

## **The History of Presidential-Congressional Leadership In American War Making: From Washington To Bush And The Empire-Building Neocons**

Tim R. Miller, Associate Professor of Political Studies, University of Illinois at Springfield

### **Introduction**

Writing in support of ratification of the U.S. Constitution, the learned James Madison cautioned:

If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

So it would be necessary, he continued, to separate powers and provide various checks to balance power between the various branches of the proposed new American federal government. “But it is not possible,” Madison would continue, “to give each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates” (Hamilton, Madison and Jay, 1961:322).

Accordingly, as Angela and John Roddey Holder would explain, “The framers of the Constitution envisioned the Congress as the most important and most powerful branch of government” (1997:19). It would be the people’s branch; it would have extensive enumerated powers establishing the very basis of federal authority. And so began a slow, evolutionary tug of war for the preeminent role of institutional leadership in American policymaking, an ebb and flow of competition across time.

American policymaking since September 11, 2001 (hereafter 9/11) has both shed light upon, and has in fact redefined, the congressional-presidential balance of power in the realm of foreign policy generally and war making particularly, as will be examined in the pages below. Two sections follow. We begin with an overview of the history of presidential-congressional rivalry across America’s war making, establishing the point that the administration has, in the words of Charlie Savage, reinstated an “era of unchecked executive power” (10-07:25). Next, we turn to the heart of the matter in answering the question, “How, exactly, has this presidential power grab been accomplished?” The discussion concludes with a query of

the implications of America's most recent venture into empire building by noting unmistakable parallels between Bush policy and neoconservative ideology.

### **Institutional Rivalry: An Overview**

In 1787 America's founding fathers proposed and subsequently set in place a remarkable constitutional arrangement of shared powers. Federalism would divide state and national authority; Montesquieu's ideas would be incorporated in order to separate powers and allow for various checks and balances of authority; the rule of law would be employed to defend liberties while protecting the other constitutional arrangements as they changed across time. Two hundred and twenty years later, the arrangement is a marvel to those of us who attempt to understand and study the process.

Because wars were inevitable—and because executives are prone to war making—the American system vested the authority to declare and fund war with the peoples' branch, the legislature. In an historical sense, Congress was the dominant branch of the federal government from its inception through the early decades. But there were exceptions, periods of challenge requiring unity of dispatch by executives in order to assure American interests and even national survival.

The president (Washington) might declare American neutrality (Britain vs. France), but he would do so timidly, as though to acknowledge overstepping his authority. Congress itself might essentially “instruct” a president (J. Adams) to manage a conflict (maritime conflict with France). The president (Jefferson) might decide to discontinue paying tribute to a foreign nation (Tripoli), but it would be for Congress to decide whether to make anything more of it. Seeing opportunities to expand the size of the country, presidents (Monroe, Jackson) could be bold, but only under the pretense of “hot pursuit” against a nation (Spain) which uses surrogates to invade American territory. Then, boldly, America would dramatically expand its size by precipitating a forced takeover; after all, a commander in chief (Polk) could deploy and redeploy troops until desired outcomes (Texas) are achieved. In a dire national emergency (Lincoln), even the rule of law could be suspended—temporarily—by a chief executive facing crisis (Civil War). Presidents might be bold in the use of force, but fundamental authority would generally reside with Congress.

## Forum on Public Policy

With the industrial revolution and America's economic interests rapidly going global, it would be legitimate for a president (McKinley) to commit troops against a sovereign power (China) outside the Western hemisphere. Likewise, presidents (T. Roosevelt, Wilson) would not be overly beholden to Congress when action to defend American property and lives was called for (Latin and South America). And, of course, the very survival of the nation could once again justify bold presidential leadership (F.D. Roosevelt) of questionable legality, a necessary temporary tradeoff for the essential secrecy and unity of command to protect our way of life (prelude to World War II); Congress might be misled along the way if the threat were large enough and there might even be "inherent" presidential authority (Curtiss-Wright case) for such bold action. Maybe. In the face of Cold War threats real and imagined, a president (Truman) might assert strong leadership short of war, such as defense of a strategic friend through a police action (Korea). The point could even be reached where Congress might suggest a president (Eisenhower) was to a degree shirking his responsibilities in even asking for their authorization to use power (Formosa). With that, it seemed the Constitution had been turned on its head.

Once again facing national crisis, a president (Kennedy) could go to the brink of world war with relatively little congressional involvement, due to the need for both dispatch and surprise (Cuban missile crisis). Guarding against Communist aggression and the threat of dominos falling, a president (L. Johnson) could wage a major military campaign including using deceit to force Congress to follow (Vietnam). Better yet, in order to stem the threat to our interests several thousand miles away a president (Nixon) could wage secret, large-scale campaigns all the while lying to Congress and the public about it (Cambodia). He was, after all, commander in chief.

Of course, such presidential overextensions could and did awaken the sleeping "giant." Congress would seek to reestablish its war making relevance by reasserting its authority. Presidents since have been largely un-phased. While denying their legal requirement to comply with the War Powers Resolution, most have nevertheless. But most presidents have complied in ways that have made the Resolution, and Congress itself, less than players with full standing. Most recent presidents have reminded Congress of their constitutional authority as commander in chief and as such have claimed the authority to deploy and direct the military as they see fit in light of national interest.

In all probability, presidents have said, there are inherent constitutional powers as commander in chief to do so (Schlesinger, Jr. 1973; DiClerico, 2000, Rudalevige, 2006).

Then came George W. Bush, assertion of a 50 or 100 year “war,” deception of Congress and the public, and two invasions to date. Congressional resolutions of authorization aside, the president asserts a definitive array of inherent constitutional powers vis-à-vis Congress and the federal courts. In historic and constitutionally-significant ways, we have come nearly full circle in that the fears of the Framers have become the realities of the present and probable future. The president of the United States is America’s foremost warrior, while Congress languishes in the background. Its War Powers Resolution collects dust, the power of the purse strings has been neutralized as unsupportive of troops and unpatriotic, and the body overall remains fragmented in the face of myriad vested interests.

Whatever else may be said, George W. Bush has filled the leadership vacuum.

### **Enhanced Executive Power: Bush Administration Tactics and Techniques**

By nearly all accounts George W. Bush and company have taken—not merely “claimed,” but actually “taken”—executive authority and power to levels unseen in America at least since Franklin Roosevelt and Lincoln before that, aided of course by events following 9/11. We now turn to the manner by which the administration has laid claim to power. Exactly how have they altered the constitutional separation of powers and corresponding checks and balances? Table 1 summarizes the leading tactics and techniques employed by Bush and company, based upon the author’s interpretation of pertinent literature.

### **Claims to Inherent Authority as Commander in Chief: Suspension of Rule of Law via Military Commissions, Extraordinary Rendition, and the Use of Torture**

Table 1 begins with the Bush administration’s bedrock assertion of expansive presidential power: his claim to inherent presidential power as commander in chief. The claim begins with the first 15 words of Article II of the U.S. Constitution, which reads, “The executive power shall be vested in a President of the United States of America.” Edwards and Wayne explain that, “For years scholars have debated whether this designation provides presidents with an undefined grant of authority or simply confers on them the title of the office.” Although “the answer to this question remains in doubt” (Edwards and Wayne, 2006:4), the majority view—and certainly that of proactive presidents—is that the chief executive has broad authority to engage in “a field of

activity wider than that outlined by the enumerated powers” (Thach, 1969:138-139). As per 18<sup>th</sup> century England, the executive is charged, by this view, with authority to serve the public interest broadly defined (see Milkis and Nelson, 1999:40-42).

