

By Dennis Loo

Yesterday the Senate passed a bill, the [National Defense Authorization Act](#) for FY 2012 (S. 1867) that makes a suitable matching pair for the prior day's forcible police action evicting the last remaining large occupation, Occupy LA, and that of the Occupy encampment in Philadelphia.

This bill represents a return to the “

[Enemy Belligerent, Interrogation, Detention, and Prosecution Act of 2010](#),

” (S. 3081) introduced by Sens. John McCain and Joseph Lieberman on March 4, 2010 that did not pass and that received no mainstream media coverage at the time except for an article expressing alarm by Marc Ambinder at

[The Atlantic](#)

. That bill and today's S. 1867 mandate the military to indefinitely detain anyone, including U.S. citizens, here at home or abroad, on the grounds that someone in authority in the military designates that person as a “terrorist” or someone who “

substantially supports

” Al Qaeda, the Taliban or “

associated forces

” (Sec. 1031). The mere accusation, in other words, is enough now to put you away for life.

What is remarkable and disturbing (but I have to say, unfortunately not surprising, to those among us who have been closely following statecraft during the Bush years and under Obama) is that despite those bills' nullification of due process and therefore straight up fascist character, the mainstream media with only one exception did not deem it worthy to bring up the fact of its introduction in its earliest incarnation as S. 3081. One would have thought (and as

[I wrote at the time](#)

) that the bill's sponsors, Sen. John McCain and Sen. Joe Lieberman, the immediate past GOP nominee for President and a past Democratic Party nominee for Vice-President (Al Gore's running mate in 2000) respectively, and thus a “bipartisan” move, would have made the bill noteworthy by itself, let alone the fascist nature of the bill, to publicize. But no, these are not ordinary times. These are the times of the “War on Terror.”

As I point out in my book, however, this trend to a radically different paradigm for governance, public order policies, in which

everyone

is treated as a suspect rather than those who have actually committed and thought to have committed a crime (i.e., a legitimate suspect

based on evidence

), has been underway since in the 1970s, in other words, prior to 9/11. These policies have been becoming more and more explicit and sweeping since the 1970s, with 9/11 and other terrorist incidents in other countries, serving as the fig leaf justification for policies that do not have to do with terrorism per se at all.

The treatment of the non-violent symbolic free speech and free assembly protests by the Occupy Movement as vermin who must be removed (and famously, pepper sprayed by Lt. John Pike at UC Davis as if he were spraying bugs) and their forcible and at times extremely brutal evictions and treatment, are part and parcel of this perilous and odious trend. You may not, under these new rules, petition your government for redress of grievances. You may not, under these new rules, speak out in public or private space (e.g., Zuccotti Park) if what you are saying is inconvenient, embarrassing, or exposing of those who run the society. You may not, under these new rules, act as if you have any rights to due process, because authorities can and are designating you as a terrorist or a supporter of terrorism or merely someone who doesn't show respect for others' views (as LA Mayor Villaraigosa dishonestly described Occupy LA), and you will be forcibly removed, beaten, or detained until you die, without recourse to a day in court or a chance to confront your accusers (does this sound Kafkaesque to you?). Crime and terrorism is anything authorities don't like and want to remove, shut down or shut up.

[T]he forces insisting that order is under siege and that repression and extralegal measures are necessary to cope with that disorder are the same forces creating disorder in the society by dispossessing increasing ranks of the people, endangering the planet's biosystem, and provoking greater and greater levels of social insecurity. Neoliberal regimes' ever-growing inequities produce dissension and dissatisfaction, not because the disaffected elect to feel disaffection—although the already privileged tend to see it that way, as if there is bounty for all if everyone would simply put their noses to the grindstone, there being no structural logic to the dispossession of so many for the wealth of the few. Rather, the disadvantaged's status brings them into conflict with those that the system favors. The position of the disadvantaged is what makes them criminal, dangerous, and potential terrorists. (

Globalization and the Demolition of Society
, Pp. 153-154)

Some people are holding out hope that Obama will veto this bill. Three things should be pointed out specifically about that hope, as Glenn Greenwald has

[written](#)

. First, "as Dave Kopel documents

, that 'it was

the Obama administration

which told Congress to

remove

the language in the original bill which exempted American citizens and lawful residents from the detention power,' on the ground it would unduly restrict the decision-making of Executive Branch officials. In other words, Obama officials wanted the flexibility to militarily detain even U.S. citizens if they were so inclined, and are angry that this bill purports to limit their actions."

