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INTRODUCTION

The Subtle Tools

Terrorist attacks can shake the foundations of our biggest buildings, but they cannot touch the foundation of America.

GEORGE W. BUSH, SEPTEMBER 11, 2001

ON SEPTEMBER 11, 2001, Manhattan's twin towers collapsed into rubble. Within hours, the edifice of American democracy began to fracture as well. Some were quick to foresee the scale of change the destruction would yield. Many officials inside the White House agreed with the CIA director George Tenet's pronouncement that "all the rules have changed."¹ According to a PEW Research Poll taken at year's end, "opinion leaders in every region agree that Sept. 11 marked the beginning of a new chapter in world history." Approximately 78 percent of U.S. respondents believed that "a new era" had been "opened up."² Donald Trump, then a mere bystander to politics, predicted, "This country is different today and it is going to be different than it ever was for many years to come."³

These first impressions turned out to be right. Over the course of the next two decades, a vastly different America has taken root. Slowly but inexorably, basic building blocks of the country have been undermined and at times destroyed. In the name of retaliation, "justice," and prevention, fundamental values have been cast aside, among them the right to be safe from abusive power by the state. Americans have been stranded,

neglected, and—in the name of security—their guarantees of security have eroded.

This transformation was set in motion immediately after the attacks of 9/11. Within eighteen months, three acts of Congress would transform the country. The first was the September 2001 Authorization for the Use of Military Force. The second was the October 2001 USA Patriot Act, and the third, one year later, was the creation of the Department of Homeland Security, brought into being by the Homeland Security Act.⁴ I will focus on each in the chapters to come.

All lined up as prelude to November 2002, the first mid-term election since the Great Depression election of 1934 in which the president's party maintained control of both houses of Congress. The 2002 election set these legislative changes in stone and fixed the country on the course it has pursued to this day—away from liberalism and toward self-serving greed and the perpetuation of injustice and inequality.

These trends were certainly not new in the history of the country, or even in the recent past. Together, these measures would reinforce a history of discrimination and racial injustice that dated to the country's founding and echoed the abuses of executive power that occurred with escalating frequency into the twentieth century: the Watergate scandal, the concealed efforts to escalate the war in Vietnam, the secret deal trading arms for hostages in the Iran–Contra affair, and the economic policies of the Reagan years that endeavored to reverse the New Deal and its economic and social safety nets, continued into the Clinton era. Yet while the war on terror was not the first time an administration would sidestep the law and the Constitution, such departures from law gained terrifying momentum after the attacks of 9/11.

By 2008, the policies of the war on terror had taken an immense toll. The wars in Afghanistan and Iraq together cost almost half a million lives.⁵ The creation of an indefinite detention regime at Guantanamo and the use of torture to extract information from “high value detainees” at CIA black sites had taken the country down a path that alarmed defenders of the rule of law and those once dependent on the United States as an ally in the struggle for human rights worldwide. American citizens' trust in government had been fractured due to revelations of

surveillance policies and the expansive use of law enforcement powers in investigations that had initially been launched against suspected terrorists but over time targeted many others.

When Barack Obama was elected president in 2008, optimism abounded over the opportunities to reverse course on post-9/11 policies. Obama's election heralded "a change in the direction and tone of the country" and a "bitter setback" for the interests that had flourished through the Bush years.⁶ Obama's anti-Iraq War campaign rhetoric and his opposition to the legal and policy exceptions made in the name of that war gave hope to critics of the war on terror. He came into office with promises to close the detention facility at Guantanamo Bay, to diminish the dependence on secrecy and institute policies that emboldened transparency, to restore the clear prohibition on torture, and to generally move the country in a direction that adhered to constitutional principles and protections.