The argument then proceeds to two more specific constitutional claims. Article II, Section 2(1) establishes that, “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several states, when called into the actual service of the United States. . . .” Likewise, Article II, Section 1(7) declares that the president, before he or she takes office, will “solemnly swear . . . and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

*CQ Weekly* writer Keith Perine put it this way:

In September 2001, as the ruins of the World Trade Center still smoldered and work crews started to repair the charred hole in the side of the Pentagon, a team of Justice Department lawyers quietly began building the Bush administration’s legal foundation for the war on terrorism.

In a lengthy memorandum signed by John C. Yoo, the deputy assistant attorney general, administration lawyers methodically laid out a pathbreaking case: that the president had inherent authority as commander in chief of the armed forces not only to do whatever was necessary to retaliate against al Qaeda, but to prevent future attacks from any quarter.

Congress, Yoo wrote, could not “place any limits on the president’s determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the president alone to make” (*CQ Weekly*, 2-27-06:543).

The key claims here in the administration’s pathbreaking assertion are that the president may “do whatever was necessary” to combat not only al Qaeda “but to prevent further attacks from any quarter” and Congress may do nothing about it because, by virtue of his “inherent authority as commander in chief,” these decisions “are for the president alone to make.” As Rudalevige recounts:

. . . debates would be shaped by the president’s unprecedented claim to unilateral power over the rights not just of aliens but of American citizens. Specifically, President Bush claimed the authority to remove defendants from the judicial process by designating them as terrorist “enemy combatants”. . . . Such people, he said, did not have to be charged with a specific crime or represented by an attorney. And they could be held indefinitely without trial. In this view of

presidential power, judicial review of a given suspect's case was not necessary—nor indeed permissible (2006:248).

By presidential order dated November 13, 2001, enemy combatants would be tried before specially constituted military commissions with neither the presumption of innocence nor access to evidence used against them, and without the Geneva Convention guidelines being in effect. These are pathbreaking assertions, indeed, particularly in light of administration claims that the war on terror may take 50 to 100 years, be generational, or even be perpetual.

Yoo's rationale has been extended to other related aspects of administration policy, including "extraordinary rendition." Writing in the *Presidential Studies Quarterly*, William Weaver and Robert Pallitto note:

The administration of George W. Bush engages in the use of "extraordinary rendition," the kidnapping of foreign citizens and the delivery of those citizens to third-party jurisdictions. In at least one such rendition, a foreign national was kidnapped from U.S. soil and delivered to a foreign jurisdiction where he was tortured. These renditions are accomplished outside of treaties and courts and are solely the result of presidential fiat. The claims to executive power to undertake these actions are of recent origin, and the great balance of U.S. history and law weighs against these claims. The actions of the Bush administration have been aided by judicial deference, a deference that challenges historical assumptions and law concerning executive power (2006:102).

The natural extension of extraordinary rendition, of course, is the alleged use of torture as American policy (particularly by surrogates overseas). Weaver and Pallitto continue, noting a review by Jane Mayer, who:

cites numerous cases of extraordinary rendition involving multiple nations, and she relies on various U.S. and international sources. For example, Bosnian national Hadj Boudella was allegedly rendered from Bosnia to the United States (Guantanamo Bay); Talaat Fouad Qassem was allegedly seized in Croatia and sent to Egypt; Shawki Salama Attiya was allegedly seized in Albania and sent to Egypt; and Maher Arar (a Canadian national) was allegedly seized in the United States and sent to Syria. All of these cases involve allegations of torture (2006:110; see Mayer, 2005).

The administration's position on torture is cloudy. On the one hand, the "'United States doesn't do torture,' Bush has declared." On the other hand, it is the president's policy that puts enemy combatants in the hands of foreign interrogators in the first place; in 2006 Bush voiced "calls for a military tribunals bill that would allow the use of what he calls 'alternative'

interrogation techniques” . . . (*CQ Weekly*, 9-25-06:2518); and the president sought to eliminate CIA operatives from Senator McCain’s (R-AZ) proposal to reform U.S. anti-torture laws. *CQ Weekly* reported that, “Human rights groups have blasted the administration for trying to construct a rationale for torturing suspected terrorists outside the United States in order to elicit information. One Department of Justice memo counseled that international laws banning torture, including the Geneva Conventions, could be found unconstitutional” (10-30-06:2862). The president responded in the spirit of Yoo. Bush:

has insisted that the executive branch has the final say in matters, such as defining torture, and issued a signing statement to the bill containing McCain’s amendment that declared he would interpret the prohibition “in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief” (*CQ Weekly*, 10-30-06:2862).

The president’s use of the term “unitary executive” represents his position that he “has unquestioned authority in times of war and is not beholden to laws or international treaties” (*CQ Weekly*, 10-30-06:2858).

The administration’s internal documents illustrate their overriding confidence in their view of a unitary executive. Rudalevige explains:

. . . Most notable was the Justice Department’s ruling in August 2002 on the applicability of the Convention against Torture, as implemented by American law, to ongoing interrogations. In a memo to the White House, OLC head Jay S. Bybee concluded that the term torture could be applied only to acts sufficient to cause, for example, “organ failure . . . or even death,” and then only if inflicting such pain (and not, say, gaining information) was the “precise objective” of the interrogator. However—even in such a case—the law did not apply to questioning stemming from “the President’s constitutional power to conduct a military campaign.” Since, “as Commander in Chief, the President has the constitutional authority to order interrogations of enemy combatants to gain intelligence information”—since, indeed, this is a “core function of the Commander in Chief”—Congress could not make laws that encroached on the exercise of that authority. A later memo constructed by a working group of Defense Department attorneys came to the same conclusion: “in order to respect the President’s inherent constitutional authority to manage a military campaign, 18 U.S.C. 2340A (the prohibition against torture) as well as any other potentially applicable statutes must be construed as inapplicable to interrogations undertaken pursuant to his Commander-in-Chief authority.” In this sense, at least, the president was above the law. While administration officials later argued this analysis was unnecessary or even irrelevant—since the president did not intend to order torture—they did not, tellingly, argue it was wrong (2006:228-229).

## Forum on Public Policy

The Bush administration's claims to such great authority have not gone unnoticed by the two competing branches, however. Prior to the post-2006 election 110<sup>th</sup> Congress, the president's defenders charged that "Congress so far has been unwilling to make tough decisions on most terrorism issues leaving the president to grapple single-handedly with a new and dangerous threat" (*CQ Weekly*, 10-30-06:2864). When pressed—as seen below regarding military trial commissions—Republican-controlled Congresses have tended to give the president most of what he sought anyway.

To date, the federal courts have ruled in part on various administration claims, particularly in *Hamdi v. Rumsfeld*, the matter of Jose Padilla, and *Hamdan v. Rumsfeld*. Yaser Edam Hamdi is a Saudi national who was born in Louisiana and is an American citizen. He "was captured in Afghanistan during American combat operations in late 2001," declared an enemy combatant and imprisoned at Guantanamo Bay, and subsequently transferred to a brig in South Carolina upon his identification as an American citizen, and also under the government's claim he could be held indefinitely. His father brought suit under habeas corpus, raising two issues: "(1) can the United States detain its citizens as enemy combatants without charging them with a crime and, if so, for how long; and (2) if a detainee contests his enemy combatant status, what manner of habeas corpus review, if any, is he entitled to receive?" The case wound its way through the federal judiciary and to the U.S. Supreme Court.

