



## War by Other Means: An Insider's Account of the War on Terror

By John Yoo



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John Yoo, the key legal architect of the Bush administration's response to 9/11, delivers a fascinating insider account of the War on Terror. While America reeled from the cataclysmic events of September 11, 2001, Yoo and a skeletal staff of the Office of Legal Counsel found themselves on the phone with the White House. In a series of memos, Yoo offered his legal opinions on the president's authority to respond, and in the process had an almost unmatched impact on America's fight against terrorism. His analysis led to many of the Bush administration's most controversial policies, including detention at Guantanamo Bay, coercive interrogation, military trials for terrorists, preemptive attacks, and the National Security Agency's wiretapping program. In fascinating detail, Yoo takes us inside the corridors of power and examines specific cases, from John Walker Lindh and Jose Padilla to an American al-Qaeda leader assassinated by a CIA pilotless drone in the deserts of Yemen. In a midterm election year, when the controversies over the president's handling of the War on Terror are sure to wage more forcefully than ever before, John Yoo's *War by Other Means* is set to become one of the fall's most talked about books.

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## War by Other Means: An Insider's Account of the War on Terror By John Yoo Bibliography

- Sales Rank: #1249295 in Books
- Brand: Brand: Atlantic Monthly Press
- Published on: 2006-09-08
- Original language: English
- Number of items: 1
- Dimensions: 1.10" h x 6.28" w x 9.20" l, 1.19 pounds
- Binding: Hardcover
- 224 pages

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### Editorial Review

From Publishers Weekly

As a former assistant attorney general for the Justice Department's Office of Legal Counsel, Yoo was in the center of the debate over where President Bush's administration draws the line on the torture of detained terrorism suspects. He revisits that and other controversies in the war on terror, from NSA wiretapping to the legal status of "enemy combatants." His response to most criticisms is that al-Qaeda is a new kind of enemy, and the old ways of thinking (e.g., the Geneva Conventions) prevent us from stopping another terrorist strike. The cornerstone of Yoo's argument is his belief that as commander-in-chief, the president has broad powers "to act forcefully and independently to repel serious threats to the nation." Even the formal declaration of war by Congress has become archaic; Yoo argues that America is at war whenever the president decides the military can "do what must be done." Thus, the Supreme Court's June decision rendering the prosecution of Guantánamo detainees by military commissions unconstitutional is, in Yoo's eyes, "a dangerous judicial intention to intervene in wartime policy" that forces the president and Congress to waste time crafting legislation when we could be out fighting terrorists. Unambiguous and combative, Yoo's philosophy is sure to spark further debate. (*Oct.*)

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From The Washington Post

You should read this book, though not for the reasons the author intends. John Yoo is a law professor who served in the Office of Legal Counsel of the Department of Justice from 2001 to 2003. In that capacity, he participated -- often quite centrally -- in the key post-9/11 legal decisions that framed the Bush administration's war on terror, including the Patriot Act, the National Security Agency surveillance program and administration positions on torture, military tribunals and the treatment of alleged terrorist detainees at Guantanamo Bay.

In *War by Other Means*, Yoo delivers on his subtitle. This is indeed "an insider's account of the war on terror." He sets an ambitious goal for himself: "to explain the choices that the Bush administration made after 9/11," choices made "under one of the most dire challenges our nation has ever faced." Yoo is mild-mannered, but he is angry, and his anger pervades this work. He attacks the media, human rights advocates, legal academics, civil libertarians, former attorney general John Ashcroft, the Supreme Court, conservative pundit George F. Will, librarians and even the Bush administration (among others) for cowardice, self-aggrandizement, overreaching, ignorance, dishonesty and cupidity.

At its core, *War by Other Means* offers spirited, detailed and often enlightening accounts of the decision-making process behind the key 2001-03 legal decisions. Yoo feels compelled to justify them because the Bush administration itself has "often failed to explain clearly to the public the difficult decisions al Qaeda has forced upon us." In some instances, Yoo mounts a persuasive defense of the administration's policies. His account of the Patriot Act, for example, convincingly demonstrates that it was not nearly as draconian as its critics charged and that perhaps "the worst thing about it is its Orwellian name."

Most illuminating about *War by Other Means*, however, are the arguments that unnerve rather than persuade. Yoo's defense of the administration's decisions about torture, surveillance, detention and due process will send a chill down the spine of anyone committed to the preservation of civil liberties and the separation of powers. Yoo asserts that Bush administration officials acted in good faith, but his reasoning reveals that they frequently acted with bad judgment.

Did you know, for example, that Congress cannot constitutionally restrict the president's authority as commander-in-chief to spy on the American people -- but that it can constitutionally eliminate such surveillance "by cutting off all funds for it"? Or that the commander-in-chief has the unqualified authority to decide "who to detain and how to detain them"? Or that the federal law prohibiting torture forbids the infliction of pain only if it is "equivalent in intensity to the pain accompanying . . . death, organ failure, or serious impairment of bodily functions"? Or that the Justice Department's withdrawal of that definition after the revelation of detainee abuse at Abu Ghraib changed nothing? Or that the president in any event has the unqualified authority to use torture? Talk about Orwellian.

Yoo's characterization of many policies is little short of bizarre. He maintains, for example, that Abu Ghraib, the Aug. 2002 "torture memo" (which gave CIA interrogators sweeping legal blessings) and the NSA surveillance program are not really objectionable because the people can always vote the president out of office if they disapprove of his decisions -- without noting that the president attempted to keep these matters secret from the American people. He characterizes the Foreign Intelligence Surveillance Act of 1978, which expressly prohibits the president from engaging in foreign intelligence surveillance without a warrant, as offering "the executive branch a deal": If the president obtains a warrant, the surveillance will be deemed reasonable; if he orders surveillance without a warrant, "he takes his chances." I don't think so. The Foreign Intelligence Surveillance Act flatly declared it unlawful for the president to engage in electronic surveillance without satisfying the act's requirements. It no more offered the president a "deal" than our drug laws offer pushers a deal: Don't sell drugs, and you won't go to jail; sell drugs, and you "take your chances."

The fundamental precept that drives Yoo's conclusions is his unyielding belief that in wartime, the president -- as commander-in-chief -- is exclusively in charge. Detention, surveillance and torture must all be within the president's unilateral control. Congress and the Supreme Court must defer to the president's judgment.

This is an extreme, reckless and dangerous view. That it has shaped the policies of our government is nothing short of irresponsible. Even U.S. Court of Appeals Judge Richard A. Posner, no slouch when it comes to advocating the aggressive use of government power to combat terrorism, has charged that Yoo's "extravagant interpretation of presidential authority . . . confuses commanding the armed forces with exercising dictatorial control" of the sort exercised by "a Hitler or a Stalin."

In his own way, Yoo has done Americans a great service. Not only has he offered useful insights into the reasoning of the Bush administration, but he has exposed that reasoning to the harsh light of day. His conception of our Constitution -- and that of the Bush administration -- must be resoundingly repudiated by Congress, the courts and the American people.

Reviewed by Geoffrey R. Stone

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