Yet making progress proved harder than Obama had anticipated. As he would write over a decade later in his memoir, *A Promised Land*, he at times underestimated the virulence of the political opposition he would encounter.⁷ Closing Guantanamo eluded his efforts as he made the calculation that passing the Affordable Care Act took precedence over the controversy closing Guantanamo was certain to unleash. His attempts to end the military presence in Iraq and Afghanistan—already known as the "forever war"—were unsuccessful. Moreover, it seems, having been persuaded by some of the security-versus-liberty arguments that those inside his own cabinet embraced, he even expanded parts of the war-on-terror arsenal—most notably the use of drone strikes with much greater frequency and against an expanding number of countries. By 2016, despite the promises of the Obama administration to wrench back some of the Bush-era deviations from the jaws of democracy's detractors, the country was still living in the thrall of the institutional and cultural changes that 9/11 and the 107th Congress had wrought.

One reason was that beneath these more overt policy choices of the post-9/11 era, including the decision to go to war in Iraq and the weakening of civil liberties in the name of national security, lay a less visible

but equally destructive set of practices. These less visible means were what I call the “subtle tools” of the war on terror, which bestowed powers without immediately calling attention to themselves. More crushingly than any one policy or piece of legislation, the subtle tools forged out of the wreckage of 9/11 have acted as a corrosive blanket smothering the good out of a democracy in turmoil.

The first of the subtle tools was the degradation of language, the starting point for political dishonesty and power mongering, and the platform upon which undemocratic and unlawful policies have been fashioned. After 9/11, language that was fuzzy, imprecise, and confounding obtained a secure foothold in government discourse. Over time, that linguistic imprecision enabled another subtle tool—confusion and imprecision in the roles and responsibilities of the institutions of government, which I term “bureaucratic porousness.” The third subtle tool, by definition hard to detect, was secrecy and the withholding of facts. The fourth and final tool, one that went hand in hand with devalued language and obfuscatory truth, was the abandonment of legal and procedural norms for lawmaking, oversight, judicial review, transparency, and many other elements of governance.

With these subtle tools in hand—imprecision and vagueness in language, secrecy and the hiding of facts, bureaucratic porousness, and abandonment of norms—the presidency after 9/11 expanded to exercise unprecedented levels of power, the public was deprived of information at record levels, and accountability was essentially removed as a mechanism within the halls of power and replaced by impunity. In each step, the institution most clearly tethered to the law—the Department of Justice—played a role. Enabled by this crucial ally, these tools were in place by the time Trump came into office, and they enabled the final transformation of the culture of governance in America.

Historians often describe the shape of American history in cyclical terms. Some liken it to a pendulum swing or an ebb and flow. The historian Arthur Schlesinger Jr., building on the outlines provided by his father Arthur Schlesinger Sr. in the 1940s and by Henry Adams in the first decade of the twentieth century, posited the “cyclical hypothesis” about the course of America’s history: A “pattern of alternation . . .

between negative and affirmative government,” between conservative and liberal governments in roughly thirty-year cycles, between periods of “deregulation, devolution and privatization” and periods in which the United States takes “the lead in the search for remedies against war and terrorism and weapons of mass destruction, against poverty and disease.”⁸

However, years later, the younger Schlesinger saw a potential interruption of this cyclical motion. “The 1990s,” he wrote, “have plainly not been the liberal era forecast by the cyclical hypothesis.”⁹ The conservative cycle had outlasted the predications of his cyclical theory, taking the country on “a scary voyage into uncharted waters.”¹⁰ As the Civil War, the Industrial Revolution, the 1960s, and the end of the Cold War had disrupted the cycles, so the newly technical age—which he termed the era of the “Computer Revolution”—was to his mind to blame for the stalling of the pendulum swing. Appealing to the humanist tradition, Schlesinger worried about the derailment of both politics and culture. Writing in 1999, he listed the challenges as “war and terrorism . . . weapons of mass destruction . . . poverty and diseases” as well as racial divides, environmental concerns, and the need for reforms in education and the economy. But Schlesinger refused to concede defeat: “The cycle, though derailed, is not necessarily dead.”¹¹ Whether the cycles would return, he was not sure. But the historian in him gave way to the mystic, as he landed upon the image that the end of the cycles evoked for him. “What rough beast, its hour come round at last, may be slouching toward Washington to be born?” he asked, paraphrasing from “The Second Coming,” W. B. Yeats’s famous ode to civilization’s demise.¹²