The Court vacated the judgment of the Fourth Circuit and remanded the case for further proceedings in the lower court. In a plurality decision authored by Justice O'Connor with the Chief Justice and Justices Kennedy and Breyer concurring, the Court sustained the government's right to hold United States citizens as enemy combatants without criminal charges when they had been seized on the battlefield participating in active hostilities. It also held, however, that the Fourth Circuit's approach to the question of judicial review afforded Hamdi too little protection, and it outlined in general terms the elements of due process to which Hamdi is entitled (Kalman and Schroeder, 2004).

In essence, "Americans captured on the battlefield can be detained without criminal charges—but they are entitled to a hearing." At the heart of the issue:

The Court avoided directly confronting the issue of whether the President has unilateral authority to seize and detain enemy combatants even in the face of congressional opposition because it found that the [Authorization on the Use of Military Force] amounted to the Act of Congress required by the Non-Detention Act. In further ruling that Hamdi was entitled to habeas review under the standards set by the Court, however, the Court necessarily rejected the aggressive



theory offered by the government. The Court acknowledged the importance of deference to the authority of the President, but it also stated “a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens” (Kalman and Schroeder, 2004).

In the matter of Jose Padilla, the facts change in that:

the president’s claim was not limited to the foreign battlefield. New York native Jose Padilla was arrested in Chicago on May 8, 2002, as he arrived at O’Hare International Airport from Pakistan. He was detained as a material witness to a conspiracy to use a radiological (i.e., “dirty”) bomb against American targets. It later emerged that the dirty bomb plot had probably been discarded and that Padilla hoped instead to blow up apartments by exploding gas ovens. Presumably he could have been criminally charged in connection with either set of plans. However, when a court required that he be either charged or released, Padilla was instead designated an enemy combatant by order of the president and transferred to military custody. “The authority of the commander-in-chief to engage and defeat the enemy encompasses the capture and detention of enemy combatants wherever found, including within the nation’s borders,” the administration argued. There need not be any rules for determining who was an enemy combatant and who would be a regular criminal, Solicitor General Theodore Olson noted; instead, “there will be judgments and instincts and evaluations and implementations that have to be made by the executive that are probably going to be different from day to day, depending on the circumstances” (Rudalevige, 2006:249-250).

As with Hamdi, the government in the Padilla matter “asserted exclusive presidential authority to detain United States citizens, even in the face of congressional opposition.” In Padilla as in Hamdi, the government “argued that the Court need not reach the issue of exclusive executive authority because Congress had in fact authorized such detentions in the Authorization on the Use of Military Force (AUMF), enacted shortly after September 11, 2001 . . .” (Kalman and Schroeder, 2004).

Since 2002, the government’s case against Padilla has weakened considerably. The *Washington Post* recently reported:

After he was arrested in May 2002, Padilla became the most prominent of the Bush administration’s terrorism suspects because of the president’s decision to detain a U.S. citizen militarily as an “enemy combatant.” Once the Supreme Court seemed to tilt against that tactic—3½ years later—the administration moved him to the civilian justice system. Since Padilla landed in criminal court in January 2006, the prosecution seems to have faltered (Whoriskey, 5-14-07).

## Forum on Public Policy

In fact, Padilla was convicted during the summer of 2007 of a lesser criminal conspiracy, a charge unrelated to earlier administration claims.

Salim Ahmed Hamdan was allegedly Osama bin Laden's driver and aide and a member of al Qaeda who was captured, held and to be tried before a military commission (i.e. without due process). On June 29, 2006 the Supreme Court ruled. *CQ Weekly* reported:

One of his boldest assertions of power—the convening of military commissions to try suspected enemy combatants—was ruled unconstitutional by the Supreme Court, which found that Bush overreached by encroaching on the constitutional prerogatives of Congress. The justices' message in *Hamdan v. Rumsfeld* was that the political branches need to consult and collaborate in order to create the best policy (10-30-06:2858).

The Court instructed the administration to either turn the matter over to established courts, or—better—engage Congress for authorization in establishing the desired system. Justice Stephen G. Breyer, the *Washington Post* reported, “made it clear that the concerns of the critics had penetrated deeply at the court.” Writing for the majority he continued:

“Where, as here, no emergency prevents consultation with Congress, judicial insistence upon that consultation does not weaken our Nation's ability to deal with danger. To the contrary, that insistence strengthens the Nation's ability to determine—through democratic means—how best to do so. . .”

“The Constitution places its faith in those democratic means,” Breyer concluded. “Our Court today simply does the same” (Lane, 6-30-06).

Illustrating the point made earlier that in those instances before the 2006 congressional election where Bush engaged Congress he typically got what he wanted, he moved on the second of his options and asked Congress to authorize the military commissions. As reported by *CQ Weekly*:

Congress last week granted President Bush much of the authority he wanted to try terrorism suspects before military tribunals, but the vote came after two months of negotiations with reluctant members of his own party in the Senate. . .

Democratic leaders and civil libertarians said they thought the courts would disallow some if not all provisions of the [Military Commissions Act] once it's enacted because it allows coercion and denies suspected terrorists the right to challenge their detention under habeas corpus (10-2-06:2624).

Accordingly, Bush's unilateral “grand claim” to inherent constitutional powers outside the realms of Congress and the law has been restricted by the courts. Notice, though, that neither the president nor his spokespersons have yielded even one iota of their claim, he has

received support from at least some quarters of the federal bench, and Congress has repeatedly authorized at least the essence of his requests.

**Claims to Inherent Authority as Commander in Chief: Warrant-less Wiretaps, Data Mining, and the Patriot Act**

On December 16, 2005 the New York Times reported a previously secret National Security Agency (NSA) “eavesdropping program aimed at intercepting domestic communications which was ordered by the president, without court-ordered warrants, and possibly in violation of the 1978 Foreign Intelligence Surveillance Act (FISA).” Congress, civil libertarians, and Democrats in general went bonkers. Senate Judiciary Committee chair Arlan Specter (R-PA) responded, “It is inexcusable to have spying on people in the United States without court surveillance in violation of our laws” (Smith, 5-15-07).

The president authorized the program by secret executive order shortly after 9/11. Once again, “The Bush administration says the authority to conduct the surveillance is grounded in the president’s inherent authority as commander in chief” (*CQ Weekly*, 1-16-06:187). At a press conference on December 19, 2005 the president responded to a question asking how he justified the noncompliance with FISA. Bush responded, “As president and commander in chief I have the constitutional responsibility, and the constitutional authority, to protect our country. So, consistent with U.S. law and the Constitution I authorized the interception of international communications of people with known links to al-Qaeda.” The president emphasized that the program specifically targets communications between Americans and individuals outside the U.S. who are known to be al-Qaeda operatives or are closely tied to the terrorist organization. He continued, “I just want to assure the American people: one, I’ve got the authority to do this; two, it is a necessary part of my job to protect you; and three, we’re guarding your civil liberties” (Smith, 5-15-07).

As a result of Watergate scandal inquiries in the early 1970s, Congress learned that NSA had spied on Americans for decades. Under Operation Shamrock, the NSA had—with the cooperation of ITT, Western Union, and RCA—intercepted all telegrams into, out of, and going through the U.S. in search of Cold War intelligence; there were few laws and regulations covering such communications at the time. The discovery of Operation Shamrock was seen by many in Congress to be in violation of both the 4<sup>th</sup> Amendment to the U.S. Constitution and Section 605 of the 1934 Communications Act.

## Forum on Public Policy

Consequently, in 1978 Congress set up a super secret court “to prevent abuses of civil liberties.” Smith continues, “FISA said no intelligence wiretaps inside the U.S. without a warrant, and the FISA court was designated as the exclusive authority for getting warrants . . . Hence the furor when President Bush went around the FISA court.” Former White House privacy counsel (1999-2001) Peter Swire commented:

The (FISA) law said “exclusive authority” for wiretaps were these other statutes and the president looked at “exclusive authority” and said “except when I feel like it.” It was as though the lessons of Watergate had been forgotten. It was as though the lessons of centralized executive power and the problems that come with that had been forgotten and now the president just said, “I think I can do it my way.” . . . My view is that the president violated the law.

