CONTENTS

Introduction: The Subtle Tools 1

1 Ground Zero 8

2 The Patriot Act 27

3 Homeland 40

4 President Trump and the Subtle Tools 52

5 The Muslim Ban 82

6 Crisis at the Border 97

7 The Deadly Strike: The Killing of General Soleimani 121

8 The Black Lives Matter Protests: Militarizing the Home Front 145

9 The 2020 Elections 173

Conclusion: Biden’s Ground Zero 198

Acknowledgments 211

Notes 215

Index 261
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. 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. 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. 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. 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.”

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.” The conservative cycle had outlasted the predications of his cyclical theory, taking the country on “a scary voyage into uncharted waters.” 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.” 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.

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
# INDEX

<table>
<thead>
<tr>
<th>Term</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abu Ghraib prison</td>
<td>20</td>
</tr>
<tr>
<td>Adams, Henry</td>
<td>4</td>
</tr>
<tr>
<td>Addington, David</td>
<td>16</td>
</tr>
<tr>
<td>Affordable Care Act</td>
<td>3</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>18, 21</td>
</tr>
<tr>
<td>Ainsley, Julia</td>
<td>104</td>
</tr>
<tr>
<td>al-Assad, Bashar</td>
<td>128</td>
</tr>
<tr>
<td>al-Awlaki, Abdulrahman</td>
<td>23</td>
</tr>
<tr>
<td>al-Awlaki, Anwar</td>
<td>23, 134</td>
</tr>
<tr>
<td>Alito, Samuel</td>
<td>94, 185</td>
</tr>
<tr>
<td>Amanpour and Company (PBS)</td>
<td>166</td>
</tr>
<tr>
<td>American Civil Liberties Union (ACLU)</td>
<td>35, 39, 86, 159</td>
</tr>
<tr>
<td>American Immigration Council</td>
<td>108</td>
</tr>
<tr>
<td>antifa</td>
<td>168</td>
</tr>
<tr>
<td>Anti-Nepotism Statute (1967)</td>
<td>58–60</td>
</tr>
<tr>
<td>Ashcroft, John</td>
<td>29–32, 63, 68, 84, 108</td>
</tr>
<tr>
<td>Atkinson, Michael</td>
<td>76, 80</td>
</tr>
<tr>
<td>attorney general (AG): “certification power,”</td>
<td>110–11, 117; OIG report on zero-tolerance, 115–16</td>
</tr>
<tr>
<td>Austin, Lloyd</td>
<td>58, 207</td>
</tr>
<tr>
<td>Authorization for the Use of Military Force (2001) (AUMF)</td>
<td>2, 143</td>
</tr>
<tr>
<td>Azar, Alex</td>
<td>173–74</td>
</tr>
<tr>
<td>Bannon, Stephen</td>
<td>107, 137</td>
</tr>
<tr>
<td>Barr, William</td>
<td>6, 53</td>
</tr>
<tr>
<td>Board of Immigration Appeals</td>
<td>117</td>
</tr>
<tr>
<td>“certification power,”</td>
<td>110</td>
</tr>
<tr>
<td>election fraud possibility claim</td>
<td>179–80</td>
</tr>
<tr>
<td>election irregularity investigations</td>
<td>188–90</td>
</tr>
<tr>
<td>on IG firings</td>
<td>80</td>
</tr>
<tr>
<td>immigration policy</td>
<td>119</td>
</tr>
<tr>
<td>impeachment and</td>
<td>77–79</td>
</tr>
<tr>
<td>Lafayette Square protester incident</td>
<td>150–51</td>
</tr>
<tr>
<td>military and law enforcement blurred</td>
<td>147, 151</td>
</tr>
<tr>
<td>Mueller report</td>
<td>74–75</td>
</tr>
<tr>
<td>overruling Board of Immigration Appeals</td>
<td>118</td>
</tr>
<tr>
<td>Portland election</td>
<td>172</td>
</tr>
<tr>
<td>Portland protests setback</td>
<td>171</td>
</tr>
<tr>
<td>preventive detention</td>
<td>39</td>
</tr>
<tr>
<td>resignation and election fraud statement</td>
<td>193–94, 200</td>
</tr>
<tr>
<td>role of DOJ</td>
<td>71, 76</td>
</tr>
<tr>
<td>Russia investigation</td>
<td>75</td>
</tr>
<tr>
<td>seditious conspiracy charges</td>
<td>169</td>
</tr>
<tr>
<td>on Soleimani killing</td>
<td>137, 141–42; suggests charges against protesters, 167–68; unsolicited letter on the Mueller investigation, 72–74</td>
</tr>
<tr>
<td>Barrett, Amy Coney</td>
<td>186, 194</td>
</tr>
<tr>
<td>Bastian, Stanley</td>
<td>183</td>
</tr>
<tr>
<td>Bergen, Peter</td>
<td>85–86, 204</td>
</tr>
<tr>
<td>Biden, Joe</td>
<td>14, 76, 175; election of, 187–88, 192–94, 203; inaugural address, 205; on Soleimani strike, 122; undoing Trump policies, 196, 206–8</td>
</tr>
<tr>
<td>bin Laden, Osama</td>
<td>11, 125, 126, 132</td>
</tr>
</tbody>
</table>

