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L. Lynn Hogue

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INTRODUCTION AND OVERVIEW

L. Lynn Hogue*

As the wars in Iraq and Afghanistan reach a mature phase, the prospect of gaining perspective on the War on Terror becomes real. The three articles in this issue offer the first fruits of that perspective by focusing on the impact of the anti-terrorism campaign on the American and international legal systems. Legal distortions by government lawyers Jay Bybee, Alberto Gonzales, and John Yoo, the neo-con enablers of the Bush Administration, contributed to numerous missteps in the War on Terror in the wake of 9/11. The decision to create Guantanamo as a place beyond the reach of law and deny detainees the rudiments of a justice system that was formerly a source of national pride and respect set the nation on a path fraught with domestic and international complications. This has become increasingly apparent as the pretext for the war in Iraq was exposed and as war on both fronts has mimicked the uncertain slog of Vietnam consuming lives and wealth for the uncertain prospect of security and stability in nations that lack the requisite cultural, political, and religious infrastructure. Blame for this state of affairs is conventionally ascribed to the executive branch. What is fresh and provocative in these three articles is a reflective assessment of the impact of the War on Terror on the law and legal institutions.

Professor Lucian Dervan draws on a deep knowledge of the intricacies of the plea bargaining process and illuminates it by a skillful application to the specifics of three terrorism prosecutions—those of Richard Reid, the shoe bomber; Hamid Hayat and others from Lodi, California; and the Lackawanna Six. By exploring the role of plea-bargaining in terrorism prosecutions, Dervan is able to

* Professor of Law, Georgia State University College of Law; A.B. (magna cum laude), William Jewell College, 1966; M.A., University of Tennessee, Knoxville, 1968; Ph.D., University of Tennessee, Knoxville, 1972; J.D., Duke University, 1974. The author is an active member of the Georgia and North Carolina Bars and a retired member of the Arkansas Bar. He is the co-author with Professor Charles A. Shanor of *National Security and Military Law*.

identify not only the strengths and limitations of the process but also to identify fruitful areas for further exploration.

Professor Aya Gruber demonstrates how the American "xenophobic exceptionalism" evident in the Supreme Court's refusal to enforce international law, notably Common Article 3 of the Geneva Conventions and Vienna Convention on Consular Relations, has undermined respect for the Court and its work and soiled the reputation of the United States in the international community. Gruber exposes the damage inflicted by the Supreme Court's refusal to follow the law—international law—particularly in the cases of *Hamdan v. Rumsfeld* and *Medellin v. Texas*. Liberal commentators have portrayed *Hamdan* as a Supreme Court successful pushback against Bush Administration excesses. Gruber proposes a far less optimistic assessment. It is a timely and important appraisal of the collateral damage inflicted by casual indifference to the rule of law.

Professor Luz Nagle undertakes the important task of contextualizing terrorism. Terrorism has proven difficult to define as well as to prosecute. She pays serious attention to its place in legal regimes, as well as the appropriate judicial mechanisms for prosecuting it, and underscores the necessity for transnational cooperation and accountability in combating terrorism. Together these three articles offer a much-needed mature reflection on the issues emerging from wars that bridge the twentieth and twenty-first centuries.