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American rendition

How executive policy became a 2-edged sword in the War on Terror

Reviewed by **Branislav L. Slantchev**

July 13, 2008

The mud pots are among the less famous attractions at Yellowstone National Park. They are essentially pools of mud whose opaque viscous surface is occasionally disturbed by gas that bubbles to the surface. The effect can be startling and often quite smelly because of the sulfur. Watching the periodic eruptions of “mud volcanoes” is akin to watching the War on Terror – nearly all of the action takes place beneath a roiling surface and the average citizen can only witness the eruptions of Guantanamo, the “torture memos,” the rumors of CIA’s “extraordinary renditions” of suspects to countries that practice torture, the abominable photographs from Abu Ghraib, and the waterboarding controversy. The one thing you know about the mud pot is that all the seemingly random disturbances are produced by the same geothermal chemical process. What you do not know about the War on Terror is whether the disturbances are the predictable failures of the rank-and-file to follow government policy or the result of faithful implementation of policy.

Jane Mayer makes a strong case, in “The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals,” that these eruptions are not merely the unpleasant byproduct of otherwise sound policies. Instead, they are the result of truly bad policies often prescribed in the name of national security. Like a good suspense novel, this current account has a main villain – Vice President Dick Cheney – and a faithful henchman – his chief of staff, David Addington. Throughout most of the book Mayer is content to represent the aberrations as wrong actions by otherwise well-meaning individuals. But when it comes to these two, her stance is different. Cheney and Addington are portrayed as pursuing a long-standing agenda to re-create the imperial presidency of the Nixon era.



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They apparently believed that the executive had been shackled by a meddling Congress, an overbearing judiciary, a pusillanimous bureaucracy, manipulative journalists, and a stupid and inattentive citizenry that simply did not understand what was best for it. The extreme legal doctrine that “the president, as commander in chief, had the authority to disregard virtually all previously known legal boundaries if national security demanded it” is not something that either Congress or the American public would care to acquiesce to under normal circumstances. But during the feverish months after 9/11, when the overriding concern of just about everyone in and out of government was to prevent follow-up terrorist attacks, Cheney and Addington could finally have their way. In Mayer’s words, “the tragedy of September 11 presented an extraordinary opportunity for putting their extreme principles into practice.”

Citing the protean concept of national security, Cheney and Addington recruited several choice individuals – key among them John Yoo, the deputy chief in the Justice Department’s Office of Legal Counsel – to find legal justifications for abrogating policies designed to protect the defendants’ rights. From the very beginning

and without any debate on the wisdom of that position, Cheney and Addington had decided that the War on Terror would require us to abandon the “niceties” of due process. “Rather than seeing the American legal system as the country's greatest strength, it was instantly regarded as a burden,” Mayer writes.

Law, like most people, will confess if you torture it long enough. It will confess even if there is nothing to confess to and the key confession, in this saga, arrived Aug. 1, 2002, in the form of a memorandum from the Office of Legal Counsel (OLC) written by Yoo but signed by Assistant Attorney General Jay Bybee. The memo broke new ground, arguing that the president could make torture legal by authorizing it. This in effect would put the president beyond the reach of any law.

A memo is not law; it is just an opinion from someone in some office at the Department of Justice. But the OLC is not just any DOJ office. It is the legal adviser to the executive branch and its interpretations of law are binding on the government. No wonder Jack Goldsmith, the OLC head in 2003, referred to these memos as “golden shields,” Mayer recounts. And behind these golden shields, the War on Terror unfolded with predictable ferocity.

The account of this war's evolution is potent and disturbing stuff. But the book is not nearly as effective as it could have been. It is neither fish nor fowl.

If, as the title suggests, it is meant to be a narrative of how particular policies came into being outside proper channels, then the book suffers from being almost entirely reliant on unverified claims made in anonymous interviews. If, on the other hand, the book is meant to criticize the Bush administration's handling of the War on Terror, then it fails on two accounts. First, it must squarely confront the fact that there has been no terrorist attack on American soil since 2001. Mayer alleges that it may be that the government's policies are unrelated to this because “it is hard to know if the Bush administration's success represents the vanquishing of new credible threats, or rather the absence of any.”

In the end, the great crime of the Bush administration is that it decided how to wield the “great and terrible power” of the government without public debate, without sufficient deliberation. The terrifying irony of a government that does not trust the judgment of the citizens it is supposed to represent cannot be lost on anyone. The people should have a say when someone is being tortured ostensibly for the sake of their security. It also may well turn out that we, as a society, decide that the price of avoiding another attack is too high if it must be paid in torture, illegality, international opprobrium, and the loss of rights and personal liberties. America can survive many 9/11s but can it survive the destruction of the ideas that make it great?

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