261
Black Lives Matter protests, 145; federal prosecution, 168–69; Homeland Security Experts Group, 152–53; Lafayette Square protester incident, 150–51; Protecting American Communities Task Force (PACT), 155. See also Portland protests
Blitzer, Jonathan, 103
Blitzer, Wolf, 99
Blumenthal, Richard, 58
Board of Immigration Appeals (BIA), 118
Bolton, John, 70, 76, 78, 122, 130–31
Bork, Robert, 62
Bowser, Muriel, 150
Bradbury, Steven, 55
Bray, Mark, 168
Breitbart, Andrew, 107
Brennan, John, 135
Brennan Center for Justice, 62
Brinkema, Leonie, 88
Brookings Institution, 61, 185
Brown, Kate, 157–59, 161–62, 172, 185
Brown, Michael, 49–50
bureaucratic porousness, 4; Department of Homeland Security (DHS), 42, 50; DHS and DOJ, 167, 169; election disruption, 180; military and civilian spheres, 152–54, 158; Portland protests and, 165; Protecting American Monuments EO, 155; Trump and, 52, 64, 151–52
Bureau of Prisons Special Operations Group (SOG), 150
Burger, Russ, 169
Burr, Richard, 68, 76
Bush, George H.W., 149
Bush, George W.: Afghanistan withdrawal of forces, 21; AUMF use of, 12–13, 17, 20; bellicose language of, 11; homeland security, 40, 42–43, 45; post 9/11 policies, 3, 203; transparency and secrecy, 70. See also immigration
Bush, George W., administration: Guantánamo detention, 22; secrecy of, 59–60, 67, 70, 78; torture policies, 17, 24, 55–56
Byman, Daniel, 185
Capitol riots, 199–204
Card, Andrew, 44
Carlson, Tucker, 162
Carter, Jimmy, 62
Center for Strategic and International Studies (CSIS), 46–47
Centers for Disease Control and Prevention (CDC), COVID-19 and minorities, 174
Central Intelligence Agency (CIA), 196; black sites, 2, 55–56; "enhanced interrogation techniques," 19, 54, 56, 66–67
Chamberlain, Neville, 131
Chauvin, Derek, 145
Cheney, Dick, 43, 204
Cheney, Kyle, 78
Cheney, Liz, 204
Chertoff, Michael, 47–50, 152, 164–67, 171
Chollet, Derek, 129
Churchill, Winston, 131
Cipollone, Pat, 75–76
Cissna, Lee Francis, 108
Clarke, Colin, 185
Clarke, Richard, 165
Clinton, Bill, 63, 100, 103, 110, 132, 206
Clinton, Hillary, 63–65
Coats, Dan, 130, 138
Cole, David, 36, 38
Coll, Steve, 18
Collins, Susan, 12
Comey, James, 63–65, 71–73
Congress: departmental reporting requirements, 70; executive documents and, 70; Guantánamo and, 22; Mueller investigation and, 74–75; 9/11 response, 2–3; secretary of defense waiver, 57–58; Trump and, 69–70, 78; whistleblower quid-pro-quo, 76–77. See also Authorization for the Use of Military Force (2001) (AUMF); Department of Homeland Security (DHS); immigration; Inspector General Act (1978); USA Patriot Act (October 2001)
Congressional Research Service, 195

