

Review

Laws, Outlaws and Terrorists: Lessons from the War on Terrorism

Gabriella Blum and Philip B. Heymann. London: MIT Press, 2013.

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The post 9-11 world has proven to be a breakpoint for international politics and the international security environment. As a consequence, the resort to and conduct of war has undergone a set of challenges. The law of war that was established following the Second World War has been put to the test as regards both the justifications of engaging in war (*jus ad bellum*) and the conduct of war as well as the treatment of both combatants and civilians (*jus in bello*) during the war on terror and the fight against transnational terrorism. For example, the 2003 invasion of Iraq and the U.S. drone programme have led to a re-interpretation of the original meaning of the UN Charter's principle of sovereignty, prohibition of violence, and states' right to self-defence, resulting in both political and academic discussions as to what constitutes a legal and just war in the current international security environment. Furthermore, when it comes to how the war on terror has been fought and how suspected terrorists and civilians have been treated, some of the foundations of humanitarian law, such as military necessity and combatant

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status, have been challenged. Moreover, the subjection of individuals to arbitrary detention and torture have further put to the test the fundamental human rights enjoyed by both combatants and non-combatants alike.

As a result, it is not only the legal principles of *jus ad bellum* and *jus in bello* but also the moral values upon which they are based that have become a source of heated debate as academics and human rights advocates are asking whether the contemporary pursuit of security is compatible with the moral values established among states since the end of the Second World War.

The award-winning book *Laws, Outlaws and Terrorists: Lessons from the War on Terrorism* by Harvard law scholars Gabriella Blum and Philip B. Heymann investigates the role of the rule of law during the war on terror and the presidency of George W. Bush and the beginning of the Obama administration. The book attempts to answer the question to what extent there is room for liberal democratic values in the fight against transnational terrorism by evaluating the applicability of public international law during a severe state of emergency. This is done by exploring both the Bush and Obama administrations' usage of the law to legally justify their respective actions and the way in which these correspond with the measures taken to fight transnational terrorism, and their effectiveness in handling the perceived security threat posed by the events of 9-11.

Despite the book being released in 2010 and it dealing primarily with the counterterrorism measures employed by George W. Bush, it still remains topical today as many of the same measures, such as targeted killings and indefinite detention, are used by the current administration. Their legality and effectiveness as a tool of combatting transnational terrorism are still discussed academically and politically. Additionally, the book's relevance rests as an evaluation and analysis of the handling of terrorism under the presidency of George W. Bush and its consequences not only for public international law but also for the standing and reputation of the United States as the upholder of liberal democracy and the rule of law.

There has been an outpouring of books from a variety of disciplines that have dealt with the war on terror and its relationship to public international law. The majority of these books have focused either on establishing the legality of the counterterrorism measures taken and/or on determining to what extent they can be seen as justified in the face of a supreme state of emergency despite being illegal. One of the main contributions of the book is that it takes a fresh look at and goes beyond this polarized research

environment and initiates a scholarly debate that focuses on different perspectives and offers a way forward from the current stalemate. The overriding aim of this book is to try to learn lessons from the war on terror in order to be able to move forward from the view that the rule of law and individual rights are not compatible with national security (which the authors argue is a fallacy)—to an understanding that liberal democratic values are part of U.S. national security. As a result, the authors write that they want to offer insights into how law, strategy, and morality should shape the outlook of counterterrorism measures.

The book first focuses on law, terrorism, and the complicated relationship that has arisen between counterterrorism strategies and their legality during a time of extreme threat to national security. This is a problem that has surfaced in the vacuum between the two main legal paradigms of peace and war that the authors term the No-Law Zone. When faced with the threat of transnational terrorism, the Bush administration saw neither national peacetime law nor the current international wartime law to be applicable to a new kind of war fighting a new kind of enemy; thus, it concluded that the war on terror was to be fought in the No-Law Zone. By completely abandoning domestic peacetime legislation, the Bush administration clearly stopped viewing and handling transnational terrorism as a crime. By adopting a war paradigm, with its justification and legitimacy stemming from the No-Law Zone, it was possible to employ warlike measures to fight the new enemy when it came both to the conduct of war and to the treatment of the enemy. This resulted in violations of the law of war, including the use of targeted killings, torture, and indefinite detention. At the same time, the administrations sought justifications and legitimacy for their actions based on existing law by finding loopholes or revising the original sentiment of the law, rendering current international law incapable of meeting the new security threat. This contributed to the misconception that current law cannot deal with the phenomenon of transnational terrorism, as well as to a hollowing out of the significance of and respect for the law of war.

