

# The Twilight of Democracy: The Bush Plan for America

Reviewing Jennifer Van Bergen's book

By [Stephen Lendman](#)

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Jennifer Van Bergen is an author, activist and educator who currently teaches English and writing at Sante Fe Community College in Gainesville, Florida. Professionally, she's also a journalist, legal analyst and non-practicing attorney who's written, spoken out and debated widely on Patriot Act justice and other civil liberties issues. Her newest book is titled "Archetypes for Writers: Using the Power of Your Subconscious." It analyzes the component skills writers need to learn about their "own already-existing characters" through a series of exercises in the book.

Her other vitally important recent book and subject of this review is called "The Twilight of Democracy: The Bush Plan for America" written in 2005. It's a clear and powerfully relevant analysis of the threat to freedom, democracy and justice in America today under the Bush regime. As the author puts it: "(We live in a time when) civil liberties have been broadly violated to an unprecedented degree....My goal (in the book) is to lay bare what the government does and is doing, and why it is so profoundly anti-democratic" and a danger to everyone.

The book is in two parts. In Book I, Van Bergen discusses constitutional law, the types of courts and standards of review established to administer it, and the dangerous path we're now on toward a fascist state under George Bush. Book II then reviews "The Bush Plan" for America under Patriot Act justice; the pervasive culture of fear, extreme secrecy and illegal sweeping universal surveillance; permanent state of war for world dominance; and network of barbaric torture-prisons where anyone for any reason may be labeled an "unlawful enemy combatant" and unjustly consigned to the awaiting hell within them.

## **Book I - Deciphering the Democratic Code**

Van Bergen starts off by explaining the clear and present danger of a president who disdains the law and ignores it in pursuit of whatever he wishes. The result is "Freedom and democracy in America are in grave danger," and all humanity is affected as well. By his actions, Van Bergen believes the Bush administration declared war on the Republic and has gone so far astray, "there may be no going back." She may be right, it may already be too late, and she explains why in her opening chapter.

### Down the Road to Fascism

Van Bergen cites the following signs of a nation "already more than three-quarters of the way down the road to fascism:" the stolen 2000 presidential election, Patriot Acts I and II,

illegal mass surveillance, torture-prison gulag, culture of extreme secrecy and fear, contempt for the rule of law, a permanent state of war and more. We may already be past the tipping point of its classical definition:

— a state combining corporatism with strong elements of patriotism and nationalism;

— a claimed messianic Almighty-directed mission; and

— characterized by authoritarian rule backed by iron-fisted militarism and homeland security enforcers, mass illegal spying, and intolerance of dissent under a president who disdains the law.

Van Bergen calls these components “The Bush Plan to subvert and overthrow democratic systems” and values. It’s not just the work of one man or a group of loyalist supporters. It’s become part of our corporate culture that thrives on achieving imperial global dominance. It’s being pursued by waging war on the world under a national security Patriot Act-governed police state tolerating no dissent. Van Bergen discusses the Act briefly before getting into a more in-depth treatment in Book II. She shows how the law dilutes constitutional standards by amending and combining three separate but parallel legal systems listed below. They use different courts, are now merged and are exploited under Patriot Act justice:

(1) criminal laws and procedures,

(2) foreign intelligence law, and

(3) immigration law.

Post 9/11, Van Bergen notes people are out of the loop believing “constitutional law is hard to understand” and strictly the realm of theoreticians. How does the Constitution relate to “getting ahead in life, with making money,” she asks. It’s central to it if people begin realizing it’s what guarantees their rights in a free society without which nothing is guaranteed but government repression against anyone considered a threat, true or not. The basic laws of the land aren’t hard to understand. What’s hard is getting people to know their rights under them, realize they’re now at risk and be willing to take a stand for what they can’t afford to ignore.

### **The Law is King - If We Can Keep It**

We like believing we’re a country of laws, not men. It’s far from true, won’t ever be unless demanded from the grassroots, and under the Bush administration it’s pure fantasy. Its officials scorn the law at home and abroad. Van Bergen counts the ways:

— refusing to adhere to the four Geneva Convention treaties that are the supreme law of the land;

— opting out of the International Criminal Court (ICC) 104 other nations belong to, including virtually all Western democracies; in addition 42 others signed the Rome Statute but haven’t yet ratified it;

— condoning torture and allowing or ignoring other human rights abuses; the Nazis called

torture “Verscharfte Vernehmung,” or “enhanced interrogation” leaving few telltale signs of abuses committed; George Bush secretly authorized his own version of harsh “enhanced interrogation” in a July, 2006 executive order; it was unmentioned on October 5 when he confronted a public uproar and contemptuously stated: “This government does not torture people;” he also ignored secret Department of Justice (DOJ) legal opinions confirming his administration condones “the harshest interrogation techniques ever used by the CIA;”

— scorning Bill of Rights laws that guarantee free expression, religion, assembly, representation by competent counsel in a criminal proceeding, fair and speedy trials by a jury of peers, protection from illegal searches and seizures and much more.

