

How Would A
PATRIOT ACT?

DEFENDING AMERICAN VALUES
from a
PRESIDENT RUN AMOK

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Preface

I do not think much of a man who is not wiser today than he was yesterday.

—Abraham Lincoln

I never voted for George W. Bush—or for any of his political opponents.

I believed that voting was not particularly important. Our country, it seemed to me, was essentially on the right track. Whether Democrats or Republicans held the White House or the majorities in Congress made only the most marginal difference. I held views on some matters that could be defined as conservative, views on others that seemed liberal. But I firmly believed that our democratic system of government was sufficiently insulated from any real abuse, by our Constitution and by the checks and balances afforded by having three separate but equal branches of government.

My primary political belief was that both parties were plagued by extremists who were equally dangerous and destructive, but that as long as neither extreme acquired real political power, our system would function smoothly and more or less tolerably. For that reason, although I always paid attention to political debates, I was never sufficiently moved to become engaged in the electoral process. I had great faith in the stability and resilience of the constitutional republic that the founders created.

All that has changed. Completely. Over the past five years, a creeping extremism has taken hold of our federal government, and it is threatening to radically alter our system of government and who we are as a nation. This extremism is neither conservative nor liberal in nature, but is instead driven by theories of unlimited presidential power that are wholly alien, and antithetical, to the core political values that have governed this country since its founding.

And the fact that this seizure of ever-expanding presidential power is largely justified through endless, rank fear-mongering—fear of terrorists, specifically—means that not only our system of government is radically changing, but so, too, are our national character, our national identity, and what it means to be American.

Our country is at a profound crossroads. We must decide whether we want to adhere to the values and principles that have made our country free, strong, and great for the 217 years since our Constitution was ratified,

or whether we will relinquish those values and fundamentally change who we are, all in the name of seeking protection from terrorism. I genuinely believe that we are extremely lucky to be the beneficiaries of a system of government that uniquely protects our individual liberties and allows us a life free of tyranny and oppression. It is incumbent upon all Americans who believe in that system, bequeathed to us by the founders, to defend it when it is under assault and in jeopardy. And today it is.

I did not arrive at these conclusions eagerly or because I was predisposed by any previous partisan viewpoint. Quite the contrary.

I first moved to Manhattan in 1991 to attend law school at New York University, and lived and worked there for the next fifteen years. Manhattan was my home and place of work on September 11, 2001. On that day, Manhattan felt like a nightmarish mix of war zone, police state, and anarchy all rolled into one. I don't know anyone whose outlook on politics wasn't altered in some meaningful way on that day. But soon we realized that our country, its institutions, and its people are strong enough to withstand any terrorist attack or any group of terrorists, and, for those who had not lost friends or family, life seemed to return to normal more quickly than anyone could have anticipated.

This is not to say that I was not angry about the attacks. I believed that Islamic extremism posed a serious threat to the country, and I wanted an aggressive response from our government. I was ready to stand behind President Bush and I wanted him to exact vengeance on the perpetrators and find ways to decrease the likelihood of future attacks. During the following two weeks, my confidence in the Bush administration grew as the president gave a series of serious, substantive, coherent, and eloquent speeches that struck the right balance between aggression and restraint. And I was fully supportive of both the president's ultimatum to the Taliban and the subsequent invasion of Afghanistan when our demands were not met. Well into 2002, the president's approval ratings remained in the high 60 percent range, or even above 70 percent, and I was among those who strongly approved of his performance.

What first began to shake my faith in the administration was its conduct in the case of Jose Padilla, a U.S. citizen arrested in May 2002 on U.S. soil and then publicly labeled "the dirty bomber." The administration claimed it could hold him indefinitely without charging him with any crime and while denying him access to counsel.

I never imagined that such a thing could happen in modern America—that a president would claim the right to order American citizens imprisoned with no charges and without the right to a trial. In China, the former Soviet Union, Iran, and countless other countries, the government can literally abduct its citizens and imprison them without a trial. But that cannot happen in the United States—at least it never could before. If it means anything to be an American citizen, it means that we cannot be locked away by our government unless we are charged with a crime, given due process in court, and then convicted by a jury of our peers.

