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Bush's "Enabling Act"

Hello and welcome to Review of the News Online. I'm William Norman Grigg, Senior Editor for The New American magazine – an affiliated publication of The John Birch Society

On March 23, 1933, about two months after terrorists committed an arson attack against the German Reichstag Building, the German Parliament passed a measure bearing the innocuous title "Law for Removing the Distress of People and Reich." "Its five brief paragraphs took the power of legislation, including control of the Reich budget, approval of treaties with foreign states and the initiating of constitutional amendments, away from Parliament and handed it over to the Reich cabinet for a period of four years," wrote historian William Shirer in his study *The Rise and Fall of the Third Reich*. While the **Enabling Act** explicitly permitted the Reich cabinet to enact laws that "might deviate from the constitution," it also specified that the powers of Parliament would be protected.

In a speech delivered that day before the Parliament, German Chancellor Adolf Hitler promised that his government "will make use of these powers only insofar as they are essential for carrying out vitally necessary measures." To those worried about the possibility that the confederated German states would be absorbed into a centralized dictatorship, Hitler

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Bush's "Enabling Act"

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extended these assurances: "The separate existence of the federal states will not be done away with." He also sought to placate those concerned about freedom of religion and other liberties: "The rights of the churches will not be diminished and their relationship to the State will not be modified. The number of cases in which an internal necessity exists for having recourse to such a law is in itself a limited one."

Hitler's pose of moderation soon gave way to a reign of terror. As Shirer observes: "It was this **Enabling Act** alone which formed the legal basis for Hitler's dictatorship. From March 23, 1933 on, Hitler was the dictator of the Reich, freed from any restraint by Parliament.... To be sure, much remained to be done to bring the entire nation and all its institutions completely under the Nazi heel...." But Hitler was able to accomplish that task almost entirely within the law – because Parliament had made the Chancellor a law unto himself.

Shocking as it may seem, the powers given to President Bush by Congress last Fall are even more expansive than those Hitler received through the **Enabling Act**. The September 14th joint resolution supposedly authorized the president to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks on September 11, 2001." This open-ended resolution has already been used to justify the military campaign in Afghanistan, as well as the administration's announced policy of "preemptive" war, under which the president claims the right to attack any nation he designates an enemy in the war on terrorism.

Just as ominously, the administration has cited the September 14th resolution in legal papers defending its summary detention of people it calls "enemy combatants," which includes at least two American-born individuals who have not been charged with a single crime. As noted in last week's Review of the News Online, the Bush administration – according to the August 8th *Wall Street Journal*, is devising a new legal regime combining "the once-separate realms of civilian law and the law of war. Criminal law determines guilt and assigns punishment for past wrongdoing, but the law of war gives governments vast powers to prevent possible harm by imprisoning and interrogating enemy soldiers."

Fusing these disparate concepts of law creates a legal framework for the President of the United States to attack any nation at any time, and imprison – without providing evidence or answering to any court – any individual he chooses for as long as he likes. The sole legal justification for accumulating such powers, once again, is the September 14th "authorization of force" resolution, which can appropriately be called Mr. Bush's **Enabling Act**.

As the administration prepares for another military campaign against Iraq, many of the president's conservative defenders are candidly endorsing the idea that last year's **Enabling Act** allows Mr. Bush to do pretty much anything he pleases. Radio talk show host Rush Limbaugh retailed this

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line in an August 17th *Wall Street Journal* article: "[T]he resolution leaves to the president the determination of whether any particular country played a role in the September 11 attack. And the resolution doesn't provide any standard on which the president is to make his determination. It's purely within his discretion."

According to Limbaugh, Mr. Bush "would be wise to consult with Congress.... But he need not defer to it. I believe once an attack on Iraq becomes imminent, President Bush will rally the American people to the cause. But those who claim that the president doesn't have the constitutional or legal authority to **act** ... are in error."

Whatever his gifts as a self-promoter and popularizer of neo-conservative nostrums, Mr. Limbaugh is not a reliable interpreter of the Constitution. James Madison, the chief architect of our Constitution, offers a view sharply at variance with that of America's self-proclaimed "Truth Detector": "The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care, vested the question of war in the Legislature."