These and other rights are constitutionally guaranteed that in a nation of laws “is considered the bottom line” and inviolate. Not so in the age of George Bush with the DOJ and courts taking great “balancing test” liberties when the administration raises issues of national security, justified or not. Van Bergen asks “Do we want a country of laws and not of power-mongering men?” Getting it means earning it and that begins with understanding our rights and how legal systems work.

They’re all underpinned by the supreme law of the land in the benchmark Constitution most people know about but not what’s in it, what it means, and how, in fact, it works for good or ill. In spite of it, governments always side with privilege and especially capital interests. Ordinary private citizens are hard-pressed to get justice without competent and generally expensive legal counsel few can afford.

## **Our Individual Rights**

Here Van Bergen focuses on due process, free speech and association, legal representation, and freedom from unreasonable searches and seizures. She notes these rights aren’t absolute because democratic governments try to balance the “good of the one” against “the good of the many” when it comes to issues of peace and security. The result is individuals often lose out for the supposed greater good that may only be the workings of a repressive state. That’s what’s happening today in America.

### **Due Process**

Also called “procedural due process,” this term only applies when a person’s “life, liberty, or property” is at stake, and the government is constitutionally required to provide due process legal procedures so a person gets a proper defense. Often in the past, this right wasn’t afforded. Today it’s being willfully swept away under police state justice.

### **First Amendment Freedoms - Speech, the Press, Religion, Assembly and Association**

No rights are more vital than these as without them no others are possible, but today, under George Bush, they’re being lost. As Van Bergen puts it: “democracy cannot exist without these freedoms.” Indeed not, and it’s why earlier crumbs of them are now threatened more than ever under Patriot Act justice and other harsh laws like the Military Commissions Act enacted after Van Bergen’s book was published. She points out free expression, the press and right to assemble are most threatened today even though they’re constitutionally guaranteed.

That doesn’t deter George Bush who on July 17, 2007 issued another of his “one-man”

Executive Order (EO) decrees “Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq.” Nothing in the Constitution implicitly or explicitly allows for EOs, but once issued, even illegally, they become the law of the land unless or until courts rule otherwise. This one criminalizes dissent so that all anti-war protests are now illegal, and persons participating in them are subject to arrest, prosecution and loss of their property. That’s how a police state works, and that’s the condition in America under George Bush’s contemptuous flouting of the law to crush all opposition.

### **Fourth Amendment Rights**

This law protects people from illegal searches and seizures, it’s not absolute under the best of conditions, and it’s practically null and void today. Later in her book, Van Bergen shows how the Patriot Act allows the government “to mix standards from different, incompatible areas of law” (such as criminal investigations, foreign intelligence and immigration) that amounts to a “witch’s brew....of ingredients poisonous to a democratic government or way of life.”

### **The Sixth Amendment Right to Counsel**

This law provides that defendants shall “have the assistance of counsel” in all criminal prosecutions during and prior to trial and to free assistance if unable to pay for it. In addition, attorney-client confidentiality and privilege are protected under law. Patriot Act justice threatens these rights for immigrants, so-called “unlawful enemy combatants,” cases in which the government feels national security trumps confidentiality, and in situations where lawyers (like Lynne Stewart) are targeted for defending “unpopular” clients.

Van Bergen concludes this section saying 9/11 changed everything, the gloves came off, and constitutionally protected rights no longer apply at the government’s discretion. Real democracies don’t work that way, America always fell short in the past, but the bar was lowered to bottom-scraping standards post-9/11. Now the unjustifiable is justified in the name of national security because the president says so, law or no law. That, however, openly constitutes “an exact reversal of the principles in our Constitution.” That’s the condition today and why Van Bergen’s book is so important to explain it.

### **The Constitutional Code**

Van Bergen calls the constitutional doctrines of separation of powers, judicial review and probable cause “code words invest(ing) the Constitution with meaning.” How they’re abused, however, explains a lot about today’s frightening situation under a president who thinks and acts (in his words) like the Constitution is “just a goddamned piece of paper.”