Asked his view, the primary architect of Bush’s expansive interpretation of executive power, former Justice Department Senior Attorney (2001-2003) John Yoo, responded:

I think that there’s a law that’s greater than FISA which is the Constitution and part of the Constitution is the president’s commander-in-chief power. Congress can’t take away the powers in running war that are given to him by the Constitution. There are some decisions the Constitution gives the president and even if Congress passes a law they can’t seize that from him.

When asked to explain his end run of the FISA Court’s warrant-granting process at his December (2005) press conference, Bush said, “Of course we use FISA’s, but FISA’s is [sic] for longterm monitoring. What is needed in order to protect the American people is the ability to move quickly to detect.” With that, the Bush position was complete: the policy is lawful in his view, as a necessary exercise of inherent powers as commander in chief in order to speedily protect American lives and property while at war.

Still, other features of this and related programs raise doubts about various presidential claims. For example, Bush, former Attorney General Alberto Gonzales, and former NSA Director General Michael Hayden have each publicly stated that the Bush-NSA eavesdropping program is narrowly targeted to intercept communications to or from specific, al-Qaeda tied operatives and their associates. No data mining—the use of “electronic drift nets”—takes place, administration officials are on record as asserting. This claim has been convincingly discredited, however. Millions of communications involving Americans have been intercepted and analyzed in patchwork attempts to identify individuals engaged in unlawful activities in support of America’s enemies. Whether these “connect the dots” data drift net endeavors are conducted by

the NSA program disclosed by the *New York Times*—or some other still secret NSA program, or some other program by another agency, or through the Federal Bureau of Investigation’s use of enhanced Patriot Act powers — there is no longer doubt that the administration’s surveillance of Americans has been done as broadly-based fishing efforts outside of probable cause. Of course, such “guessing” is illegal per FISA. In response, John Yoo again defended the administration saying, “This is a good example of where existing laws were not up to the job.”

A little over a year after the NSA programs “outing” by the *Times*, “under pressure from lawsuits like the AT&T case and from Congress, President Bush made a dramatic reversal last January; he put the one NSA eavesdropping program that he has acknowledged under the FISA act, but he still claims he has the power to go outside FISA anytime that he wants” (Smith, 5-15-07); also see *CQ Weekly*, 6-4-07:1660-1661).

In an apparent change of tactics and to the surprise of many, the president sought congressional authorization for his warrantless eavesdropping program during early 2007. In early August, Congress gave the president another victory much to the chagrin of civil libertarians. The bill:

updates the Foreign Intelligence Surveillance Act, know as FISA. It gives the government leeway to intercept, without warrants, communications between foreigners that are routed through equipment in United States, provided that “foreign intelligence information” is at stake. Bush describes the effort as an anti-terrorist program, but the bill is not limited to terror suspects and could have wider applications, some lawmakers said (Hebert: 8-5-07).

### **Dealings with Congress: Patriot Act and Torture (Revisited), Briefings and Signing Statements**

The Bush administration has also gained executive authority through their dealings with Congress. In the earlier discussion of military commissions and the suspension of the rule of law, the point was made that the pre-110<sup>th</sup> Congress was in many ways hesitant in the face of presidential claims to war-time authority. Opposition to a war president’s policies may seem unpatriotic, unsupportive of the troops, and even likely to cost legislators votes. So Congress has tended to go along. Two examples pertain to the surveillance policy discussed above, and two other illustrations speak even more directly to the means of enhanced executive power.

Regarding the issue of domestic surveillance, it should be noted that Congress was “briefed” on the secret program, in a manner of speaking. In 1991 President George H. W. Bush reached a compromise with Congress on an intelligence authorization bill which “softened the

reporting requirements” in legislation requiring “that future administrations tell lawmakers about covert activities.” Accordingly, when asked whether Congress was informed of the NSA surveillance program:

Vice President Dick Cheney says congressional leaders were told about the program “more than a dozen times,” usually at briefings led by him. But only a handful of lawmakers were told about the surveillance, and they were told under conditions that are being widely criticized for not giving members of Congress many options if they have concerns about what they’ve heard.

The briefings were provided only to a select group known as the “Gang of Eight”—the Senate majority and minority leader, the House Speaker and minority leader, and the chairmen and ranking minority party members of the two Intelligence committees—under an arrangement that has developed over decades and was written into law in 1991. But those lawmakers can’t take notes during their briefings. They can’t take any staff specialists into the room with them. And they can’t discuss what they’ve heard with anyone who wasn’t in the room.

It’s not a good arrangement for providing aggressive oversight, former Intelligence committee aides say. And last week, the nonpartisan Congressional Research Service suggested that the Bush administration may have erred by providing the NSA briefings only to the Gang of Eight because the statute says the president should reserve such limited briefings only to discuss covert activities—and only under “extraordinary circumstances.” The NSA program was more of an intelligence collection program, so limiting the briefings to the Gang of Eight “would appear to be inconsistent with the law,” CRS said.

The point here is that in this and other instances, Congress seems to have readily enabled the power shift to the executive. In the example above, it is as though congressional leaders accepted an executive “gag order” issued by their supposed coequals (*CQ Weekly*, 1-23-06:221-223).

Passage of the USA Patriot Act “with overwhelming bipartisan support” is a major example of congressional support for executive authority during times of war. The 1000 page Patriot Act “empowered executive agencies to prosecute a domestic war against terrorism” (Lowi et al, 2006:29). As is widely known:

The Patriot Act greatly expanded the federal government’s power to monitor individuals and groups. Provisions of the act include expanded wiretapping powers and increased abilities to search student records. Advocates argued that these new measures were vital tools in the war on terror, and that most Americans were more than willing to give up some personal freedom if it meant a more secure and safe nation. The legislation, which might have seemed controversial at any other time, passed with overwhelming bipartisan support less than six weeks after the September 11 terrorist attacks (Lowi, 2006:134).

Although modified in 2006, the Patriot Act is an historical illustration of congressional deference to the Bush vision of executive authority.

Among President Bush's most glaring techniques for institutional power grabbing has been his use of signing statements. When the president signs bills into law, he regularly—and more than any other president in U.S. history—asserts that he has “final” say on what the new laws mean. Chris Wilson explains:

Presidents can exercise their powers in different ways: imposing executive orders, creating new rules within executive branch agencies or issuing national security directives. One less well known tactic is issuing a statement when a bill is signed.

President Bush has done that more than any of his predecessors, frequently declaring that he has the ultimate discretion over how laws are enforced, irrespective of any conditions Congress may impose. Bush has been particularly aggressive on policies to combat terrorism, brushing off congressional directives on torture, intelligence-gathering and disclosure.

Just how legally binding the statements are is a matter of dispute. But Phillip Cooper, a professor of public administration at Portland State University in Oregon who has studied Bush's use of statements, says they are an important component of Bush's efforts to expand the notion of a “unitary executive.”

“The idea was to consistently stake out the broadest claim to executive power possible,” Cooper says. “This is not an aside, not a speech. It's an attempt to assert legal authority.”

In many cases, Bush uses the signing statement to single out very specific sections of a law. And though the statements might be overlooked by some in Congress, they are required reading for executive branch officials, who must implement the laws and who naturally give deference to how their boss wants it done (*CQ Weekly*, 10-30-06:2863).

