

BOOKS

[*War by Other Means: An Insider's Account of the War on Terror*, John Yoo, Atlantic Monthly Press, 224 pages]

He Wrote the Book on Torture

By James Bovard

GEORGE W. BUSH has made absolutism respectable among American conservatives. And no one has done more pimping for president-as-Supreme-Leader than John Yoo, the former Justice Department official who helped create the “commander-in-chief override” doctrine, unleashing presidents from the confines of the law. At a time when Bush is pushing Congress to approve the use in military tribunals of confessions that resulted from torture, it is vital to understand the thinking of the Bush administration’s most visible advocate of “coercive interrogation.”

Yoo’s new book, *War by Other Means: An Insider's Account of the War on Terror*, reads like a slippery lawyer’s brief submitted to a dim judge who gets all his information from Fox News. Though Yoo’s misrepresentations and omissions should provoke outrage, his book will likely receive accolades from many conservative reviewers. This new volume compliments Yoo’s first book, *The Powers of War and Peace*, which revealed that the Founding Fathers intended to permit presidents to start wars on their own whims, regardless of what the Constitution says.

Perhaps Yoo’s authoritarian tendencies resulted from his time at Harvard, where empowering an elite is always in fashion. Yoo paints every proposal for limiting the president’s power as a dangerous novelty. He is always trying to

shift the burden of proof onto anyone who thinks the president should not be a czar.

He scoffs at critics of the phrase “war on terror” while admitting “the United States is not at war with every terrorist group in the world, or all who employ terrorist tactics, or a social problem, but with Al Qaeda.” Yet top administration officials were laying plans to invade Iraq within days after the Twin Towers collapsed. Two weeks after 9/11, Yoo, in a memo to the White House, claimed that the attacks gave the U.S. government carte blanche for war anywhere in the world. Yoo suggested that “an American attack in South America or Southeast Asia might be a surprise to the terrorists,” since they were expecting the U.S. to target Afghanistan. Yoo assured the White House that “the President’s broad constitutional power ... would allow the President to [take] whatever actions he deems appropriate to pre-empt or respond to terrorist threats from new quarters.” Yoo’s assurances may have inspired Bush’s declaration a few weeks later that “So long as anybody’s terrorizing established governments, there needs to be a war.”

Yoo wrote a Torturers’ Emancipation Proclamation memo while serving as deputy assistant attorney general. He informed the White House in August 2002 that it could scorn federal law because “the President enjoys complete discretion in the exercise of his Commander-in-Chief authority and in conducting operations against hostile forces ... we will not read a criminal statute as infringing on the President’s ultimate authority in these areas.” Thus, the “commander-in-chief” title automatically swallows up the rest of the Constitution.

Yoo’s memo began by largely redefining torture out of existence. It then explained that even if someone died during torture, the torturer might not be guilty if he felt the torture was necessary to prevent some worse evil. Yoo preemptively exonerated any U.S. torturer: “If a government defendant were to harm an enemy combatant during an

interrogation in a manner that might arguably violate [the Anti-Torture Act], he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network.” Yoo never explained why preventing a catastrophic attack is the only reason why a suspect might be maimed during interrogation.

War by Other Means endlessly refers to Abu Ghraib as if that were the alpha and omega of the torture scandal. In reality, the photos in late April 2004 were not even the tip of the iceberg. U.S. government agents have inflicted abuses ranging from the endless high-volume repetition of a “Meow Mix” cat food commercial at Guantanamo to tearing out toenails in Afghanistan, from compulsory enemas for recalcitrant prisoners to beating people to death in Iraq and kicking them to death outside Kabul, from illegally sending detainees to foreign governments to be tortured by proxy to creating a system of “ghost prisoners” worthy of a banana republic.

Yet Yoo implies that the torture scandal may be largely a liberal media concoction. After citing *The New Yorker’s* Seymour Hersh, Yoo says, “Articles have appeared claiming abuses at Guantanamo such as long-term isolation, stress positions, and exposure to extreme heat or cold or noise. At this writing we cannot know if such reports are false, or isolated examples. They are currently unverified and the subject of continuing investigations.”

