

GEORGE BUSH'S ANNUS HORRIBILIS

THE PRESIDENT IS BADLY WOUNDED BUT THAT MIGHT NOT BE GOOD FOR ANYONE IN 2006

BY ANDREW GUMBEL

2005 was the year the Bush administration curled up and laid down to die. The President told us a little over a year ago that he regarded his reelection as political capital he was now free to spend, but in retrospect it seems he was handed no more than loose change, or — to extend the metaphor in a slightly different direction — a pile of fool's gold.

His ambition to dismantle Social Security as we know it — going nowhere. His continuing itch to extend tax cuts for the wealthy — denied by the realities of out-of-control deficit spending. His Iraq policy — ever more floundering and tragic, and now, thanks to Representative John Murtha of Pennsylvania and the investigations of Patrick Fitzgerald, condemned to incoherence in the public relations arena, too.

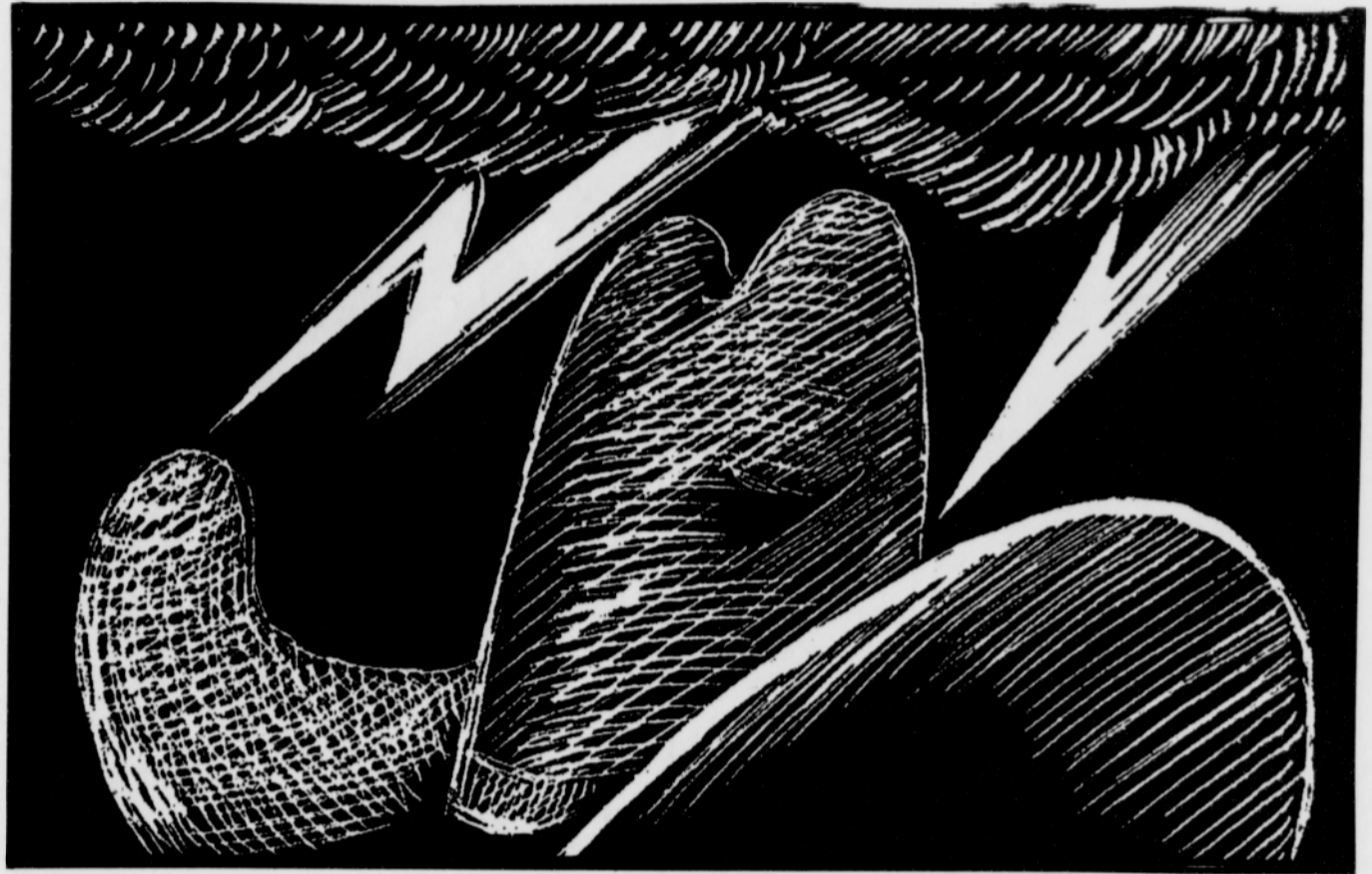
His war on terror — exposed as both incompetent and morally bankrupt in the wake of scandals concerning torture and the unauthorized wiretapping of American citizens. His general credibility in the domestic arena — shot to pieces by the scandalously lackadaisical response to Hurricane Katrina, and by the numerous corruption scandals now lapping at the heels of the entire Republican establishment.