Charlie Savage, of the *Boston Globe*, won a 2007 Pulitzer Prize for his series of articles examining Bush's use of signing statements. Noting the vice president's influence over Bush on the issue, Savage cuts to the chase:

“What's happening now is unprecedented on almost every level,” said Ron Klain, who was chief of staff to Vice President Al Gore from 1995 to 1999. . . . The administration insists that Bush's use of signing statements is not unprecedented. Justice Department spokesman Brian Roehrkasse said, “President Bush's signing statements are lawful and indistinguishable from those issued on hundreds of occasions by past presidents.”

The use of signing statements was rare until the 1980s, when President Ronald W. Reagan began issuing them more frequently. His successors continued the practice. George H. W. Bush used signing statements to challenge 232 laws over

four years, and Bill Clinton challenged 140 over eight years, according to Christopher Kelley, a political science professor at Miami University of Ohio.

But in frequency and aggression, the current President Bush has gone far beyond his predecessors.

All previous presidents combined challenged fewer than 600 laws, Kelley's data show, compared with the more than 750 Bush has challenged in five years . . .

Critics of the Bush tactic have been harsh in their assessments of both the president and vice president's motives in extending the use of signing statements. Savage continues:

Douglas Kmiec, who as head of the Office of Legal Counsel helped develop the Reagan administration's strategy of issuing signing statements more frequently, said he disapproves of the "provocative" and sometimes "disingenuous" manner in which the Bush administration is using them.

Kmiec said the Reagan team's goal was to leave a record of the president's understanding of new laws only in cases where an important statute was ambiguous. Kmiec rejected the idea of using signing statements to contradict the clear intent of Congress, as Bush has done. Presidents should either tolerate provisions of bills they don't like, or they should veto the bill, he said. . . .

By contrast, Bush has used the signing statements to waive his obligation to follow the new laws. In addition to the torture ban and oversight provisions of the Patriot Act, the laws Bush has claimed the authority to disobey include restrictions against US troops engaging in combat in Colombia, whistle-blower protections for government employees, and safeguards against political interference in taxpayer-funded research.

Cheney's office has taken the lead in challenging many of these laws, officials said, because they run counter to an expansive view of executive power that Cheney has cultivated for the past 30 years. Under the theory, Congress cannot pass laws that place restrictions or requirements on how the president runs the military and spy agencies. . . .

Mainstream legal scholars across the political spectrum reject Cheney's expansive view of presidential authority, saying the Constitution gives Congress the power to make all rules and regulations for the military and the executive branch and the Supreme Court has consistently upheld laws giving bureaucrats and certain prosecutors the power to act independently of the president.

One prominent conservative, Richard Epstein of the University of Chicago Law School, said it is "scandalous" for the administration to argue that the commander in chief can bypass statutes in national security matters. "It's just wrong," Epstein



said. “It is just crazy as a matter of constitutional interpretation. There are some pretty clear issues, and this is one of them” (Savage, 5-28-06).

### **Powers of the Vice President**

Writing in the *CQ Weekly*, David Nather surmises that, “Cheney’s impact on the Bush presidency—his role in the buildup to the Iraq War, his influence on anti-terrorism policies such as eavesdropping and interrogation tactics, and his expansive view of executive power—has been so widespread that his status as the most powerful vice president in history isn’t seriously debated anymore” (6-11-07:1734). Indeed not. Beyond Cheney’s considerable experience and political cunning, two other pertinent facts stand out regarding the powerful role he plays in the administration. First, as Gellman and Becker note (6-25-07) in their acclaimed four-part series on the VP, Cheney has a “robust view of executive authority.” Studies of Cheney’s career are in widespread agreement on the roots of his thinking on executive power:

Cheney’s thinking was formed during his years in the White House as Ford’s chief of staff, in the wake of Vietnam and Watergate, when Congress set about dismantling the imperial presidency. Cheney still seems to resent these moves by Congress to bring the presidency back within the Constitution. Later, when serving as a member of Congress, Cheney was unhappy with his colleagues’ exercising their constitutional powers (and responsibilities) during the Reagan presidency, culminating in the congressional investigation of the Iran-Contra scandal, which Cheney participated in from his seat in Congress, as a member of the Republican leadership and a ranking member of the joint investigating committee.

Cheney rejected the majority report of the Iran-Contra committee’s investigation, which said that the common elements of both “the Iran and Contra policies were secrecy, deception and disdain for the law” and that the entire affair “was characterized by pervasive dishonesty and inordinate secrecy.” Cheney was not the least bit concerned by either the secrecy or lawbreaking, and said so when filing a minority report. . . . (Dean, 2004:181-182).

Cheney’s view of executive supremacy during times of war has produced a striking, often secretive policymaking operation based in his office. One of the administration’s more controversial and embarrassing policies which originated with the Office of the Vice President stands out in illustrating the extremes of the administration. We return to the use of torture.

Gellman and Becker continue:

In a radio interview last fall, Cheney said, “We don’t torture.” What he did not acknowledge, according to Alberto J. Mora, who served then as the Bush-appointed Navy general counsel, was that the new legal framework was designed specifically to avoid a ban on cruelty. In international law, Mora said, cruelty is defined as “the imposition of severe physical or mental pain or suffering.” He added: “Torture is an extreme version of cruelty.”

How extreme? Yoo was summoned again to the White House in the early spring of 2002. This time the question was urgent. The CIA had captured Abu Zubaida, then believed to be a top al-Qaeda operative, on March 28, 2002. Case officers wanted to know “what the legal limits of interrogation are,” Yoo said.

This previously unreported meeting sheds light on the origins of one of the Bush administration’s most controversial claims. The Justice Department delivered a classified opinion on Aug. 1, 2002, stating that the U.S. law against torture “prohibits only the worst forms of cruel, inhuman or degrading treatment” and therefore permits many others. Distributed under the signature of Assistant Attorney General Jay S. Bybee, the opinion also narrowed the definition of “torture” to mean only suffering “equivalent in intensity” to the pain of “organ failure . . . or even death.”

When news accounts unearthed that opinion nearly two years later, the White House repudiated its contents. Some officials described it as hypothetical, without disclosing that the opinion was written in response to specific questions from the CIA. Administration officials attributed authorship to Yoo. . . .

But the “torture memo,” as it became widely known, was not Yoo’s work alone. In an interview, Yoo said that Addington, as well as Gonzales and deputy White House counsel Timothy E. Flanigan, contributed to the analysis.

The vice president’s lawyer advocated what was considered the memo’s most radical claim: that the president may authorize any interrogation method, even if it crosses the line into torture. U.S. and treaty laws forbidding any person to “commit torture,” that passage stated, “do not apply” to the commander in chief, because Congress “may no more regulate the President’s ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield.”

That same day, Aug. 1, 2002, Yoo signed off on a second secret opinion, the contents of which have never been made public. According to a source with direct knowledge, that opinion approved as lawful a long list of interrogation techniques proposed by the CIA—including waterboarding, a form of near-drowning that the U.S. government has prosecuted as a war crime since at least 1901. The opinion drew the line against one request: threatening to bury a prisoner alive (Gellman and Becker, 6-25-07).

The prominent role of the VP in the administration's ascendant view of executive authority begins, then, with his political philosophy; and it takes nourishment from the second great source of Cheney power, his wealth of political skills acquired during extensive service in the federal government. These tactics and techniques have been both identified and assessed by Gellman and Becker, nicely abbreviated by Richard Reeves, and supplemented by the *CQ Weekly*.

