

Supplanting the United States Constitution: War, National Emergency and "Continuity of Government"

by Peter Dale Scott

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In July 1987, during the Iran-Contra Hearings grilling of Oliver North, the American public got a glimpse of "highly sensitive" emergency planning North had been involved in. Ostensibly these were emergency plans to suspend the American constitution in the event of a nuclear attack (a legitimate concern). But press accounts alleged that the planning was for a more generalized suspension of the constitution.

As part of its routine Iran-contra coverage, the following exchange was printed in the New York Times, but without journalistic comment or follow-up:

[Congressman Jack] Brooks: Colonel North, in your work at the N.S.C. were you not assigned, at one time, to work on plans for the continuity of government in the event of a major disaster?

Both North's attorney and Sen. Daniel Inouye, the Democratic Chair of the Committee, responded in a way that showed they were aware of the issue:

Brendan Sullivan [North's counsel, agitatedly]: Mr. Chairman?

[Senator Daniel] Inouye: I believe that question touches upon a highly sensitive and classified area so may I request that you not touch upon that?

Brooks: I was particularly concerned, Mr. Chairman, because I read in Miami papers, and several others, that there had been a plan developed, by that same agency, a contingency plan in the event of emergency, that would suspend the American constitution. And I was deeply concerned about it and wondered if that was an area in which he had worked. I believe that it was and I wanted to get his confirmation.

Inouye: May I most respectfully request that that matter not be touched upon at this stage. If we wish to get into this, I'm certain arrangements can be made for an executive session.[1]

But we have never heard if there was or was not an executive session, or if the rest of Congress was ever aware of the matter. According to James Bamford, "The existence of the secret government was so closely held that Congress was completely bypassed." [2] (Key individuals in Congress were almost certainly aware.)

Brooks was responding to a story by Alfonzo Chardy in the Miami Herald. Chardy's story alleged that Oliver North was involved with the Federal Emergency Management Agency (FEMA) in plans to take over federal, state and local functions during a national emergency. This planning for "Continuity of Government" (COG) called for "suspension of the Constitution, turning control of the government over to the Federal Emergency Management Agency, emergency appointment of military

commanders to run state and local governments and declaration of martial law.”[3]

To my knowledge no one in the public (including myself) attached enough importance to the Chardy story. Chardy himself suggested that Reagan’s Attorney General, William French Smith, had intervened to stop the COG plan from being presented to the President. Seven years later, in 1994, Tim Weiner reported in the New York Times that what he called “The Domsday Project” – the search for “ways to keep the Government running after a sustained nuclear attack on Washington” – had “less than six months to live.”[4]

To say that nuclear attack planning was over was correct, But this statement was also very misleading. On the basis of Weiner’s report, the first two books on COG planning, by James Bamford and James Mann, books otherwise excellent and well-informed, reported that COG planning had been abandoned. [5] They were wrong.

Mann and Bamford did report that, from the beginning, two of the key COG planners on the secret committee were Dick Cheney and Donald Rumsfeld; the two men who implemented COG under 9/11. [6] What they and Weiner did not report was that under Reagan the purpose of COG planning had officially changed: it was no longer for arrangements “after a nuclear war,” but for any “national security emergency.” This was defined in Executive Order 12656 of 1988 as: “any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.”[7]

In other words extraordinary emergency measures, originally designed for an America devastated in a nuclear attack, were now to be applied to anything the White House considered an emergency. Thus Cheney and Rumsfeld continued their secret planning when Clinton was president; both men, both Republicans, were heads of major corporations and not even in the government at that time. Moreover, Andrew Cockburn claims that the Clinton administration, according to a Pentagon source, had “no idea what was going on.”[8] (As I shall explain later, this sweeping claim needs some qualification.)

The expanded application of COG to any emergency was envisaged as early as 1984, when, according to Boston Globe reporter Ross Gelbspan, Lt. Col. Oliver North was working with officials of the Federal Emergency Management Agency . . . to draw up a secret contingency plan to surveil political dissenters and to arrange for the detention of hundreds of thousands of undocumented aliens in case of an unspecified national emergency. The plan, part of which was codenamed Rex 84, called for the suspension of the Constitution under a number of scenarios, including a U.S. invasion of Nicaragua.[9] Clearly 9/11 met the conditions for the imposition of COG measures, and we know for certain that COG planning was instituted on that day in 2001, before the last plane had crashed in Pennsylvania. The 9/11 Report confirms this twice, on pages 38 and 326.[10] It was under the auspices of COG that Bush stayed out of Washington on that day, and other government leaders like Paul Wolfowitz were

swiftly evacuated to Site R, inside a hollowed out mountain near Camp David.[11]

