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The Perils of Emergency Power

by James Bovard

The *New York Times* reported on June 23 that President Bush invoked the International Emergency Economic Powers Act to justify warrantless searches of Americans' and other people's financial data. According to Treasury Undersecretary Stuart Levey, the U.S. government may have conducted "hundreds of thousands" of warrantless searches of Americans' and others' personal financial data. The Bush administration used broad administrative subpoenas to commandeer the personal data — simply a bureaucratic command to "give us the information."

The media paid little attention to the law the president invoked to justify the incursion; instead, almost all the coverage and analysis was consumed by harangues over whether the *New York Times* was guilty of treason for informing Americans of what the federal government was doing.

But the International Emergency Economic Powers Act (IEEPA) is not something safe to ignore. This law gives the president the prerogative to proclaim the existence of an "unusual and extraordinary threat ... to the national security, foreign policy, or economy of the United States" that originates "in whole or substantial part outside the United States." Once the president pushes this power, many of the limits to his other powers vanish.

This law was passed in 1977, codifying and slightly reforming some of the powers that Franklin Roosevelt had commandeered during the Great Depression.

In 1973, a congressional Special Committee on the Termination of the National Emergency reported,

Since March 9, 1933, the United States has been in a state of declared national emergency. In fact, there are now in effect four presidentially proclaimed states of national emergency: In addition to the national emergency declared by President Roosevelt in 1933, there are also the national emergency proclaimed by President Truman on December 16, 1950, during the Korean conflict, and the states of national emergency declared by President Nixon on March 23, 1970, and August 15, 1971.

These proclamations give force to 470 provisions of federal law. These hundreds of statutes delegate to the president extraordinary powers, ordinarily exercised by the Congress, which affect the lives of American citizens in a host of all-encompassing ways. This vast range of powers, taken together, confers enough authority to rule the country without reference to normal constitutional processes.

These emergency decrees had resulted in some of the most devastating power grabs in U.S. history.

As a 2005 Congressional Research Service (CRS) report noted, Roosevelt's proclamation was based, a "on the somewhat questionable authority of the Trading with the Enemy Act of 1917." Roosevelt proclaimed a "bank holiday" — halting "a major class of financial transactions by closing the banks," the CRS noted. When Congress passed the Trading with the Enemy Act during the First World War, congressmen were not thinking of average citizens in Omaha and Sioux Falls as the target of the legislation. Yet Roosevelt contorted the law to his purposes, and Congress effectively retroactively approved his action with new legislation.

Roosevelt's gold seizure

On April 5, 1933, Roosevelt commanded all citizens to surrender their gold to the government. No citizen was permitted to own more than \$100 in gold coins, except for rare coins with special value for collectors. Gold was thus turned into the same type of contraband substance that rum had been during Prohibition.

Roosevelt used the same "hoarding" rhetoric against anyone who owned gold that Stalin used against Ukrainian peasants who sought to retain part of their wheat harvest to feed their families. But while Stalin sent execution squads to kill peasants who had a few bushels of grain hidden in their hovels, Roosevelt was kinder and gentler, seeking only 10-year prison sentences for any citizen who retained more than five Double Eagle gold coins.

Nixon's abuses of power

On August 15, 1971, President Nixon imposed wage and price controls, thereby effectively criminalizing tens of millions of actions every day. He based this seizure of power on the threat of inflation. But at the same time that his enforcement agents brought the weight of government (and the threat of criminal prosecution) upon the head of any business that did not kowtow to his guidelines, he also directed the Federal Reserve to flood the nation with new paper money.

At the same time that he undermined the value of the dollar, Nixon also closed the gold window, prohibiting foreigners from redeeming their dollars for anything more than a "tough luck" shrug from the U.S. government. Such powers may have helped inspire Secretary of State Henry Kissinger's famous saying, "The illegal we do immediately. The unconstitutional takes a

little longer.” The printing presses helped further a boom that ensured a second term for Nixon, at least until he was driven from office in disgrace.