What are the vice president's unique political tactics? We begin with Reeves: (1) Cheney has "Redefine(d) the office" in order "to be able to claim he is not subject to the legal scrutiny affecting other executive branch offices." This is Cheney's seemingly silly claim that rather than an executive official, the vice presidency is a legislative office and thus not subject to such requirements as providing public documents to the General Accountability Office. (2) "Seek access, intimidating access, to lower levels of government." The VP simply shows up, without invitation, to lower-level meetings "stifling internal debate and forcing them to answer only to him" (3) "Establish information systems that direct department papers into Cheney's office, but block any words coming out." (4) When opportunities arise, "prepare the first paper on any important subject" in order to focus subsequent discussions on Cheney's ideas. (5) Manipulate the president's cognitive limitations by relieving him from reading "long intelligence summaries and rough drafts of legislative actions." Follow up by having [Cheney's] office prepare new, shorter summaries serving [the VP's] agenda." (6) Pull off the "fait accompli." For example, the president's order to transfer suspected enemy combatants to foreign locations (e.g. Guantanamo Bay, Egypt, Jordan) for presentation to newly-constituted military commissions "denying them all access to civilian courts or civilian lawyers," was drafted in the Office of the Vice President. "This edict, seen by only four people, was signed in the Oval Office before Secretary of State Colin Powell or National Security Adviser Condoleezza Rice knew the subject was under discussion."

(7) "Be the last man to speak to the president, by sitting with him as others leave the room, or even by arranging video links to 'sit in' while traveling." (8) "Work through surrogates—Cheney's hand is often hidden in policy decisions." Also, "aggressively" work to have the chain of command revised so that lower officials "answer to him rather than to department heads or to the president." (9) Carry out "the educational use of power," which is "a euphemism for humiliating or firing people" not for poor performance, "but as an object lesson

for colleagues inclined to challenge the vice president's arguments or agenda." (10) Learn to speak and write using "language that deliberately contradicts itself" thereby providing cover, deniability, and making it easier to bring items previously thought settled back to the table. (11) "Don't take 'no' for a final answer. Continue, flexibly, to come back with rejected proposals in new forms, sent to new venues." (12) Use the technique intelligence officials call 'cut-outs' i.e. "have documents or analysis transmitted to lower-level officials without revealing that their actual source is the vice president. Let others, ignorant others, deliver specifics of your own agenda. Leave no fingerprints." (13) Disregard and demean the public and media's rights to either "know what he does or why" or the belief "that the press has a valid public purpose" (Reeves, 7-3-07; see Gellman and Becker).

*CQ Weekly* adds to the list of Cheney tactics: (14) Use the powers of friends and allies "to discredit critics," much as was done in the attempt to neutralize Iraq War critic Ambassador Joseph C. Wilson IV (of the Valerie Plame outing). (15) Achieve an "integration of the presidential and vice presidential staffs." For instance "Cheney's chief of staff . . . also carries the title assistant to the president." (16) Seek to politicize the intelligence community, pressuring them personally and through your staff, to produce and concur with your own desired interpretations and outcomes and to "discredit critics." And (17) develop and sharpen an uncanny "ability to know what channels to use when . . . information is needed" (Nather, 6-11-07:1734-1742).

### **Broad Interpretation of Congressional Resolutions**

The Bush administration likewise contends that Congress is somewhat irrelevant to the conduct of the wars in Iraq and Afghanistan because they have already authorized these wars and Bush policies in their strong support for two particular resolutions. Thus, in defense of the NSA surveillance program without FISA court authorization, for example, "officials point to the use-of-force resolution Congress passed after the 2001 attacks, saying that gives the president a statutory exemption" from existing measures such as FISA (*CQ Weekly*, 2-27-06:544).

On September 18, 2001, Congress passed Public Law 107-40, a concurrent resolution known as the "use of force" resolution. Two parts stand out. Section 2(b) essentially suspends the War Powers Resolution's 60/90 day trigger. But the heart of the considerable claim to unilateral authority is found in Section 2(a):

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) <<NOTE: President.>> In General.—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

By this reasoning, the president is apparently asserting that such actions as establishing military commissions and ignoring FISA court for surveillance warrants against Americans are likely to prevent future terrorist attacks against the nation. In other words, a congressional resolution lacking a sunset provision trumps the rule of law, judicial authorization of surveillance, and every law in the land the president finds inconvenient as commander in chief. This is quite a claim, indeed.

Public Law 107-243 was passed on October 16, 2002, and authorizes the president to use force against Iraq if he finds “continuing threat posed by Iraq” and their refusal to comply with U.N. resolutions. Hans Blix, former director of the U.N. Inspection Commission, would later state, “. . . since its (Iraq’s) level of cooperation was much better than it had rendered inspectors in earlier years, I did not think that inspections should be curtailed and declared a failure after only three and a half months—and used as justification to go to war” (Blix, 2004: 11-12).

**Secrecy and the Claim of Executive Privilege**

Weaver and Pallitto “have argued . . . that the George W. Bush administration relies on institutional secrecy to an unprecedented extent” (*Presidential Studies Quarterly*, 2006:111; also see *Political Science Quarterly*, 2005). Stephen Aftergood, director of the Federation of American Scientists’ Project on Government Secrecy, adds that the administration “has preferred secrecy when openness would be just as easy.” Administration spokespersons have stated that “open government is an important goal, but it isn’t always possible” (*CQ Weekly*, 7-18-05:1959). Critics acknowledge that while other recent presidents have fought battles to prevent disclosure of information from the public, “the current administration seems to be different from the others . . . in that secrecy is a part of a guiding philosophy of government, not just an occasional response

to extraordinary events. ‘You’ve got an administration that wants no oversight’ (Representative Christopher) Shays (R-CT) said” (*CQ Weekly*, 7-18-05:1962).

Although not mentioned in the U.S. Constitution, “From time to time, Presidents . . . have claimed the executive privilege of withholding information from Congress, the federal courts, or the general public . . . arguing that it is a functional necessity” in order to receive straightforward advice from aides and to further candid deliberations from them. Presidents since Washington have invoked the claim. Its modern heritage is generally traced to the presidency of William Howard Taft, “whose Executive Order 1062 provided that the President could order heads of departments not to furnish information to Congress if it were ‘incompatible with the national interest’.” Before World War II the privilege was rarely invoked. The most controversial use of the privilege against congressional inquiries was by President Nixon during the Watergate scandal. Its cousin is the claim to “state secret privilege” used to withhold national secrets (Patrick et al, 2000: 181-182).

While “Bush has not been shy about wielding the powers and prerogatives of the presidency. . .” he has “In most cases . . . exploited less controversial tools that are more clearly at his disposal, such as the right to assert executive privilege” (*CQ Weekly*, 2-27-06:543). But the administration has aggressively invoked executive privilege to resist congressional oversight on several of the most controversial issues during their tenure, such as resistance to disclosing the members of the vice president’s energy task force and the substance of their meetings (*CQ Weekly*, 6-11-07:1741), information regarding independent contracting in Iraq (*CQ Weekly*, 5-21-07:1496), and most recently to prevent White House aides (including political adviser Karl Rove) from testifying before Congress regarding the firing of eight federal prosecutors (Associated Press, 8-2-07). William G. Weaver says that while there are difficulties in obtaining data on executive privilege, his data show that the state secret privilege “was asserted at least 55 times between 1953 and 2000, and at least 23 times since Bush took office” (*CQ Weekly*, 10-9-06:2684-2685). Consistent with their views on the “unified executive,” *CQ Weekly* reports, the current regime opposes both oversight and openness:

. . . the Bush administration’s reluctance to do so—to share information—has become the default position in the post Sept. 11 world. Administration secrecy has become the rule rather than the exception, a phenomenon that lawmakers, journalists, public interest groups and even ordinary Americans say has interfered with their ability to participate in government and to hold it accountable for its actions (Nather, 7-18-05:1959).