It's hard to know, in fact, what the administration still hopes to achieve. The President talks a lot about staying the course, but there doesn't seem to be a whole lot of course left to stay. It's still possible the new year could see major staffing changes in the White House, or the announcement of a major new series of initiatives — on developing alternative energy sources, perhaps, something pundits on both left and right have been suggesting as a feasible way to revive his flagging fortunes. But the doggedness that has characterized this administration as it lurches from one disaster to the next suggests otherwise. The Bushies don't like admitting they are wrong about anything, and longevity in public office in this White House is measured by loyalty, not competence.

The truly frightening prospect, in fact, is that this crew still has three years left in office, and there isn't a thing any of us can do to dislodge them. We're condemned, in other words, to live with the stench of rotting political flesh for the foreseeable future. Being a Brit, I'm often asked if I think, in a parliamentary system, it would be easier to kick the Bushies out now that they have clearly lost the public trust. To which my answer is: not necessarily.

It's true that, in the mother of parliaments in Westminster, it only takes a straight up-and-down vote by the members of the majority party to unseat a Prime Minister, which is what happened to Margaret Thatcher in 1990. But does anyone think that the Republicans who control Congress would really dare to rebel against their own anointed leader, when so much of their own, and the country's, credibility is at stake in Iraq and elsewhere? Tony Blair, after all, has clung on, even though the Iraq War has been far more unpopular in Britain, and his own Labor Party feels distinctly ambivalent about him.

The U.S. Congress is also a far more conservative and stultified body than its foreign counterparts. Incumbents are so well protected in the U.S. system — by the cold logic of campaign



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fund-raising and the non-competitive nature of almost all electoral districts — that the winds of democratic change need scarcely concern them. One sobering reality that Bush opponents need to confront in the coming year, in fact, is that, whatever misfortunes the Republicans suffer, the overwhelming probability is that they will remain in charge of one, if not both houses of Congress after next November's mid-terms.

Gerrymandering of district boundaries has reached such absurd limits that more than 99% of congressional seats have been safe for the incumbent party in the past few election cycles. It's going to take little short of a political earthquake to dislodge the Republican majority in the House — that, or a cascade of resignations prompted by the testimony now promised by the über-lobbyist and slush-fund operator Jack Abramoff.

How well insulated exactly are the Republicans? When they took control of the House in 1994, they won 53.6% of the two-party vote and gained 52 seats. According to Rob Richie of the non-partisan Center for Voting & Democracy, which studies voting patterns and lobbies for alternatives to the winner-takes-all electoral model, the Democrats will have to do significantly better in 2006 than the Republicans did in 1994, and even then can expect only a fraction of the dividends. They will probably have to win 54% of the two-party vote to stand even a chance of winning back the House, and even then are likely to squeak home by just a seat or two. (The Republicans currently have 29 more seats than the Democrats.)

Part of the reason for this lopsided picture is the number of open seats — by far the easiest ones to snatch away from the opposing party because it takes the incumbency advantage out of

the picture. In 1994, there were 52 open seats, of which the GOP won 39. To date, the number of seats coming open in 2006 is just 18.

For this reason, a huge amount is riding on lobbyist Jack Abramoff's anticipated testimony. So much is at stake, in fact, that if I were in Abramoff's place I would be getting someone else to open the mail and making sure someone else drank from the first cup from every pot of coffee. A huge amount is riding, too, on the U.S. Supreme Court's examination of 2003 redistricting in Texas orchestrated by the now-indicted Tom DeLay. Republicans picked up four extra seats in 2004 thanks to DeLay's little piece of political engineering — made possible simply because the Republicans edged into the majority in the Texas state legislature — and could lose them again more or less automatically if the Supreme Court decides the redistricting maneuver was illegal.

If the Democrats in the Senate have any sense — and, under Harry Reid, they've proved themselves adept at using the rules of Capitol Hill to their advantage — they will be actively thinking of ways of at least delaying Samuel Alito's confirmation until after the redistricting case is heard in April. Sandra Day O'Connor may be no shoe-in, but she is far more likely to rule in favor of sticking to the pre-established practice of redrawing district boundaries once a decade. The Democrats will no doubt frame any objections to Alito's nomination around the issues of abortion or wiretapping without a warrant, but make no mistake: Their eyes will be squarely on the electoral prize as well.