Nixon’s abuses of power helped spur concern about the extent of emergency power. The 1973 congressional committee sought to “bring together the body of statutes, which have been passed by Congress, conferring extraordinary powers upon the Executive branch in times of national emergency.” But there were so many such provisions that no one had kept track of them. The committee’s report lamented,

This has been a most difficult task. Nowhere in the Government, in either the Executive or Legislative branches, did there exist a complete catalog of all emergency statutes. Many were aware that there had been a delegation of an enormous amount of power but, of how much power, no one knew. In order to correct this situation, the Special Committee staff was instructed to work with the Executive branch, the Library of Congress, and knowledgeable legal authorities to compile an authoritative list of delegated emergency powers.

Unfortunately, this did not persuade Congress to pull the plug on this nonsense. Instead, the 1977 act perpetuated many of the same powers.

Emergencies and power

The *Public Papers of the Presidents* contain notice after notice of the IEEPA’s being invoked. Yet, almost all of these national emergencies are as bogus as three-dollar bills.

In the last 15 years, the U.S. government has proclaimed international emergencies in order to justify boycotts against Haiti (1991–1994, because of a military coup), Liberia (2001–2004, because of human-rights violations), Sierra Leone (2001–2004, because of human-rights violations), and Libya (1986–2004, because of terrorism sponsorship). On its face, to claim that there is an international emergency because some sub-Saharan government is trampling its people’s rights is absurd. This is practically the job description of most of the governments in that part of the world. Yet issuing this label permits presidents to strut around and act as though they have a magic wand to inflict justice upon the world. IEEPA allows the feds to prohibit all trade and levy heavy penalties on Americans who buy and sell from people of whom U.S. politicians do not approve.

The IEEPA was continually invoked by three presidents to justify the blockade of Iraq, which lasted from 1990 to 2003. The sanctions on Iraq resulted in boosting the infant and young-child mortality rate by 150 percent. Columbia University professor Richard Garfield, an epidemiologist and an expert on the effects of sanctions, estimated in 2003 that the sanctions had resulted in 343,900 to 529,000 infant and young-child fatalities.

Apparently, in the eyes of presidents George H.W. Bush, Bill Clinton, and George W. Bush, America would have been gravely threatened if the blockade had not ravaged the children of Iraq — and the entire economy.

The IEEPA can give the government boundless arbitrary power over how Americans spend their money. As Wikipedia noted,

The Department of Justice has brought IEEPA charges against Americans who travelled to Iraq in advance of the 2003 invasion to act as human shields, on the basis that they spent money while in Iraq.

According to the feds, Americans in effect automatically became criminals when they got in the way of the Pentagon's killing of foreigners. The notion that the pittance that dissident Americans spent in Baghdad prior to "Shock and Awe" somehow created an "international economic emergency" is total hokum. Yet, federal prosecutors solemnly filed such charges in court.

The current IEEPA case — involving Bush's order to conduct warrantless financial surveillance — may yet draw attention to the underlying power that he used. In the coming weeks and months, other details of the surveillance scheme may leak out. It is likely that the government has gone much further than Americans yet realize.

Unfortunately, neither Congress nor the courts have done much to restrain "emergency" power grabs. As Robert Higgs and Charlotte Twight noted in a 1987 study for the Independent Institute,

The [Supreme] Court has ruled on several occasions on the permissibility of emergency powers; these decisions constitute a melancholy chapter of constitutional history, a record of evasion and capitulation of the judicial function against which many justices on the minority side have objected.

In the era of the Founding Fathers, Americans referred to "emergency" as "the tyrant's plea." Unfortunately, far too many Americans have forgotten why tyranny is a bad thing. Instead, they wait to be rescued by politicians seizing absolute power. Too few Americans recognize that the loss of inviolable rights may be the biggest emergency of them all.

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