



The Terror Presidency: Law and Judgment Inside the Bush Administration

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Jack Goldsmith's duty as head of the Office of Legal Counsel was to advise President Bush what he could and could not do...legally. Goldsmith took the job in October 2003 and began to review the work of his predecessors. Their opinions were the legal framework governing the conduct of the military and intelligence agencies in the war on terror, and he found many—especially those regulating the treatment and interrogation of prisoners—that were deeply flawed.

Goldsmith is a conservative lawyer who understands the imperative of averting another 9/11. But his unflinching insistence that we abide by the law put him on a collision course with powerful figures in the administration. Goldsmith's fascinating analysis of parallel legal crises in the Lincoln and Roosevelt administrations shows why Bush's apparent indifference to human rights has damaged his presidency and, perhaps, his standing in history.

The Terror Presidency: Law and Judgment Inside the Bush Administration Details

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James says

I liked this book. Even though I'm not a lawyer or a neocon or a friend of UChicago, I found much to admire in Goldsmith, in his presentation of his story, and in his honesty, indeed, heroism. Now i cannot abide by some of his conservative glossing over of the facts when it was convenient to him, such as in his treatment of the mentally incompetent and tortured terrorist Abu Zubaydah, but I can admire the courage it took to stand upto David Addington, Cheney's counsel and the White House's biggest bully, and the Bush administration on at least some matters of law. He calls John Yoo a friend and then demonstrate how faulty was the legal reasoning of his friend. He also points out some of the reasons why an administration might take this or that approach to handling the treatment of detainees after 9/11 that I in my righteousness had not considered. So the book made me think sometimes. His connection of the Bush admin behavior to the Lincoln and Roosevelt cases was enlightening only in suggesting how badly the Bush admin screwed up by NOT informing the Congress and nation of its intent to violate and stretch to their limits U.S. and international laws. While many left-leaners like me will find the comparisons overdone, I thought the comparisons made well the point that Bush led the nation poorly because he did not trust the nation to understand the dilemmas he faced and to make decisions together with him on what to do about these dilemmas. He thought little of our abilities, and a book like this helps me see how little we will think of his not just now but for a very long time.

Tom Meyer says

Fascinating must-read for anyone interested in current events, the War on Terror, or civil liberties.

The book is partly a narrative of Goldsmith's own experience in the Bush administration and partly a (brief) legal history of presidential powers relating to war and intelligence. A fairly hawkish conservative legal scholar, joined the Bush Administration as the head of the Office of Legal Council in 2003; essentially, the president's head legal adviser. While there, he discovered John Yoo's famous Terror Memos and was horrified by their shoddy research and overreach. Goldsmith subsequently ordered them retracted and issued a narrower opinion of what the president could and could not do to terrorists. This, I was expecting.

What I was not expecting was Goldsmith's history lessons. The intelligence community, he argues, is caught in a horrible cycle of excesses. When something awful happens -- a 9/11, for instance -- Americans demand that they be publicly berated for failing, then given vastly greater powers to prevent a second disaster. Intelligence agencies then unvaryingly overreact and start doing all manner of things that are ugly, but keep us safe. Just as Americans' fear of another attack is beginning to subside, the ugly truths come out. Then, we berate the intelligence officials again for dishonoring us, and we strip them of all the powers we gave them, and then some. Before long, another attack happens and the whole cycle starts over. It's an arresting and tragic analysis.

His second lesson -- which forms the basis of his solution -- is that these cycles are exacerbated when the president makes these changes in secret, and mitigated when they are made publicly and with the assent of the other branches. "The president cannot avoid accountability for national security decisions," he says, "But he can spread the accountability, and thereby minimize the recriminations and other bad effects of the risk-taking that his job demands." This refusal to engage and to go-it-alone-Congress-be-damned approach, Goldsmith argues, was the first cause of all of the Bush administrations subsequent mistakes.

I can't recommend too this one too highly. And at 233 pages, it's very easy and quick reading.

Jeff says

Given that Mr. Goldsmith and I have radically different political views, it is difficult to write an objective review of his book. And while I believe at several points in the book Mr. Goldsmith avoided lying by telling have truths. The book is, in many respects, very apologetic. It also is, at 216 pages (233 with afterword) both brief and too long.

The majority of the book if filler. Each chapter reads like an attempt to "give props" to various friends in Republican politics. Only the final chapter and afterword really have any meat to them. The thesis of the book is that President Bush's excesses were all totally legal, though perhaps poor policy. But President Bush's attempt to expand the power of the Presidency for the legitimate purpose of safeguarding Americans was handled in such a unilateral and secretive way that it had the long term result of dishonoring the Presidency, making the public suspicious of it, and in fact weakening the Presidency.