For general queries, contact webmaster@press.princeton.edu
Constitution: Article 1, 16, 26; Article II, 96, 142; Article III, 193; First Amendment, 84, 88, 90, 92, 94, 153, 160, 164; Fourth Amendment, 29, 31, 84, 153, 160
Conway, Kellyanne, 188
Conyers, John, 30, 33, 35
COVID-19, 156, 173–76, 183, 192
Crocker, Ryan, 127
Crow, Jason, 199, 201
Cruz, Ted, 198, 203
Customs and Border Protection (CBP), 47, 50, 104, 113; Black Lives Matter protests involvement, 155; budget increases, 100; union endorses Trump, 98
Cybersecurity and Infrastructure Security Agency (CISA), 190
Daschle, Tom, 33
Davis, Julie Hirschfeld, 114
Defense Intelligence Agency, 196
Deferred Action for Childhood Arrivals (DACA), 103, 109–11, 165, 206
Deferred Action for Parents of Americans (DAPA), 103, 108
DeJoy, Louis, 180–83, 194
Democratic Party, 45, 62, 76, 115, 122, 159, 175, 181, 184, 186, 188, 190
Department of Defense, 20, 56, 196, 207
Department of Homeland Security (DHS): abuse of power, 165–67; consolidation of agencies, 42–43; creation of, 43, 45; election fraud study (2016), 177; Federal Protective Service, 155, 157–58, 199; Hurricane Katrina disaster, 48–50; IG report on additional border agents, 106; military and law enforcement blurred, 149; Portland behavior criticized, 164–65; secrecy of reorganization plan, 44; southern border security, 98, 109; Trump’s use of, 6, 154; vagueness of, 40–42, 45, 97, 146
Department of Justice (DOJ): election irregularity protests, 190; Guantanamo detainees case, 22; independence of, 62–63, 65–66; military and law enforcement blurred, 147, 154; Muslim ban role, 88–89; policy on presidential indictments, 74–75; Portland protesters targeted, 167–68; Saturday Night Massacre, 62; seditious conspiracy charges, 168–69; Trump’s use of, 4, 6, 146, 155. See also Authorization for the Use of Military Force (2001) (AUMF); Federal Bureau of Investigation (FBI); Office of Legal Counsel (OLC); USA Patriot Act (October 2001)
Development, Relief, and Education for Immigrant Minors (DREAM) Act, 103
Dingell, John, 30, 44
Director of National Intelligence, 77, 130, 136; deputy director, 54. See also Office of the Director of National Intelligence.
domestic surveillance, 28. See also USA Patriot Act (October 2001)
Dorgan, Byron, 11
drones, 3, 23–25, 60, 100, 155; drone strike and assassination, 121, 132–134; Iran downing of, 130
Duckworth, Tammy, 55
Duncan, Robert, 180, 183
Dunford, Joseph, 86, 130
Election Crime Branch (DOJ), 190
election disruption: Biden and process, 205–6; Capitol riots, 199–204; election results certification, 202–3; recounts and court cases, 188, 191; “Save America Rally,” 198–99; state AG letter on DOJ interference, 190; Texas AG lawsuit, 192–93; voter intimidation fears, 185–86; voting rights rules lawsuits, 184–85
Election Infrastructure Government Coordinating Council (GCC), 190
election 2020: COVID-19 and voting rules, 176; election day worries and complaints, 187; federal officials on fraud, 190; mail-in voting, 176, 178–82, 184–85, 187; state officials and courts, 180. See also Post Office
election year events: conventions, Democrats and Republicans, 175; presidential debates, 175
Ellison, Keith, 190
Emerson, Ralph Waldo, 10
Engel, Stephen, 54–55, 72, 77–78, 80
Esper, Mark, 130, 139–40, 142–43, 147, 150–52, 154
executive orders: Biden’s first days, 206–7; “Border Security and Immigration Enforcement Improvements” (Trump), 100, 104–6; “Enhancing Public Safety in the Interior of the United States” (Trump), 100, 106–7; “Excepted Service” employees (Trump, Biden), 196–97; family separation end (Trump), 115; Guantanamo Bay closure (Obama, Trump), 25–26; Office of Homeland Security (Bush), 40; “Protecting American Monuments” (Trump), 154; “Protecting the Nation from Foreign Terrorist Entry” (Trump), 82–83, 85–88