Unverified—except for a deluge of e-mails from FBI agents who visited Gitmo and were horrified by what they saw. An FBI agent reported on Dec. 5, 2003 that the “torture techniques” used at Gitmo have “produced no intelligence of a threat neutralization nature.” One FBI agent complained about a female U.S. military interrogator who yanked back a shackled prisoner’s thumbs and grabbed his genitals. Another FBI agent e-mailed bureau headquarters on Aug. 2, 2004 after seeing detainees “chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they had urinated or defecated on

themselves and had been left there for 18, 24 hours or more.” FBI agents also observed that detainees were being abused with extreme temperatures and loud rap music. An agent detailed to Iraq complained to FBI headquarters in June 2004 after seeing U.S. forces involved in “numerous serious physical abuse incidents of Iraqi civilian detainees ... strangulation, beatings, placement of lit cigarettes into the detainees’ ear openings.” (The FBI memos were disclosed as a result of an ACLU lawsuit.)

Yoo plays to True Believers throughout the book, invoking Vice President Dick Cheney as an authority on the value of torture—as well as “the popular Fox television program *24*.” But he ignores FBI and military experts who disdain torture because it generates false confessions. A prime example Yoo offers of the merits of “coercive interrogation” involved allegations that sparked Attorney General John Ashcroft to issue a warning in May 2004 that “Al Qaeda planned to attack the United States that summer. ... The attacks never happened; perhaps the intensive scrutiny caused El Shukrijumah [a Saudi al-Qaeda operative] and his cell to scuttle their plans.”

Actually, this warning was one of the

year, a power outage in London, and the Madrid bombings.” The group’s warning consisted of one email sent two months earlier to a London newspaper. *Newsweek* reported that the White House “played a role in the decision to go public with the warning Instead of the images of prisoner abuse at Abu Ghraib, the White House would prefer that voters see the faces of terrorists who aim to kill them.”

Yoo’s claims about the benefits of torture were effectively obliterated on Sept. 6 by Lt. Gen. John Kimmons, the Army deputy chief of staff for intelligence. Kimmons announced at a Pentagon news conference, “no good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tells us that.” Kimmons has vastly more credibility on interrogation methods than desk warriors like Yoo.

The more power Yoo believes the president deserves, the more obfuscations he makes about how existing power has been used. Though this book went to press in July 2006, Yoo relies on dubious data from September 2004 to exonerate the federal torturers. Yoo

Regardless, Yoo relies on this guy as a top defense witness: “Church’s investigation found (as of September 2004) 71 cases of detainee abuse and 6 deaths, and with only 20 of those cases involving interrogation, and 130 cases still under investigation.” Yoo asserts, “this is an extremely low error rate,” considering that the U.S. had detained 50,000 people at that point.

The week after Church testified, the Pentagon admitted that 26 detainees in Iraq and Afghanistan had been killed in what appeared to be criminal homicides—more than four times as many homicides as Church noticed. Yoo disdained updating the morgue count. And it has become obvious since last Fall that the feds greatly undercounted their interrogation victims. Captain Ian Fishback of the 82nd Airborne repeatedly unsuccessfully sought to get guidance from superiors on the standards for lawful and humane treatment of detainees in Iraq. Fishback publicly complained late last year: “I am certain that this confusion contributed to a wide range of abuses including death threats, beatings, broken bones, murder, exposure to elements, extreme forced physical exertion, hostage-taking, stripping, sleep deprivation and degrading treatment.” Tony Lagouranis, a former army interrogator at Abu Ghraib and member of a special intelligence team in Iraq, told PBS’s “Frontline”: “It’s all over Iraq. The infantry units are torturing people in their homes. They would smash people’s feet with the back of an axhead. They would break bones, ribs.”

None of this appears in Yoo’s book.

In *War by Other Means*, Yoo eschews following his logic to its conclusions. He was more forthcoming in a debate last December when asked: “If the president deems that he’s got to torture somebody including by crushing the testicles of the person’s child, there is no law that can stop him?” Yoo replied, “No treaty.” His opponent, Notre Dame law professor Doug Cassell, followed up: “Also no law—that is what you wrote in the August 2002 memo.” Yoo replied, “I

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biggest farces of Bush’s 2004 fear-mongering election campaign. Ashcroft’s May 26 warning was quickly repudiated by Homeland Security Department officials who informed the media that “there was no new information about attacks in the U.S., and ... no change in the government’s color-coded ‘threat level.’” NBC News reported that Ashcroft’s primary al-Qaeda source was “a largely discredited group, Abu Hafs al-Masri Brigades, known for putting propaganda on the Internet” that had falsely “claimed responsibility for the power blackout in the Northeast last

cites a report done by a committee headed by Vice Admiral Albert Church, who literally became a laughingstock when he testified in March 2005 before the Senate Armed Services committee. Church, charged with investigating detainee abuse in Iraq, never bothered interviewing Paul Bremer, the chief of the Coalition Provisional Authority. Church explained: “Ambassador Bremer, as I understood it, worked for the Department of State.” This assertion stunned the senators, as Bremer was a Pentagon employee and directly in the military chain of command.

think it depends on why the president thinks he needs to do that.” (One blogger summarized Yoo’s philosophy of government: “All Your Balls Belong to Us!”) Yoo has yet to specify appropriate presidential pretexts for juvenile testicular demolition.