Goldsmith's argument, though tediously stretched through six chapters when it would have been better as an essay in Newsweek, is a compelling one and of particular value to anyone who wants to be informed on the issue. I particularly recommend it for those people, like myself ideologically opposed to the Bush administration -- in polarized politics it is easy to demonize the other side and to forget that sometimes mistakes that were made with good intentions instead of evil ones.

Colleen Clark says

What interested me most in this book was a Bush administration insider's account of how badly the Justice Dept. went awry. Goldsmith went from being an assistant to the DOD lawyer Jim Haynes (Sept 2002-Sept 2003) to being head of the Office of Legal Counsel (OLC) in the Justice Dept. from Sept 03 to summer 04. While Goldsmith was generally on board with the Bush administration counterterrorism policies he ultimately resigned because the legal opinions written by John Yoo, whom he called a "friend," were "deeply flawed: sloppily reasoned, overbroad, and incautious in asserting extraordinary constitutional authorities on behalf of the President." p 10

He has much to say about the power of Cheney's lawyer David Addington.

"Of probably a hundred meetings in Gonzales's office to discuss national security issues, I recall only one when Addington was not there." p 76

Also, as an aside, is this, particularly relevant in Feb 2010 as I write this, "...military commissions, which Ashcroft never liked." p 24.

Where else are you going find so much inside dope from an insider who is not blowing the whistle but is principled and independent-minded?

Jenny says

A conservative lawyer's take on how corrupt things were when he worked at DOJ from 2003-2004. While he

makes some good points, his insistence on comparing the Bush administration to the Lincoln and FDR administrations is gratuitous and annoying, if not flat out wrong.

Neil H says

A professor trained in the relevant expertise with the lofty, academic pedigree against the hard hitting concrete, dirty reality of politics. It could have been a lot less exciting if what he went through was for a longer period but because it's was condensed within less than a year, the drama, heartache was more palpable. How does POTUS exercise in the time of war and technological progress. Has the politics, legislation and constitution caught up with the science and technology that increasingly drives a whole new world of sabotage whores and death nuts? An engaging read of if the dry reach of law compliment the true reality of the groundwork of agents which fights and investigates daily on its citizens behalf and the engorged egos of the white house.

Maduck831 says

“When OLC writes legal opinions supporting broad presidential authority in these contexts – as OLCs of both parties have consistently done – they cite executive branch precedents (including Attorney General and OLC opinions) as often as court opinions. These executive branch precedents are “law” for the executive branch even though they are never scrutinized or approved by courts.” (36) “by a tie 213-213 vote, to authorize them. Kosovo was “the first time in our history that a president waged war in the face of a direction congressional refusal to authorize the war,” as Adler noted. It also marked the first and only time that a president exceeded the limitations on the 1973 War Powers Act.” (37) [Francis Biddle} “I do not think he was much concerned with the gravity or implications of this step,” Biddle later said. Roosevelt acted in the belief “that rights should yield to the necessities of war.” (44) [“The Anarchist Fighters”] “Demands immediately arose among members of Congress for swift justice to the saboteurs – for the death penalty if the law permits it,” reported the Washington Post, the public favored death for the saboteurs by a 10 – 1 margin.” (50) “The country gasped a sigh of relief. “To handle [the saboteurs] in the civil courts would be to help Hitler immensely, and that would be intolerable,” wrote the Washington Post. “We cannot afford to give our enemy, in our present pass, the slightest assistance.” (52) “He (Suskind) attributes its influence to Vice President Cheney’s November 2001 decree to the CIA that low – probability threats must be treated like a certainty.” (75) “In response to the secession crisis that began when Confederate forces fired on Fort Sumter, Lincoln raised armies and borrowed money on the credit of the United States, both powers that the Constitution gave to Congress...” (82) “When they hear a government lawyer talking about shades of grey and degrees of risky, they understandably hesitate, especially when criminal laws are in play.” (93) “The first branch of government, Yoo argued without any citation of authority...” (98) “No one (including the Supreme Court) complained when Roosevelt used his military powers to capture, try, and execute the Nazi saboteurs caught in civilian clothes in the United States during World War II, even though one of them, Herber Haupt, was an American citizen.” (117-118) (this is when he loses me a bit, he is essentially comparing al Qaeda to Nazis and I don’t think that is a fair comparison...I see what he is trying to get at (FDR is revered now and he did what Bush did!) but don’t buy it, if he takes this road, he needs to explain why al Qaeda and Nazis are similar...a much harder stance to take) “Addington once expressed his general attitude toward accommodation when he said, “We’re going to push and push until some larger force makes us stop.” (126) [Robert Kagan’s essay “Power and Weakness,” June 2002)] [The Military Commissions Act of 2006] [“Military Interrogation of Alien Unlawful Combatants Held Outside the United States” – John Yoo] [Department of Defense Working Group] [August 2002 interrogation opinion] “In light of all I had been through and done, I did not see how I could get that faith back. And so I quit.” (163) (he also doesn’t