The bill's sponsors had
excluded

American citizens and lawful residents and Obama wanted them put in.

Second, the objections being raised by the Obama White House to the bill are not that the bill abrogates due process and that entirely innocent people could have their rights stripped and be detained indefinitely. Their objections are that the bill interferes with the Executive branch's free exercise of these powers unto itself. Which brings us to the third point.

Third, this bill, as horrible as it is, is essentially a "Me Too" bill signifying the Legislative Branch's jumping wholly and enthusiastically onto the "We're Against Terrorism Too!" bandwagon, showing how willing they are, as is the Supreme Court and the White House, to use torture, ubiquitous surveillance, and powers befitting not a country that respects due process as the linchpin of a society that is

not

a tyranny, to suspend people's rights and exercise dictatorial powers.

Notably, as Greenwald also points out, the bill only passed because sixteen Democrats joined the majority of Republicans, including some "liberal" stalwarts:

Every GOP Senator (except Rand Paul and Mark Kirk) voted against the Udall amendment, while just enough Democrats — 16 in total — joined the GOP to ensure passage of Levin/McCain. That includes such progressive stalwarts as Debbie Stabenow, Sheldon Whitehouse, Jeanne Shaheen and its lead sponsor, Carl Levin.

I've

[described](#)

this little scam before as "Villain Rotation": "They always have a handful of Democratic Senators announce that they will be the ones to deviate this time from the ostensible party position and impede success, but the designated Villain constantly shifts, so the Party itself can claim it supports these measures while an always-changing handful of their members invariably prevent it." This has happened with

[countless votes](#)

that are supposed manifestations of right-wing radicalism but that pass because an always-changing roster of Democrats ensure they have the support needed. So here is the Democratic Party — led by its senior progressive National Security expert, Carl Levin, and joined by just enough of its members — joining the GOP to ensure that this bill passes, and that the U.S. Government remains vested with War on Terror powers and even expands that war in some critical respects.

This makes you oh so enthusiastic to go out there and campaign for progressives and the Democrats more generally because they will do such a bang up job of representing the People, does it not?

There is a path that represents the only real road forward in the face of this, as I write in my book:

In the neoliberal world not only do physical characteristics matter, but behaviors, dress, class background, attitudes, and so on, can create a sense of “insecurity” for others, justifying clampdowns. The law no longer represents the standard that people must abide by in order to avoid having police actions and prosecutions imposed upon them. The new standard is that one can be subjected to governmental or private social control measures simply for being a perceived threat or source of discomfort to someone. This undermining of the rule of law is being carried out across the full spectrum of bureaucratic and corporate purview and policy making from top to bottom. As Hornqvist puts it: “It may seem absurd that a single area of policy should cover everything from truancy and drug sales to acts of terror. But it is absurd only because so many of us have not yet learned to proceed from a concept of security that has broken away from the logic of the law.” [1] From this perspective, Bush and Cheney’s express violations of the rule of law are then not unique to them. They were merely on the cutting edge of that trajectory. And Obama’s perpetuation of their actions represents the further advance of that neoliberal project. *This means that attempts to restore the rule of law will not succeed as a strategy separate from a fundamental challenge to the entire logic of the system itself.* (p. 155).

[1] Magnus Hornqvist, “The Birth of Public Order Policy,” *Race and Class* 46, no. 1 (July-September 2004), 37.