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The impossibility of global anti-terrorism law?

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1. Introduction

The unfolding of legal developments around the world post-9/11 is a familiar story. In the days following the attacks, the US Congress and the Bush Administration sprang into action, laying the legal foundation for a decade-long domestic and international response by the US government as part of a 'global war on terrorism'. Declaring that the rest of the world was either 'with us or … with the terrorists',[1] the Bush Administration went to the UN Security Council and obtained a novel legal instrument, Resolution 1373,[2] opening the door to a co-ordinated legislative response by states to international terrorism, and centralised monitoring of that response by the Counter-Terrorism Committee. In capital after capital, new anti-terrorism laws were enacted in response to US political pressure, the Security

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[1] George W. Bush, Address to a Joint Session of Congress and the American People (20 September 2001).

[2] S/RES/1373(2001). Invoking mandatory language, the Security Council 'decided' 'that all States shall … [c]riminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts' and '[e]nsure that … the financing, planning, preparation or perpetration of terrorist acts … are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts'.

Council's call to action and a general trend of revisiting anti-terrorism laws. In one fell swoop, the Security Council assumed the role of an international legislative body, and assumed the power to monitor domestic legislative compliance. In her chapter in this volume, Powell discusses the Security Council's role in the formation of an international anti-terrorism regime.[3] But the 'globalisation' of anti-terrorism norms did not end with the United Nations. Roach, for instance, has described how the UK's anti-terrorism laws have served as templates that have migrated around the world.[4] At the level of enforcement, national security agencies around the world are collecting and sharing intelligence more than ever before,[5] sometimes with tragic consequences.[6] And although it took some time to catch up, human rights law too has been revisited with a view to articulating afresh the principles according to which states might legitimately pursue an anti-terrorism agenda,[7] principles that are, however, only gradually seeping back into the work of the Counter-Terrorism Committee.[8]

In light of these legal developments, it might therefore be assumed that there is something we can coherently describe as 'global anti-terrorism law'. Indeed, the evidence seems compelling. Resolution 1373 and its successors have created a legal legislative template that has been widely followed by states;[9] model anti-terrorism laws have proliferated around the globe; and

[3] C. H. Powell, Chapter 2, this volume.

[4] Kent Roach 'The post-9/11 migration of Britain's Terrorism Act 2000', in Sujit Choudhry (ed.), *The Migration of Constitutional Ideas* (Cambridge University Press, 2006), pp. 347–402.

[5] Simon Chesterman, *One Nation Under Surveillance: A New Social Contract to Defend Freedom Without Sacrificing Liberty* (Oxford University Press, 2011).

[6] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar* (Ottawa: Government of Canada, 2006). The report is available on the Canadian Security Intelligence Review Committee's website: www.sirc-csars.gc.ca/opbapb/opbapb-eng.html.

[7] See, for example, 'The Ottawa principles on anti-terrorism and human rights' in Nicole LaViolette and Craig Forcese (eds.), *The Human Rights of Anti-terrorism* (Toronto: Irwin Law, 2008).

[8] According to the Counter-Terrorism Committee's website, with 'the establishment of the Counter-Terrorism Committee Executive Directorate (CTED) by Security Council Resolution 1535 (2004), the Committee began moving to a more pro-active policy on human rights. CTED was mandated to liaise with the Office of the UN High Commissioner on Human Rights (OHCHR) and other human rights organizations in matters related to counter-terrorism (S/2004/124), and a human rights expert was appointed to the CTED staff' (see www.un.org/en/sc/ctc/rights.html).

[9] Other examples in the anti-terrorism financing area include the UN Office on Drugs and Crime's model legislation on money laundering and terrorism financing (www.unodc.org/unodc/en/money-laundering/Model-Legislation.html) and the work of the Financial Action Taskforce (FATF).

there is widespread co-ordination among governments on the implementation of these laws and legal norms. These developments suggest, in turn, three assumptions: that a coherent legal regime governing anti-terrorism measures is starting to emerge; that we can theorise about global anti-terrorism law in a way that makes sense broadly or universally; and that, normatively speaking, it succeeds or fails as a whole, however we might define success or failure.