What few have recognized is that, nearly a decade later, some aspects of COG remain in effect. COG plans are still authorized by a proclamation of emergency that has been extended each year by presidential authority, most recently by President Obama in September 2009. COG plans are also the probable source for the 1000-page Patriot Act presented to Congress five days after 9/11, and also for the Department of Homeland Security's Project Endgame -- a ten-year plan, initiated in September 2001, to expand detention camps, at a cost of \$400 million in Fiscal Year 2007 alone.[12]

At the same time we have seen the implementation of the plans outlined by Chardy in 1987: the warrantless detentions that Oliver North had planned for in Rex 1984, the warrantless eavesdropping that is their logical counterpart, and the militarization of the domestic United States under a new military command, NORTHCOM.[13] Through NORTHCOM the U.S. Army now is engaged with local enforcement to control America, in the same way that through CENTCOM it is engaged with local enforcement to control Afghanistan and Iraq.

We learned that COG planning was still active in 2007, when President Bush issued National Security Presidential Directive 51 (NSPD 51). This, for the sixth time, extended for one year the emergency proclaimed on September 14, 2001. It empowered the President to personally ensure "continuity of government" in the event of any "catastrophic emergency." He announced that NSPD 51 contains "classified Continuity Annexes" which shall "be protected from unauthorized disclosure." Under pressure from his 9/11 truth constituents, Congressman Peter DeFazio of the Homeland Security Committee twice requested to see these Annexes, the second time in a letter signed by the Chair of his committee. His request was denied.

The National Emergencies Act, one of the post-Watergate reforms that Vice-President Cheney so abhorred, specifies that: "Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated" (50 U.S.C. 1622, 2002). Yet in nine years Congress has not once met to discuss the State of Emergency declared by George W. Bush in response to 9/11, a State of Emergency that remains in effect today. Appeals to the Congress to meet its responsibilities to review COG have fallen on deaf ears.[14]

Former Congressman Dan Hamburg and I appealed publicly last year, both to Obama to terminate the emergency, and to Congress to hold the hearings required of them by statute.[15] But Obama, without discussion, extended the 9/11 Emergency again on September 10, 2009;[16] and Congress has continued to ignore its statutory obligations. One Congressman explained to a constituent that the provisions of the National Emergencies Act have now been rendered inoperative by COG. If true, this would seem to justify Chardy's description of COG as

suspension of the Constitution. Are there other parts of the Constitution that have been suspended? We do not know, and the Chair of the Homeland Security Committee has been told he cannot find out.

Plans drafted by a secret committee, including corporation heads not in the government, have provided rules that allegedly override public law and the separation of powers that is at the heart of the Constitution. Congress is derelict in addressing this situation. Even Congressman Kucinich, the one Congressman I have met, will not answer my communications on this subject.

Yet as I see it, the only authorization for the COG planning was a secret decision by President Reagan (NSDD 55 of September 14, 1982) which in effect federalized the counterinsurgency planning (called Cable Splicer), which he had authorized in California when governor there.

It is clear that the planning by Cheney, Rumsfeld and others in the last two decades was not confined to an immediate response to 9/11. The 1000-page Patriot Act, dropped on Congress as promptly as the Tonkin Gulf Resolution had been back in 1964, is still with us; Congress has never seriously challenged it, and Obama quietly extended it on February 27 of this year.

We should not forget that the Patriot Act was only passed after lethal anthrax letters were mailed to two crucial Democratic Senators – Senators Daschle and Leahy – who had initially questioned the bill. After the anthrax letters, however, they withdrew their initial opposition. [17] Someone -- we still do not know who – must have planned those anthrax letters well in advance. This is a fact most Americans do not want to think about.

Someone also must have planned the unusual number of war games taking place on 9/11. COG planners and FEMA had been involved in war games planning over the previous two decades; and on 9/11 FEMA was again involved with other agencies in preparing for Operation Tripod, a bioterrorism exercise in New York City. [18]

Someone also must have planned the new more restrictive instructions, on June 1, 2001, determining that military interceptions of hijacked aircraft had to be approved “at the highest levels of government” (i.e. the President, Vice-President, or Secretary of Defense). [19] The Report attributes this order to a JCS Memo of June 1, 2001, entitled “Aircraft Piracy (Hijacking) and Destruction of Derelict Airborne Objects.” But the written requirements had been less restrictive before June 1, 2001, and I am informed that the change was quietly revoked the following December.

