

FOREWORD

Christopher Blakesley is a well-known scholar, whose work over a long period of time has addressed international and comparative criminal law. *Terror and Anti-Terrorism: A Normative and Practical Assessment* is another contribution to his significant body of scholarly writings on the topic. In this book, the author takes a different approach to a phenomenon that seems to have gripped the attention of the international community in a way that has never occurred before; namely, the terrorist attacks that occurred in the United States on September 11, 2001. The targets chosen by the attackers and the consequences that resulted therefrom were not only tragic, but dramatic, as they evidenced the vulnerability of this country. A few individuals belonging to a loose network called *al-Qa'eda*, with its base in far away Afghanistan and without much technological capabilities or sophistication, were able to inflict not only a serious human toll to the people of this country, but also to attack its most visible symbols of economic and military power, namely, the World Trade Center and the Pentagon. The combination of both was more than what the US could absorb, but more particularly, the exposure to vulnerability made the threat of terrorism that much more significant in the eyes of the people and its government. Admittedly, the government may have manipulated the tragic and dramatic event to heighten public fear and thus to acquire greater public support for its political agenda; nevertheless, the risks were self-evident.

One of the first issues to arise after this event was whether to consider governmental responses to terrorism a “war” as the Administration proclaimed it, or to deal with it as both an international and a domestic crime. Choosing the paradigm of war over crime had its implications with respect to the applicable law, namely, the Geneva Conventions of August 12, 1949, which was ratified by the US (although the US has not ratified the two Additional Protocols of 1977). Professor Blakesley thus starts with what he refers to in Chapter 1 as “Ruminations on Why Terrorism Is Perpetuated: Conceptual and Historical Background.” It is indeed useful to look back in history in order to assess its relevance to contemporary analysis. It might have also been useful to compare how other countries have assessed similar threats, and perhaps also how the US previously responded to terrorism. After all, there were previous attacks on the twin towers and in Oklahoma City that were of the same genre, though not with the same consequences. Yet never before has terrorism been elevated to “war” status.

Chapter 2 addresses the perennial issue of defining terrorism, something that has significantly eluded the international community for a long period of time—as the author notes, not because of its inherent difficulty, but because of its political implications.

The author re-traces the history of attempting to define terrorism, and goes on, in Chapter 3, to offer his own approach, which he refers to as “neutral.” But such neutrality is relative. Surely when there is a significant asymmetry of forces between two parties, the dominant force exercises conventional violence, while the dominated one, who does not have the same means at its disposal, resorts to a terror-violence strategy and to terrorism tactics. The dominant party can conform to the rules of armed conflicts (though it frequently violates them), but the dominated party cannot because of the power imbalance. Thus, to have a “neutral” rule is a legal fiction. The problem of defining terrorism has always placed an undue emphasis on the legality of means and not enough emphasis on developing conflict resolution mechanisms that can avoid the resort to violence altogether. Admittedly, this would not eliminate all motivations for terrorism.

As is frequently said, evidencing the moral/legal dichotomy, “what is terrorism to some is heroism to others.” But more significantly, the international community is consistently confronted with another perennial issue, namely, whether the end justifies the means. All too frequently governments have proven that to be the case, thus establishing double standards whenever they commit acts of violence similar to those committed by small groups or individuals, and whenever they use the same rationalizations.

The author continues, in Chapter 3, to make a comparison between terrorism, war crimes, and crimes against humanity in an attempt to clarify what is frequently confused in the minds of jurists and non-jurists. This confusion underscores the artificiality of devising legal regimes which include definitions of different crimes when in the end it simply boils down to the commission of harmful acts known to every criminal law system in the world. Thus, placing a bomb in a public place that results in the death of innocent civilians changes neither the act nor its consequences because it is called terrorism, a war crime, or a crime against humanity. It is pure and simple murder. To paraphrase Shakespeare, a rose by any other name is still a rose.

The utility of the definitional discourse is therefore limited, but it does serve to limit the application of terrorism to the acts of individuals and in small groups who resort to unlawful means of violence while excluding from that category similar or comparable acts committed by states or state agents. What the definitional debate also reflects is that the international community has not reached consensus on using victim protection as the starting point, and of applying the same value reflecting that protected social interest across the board, irrespective of who the perpetrator may be or what the means may be. In other words, the legal approach is not a victims’-oriented approach and is not a uniform means and methods approach.

The same conceptual basis underlies theories of jurisdiction, which the author addresses in Chapter 4. He reviews extensively traditional theories of jurisdiction and more contemporary expansionist approaches. Contemporary national legislation in many countries including the US resorts to expanding extraterritorial criminal jurisdiction, but there are no agreed-upon international

modalities for the resolution of jurisdictional conflicts. As a result, some states have resorted to kidnappings as a way of securing extralegal jurisdiction.

In Chapter 5, the author reverts back to the historical and conceptual perspectives of terrorism discussed in Chapter 1, expanding it into interdisciplinary discourse on what is terrorism, how to address it, and whether it constitutes war, or for that matter “just war.” That theme is carried forward in Chapter 6, but with a more defined legal characteristic. There, the author distinguishes terrorism from domestic common crimes, a theme that also relates to the first three chapters. This lays the foundation for Chapter 7, an interesting analysis in which war crimes and crimes against humanity are distinguished from terrorism in much the same way as terrorism is distinguished from domestic common crime in Chapter 6. Understandably, he then extends that distinguishing characteristic, but only in part, to whether a state can commit terrorism as discussed in Chapter 8.

Chapters 9 and 10 pursue some of the issues raised in Chapter 7, addressing more particularly the need for justice and the consequences of injustice. Chapter 10 in particular addresses some inter-disciplinary questions relating to fear, rage, hatred, the psychological symbiotic relationship between enemies, the dialectic of violence, and the self-serving justifications and claims of security and self-defense advanced by states. He laces these important philosophical, social, and socio-psychological issues with legal issues and applies them to extradition.

Lastly, in Chapters 11 and 12, the author addresses the institutionalization of the practice of torture under this administration, and the threats to constitutional rights, which he carries to the point of considering them threats to “our constitutional republic.” He challenges US responses to what it calls the “war on terrorism,” and raises questions about the violation of international and domestic law committed by this administration in the name of security. He concludes:

The pretentious justifications, excuses, and rationalizations given by apologists for those who commit atrocity ring hollow, and are frighteningly familiar. Care must be taken to ensure that international and domestic and international action to obtain justice and to prosecute perpetrators does not fall into the same trap that ensnared those who committed the crimes. If we allow ourselves to descend to simple vengeance, terrorism, torture and similar atrocity, because of our fear or insecurity, or in the name of “fighting terrorism” or fighting for “freedom,” we are lost.

We must remind ourselves of John Milton’s poignant warning: “So spake the Fiend, and with necessity. They tyrant’s plea, excus’d his devilish deeds and it I still the shibboleth of the descendants of the Prince of Darkness.”

As a whole, the book offers the reader a different perspective on terrorism—one that blends an inter-disciplinary approach with a purely legal one. The

author highlights classic issues and addresses contemporary ones with courage and conviction. His scholarship co-exists with his passion for justice and the rule of law.

Notwithstanding the many publications on this subject, this one is particularly deserving of attention because of the wide range of intellectual perspectives that it reflects as well as the diverse issues that it addresses. More particularly, the book reveals a consistent thread, evidencing the importance of the rule of law in achieving world order.

Professor Blakesley is to be congratulated for this contribution to the literature on terrorism.

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