Face the Nation, 61
Fadlallah, Mohammad Hussein, 132
FBI Director, 63, 65, 72, 75, 153
Federal Bureau of Investigation (FBI), 34–35, 42, 61–65, 147, 150, 189, 199
Federal Emergency Management Agency (FEMA), 44; Hurricane Katrina disaster, 49–50
Federalist, no. 37, 9–10
Federalist, no. 62, 31
Federalist Society, 6
Feingold, Russell, 14–16, 28–29, 32–33, 35, 39, 41, 46, 201
Feinstein, Dianne, 54, 67, 115
Filkins, Dexter, 127
Fine, Glenn, 79
Florida Senate election, 178
Flournoy, Michele, 135
Floyd, George, 145, 148–49, 155–56
Flynn, Michael, 53–54, 65, 100
Foer, Franklin, 109
Ford, Gerald, 62, 132
Foreign Intelligence Surveillance Act (FISA), 31. See also National Security Letters (NSLs)
Francisco, Noel, 89, 92–93, 110
Freedom of Information Act (FOIA) requests, 66–67, 69; FOIA Improvement Act, 69
Freeh, Louis, 63
Garland, Merrick, 186
Gellman, Barton, 63
Geltzer, Joshua, 133
Geneva Conventions, Common Article 3, 19
Gerstein, Josh, 78
Ginsburg, Ruth Bader, 186
Giuliani, Rudy, 78
Goldsmith, Jack, 55, 62–63
Gonzales, Alberto R., 44, 63, 79
Gorsuch, Neil, 94
Gosar, Paul, 198
Government Accountability Office (GAO), 48, 200
Graham, Lindsey, 136
Ground Zero, 8–9
Guantanamo Bay Detention Facility, 2; “detainees,” 22–23; “enemy combatants,” 19, 21; imprecise language of, 22; international law application, 22; mission definition, 18–20; Trump expansion, 25–26
Guterres, António, 122
Hadley, Stephen J., 44
Hagel, Chuck, 11
Hamdan v. Rumsfeld, 89
Harvard Law Review, 118
Haspel, Gina, 55–56, 130, 137
Hassoun, Adham, 39
Hawley, Josh, 203
Hayden, Michael, 153
Hayes, Quanice Derrick, 156
Heritage Foundation, 46–47, 125

For general queries, contact webmaster@press.princeton.edu
Hernández, Marco, 156, 158, 160
Hirono, Mazie, 202
Holder v. HLP, 89, 91–92, 94–95
Hollen, Chris Van, 140
Homan, Thomas, 98
homeland, 41–42
Homeland Security Council (HSC), 42
Hoover, J. Edgar, 61–62
House Committee on Armed Services, 185
House Committee on Foreign Affairs, 26
House Committee on Oversight and Reform, 182
House Judiciary Committee, 38, 75; Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, 30
Hoyer, Steny, 201
Hussein, Saddam, 125, 127
Hyde-Smith, Cindy, 203

