called biased because he sought to apply the rules evenhandedly.

The final straw for Bush apparently was Bustani’s efforts to persuade Iraq to join the Chemical Weapons Convention, which would allow the OPCW to inspect Iraqi facilities. The Bush administration denounced this move an “ill-considered initiative” and pushed to have Bustani deposed, threatening to withhold dues to the OPCW if Bustani remained.

Critics said Washington’s reasoning was that Bush would be stripped of a principal rationale for invading Iraq and ousting Saddam Hussein if the Iraqi dictator agreed to join the international body designed to inspect chemical-weapons facilities, including those in Iraq. A senior U.S. official dismissed that interpretation of Bush’s motive as “an atrocious red herring.”

Accusing Bustani of mismanagement, U.S. officials called an unprecedented special session to vote Bustani out, only a year after he was unanimously reelected to another five-year term. The member states chose to sacrifice Bustani to save the organization from the loss of U.S. funds. [Christian Science Monitor, April 24, 2002]

“By dismissing me,” Bustani told the U.N. body, “an international precedent will have been established whereby any duly elected head of any international organization would at any point during his or her tenure remain vulnerable to

the whims of one or a few major contributors.” He said that if the United States succeeded in removing him, “genuine multilateralism” would succumb to “unilateralism in a multilateral disguise.”

World Cooperation

Despite Bush’s success bending some international organizations to his will, Europe and other parts of the world have continued to promote multilateral strategies, even over Bush’s objections.

On April 11, 2002, the Rome Statute of the International Criminal Court was ratified by enough countries to make the court a reality. Treaty ratification surged past the necessary 60 countries with the approval of Bosnia-Herzogovina, Bulgaria, Cambodia, Democratic Republic of Congo, Ireland, Jordan, Mongolia, Niger, Romania and Slovakia – to go along with the support of all the nations of Western Europe and virtually every major U.S. ally.

Taking effect on July 1 with an inaugural ceremony of the International Criminal Court expected as early as February 2003 the court will try people accused of genocide, crimes against humanity, and war crimes. Amnesty International has called the court “a historic development in the fight for justice.” Human Rights Watch has called it “the most important new institution for enforcing human rights in 50 years.”

Reacting hostilely to the Rome Statute’s ratification, Bush reiterated his opposition and repudiated President Bill Clinton’s decision to sign the accord. “The United States has no legal obligations arising from its signature on Dec. 31, 2000,” the Bush administration said in a May 6, 2002, letter to U.N. Secretary General Kofi Annan. “The United States requests that its intention not to become a party be reflected in the depositary’s status lists relating to this treaty.”

While the “unsigning” was a remarkable snub at the world’s diplomats and at principles of civilized behavior that the U.S. has long championed, it will not itself stop the court’s creation, nor does it legally absolve the United States from cooperating with it. But the letter signaled Bush’s intent to undermine the court at every turn (except when its actions fit with U.S. strategic interests).

With strong administration support, House Republicans promoted a bill that would allow U.S. armed forces to invade The Hague, Netherlands, where the court will be located, to rescue U.S. soldiers if they are ever prosecuted for war crimes. The bill, sponsored by House Majority Whip Tom DeLay, would bar U.S. military aid to countries that ratify the treaty.

The bill also would prevent the U.S. from participating in peacekeeping missions that might put American soldiers under the court's jurisdiction. DeLay's bill even would prohibit the U.S. from sharing intelligence with the court regarding suspects being investigated or prosecuted.

The Bush administration's active campaign against the court places the U.S. alongside only one other country, Libya.

Contrasting Principles

Washington's opposition to the court contrasts, too, with the staunch U.S. support for the war crimes tribunal that was created to try former Yugoslav President Slobodan Milosevic. In that case, the U.S. threatened to withhold financial aid to Yugoslavia if it did not hand over Milosevic and cooperate with the tribunal.

When Yugoslavia complied, Bush hailed the move as "a first step toward trying him for the crimes against humanity with which he is charged." Bush's opposition to a permanent war crimes court seems driven by fear that his freedom to wage war around the world might be proscribed by fear of war-crime charges.

Bush's selective unilateralism has sparked anti-Americanism even among former close allies. Reflecting the widespread view that Bush is asserting an American exceptionalism disdainful of world opinion, critics have come to routinely refer to the United States as "the empire."

