

The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals.

By Jane Mayer. New York: Doubleday, 2008.

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The mudpots 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 is startling even though one expects it, and often quite stinky because of the sulfur. Watching the boiling slurry with 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 Guantánamo, the “torture memos,” the “American Taliban” John Walker Lindh, 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 mudpot 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 said policy.

Jane Mayer makes a strong case that these eruptions are not merely the unpleasant by-product of otherwise sound policies. Instead, they are the result of truly bad policies that often prescribed in the name of national security the very deviations we abhor. The shortcomings of these policies, although evident to some individuals in the know, could not have been exposed or corrected because of the deliberate circumvention of the usual policy-making process by a coterie of zealous individuals within the Bush Administration. Of people who did not hesitate to ditch American ideals in their single-minded pursuit of security. Of people who used tendentious interpretation of the law to justify policies that should have been deliberated on in the public forum. Of people who resorted to practices that may have seriously undermined the very security they were trying so desperately to achieve.

At the risk of oversimplifying Mayer’s book, let me attempt a summary of her thesis. As any good suspense novel, this current account has a main villain – Vice President Dick Cheney – and a faithful henchman – his Chief of Staff David Addington. Although throughout most of the book Mayer does not indulge in conspiracy theories and is content to represent the aberrations as wrong actions by otherwise well-meaning individuals, 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. They apparently believed that the Executive had been shackled by a meddling Congress, overbearing Judiciary, 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” (51) 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” (51).

Citing the wonderfully protean concept of national security, Cheney and Addington recruited several other 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. The new policies would focus on obtaining “actionable” information as quickly as possible to preempt future terrorist attacks. When one is only interested in information regardless of whether the methods used to obtain it would enable it to stand up in court, interrogation no longer has to be bound by the rules of due process. When one believes that devastating attacks are imminent, it is imperative to obtain information that could be used to prevent them. Indeed it would be immoral to delay. If the suspect refuses to talk, this mindset can easily justify extreme measures, even torture, to extract the information. And so it did. 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” (52).

Law, like most people, will confess if you torture it long enough. It will confess even if there is nothing to confess to. In the event, the confession arrived on August 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. After redefining torture in a way that would leave out many of the practices of the Spanish Inquisition (which itself was too simplistic in its approach because it did not have access to modern psychology to make them even more effective), the memo broke new grounds by arguing that the President could make torture legal by authorizing it (152). This in effect would put the President beyond the reach of any law, and it is no wonder that the Supreme Court struck down a previous attempt to assert “inherent powers” of the Presidency under Truman. The authors must have been aware of that unpalatable precedent because they took great care to keep the memo secret (and indeed, parts of it still are).

Now, one may wonder why a memo from OLC is so important. After all, the memo is not law; it is just an opinion from someone in some office at the Department of Justice (DOJ). That was my first reaction too: why should I care what some lawyer whose name I had never heard before from some government office I had never heard of thinks about torture? The problem is that 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. When OLC says torture is legal, then for all practical purposes

es it is, unless the Attorney General overrides that opinion or the courts strike it down. As Mayer puts it, “it is nearly impossible to prosecute U.S. officials who followed that advice on good faith” (65). No wonder then that Jack Goldsmith, the OLC head in 2003, referred to these memos as “golden shields.” (At this point one may stop to ponder the wisdom of a system that allows the members of OLC to be political appointees. The government deciding who can give it “get out of jail free” cards? Say it ain’t so!)

Behind these golden shields, the War on Terror unfolded with predictable ferocity. The CIA established a worldwide network of “black sites” to which they could kidnap individuals on the mere suspicion of being connected to terrorism (in the case of Khaled el-Masri, having an Arab name that sounded like that of an important Al Qaeda operative was enough of a connection, 282-287). What the CIA did there is not exactly clear but it is known to have waterboarded several suspects and subjected many more to extreme forms of interrogation. At least two have died in CIA custody and then there is the uncertain but easily surmisable fate of those it “extraordinarily rendered” to the intelligence services of countries with unsavory regimes that regularly practice torture (Egypt and Syria, among others). The military – which we would normally expect to follow its own Uniform Code of Military Justice – did little better with the “unlawful enemy combatants” under its supervision at the legal limbo of Guantánamo and at the universally reviled prison of Abu Ghraib. Contrary to the vehement protestations of high-ranking U.S. officials (e.g., the President and Rumsfeld among others), Mayer argues that these abuses were not simply regrettable aberrations of individual soldiers or agents. They were systematic practices deliberately instituted as government policy. Some, like Rumsfeld, would flatly refuse to discuss the detainees (188), and others who dared question the practices would be regarded as squeamish and insufficiently patriotic, and in some instances (e.g., Goldsmith, 294) would be forced to resign.

This is potent and disturbing stuff. But the book is not nearly as effective as it could have been. The main problem is that 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 and without sufficient deliberation, then the book suffers from being almost entirely reliant on unverified (and unverifiable) claims made in anonymous interviews. I am not unrealistic and I do realize that asking for corroboration may be impractical if not outright impossible when we are dealing with current affairs. But one does have to wonder about the veracity of claims of “he said, she said” nature especially when they are not cross-checked with, or even flatly contradict, others.