#### **1. Separation of Powers**

The framers crafted a government in three parts so no one of them got too much power although it never worked out that way from the start. Nonetheless, their idea was for the legislative branch to make laws, the executive to execute them, and the judiciary to interpret them. The doctrine is called the “separation of powers” that’s the “core protection against tyranny” if enforced and utterly meaningless if not like today under George Bush.

Since 9/11, Democrats and Republicans abdicated their responsibility and have marched ever since in lockstep on virtually everything the administration wants. Rhetoric aside, almost nothing’s changed to this day in spite of six and a half years of disastrous and

reckless governance outside the law. Van Bergen sums it up saying, in the absence of checks and balances, “government power (has) run amok” under the Bush Plan.

## **2. Judicial Review**

According to law professor Jethro Lieberman, judicial review is “the power of courts to declare laws and acts of government unconstitutional” although nothing in the Constitution allows this practice. Van Bergen adds, without this check on the other two branches, there’s “no remedy for bad laws (and in fact) no democracy.” It differs from the notion of “judicial supremacy” meaning the High Court is the final arbiter on all constitutional issues.

## **3. Court Stripping**

Examples of this practice are found in extremist laws like the 1996 Anti-Terrorism Law (AEDPA), Patriot Acts I and II and other recent legislation as they restrict the ability of courts to review executive actions, and that’s not how democratic states function.

## **4. Probable Cause**

Under the Fourth Amendment, neither arrest or search warrants are allowed without evidence of “probable cause” of criminal activity. The Bush administration, however, views all legal constraints as quaint and fanciful. It simply sweeps them away to do as it pleases to target anyone for any reason, real or concocted, in its sham “war on terrorism.” Weak as they always were, post-9/11, constitutional protections are now an illusion. They simply no longer exist despite all the pretense they do.

## **Types of Courts and Standards of Review**

Van Bergen lists four types today, each functioning under very different legal standards:

— regular federal civil and criminal courts called an “Article III court;” here, in theory, convictions depend on there being proof beyond a reasonable doubt; in practice, justice depends on how much of it defendants can buy in the form of competent legal counsel, and too few people can buy enough or any;

— immigration (or Executive branch) courts that rule on asylum and deportation issues; they’re also called the Executive Office of Immigration Review (EOIR); these courts administer immigration law and handle cases under it involving asylum, deportation, immigration crimes and detentions pending review;

— military courts and tribunals don’t come under the federal civil justice system; they’re for trying members of the armed services under the Uniform Code of Military Justice (UCMJ) and are used under the oppressive Military Commissions Act for anyone the president calls an “unlawful enemy combatant,” real or imagined; the greatest danger these courts pose is that under a real or concocted state of emergency, the president can declare martial law, suspend the Constitution, and consign any targeted individual to justice under these courts with no trial by jury, no habeas rights, no assigned competent defense counsel, and no right of appeal;

— FISA courts (or FISC made up of 11 district court justices) rule on obtaining foreign intelligence warrants under which no Fourth Amendment protections apply; The Patriot Act

amended FISA to allow surveillance of US citizens whenever the administration claims it relates to a foreign intelligence investigation with obvious implications what this means; the Democrat-led Congress went even further in early August as discussed below.

The above-listed courts operate under hugely differing standards, and Van Bergen notes a stark one in the case of military tribunals where civilians may now be tried on the whim of the president. In these courts, due process is a fantasy as they're run by, untrained in civil law, military officers, yet they're empowered to render final judgments, beyond appeal, up to and including death sentences. Serious abuses are common enough in civil and criminal courts. In immigration, FISA and military ones, the notion of due process and fair and equal justice under the law is a non-starter.

All the above examples today, in fact, add up to a shredding of notions of "guilt beyond a reasonable doubt," due process under the law, and "probable cause of criminal activity" to justify arrests and searches in the age of George Bush. Van Bergen notes under the Patriot Act alone, criminal constitutional procedural standards are severely undermined so that the rule of law no longer applies any time the government says so. That's pretty scary if you're the target.

## **Book II - "The Bush Plan"**

Here Van Bergen gets into the meat of her book under "The Bush Plan" that contains "the elements of fascism."