During his May 2002 trip to Europe, demonstrators went into the streets to protest Bush's policies. The scene that I witnessed in Berlin in late May was almost the opposite of what I had observed in Copenhagen in mid-September. Instead of a warm affection for the United States, there was ridicule and contempt.

At the "Cowgirls and Cowboys Against the War" protest march in Berlin, demonstrators wearing cowboy outfits followed a truck with a country music band mocking Bush's Wild West approach to foreign relations. At the protest, I saw people holding signs that read, "George W. Bush: Usurper, Oil Chieftain, Super-terrorist" and "Bush: System Robot." Another sign I saw had a photograph of Bush with a goofy expression on his face and a caption reading, "Do you really want this man to lead us into war?"

The estimates of the Berlin protests ranged from 20,000 to 50,000 people. But it is clear from opinion polls and press commentaries that the protesters were expressing sentiments widely held in Europe. According to European polls, approval ratings of Bush's international policies hover at around 35 percent.

[http://people-press.org/reports/display.php3?ReportID=153]

Many Europeans believe Bush offered only lip service to the American ideal of democracy. Not only was Bush building alliances with undemocratic human rights violators, such as Uzbekistan and Georgia, but Bush's diplomats were supportive when coup plotters briefly ousted the elected president of Venezuela, Hugo Chavez, on April 12, 2002.

The Bush administration viewed Chavez as a troublesome populist who threatened the stability of Venezuela's oil industry. Washington retreated only when Chavez backers poured into the streets and reversed the coup.

Limiting Freedoms

Now, Bush has established a domestic corollary to the worldwide "Bush Doctrine." Along with asserting his unilateral power abroad, Bush was limiting freedoms within the United States.

The expansion of police powers began immediately after the Sept. 11 attacks when Middle Easterners living in the U.S. were swept off the streets and held incommunicado as "material witnesses" or for minor visa violations. Attorney General John Ashcroft likened their detentions to arresting gangsters for "spitting on the sidewalk."

The total number and the identities of those arrested remained state secrets. Government officials estimated that about 1,100 people, mostly Middle Eastern-born men, were caught up in the dragnet. Some legal observers outside the government put the number much larger, at about 1,500 to 2,000 people. Only one of these detainees has been charged with a crime connected to the Sept. 11 attacks, Zacarias Moussaoui, who was in custody before the attacks. [For details, see Salon.com's The Dragnet Comes Up Empty, June 19, 2002]

Next came the hundreds of combatants captured in Afghanistan and put in cages at the U.S. military base in Guantanamo Bay, Cuba. Bush refused to grant them protections under the Geneva Conventions and said they could be tried by a military tribunal established by his fiat.

Initially, many Americans reconciled themselves to the array of post-Sept. 11 detentions and the Guantanamo cages, believing that the arrests without trial only affected foreigners and were a reaction to a short-term emergency. But that comfort level shrank when Jose Padilla, a 31-year-old U.S.-born citizen who had converted to Islam, was arrested on May 8, 2002, in Chicago.

Ashcroft announced the arrest at a dramatic news conference in Moscow more than a month later, on June 10, 2002. Ashcroft depicted Padilla's capture as a major

victory in the “war on terror.” Administration officials said Padilla had met with al-Qaeda operatives abroad and was in the early stages of a plot to develop a radiological “dirty bomb” that would be detonated in a U.S. city.

But Deputy Defense Secretary Paul Wolfowitz said later that the bomb plot amounted only to “some fairly loose talk.” [Washington Post, June 13, 2002] Nothing concrete had occurred. Padilla had no bomb-making materials, no target, no operational co-conspirators, no plan. Beyond assertions, the administration offered no evidence of Padilla’s guilt.

Bush described Padilla as an “enemy combatant” and ordered him detained indefinitely at a military prison in South Carolina. No trial, not even one before the military tribunal, was to be held. Attempting to justify this extra-constitutional detention, Bush explained that Padilla was a “bad guy” and “he is where he needs to be, detained.” The Bush administration said Padilla would be jailed for as long as the war on terrorism continues, potentially a life sentence given the vague goals and indefinite timetable of this conflict. [http://news.bbc.co.uk/hi/english/world/americas/newsid_2039000/2039214.stm]

Even though the Clinton administration had succeeded in winning convictions against both Islamic and domestic terrorists in open court, Bush was demonstrating his Clint-Eastwood-style impatience for such legal niceties. [Ultimately, the U.S. government backed away from the “dirty bomb” allegations but prosecuted Padilla in a Miami federal court for collaborating with a different group of alleged Islamic terrorists. Padilla was convicted and sentenced to 17 years in prison.]

