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The Real Patriots

By [BOB HERBERT](#)

If we could manage to get past the tedious and the odious — like the empty speculation on whether a woman can win, or whether Barack Obama is black enough — we might be able to engage the essential issue facing the U.S. at this point in our history.

And that is whether, once the Bush administration has finally and mercifully run its course, the country goes back to being a reasonably peaceful, lawful, constructive force in the world, or whether we continue down the bullying, warlike, unilateral, irresponsible, unlawful and profoundly ineffective path laid out by Bush, Cheney & Co.

The question is not so much whether a Republican or a Democrat takes the White House in the next election; it's whether the American people can take back their country.

I don't think most Americans are up for perennial warfare. And whatever the polls might say, it's very hard for me to accept that the men and women who rise from their seats and cover their hearts at the start of sporting events are really in favor of dismantling the system of checks and balances, or holding people in prison for years without charging them, or torturing prisoners in U.S. custody, or giving the president the raw power and unsavory privileges of an emperor.

It was Richard Nixon who said, "When the president does it, that means that it is not illegal."

George W. Bush and Dick Cheney, operating behind the mammoth fig leaf of national security, took this theoretical absurdity to heart and put it into widespread practice.

There are, however, many thoughtful Americans who want to stop this calamitous disregard for the rule of law, two of whom I'll mention today — Frederick A. O. Schwarz Jr. and Senator Chris Dodd.

[Mr. Schwarz is one of the most decent men I've known. I covered him when he was the chief lawyer for New York City during the Koch administration. He was then, and still is, the quintessential straight arrow.

In the 1970s Mr. Schwarz was chief counsel for the Church Committee (named after its chairman, Senator Frank Church), which uncovered extraordinary abuses and led to historic changes in the nation's intelligence services. He is now the senior counsel at the Brennan Center for Justice at New York University Law School.

To say that Mr. Schwarz is disturbed by some of the things that have occurred during the presidency of George W. Bush is an understatement. In a book to be published next month by The New

Press, "Unchecked and Unbalanced: Presidential Power in a Time of Terror," Mr. Schwarz and a colleague at the Brennan Center, Aziz Z. Huq, write:

"For the first time in American history, the executive branch claims authority under the Constitution to set aside laws permanently — including prohibitions on torture and warrantless eavesdropping on Americans. A frightening idea decisively rejected at America's birth — that a president, like a king, can do no wrong — has reemerged to justify torture and indefinite presidential detention."

Undermining checks and balances here at home and acting unilaterally abroad have made us less safe, said Mr. Schwarz. Some of the actions the U.S. has taken "have so hurt our reputation," he said, "that Abu Ghraib and Guantánamo Bay have become in many eyes more the symbol of America than the Statue of Liberty."]

Senator Dodd, a Connecticut Democrat who is running for

president, has introduced legislation that would definitively bar the use of evidence obtained by torture or coercion, reinstate full U.S. adherence to the Geneva Conventions and restore rights of habeas corpus for certain terror suspects that were stripped away by the federal government last year.

(Habeas corpus is a legal proceeding that allows suspects to challenge their detention in a court of law. To get a sense of its significance, imagine that you were locked up somewhere and were not permitted to show that a mistake had been made, that you were innocent. Imagine that you, or a loved one, were held under those circumstances for a period of years, or forever.)

Senator Dodd said this corrosion of the rule of law has been tolerated primarily because “people have been frightened.” As he put it, in an atmosphere of crisis, “the temptation to succumb to the demagoguery of these things is strong.”

The senator and Mr. Schwarz, in their different ways, are among the

many quiet patriots who are spreading the word that the very meaning of the United States, the whole point of this fragile experiment in representative democracy, will be lost if the nation’s ironclad commitment to the rule of law is allowed to unravel.