I developed an intense interest in the Padilla case. It represented a direct challenge to my foundational political views—that we can tolerate all sorts of political disputes on a range of issues, but we cannot tolerate attacks by the government on our constitutional framework and guaranteed liberties.

My deep concerns about the Padilla case eroded but did not entirely eliminate my support for the president. The next significant item on the president's agenda was the invasion of Iraq. While the administration recited the standard and obligatory clichés about war being a last resort, by mid-2002 it appeared, at least to me, that the only unresolved issue was not whether we would invade but when the invasion would begin.

During the lead-up to the invasion, I was concerned that the hell-bent focus on invading Iraq was being driven by agendas and strategic objectives that had nothing to do with terrorism or the 9/11 attacks. The overt rationale for the invasion was exceedingly weak, particularly given that it would lead to an open-ended, incalculably costly, and intensely risky preemptive war. Around the same time, it was revealed that an invasion of Iraq and the removal of Saddam Hussein had been high on the agenda of various senior administration officials *long before September 11*.

Despite these doubts, concerns, and grounds for ambivalence, I had not abandoned my trust in the Bush administration. Between the president's performance in the wake of the 9/11 attacks, the swift removal of the Taliban in Afghanistan, and the fact that *I wanted the president to succeed*, because my loyalty is to my country and he was the leader of my country, I still gave the administration the benefit of the doubt. I believed then that the president was entitled to have his national security judgment deferred to, and to the extent that I was able to develop a definitive view, I accepted his judgment that American security really would be enhanced by the invasion of this sovereign country.

It is not desirable or fulfilling to realize that one does not trust one's own government and must disbelieve its statements, and I tried, along with scores of others, to avoid making that choice until the facts no longer permitted such logic.

Soon after our invasion of Iraq, when it became apparent that, contrary to Bush administration claims, there were no weapons of mass destruction, I began concluding, reluctantly, that the administration had veered far off course from defending the country against the threats of Muslim extremism. It appeared that in the great national unity the September 11 attacks had engendered, the administration had seen not a historically unique opportunity to renew a sense of national identity and cohesion, but instead a potent political weapon with which to impose upon our citizens a whole series of policies and programs that had nothing to do with terrorism, but that could be rationalized through an appeal to the nation's fear of further terrorist attacks.

And in the aftermath of the Iraq invasion came a whole host of revelations that took on an increasingly extremist, sinister, and decidedly un-American tenor. The United States was using torture as an interrogation tool, in contravention of legal prohibitions. We were violating international treaties we had signed, sending suspects in our custody for interrogation to the countries most skilled in human rights abuses. And as part of judicial proceedings involving Yaser Esam Hamdi, another U.S. citizen whom the Bush administration had detained with no trial and no access to counsel, George W. Bush began expressly advocating theories of executive power that were so radical that they represented the polar opposite of America's founding principles.

With all of these extremist and plainly illegal policies piling up, I sought to understand what legal and constitutional justifications the Bush administration could invoke to engage in such conduct. What I discovered, to my genuine amazement and alarm, is that these actions had their roots in sweeping, extremist theories of presidential power that many administration officials had been advocating for years before George Bush was even elected. The 9/11 attacks provided them with the opportunity to officially embrace those theories. In the aftermath of the attack, senior lawyers in the Bush Justice Department had secretly issued legal memoranda stating that the president can seize literally absolute, unchecked power in order to defend the country against terrorism. To assert, as they

did, that neither Congress nor the courts can place any limits on the president's decisions is to say that the president is above the law. Once it became apparent that the administration had truly adopted these radical theories and had begun exerting these limitless, kinglike powers, I could no longer afford to ignore them.