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), 100
immigration, 107, 109, 112, 115; arrests, 108; asylum claims, 111, 118; border security and, 46, 98–99; “Catch and Release,” 105; Clinton era deportation measures, 100; Deferred Action for Childhood Arrivals (DACA) program, 103, 110–11, 165; Deferred Action for Parents of Americans (DAPA), 103, 108; DHS dysfunctionality, 45–47; family separation policy, 113–16; Flores settlement agreement, 113–14; Mexicans and Central Americans, 99; order denying bond to asylum seekers, 117; post 9/11 policies, 84; Priority Enforcement Program (PEP), 102, 106; sanctuary cities, 102, 107; Secure Communities policy, 102; “unaccompanied children,” 111–12; undocumented immigrants, 101–2, 107; zero-tolerance policy, 108–9, 111, 115–16. See also executive orders; Muslim ban; National Security Entry-Exit Registration System (NSEERS)

Immigration and Customs Enforcement (ICE), 47, 50, 69, 108, 111, 113, 155, 157; budget increases, 101; Obama era restraints, 102; union endorses Trump, 98
Immigration and Nationality Act (1965), 32
Immigration and Naturalization Act, 92, 95
immigration judges, 109–10
Ingraham, Laura, 139
Inskeep, Steve, 179, 185
inspector general, 35, 47, 49, 64, 76–77, 79–80, 106, 113, 115
Inspector General Act (1978), 79
inspectors general, Trump dismissals, 80
Insurrection Act, 149, 153, 185
Intelligence Community Whistleblower Protection Act (1998), 77
Iran, 123; Soleimani retaliation, 143; U.S. military encounters, 129–30; weapons of mass destruction, 122, 124. See also Soleimani, Qasem
Iran War Powers Resolution, 144
Iraq War, 21–22. See also Authorization for the Use of Military Force (2002) (AUMF)
Islamic Revolutionary Guard Corps (IRGC), 121, 129
Islamic State of Iraq and Syria (ISIS), 18, 22–23, 25, 71, 82, 91, 96
Jaffer, Jameel, 24, 68–69
Jefferson, Thomas, 149
Jenkins, Brian, 165–66, 204
Joint Comprehensive Plan of Action (JCPOA), 122–25, 131
Joint Terrorism Task Forces (JTTFs), 147
Kagan, Elena, 89–90
Karpinski, Janis, 20
Katyal, Neal, 89, 91–93, 94–96
Kavanaugh, Brett, 70
Keep Families Together Act, 115
Kelly, John, 53–54, 85, 98–99, 108, 111, 113
Kennedy, Anthony, 94
Kennedy, John, 203
Kerry, John, 122
Khameini, Ali, 127, 130
Khan, Samir, 23
Khanna, Ro, 182
Khamenei, Ali, 127, 130
Kilpatrick, Carolyn, 31
Kimbrough, Patrick, 156
King, Rodney, 149
Kimmons, Patrick, 156
Krush, Kris, 190–91
Kupferman, Charles, 76
Koh, Harold, 94
Kushner, Jared, 58–60

Landrieu, Mary, 11–12

language, vagueness: assassination, 132–34, 144; DHS, 40–42, 45; election disruption, 179; imminence, 24, 132–33, 139–42, 144; Iran and, 124–25; military and law enforcement blurred, 153–54; Portland protests and, 165, 167, 170; Protecting American Monuments EO, 154–55; protesters as terrorists, 146–47; strike against Soleimani, 122, 142–43; Trump and, 52; USA Patriot Act, 29–32. See also Obama Framework; Trump Framework

Lee, Barbara, 12–13, 15
Lehnert, Michael, 19
Leiter, Michael, 153
Levin, Carol, 14
Lewandowski, Corey, 65
Libby, Scooter, 43
Loffler, Kelly, 202
Lofgren, Zoe, 31
Lugar, Richard, 94

Madison, James, 9, 31
Maloney, Carolyn, 182
Maquire, Joseph, 130
Marerro, Victor, 184
Marshall, George, 57–58
Marshall, Roger, 203
Martin, Trayvon, 145
Mattis, James, 53, 56–60, 69, 86, 99, 130, 207
Mayorkas, Alejandro, 153
McCabe, Andrew, 65
McConnell, Mitch, 180, 186
McGahn, Don, 65, 70, 75–76, 78–80
McMaster, H. R., 54, 70
Merkley, Jeff, 114
Migration Policy Institute, 103
militarization of law enforcement, 147, 149–55, 157
Mille, Stephen, 162
Milley, Mark, 130, 140, 147, 151–52, 154, 171, 185
Mitchell, Andrea, 138
Mueller, Robert, 72–75
Muhandis, Abu Mahdi al, 121
Mulvaney, Mick, 78
Murphy, Chris, 58
Murphy, Emily, 196
Muslim ban, 82–88, 90–96. See also executive orders; Trump v. Hawaii