Against the view that a global anti-terrorism regime with these practical and theoretical consequences is starting to emerge, this chapter argues that when we look beyond legal forms, it becomes clear that neither the positing of a global anti-terrorism regime nor the three assumptions about its consequences is warranted. It is argued instead that the actual experience of anti-terrorism laws around the world suggests diversity rather than uniformity, and that we have to rethink our approach to anti-terrorism laws, particularly in light of recent and uneven changes in the modern state, to make these laws – as well as the constraints imposed on them – more effective. The next part of this chapter (Section 2) explains in more detail the three assumptions about global anti-terrorism law: its emergence, normative implications and theoretical dimensions. Section 3 explains why these assumptions are problematic, highlighting the disparate and asymmetrical impact of formally equivalent legal norms. It also explains why our normative assessment of anti-terrorism and emergency legislation must differ according to the context and urges that the complexity of anti-terrorism law and policy be taken into account in formulating anti-terrorism theories and policies. Finally, Section 4 situates this discussion of the complexity of anti-terrorism law in the broader frame of law and globalisation, arguing that anti-terrorism policy remains a moving target precisely because the status of legal norms and of the modern state itself are in flux and thus our approach to empowering and constraining governments and transnational legal entities in their anti-terrorism policies must be equally malleable.

2. Global anti-terrorism law

It is not surprising that in the weeks, months and years after the 2001 attacks on the United States, law became a key instrument both in the 'war on terror' and in attempts to moderate and constrain that 'war'. Although much of the rhetoric of the Bush Administration seemed almost contemptuous of legal norms and constraints, preferring instead sheer force, an enormous amount of energy was spent, domestically and internationally,

both to justify legally what was being done and to establish a legal framework for international co-operation and co-ordination. The 'torture memos'[10] serve as a notorious example of the former tendency; Resolution 1373 provides an example of the latter. At the same time, those concerned about abuses of power in the 'war on terror' also turned to law for support, drawing on international human rights norms and domestic constitutional protections (often themselves drawing on constitutional norms in other jurisdictions) to limit those abuses. It is not unreasonable, then, to assume that over the span of almost a decade, a coherent 'global anti-terrorism law' might have begun to emerge, the conceptual dimensions of which might be explained theoretically, and the normative implications of which might generally be assessed. This part of the chapter examines the basis for this assumption.

A. The emergence of global anti-terrorism law

In his contribution to this volume, Banks argues that a decade after 9/11, the United States 'is now creating more durable structures, processes and institutions to undertake and control efforts to counter terrorism' and that 'a longer term realignment of the relative importance of security among our government's objectives may be taking place'.[11] He argues that the scrutiny of counter-terrorism measures by the courts and Congress has resulted in new arrangements that 'represent the emergence of a new counter-terrorism paradigm, the shape and dimensions of which are slowly beginning to appear'.[12] Could the same process be taking place internationally? Might we be witnessing a convergence of norms and an evolving global consensus on both the importance of national security and the limits of counter-terrorism powers? Does it make sense, even in a cautious way, to speak – as some scholars do – of 'the international standardisation of national security law' and 'the emerging international law of terrorism'?[13] There are two broad reasons to think so.

[10] See Karen L. Greenberg and Joshua L. Dratel (eds.), *The Torture Papers: The Road to Abu Ghraib* (New York: Cambridge University Press, 2005).

[11] William C. Banks, Chapter 18, this volume, p. 450.

[12] Ibid.

[13] See Kim Lane Scheppele, 'The international standardization of national security law' (2010) 4 *Journal of National Security Law and Policy* 437 and Ben Saul, 'The emerging international law of terrorism' (2009) *Indian Yearbook of International Law and Policy* 163–92.

First, through Security Council Resolution 1373, the Security Council has been said to have assumed the role of a global legislator,[14] claiming the authority under Chapter VII of the UN Charter to legislate counter-terrorism norms at the international level ('to restore international peace and security'[15]) and requiring states to implement those norms through domestic legislation. Resolution 1373 has now been institutionalised through the work of the Counter-Terrorism Committee, which monitors compliance with the resolution and provides technical assistance to states in implementing it.[16] In terms of compliance with the reporting requirements under the Resolution 1373 regime, the statistics show that states have taken their obligations seriously: 'All 192 U.N. member states filed at least one report with the Security Council's Counter-Terrorism Committee (CTC)… By August 2007, 107 countries had filed four reports and 42 had filed five. The reports show that there was extraordinary uptake of the new anti-terrorism framework.'[17] In terms of formal law, while some international anti-terrorism norms are still developing, there does appear to be 'a genuinely new international law of terrorist financing' with a powerful bureaucracy in the shape of the Financial Action Taskforce, an inter-governmental body established at the G-7 Summit in Paris in 1989, which 'has had a powerful influence on both norm creation and norm enforcement in the area of global terrorist financing'.[18]

