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Rule by Decree: The Emergency State's Plot to Override the Constitution I By John & Nisha Whitehead

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14–17 minutes

“[Rule by indefinite emergency edict risks leaving all of us with a shell of a democracy](#) and civil liberties just as hollow.” — Justice Neil Gorsuch

We have become a nation in a permanent state of emergency.

Power-hungry and lawless, the government has weaponized one national crisis after another in order to expand its powers and justify all manner of government tyranny in the so-called name of national security.

COVID-19, for example, served as the driving force behind what Supreme Court Justice Neil Gorsuch characterized as “[the greatest intrusions on civil liberties in the peacetime history of this country.](#)”

In a statement attached to the Supreme Court’s [ruling in *Arizona v. Mayorkas*](#), a case that challenged whether the government could continue to use its pandemic powers even after declaring the public

health emergency over, Gorsuch provided a [catalog](#) of the many ways in which the government used COVID-19 to massively overreach its authority and suppress civil liberties:

[“Executive officials across the country issued emergency decrees on a breathtaking scale.](#) Governors and local leaders imposed lockdown orders forcing people to remain in their homes. They shuttered businesses and schools, public and private. They closed churches even as they allowed casinos and other favored businesses to carry on. They threatened violators not just with civil penalties but with criminal sanctions too. They surveilled church parking lots, recorded license plates, and issued notices warning that attendance at even outdoor services satisfying all state social-distancing and hygiene requirements could amount to criminal conduct. They divided cities and neighborhoods into color-coded zones, forced individuals to fight for their freedoms in court on emergency timetables, and then changed their color-coded schemes when defeat in court seemed imminent.

“Federal executive officials entered the act too. Not just with emergency immigration decrees. They deployed a public-health agency to regulate landlord-tenant relations nationwide. They used a workplace-safety agency to issue a vaccination mandate for most working Americans. They threatened to fire noncompliant employees, and warned that service members who refused to vaccinate might face dishonorable discharge and confinement. Along the way, it seems federal officials may have pressured social-media companies to suppress information about pandemic policies with which they disagreed.

“While executive officials issued new emergency decrees at a furious pace, state legislatures and Congress—the bodies

normally responsible for adopting our laws—too often fell silent. Courts bound to protect our liberties addressed a few—but hardly all—of the intrusions upon them. In some cases, like this one, courts even allowed themselves to be used to perpetuate emergency public-health decrees for collateral purposes, itself a form of emergency-lawmaking-by-litigation.”

Yet while the government’s (federal and state) handling of the COVID-19 pandemic delivered a knockout blow to our civil liberties, empowering the police state to flex its powers by way of a bevy of lockdowns, mandates, restrictions, contact tracing programs, heightened surveillance, censorship, overcriminalization, etc., it was merely one crisis in [a long series of crises](#) that the government has shamelessly exploited in order to justify its power grabs and acclimate the citizenry to a state of martial law disguised as emergency powers.

These attempts to use various crises to override the Constitution are still happening.

It doesn’t even matter what the nature of the crisis might be: civil unrest, the national emergencies, “unforeseen economic collapse, loss of functioning political and legal order, purposeful domestic resistance or insurgency, [pervasive public health emergencies](#), and catastrophic natural and human disasters.”

They have all become fair game to a government that continues to quietly assemble, test and deploy emergency powers a long laundry list of terrifying powers that override the Constitution and can be [activated at a moment’s notice](#).

We’re talking about lockdown powers (at both the federal and state level): the ability to suspend the Constitution, indefinitely detain

American citizens, bypass the courts, quarantine whole communities or segments of the population, override the First Amendment by outlawing religious gatherings and assemblies of more than a few people, shut down entire industries and manipulate the economy, muzzle dissidents, “[stop and seize any plane, train or automobile to stymie the spread of contagious disease](#),” reshape financial markets, create a digital currency (and thus further restrict the use of cash), determine who should live or die.

While these are powers the police state has been working to make permanent, they barely scratch the surface of the far-reaching powers the government has unilaterally claimed for itself without any pretense of being reined in or restricted in its power grabs by Congress, the courts or the citizenry.

As David C. Unger, observes in *The Emergency State: America's Pursuit of Absolute Security at All Costs*:

“For seven decades we have been yielding our most basic liberties to a secretive, unaccountable emergency state – a vast but increasingly misdirected complex of national security institutions, reflexes, and beliefs that so define our present world that we forget that there was ever a different America. ... [Life, liberty, and the pursuit of happiness have given way to permanent crisis management](#): to policing the planet and fighting preventative wars of ideological containment, usually on terrain chosen by, and favorable to, our enemies. Limited government and constitutional accountability have been shouldered aside by the kind of imperial presidency our constitutional system was explicitly designed to prevent.”

This rise of an “emergency state” that justifies all manner of government tyranny in the so-called name of national security is all happening according to schedule.

The civil unrest, the national emergencies, “unforeseen economic collapse, [loss of functioning political and legal order](#), purposeful domestic resistance or insurgency, pervasive public health emergencies, and catastrophic natural and human disasters,” the government’s reliance on the armed forces to solve domestic political and social problems, the implicit declaration of martial law packaged as a well-meaning and overriding concern for the nation’s security: the powers-that-be have been [planning and preparing for such a crisis for years now](#).

The seeds of this ongoing madness were sown several decades ago when George W. Bush stealthily issued two presidential directives that granted the president the power to unilaterally declare a national emergency, which is loosely defined as “[any incident, regardless of location, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the U.S. population, infrastructure, environment, economy, or government functions](#).”