Nadler, Jerrold, 33, 75–76, 78, 115
Nagin, Ray, 49
Nakamura, Beth, 159
National Crime Information Center (NCIC), 85
National Defense Authorization Act, 133
National Guard, 146, 148–50, 172, 185
National Public Radio (NPR), 61, 142–43
National Security Act (1947), 56–57
National Security Agency, 36, 196
National Security Council (NSC), 42, 133–35, 137–38, 195
National Security Entry-Exit Registration System (NSEERS), 84–85
National Security Letters (NSLs), 34–36

For general queries, contact webmaster@press.princeton.edu
Nelson, Bill, 178
Netanyahu, Benjamin, 123
*New York Times*, 8, 34, 41, 165
9/11 Commission Report, 42–43, 195, 204
Nixon, Richard M., 10, 12, 62, 74, 137, 209
Noonan, Peggy, 41
norms, disruption of, 51, 208; Barr and, 71, 119; Capitol insurrection, 202; election pushback, 191; presidential transfer of power, 199–200; Supreme Court nomination, 186; Trump and, 53
norms, violation of: D.C. protests and, 151; military and law enforcement blurred, 153–54, 167; Portland protests, 170; Secretary of Defense, 56–58, 207; travel ban, 89
Obama, Barack, 3; AUMF language, 20–21; Comey appointment, 63; drone strikes and, 23–25; immigration policies, 85, 101–3; Iran policies, 131; OLC and executive privilege, 60; transparency and secrecy, 69. See also Joint Comprehensive Plan of Action (JCPOA); Obama Framework
Obama administration: Anti-Nepotism Statute and, 59; counterterrorism efforts, 23; Iran and nuclear weapons, 122–23. See also Authorization for the Use of Military Force (2001) (AUMF)
Obama Framework, 133–35, 144
Obey, David, 44–45
O’Brien, Robert, 131, 139
Office of Homeland Security (OHS), 40, 42–43
Office of Immigration and Citizenship, 108
Office of Legal Counsel (OLC): executive staff testimony, 78; Obama and, 67, 69; role and duties, 59; secret memo on immunity from testifying, 76–77; sitting president memo, 74; staff of, 15–16, 54–55; Stellar Wind, warrantless surveillance, 66; Trump and, 60
Office of Refugee Resettlement (ORR), 112–113
Office of the Director of National Intelligence, 38, 196, 206. See also Director of National Intelligence.
Olsen, Matt, 153
Oppenheimer, J. Robert, 9
Orwell, George, 7, 10
Owens, Annie, 59–60
Oxley, Michael, 28
Papachristou v. City of Jacksonville, 32
Paterson, NJ, special election, 179
Paxton, Ken, 192
Pelosi, Nancy, 76, 204
Pence, Mike, 25, 54, 65, 78, 161, 177, 199
*Pennsylvania v. DeJoy*, 184
Petraeus, David, 126, 128–29
PEW Research Poll, 1
Pilger, Richard, 190
“Politics and the American Language” (Schlesinger), 10
“Politics and the English Language” (Orwell), 10
Pompeo, Mike, 55–56, 78, 122–26, 130, 139–41
Portland protests, 155–58; DHS role, 162; Don’t Shoot Portland, 156; election day experience, 172; journalists lawsuit, 159–64, 170–71; Operation Diligent Valor, 157; “phased withdrawal” of federal troops, 161–62; secrecy and confusion of, 163; Temporary Restraining Order (TRO), 156–60, 162, 171
Posse Comitatus Act, 149, 153
post 9/11 policies, 3, 41, 45, 53, 84, 91, 202–4, 208
Postal Regulatory Commission (PRC), 181, 183–84
Postal Reorganization Act (1970), 180

