

“Undoing the Imperial Presidency”

Reviewing David Swanson's "Daybreak"

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David Swanson is co-founder of AfterDowningStreet.org and Washington Director of Democrats.com. He's also a board member of Progressive Democrats of America, the Backbone Campaign, and Voters for Peace as well as a member of the legislative working group of United for Peace and Justice.

Subtitled “Undoing the Imperial Presidency and Forming A More Perfect Union, Daybreak” is Swanson's first book, a timely and impressive account of presidential extremism, congressional complicity, the urgency for progressive change, and how to do it.

Swanson exposes what was wrong under George Bush and provides a compelling prescription for real change.

In his book “Cracks in the Constitution,” Ferdinand Lundberg explained that the supreme law of the land, the Constitution, never deterred presidents or sitting governments from doing what they wished, then inventing justifications for their actions. During eight years in office, George Bush personified it and said so in his own words. In 2005, he told congressional Republican leaders:

“I’m the president and the commander-in chief. Do (things) my way. Stop throwing the Constitution in my face. It’s just a goddamned piece of paper.” Both parties acceded. The administration got away with murder. Separation of powers were abandoned. Checks and balances barely exist. Lawlessness became the new standard, and the republic took a giant step backward toward despotism and dystopia under a culture of violence, police state laws, and a Wall Street-run asset-stripping system – parasitically destroying America, wrecking the economy for profit, and forcing the public into permanent debt peonage.

Swanson's book is a call to arms for change, an alert about what's wrong with the nation, the urgency to restore the rule of law, save the republic, and necessity to get engaged enough to matter. After eight years under Bush – Cheney and Obama's early months, the government is more than ever corrupted, imperial, and extremist. Undoing the damage will take years of committed effort, and Swanson explains how:

- understand the imminent danger;
- replace today's media system with a more democratic one;
- develop new thoughts and actions;

- engage to work for change;
- cooperate with other nations, don't exploit them;
- consider eight years of damage and serious problems built up over decades;
- demand accountability for wrongdoing; and
- “encourage the American people to take actions that are absolutely necessary. Now.”

Presidential Power Grab and How to Repair It

George Bush's “attorneys openly argued before a congressional committee that the president (may) violate any law until the Supreme Court specifically rules in favor of it.” He used signing statements to rewrite them, issued one-man rule Executive Orders, and unconstitutionally usurped “unitary executive” powers that Chalmers Johnson called a “bald-faced assertion of presidential supremacy....dressed up in legalistic mumbo jumbo.”

Congress let him bypass the Constitution and do as he pleased. Police state laws were enacted. Permanent wars are waged for world dominance. Torture became official US policy. Government is more secretive and intrusive than ever. Illegal spying is pervasive. Dissent is targeted. Social decay is deepening. Democracy is eroding and dying. Incestuous ties between favored business interests and government created a cesspool of corruption, and America is plagued more than ever by the dynamic that doomed earlier empires – what Chalmers Johnson calls “isolation, overstretch, the uniting of local and global forces opposed to imperialism, and in the end bankruptcy.” Under Obama, little so far has changed as the nation strays further toward tyranny and ruin.

The Power of War

Article 51 of the UN Charter authorizes the “right of individual or collective self-defense if an armed attack occurs against a Member....until the Security Council has taken measures to maintain international peace and security.” Preemptive attacks are banned at all times with no exceptions.

The Nuremberg Charter's Article VI explicitly prohibits the following:

- crimes against peace;
- planning and waging wars of aggression;
- war crimes; and
- crimes against humanity.

The Nuremberg Tribunal also stated that, “To initiate a war of aggression....is not only an international crime; it is the supreme international crime (against peace) differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”

The Constitution's Article I, Section 8 empowers Congress alone to declare war, even though

since 1941 it deferred unconstitutionally to the president.

If America is under attack or faces an imminent threat, the November 1973 War Powers Resolution lets the president deploy US forces for up to 60 days plus an additional 30 days for withdrawal, subject to congressional authorization and without a declaration of war.

Post-9/11, no threat existed, yet the Bush administration used deception to wage illegal aggressive wars in defiance of the above constitutional and international law standards. Republican and Democrat Congresses acceded, and so has Barack Obama by continuing an open-ended Iraq occupation and stepped up belligerency against Afghanistan and Pakistan, with perhaps other nations and regions to follow.

If it chooses, Congress can end wars by no longer funding them. Article I, Section 7, Clause I says:

“All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.”