Writing in April 1798, Madison took issue with figures who insisted – even at that early stage of our nation's history – that the president, as commander-in-chief, had some unspecified authority to commit our nation to war in absence of a congressional declaration. Such assumptions, he wrote "strike at the root of all these provisions, and will deposit the peace of the Country in that Department which the Constitution distrusts as most ready without cause to renounce it."

Alexander Hamilton took exactly the same position. "It is the province and duty of the Executive to preserve to the Nation the blessings of peace," he wrote in 1793. "The Legislature alone can interrupt those blessings, by placing the Nation in a state of War."

Writing a year later, Hamilton declared that "war is a question, under our constitution, not of Executive, but of Legislative cognizance. It belongs to Congress to say - whether the Nation shall of choice dismiss the olive branch and unfurl the banners of War."

Nor can Congress simply delegate that authority to the president, as some insist it did last September 14th. Once upon a time, conservative Republicans would criticize Congress for delegating its lawmaking powers to un-elected bureaucrats in federal agencies, who for decades have been issuing regulations that supposedly have the force of law. Yet in our present circumstances, conservative Republicans see nothing amiss in congressional attempts to delegate to the president its unique constitutional power to declare war.

Ironically, the claims being made by the administration and its courtiers in the conservative media validate the criticisms offered last September by Representative Barbara Lee, the only member of the House to vote against the September 14th **Enabling Act**. Explained Lee: "It was a blank

check to the president to attack anyone involved in the September 11 events – anywhere, in any country, without regard to our nation's long-term foreign policy, economic and national security interests, and without time limit. In granting these overly broad powers, the Congress has failed its responsibility to understand the dimensions of its declaration."

True it is that – as Shakespeare wrote – the Devil can cite scripture to his purpose. But scripture doesn't become untrue just because the Devil recites it. Likewise, Barbara Lee's Marxist background doesn't invalidate the constitutional principles on which she uncharacteristically acted last September, and her misgivings about the "blank check" granted to the Bush Administration have been vindicated in every detail.

Our nation can and must be defended, but perpetual warfare of the sort being openly pursued by the Bush administration would be a death sentence for our liberties. "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," warned Madison in 1795. "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.... No nation could preserve its freedom in the midst of continual warfare."

The most ominous aspect of the Bush administration's impending war on Iraq is this: That war will be used to enhance the United Nations at the expense of our national independence. In a July 26th *Wall Street Journal* column, Republican legal scholars David B. Rivkin and Lee A. Casey argue that no congressional declaration of war against Iraq is necessary, since "Congress has already authorized the use of force. In early 1991 ... Congress passed Public Law 102-1. This law authorized the president to use the 'United States Armed Forces' to enforce the United Nations Security Council resolutions against Iraq...."

In recent weeks, a host of globalist pseudo-statesmen – including Henry Kissinger, Lawrence Eagleburger, Brent Scowcroft, and Zbigniew Brzezinski – have used op-ed columns and other public forums to urge President Bush to cite Saddam Hussein's "defiance" of the UN as justification for a military strike. In an August 18th *Washington Post* column, Brzezinski wrote: "If it is to be war [against Iraq], it should be conducted in a manner that legitimizes U.S. global hegemony and, at the same time, contributes to a more responsible system of international security.... Iraq's defiance of the international community is the central issue the world should be concerned about. Hence the focus of U.S. concern must be on weapons of mass destruction that Iraq may be surreptitiously seeking to produce in contravention of UN resolutions...."

In 1991, the first President Bush claimed that he didn't need a congressional declaration of war before attacking Iraq, because he had received authorization from the UN Security Council. One gets authorization from a *superior*, not from a *subordinate*. A little more than a decade later, the second President Bush claims that Congress has effectively alienated to him the power to declare war both abroad and at

home, and he has cited UN Security Council Resolution 1373 as "authorization" for the open-ended "war on terrorism."

It's likely that many of the German parliamentarians who voted in favor of the **Enabling Act** of 1933 were unaware that they had signed the death warrant of their republic. Likewise, it's doubtful that many of the congressmen who voted in favor of last September's **Enabling Act** envisioned that it would permit the second President Bush to continue our nation's subordination to the UN. But such are the wages of congressional abdication to the imperial presidency.

Thank you for listening. Please join us again next week.

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