

Terrorism from Robespierre to Al-Qaida

Perrine SIMON-NAHUM

Adopting an original double perspective, the legal scholar Mireille Delmas-Marty and the historian Henry Laurens summon history to the service of law in defining the elusive phenomenon of terrorism. They identify its past forms in order to shed light on its contemporary specificities.

Reviewed: Mireille Delmas-Marty and Henry Laurens, eds., *Terrorismes. Histoire et droit*, Paris, CNRS Éditions, 2010, 337p, 10 €.

The starting point is the difficulty legal scholars faced when they needed a penal standpoint from which to condemn terrorist acts—to judge them, in other words, in terms of good and evil. Law is indeed a major actor on the stage on which terrorism is played, insofar as international norms have sought, since the end of the Second World War, to channel the use of violence. It is precisely this effort to organize violence that terrorist events call into question. One recalls that in 2001, Derrida and Habermas discussed the notion of terrorism as an event.

Confronted with risk, states react, as Mireille Delmas-Marty emphasizes, by resorting to an increasing number of derogations from regular law. Human rights law is developing at present in opposition to this trend: it seeks to limit exceptional measures, while attempting to limit possible misconduct by giving international courts of justice the right to control their implementation. At the international level, however, states have not always succeeded in ratifying international conventions, as they have been unable to agree on a shared definition of terrorism. The policies that a number of states adopted to fight the terrorist organizations that emerged in the wake of 9/11, which are often categorized as “global terrorists,” contradict efforts to normalize the law and make any agreement in the short term unlikely. The definition of terrorism is thus not simply an abstract question, but one that is detrimental to the law’s actual development. Can history contribute to this effort?

A History of Terrorism

We rarely turn to history when thinking about terrorism. In recent years, one is more likely to find sociologists, political scientists, and even theologians reflecting on this topic. In their *Histoire du terrorisme* (History of Terrorism), published in 2006, Gérard Chaliand and Arnaud Blin tried to show the continuity and change in terrorist action since antiquity, but without asking if a different approach might be necessary. Henry Laurens, a specialist of the Middle East, has undertaken to bring terrorism fully into the historical realm.

The advantage of history is that it can take on a topic like terrorism without being accused, as happens with law, of granting it some kind of recognition. Historians examine the various forms of revolt that have occurred over different historical periods. According to Laurens, the contours of the phenomenon were first defined in the 19th century by Carbonarism. He treats this movement as a historical category whose metamorphoses can be traced over time. Going back to 1793, he makes a preliminary distinction between “terror” and “terrorism.” Carbonarism and its Blanquist avatar were characterized by their members’ lack of self-interested motives and particularly by their desire to overthrow the political and social order. The Irish movement, born in the mid-nineteenth century, could be found in several countries.

Towards the late 19th century, terrorism evolved in tandem with international relations, providing it with new targets and allowing it to perfect its practices. The analysis that Hamit Bozarslan, the author of *Histoire de la violence au Moyen-Orient* (History of Violence in the Middle East), devotes to the *comitadjilik* phenomenon in the Ottoman Empire at the turn of the twentieth century addresses the question of revolutionary political action and the redefinition of political forms resulting from the practice of direct violence. It builds on Laurens’ analysis, which claims that the first act of contemporary terrorism was the hostage-taking at the Ottoman Bank in Istanbul on August 26, 1896. He seeks to show how this model was reappropriated by various minorities and in different national contexts as it “contaminated” other models, spreading from Turkey to the Balkans and Armenia following the massacres of 1894-1896.

Barbara Lambauer’s article on Nazi Germany’s struggle against the “terrorism” of resistance movements in the Soviet Union, Serbia, and France not only explores the term’s malleability, but also the relationship between war and terrorism. She shows that what distinguishes Nazi methods from previous “counter-terrorist” experiences is, first, the level of violence their reprisals reached, which was comparable to the violence German armies inflicted on the populations of occupied countries, but also the systematic connections forged between the occupation forces and the anti-Jewish policies pursued in these territories.

Towards an International Law on Terrorism?

The return to law in Delmas-Marty’s analyses emphasizes the heterogeneity of contexts that terrorist acts encompass, notably when directed against a specific country. The problem lies in the impossibility of implementing an international law on terrorism. If penal and humanitarian law offer the best safeguards against the excesses typical of national responses to terrorism, the

dilemma is made all the more pressing given the relative failure of regulatory efforts implemented since 2005, as Emmanuel Decaux shows.

We are, however, witnessing a transcendence of the nation-state in the name of respect for universal laws. This is demonstrated in Stefano Manacorda's contribution on Europe and, more broadly, in the essay by Michel Rosenfeld, an American specialist of comparative constitutional law, which examines the principle of proportionality or weighting that has been implemented, for example, in the United States, Great Britain, and Israel. These analyses demonstrate very clearly how the context in which terrorism occurs goes significantly beyond existing legal frameworks, resulting paradoxically in the creation of a new kind of law. To do their work, legal scholars must thus become historians of the modern world and elaborate, in response to increasingly specific legal characterizations of terrorist acts, terms and procedures which are themselves increasingly specific in order to establish the legal frameworks required to prosecute terrorists.

This new paradigm of "war against terror law," which Rosenfeld endorses, while emphasizing the non-conventional character of the war against terrorism, necessitates extraordinary measures that are specifically adopted to suit it. The legal scholar has no choice but to accept this obvious fact. These measures can no longer be considered temporary, as they are destined to last. Their permanence requires the law to implement an exceptional system for weighing the alternatives, one that will be able to take the rights of individuals into account in the crisis periods that shape our daily lives. Thus Rosenfeld replaces concept of a "period of crisis" with that of "times of stress." Repressive measures must be subject to an exceptional system of weighting, one that is more attentive to individual rights, and designed, as he puts it, for times of stress rather than periods of crisis.

This also implies the redefinition of the proper realm of politics, law, and the military, lest any one of them take hold of the public sphere. One might think, as Delmas-Marty suggests in her conclusion, that penal law will be suitably adapted when the concept of terrorism yields, in legal proceedings, to distinctions that are both more precise and more historically specific. It will no longer be crime that is universalized, but the values opposed to it. Upon reading these legal reflections, one finds oneself convinced that the future of law relating to terrorism lies more in the ability of judges to think historically about their own period than in the capacity of historians to hold up the mirror of the past.

Published in booksandideas.net, 12th September 2013. Translation by Michael Behrent
©booksandideas.net

Published in laviedesidees.fr, 7th October 2010