Second, convergence is also occurring horizontally, in the sense that many states have looked to other states in drafting and implementing anti-terrorism laws and in adjudicating anti-terrorism cases. As Roach has argued, the UK's anti-terrorism legislation, especially the Terrorism Act 2000, has served as a model for defining terrorism in other jurisdictions, albeit with local variations.[19] Roach does not go so far as to suggest a uniformity in the definition of terrorism or in anti-terrorism legislation,

[14] E. Rosand 'The Security Council as "global legislator": *ultra vires* or ultra innovative?' (2005) 28 *Fordham International Law Journal* 542.

[15] UN Charter, art. 51.

[16] See C. H. Powell, 'The role and limits of global administrative law in the Security Council's anti-terrorism programme', in Hugh Corder (ed.), *Global Administrative Law* (Cape Town: Juta/*Acta Juridica*, 2009), pp. 32–67.

[17] Scheppele, 'The international standardization of national security law', 442.

[18] Saul, 'The emerging international law of terrorism', 184, 174–5. See also Kevin E. Davis, Chapter 8, this volume. Not surprisingly, the FATF's recommendations have been taken seriously by major financial centres, such as Hong Kong, who are among its members: see Simon N. M. Young, Chapter 15, this volume.

[19] Roach, 'The post-9/11 migration'.

but he argues that the UK's terrorism laws (unlike US legislation) have had a significant influence on other legislation because the Terrorism Act 2000 happened to be 'at hand when other countries started their hurried drafting of new anti-terrorism laws in [response] to 9/11 and Security Council Resolution 1373'.[20] Much as it did in colonial times, in India and much of the Commonwealth,[21] UK security laws continue to have a significant impact on much of the English-speaking world and beyond.[22] Similarly, international agencies, such as the United Nations Office on Drugs and Crime, facilitate the transmission and harmonisation of anti-terrorism laws through, for instance, their model legislation on anti-terrorism financing.[23]

Some degree of convergence can also been seen in the judicial realm, particularly in liberal democracies. While the jurisprudence has by no means been consistent, recent analyses of the case law indicate, after a slow start, a growing trend on the part of the courts to moderate at least some of the excesses of anti-terrorism powers, with courts in Canada, Germany, Israel, the United Kingdom and the United States limiting the anti-terrorism powers claimed by their respective governments.[24] For example, McGarrity and Santow show how the principle of proportionality 'both as a legal principle to be applied by the courts and a generally

[20] Ibid., p. 376.

[21] Anil Kalhan, Gerald P. Conroy, Mamta Kaushai, Sam Scott Miller and Jed S. Rakoff 'Colonial continuities: human rights, terrorism, and security laws in India' (2006) 20 *Columbia Journal of Asian Law* 93.

[22] In his analysis of legislation in Australia, Canada, New Zealand, the United Kingdom and the United States, Lynch argues that despite the differences 'regarding governance and their likely priority as a terrorist target, clear trends in the creation of anti-terrorism laws both as to form and process are discernible', Andrew Lynch, Chapter 7, this volume.

[23] See above note 9.

[24] See, for example, E. Benvenisti, 'United we stand: national courts reviewing counter-terrorism measures' in A. Bianchi and A. Keller (eds.), *Counterterrorism: Democracy's Challenge* (Oxford: Hart Publishing, 2008), pp. 251–76. Among the cases regularly cited as part of this trend are: *Charkaoui* v. *Canada (Citizenship and Immigration)*, 2007 SCC 9; *Air-transport Security Act* case, Bundesverfessungsgericht (VerfG – Federal Constitutional Court), 59 *Neue Juristische Wochenschrift* 751 (2006); *Public Committee against Torture in Israel* v. *Government of Israel* (HCJ 769/02) (available in English at elyon1.court.gov.il/Files_ENG/02/690/007/A34/02007690.A34.HTM); *A* v. *Secretary of State for the Home Department* [2004] UKHL 56; and the line of cases in the United States Supreme Court leading up to and including *Beaumediene* v. *Bush*, 128 S Ct 2229 (2008). The US Supreme Court's decision in *Holder* v. *Humanitarian Law Project*, 130 S. Ct. 2705 (2010), upholding the constitutional validity of a material-support statute against a constitutional challenge, might be seen as going against this trend.