### **The Demise of Democracy - Part One**

Intentional or not, the Bush administration charted a post-9/11 course straight toward a full-blown national security fascist police state. It already has all its oppressive trappings dressed up in modern-day garb, including high-sounding, fear-engendering, doublespeak language disguising it. Strip off the mask and here's a look:

- Patriot Acts I and II,
- the Military Commissions Act (aka the "torture authorization act" and much more),
- a permanent state of preventive wars under the concocted doctrine of "anticipatory self-defense" using first strike nuclear weapons;
- a climate of fear and extreme secrecy;
- universal illegal surveillance for any purpose all the time;
- disdain for domestic and international law with George Bush unconstitutionally usurping "unitary executive" powers Chalmers Johnson calls a "bald-faced assertion of presidential supremacy....dressed up in legalistic mumbo jumbo;"
- criminalizing dissent (Jefferson called "the highest form of patriotism") through legislation and illegal "one-man" decree Executive Orders;
- stealing elections;
- shredding civil liberties and rendering human rights a non-starter;

- controlling information through the dominant mass media functioning as collective national thought police gatekeepers “filtering” in all acceptable state propaganda and suppressing all vital and relevant information and analysis;
- rampant corruption in a corporatocracy;
- a culture of out-of-control militarism, and much more under the phony “war on terrorism” making democracy in America pure fantasy.

Van Bergen reviews all of the above in detail and other elements Laurence W. Britt listed in his article titled “Fascism Anyone?” Her conclusion: “Using Britt’s list, it is no stretch to call the Bush government fascist....if Britt is believed, we’re already there.”

### **The Patriot Act - Part Two**

Van Bergen states this act gives “tremendous powers to central authorities, undermine(s) civil liberties, and enable(s) suppression of opposition.” It’s the “mainstay of government oppressive power (as it) authorizes and codifies a near-absolute and permanent invasion of (our) private lives, sets vast precedents in immigration law....dissolving....human rights (and erecting) a massive law enforcement apparatus (targeting) immigrant(s) and citizen(s) (worldwide).”

Van Bergen discusses the issues below before getting into the meat of the Act that opens the way for a vast menu of other abuses.

### **Guantanamo, Enemy Combatants, and Abu Ghraib**

The Bush Administration usurped the unconstitutional right to detain any foreign national or US citizen without evidence and deny them due process, habeas or competent counsel with the right of appeal. It also flouts domestic and international laws it denounces as “ quaint and out of date.” It won’t allow them or any nation, body or individual to impede its plans for unchallengeable worldwide imperial dominance. Anyone in the way may be consigned to torture-prison hellholes like Guantanamo that was purposefully placed on foreign soil because those locations present a “minimal ‘litigation risk.’ ” Being offshore was believed to make possible the denial of due process, habeas and judicial review rights as well as to be able to hold detainees beyond the law indefinitely.

### **Iraq: Preemptive war and International law**

Van Bergen states “The invasion of Iraq established the doctrine of preemptive (or preventive) war” with the US usurping an illegal right to attack another nation it claims is a current or future threat with no justifiable evidence to prove it. The 1945 Nuremberg Charter said doing that is the “supreme international crime against peace” that constitutes the worst of all crimes of war and against humanity. Van Bergen asserts attacking Iraq (and Afghanistan) “signal(s) an end of the rule of law and avoid(ance) of accountability on a global scale.” She cites other examples of contempt for the law as well.

### **The Coup in Haiti**

The US has a long and disturbing history of intervening in Haiti’s affairs, deposing its leaders, and replacing them with acceptable puppets. The Bush administration continued this practice on February 29, 2004 when US Marines abducted and forcibly removed

democratically elected President Jean-Bertrand Aristide and flew him against his will to the repressive Central African Republic. Today he remains in exile in South Africa vowing to return even though the Bush administration asserts the right to prevent him from doing it.

US administrations have deposed many foreign leaders, and the Bush administration violates international laws “left and right,” so what’s the significance of Haiti, asks Van Bergen? “There is no (other) ‘third world’ country (anywhere) closer (in proximity) to the US,” it’s also the “first (ever) black republic,” the sole one in the Western Hemisphere, and it won its independence through armed rebellion against repressive French foreign rule. Haiti is much like what former Mexican dictator Porfirio Diaz said about his own country: “Poor Mexico, so far from God, so close to the US.” Proximity to America has been Haiti’s curse for over 200 years, and it still is.

### **Withdrawal from the International Criminal Court (ICC)**

The ICC was created by the 1998 Rome Statute and established in 2002 to prosecute individuals for genocide, crimes against humanity and war. As of mid-2007, 146 countries signed the Statute and 104 ratified it to become members except for a big absentee – America with Van Bergen saying withdrawing from the ICC (after the Clinton administration signed the Statute) “frees up the United States from international accountability for war crimes.” The Bush administration made sure over 100 nations won’t extradite Americans to the Hague by signing Bilateral Immunity Agreements (BIAs) with them, and in August, 2002, Congress passed the American Servicemembers Protection Act (called the Hague Invasion Act) authorizing the President “any means necessary” to secure release of any American detained by or on behalf of the Court.

