

# Book Notes: The Terror Presidency: Law and Judgment Inside the Bush Administration, by Jack L. Goldsmith

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**Book Note****THE TERROR PRESIDENCY: LAW AND JUDGMENT  
INSIDE THE BUSH ADMINISTRATION, by Jack L.  
Goldsmith<sup>1</sup>**

STEVEN MOLNAR

AFTER BEING APPOINTED head of the Office of Legal Counsel (OLC) in October 2003, Jack Goldsmith was shocked to discover that many of the government's most important counterterrorism policies rested on deeply flawed legal opinions. *The Terror Presidency: Law and Judgment Inside the Bush Administration* is a behind-the-scenes look at Goldsmith's battle of principle against an administration committed to an unconstitutional exercise of power shrouded in secrecy.

The book begins with an overview of Goldsmith's path to the OLC, followed by a discussion of the various legal challenges that confront any president. Notwithstanding his sympathy for the difficult legal climate in which a president operates, Goldsmith believed that the government had gone too far in its commitment to the "unitary executive" and was acting in an extralegal manner. Chapter 3 highlights the culture of fear that underscored every decision: the desire to prevent future attacks on American soil led to a blurring of legal lines and the adoption of questionable tactics. Goldsmith never doubted the sincerity of any of the key actors; he simply believed that their understanding of the American Constitution was wrong.

The role of lawyers in crafting military and defence policy is the focus of Chapter 4. Because of the authority associated with OLC opinions, there is an overwhelming pressure for lawyers to "make legal" whatever the president has done or is doing. The question of "What should we do?" was replaced by "What can we lawfully do?", and Goldsmith had a different answer to this

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1. (New York: W.W. Norton & Company, 2007) 256 pages.

question than the administration wanted to hear. The most problematic of all the existing opinions that Goldsmith reviewed was the one authorizing the use of torture and other alternative techniques in the interrogation of terrorism suspects, which is the subject of Chapter 5. He withdrew this opinion at the same time that he tendered his resignation.

The concluding chapter offers general thoughts on the challenges of the Terror Presidency. In highlighting the failings of the Bush presidency, Goldsmith draws a useful contrast between George Bush and Franklin Roosevelt. Whereas Roosevelt consulted widely and acted in an open, bipartisan manner, the Bush administration pursued a unilateral approach and felt little need to explain itself. This contrast highlights the broad lesson of *The Terror Presidency*—that the administration asserted power in an unnecessary and self-defeating manner, and that the President's insistence on secrecy and the unitary executive has, in fact, weakened the Office of the President of the United States.