One pattern in particular has alarmed critics of the Bush power grab: the administration's use of the

classification process, especially to hide politically embarrassing information, as they are alleged to have done regarding flaws in their border security policy (*CQ Weekly*, 7-18-05:1959-1960). *CQ Weekly* reports:

The administration has classified a record amount of government information—an estimated 15.6 million documents and other records in fiscal 2004, according to the Information Security Oversight Office of the National Archives and Records Administration—and has made it easier to apply official secrecy to a wider variety of materials. It has created and expanded categories of documents that are kept secret yet aren't classified, hiding them under such labels as “sensitive but unclassified” that have fewer requirements than the official classification system (7-18-05:1959).

### **The Politics of Patriotism**

The Bush administration's dramatic claims to unified executive power are accompanied by a political trump card. Speaking on “American Morning” recently—as he had August 1, 2007 on CNN's Larry King program—Vice-president Cheney criticized U.S. Senator Hillary Clinton (D-NY), questioning her patriotism for being critical of the Bush administration and asserting that doing so is an aid and comfort to enemies such as al-Qaeda.

A year earlier the leftist publication *The Nation* reported the same theme in an editorial titled “Bush's

High Crimes”:

Choosing his words carefully, George W. Bush all but accused critics of his extralegal warrantless wiretaps of giving aid and comfort to Al Qaeda: “It was a shameful act, for someone to disclose this very important program in time of war. The fact that we're discussing this program is helping the enemy. . .” (1-16-06:3).

Acknowledging that one definition of “politics” is seeking advantage, the administration’s criticism of war opponents as unpatriotic can be interpreted as meaning that criticism of George Bush’s exaggerated claims to executive power is unpatriotic. In a free society, that would mean something entirely different.

Having examined several aspects of how the administration has seized war making power from the Congress — and acknowledging that they have employed other tactics and techniques as well (See *CQ Weekly* 1-30-06:262; 2-12-07:450-457)—we close by turning to the next question of consequence. Why have Bush and his administration taken this tack?

### **Conclusion: George W. Bush, Neoconservative**

#### **Ideology and Empire America**

In raising the question of how well neoconservative beliefs parallel—and possibly explain—Bush administration foreign policy, it is first necessary to identify the essential tenets of the term. It doesn’t take long in reviewing the voluminous literature to realize that Professor Ira Chernus was on to something when he wrote, “No one can say for sure just what a neoconservative is, not even the neocons themselves” (2006:18). The classic one-liner is by neocon godfather Irving Kristol, who once quipped that a neocon is “a liberal who has been mugged by reality” (1995:134,142). Congressman Ron Paul (R-TX), speaking on the floor of the U.S. House of Representatives in a talk entitled “We’ve Been Neo-Conned,” provides a more complete set of tenets:

1. They agree with Trotsky on permanent revolution, violent as well as intellectual.
2. They are for redrawing the map of the Middle East and are willing to use force to do so.
3. They believe in preemptive war to achieve desired ends.
4. They accept the notion that the ends justify the means – that hard-ball politics is a moral necessity.
5. They express no opposition to the welfare state.
6. They are not bashful about an American empire; instead they strongly endorse it.



## Forum on Public Policy

7. They believe lying is necessary for the state to survive.
8. They believe a powerful federal government is a benefit.
9. They believe pertinent facts about how a society should be run should be held by the elite and withheld from those who do not have the courage to deal with it.
10. They believe neutrality in foreign affairs is ill-advised.
11. They hold Leo Strauss in high esteem.
12. They believe imperialism, if progressive in nature, is appropriate.
13. Using American might to force American ideals on others is acceptable. Force should not be limited to the defense of our country.
14. 9-11 resulted from the lack of foreign entanglements, not from too many.
15. They dislike and despise libertarians (therefore, the same applies to all strict constitutionalists.)
16. They endorse attacks on civil liberties, such as those found in the Patriot Act, as being necessary.
17. They unconditionally support Israel and have a close alliance with the Likud Party  
(7-10-03).

The elements here are striking; Paul, of course, is a neocon critic:

. . . permanent revolution, violent . . . redrawing the map of the Middle East (through) force . . . preemptive war . . . ends justify the means . . . welfare state . . . American empire . . . lying is necessary . . . powerful federal government . . . elite (secrecy) . . . (non) neutrality . . . Leo Strauss . . . imperialism . . . (use of) American might to force American ideals . . . (too few) foreign entanglements . . . despise libertarians (and) strict constitutionalists . . . attacks on civil liberties . . . unconditionally support Israel (and) the Likud Party.

These, then, are several of the central elements of neoconservatism. He explains, “demonstrating moral strength by combating evil, in order to preserve traditional values. This is the central thread that has run through the neoconservative weave from beginning to end, from their war against radicalism in the 1960s to their war against terrorism today” (2006:19).

And how do these ideas pertain to George W. Bush and company? Might they explain why Bush foreign policy is what it is? Prominent neocon journalist Charles Krauthammer believes so:

The remarkable fact that the Bush Doctrine is, essentially, a synonym for neoconservative foreign policy marks neoconservatism's own transition from a position of dissidence, which it occupied during the first Bush administration and the Clinton years, to governance. Neoconservative foreign policy, one might say, has reached maturity. That is not only a portentous development, requiring some rethinking of principles and practice, but a rather unexpected one . . .

What neoconservatives have long been advocating is now being articulated and practiced at the highest levels of government by a war cabinet composed of individuals who, coming from a very different place, have joined and reshaped the neoconservative camp and are carrying the neoconservative idea throughout the world. As a result, the vast right-wing conspiracy has grown even more vast than liberals could imagine. And even as the tent has enlarged, the great schisms and splits in conservative foreign policy—so widely predicted just a year ago, so eagerly sought and amplified by outside analysts—have not occurred. Indeed, differences have, if anything, narrowed (July-August, 2005:22, 26).

Actually, this is the point. Whether Bush was himself a disciple before 9/11 is highly doubtful, but irrelevant. Recall what the administration regularly tells us: the world forever changed on 9/11. Chernus at one point explains that while many in the movement focused their concerns with traditional values on domestic matters, others placed their concerns with traditional American values in the realm of foreign policy. He asserts:

There were some neoconservatives, however, who still saw great danger coming from abroad and wanted their movement to stay focused on foreign affairs. By the end of the 1990s, they would take firm control of the movement. By 2001, they would take firm control of foreign and national security policy in the Bush administration. They would be ready to seize the moment of 9/11 and make their story the nation's own (2006:39).

In his deliberations regarding whether Bush is in fact among the harbingers of neoconservative foreign policy, Chernus offers an intriguing way to conduct the analysis—the object of the analysis being the president's manner of storytelling. Storytelling is a fundamental form of communication. University of Colorado at Boulder Professor of Religious Studies Ira Chernus explains:

No matter how painful or frightening the world might become, it is always easier to handle if we can fit it all into a story line. Stories give shape to our lives. They create a secure picture of what the world is like and how life should be lived. We

rely on our stories to give structure to our experience, to make it seem meaningful, to turn it from chaos into order. A story lets us hope that we can somehow bring even the most overwhelming events and feelings under control.

Most of the time we can't even tell our most important stories completely in any detailed narrative. We take them for granted. We know them only in bits and pieces, but the whole story is always there. Mentioning just one piece is like pushing a button that brings the whole story to life; the process unfolds largely unconsciously. An outsider who studied our lives closely might well see the full structure of our stories more clearly than we could. That's why it may be helpful for an outsider like myself, a critic of nearly every aspect of Bush administration policy, to piece together the stories of the administration (2006:3).