Either House may originate an appropriations bill although the House claims sole authority to do it. Either may amend bills of any kind, including revenue and appropriation ones. Congress has the power of the purse, so it alone, if it wishes, can fund or end wars. Under George Bush and Barack Obama, Democrats and Republicans are united to continue them.

September 11 was the pretext for launching a long-planned premeditated attack against Afghanistan – a non-belligerent country posing no threat to America and one that sought peaceful engagement. Non-existent weapons of mass destruction then became justification for waging preemptive war against Iraq. Both conflicts are blatantly illegal, yet continue without end.

On January 17, 2003 (ahead of the Iraq war), Law Professor and international human rights law expert Francis Boyle introduced six articles of impeachment against George W. Bush on charges of “high crimes and misdemeanors,” including:

- trying to suspend Habeas Corpus;
- backing the unconstitutional USA Patriot Act;
- the mass-rounding up and incarcerating of foreigners;
- conducting kangaroo tribunal proceedings;
- violating and subverting the Posse Comitatus Act;
- conducting lawless searches and seizures; and
- violating the First Amendment, the Third and Fourth Geneva Conventions, US War Crimes Act, UN Convention Against Torture, and Universal Declaration of Human Rights.

As a result, “George Walker Bush has acted in a manner contrary to his trust as President

and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.” So far, Barack Obama shares equal guilt under US and international law.

On June 10, 2008, Congressman Dennis Kucinich introduced 35 Articles of Impeachment against George W. Bush, citing among other charges:

- “Creating a Secret Propaganda Campaign to Manufacture a False Case for War Against Iraq;”
- lying to Congress and the public about weapons of mass destruction and calling Iraq a security threat;
- violating the Constitution and UN Charter;
- “Initiating a War Against Iraq for Control of That Nation’s Natural Resources;”
- “illegally misspen(ding) funds to begin a war in secret prior to any congressional authorization;”
- authorizing torture and extraordinary renditions to secret “black sites;”
- threatening to attack Iran;
- illegally spying on Americans; and
- obstructing investigations about the 9/11 attacks.

No action was taken, so George Bush, Dick Cheney and other high officials in their administration faced no charges in office and still don’t today.

The Power of Money

As explained above, only Congress has “the power of the purse” to spend or not spend as it chooses and also how much. Under constitutional and statutory law, “it is illegal to use government funds for anything other than what Congress appropriates them for.” Yet lawless spending occurs regularly, including through unaccountable black budgets, and Congress does nothing to stop it.

Through a signing statement, George Bush empowered himself to transfer funds from authorized programs to secret ones. It was one of Kucinich’s impeachment charges against him.

Then in 2008, the Bush administration began looting the federal Treasury to reward criminal bankers for their crimes and accelerated the process of transferring public wealth to Wall Street. Obama greatly stepped up the practice, and on July 20, 2009, AP reported that:

“The federal government has devoted \$4.7 trillion to help the financial sector through its crisis, a watchdog report said Monday,” referring to Neil Barofsky, the Special Treasury Department’s Inspector General in charge of overseeing the Troubled Assets Relief Program (TARP).

“Under the worst of circumstances, the report said, the government’s

maximum exposure could total nearly \$24 trillion, or (an) \$80,000 (liability) for every American.”

On March 31, Bloomberg reported that the Treasury and Fed “spent, lent or committed \$12.8 trillion,” an amount approaching America’s 2008 \$14 trillion GDP. Currently, the number at least matches and may exceed it.

At the same time, the economic crisis is worsening. Credit remains frozen. The worst housing and commercial real estate slump since the Great Depression continues. Foreclosures threaten millions. Job losses keep mounting. True unemployment, according to economist John Williams (with all uncounted categories included), approaches 21% and is rising. Savings have greatly eroded. Government debt levels are unparalleled during peacetime. Major banks are effectively insolvent. Households are too over-extended to spend or borrow more, and the administration offered little relief to them or states unable to meet their budget commitments, so they adjust by slashing essential social services, including health care, education, and everything for the most needy.

Power of the Judiciary

For years and especially under George Bush, the federal judiciary has been stacked with judges from or affiliated with the extremist Federalist Society. It advocates rolling back civil liberties; ending New Deal social policies; opposing reproductive choice, government regulations (except industry approved ones), labor rights and environmental protections; and subverting justice in defense of privilege.

