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www.afgazad.com

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A Lawless Regime

by Jacob G. Hornberger

3/26/2009

As we were pulling together today's FFF Email Update, two points from two different articles struck me for their truthfulness and insightfulness.

Simon Jenkins writes: "This war [Afghanistan] remains what it was from the start, aggression against a foreign state intended to punish it for refusing to hand over the perpetrators of 9/11. It was later sanitized (largely by the British) as a liberal intervention to bring democracy and gender awareness to a poor people."

Referring to the legal memos that empowered President Bush to seize omnipotent power after 9/11, Michael Ratner of the Center for Constitutional Rights, states: "I call it 'Führer's law.' What those memos lay out means the end of the system of checks and balances in this country. It means the end of the system in which courts, legislature and executive each had a function and they could check each other."

As Ratner points out, after 9/11 the president and the Pentagon assumed the power to do whatever they wanted as part of their "war on terrorism." No constitutional checks on power whatsoever. Everything they were doing in Afghanistan, Iraq, and Cuba, they could do here.

That's what the seizure, incarceration, and torture of Jose Padilla were all about. The president and the Pentagon were demonstrating that a new day had arrived in America — the day when ordinary people were subject to the omnipotent control of the military and its commander in chief. The same holds true for the illegal wiretapping and monitoring of people's email.

What President Bush and the Pentagon did after 9/11 is simply declare the crime of terrorism to also be an act of war, at their option. That's why they've been able to shift back and forth in the Jose Padilla and Ali al-Marri cases. Today, a criminal defendant, tomorrow an enemy combatant. Or vice versa. Everyone, including Americans, is now subject to the arbitrary and capricious dictates of U.S. officials as to how they are to be treated as part of the war on terrorism.. That's what the "rule of men" is all about, as compared to the "rule of law," where everyone must be treated in the same manner.

As Ratner points out, the invasion of Afghanistan is an illegal war of aggression, just like the war on Iraq. First of all, let's not forget that the Constitution requires a congressional declaration of war before the president can wage war. The Congress never declared war on Afghanistan. But of course, given the president's determination that after 9/11 the Constitution could be ignored, why would anyone expect him to comply with the declaration of war requirement?

Furthermore, while pro-war supporters often refer to Afghanistan as "harboring Osama bin Laden," that rationale for invading Afghanistan was bogus. As Ratner points out, the reason the U.S. went to war against Afghanistan was the Afghan government's refusal to turn bin Laden over to the U.S. Not once did Bush, the Pentagon, the CIA, or anyone else provide one iota of evidence indicating that the Afghan government had conspired with bin Laden to commit the 9/11 attacks. Moreover, there was no extradition treaty between Afghanistan and the U.S.

In fact, today the U.S. government is refusing to extradite a man with ties to the CIA named Luis Posada Carriles to Venezuela, despite a formal extradition request from Venezuela pursuant to a formal extradition treaty between the two countries. Posada Carriles is accused of committing a terrorist bombing of a Cuban airline in which dozens of people were killed, including the young members of a Cuban sports team.

Does Venezuela have the right to invade the United States for harboring a terrorist? I'd suspect that most pro-war Americans would say, "Absolutely not! And I'd fight on the side of my country if they did, and I'd kill as many bad guys as necessary to rid my nation of the invader and occupier!"

Well, that's precisely what many Afghans are doing — fighting to rid their nation of an illegal invader and occupier, one that has killed thousands of Afghani citizens. Yet, the illegal invader and occupier just continues killing more and more people every week.

And what will happen if friends or relatives of Afghani victims of U.S. aggression end up committing a terrorist act on American soil? Well, can't you hear Barack Obama, the Pentagon, and the CIA announcing, "The terrorists hate us for our freedom and values and are trying to take over our country. To keep you safe, we must now begin exercising those omnipotent powers were assumed after 9/11."