### **Prosecutions and Proceedings**

Activists are prime Bush administration targets in its effort to crush all dissent and opposition. It’s using the Patriot Act to do it along with bending other current and obscure older laws to bring criminal indictments. Then on July 17, George Bush issued another Executive Order criminalizing dissent by targeting anyone opposing the administration’s Iraq war effort with threats to seize their property. Another EO followed August 2 against anyone seen undermining Lebanon’s corrupted pro-Western government claiming “Such actions constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.”

Van Bergen notes these type actions by individuals or groups signal the notion that “activists = terrorists” and linking them together is the administration’s way to control, suppress and remove all opposition it finds threatening. Activists are being targeted by grand jury subpoenas. Before them they’re required to testify about unspecified federal law violations and then later allow that testimony to be used against them to charge perjury for some slightly incorrect or inaccurate statements.

### **Data Mining under MATRIX**

MATRIX is a data mining effort standing for the Multistate Anti-Terrorism Exchange Program that police and federal authorities are using in some states. It’s a form of mass scrutiny over the lives and activities of innocent people to learn if targets exhibit signs of being a terrorist or other type criminal.



MATRIX creates a “terrorism quotient” or High Terrorist Factor (HTF) that measures the likelihood individuals in the database are terrorists. Van Bergen noted the ACLU believes the program is “an effort to recreate the discredited Total Information Awareness (TIA) data mining program at the state level.” It shows the federal authorities are deep into efforts at all levels to spy on US citizens. MATRIX is an unprecedented effort to do it within or outside the law. It constitutes a massive invasion of privacy and violates our rights in a free society and is one of many repressive post-9/11 unconstitutional tools the nation’s 16 spy agencies are using against us.

The Constitution doesn’t specifically mention a right to privacy, but Supreme Court decisions affirmed it over the years as a fundamental human right. As such, it’s protected under the Ninth Amendment as well as the Third prohibiting the quartering of troops in homes, the Fourth affording protection from unreasonable searches and seizures, and the Fifth protecting against self-incrimination. MATRIX and other intrusions enhance Patriot Act powers allowing them to persist outside of congressional oversight and judicial review. It’s another part of the overall scheme to subvert the rule of law under George Bush police state justice.

## **Secrecy**

The Bush administration built a culture of extreme secrecy from the start. Van Bergen call this trait the “watchword of the Bush administration” by quoting Judge Keith of the Third Circuit Court of Appeals saying “Democracy dies behind closed doors” where under this administration they’re locked shut and bolted. Policy for the last six and a half years has been a “blatant power grab....an American coup, an American military dictatorship (and) an American fascist empire” that’s highlighted by what’s going on at Guantanamo, Abu Ghraib and other torture-prisons free from oversight or public scrutiny.

Van Bergen sums up saying the Bush administration exhibits the “common threads found in all fascist states,” and that should scare everyone. This government, she says, is run “by a ruling elite of (extremist Christian) religious fanatics” wielding “unrestrained oppressive power” violating constitutional law, including the most precious of our rights under the First Amendment. It’s flouted the rule of law and smashed civil liberties after “sull(ying) the name and reputation of the United States Supreme Court” by using the Court’s authority to seize power lawlessly and keep it. Ever since, it’s been on the march for total world dominance and now threatens all humanity by its out-of-control actions.

## **The Patriot Act - Mainstay of Oppressive Power**

Van Bergen calls this act “the most vivid component of the Bush Plan.” Its danger lies in placing too much unchecked power in executive branch hands that creates an “enabling structure for fascism and oligarchy” that endangers democracy. Specifically, the act creates three main threats to civil liberties: the erosion of due process, freedom of association, and the right to be free from unreasonable searches and seizures, and as a consequence, the loss of privacy.

### **(1) The Threat to Due Process**

The Patriot Act threatens due process in two ways:

— by permitting indefinite detentions of undocumented immigrants, it represents a slippery

slope as law professor David Cole explains: “(W)hat we do to foreign nationals today often paves the way for what will be done to American citizens tomorrow,” and it’s already happening under the concocted notion of “unlawful enemy combatants” anyone for any reason can be called and face prosecution.