serious moment in our national history.

I do not think he is unfair to John Yoo but carefully frames the advice Yoo gave the president. The book is an odd mesh of memoir and legal opinion.

I first read this book several years ago but had forgotten it. It is a sad story though told straight;

Annette says

Have you ever been at a party and had the ear of about 8 or 9 people? They're all looking at you because they think you're smart because you know a lot of interesting data. And you confidently throw out a shocking number while holding your two-ice-cubed cranberry vodka and say "Did you know that eight hundred and eighty THOUSAND Iraqi citizens have been killed since the beginning of hostilities?" And everyone gasps in astonishment and disbelief at a) the hideousness of the number and b) your complete genius.

Only later do you find that your data was wrong. You googled it, and it was "only" eighty eight thousand dead Iraqi citizens. You're left at an impasse. Do you email the 8 or 9 people to tell them you were mistaken? Or do you allow them to continue under the mistaken beliefs which you sowed? I mean, how much harm can be caused by middle-class uberguilt?

I must do the former. I must eat crow. This book has fomented this impasse for me. Don't get me wrong, I still think that the Bush administration is a bumbling Keystone Cop operation which rewards mediocrity and failure while punishing competence. Yet I have a whole new appreciation for the obstacles they are up against with regards to: the desire to recreate the unitary executive practiced under Lincoln, FDR and other wartime presidents; applying international law to US law (not such a good idea...trust me!); immunity for CIA/FBI agents and other executive branch employees; investigations in a world with disposable cell phones and mandatory warrants for wiretaps; and yes...terror & terrorism.

And the administration's over-reliance on secrecy has more than likely led to its abysmal popularity with the American people. If the administration did what FDR and Lincoln did...come completely clean with the American people in what they are trying to accomplish and the threats we face...I think a lot less people would be so pessimistic and wary.

While the book did read like an apologia, and I reserve the fifth star because the last chapter implied that one day history will compare Bush II to FDR and Lincoln, I rate this book highly because it challenged my preconceived notions about the administration.

Anna says

Better than Mayer's book on the same topic and scholarship is more nuanced and less sensational. Goldsmith wavers between criticism of the administration and feeling like it's his responsibility to make excuses for the administration as someone who was part of it for a short time.

Pierre says

I think this book is a good read because it offers great insight into the sick and twisted minds who are working behind the scenes in the Bush White House to promote an arch-conservative agenda.

However, this book reads like a giant apology for Jack Goldsmith's tenure at the Bush White House. Basically, Goldsmith has used this book to apologize and explain away how he embarrassed the White House after the Abu Gareb scandal by withdrawing a number of legal opinions which were the basis of the memos authorizing torture and disregarding the Geneva Convention.

The book is also an apology for Bush Administration policy during the "war on terror". On the one hand, Goldsmith seems to argue that it is reasonable that the White House wanted to expand its war time powers because of the fear of a terrorist attack but at the same time arguing that the White House over-reacted and expanded its power too far. Goldsmith is still an arch-conservative at heart, but believes that Bush overplayed his hand. What Goldsmith doesn't understand is that his conservative ideology is the problem.

For this book to have had 5 stars, Goldsmith would not just have to come to the realization that Bush's rationalizations for torture and eavesdropping were on legally unsecure footing, but that they were wrong because they were poor policy choices based on a total misunderstanding of the terrorist threat that the US faces.

Greg says

I like this book because it doesn't attempt to be a tell all political memoir. It's written with the detached, yet incisive eye of an academic, which Goldsmith is. It's interesting because he got burned pretty bad by the powers that be, yet he doesn't try to settle scores. Instead, he attempts to explain the importance of the Office of Legal Counsel in informing the legality of executive action, what kinds of pressures the office has historically faced, and how previous presidents, such as Lincoln and FDR, pushed the limits of the law far more responsibly in times of crisis than the Bush administration did. Angler and One Percent Doctrine are better for the page-turning recountings of heated bureaucratic battles. This book is far better for an understanding of what could have been done differently in the past, and what legal principles should guide us in times of crisis in the future.

