

US Attorney General William Barr's brief for presidential dictatorship

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On November 15, US Attorney General William Barr gave a speech at the right-wing Federalist Society's 2019 National Lawyers Convention in Washington, DC. To repeated rounds of applause from the audience, Barr delivered a blustering and provocative manifesto for unbridled executive power.

Even by the degraded standards of American political discourse at present, Barr's speech was exceptional for its essentially anti-democratic and fascistic content.

Barr denounced the description of the American Revolution as "a rebellion against monarchical tyranny." Instead, according to Barr, the American Revolution served to consolidate supreme, unchecked power in the office of the president.

All executive power, Barr argued, must be consolidated in the hands of a single individual, the exercise of whose powers is not subject to challenge. In addition, according to Barr, the president must be free to act without any legal restraint whatsoever in "exigent circumstances." Barr received a standing ovation.

This lecture came on the heels of a speech at the University of Notre Dame earlier in November, in which Barr went on the offensive against the separation of church and state. In that speech, he announced that the American revolutionaries believed that "religion was indispensable to sustaining our free system of government."

Barr's two speeches combined craven efforts to ingratiate himself with President Trump, off-the-charts lying about history, and a grunting, insulting delivery. For all their crudeness, the speeches appear to represent a deliberate effort on the part of Trump and his circle of fascistic advisers to lay out different elements of the ideological framework for an American presidential dictatorship.

Barr, a multimillionaire, is a former CIA analyst, Department of Justice official, and Verizon Communications general counsel who served as the attorney general under George H. W. Bush from 1991 to 1993. His long career as a hardline reactionary includes authoring an infamous report titled *The Case for More Incarceration* in 1992, in which he advocated an increase in the rate of imprisonment.

He opened his Federalist Society speech by invoking "originalism," the pseudo-legal doctrine most closely associated with the late far-right Supreme Court Justice Antonin Scalia. According to this doctrine, whatever reactionary outcome is desired by a judge is justified by declaring (often falsely) that it represents the "original" intent of the authors of the American Constitution.

After invoking "originalism" in his speech, Barr denounced the "steady encroachment on Presidential authority by the other branches of government," which he claimed has "weakened the functioning of the Executive Branch, to the detriment of the Nation."

Barr continued: "The grammar school civics class version of our

Revolution is that it was a rebellion against monarchical tyranny, and that, in framing our Constitution, one of the main preoccupations of the Founders was to keep the Executive weak. This is misguided."

Instead, according to Barr, "By the time of the American Revolution, the patriots well understood that their prime antagonist was an overweening Parliament."

Thus, according to Barr, the US Constitution was designed to make "the Executive power independent of the divided counsels of the Legislative branch," and to vest "the Executive power in the hands of a solitary individual, regularly elected for a limited term by the Nation as a whole." This individual is empowered to act with "energy, consistency and decisiveness."

This "original" conception of the executive, according to Barr, was reinforced throughout American history, including by the Civil War, the Second World War, "the Cold War and the challenge of Communism," the civil rights period, and "the fight against Islamist Fascism and international terrorism."

With a nod to Nazi jurist Carl Schmitt's theory of the "state of exception" (*Ausnahmezustand*), which has been gaining currency among American legal scholars in the course of the "war on terror," Barr declared that the executive power wielded by the president includes "the power to address exigent circumstances that demand quick action to protect the well-being of the Nation but on which the law is either silent or inadequate."

It hardly seems necessary to argue at any great length that Barr's version of American history turns reality on its head. The American Revolution was a world-historic and progressive event, among the most radical achievements of the Enlightenment era, crowned with the aspiration to bring into existence a society recognizing that "all men are created equal."

Barr's version of American history might be described as "opposite day" in a traditional American civics class, with every single democratic and legal principle achieved over generations twisted, inverted and turned inside-out. In Barr's version of history, the overthrow of monarchical tyranny is transmuted into its opposite, the institution of a new kind of tyrant.

The constitutional system of system of "checks and balances" that emerged after the American Revolution was specifically designed to prevent the growth of unrestrained executive power. According to this system, power was divided between the legislative, executive and judicial branches, each with limited powers to check or control the activities of the other two.

The original views of Thomas Jefferson, James Madison and John Adams on this subject are a matter of well-documented historical record. George Washington once wrote that while the forms of

government instituted by the American revolutionaries were not failsafe, the Constitution contained “more checks and barriers against the introduction of Tyranny... than any government instituted among mortals.”

Barr’s speech calls to mind Leon Trotsky’s words in *Results and Prospects*: “The bourgeoisie has shamefully betrayed all the traditions of its historical youth, and its present hirelings dishonor the graves of its ancestors and scoff at the ashes of its ideals.”