I believe Schlesinger was right. The cycles—the pendulum swings—are today perilously close to stasis. A completely new direction is now in place, wherein the mandate of security has successfully unmoored fundamental liberties and given permanence to a new version of democracy, one that has infiltrated American institutions, laws, public culture, and economy—in sum, the culture of governance. The legacy of the war on terror has spawned a full-throated embrace of a new national vision, one with roots deep in the American past yet with many novel features, among them a weakening of the separation of powers

doctrine, a degradation of rights to and of citizenship, an increasing lack of independence on the part of the courts, and the willful destruction of professionalism in government, each of them forcefully launched in the wake of 9/11.

Armed with the subtle tools forged in the wake of 9/11, Donald Trump's presidency threatened to put the final brakes on this pendular movement. While the changes after 9/11 might organically have been curtailed as the era of terrorism wound down, the rise of Trump and the interests he helped promote have impeded any such change. He turned wholeheartedly to the subtle tools, which were brought to his attention by those in agencies that had mastered them during the war on terror: the Department of Homeland Security and the Department of Justice. Made aware of their existence, Trump instinctively understood their power to sow political disruption and undermine U.S. institutions, law, and policy. He took these tools, already destructive, and sharpened them into weapons.

Some of this was bound to occur. In fact, many transformations unleashed by 9/11 had been tried and tested in the past, and many of the political interests and personalities that had helped bring Trump to power harkened back to the times when presidential power had overstepped the lawful limits of their power—including the conservative law group the Federalist Society, and longtime Republican insiders such as William Barr. But the past failures had given rise to new strategies. The indictments and convictions of top officials after the Watergate and Iran–Contra scandals revealed the subtle tools at play, but poorly used. Those who championed these tools were better prepared now.

Seen in this context, President Trump, his administration, and the policies they spawned are the consequence not only of 9/11 but also of its frustrated precedents. Trump did not create a brand-new agenda; he merely provided a new and powerful chapter of the story that had limped through the latter twentieth century and taken on a powerful energy after 9/11.

The subtle tools—and their consequences—have yet to receive the scrutiny they deserve. Historians, journalists, and public intellectuals have cataloged some of the more overt products of these tools in action,

among them the decision to invade Iraq, the implementation of illegal and unconstitutional policies of surveillance at home, the use of torture abroad, and the erosion of trust between the body politic and the government. But it was the subtle tools, and their first fruits, that tilled the ground for these more consequential turns in the course of American politics and governance. Although they had been used in some fashion earlier, they were brandished after 9/11 with heightened energy, vaster application, and an understanding that used in coordination with one another, their power could prove limitless. Without these tools, refashioned and strengthened to meet the 9/11 moment, the consequential reversals of liberal democracy could not have been accomplished. Without them, Schlesinger's cyclical pattern might not have been interrupted. Without them, the path to Donald Trump might never have been laid.

As the third decade of the twenty-first century dawns, we must come to terms with the damage that our democracy has suffered and the perils that lie ahead. This has been an extraordinary two decades in the nation's history. We need to grapple not only with the transformation that has taken place before our eyes, in policies that deviate far and wide from principles of liberty and justice, but also with the unseen, beneath-the-surface changes to the culture of governance that enabled those policies to come into being in the first place. It is my hope that by recognizing these subtle tools, and the power their owners can wield, we can deepen our understanding of the dysfunctional culture of governance that evolved in the years after 9/11. Perhaps then we can embark on the corrections needed to restore our cherished traditions of law, justice, and governance. As George Orwell reminds us, in the very diagnosis lie the rays of hope for the future, for "to think clearly is a necessary first step towards political regeneration."¹³

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