



Under the Color of Law: The Bush Administration's Subversion of U.S. Constitutional and International Law in the War on Terror

Martin Henn

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Under the Color of Law constitutes a full and critical scholarly commentary to the text of five key Bush administration legal memoranda formative of U.S. counterterrorism policy from 2001 to 2009. This volume is dedicated to the idea that these documents are worthy of being read and critically examined in themselves as primary text, precisely because the act of critical assessment may yield meaningful policy reform in the ongoing debate facing the nation over balancing security interests with the preservation of civil liberties. This volume is intended to provide counterpoint for, and antithesis to, positions vigorously defended by President Bush's attorneys working at the OLC inside the Department of Justice, and it is designed to be used primarily in conjunction with and examined as response to the Bush-era documents themselves.

Martin Henn investigates five central questions, each framed around commentary to a specific administration document. This work addresses the Yoo-Flanigan Memorandum of September 25, 2001, and asks whether any President has constitutional power to initiate a foreign war without congressional authorization. Regarding President Bush's November 13 executive order of 2001, Henn asks whether an emergency of war permits any President to usurp judicial and legislative powers to interpret law and define and punish offences against the law of nations. Along with many other questions these documents initiate, the author carefully analyzes and seeks to answer questions regarding the Bush administration, the use of interrogational coercion and torture in the war on terror.

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