— by the act’s “designation provision” that authorizes the Attorney General or Secretary of State to call a foreign organization a terrorist group even if it isn’t. Further, the administrative designation is sealed to effectively render it beyond review or challenge.

## (2) The Threat to Freedom of Association

“Designation” also threatens freedom of association as aliens and US citizens may be charged and prosecuted because of their claimed association with an “undesirable group.” Van Bergen notes that post-9/11, many thousands of Muslims and Arabs were illegally rounded up, detained, imprisoned, abused, tortured and/or deported solely because of their faith. By Bush administration reasoning, Muslims = “terrorists” and “Islamofascists,” especially those not white enough.

## (3) The Fourth Amendment Threat: Surveillance and Privacy

Patriot Act privacy issues fall under FISA that just got worse as prior to its August recess Congress cravenly caved to the politics of fear and hastily passed the White House crafted Protect America Act 2007 that amends FISA with doublespeak language Orwell would love.

The new law supposedly closes so-called “communication gaps” but will allow virtual unrestricted mass data-mining, monitoring, and intercept of domestic and foreign internet, cell phones and other new technology as well as transit international phone call traffic and emails. The Act claims to restrict surveillance to foreign nationals “reasonably believed to be outside the United States” and will sunset in six months unless renewed as Congress is about to do for at least most of its provisions for six years. In fact, this law targets everyone, including US citizens inside the country, if the AG or DNI claim they pose a potential terrorist or national security threat, and no evidence is needed to prove it. Further, in an election year, renewal is virtually guaranteed with even harsher provisions added.

In point of fact, the new law allows near-unrestricted warrantless spying of anyone at the discretion of the AG or DNI. It thus renders any notion of illegal searches and privacy rights null and void. The Act effectively legalizes illegality by Fourth Amendment standards that Patriot Act provisions pretty much swept away earlier. This is how things work in a police state where laws render privacy issues (and all other freedoms) null and void, and everyone is under constant surveillance and stripped of their rights.

When FISA was enacted, it was done to collect “foreign intelligence information” between or among “foreign powers” with FISC warrants only targeting foreigners. The Patriot Act then amended the law to effectively target anyone the government so designates as long as it relates “to an ongoing investigation (for a) significant foreign intelligence purpose.” Van Bergen highlights the threat (now even greater) with this example: “if you speak to a friend or relative in the Middle East and that person gave money....to an (humanitarian aid providing) organization....suspected of ties to terrorism....you are a legitimate target for wire, phone, or computer taps under FISA.” Even worse, you can be charged with terrorism, arrested, tried in a military tribunal as an “unlawful enemy combatant” and renditioned to a torture-prison hellhole forever - for having made an innocent phone call.

Van Bergen concludes saying the Patriot Act (even without the new Protect America Act) is so sweeping in scope, it's impossible relating everything about it in a short book, let alone this review. Instead, she highlighted areas in it relating to civil rights protections affecting due process and under the First and Fourth Amendments. This oppressive act severely weakened them and with prosecutorial finesse effectively renders them null and void that threatens everyone with police state justice in the age of George Bush.

### **Ashcroft's Way - A Closer Look at the Patriot Act**

In the hands of a man like former Attorney General John Ashcroft (as well as Alberto Gonzales and Michael Mukasey), laws like the Patriot Act become repressive police state tools that sweep aside the rule of law. Van Bergen shows how easily this Act can be twisted and misused by citing assertions about it Ashcroft made to justify its use and under what circumstances.

### **Preserving Life and Liberty**

Ashcroft gave four reasons to justify using the Patriot Act to, in his judgment, preserve life and liberty.

(1) It provides tools for investigating terrorism and other crime while ignoring that laws were already available to do it pre-Patriot. DOJ claims the new law provides enhanced enforcement by strengthening its use of surveillance that was never prohibited in the past but wasn't as unrestricted as now under Patriot. Unlike before, this Act denies constitutional protections nominally in place for all type criminal investigations pre-Patriot, and therein lies its danger.

(2) The Act allows "roving (telephone) wiretaps" that apply to the person, not the place. Thus, if someone uses different phones, all of them may be tapped. DOJ claims this provision allows federal agents to "follow sophisticated terrorists trained to evade detection." Van Bergen explains these taps don't require probable cause of criminal behavior and thus evade constitutional protections. Under Patriot, federal agents are immune from Fourth Amendment restrictions against unreasonable searches and seizures that renders this protection null and void for everyone.