While curtsying to the prevailing rhetoric on democracy, Yoo shows contempt for “government by consent.” He claims the 2004 election vindicated Bush’s torture policy: “Our nation had a presidential and congressional election after Abu Ghraib and the leaking of the [2002] memos. If the people had disagreed with administration policies, they could have made a change.”

How could the people judge the policy when the Bush administration was suppressing almost all information about it? There were no independent probes into the torture scandal during 2004. All the investigators were under the thumb of the Pentagon. The investigations were designed to look only downward—with no authority to pursue wrongdoing to the highest branches of the Pentagon and the White House. The Bush team succeeded in delaying the vast majority of damning revelations until after he was re-elected. Presumably, the public can “approve” atrocities even when the government deceives them about the actual events.

Yoo reasons like a devious personal-injury lawyer—yet it is the rights of the American people that are being run over. He is being feted by conservative foundations and think tanks, and often treated deferentially by liberals, for a theory of presidential power that would make Hobbes proud.

Yoo believes Americans should presume that the government always has a good reason for violating the law, even when it deceives the citizens about the reasoning. Yoo’s doctrines are absolutely unfit for any system with a pretense of self-government. ■

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[The Reform of the Roman Liturgy: Its Problems and Background, Klaus Gamber, Roman Catholic Books, 198 pages]

Recovering the Lost Liturgy

By Thomas E. Woods Jr.

KLAUS GAMBER’S BOOK *The Reform of the Roman Liturgy* was and is a publishing event, one of the most significant in the Catholic world in a generation. It sent shock waves throughout Europe when it first appeared there 16 years ago, and its appearance here during the pontificate of Benedict XVI—who as Cardinal Ratzinger provocatively endorsed it with a pointed preface to the French edition—promises to be no less eventful.

High Church politics is unfolding. The Mass is the center of Church life. Insiders expect Benedict to forcefully restore the old Latin Mass, at least as an option, thereby extending the baby steps taken by John Paul II, whose heart was clearly not in it, to atone for expunging the Latin liturgy from the life of the average Catholic after Vatican II.

This book provides, in bite-sized chapters, all the background. It is common knowledge that in the wake of the Second Vatican Council, Pope Paul VI dramatically revised the text and rubrics of the Mass. Whether the Council Fathers envisioned the radical changes that were ultimately made is a matter of dispute, but recent research by Father Brian Harrison of the Pontifical University of Puerto Rico found that most of the leading bishops as Vatican II opened favored only minor changes rather than a sweeping revision of the entire rite.

But a sweeping revision of the entire rite is exactly what we got.

Apologists for the reform tried to claim that the Mass had been changed countless times in the past and therefore that the discontent surrounding this most recent round of changes must

reflect either a lack of acquaintance with the checkered history of the Mass or a reactionary attachment to older forms for their own sake. But none of the organic and virtually imperceptible changes that had been made over the centuries was anything like the reform of the 1960s, in which a committee radically overhauled the entire rite.

Motivations for changing the rite varied, ranging from the pastoral concerns of misguided men of good will all the way to the downright sinister. Some, moved either by neo-Jansenism or Enlightenment contempt for the Middle Ages, claimed they were returning the Mass to its apostolic simplicity in light of recent liturgical research. This argument has not held up over time: research more recent still has shown that as a result of misreadings of the ancient sources, major aspects of the new rite—from the Prayer of the Faithful to concelebration to the practice of Mass facing the people—are in fact modern fabrications with no ancient analogue.

Others claimed they wanted to make the Mass more understandable to the people. But if that were all they were after, there was no need to draw up a completely new rite: they could simply have translated the traditional Mass into the vernacular.

Whatever the motivations behind the changes, though, Pope Paul VI acknowledged that something of priceless worth was being given up when he introduced his new rite in 1969-70. “A new rite of Mass: a change in the venerable tradition that has gone on for centuries. This is something that affects our hereditary religious patrimony, which seemed to enjoy the privilege of being untouchable and settled. It seemed to bring the prayer of our forefathers and our saints to our lips and to give us the comfort of feeling faithful to our spiritual past, which we kept alive to pass it on to the generations ahead.”

And although some even now pretend that stripping away the Latin language was the furthest thing from anyone’s mind at the time and that the abandonment of Latin was merely the unfortu-