Though many Americans may feel little sympathy for Padilla, a street tough who allegedly consorted with al-Qaeda terrorists, the principle behind the case was clear: Bush was arrogating to himself the unilateral right to judge whether an American citizen was part of a terrorist cabal and thus could be stripped of all constitutional rights.

Under this precedent, a U.S. citizen can be denied his right to an attorney, his right to a speedy trial before a jury of peers, his right to confront accusers, his right against self-incrimination, even his right to have the charges against him spelled out. Simply on Bush’s say-so, an allegation of conspiracy could become grounds for unlimited imprisonment, even with no overt acts and no public evidence.

A Bleak Future

It no longer seemed farfetched to think that George W. Bush might someday expand his extraordinary powers to silence those who ask difficult questions or

criticize his judgment or otherwise give aid and comfort to the enemy.

When some Democrats demanded to know what Bush knew about the terror threats before Sept. 11, Cheney delivered a blunt warning. “My Democratic friends in Congress,” Cheney said, “they need to be very cautious not to seek political advantage by making incendiary suggestions, as were made by some today, that the White House had advance information that would have prevented the tragic attacks of 9/11.” [Washington Post, May 17, 2002]

Bush, the first man in more than a century to take the White House after losing the popular vote, seemed to have developed an abiding trust in his personal right to wield unlimited power. After succeeding in getting his allies on the U.S. Supreme Court to stop the counting of votes in Florida in December 2000, Bush may have felt confident that he would have their help, too, in redefining the U.S. Constitution. Bush also may have been confident that a frightened American populace would support his every move, regardless of how many freedoms they must surrender in the name of security.

Unthinkable a year earlier before 9/11, there was now the shape of an American Gulag where people could disappear without public legal proceedings or possibly no legal proceedings at all.

The American people may learn too late that relying on repression to gain security can mean sacrificing freedom without actually achieving greater security. As counterinsurgency experts have long argued, only a wise balance between reasonable security and smart policies to address legitimate grievances can reduce violence to manageable levels over the long term. Often, repression simply breeds new generations of bitter enemies.

In the nine months since 9/11, George W. Bush marched off in a political direction so troubling that American editorial writers don’t dare speak its name. He is moving toward a system in which an un-elected leader decides what freedoms his people will be allowed at home and what countries will be invaded abroad. If carried to its ultimate conclusion, this political strategy could degenerate into what would be called in any other country a dictatorship.

—With reporting by Robert Parry

Shame on Us All

From the Archive: Congress keeps expanding government powers in the “war on terror” even when President Obama doesn’t ask for them, unlike President George

W. Bush who proudly signed the Military Commissions Act, a precursor to the indefinite detention in today's National Defense Authorization Act, as described by Robert Parry in 2006.

By Robert Parry (Originally published on Oct. 18, 2006)

History should record October 17, 2006, as the reverse of July 4, 1776. From the noble American ideal of each human being possessing "unalienable rights" as declared by the Founders 230 years ago amid the ringing of bells in Philadelphia, the United States effectively rescinded that concept on a dreary fall day in Washington.

At a crimped ceremony in the East Room of the White House, President George W. Bush signed the Military Commissions Act of 2006while sitting behind a sign reading "Protecting America."

On the surface, the law sets standards for harsh interrogations, prosecutions and executions of supposed terrorists and other "unlawful combatants," including al-Qaeda members who allegedly conspired to murder nearly 3,000 people on Sept. 11, 2001.

"It is a rare occasion when a President can sign a bill he knows will save American lives," Bush said. "I have that privilege this morning."

But the new law does much more. In effect, it creates a parallel "star chamber" system of criminal justice for anyone, including an American citizen, who is suspected of engaging in, contributing to or acting in support of violent acts directed against the U.S. government or its allies anywhere on earth.

The law strips "unlawful combatants" and their alleged fellow-travelers of the fundamental right of *habeas corpus*, meaning that they can't challenge their imprisonment in civilian courts, at least not until after they are brought before a military tribunal, tried under special secrecy rules and then sentenced.

One of the catches, however, is that with *habeas corpus* suspended these suspects have no guarantee of a swift trial and can theoretically be jailed indefinitely at the President's discretion. Given the endless nature of the "global war on terror," suspects could disappear forever into the dark hole of unlimited executive authority, their fate hidden even from their families.