Bush’s Justice Department was just as corrupted by putting politics ahead of the rule of law, hiring and firing prosecutors and other employees based on their loyalty to the Republican party, targeting the innocent opportunistically, waging war on Islam and Latino immigrants, creating justifications for administration crimes, then turning a blind eye to them.

For eight years, waging illegal wars, committing crimes of war and against humanity, violating constitutional and international laws, legalizing torture as official US policy, sanctioning police state laws, spying illegally on Americans, permitting government and corporate fraud, criminalizing dissent, and creating “a justice system stripped of all justice,” became federal policy under George Bush and remains so under Obama.

Treaty and Appointment Powers

US presidents may make treaties with the advice and consent of two-thirds of the Senate. However, Status of Forces Agreements (or SOFAs) require only the approval of host countries or enough pressure applied to get it. To legitimize America’s occupation, the Iraq SOFA illustrates the process.

Chalmers Johnson calls all of them “foreign military enclaves....completely beyond the jurisdiction of the occupied nation,” a modern day version of 19th century China’s “extraterritoriality” granting foreigners charged with crimes the “right” to be tried by his or her own government under his or her own laws.

Iraq’s SOFA legitimizes permanent occupation and continued war beyond control of Congress or Iraqi officials. Nominally a 2011 withdrawal date was set, but given the impotency of the Iraqi government and the way past agreements were manipulated, US

forces will remain indefinitely on dozens of bases, at least five super ones, and perhaps others yet to be built. No change is envisioned under Obama despite rhetoric claiming otherwise.

Federal appointees as ambassadors, ministers, consuls, judges, and others must be approved by the Senate, yet presidents may fill vacancies when the body is in recess. Bush took full advantage in appointing John Bolton UN ambassador over Senate objections. Yet most often, the Senate acquiesced to some of his most egregious nominees, including to the federal bench.

Executive Power

US presidents are the most powerful officials anywhere under our system of government. Regardless of the occupant, the office is inherently imperial as one man can exploit it to his advantage, effectively becoming a dictator if he wishes. The Constitution's Article II, Section 1 grants him near-limitless power in a single innocuous sentence stating: "The executive power shall be vested in a President of the United States of America."

Article II, Section 3 adds: "The President shall take care that the laws be faithfully executed" without saying that Presidents may make as well as execute laws, even though nothing in the Constitution permits it, and Article I, Section 1 reads: "All legislative powers herein granted shall be vested in a Congress of the United States."

However, executive power is key in the hands of presidents to exploit as it's concentrated in one (party bosses selected) man, chosen by an Electoral College that can subvert the popular vote if it wishes.

In times of war, presidents as military commander-in-chief are effective tyrants, and even though Article I, Section 8 grants only Congress the right to declare it, since 1941, all presidents did solely on their own authority.

They can also grant commutations or pardons freely except in cases of impeachment, make treaties with the advice and consent (not ratification) of the Senate, terminate them as well, and can rule by decree through executive agreements with foreign governments.

With rare opposition, they can appoint or discharge officials, veto congressional legislation, and nearly always be sustained. While only Congress has appropriating authority, they can release or not release funds for executive branch spending.

A huge bureaucracy is at their disposal, including powerful officials like the Secretaries of Defense, State, Treasury, and Homeland Security, and the Attorney General in charge of the Justice Department.

They can make one-man laws through Executive Orders and signing statements, powers easily abused as George Bush proved. He usurped "unitary executive" power to declare the law is what he said it was and got no congressional or judicial opposition to stop him.

Bush and earlier presidents, including Franklin Roosevelt during WW II, showed that presidents are unencumbered by constitutional restraints and can effectively rule as a sovereign, easily circumventing Congress and the courts to render the separation of powers neutralized.

Presidents also have their own private army through the Department of Homeland Security, the vast US intelligence apparatus, and much more. The CIA comprises one part. It functions as a praetorian guard operating freely outside the law and backed by a \$50 billion + black budget with greater amounts available if requested.

In theory, presidents must obey the law, but can creatively interpret it to get away with murder unless Congress and the courts stop them. Rarely does it happen and never for George Bush. As for impeaching and convicting presidents for malfeasance, John Adams said it would take a national convulsion to do it, and Article II, Section 4 states it can only be for "treason, bribery, or other high crimes and misdemeanors." Based on the historical record, it's near-impossible to do as no president was ever removed this way and only two were ever impeached, both unjustly. Nixon resigned on his own volition, but might, in fact, have been removed if he hadn't.