© Copyright, Princeton University Press. No part of this book may be distributed, posted, or reproduced in any form by digital or mechanical means without prior written permission of the publisher.
Post Office: Board of Governors, 180–81; mail-in voting doubts and difficulties, 181–82; mail service cutbacks, 181; state election mail lawsuits, 182–84
Pre-Election Presidential Transition Act (2010), 195–96
Presidential Advisory Commission on Election Integrity, 177
presidential powers, 75; expansion under AUMF, 13–14; unitary executive theory, 16–17, 72
presidential transition: Bush to Obama transition, 195–96; 9/11 Commission Report and, 195; Trump to Biden transition, 196
Presidential Transition Act (1963), 194–95
Priebus, Reince, 100
Promised Land, A (Obama), 3, 66
Proud Boys, 169–70, 185
Psaki, Jen, 207–8
Putin, Vladimir, 70, 138
Raab, Dominic, 122
Reagan Ronald, 132
Reid, Harry, 55
Republican Party, 6, 46, 83, 175, 180–81, 184, 187, 192–93, 201, 203, 204
“Rethinking the Department of Homeland Security (DHS)” (CSIS/Heritage), 46–47
Rhodes, Ben, 127
Rice, Condoleezza, 44, 48
Richardson, Elliot, 62
Ridge, Tom, 42–45, 47, 49, 152, 165–66, 171
Roberts, John, 90–91, 94–96
Rosen, Jeffrey, 168
Rosenstein, Rod, 65, 116
Rove, Karl, 43–44
Rumsfeld, Donald, 19
Russia investigation, 72, 74
Sanders, Sarah Huckabee, 25
Sargent, Greg, 164
Savage, Charlie, 17
Scalia, Antonin, 186
Schiff, Adam, 76–77
Schlesinger, Arthur, Jr., 4–5, 7, 10, 197
Schlesinger, Arthur, Sr., 4
Scott, Rick, 178
“Second Coming, The” (Yeats), 5
secrecy: anonymity of federal agents, 158; Biden and transparency, 207; classified documents, 67; family separation policy, 114, 116–17, 119; Iran and, 124, 133; military and law enforcement blurred, 153–54; OLC and, 59; Portland protests and, 165; reporting requirements ignored, 133–34; Stellar Wind, warrantless surveillance, 66; strike against Soleimani, 122; Trump and, 52, 69–71, 78–79
Secretary of Defense, civilian appointment, waiver, 56–58
Seditious Conspiracy statute, 167–68
Senate Committee on Homeland Security and Governmental Affairs, 98
Senate Judiciary Committee, 38; Subcommittee on the Constitution, 14, 29
Sensenbrenner, Jim, 30, 33
September 11, 13, 16, 28, 49, 83–84, 109, 202; act of war, 8, 11
Serrano, José, 31
Sessions, Jeff, 65, 107–11, 113–17, 119
Sessions, William, 63
Shapiro, Ari, 142–43
Simon, Michael, 160–63, 170–71
Slotkin, Elissa, 128
Snowden, Edward, 36
Sobchak, Frank, 128
Soleimani, Qasem: Article II powers and drone strike, 96; decision-making on strike, 135–36, 138–40, 144; Iraq and U.S. cooperation, 127–28; Pompeo letter, 124;
Quds Force and, 126–27; retaliation for strike on, 128–29; sanctions, 130; Saudi ambassador plot, 129; terrorism claim, 139, 144; U.S. military and, 126, 128
Soufan, Ali, 127
Southwest Border Security Act, 100
Specter, Arlen, 11, 15, 36
State Department, 25, 45, 66, 83, 91
Stevenson, Jonathan, 135, 137, 212
Sullivan, Emmet, 183
Supreme Court nomination, 186
Tenet, George, 154
terrorists and terrorism: Capitol riots, 199–204; domestic terrorism, 200–201, 204–5; "enemy combatants," 25–26; Islamic terrorism, 82, 86; protesters, 146. See also Al Qaeda; Islamic State of Iraq and Syria (ISIS); USA Patriot Act (October 2001)
Thomas, Clarence, 94
Tillerson, Rex, 86
Title 8, U.S. Code, §1152, 92–93; §1182, 92–93
“torture memos.” See war on terror
Transportation Security Administration (TSA), 47, 86
Truman, Harry S., 13, 57
Trump, Donald, 1; appointments, 54–58; appointments, Senate confirmations, 61; appointments, turnover, 61, 130–31; on Black Lives Matters protesters, 146; candidacy, 83; Comey and, 64–65; election disruption, 176–78, 185, 188, 194, 198–99; executive privilege, 76; Floyd’s murder, 146; illegal immigrants, 26; immigration, restrictive, 97; inspectors general dismissals, 80; Iran and, 122, 124; mail-in voting, 178–79; on Mexicans, 99; military and law enforcement, 147, 150–51, 159, 165; 9/11 subtle tools, 4, 6–7; OLC and, 60; popular vote (2016), 177; protesters as terrorists, 146; Russia investigation, 65; second impeachment, 203–4; Soleimani strike decision, 135–39, 144; "stand back and stand by," 169; transition disruption and beyond, 196–97; transparency and secrecy, 69–70; war on terror, tools of, 52; war on terror and, 9. See also Authorization for the Use of Military Force (2001) (AUMF); bureaucratic porousness; Joint Comprehensive Plan of Action (JCPOA)
Trump, Donald, executive orders, 25
Trump, Donald, Russia investigation: court rulings, 78; impeachment, 77–78; obstruction investigation, 74–76; whistleblower quid-pro-quo, 76–77
Trump Framework, 134
Trump v. Hawaii, 89, 91–96
Tuberville, Tommy, 203
Tuter, Jack, 178
United Nations, Article 51, 143
USA Freedom Act (2015), 37
USA Patriot Act (October 2001): abuse of power, 33; Anti-Terrorism Bill, 27–28; Ashcroft version, 30–31; border security and, 100; circuit court review, 36–37; Department of Justice role, 33; domestic surveillance wish list, 29; expanded use, 34–36; goal of, 27–28; immigration provisions, 39, 93; passage of, 2; reforms of, 28; replacement legislation, 37; rushed congressional vote, 32–33; Trump misuse, 38; vagueness of language, 29–32. See also National Security Letters (NSLs); USA Freedom Act (2015)
Vietnam War, Gulf of Tonkin Resolution, 14
Visa Waiver Program Improvement and Terrorist Travel Prevention Act (2015), 85
Vladeck, Stephen, 88, 159
Wagner, Ann, 201
Waltz, Michael, 201
Walz, Tim, 148–49
war, congressional declaration, 12–14
Ware, Bryan, 191
WARNock, Raphael, 202

