



Written by [Jack Kenny](#) on September 11, 2012

“Phantoms of Lost Liberty” Still Haunting Post-9/11 America

“He who is not with me is against me; he that gathereth not with me scattereth abroad.” Jesus

“Either you are with us or you are with the terrorists.” George W. Bush

In announcing the global war on terrorism in his [speech](#) to a joint session of Congress on September 20, 2001, President George W. Bush put the world on notice: “Every nation in every region now has a decision to make: Either you are with us or you are with the terrorists.” Bush, who claims to be a born-again Christian and who had named Jesus Christ as his favorite “philosopher,” might have noticed the similarity between his words and those of Jesus in the New Testament: “He who is not with me is against me; he that gathereth not with me scattereth abroad” (Mathew 12:30) In declaring a war that “will not end until every terrorist group of global reach has been found, stopped and defeated, Bush appeared to be holding himself and his nation up as the world’s new Savior. Many of his speeches following the terrorist attacks of September 11, 2001, bore Messianic overtones. “We will rid the world of evildoers,” the president [promised](#). The war against terrorism soon became the crusade for a [“global democratic revolution.”](#) The candidate who had spoken of a “more humble” role for America in the world became the president whose “Bush Doctrine” sought to justify the waging of preventive war in response to perceived threats anywhere in the world. And the rest of the world must take a stand for or against us. “Either you are with us or you are with the terrorists.”



America’s role as the Superstate with the mission of making the world safe from terrorism would



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change our domestic politics as well. Congress would rush through passage of the USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools to resist Intercept and Obstruct Terrorism) Act, giving the federal government broad new surveillance and search-and-seizure powers. Conservative Republicans who had made a career of opposing — at least rhetorically — big government bureaucracies hastened to pass legislation creating the new Department of Homeland Security, combining 22 agencies and departments into a massive new cabinet-level department with more than 200,000 employees. Federal agents with [National Security Letters](#) were empowered to search, without court-issued warrants, library records, book purchases, Internet communications and other records revealing what Americans are reading, thinking about, and saying to one another. Those who claimed that constitutional rights were being violated were dismissed as fanatics — or worse.

On September 30, 2001, Attorney General John Ashcroft [announced](#): “We’ve arrested and detained almost 500 people since the September 11 terrorist attacks.... We seek to hold them as suspected terrorists, while their cases are being processed on other grounds.” On December 6, the attorney general testified before the Senate Judiciary Committee on the progress made by the Department of Justice in combating terrorism since September 11. Ashcroft made a fleeting and somewhat mysterious reference to a “preventative campaign of arrest and detention of lawbreakers,” but insisted no constitutional rights were being violated.

“Our efforts have been carefully crafted to avoid infringing on constitutional rights while saving American lives,” the attorney general said just a moment before expressing concern for the privacy of the detainees. “Out of respect for their privacy, and concern for saving lives, we will not publicize the names of those detained.”

People were arrested, taken out of circulation, and confined for indefinite periods of time with no public notice of their detention. This hardly looked like the law enforcement efforts of a free and open society. In fact, it looked more like accounts of arrests in the former Soviet Union, where suspects “disappeared” without any notice, becoming in some cases “non-persons.” Yet Ashcroft was dismissive, even contemptuous, of concerns being raised over civil liberties violations, describing those complaints as “fear mongering.” To “those who scare peace-loving people with phantoms of lost liberty,” Ashcroft delivered the following [message](#):

Your tactics only aid terrorists — for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies, and pause to America’s friends. They encourage people of good will to remain silent in the face of evil.

The message was clear enough. If you don’t support the actions taken by your government, or at least keep silent about them, you are providing “ammunition to America’s enemies.” The Bush rule for international relations would have its political application in the “homeland”: “Either you are with us or you are with the terrorists.”

Over the next few years, we would learn that terrorism suspects, including American citizens arrested here in the United States, could be held in military prisons indefinitely, without a formal charge and trial, simply on the strength of the president designating them “enemy combatants.” We learned of “extraordinary renditions” of foreign nationals to countries where they would be interrogated by governments that we knew practiced torture as a matter of routine. We learned that waterboarding and other forms of torture had been approved by our own government as “enhanced interrogation” techniques. The scandal over the degradations imposed on inmates and revelations of secret prisons run by our CIA might have left at least some Americans wondering if the old Soviet Union had really



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gone out of business or was operating under new management in Washington, D.C.

Then came a new president, one who had been a vocal critic of civil liberties violations when they were practiced by the Bush administration. But Barack Obama's list of persons, including American citizens, designated for "targeted killings" far from any field of military battle, raised further questions about whether our government was in the business of protecting or destroying life and liberty. Attorney General Eric Holder claimed the constitutional guarantee of "due process" does not necessarily require a court of law. "The Constitution guarantees due process not judicial process," Holder [explained](#). A review and determination by the president and those with whom he chooses to share that responsibility may suffice. The roles of judge, jury, and executioner are thus vested in one all-powerful chief executive.

Then Congress late last year passed, and President Obama signed, a National Defense Authorization Act (NDAA) that empowers the president to use the military to arrest and detain indefinitely, without charge or trial, citizens or aliens, here or abroad, who are suspected of aiding persons or organizations plotting or carrying out attacks upon the United States. That kind of activity by an American would constitute treason, of course, and our Constitution specifically guarantees a right to trial for those accused of treason:

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. (Article 3, Section 3.)

But of course, there need not be any conviction, nor any need of a court, if the government may hold people indefinitely without trial.

Those "phantoms of lost liberty" have been busy over the past decade. They appear now to be writing our nation's laws.

Photo of remains of south tower of World Trade Center after September 11, 2001 attacks



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