The 9/11 attacks were not the first time our nation has had to face a new and amoral enemy. Throughout our history, we have vanquished numerous enemies at least as strong and as threatening as a group of jihadist terrorists without having the president seize the power to break the law. As a nation, we have triumphed over a series of external enemies and overcome internal struggles, and we have done so not by abandoning our core principles in the name of fear but by insisting on an adherence to our fundamental political values.

In response to the many controversies and scandals concerning its misconduct, the Bush administration has invariably dismissed them, focusing instead on deliberately spreading an all-consuming, highly exploitative fear of terrorists. No matter what the accusation, the administration trots out its favorite tool: manipulative fear-mongering. Public appearances by senior Bush officials over the last four years have rarely missed the opportunity for a calculated and cynical invocation of mushroom clouds, homicidal dictators, and a never-ending parade of new and destructive weapons. The language of fear is the Bush administration's lingo.

Upon drawing these conclusions, I developed, for the first time in my life, a sense of urgency about the need to take a stand for our country and its defining principles. I believe that the concentrated and unlimited power now claimed by President Bush constitutes a true crisis for the United States—that it has the potential to fundamentally change our national character, to irreversibly restrict our individual liberties and to radically alter our core principles. It is not hyperbole to observe that we are moving away from the founding principles of our constitutional republic towards theories of powers that the founders identified as the hallmarks of tyranny.

Despite the significance of these developments, Bush's radical theories of power have barely even been acknowledged, let alone analyzed and trumpeted, by the national media. One of the few places where any of these issues were being discussed was on the Internet, on online political web logs, or "blogs."

In October 2005, I started my own blog, and chose as its name “Unclaimed Territory”—a declaration that my particular political passion has no grounding in any partisan loyalties or ideologies. Instead, my passion emanates almost entirely from a fervent and deeply held belief in the supremacy of our constitutional principles and the corresponding duty of every American citizen to defend these liberties when they are under assault.

Although I lacked any specific plan, I created my blog with the goal of finding a way to discuss and publicize just how radical and extreme the Bush administration had become. My blog quickly grew far beyond anything I imagined, with a daily readership of 10,000 within three months.

On December 15, 2005, *The New York Times* published a journalistic bombshell when it revealed that for the last four years, the National Security Agency has been eavesdropping on American citizens in violation of the law—because it had been ordered to do so by President Bush. From the start of the NSA eavesdropping scandal, I began writing every day about what I believed were the profoundly important legal, political, and constitutional issues raised by the Bush administration’s secret surveillance program.

This is not about eavesdropping. This is about whether we are a nation of laws and whether, in the name of our fear of terrorists, we will abandon the principles of government that have made our country great and strong for more than two centuries.

My blog has become one of the principal online gathering places for citizens of every ideological perspective and background who are truly alarmed by the law-breaking powers seized by the Bush administration, and who want to take a stand in defense of the principles of government and the Constitution. Original reporting on my blog led directly to front-page news stories on the NSA scandal in media outlets such as *The Washington Post*, the *Los Angeles Times*, and Knight-Ridder. And when the Senate Judiciary Committee held a hearing on March 31, 2006, regarding Senator Russ Feingold’s resolution to formally censure the president, Senator Feingold read from my blog as he questioned one of the committee’s witnesses, former Nixon White House Counsel John Dean. Let it not be said that our voices cannot be heard in the halls of government.

I began my blog because I believed my country needed whatever talents or knowledge I had to offer. Our basic system of constitutional liberties is at risk. I say that because we are a country in which the president

has said—expressly and repeatedly—that he has the power to act without restraints, including the power to break the law. He has not only claimed these powers but has exercised them repeatedly over the course of several years. And he still has more than two and a half years left in office.

Even when the other checks on our government fail, citizens always have the ability to take a stand for their country. For that to happen, the first requirement is that Americans be fully informed of the objective facts regarding just how radical and extreme our government has become under George W. Bush, and the sweeping, genuinely un-American powers that one man has claimed. I began my blog to provide those facts and to take a stand in defense of our nation's founding principles. That is also why I've written the book you now hold in your hands.