



Bush, Obama, and the Nine-year “Emergency”

The United States of America, therefore, is now entering its 10th year under a continual state of emergency — on the basis of a small number of (admittedly spectacular) terrorist attacks that took place in the space of a few hours back in 2001 and a handful of failed attempts since.

So-called national emergencies are a boon for governments, and particularly for heads of state. The “national emergency” in 1933 Germany occasioned by the firebombing of the Reichstag spurred the German parliament to grant Chancellor Adolf Hitler supposedly temporary dictatorial powers; we all know how that turned out. Egypt has been operating under a state of emergency since 1967 (except for a brief period in 1980 and '81). Its government has taken advantage of its emergency declaration to lock up thousands of political prisoners indefinitely, to create a kangaroo court system for those it bothers to try, to prevent criticism of the regime, and to suspend other constitutional rights.

Many of the Egyptian government’s abuses have occurred in the United States on a smaller scale, justified by such personages as Bush Justice Department official [John Yoo](#) on the basis of the ongoing national emergency. If our national emergency is allowed to stand for another 30-plus years, imagine how entrenched and expanded these policies would become.

When the President declares a national emergency, [wrote](#) Harold C. Relyea, specialist in American national government with the Congressional Research Service, he “may seize property, organize and control the means of production, seize commodities, assign military forces abroad, institute martial law, seize and control all transportation and communication, regulate the operation of private enterprise, restrict travel, and, in a variety of ways, control the lives of United States citizens.”

Not all of these powers are exercised in every emergency. The 1976 law, intended to prevent abuses of the President’s power to declare national emergencies, requires the President to state the emergency statutes he wishes to invoke “either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders.” Jason Ditz of Antiwar.com [notes](#) that “the current state of emergency empowers the president in a number of manners, including allowing him to suspend officer personnel laws related to the US military, suspending all legal limits on the number of commissioned officers, authorizations to grow the size of the military beyond the legal appropriations, waive limits on reserves, and the right to recall retirees to active duty.” This does not, however, prevent Obama or a future President from choosing to invoke more statutes under the same declaration of national emergency.

Bush and Obama have both denied the writ of habeas corpus to numerous prisoners, claiming the authority to imprison people indefinitely on the President’s say-so as part of their powers in this emergency. However, Article I, Section 9 of the U.S. Constitution only allows for a suspension of this privilege “in cases of rebellion or invasion.” As Lewis Seiler and Dan Hamburg [wrote](#) after Obama renewed the state of emergency last year, “The Obama administration is essentially arguing that the United States is currently in a state of resisting foreign invasion a full eight years after the attacks of 9/11!” Make that *nine* years now. “This is ludicrous,” they add. Furthermore, since Article I concerns itself with Congress, not the President, it is likely that the Framers of the Constitution intended to vest the power of suspending habeas corpus in the legislature, making Bush’s and Obama’s overreach not just “ludicrous” but also unconstitutional.

It’s also worth pointing out that the National Emergencies Act states the following:



Written by [Michael Tennant](#) on September 12, 2010

Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

Congress has, in fact, not held a single hearing on the Bush-Obama national emergency proclamation — “a fact,” said Seiler and Hamburg, “that casts doubt on the legality of the state of emergency.” It also demonstrates the commitment to overweening executive power from both parties since Democrats didn’t even bother to hold hearings when they controlled Congress while Bush was in office.

While Obama, as a Senator and presidential candidate, claimed to differ from Bush significantly when it came to issues of executive power and civil liberties, his repeated extensions of Bush’s national emergency declaration and continued use of emergency powers (including some of rather dubious legality) put the lie to such claims. Instead of effecting “a fundamental break with the Bush administration’s policies on detention, accountability, and other issues,” Obama instead is “ratif[ying], rather than reject[ing], the dangerous notion that America is in a permanent state of emergency and that core liberties must be surrendered forever,” as the ACLU warned in a July [report](#).

If Republicans regain control of Congress in November, one of their first orders of business should be to terminate the Bush-Obama national emergency. If there ever was a time when it was justified, that time has long since passed; and the longer the state of emergency is allowed to continue, the more detrimental it is to our liberties. Congress needs to assert its constitutional primacy, or it risks becoming the Roman Senate to the Caesar at 1600 Pennsylvania Ave.

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