Having argued for the effective evisceration of the powers of Congress and its oversight of the executive branch, Barr went on to denounce present-day courts as playing an “overzealous role in inter-branch disputes.” Barr took special exception to judicial decisions striking down Trump’s anti-Muslim travel ban. Defending the measure, Barr claimed that judicial decisions questioning Trump’s motives constituted “a serious intrusion on the President’s constitutional prerogatives.” He complained that “every major policy of the Trump Administration has been subjected to immediate freezing by the lower courts.”

The immune system of any healthy democratic society would have greeted Barr’s speeches with vigorous and universal condemnation, perhaps interspersed with laughter and derision. Instead, the response of the Democratic-aligned media to Barr’s speech, where there has been any response at all, has largely been limited to objecting to the implications of the speech for the impeachment proceedings.

To borrow a legal concept, the Democrats have “unclean hands.” They are in no position to object to the assertion of unbridled presidential authority, having most energetically advocated the same positions under President Barack Obama. Unlimited spying, extrajudicial assassination of American citizens, military tribunals, the coddling of torturers, immunity for police, the criminalization of dissent, the persecution of whistleblowers, the “lockdown” of urban areas, mass deportations, children in cages, emergency powers and states of emergency—this was the legacy of presidential authority under Obama.

In 2012, just to cite one example, the Obama administration sought to block a lawsuit by the American Civil Liberties Union that challenged domestic spying. In arguments and briefs before the Supreme Court, the Obama administration relied upon precisely the same “separation of powers” arguments that are now being employed by Barr.

When Justice Scalia declared during oral arguments that the Supreme Court should not even hear the case in the first place, the Obama administration’s attorney, Solicitor General Donald B. Verrilli Jr., responded: “That’s exactly right, Justice Scalia.” Scalia went on to invoke the “separation of powers” and to declare that the president’s conduct is “none of our business.” Verrilli agreed that “the Court’s authority cannot be invoked in that circumstance.”

It is impossible to resist pointing out that Barr’s entire speech was predicted by Sinclair Lewis in his satirical novel *It Can’t Happen Here*, in which Lee Sarason, the gutter henchman and ghost-writer for the would-be dictator Buzz Windrip, declares: “The Executive has got to have a freer hand and be able to move quick in an emergency, and not be tied down by a lot of dumb shyster-lawyer congressmen taking months to shoot off their mouths in debates.”

Sarason continues, writing as Windrip, that his fascistic proposals represent “fundamentally, the same principles of Liberty, Equality, and Justice that were advocated by the Founding Fathers of this great land back in 1776!”

The fact that the attorney general of the United States could give

such a speech in broad daylight—and could receive, moreover, a standing ovation—is a milestone in the protracted disintegration of American democracy.

A fascistic American state looms closer and closer, with all its terrible consequences. It represents the response of a frightened ruling class to the growth of the class struggle.

The capacity of such a regime for sadism, degradation and violence would be proportional to the advanced stage of the historical crisis of capitalism and the corresponding intensity of all of the unresolved social contradictions of the epoch.

The most sinister passage of Barr’s speech was his reference to the Supreme Court’s *Boumediene* decision in 2008, which narrowly permitted detainees who had been held incommunicado without judicial process as part of the “war on terror” to file *habeas corpus* petitions and receive a modicum of legal process.

Barr complained: “For the first time in American history our armed forces is incapable of taking prisoners. We are now in a crazy position that, if we identify a terrorist enemy on the battlefield, such as ISIS, we can kill them with drones or any other weapon. But if we capture them and want to hold them at Guantanamo or in the United States, the military is tied down in developing evidence for an adversarial process and must spend resources in interminable litigation.”

The implications of this remarkable passage are plain. Barr references Guantanamo Bay, but is conspicuously silent with regard to the revelations of systematic torture, the practice of “rectal feeding” and many other forms of porno-sadistic abuse perpetrated against victims of America’s international “rendition” network. According to Barr, the president should have the power to abduct, imprison and torture anyone, anywhere in the world, without being inconvenienced by the need for “developing evidence” or the “adversarial process.”

Barr’s pseudo-legal arguments have doubtless been coordinated with other elements of the political strategy being pursued by Trump and his fascistic advisers. Using his twitter account, Trump appeals relentlessly to every form of bigotry and prejudice. He pardons and celebrates war crimes. At his rallies, he incites the police and vigilantes against his political opponents, while he shouts about the dangers posed by “socialists” who “hate America.”

The fight against the danger of presidential dictatorship requires a break with the two parties of American imperialism, both of which are fully complicit in the disintegration of American democracy. As an urgent question of self-defense, the international working class must make preparations to bring its own social power to bear, mobilize into resilient and independent organizations, and base its defense of its democratic and social rights on the study of the history of the struggle for socialism.



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