Comprising the country’s Continuity of Government (COG) plan, these directives ([National Security Presidential Directive 51 and Homeland Security Presidential Directive 20](#)), which do not need congressional approval, provide a skeletal outline of the actions the president will take in the event of a “national emergency.”

Just what sort of actions the president will take once he declares a national emergency can barely be discerned from the barebones directives. However, one thing is clear: in the event of a national

emergency, the COG directives give unchecked executive, legislative and judicial power to the president.

The country would then be subjected to martial law by default, and the Constitution and the Bill of Rights would be suspended.

Essentially, the president would become a dictator for life.

It has happened already.

As we have witnessed in recent years, that national emergency can take any form, can be manipulated for any purpose and can be used to justify any end goal—*all on the say so of the president*.

The emergency powers *that we know about* which presidents might claim during such states of emergency are vast, ranging from imposing martial law and suspending habeas corpus to shutting down all forms of communications, including implementing an internet kill switch, and restricting travel.

Yet according to [documents obtained by the Brennan Center](#), there may be many more secret powers that presidents may institute in times of so-called crisis without oversight from Congress, the courts, or the public.

Remember, these powers do not expire at the end of a president's term. They remain on the books, just waiting to be used or abused by the next political demagogue.

So, too, every action taken by the current occupant of the White House and his predecessors to weaken the system of checks and balances, sidestep the rule of law, and expand the power of the executive branch of government makes us that much more vulnerable to those who would abuse those powers in the future.

Although the Constitution invests the President with very specific,

limited powers, in recent years, American presidents (Biden, Trump, Obama, Bush, Clinton, etc.) have claimed the power to completely and almost unilaterally alter the landscape of this country for good or for ill.

The Executive Branch's willingness to circumvent the Constitution [by leaning heavily on the president's so-called emergency powers](#) constitutes a gross perversion of what limited power the Constitution affords the president.

As law professor William P. Marshall explains, "[every extraordinary use of power by one President expands the availability of executive branch power for use by future Presidents.](#)" Moreover, it doesn't even matter whether other presidents have chosen *not* to take advantage of any particular power, because "it is a President's action in using power, rather than forsaking its use, that has the [precedential significance.](#)"

In other words, each successive president continues to add to his office's list of extraordinary orders and directives, [expanding the reach and power of the presidency](#) and granting him- or herself near dictatorial powers.

All of the [imperial powers amassed by Obama, Bush](#), Trump and now Biden—to kill American citizens without due process, to detain suspects (including American citizens) indefinitely, to strip Americans of their citizenship rights, to carry out mass surveillance on Americans without probable cause, to wage wars without congressional authorization, to suspend laws during wartime, to disregard laws with which he might disagree, to conduct secret wars and convene secret courts, to sanction torture, to sidestep the legislatures and courts with executive orders and signing

statements, to direct the military to operate beyond the reach of the law, to establish a standing army *on American soil*, to operate a shadow government, to declare national emergencies for any manipulated reason, and to act as a dictator and a tyrant, above the law and beyond any real accountability—have become a permanent part of the president’s toolbox of terror.

These presidential powers—acquired through the use of [executive orders, decrees, memorandums, proclamations, national security directives and legislative signing statements](#) and which can be activated by any sitting president—enable past, present and future presidents to operate above the law and beyond the reach of the Constitution.

This is what you might call a stealthy, creeping, silent, slow-motion coup d’état.

As an investigative report by the Brennan Center [explains](#):

“There are currently 41 declared national emergencies, most of which have been in place for more than a decade... Some of the emergency powers Congress has made available to the president are so breathtaking in their vastness that they would make an autocrat do a spit take. [Presidents can use emergency declarations to shut down communications infrastructure, freeze private assets without judicial process, control domestic transportation, or even suspend the prohibition on government testing of chemical and biological agents](#) on unwitting human subjects.”

If we continue down this road, there can be no surprise about what awaits us at the end.

We must recalibrate the balance of power.

For starters, Congress should put an end to the use of presidential [executive orders, decrees, memorandums, proclamations, national security directives and legislative signing statements](#) as a means of getting around Congress and the courts.

At a minimum, as *The Washington Post* [suggests](#), “all emergency declarations [s]hould expire automatically after three or six months, whereupon Congress would need to vote upon any proposed extension. It is time for both parties to recognize that governing via endless crises — even when they are employed to implement broadly popular policies that win plaudits from key political constituencies — subverts our system of constitutional government.”

We’ve got to start making both the president and the police state play by the rules of the Constitution.

As Justice Gorsuch recognized:

“Fear and the desire for safety are powerful forces. They can lead to a clamor for action—almost any action—as long as someone does something to address a perceived threat. A leader or an expert who claims he can fix everything, if only we do exactly as he says, can prove an irresistible force. We do not need to confront a bayonet, [we need only a nudge, before we willingly abandon the nicety of requiring laws to be adopted by our legislative representatives and accept rule by decree](#). Along the way, we will accede to the loss of many cherished civil liberties—the right to worship freely, to debate public policy without censorship, to gather with friends and family, or simply to leave our homes. We may even cheer on those who ask us to disregard our normal lawmaking processes and forfeit our personal freedoms.

Of course, this is no new story. Even the ancients warned that democracies can degenerate toward autocracy in the face of fear.”

Unfortunately, the process of unseating a dictator and limiting the powers of the presidency is far from simple but at a minimum, as I point out in my book [Battlefield America: The War on the American People](#) and in its fictional counterpart [The Erik Blair Diaries](#), it must start with “we the people.”

WC: 2202