influential idea'[25] is increasingly used by courts not only in Europe (where it originated) and Canada (where it was judicially adopted in *R* v. *Oakes*[26]), but even in Australia, in security cases.[27]

Moreover, the practice of anti-terrorism also shows an increasing co-ordination among governments and, in particular, intelligence agencies, on matters of national security.[28] Co-ordination in such matters is not entirely unusual, but was mandated by the Security Council in Resolution 1373, which called upon states to assist one another by exchanging information and 'to co-operate on administrative and judicial matters to prevent the commission of terrorist acts'.[29] International regulatory co-ordination is now widely regarded as an essential aspect of an effective counter-terrorism framework, which has prompted co-ordination through intergovernmental networks in a variety of sectors such as aviation security, policing, immigration, financial regulation and intelligence.[30]

Global anti-terrorism law might refer, then, to two phenomena: the vertical dimension of the anti-terrorism regime, which seeks to articulate international legal norms and standards which, in turn, are adopted and applied by states; and the horizontal dimension of global anti-terrorism law, which posits a convergence of principles and practices through borrowing and co-ordination between or among states. These two phenomena are not always distinct and may well be mutually reinforcing. It may be, then, that we have reason to believe that a grand narrative of global anti-terrorism law is possible, one that shows how the events of 9/11 have triggered a global dialogue that, in fits and starts, is generating a coherent set of principles and practices to be followed by states in their counter-terrorism efforts.

[25] Nicola McGarrity and Edward Santow, Chapter 6, this volume.
[26] [1986] 1 SCR 103.
[27] Nicola McGarrity and Edward Santow Chapter 6, this volme referring to *Gypsy Jokers Motorcycle Club Inc* v. *Commissioner of Police* (2007) 33 WAR 245, para. 57, in support of this claim.
[28] Chesterman, *One Nation Under Surveillance*.
[29] Paragraph 3(b); see also Powell, 'The role and limits of global administrative law', p. 25.
[30] The dark side of such co-operation can be seen in cases such as that of Maher Arar, who was subjected to extraordinary rendition and tortured as a consequence of erroneous intelligence-sharing agencies in Canada and the United States. Arar was later vindicated (in Canada) and compensated (in the amount of Can $10.5 million) by the Canadian government following the publication of the report of the Commission (above note 6).

B. *Theorising global anti-terrorism law*

A grand narrative of this sort, highlighting an increasingly coherent global anti-terrorism regime, opens the door to a particular kind of theoretical inquiry and modelling, at a high degree of generality. We could ask, for instance, whether anti-terrorism law, in its international or domestic dimensions, is part of ordinary law or something extraordinary or exceptional that stands apart from it.[31] Global anti-terrorism law could be seen, ideally, as an articulation of the circumstances in which states are justified, either alone or collectively, in limiting the rights of individuals in the interests of national or international security. Contemporary theories of anti-terrorism and emergency powers are often framed in this way, as having something important to say about these powers generally and their relationship to legality,[32] although sometimes with the caveat that they are concerned primarily with liberal democracies.[33]

The importance of understanding the relationship between emergency powers and legality in the West is particularly acute in light of the experience of emergency powers in Weimar Germany,[34] which suggests that the 'exception' contains within it the seeds of destruction of the modern liberal state. It is not surprising then that contemporary theorists are particularly concerned with the threat emergency powers pose to legality, with some seeking to ensure that such powers are subject to legality in the sense of judicial supervision,[35] or to formal legislative oversight,[36] and others seeking to insulate the legal system from emergency powers

[31] For a survey of recent theories of emergency powers, see Victor V. Ramraj (ed.), *Emergencies and the Limits of Legality* (Cambridge University Press, 2008).

[32] See Oren Gross, 'Chaos and rules: should responses to violent crises always be constitutional?' (2003) 112 *Yale Law Journal* 1011.