For instance, there are numerous references to people from the FBI criticizing the CIA’s handling of suspects. Their basic claim is that had the Administration allowed the FBI to get involved rather than giving the know-nothings from the CIA *carte blanche* to run wild and incompetent, everything would have been so much better (202-204). According to these FBI people, the CIA’s interrogation tactics were fatally flawed, and the Agency messed up obvious leads, allowed itself to be led down blind alleys, and abused the suspects in the process. The presumption (often stated outright) is that the FBI would have gotten better results without the controversial techniques. Before we get carried away here, perhaps we should remind ourselves that the FBI’s own record

is not exactly spotless. Leaving aside the Bureau's behavior during the Vietnam War and Civil Rights era, it is not difficult to find instances of less-than-stellar performance in the recent past. We do not even have to dwell on Ruby Ridge, Waco and the blowback that was the Oklahoma City bombing. We may want to recall that the 9/11 hijackers operated in the United States for months before the fatal September. We may also want to recall the 2007 admissions by FBI director Mueller about the Bureau using the Patriot Act "improperly" to obtain information in illegal ways (NYT, March 10, 2007). This is not meant to absolve the CIA. It is meant to remind us that we do not really have tangible data measuring performance in analogous situations that we could use to assess the relative success of the two agencies.

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" (330). Since we do not know exactly what plots, if any, were foiled, one is, of course, free to believe that the terrorist who tried to attack the U.S. with mind-numbing regularity prior to 9/11 have somehow grown quiescent, and that this has nothing to do with the loss of training facilities and safe haven in Afghanistan, with the need to hide from relentless pursuit all around the globe, or with the operational difficulties resulting from increased inter-governmental cooperation.

Without hard data, of course, these ruminations are neither here nor there. This, however, brings me to the second problem. In order to establish that a policy is bad, one must provide a workable alternative against which we may evaluate it. We cannot just posit an unrealistic ideal – e.g., Islamic terrorist suspects will confess willingly if we only sipped coffee and discussed theology in Arabic with them (no, I am not making this up: see the implications from John Walker Lindh's case on p. 99 or Al-Libi's case on p. 105) – and then judge against it. Something leads me to believe that not all, and perhaps even not many, terrorists will be quite that cooperative (149). What are we to do if they would not cooperate?

This, of course, is the crux of the problem and unfortunately it is precisely here that the book falls eerily silent. The big question can be stated bluntly: Should terrorism be treated as a crime or an act of war (80-88)? How we treat detainees then depends on the answer to that question. If terrorism is a crime, then our goal would be the prosecution of suspects. If it is an act of war, then our goal can at most be the extraction of information (one cannot prosecute soldiers for fighting unless they commit war crimes, and even then it is tricky). If our goal is to obtain tactical information to prevent future attacks, how far can we go in interrogating detainees? What if the methods we use make it impossible to prosecute suspects later on? If we cannot prosecute them, what do we do with them once we have "milked them dry"? Are all methods that the Red Cross says are "tantamount to torture" beyond the pale? If not, how far can we go and under what conditions (227)?

These are not easy questions but Mayer simply asserts the answers she likes. At times, it almost sounds that *anything* would be better than the policies of the Bush Administration. There are numerous claims that humane treatment of detainees is more effective in eliciting their cooperation (110-19, 134), that mistakes are too easily made (130, 282), that emotions cloud the judgment of interrogators (142), that torture may work to extract “confessions” but not useful information (170), that such tactics corrode morale (174), and that they produce dangerous backlashes abroad (184).

These may be true or they may not. Impressionistic accounts aside, we have no idea whether torture is effective – I guess it would depend on the context. Even mild forms of coercion would work on some and not even extreme forms would work on others. It may well be true that most of the information you get this way is useless because it is either misleading or entirely fabricated. But what if the one bit you get turns out to be instrumental in preventing a deadly attack?

Now, there is nothing more repugnant to a former citizen of a communist country than a government that runs unchecked in the name of his best interests. I am also severely troubled by a wholly pragmatic approach to the treatment of detainees -- it is all too easy to justify just about anything on the grounds of expedience and vague notions of national security. But we can probably all imagine an extreme scenario under which most of us would approve some form of physical coercion of a suspect. If we can imagine that, then the ban on torture is not absolute and it becomes a policy matter to draw the line somewhere. Defining the requirements that would permit extreme measures and setting limits to how extreme they can be is what we should ponder and deliberate upon.

In the end, the great crime of the Bush Administration is that it decided how to wield the “great and terrible power” (91) of the government without public debate, without sufficient deliberation, and without much attention to the merits and demerits of the various policies. It concealed from the very public it claimed to protect the means through which it was effecting that protection. 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 who has ever heard the equivalent of “we are doing what’s best for you, and we know better than you do what’s best for you.” The people should have a say when someone is being tortured ostensibly for the sake of their security. Perhaps we can agree on some “rules of engagement” that although not pretty are nevertheless effective enough to justify the costs. But 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?