The stories we tell convey “meaning” as we see it, about what we believe, value, desire, and more. Narratives are built around these stories, and themes may become evident. For politicians out to win votes or support, these themes demonstrate complex relationships between what they are “selling” as well as what they value and believe you and I are buying. In this sense, story analysis conveys meaning. Few would doubt that the story lines parents, ministers, teachers, police, boyfriends and girlfriends tell convey meanings about their deeply held belief systems. And when these story lines are regularly repeated, they in all likelihood convey deeply-based values, etc. The same may be said of the messages of political leaders. In the case of the president, Chernus has long studied the narratives—the stories—he relies upon; and as a peace and conflict specialist who examines the implications of religious studies, he is well acquainted with the neoconservative movement. What has he found?

Chernus sees Bush as “a complicated person” who from early on impressed neocon stalwarts with “his ability to make complicated issues seem simple, to convey the image of a simple man who sees clear simple truth and sticks to it, no matter what” (2006:61; see *CQ Weekly*, 7-25-05:2020-2021). Chernus explains:

. . . the president has always conveyed his image of clear-cut certainty by telling simple stories with apparently absolute conviction, over and over again. Five stories have dominated his public life and they all seem to fit together neatly, reinforcing the image of a man who knows exactly what he believes. The first is the story he was raised on: how to achieve and exhibit good character. He adopted the other four stories at later times in his life. First there was the “faith” story, telling how Bush himself has been saved by finding Jesus Christ. Then there was the “culture” story telling how liberals are undermining America's moral and cultural values. From September 11, 2001, there was the “war on terrorism” story, telling how the United States will rid the world of the evil of

terrorism. Finally, there was the “freedom” story, about America’s commitment to rid the world of every tyrant in the “axis of evil.”

As long as the president stays inside his familiar narrative structure, there seems to be no room or reason for him to feel doubt. Yet the promise of a life without doubt can never be fulfilled, because the stories are all built on the same simple plot line that shapes the neoconservative story: the battle of virtue against sin. Bush’s stories show, more clearly than the neocons’, the foundation of their narrative structure: a fear of sin and an inescapable doubt about winning any permanent victory over sin (2006:61-62).

With the president’s post 9/11 war on terrorism story we leave the shadows and move more openly into the realm of empire building.

Bush built his story on this familiar and utterly simple mythic plot: Innocent Americans, propelled into mortal conflict by fate and through no choice of their own, must go to war against savage enemies who would take away human liberty. As warriors for good, they willingly fight every enemy and endure every hardship to secure the worldwide triumph of the highest moral ideals. Americans will make any sacrifice to fulfill their divine mission to defeat freedom’s enemies. Their sacrifice purifies and ennobles them as it spreads liberty around the world. They gain what scholar Richard Slotkin calls “regeneration through violence.”

. . . Whatever violence American heroes perpetrate is fully justified because they, and the civilization they spread, are so purely good.

Having long blamed much they see as wrong in America on moral decline, 9/11 presented neocons with the opportunity to make military strength synonymous with moral strength. And, Chernus adds, “the moral would be just what anyone who knew the neocon stories would predict: Only one response to the attack was possible—a long, arduous, perhaps endless war on terrorism.”

Bush, of course, picked up and espoused central neocon themes. The plague of 60’s radicalism had seriously weakened “all of American society,” which produced a serious decline in America’s “moral standards.” As a result, Americans feared challenges and avoided them at all cost. We had become weak and both unwilling and unable to exercise strength. The “classic virtues of courage, steadfastness, and a ruthless desire for victory” had been forgotten, David Brooks and The Weekly Standard espoused (11-5-01).

Chernus continues:

. . . The neocons responded to the attack with what Kagan called “a ready-made approach to the world.” Their years of ideological conviction gave them not only a ready-made explanation for the tragedy but also a ready-made reaction. “Intellectual and conceptual simplicity,” Krauthammer called it: “States line up with more powerful states not out of love but out of fear. And respect . . . . The world await[s] the show of American might.” Brooks agreed that the political debates of the coming years would be about “how to wield power.” He hoped that Americans would follow the path charted by Reinhold Niebuhr, “to think in moral terms about force—and to be tough-minded.” The war on terrorism should “breed a certain bloody-mindedness” and remind us of simple truths: “Evil exists . . . . To preserve order, good people must exercise power over destructive people . . . . Every morning you strap on your armor and you go out to battle the evil ones. It’s more important to be feared than loved . . . to show that under Pax Americana, the world s governable.”

Would Americans have the will to destroy evil and wield power around the world?

George Bush does, with his war on terrorism story in hand. Kristol and the neocon stalwarts, Chernus adds, could take comfort at the “apparent conversion of Bush himself; at last they had a dependable friend in the Oval Office. ‘So I think you had Bush, Cheney, and Rice, all lined up together’.” And America “finally had a war president and a war administration that could show America’s strength to the whole world.”

Bush, then, employed his war on terrorism story to justify an extension of the American empire, first in Afghanistan, then Iraq, and then we’ll see. America represents “absolute good,” Bush would assert. And “God has set His stamp of approval especially on the American way of life and chosen this nation for the divine mission of eradicating sin from the world,” as Chernus explains. In Bush’s story:

. . . the new war would create a higher material and spiritual state, not just for the U.S. but for the whole world. Since patriotic American values were held up as the only universally legitimate values, a good person could choose no other value system. The only alternative to “compassionate conservatism” was to be among the evildoers. This was the deeper implication of his dictum: “God is not neutral” (Chernus, 2006:115-141).

Why, then, has the United States invaded Afghanistan and Iraq, while threatening Iran, Syria, Pakistan, Hezbollah, North Korea and undoubtedly others? We’ll each decide for

ourselves, of course. But for me, neoconservative politics is not only an obvious consideration, but an equally obvious answer. If this assessment is correct, the United States is doomed to repeat the folly of empire building for the purported reason of “state security” (see Snyder: 1991). And national security is, of course, the second pillar (along with “freedom”) of Bush rhetoric regarding our role in the world. But there is a significant difference per George Bush and the empire-building neocons. For them, the fight is not merely to defend national security. Rather, it is to establish “our way”—it’s “freedom,” after all—wherever “enemies” exist. But since we will always have opponents, we must always impose our will throughout the world. In order to be secure, we must be perpetually insecure, for neoconservative philosophy requires enemies to destroy. This is the legacy of George W. Bush and his neocon enablers.

**Table 1**

**Enhanced Executive Power:  
Bush Administration Tactics and Techniques**

1. Claims to Inherent Authority as Commander in Chief:
  - Suspension of Rule of Law via Military Commissions
  - Extraordinary Rendition
  - Use of Torture, Cruelty
2. Claims to Inherent Authority as Commander in Chief:
  - Warrant-less Wiretaps, Surveillance, Eavesdropping
  - Data Mining via Electronic Drift Nets
  - Patriot Act and Torture
3. Dealings with Congress
  - Signing Statements
  - Manner of Briefings
  - Patriot Act and Torture (Revisited)
4. Powers of the Vice President
  - Robust View of Executive Power and Authority
  - Robust Tactics and Techniques Employed by the VP
5. Broad Interpretation of Congressional Resolutions
  - Public Law 107-40, Authorization to Use Force Against Enemies
  - Public Law 107-243, Authorization to Attack Iraq
6. Secrecy and the Claim of Executive Privilege
  - Secrecy as Guiding Philosophy
  - Resistance to Oversight

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- State Secrets Privilege
- Classifying Documents

### 7. Politics of Patriotism

- Criticism Unpatriotic

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