

Goldsmith discusses why checks and balances work

"Like the framers of the Constitution, we worry about a too-powerful government, and especially a too-powerful presidency, almost as much as we do about national security," observes Jack Goldsmith in his new book, "Power and Constraint: The Accountable Presidency after 9/11."

He adds, "The United States has basically decided that a self-serving and institutionally biased media which pursues and publishes government secrets that sometimes harm national security achieves important accountability benefits that on balance outweigh the harms to national security."

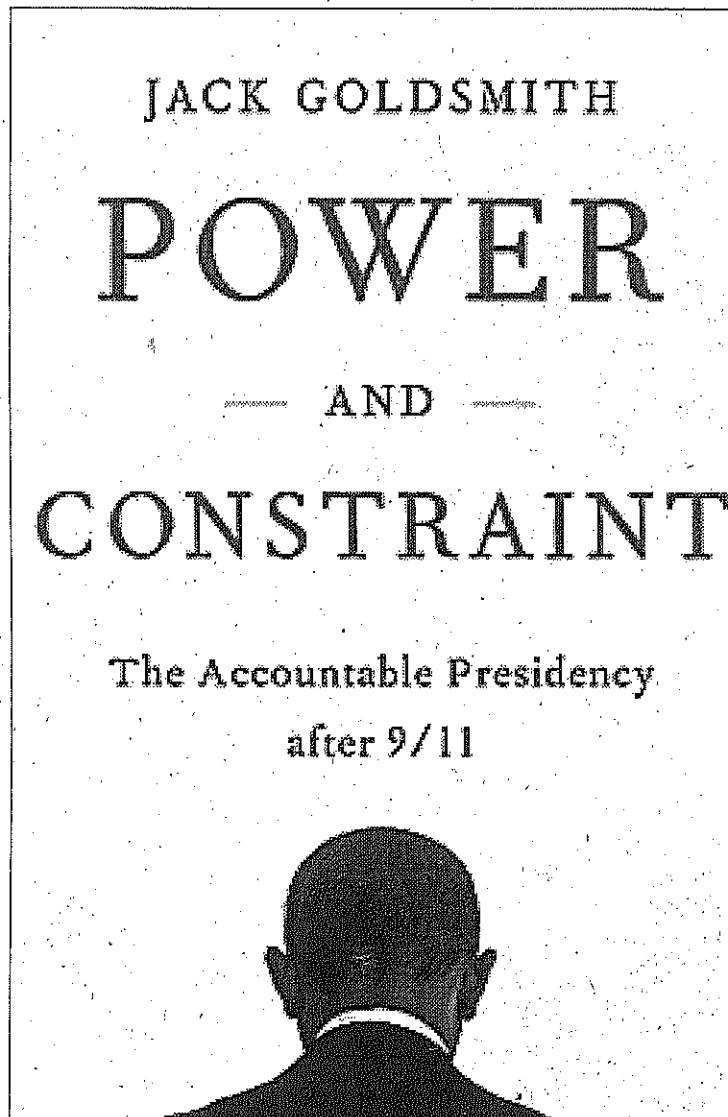
Goldsmith, who served in the Bush Administration's Office of Legal Counsel, is currently the Henry L. Shattuck Professor at the Harvard Law School. His previous books include "The Terror Presidency: Law and Judgment Inside the Bush Administration," "The Limits of International Law" with Eric A. Posner and "Who Controls the Internet?: Illusions of a Borderless World" with Tim Wu.

The seven chapters that comprise "Power and Constraint" are arranged in three major sections. Part One, "Continuity," consisting of the first two chapters, discusses President Barack Obama's reluctant embrace of his predecessor's counterterrorism policies. Goldsmith explains how Obama moved from the shimmering idealism that characterized his campaign to the more shadowy reality that gradually emerged after he took office. But the author is not content to merely describe how this metamorphosis occurred; he feels it is equally important that we understand why it took place.

"In retrospect, what is remarkable about candidate Obama's criticism of the Bush counterterrorism program is how much subtle wiggle room they left the future President," Goldsmith writes. "Once in office, the Obama administration exploited this wiggle room in some areas and departed from campaign pledges in others. Obama continued the later Bush counterterrorism program, but he did so in a different way from his predecessor, with a different public attitude toward his powers."

Part Two, "Distributed Checks and Balances," is made up of the middle four chapters of the book. Here, Goldsmith goes into considerable detail as he describes how forces from both within as well as outside the administration were able to effectively derail key components of the president's counterterrorism initiatives, many of which seemed to skirt several fundamental legal principles.

"The U.S. Constitution creates a system of 'checks and balances' that gives other institutions — Congress, the courts, and the press — the motives and tools to counteract the president when they think he is too powerful, pursues the wrong policies, or acts illegally," Goldsmith notes. "Far from rolling over after 9/11, these institutions pushed back harder against the Commander in Chief than in any other war in American



"Power and Constraint: The Accountable Presidency after 9/11" by Jack Goldsmith. New York: W.W. Norton & Co., 2012, 336 pages, \$26.95.

history."

Finally, in Part Three, "Assessment," Goldsmith argues that emerging restrictions on the presidency have actually served to strengthen the efficacy of the office. In making his case, the author provides numerous examples that appear to substantiate the conclusions he so elegantly articulates. Goldsmith sees the last decade — one in which the presidency was elevated to a remarkable and unprecedented level of power — as a victory for the inherent authority of the U.S. Constitution. Even when faced with monstrous acts of terrorism, when it would have been all too easy for the executive branch to impose authoritarian rule on the American people under the guise of national security, our unique brand of democracy ultimately prevailed.

"The executive branch's overdeployment and manipulation of the secrecy stamp is an important justification for an aggressive press to find and publish these secrets," Goldsmith asserts. "The larger point here — one that applies to all accountability mechanisms — is that accountability includes much more than criminal punishment and does not turn only on individual mistakes or wrongdoing."

Like every project he has been involved with, Goldsmith's research for "Power and Constraint," with no less than 43 pages of source notes at the conclusion of the main text, was meticulous and exhausting. The author culled many of the anec-

dotes found scattered throughout the book from personal interviews with "over 60 current and former government officials in all three branches of government." Most of these individuals chose to remain anonymous — for reasons that are entirely understandable — but their firsthand knowledge and perceptions of the events that form the backbone of "Power and Constraint" are evident on almost every page and add an intimacy to the narrative that would not have been possible otherwise.

The book left me with a surprisingly good feeling about the resiliency of our system of governance as well as a renewed appreciation for its framers. They obviously knew what they were doing when they created checks and balances in an attempt to make certain we never descend into tyranny. Goldsmith does an outstanding job of explaining why these safeguards are still working 236 years after they were set in motion.

"Power and Constraint" is a perfect antidote to the culture of cynicism that often permeates our daily existence. In an era when it is all too common to see our country through an Orwellian lens, Goldsmith reminds us that the self-correcting features deeply embedded in the American experiment in self-governance remain solidly intact.

— Reviewed by Aaron W. Hughey, Department of Counseling and Student Affairs, Western Kentucky University.