Above all others, Bush and Cheney deserved impeachment, but efforts to do it failed because few in Congress had the courage of Dennis Kucinich. As a result, they were unrestrained, even though this isn't what the framers had in mind. Short of a constitutional re-make, other executives will be similarly empowered and as able to take full advantage. George Bush wasn't the first. He won't be the last, and others ahead may be worse as America hurtles recklessly toward tyranny because no constraints are in place to stop it.

Pardoning Power

As explained above, presidents can grant clemency and pardons, except in cases of impeachment. Often the power is abused, and most presidents are guilty, though some far more than others. Cases in point: Ford pardoning Nixon and GHW Bush pardoning six Iran-Contra criminals, including former Secretary of Defense Casper Weinberger, former National Security Advisor Robert McFarlane, and former Assistant Secretary of State for Inter-American Affairs Elliott Abrams. GW Bush commuted I. Lewis (Scooter) Libby's sentence for having obstructed justice by blocking the investigation of a crime.

It remains to be seen if a president can pardon his officials for crimes he authorized and perhaps even himself. Nothing in the Constitution prevents it, so creative lawyers may find a way, and what's in place to stop them.

The Cheney Branch

No vice president matched Cheney's power, his abuse of office, the secret government he ran, the damage he caused, and the weakening of democratic rule of law on his watch. Vice presidents also preside over the Senate, have the final say in case of tie votes, and are first in the presidential line of succession should the executive die, resign, or be removed.

As the nation's strongest ever vice president and most ruthless, Cheney directed US national security policies, sidestepped George Bush on major issues, put his top loyalists in key posts, including Rumsfeld and Wolfowitz, stacked the bureaucracy with neocon extremists like himself, and held out for eight years despite repeated calls for his removal.

He justified seizing unconstitutional powers "because the world is dangerous (and) because I say we have that obligation." He was the power behind National and Homeland Security Presidential Directives like NSPD-51/HSPD-20 to establish "Continuity of Government (COG)" procedures under a "Catastrophic Emergency" defined as:

— “any incident (such as a terrorist attack), regardless of location, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the US population, infrastructure, environment, economy, or government functions.”

COG is “a coordinated effort within the Federal Government’s executive branch to ensure that National Essential Functions continue to be performed during a Catastrophic Emergency.”

These directives give presidents and powerful vice presidents unprecedented authority free from constitutional constraints. Martial law without congressional approval can be declared in case of a “national emergency,” so both can rule with dictatorial powers under police state laws. Bush and Cheney took full advantage. So can future executives.

Congressional Collapse

The Democrat-controlled 111th Congress is just the latest in more recent failed ones and that of government overall. The electoral process bears much of the blame. It’s scripted and corrupted. Secrecy and back room deals substitute for a free, fair, and open process. Candidates are pre-selected. Big money owns them. Both parties share equal guilt. The major media play a dominant role. Favored candidates have a distinct advantage. Alternative ones are marginalized. Horse race journalism substitutes for real debate, while the public interest is nowhere in sight.

Democrats and Republicans comprise two wings of one party representing privilege, not the greater good, and therein lies the problem. On Capitol Hill, democracy is rhetoric, not real. Profiles in courage are as rare as mild Chicago winters, and as Harry Truman famously said, “If you want a friend in Washington, get a dog.”

Influence peddling is a way of life. What “payola” is to the music industry, “pay-to-play” is to Washington, and the more anted up, the more favors curried, but the “price of admission” keeps rising. Changing things requires major reform starting with a total electoral process makeover.

Get big money out of it and replace it with publicly funded elections. End corporate run electronic voting. Mandate verifiable hand-counting by nonpartisan civil servants. Adopt proportional representation over winner-take-all. Institute instant runoff voting (IRV). Automatically enfranchise all US citizens at birth under one uniform national law. Prohibit paid political advertising and require broadcasters to provide free air time to all candidates equally over over a shorter electoral cycle. Make democracy in America real, not the best kind money can buy.

Make the impeachment and conviction process work by using them against presidents and others having no place in honest government. End the idea that “We Won’t Impeach (or Convict) You No Matter What.” Get oversight back into the system. Make abuse of office a crime and hold offenders accountable. Hold public hearings. Demand vital documents. Issue binding subpoenas. Make not showing up criminal. Jail those refusing to cooperate. Make it apply to top officials, including the president and vice president. Use independent special prosecutors freely, fully empowered by their mandate. Put teeth back into the rule of law.