In *The Road to 9/11* I suggest the change in the JCS memo came from the National Preparedness Review in which President Bush authorized Vice-President Cheney, together with FEMA, “to tackle the... task of dealing with terrorist attacks.” [20] Not noticed by the press was the fact that Cheney and FEMA had already been working on COG planning as a team throughout the 1980s and 1990s. [21]

As I wrote above, it is necessary to qualify a Pentagon officials claim (to author Andrew Cockburn) that the Clinton administration had "no idea what was going on" in COG. Let me quote from my response to Cockburn's book in my own, *The Road to 9/11*:

[Weiner's] article persuaded authors James Mann and James Bamford that Reagan's COG plans had now been abandoned, because "there was, it seemed, no longer any enemy in the world capable of . . . decapitating America's leadership." [22] In fact, however, only one phase of COG planning had been terminated, a Pentagon program for response to a nuclear attack. Instead, according to author Andrew Cockburn, a new target was found:

Although the exercises continued, still budgeted at over \$200 million a year in the Clinton era, the vanished Soviets were now replaced by terrorists. . . . There were other changes, too. In earlier times the specialists selected to run the "shadow government" had been drawn from across the political spectrum, Democrats and Republicans alike. But now, down in the bunkers, Rumsfeld found himself in politically congenial company, the players' roster being filled almost exclusively with Republican hawks. . . . "You could say this was a secret government-in-waiting. The Clinton administration was extraordinarily inattentive, [they had] no idea what was going on."

Cockburn's account requires some qualification. Richard Clarke, a Clinton Democrat, makes it clear that he participated in the COG games in the 1990s and indeed drafted Clinton's Presidential Decision Directive (PDD) 67 on "Enduring Constitutional Government and Continuity of Government." But COG planning involved different teams for different purposes. It is quite possible that the Pentagon official was describing the Department of Defense team dealing with retaliation.

The Pentagon official's description of a "secret government-in-waiting" (which still included both Cheney and Rumsfeld) is very close to the standard definition of a cabal, as a group of persons secretly united to bring about a change or overthrow of government. In the same era Cheney and Rumsfeld projected change also by their public lobbying, through the Project for the New American Century, for a more militant Middle East policy. In light of how COG was actually implemented in 2001, one can legitimately suspect that, however interested this group had been in continuity of government under Reagan, under Clinton the focus of Cheney's and Rumsfeld's COG planning was now a change of government. [23]

Understandably there is great psychological resistance to the extraordinary claim that Cheney and Rumsfeld, even when not in government, were able to help plan successfully for constitutional modifications, which they themselves implemented when back in power. Most people cannot bring themselves even to believe the second, known half of this claim: that on September 11, 2001, COG plans overriding the constitution were indeed implemented. This is why the first two print

reviews of *The Road to 9/11*, both favorable and intelligently written, both reported that I speculated that COG had been imposed on 9/11. No, it was not a speculation: the 9/11 Commission Report twice confirms that COG was instituted on the authority of a phone call between Bush and Cheney of which they could find no record. No record, I did speculate, because it took place on a secure COG phone outside the presidential bunker – with such a high classification that the 9/11 Commission was never supplied the phone records.

A footnote in the 9/11 Report says

“The 9/11 crisis tested the U.S. government’s plans and capabilities to ensure the continuity of constitutional government and the continuity of government operations. We did not investigate this topic, except as needed to understand the activities and communications of key officials on 9/11. The Chair, Vice Chair, and senior staff were briefed on the general nature and implementation of these continuity plans.[24]

The other footnotes confirm that no information from COG files was used to document the 9/11 report. At a minimum these files might resolve the mystery of the missing phone call which simultaneously authorized COG, and (in consequence) determined that Bush should continue to stay out of Washington. I suspect that they might tell us a great deal more.

What is the first step out of this current state of affairs, in which the constitution has in effect been superseded by a higher, if less legitimate authority? I submit that it is to get Congress to do what the law requires, and determine whether our present proclamation of emergency “shall be terminated” (50 U.S.C. 1622, 2002).

An earlier polite, judiciously worded appeal to this effect failed. It may be necessary to raise the issue in a larger, albeit more controversial context: the scandal that a small cabal was able to supersede the Constitution, and Congress has failed, despite repeated requests, to do anything about it. I would hope that Americans concerned about this matter would raise it with all the congressional candidates in the forthcoming elections. At a minimum, candidates should promise to call for a full discussion of the proclaimed national emergency, as the law requires.

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Notes

[1] *New York Times*, July 14, 1987.

[2] James Bamford, *A Pretext for War: 9/11, Iraq, and the Abuse of America's Intelligence Agencies* (New York: Doubleday, 2004), 74: “The existence of the secret government was so closely held that Congress was completely bypassed. Rather than through legislation, it was created by Top Secret presidential fiat. In

fact, Congress would have no role in the new wartime administration. 'One of the awkward questions we faced,' said one of the participants 'was whether to reconstitute Congress after a nuclear attack. It was decided that no, it would be easier to operate without them.'" Cf. James Mann, *The Rise of the Vulcans: The History of Bush's War Cabinet* (New York: Viking, 2004), 145.