war on terror: Al Qaeda and, 13; AUMF
use of, 17–18; "enhanced interrogation
techniques," 19, 54; language of, 11, 13;
secrecy and, 66; torture policy, 54–55;
Trump and, 53–54; unlimited powers
and, 2, 9, 109; WWII comparison, 11–12

war powers: congressional power, 26.
See also Authorization for the Use of
Military Force (2001) (AUMF)

War Powers Act (1973), 12

wars, undeclared, 13

Washington, Jason, 156

Washington Post, 152, 164

Washington v. Trump, 183

Watergate scandal, 2, 6, 10, 51, 62–63, 209

Waters, Maxine, 32

Waxman, Henry, 44–45

Webster, William, 153

Wheeler, Ted, 157–59, 169, 171

While America Slept (O’Brien), 131

While England Slept (Churchill), 131

Whipple, Chris, 128

whistleblowers, 69, 76–80

Whitaker, Matthew, 118

white supremacy, 107, 169, 185, 201, 205

Whitmer, Gretchen, 187

Williams, Billy, 169

Wittes, Ben, 158

Wolf, Chad, 158, 161–62, 166–67, 169, 171, 200

Yeats, W. B., 5

Yoo, John, 15–17, 55, 80

Zarif, Mohammad Javad, 84, 130

zero-tolerance policy, 108–9, 11, 115