

## **LEGAL ISSUES IN THE STRUGGLE AGAINST TERROR**

by John Norton Moore and Robert F. Turner (eds.). Durham, North Carolina: Carolina Academic Press, 2010. 592pp. Hardback. \$70.00. ISBN: 9781594608308.

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The effects of terrorist attacks can be devastating to the social, political, and legal fabric of a country and its people. However, our responses to terrorist attacks say as much about us as it does the terrorists. This makes discussions about legal issues a vital component of a principled response to terrorist threats. Responding indiscriminately, designing draconian legal regimes for suspected terrorists or, worse yet, throwing law out the window entirely cannot be an option. Books such as *LEGAL ISSUES IN THE STRUGGLE AGAINST TERROR* are essential to helping us have the discussions needed to make sound responses to terrorist threats. The editors of *LEGAL ISSUES IN THE STRUGGLE AGAINST TERROR*, John Norton Moore and Robert Turner, have been at the forefront of discussions in this area for some time now. They are pioneers in the field of national security law having co-founded the Center for National Security Law at the University of Virginia two decades before the 9/11 attacks. Their latest work is a valuable addition to the library of anyone who is serious about exploring the legal issues surrounding the ongoing fight against Al Qaeda and its terrorist allies.

This book, an edited volume, contains nineteen chapters on a number of diverse topics ranging from cyberterrorism and the threat of nuclear terrorism, to intelligence gathering, military commissions, and integrating civilian/military responses to terrorist threats. The editors concede at the outset that there is no real common theme to the volume. As a result the focus of the individual chapters varies considerably. Some chapters focus on fundamental constitutional issues pertaining to the structure and purpose of the American legal system. Others examine procedural legal questions. Several others look at how the international legal regime addresses terrorism. Some chapters, such as David Graham's "The Legal Regime for Detainees" and James Terry's "Habeas Corpus and the Detention of Enemy Combatants in the Global War on Terror" cover material that has been exhaustively covered over the past decade. However, even these contributions provide nice, clear synopses of the issues in question and as such would be worthwhile to those seeking an introduction to the subjects.

The most interesting chapters in the book dealt with topics that have generally received less public scrutiny. While there remain many thorny and important problems in such areas as the use of military commissions and the applicability of habeas corpus to suspected terrorists, these are areas that have been very publicly and thoroughly debated. An argument can be made, for instance, that the legal regime we use to [page 67] identify and prosecute suspected terrorists is undergoing constant review and revision in an attempt to address both national security and civil liberties concerns. On the other hand, we have not spent as much time discussing issues such as the problems associated with outsourcing military functions in wartime especially in light of the myriad of problems encountered in Iraq after the fall of Saddam Hussein. M.E. "Spike" Bowman

does an excellent job of explaining just how much work needs to be done in this area and how we can develop policies that promote both quality performance and fiscal accountability. Similarly, there has been some discussion about immigration policy in the War on Terror, but it has focused primarily on how we keep potential terrorists out of the United States. Margaret Stock's chapter reminds of the negatives associated with restricting the flow of immigrants to the U.S. Jeffrey Addicott's chapter on cyberterrorism also falls into this category. With so many critical aspects of our lives tied to the Internet, Addicott argues that a proactive federal policy in this area should be among the foremost security concerns of the U.S. government.

Another welcome inclusion focuses on the relationship between military and civilian authorities in responding to terrorist threats. It's a subject more commonly found in the public policy and public administration literatures rather than volumes such as this one. How do we best make use of military resources without leaving a heavy military footprint on civilian society? Terrorist threats are going to require the combined resources of civilian and military authorities and even more importantly, policies need to be in place to facilitate this coordinated effort lest we see a repeat of the problems experienced during 9/11 and hurricane Katrina. Chapters like these serve to remind us how multi-faceted the ongoing struggle against terrorism is in our society and how very far we have to go in some very important areas.

There are also a handful of contributions that address important international aspects of terrorism. The U.S. is not alone in its fight against terrorists and cannot expect to develop its own anti-terror policies in isolation from the rest of the world. A. John Radsan's, "A New Recipe for Renditions and Extraditions," reminds us that speed, decisiveness, accuracy, and transparency are all crucial elements of any U.S. rendition/extradition scheme. If we take a more systematic approach to the development of policy in this area we can hopefully avoid such high-profile cases as those of Khaled el-Masri and Maher Arar, where U.S. officials were accused of torturing individuals or turning them over to be tortured by others. Stewart Baker and Nathan Sales' essay on "Homeland Security, Information Policy, and the Transatlantic Alliance" again reminds us that reaching a consensus about the best means of fighting terrorism can occasionally be a difficult process as Europeans and Americans have some important differences in how they approach privacy concerns and the sharing of information in the search to identify terrorists. Finally, the two chapters on Jus ad Bellum (Chapter 13) and Jus in Bello (Chapter 14) in the fight against terrorism highlight the importance of the international legal regime and international legal norms. [page 68]

At present, the book also has the advantage of timeliness. It represents some of the most recent research and developments on these legal issues. Timeliness, however, is fleeting. Fortunately, this volume brings more to the table. In many of the chapters the material is framed in such a way as to promote discussions that allow readers to explore broader questions. For instance, the chapter on immigration and terrorism does explore and assess some of the current policies that the U.S. has implemented and might consider implementing in the future. But it also reviews these policies in such a way as to stimulate discussion about the broader role of immigration in American society and its impact on our national security. The chapter on civilian-military cooperation in response to terrorist threats also examines specific existing government arrangements, but it allows readers to explore delicate questions involving the role of the military in American society. Framing issues like this will help this book remain valuable even when

some of the examples used in the book become dated.

The volume suffers slightly from an affliction that plagues many edited volumes, the lack of a common theme to at least loosely bind the chapters together. It is not a problem in terms of the quality of the material itself. All the chapters represent solid contributions by their respective authors. Rather the lack of a theme and the fact that the authors represent a broad range of perspectives (e.g., academics, those in government service, lawyers, political scientists, and technical experts) means that the writing styles can differ considerably. This book is not a primer. While academics and legal researchers may find themselves comfortable with this approach, someone who knows absolutely nothing about the law and terrorism may find some chapters this book a difficult read. Still, most of the chapters are suitable for undergraduates or interested laypersons. In terms of style and content the book would be a suitable supplemental text for a variety of upper-level undergraduate and graduate courses though its length—over 500 pages—might discourage some who would otherwise consider it for such a use. It would also be a natural fit for courses on National Security Law, Terrorism, International Security, American Foreign Policy, or Law & Society.

In the immediate aftermath of 9/11 many of our government's responses to terrorist threats were developed in a secretive, unilateral, and ad hoc manner. The problems with such an approach have been made abundantly clear in a number of areas such as coercive interrogations, military tribunals, and warrantless electronic surveillance. The struggle against terrorism is an ongoing one, not tied to a particular presidential administration or limited to a particular geographic region. Open discussions about the issues contained in *LEGAL ISSUES IN THE STRUGGLE AGAINST TERROR* are essential if we are to develop a sound, transparent, durable legal regime as a key component of the continuing fight against terrorists.

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