[3] *Miami Herald*, July 5, 1987. In October 1984 Jack Anderson reported that FEMA's plans would "suspend the Constitution and the Bill of Rights, effectively eliminate private property, abolish free enterprise, and generally clamp Americans in a totalitarian vise."

[4] Tim Weiner, *New York Times*, April 17, 1994.

[5] Bamford, *A Pretext for War*, 74; cf. James Mann, *The Rise of the Vulcans: The History of Bush's War Cabinet* (New York: Viking, 2004), 138-45.

[6] Scott, *The Road to 9/11: Wealth, Empire, and the Future of America* (Berkeley and Los Angeles: University of California Press, 2007), 183-87.

[7] The provisions of Executive Order 12656 of Nov. 18, 1988, appear at 53 FR 47491, 3 CFR, 1988 Comp., p. 585, <http://www.archives.gov/federal-register/codification/executive-order/12656.html>. The *Washington Post* (March 1, 2002) later claimed, falsely, that Executive Order 12656 dealt only with "a nuclear attack." Earlier there was a similar misrepresentation in the *New York Times* (November 18, 1991).

[8] Andrew Cockburn, *Rumsfeld: His Rise, Fall, and Catastrophic Legacy* (New York: Scribner, 2007), 88.

[9] Ross Gelbspan, *Break-ins, Death Threats, and the FBI* (Boston: South End Press, 1991), 184; cf. *New York Times*, November 18, 1991.

[10] 9/11 Commission Report, 38, 326; Scott, *Road to 9/11*, 228-29.

[11] Alfred Goldberg et al., *Pentagon 9/11* (Washington: Department of Defense, 2007), 132.

[12] Scott, *Road to 9/11*, 238, 240-41.

[13] U.S. Department of Defense, "U.S. Northern Command," <http://www.globalsecurity.org/military/agency/dod/northcom.htm>. Cf. John R. Brinkerhoff, PBS, Online Newshour, 9/27/02: "The United States itself is now for the first time since the War of 1812 a theater of war. That means that we should apply, in my view, the same kind of command structure in the United States that we apply in other theaters of war." Brinkerhoff had earlier developed the martial law provisions of REX 84 in the Reagan era.

[14] Cf. Peter Dale Scott and Dan Hamburg, "To All Readers: Help Force Congress To Observe the Law on National Emergencies!!!," 911Truth.org, March 24, 2009, <http://www.911truth.org/article.php?story=20090324183053848>).

[15] Peter Dale Scott, "[To All Readers: Help Force Congress To Observe the Law on National Emergencies!!!](http://www.911truth.org/article.php?story=20090324183053848)" (with Dan Hamburg), <http://www.truth.org>, March 24, 2009, <http://www.911truth.org/article.php?story=20090324183053848#r7>.

[16] White House Press Release, September 10, 2009, http://www.whitehouse.gov/the_press_office/Notice-of-continuation-from-the-president-regarding-the-emergency-declared-with-respect-to-the-September-11-2001-terrorist-attacks/. A press briefing by Obama's spokesman Robert Gibbs the same day did not mention the extension.

[17] Cf. *Time*, Nov. 26, 2001: "While Daschle, the Senate majority leader, could

have been chosen as a representative of all Democrats or of the entire Senate, Leahy is a less obvious choice, most likely targeted for a specific reason. He is head of the Senate Judiciary Committee, which is involved in issues ranging from antitrust action to *antiterrorism legislation*" [emphasis added]. See also Anthony York, "Why Daschle and Leahy?" Salon, November 21, 2001, <http://dir.salon.com/story/politics/feature/2001/11/21/anthrax/index.html>.

[18] Brian Michael Jenkins and Frances Edwards-Winslow, "Saving City Lifelines: Lessons Learned in the 9-11 Terrorist Attacks" (San Jose, CA: Mineta Transportation Institute, San José State University, 2003).

[19] 9/11 Report, 17; cf. fn. 101, 458.

[20] *Houston Chronicle*, May 9, 2001; *Road to 9/11*, 209.

[21] James Mann, *The Rise of the Vulcans: The History of Bush's War Cabinet* (New York: Viking, 2004), 139; James Bamford, *A Pretext for War: 9/11, Iraq, and the Abuse of America's Intelligence Agencies* (New York: Doubleday, 2004).

[22] Mann, *Rise of the Vulcans*, 144.

[23] Scott, *The Road to 9/11*, 186-87.

[24] 9/11 Commission Report, 555.

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