(3) The Act allows what's called "sneak and peak" searches through issuance of "delayed notice" warrants. Under it, targets aren't notified until a later time and at the government's discretion so investigators won't tip off suspects in advance. Again, this type warrant has been available for decades provided law enforcers could show a judge it was justified under special conditions. That's all changed now, and anything goes for any criminal investigation involving a physical or electronic search.

(4) Patriot gives federal agents court-ordered access to "third party records" of all kinds - financial, medical, educational, virtually anything requested. For any national security claimed purpose, it allows the government to pry into any aspect of our lives, justified or not.

### **Information Sharing**

Ashcroft claimed the "Patriot Act facilitated information sharing and cooperation among government agencies so they can better 'connect the dots.'" Van Bergen notes separate government agencies never were impeded from working together, but Patriot tore down

built-in safeguards against abuses that are now a thing of the past. Today under the Act, our constitutionally-protected civil liberties are severely compromised and effectively off the table because of the latitude law enforcement is now allowed under this law.

In a word, the Patriot Act poses real dangers to democratic freedoms that are now on very shaky footing. In fact, they're practically non-existent at the whim of law enforcers who can operate ad libitum in the name of national security that's freely interpreted to mean virtually anything. Van Bergen asks: "(Is it) ever wise to leave our liberty and our country in the unaccountable hands of those who by their positions must always be 'cast in the role of adversary' against those whose liberties they seek to invade." Answer: never, especially if the "adversaries" are in the Bush administration.

### **The Cheney Plan for Global Dominance**

Van Bergen lays out the threat straightaway saying if there's any doubt about the Bush administration's "fascist and imperial objectives," the "Cheney Plan for global dominance must quell it." Under GHW Bush, Defense Secretary Cheney and his undersecretary Paul Wolfowitz were tasked to shape America's post-Cold War strategy. Wolfowitz and convicted and commuted Cheney aide Lewis Libby drafted the scheme in their Defense Planning Guidance some call the Wolfowitz doctrine. It was so extreme, it was kept under wraps until it was leaked to the New York Times. Its exposure got it shelved until it was revived under GW Bush in 2001 as an updated scheme for world dominance. It's spelled out clearly in the 2002 National Security Strategy (NSS) that was revised in 2006 in even more extreme form.

NSS is an "imperial grand strategy" declaration of preemptive or preventive war against any country or force the administration claims threatens our national security, true or false. Along with the 2001 Nuclear Policy Review, it gives the government the unilateral right to declare and wage future wars using first strike nuclear weapons under the doctrine of "anticipatory self-defense" that has no basis in international law or anywhere else outside Washington. Van Bergen explains that "the Cheney Plan (aka the Bush Plan)....is an exceedingly dangerous doctrine" in play in the Middle East and Central Asia that may be cataclysmic if it's unleashed in its most extreme form.

### **Global Dominance in Action - Military Necessity or War Crimes? - Violating the Geneva and Hague Conventions**

As a signatory to the Geneva and Hague Conventions, these laws are the supreme law of the land under the Constitution, but that hasn't deterred the Bush administration from defying their letter and spirit. No signatory nation is exempt from Geneva and Hague, and violating their provisions constitutes a serious and punishable breach of sacred law. Van Bergen calls any of numerous instances she noted a war crime and "Taken together, they are an outrage against humanity and the law of nations."

She also brings up the "Doctrine of Military Necessity" that involves lawful measures indispensable in the conduct of war. It's important to note this notion doesn't justify violating international humanitarian law or our own Constitution. "A real necessity," like launching D-Day, is "obvious," Van Bergen explains. But mass-slaughtering innocent civilians in Fallujah can't be justified for any reason nor is waging aggressive wars against non-threatening nations, and saying it's for national security meets no acceptable international law standard.

## **Epilogue - Detainees and Torture**

The final part of Van Bergen's book provides still more proof of the Bush administration's "broad assault" against long-standing, rock-solid rule of law principles. Its scorn for the law opened the door for more extreme violations that are nonchalantly accepted as standard practice under "war on terrorism" rules that changed everything. They don't and won't ever under any conditions. Yet, the Pentagon and DOJ "developed the breathtaking legal argument that the President, as commander-in-chief of the armed forces, was not bound by US or international laws prohibiting torture when acting to protect national security."

### **Torture**

Van Bergen cites Bush's frequent use of the death penalty and indifference to human suffering when he was Texas governor. In fact, his flippant attitude showed up much earlier and now he flaunts it. The Patriot Act made current practices possible by "help(ing) set the stage for government endorsed torture." Under this repressive law, the nation regressed to "barbarian times" reminiscent of the worst of the Spanish Inquisition and Nazi era. Van Bergen stresses no society claiming to be a "liberty-protecting one" can justify "human rights abuses in response to a terrorist attack" or for any other reason. Any country violating these sacred precepts must be held to account and made to answer for their serious crimes against humanity, and that's what the ICC is in place to do.