The authors conclude that the policies implemented in the fight against transnational terrorism have been counter-productive to American interests as they have negatively impacted its security, liberty, and international leadership. Hence, the authors are of the opinion that a third law paradigm that deals with transnational terrorism might be required to fill the gap between peace and wartime law. However, details of this third

paradigm, which takes into account democratic values and the dignity and rights of the individual, are not provided by the authors.

As mentioned before the values of liberal democracy and their compatibility with a supreme threat to national security are one of the main themes of the book. The authors find the answer to this question by looking at how former presidents—such as Jefferson, Lincoln, and Roosevelt—have reasoned and acted when faced with the question of an extreme threat to national security. Subsequently, the book establishes the long American tradition of adhering to the rule of law and democracy as well as to the U.S. Constitution even under extreme security threats. Doing so is not only compatible with American interests but it is also a way of combatting any security threat. Hence, the authors argue that President Bush's claims of the moral authority over the law in the fight against terrorism was counterproductive insofar as it damaged the United States' reputation internationally by undermining its credibility as a forerunner of liberal democracy. One of the main contributions of the book is that it illustrates well the necessity of not abandoning American values and to implement counterterrorism measures reflecting those values.

Consequently, the third part of the book offers suggestions on how to maintain the moral values of liberal democracy in dealing with transnational terrorism and an eventual end to the war on terror. First, the issue of negotiating with terrorists is discussed. Second, the issue of reducing the moral support for terrorism as a way of decreasing the number of recruits is touched upon. Both issues concern main questions within conflict resolution theory, namely, how to negotiate an end to violence and how to create a long-lasting peace. This part of the book tends to be less practical and more theoretical, searching for possible solutions to dealing with transnational terrorism and to end the global war on terror rather than analyzing the empirical, political, and legal conundrums exemplified in the first part of the book. Of course, there is value in a theoretical approach, such as that demonstrated by a peace and conflict perspective with its normative goal of pursuing an end to violent conflict both in theory and in practice.

However, it is of utmost importance to remain sensitive to every conflict being unique and needing to be treated as such in a conflict resolution process. This applies to the conflict of contemporary terrorism as it comes in many forms.

The authors soberly conclude that there will always be terrorism and that the main lesson to learn is not to panic or abandon one's values. The question remains whether the lessons learned so far will be employed after the next terrorist attack.

At the end of the Second World War, the international community decided to codify the moral values of the just war tradition (*jus ad bellum* and *jus in bello*), resulting in the law of war. The aim of the law of war was to outlaw not a specific enemy but certain actions as a way of preventing a new world war. A similar notion is echoed in discussions surrounding a possible third legal paradigm dealing with transnational terrorism/armed conflict. The book is a contribution to these discussions as the authors argue both that there is no need to disregard current international law and its sentiments and that a third legal paradigm, if needed, should be built on current law and its ethics.

The book is of value not only for legal scholars and students but also for scholars and students of other disciplines, such as international relations, peace and conflict studies, human rights studies, and political science, because it offers an understanding of the role of international law in the decision-making process during a security threat. This is especially true when it comes to showing the decisive role both of the U.S. president and of government lawyers. This, in turn, illustrates the workings and importance of law as a political tool when it comes to how politics conditions the development of law. The authors illustrate how states' legal practices influences the interpretation, implementation, and understanding of international law, thus creating a legal doctrine based on state practice rather than on legal practice. However, this state of affairs raises the question of the extent to which international law could be impartial as states only allow the law to be as effective as they want it to be. Nevertheless, the book also shows that international law matters to states in so far as it legitimatises their undertakings, a valuable insight for legal scholars and political scientists. Furthermore, it examines the importance of moral ideals regarding state security and ultimately decides against the abandonment of the core values and principles of public international and human rights law.