What else can the Democrats do to push the beleaguered Republicans into retreat, if pushing them out of power remains a long-range proposition? Developing some attractive policy positions, particularly on Iraq, would of course be a plus, but given the divisions in the party we can hardly count on that. Their best strategy, in the end, may be to watch the Republicans fall over each other's swords and stay well out of the way.

If I had to recommend one book to the Democratic leadership, it would be Dashiell Hammett's crime classic *Red Harvest*. The plot centers around a corrupt small-town political machine rather than the national government, but the manner in which Hammett's Continental Op brings the place to heel nevertheless holds valuable lessons for contemporary Washington. Rather than inserting himself too intimately into the putrid mess, Hammett's anti-hero simply figures out who controls which rackets, quietly sows discord between the rival factions, then sits back and watches them all shoot each other to pieces. If 2006 provides even a fraction of that kind of drama, it could be compulsive political viewing — and pretty darn entertaining.

Andrew Gumbel is the author of *Steal This Vote*. He wrote this article for *Los Angeles CityBeat*.

WE DON'T NEED A NEW KING GEORGE

BY ANDREW SULLIVAN

A somewhat legal law is a little like a somewhat pregnant woman. At first blush, it seems like an absurdity. But President Bush disagrees. In the past five years, quietly but systematically, he has been arguing that the law doesn't always apply to him. How has he done this? By attaching "signing statements" that spell out his own attitude to bills he signs.

Previous Presidents have sporadically issued signing statements, but seldom and mainly as boilerplate or spin. Until the 1980s, there had been just over a dozen in two centuries. The President's basic legislative weapon, after all, is the veto given him by the founders. He can use the power as leverage to affect legislation or kill it. But he cannot legislate himself or interpret the law to counter Congress's intent. Signing statements were therefore relatively rare instances of presidential nuance or push-back. In eight years, Ronald Reagan used signing statements to challenge 71 legislative provisions, and Bill Clinton 105.

In five years, President Bush has already challenged up to 500 provisions, according to one tally — far, far more than any predecessor. But more important than the number under Bush has been the systematic use of the statements and the scope of their content, asserting a very broad legal loophole for the Executive. Last December, for example, after a year of debate, the President signed the McCain amendment into law. In the wake of Abu Ghraib, the amendment banned all "cruel, inhuman and degrading" treatment of U.S. military detainees. For months, the President threatened a veto. Then the Senate passed it 90 to 9. The House chimed in with a veto-proof majority. So Bush backed down, embraced McCain and signed it. The debate was over, right? That's how our democracy works, right?

Not according to this President. Although the meaning of the law was crystal clear and the Constitution says Congress has the exclusive power to "make Rules concerning Captures on Land and Water," Bush demurred.

He issued a signing statement that read, "The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander-in-Chief and consistent with the constitutional limitations of the judicial power."

Translation: If the President believes torture is warranted to protect the country, he'll violate the law and authorize torture.

If the courts try to stop him, he'll ignore them too. This wasn't quibbling or spinning. Like the old English kings who insisted that Parliament could not tell them what to do, Bush all but declared himself above the law he signed. One professor who specializes in this constitutional area, Phillip J. Cooper of Portland State University in Oregon, has described the power grabs as "breath-taking."

And who came up with this innovative use of presidential signing statements? Drumroll, please. Samuel Alito, Supreme Court nominee, way back in 1986. In a February 5 memo, he wrote, "Since the President's approval is just as important as that of the House or Senate, it seems to follow that the President's understanding of the bill should be just as important as that of Congress." That is, of course, a very strange idea — which is why, until then, signing statements had been sporadic and rare. Courts have always looked solely to congressional debates in interpreting laws Congress has passed. In laws with veto-proof margins, the President's view is utterly irrelevant. Alito seemed to concede that at the time, recognizing the "novelty of the procedure and the potential increase of presidential power."

Alito, of course, didn't foresee the war on terrorism. But put a war President's power together with the new use of signing statements, and Executive clout has been put on steroids. "If you take this to its logical conclusion, because during war the Commander-in-Chief has an obligation to protect us, any statute on the books could be summarily waived," argued Senator Lindsey Graham, a Republican from South Carolina.

As Graham shows, this isn't a Republican-Democrat issue. It's a very basic one. A President, Democrat or Republican, has every right to act unilaterally at times to defend the country. But a democracy cannot work if the person who is deputed to execute the laws exempts himself from them when he feels like it. Forget the imperial presidency. This is more like a monarchical one. America began by rejecting the claims of one King George. It's disturbing to think we may be quietly installing a second one.

Andrew Sullivan wrote this article for *Time* magazine. His blog, "The Daily Dish," can be found at time.com.



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