While incarcerated, the "unlawful combatants" and their cohorts can be subjected to coercive interrogations with their words used against them if and when they are brought to trial as long as a military judge approves.

The military tribunals also could use secret evidence to prosecute a wide range of “disloyal” American citizens as well as “anti-American” non-citizens. The procedures are similar to “star chambers,” which have been employed historically by absolute monarchs and totalitarian states.

Even after the prosecutions are completed, the President could keep details secret. While an annual report must be made to Congress about the military tribunals, the President can conceal whatever information he chooses in a classified annex.

False Confidence

When Congress was debating the military tribunal law in September 2006, some Americans were reassured to hear that the law would apply only to non-U.S. citizens, such as legal resident aliens and foreigners. Indeed, the law does specify that “illegal enemy combatants” must be aliens who allegedly have attacked U.S. targets or those of U.S. military allies.

But the law goes much further when it addresses what can happen to people alleged to have given aid and comfort to America’s enemies. According to the law’s language, even American citizens who are accused of helping terrorists can be shunted into the military tribunal system where they could languish indefinitely without constitutional protections.

“**Any person** is punishable as a principal under this chapter who commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission,” the law states.

“**Any person** subject to this chapter who, **in breach of an allegiance or duty to the United States**, knowingly and intentionally aids an enemy of the United States … shall be punished **as a military commission may direct.**

“**Any person** subject to this chapter who **with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power**, **collects or attempts to collect information** by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, **shall be punished by death or such other punishment as a military commission may direct.**

“**Any person** subject to this chapter who conspires to commit one of the more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, **by death or such other punishment as a military commission may direct**, and, if death does not result to

any of the victims, by such punishment, other than death, as a military commission may direct." [Emphases added]

In other words, a wide variety of alleged crimes, including some specifically targeted at citizens with "an allegiance or duty to the United States," would be transferred from civilian courts to military tribunals, where *habeas corpus* and other constitutional rights would not apply.

Secret Trials

Secrecy, not the principle of openness, dominates these curious trials.

Under the military tribunal law, a judge "may close to the public all or a portion of the proceedings" if he deems that the evidence must be kept secret for national security reasons. Those concerns can be conveyed to the judge through *ex parte* or one-sided communications from the prosecutor or a government representative.

The judge also can exclude the accused from the trial if there are safety concerns or if the defendant is disruptive. Plus, the judge can admit evidence obtained through coercion if he determines it "possesses sufficient probative value" and "the interests of justice would best be served by admission of the statement into evidence."

The law permits, too, the introduction of secret evidence "while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that … the evidence is reliable."

During trial, the prosecutor would have the additional right to assert a "national security privilege" that could stop "the examination of any witness," presumably by the defense if the questioning touched on any sensitive matter.

The prosecution also would retain the right to appeal any adverse ruling by the military judge to the U.S. Court of Appeals in the District of Columbia. For the defense, however, the law states that "no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions."

Further, the law states "no person may invoke the Geneva Conventions or any protocols thereto in any *habeas corpus* or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of

rights in any court of the United States or its States or territories."

In effect, that provision amounts to a broad amnesty for all U.S. officials, including President Bush and other senior executives who may have authorized torture, murder or other violations of human rights.

Beyond that amnesty provision, the law grants President Bush the authority "to interpret the meaning and the application of the Geneva Conventions."

[Some provisions of the 2006 law were modified in 2009 to grant additional safeguards for the accused. However, the newly approved National Defense Authorization Act of 2012 again broadens the government's powers to detain indefinitely alleged "terrorists" and those accused of aiding them, including Americans arrested on U.S. soil.

[Sen. Lindsey Graham, R-South Carolina, a bill co-sponsor, made clear that Americans would not be spared possible detention. "The statement of authority to detain, does apply to American citizens and it designates the world as a battlefield including the homeland," Graham said.]

In signing the Military Commissions Act of 2006, Bush remarked that "one of the terrorists believed to have planned the 9/11 attacks said he hoped the attacks would be the beginning of the end of America." Pausing for dramatic effect, Bush added, "He didn't get his wish."

Or, perhaps, the terrorist did.

Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. His latest book, *Neck Deep: The Disastrous Presidency of George W. Bush,* was written with two of his sons, Sam and Nat, and can be ordered at neckdeepbook.com. His two previous books, *Secrecy & Privilege: The Rise of the Bush Dynasty from Watergate to Iraq* and *Lost History: Contras, Cocaine, the Press & 'Project Truth'* are also available there.