Jerome says

A dry but objective and interesting look at the legal issues and challenges that the Bush administration faced after 9/11. Goldsmith explains some of the administration's policy decisions and the inner workings of the White House Office of Legal Counsel. You can tell this was written by a lawyer, though...

Goldsmith stabs his old friend John Yoo in the back, vaguely implying that Yoo was a bad lawyer who made errors in his OLC memos, though Goldsmith doesn't say what. Just that he didn't like their "tone." Yoo recommended Goldsmith for his job in the first place. So for Goldsmith to air stylistic issues over legal memos in public feels petty, inasmuch as such things are supposed to be a joint activity in legal offices in any event. Whither honor and decency?

Instead of catering to political winds, Goldsmith might have explained better how law differs from policy. Law states general rules. How any general rule sorts out in particular circumstances must forever remain to some extent unpredictable. Policy is set by the policymakers. That can and should change with circumstances, though not too much, if one is taking account of a need for consistency. What better time to

revise memos than a month or so after Abu Ghraib?

As of early June 2009 the NYT confirmed for the umpteenth time that the law of war remains just the same now, under Obama, as it ever was under Bush. Policy has shifted, but only slightly, even today. Yoo sketched the bounds of executive power in war as it was and always had been. Goldsmith states clearly that all interrogation techniques and policies that Yoo put forward were legally correct. He says George Tenet regarded Yoo's memos as crucial if America was to protect its warriors, spies and interrogators from politicized litigation antics.

So shortly after Abu Ghraib, government drones set about to modify memos for perceived "tone" problems. Forgive me while I suppress a yawn. Yoo and Addington are fingered as bad guys; nearly everyone else is praised to the skies. This part, about 95% of the book, is rich and persuasive. The mournful tut-tutting about the bad guys is too nonspecific to be of interest.

The executive has great power to act in war within the law as he reasonably sees fit. There is nothing novel or new about this. It is the law as all Presidents have assumed it throughout American history. Clinton ignored the 1974 War Powers Act and bombed Kosovo over Congress's objection. He was the first to authorize terrorist renditions in locales where torture is routine. FDR contravened many laws passed by Congress requiring neutrality in WWII. Bush never did anything close.

Some academics however argue that the executive is a subordinate rather than an equal branch of government. So far all they've done is intimidate those who want jobs or social acceptance in the legal academy. Dirty bomber Padilla sued John Yoo, courtesy of the Yale Law Clinic, claiming this book in support as pure harassment, apparently not reading further than its jacket and press release. Nothing came of that, nor will it.

The author nevertheless claims to be a scholar whose higher wisdom and morals forced him to correct all Yoo's sad, bad work, a pose that is quite annoying if one knows the people being smeared in his book, and makes one suspect the author's basic integrity. Qualms coming right after Abu Ghraib is perfectly natural, as is Goldsmith's fuzziness on what really was wrong with the memos. Goldsmith also says a few times in the book that Yoo's views were, and continue to be, respectable legal opinion, that Yoo has openly defended with eloquence. Evidently the author just wants to have it all ways with all markets. This mars the book.

David Addington plays the standard role of Rasputin. He said something snarky, once, about FISA and that is set forward to prove that he is a bad man. Goldsmith himself winds up doing no actual memo revising. After a mere 9 months at OLC, he shoves on to greener pastures at Harvard. Publish or perish! OLC colleague Dan Levin followed up to do all the actual work.

In fact, it wasn't Goldsmith at all but a fellow named Philbin who had first said, uh, since it was now 2004, not 2002, and the immediate 9/11 emergency was past, maybe we ought to look over those old memos and make changes. Goldsmith heartily concurs. Was it all so important after all? Well, it was after Abu Ghraib erupts. No more lah dee dah in that office. Broad presidential authorizations to fight terror...broadly?...Whoops! Just think of the wild new vicarious liability theories lefty academicians and ACLUers must be hatching. Intensive CYA, one of government's most critical tasks, ensues.

This is your classic political farce in the tone of "more in sorrow, than in anger" coupled, under the surface, with excellent pro-Bush administration policy arguments. The book's facts stated as such are interesting and useful to have--now that the political attitudes of this book's day are past.