On July 19, 2007, well after the publication of Van Bergen's book, George Bush displayed his contempt for the law in another sweeping executive order (EO). According to AP, he "breathed new life into the CIA's terror interrogation program (aka no holds barred torture) that would allow harsh questioning of suspects limited in public only by a vaguely worded ban (signifying none whatever) on cruel and inhuman treatment." The order pretends to prohibit some practices, "to quell international criticism," describes them only vaguely, and doesn't say what practices are still allowed. The Bush administration insists its interrogation operation is one of its most important tools in the "war on terrorism." Bottom line - ugly business as usual will continue unchanged and unchecked, except for doublespeak language that signifies only deception from a president exposed as a serial liar.

### **The Detainee Decisions - by the US Supreme Court**

Van Bergen notes recent detainee decisions of great "importance to the future of this country." In *Rasul v. Bush* in June, 2004, the Court settled the jurisdictional question regarding Guantanamo detainees. It ruled the US exercises "complete jurisdiction and control (of the territory and) Aliens held (there), like American citizens, are entitled to invoke the federal courts' authority" under their habeas rights.

On the same day, the Court ruled on *Hamdi* (a US citizen) *v.* *Rumsfeld* and granted his habeas right to challenge his detention as an "unlawful enemy combatant." Then in June, 2006, the Court ruled on *Hamdan v. Rumsfeld* and held that military commissions set up to try Guantanamo detainees lack "the power to proceed because (their) structures and procedures violate both the Uniform Code of Military Justice (UCMJ) and the four Geneva Conventions signed in 1949."

Van Bergen calls habeas the "Great Writ of Liberty" that dates back to 12th century England and long considered sacrosanct and inviolable - but not to the Bush regime. By its Inquisition era rules, habeas, probable cause, due process and half or more of the Bill of

Rights amendments are null and void in the name of national security that denies it to us.

### **National Security Courts and Torture Warrants**

The notion that (undefined) “terrorists” are military enemies who justify war, and not criminals, is offensive and illegal. Van Bergen points out doing it “creates another parallel legal system (and it ignores) a primary condition of battle, visible combat.” The very idea of a “war on terrorism” is doublespeak fraud. It’s nothing more than a devious scheme for a broader agenda that needs fictitious “outside enemy” threats as justification. That’s what made Osama bin Laden “Enemy Number One” along with Al Queda even though the CIA created them both to fight the Soviets in Afghanistan in the 1980s.

Making them fearsome enough and on the loose opens the door to all sorts of abuses that are passed off as justifiable self-defense under the Bush regime. In the name of national security, it’s gotten away with aggressive wars, torture, indefinite detentions, repressive laws and an end to democracy in America that was on shaky ground pre-9/11 and now is kaput. This happened because our judicial and core constitutional systems were separated and left “outside the protections of the Constitution and international laws.” We keep heaping new kinds of oppression on top of old ones that deepen the problem instead of working to rectify it.

Van Bergen ends her book saying these actions recruit more enemies and make the world less safe. Another way is needed, and it ought to start with “learn(ing) about the lessons of our own sometimes violent history and recall and reclaim the fundamental, lost ideals that we have forgotten” and sadly only paid lip service to for more than two centuries.

*Global Research Associate Stephen Lendman lives in Chicago and can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net).*

*Also visit his blog site at [www.sjlendman.blogspot.com](http://www.sjlendman.blogspot.com) and listen to The Steve Lendman News and Information Hour on [TheMicroEffect.com](http://TheMicroEffect.com) Mondays at noon US central time.*

The Twilight of Democracy by Jennifer Van Bergen can be ordered from Amazon at

<http://www.amazon.com/Twilight-Democracy-Bush-Plan-America/dp/1567512925>

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#### **About the author:**

Stephen Lendman lives in Chicago. He can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net). His new book as

editor and contributor is titled "Flashpoint in Ukraine: US Drive for Hegemony Risks WW III."  
<http://www.claritypress.com/LendmanIII.html> Visit his blog site at [sjlendman.blogspot.com](http://sjlendman.blogspot.com). Listen to cutting-edge discussions with distinguished guests on the Progressive Radio News Hour on the Progressive Radio Network. It airs three times weekly: live on Sundays at 1PM Central time plus two prerecorded archived programs.

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