Undoing the Imperial Presidency and the Wars They Wage

America's imperial presence is everywhere through a global network of bases able to strike any nation perceived as a threat and intimidate others into submission. Host country populations perceive us as intrusive, hostile, and detrimental to their own interests with good reason.

They reflect empire and an aim to dominate everywhere, not security, at the expense of appropriated public land, environmental pollution and destruction, unacceptable noise, and human rights abuses by abusive troops committing crimes that include murder and rape.

They control trade, resources, local cheap labor, and political, economic, and social life in host countries. They force compliance with America's will through the Pentagon's might and freewheeling use of it. They've made America a global pariah, and they're illegal and oppressive as unwelcome occupiers.

Respecting International Treaties

Under the Constitution's Article VI, "....all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby..."

As explained above, presidents can make treaties with the advice and consent of two-thirds of the Senate, and can terminate them by executive edict as George Bush did in renouncing the ABM Treaty with Russia. They can also violate them freely with impunity, including the UN Charter, Nuclear Non-Proliferation Treaty, and Chemical and Biological Weapons Conventions, among others. They can block ratifying ones like Kyoto, the Comprehensive Test Ban and Landmine Treaties, PAROS to prevent an arms race in space, and the ICC. They can approve harmful ones like the WTO and NAFTA. They can hurt or harm with a stroke of a pen or do nothing by abstaining.

They and Congress can enact real change by allocating public dollars equitably for essential social needs, including universal health care and education. They can end imperial wars and occupations, downsize the military, close global bases, produce fewer weapons, become a good neighbor, not a menacing one. They can end corporate welfare and other giveaways, rebuild essential infrastructure, put people back to work, reindustrialize the country, end Wall Street's dominance, nationalize or abolish the Federal Reserve, and let government be of, for, and by the people the way Lincoln envisioned. They can do all that and more but won't.

Forming a More Perfect Union

We can restore the Bill of Rights and add new ones, revoke illegal laws like the USA Patriot Act, and enforce all constitutional, statutory, and international ones. We can reinvent democracy and make it real. We can make social equity and equal justice the law of the land. We can be good neighbors, not intimidating ones.

We can protect against "arbitrary arrest, detention, exile, or enforced disappearance, and from all forms of slavery and forced labor, with criminal penalties for violators and compensation for victims." We can ban torture, illegal surveillance, political witch-hunts, and corporate personhood. We can protect, not wreck the environment, prohibit unsafe foods and drugs, enforce collective bargaining and human and civil rights. We can guarantee safety net protections for the needy, end homelessness and hunger, elevate living

standards, and make corporations and the rich pay their fair share.

We can take the power of money out of politics, convene a second constitutional convention, redo the document Michael Parenti said protected “a rising bourgeoisie(’s freedom to) invest, speculate, trade, and accumulate” to assure that people who own the country run it. We get it right this time, but grassroots pressure is needed to do it. We can discover that organized people can beat organized money with enough will.

We no longer need tolerate extreme inequalities of wealth, lost civil liberties, human rights abuses, destructive foreign wars, the American dream turned nightmare, and politics more corrupted than ever regardless of the party in power. Ideas for change abound. Free and open debate are needed to pick the best, then organize for change and work to enact them for the fundamental goal of equity and justice for all in a nation again to be proud of.

Citizen Power

People are crying for change, but only grassroots activism can bring it. In his call to arms, Swanson says:

“We have reached a critical moment, at great expense, but with great possibility. Things have gotten bad enough in the minds of enough Americans that there is an opening for creating a mass movement for real change, and that movement is already growing all around us.” After eight years under Bush – Cheney and a complicit Congress, “What is needed in US civil society is a revolution,” a non-violent one.

But “Throughout history, the most powerful movements have (been met by) the most powerful suppressive reactions....Our own power and potential for greater power lies in the coalition we can build of activist groups focused on domestic and international issues, in organizing and training, in funding, in media of our own creation, in leaders, in sympathetic and organized government employees, in protection we can offer to whistleblowers and resisters, in our international allies, in local and state governments, and possibly even in the Congress or the Supreme Court resisting the abuses of the White House in the interests of a balance of powers.”

Short of effective real change, odds are “our future will take us from bad to worse,” and produce a government even more harmful to the public interest. “The choice belongs (collectively) to all of us together” to prevent it and work for the America we want. But wishing won’t make it so.

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