[33] Ferejohn and Pasquino concede that the countries spoken of in their analysis 'are very stable and entrenched democracies that have little need to invoke extreme constitutional measures to protect their regimes': John Ferejohn and Pasquale Pasquino, 'The law of the exception: a typology of emergency powers' (2004) 2 *International Journal of Constitutional Law* 210, 216.

[34] Kim Lane Scheppele, 'Law in a time of exception' (2004) *University of Pennsylvania Journal of Constitutional Law* 1001, 1009.

[35] See, for instance, David Dyzenhaus, 'The state of emergency in legal theory' in Victor V. Ramraj, Michael Hor and Kent Roach (eds.), *Global Anti-Terrorism Law and Policy* (Cambridge University Press, 2005), Chapter 4; David Dyzenhaus, 'The compulsion of legality' in Ramraj, *Emergencies and the Limits of Legality*, 33–59.

[36] Bruce Ackerman, 'The emergency constitution' (2004) 113 *Yale Law Journal* 1029; William E. Scheuerman, 'Presidentialism and emergency government' in Ramraj, *Emergencies and the Limits of Legality*, pp. 258–86.

by locating these powers outside the legal system and subjecting them largely to formal and informal political checks.[37] Although sometimes qualified to apply to only a certain class of countries (or countries that are 'worth saving'[38]) these theories often purport to say something general about the relationship between emergency powers and legality, and about the nature of law in the modern state. Gross, for example, insists that his essay on the extra-legal measures model of emergency powers is 'not an "American" study, nor is it a post-September 11th one' and should be 'treated as generally applicable to constitutional democratic regimes faced with the need to respond to extreme violent crises.'[39] And in his response to Gross in the first edition of this volume, Dyzenhaus defends a theoretical argument that extends to 'well-ordered societies' that do more than 'pay mere lip service to the rule of law'.[40] Legal theory, it often seems, remains committed to the idea that we can articulate a general approach to law that is widely or universally applicable – an idea that is extended to the conceptualisation of emergency powers and anti-terrorism law.

C. *Evaluating global anti-terrorism law*

The desire to provide a normative assessment of legal developments suggests another reason why a grand narrative of anti-terrorism law might be considered important. As the events of 9/11 powerfully demonstrated, political violence was not exempted from the increase in what Sklair calls 'transnational practices' and sees as the defining characteristic of globalisation:

> Globalization, therefore, is defined as a particular way of organizing social life across existing state borders. Research on small communities, global cities, border regions, groups of states, and virtual and mobile communities of various types provides strong evidence that existing territorial boundaries are becoming less important and that transnational practices are becoming more important. The balance of power between state and non-state actors and agencies is changing.[41]

[37] Gross, 'Chaos and rules'.
[38] Gross, 'Stability and flexibility: a Dicey business' in Ramraj, Hor and Roach, *Global Anti-Terrorism Law and Policy*, p. 90.
[39] Gross 'Chaos and rules', 1027.
[40] Dyzenhaus 'The state of emergency in legal theory', p. 88.
[41] Leslie Sklair, *Globalization: Capitalism and its Alternatives* (Oxford University Press, 3rd edn, 2002), p. 8.

If, as the evidence seems to suggest, territorial boundaries are also becoming less important to agents of political violence, it is not surprising that states, and legislatures, judges, bureaucrats and agencies within states, would look beyond national borders to coordinate, harmonise and set limits on their counter-terrorism activities.

It is entirely reasonable that we would want to map these activities, understand legally their scope and limits, and set them within a theoretical context that we can subject to critical scrutiny and, especially, to normative evaluation. For instance, it might be argued that global anti-terrorism law is inconsistent with rule-of-law principles to the extent that it permits states to designate individuals and groups as 'terrorists' without an adequate judicial process.[42] Or it might be argued that global anti-terrorism law is insufficiently attuned to human rights standards or that the rise of global anti-terrorism law has led to the decline of constitutionalism. For instance, Scheppele has argued that the 'anti-terrorism campaign' has taken 'a toll on constitutional governance' in both weak and strong constitutional states.[43] Similarly, NGOs, such as the International Commission of Jurists, expressed a concern in 2004 about the 'cumulative impact of emerging counter-terrorism measures, and the risk of unraveling the international human rights standards that have been painstakingly developed over the second half of the last century', and commissioned a panel of 'eminent jurists' to study the impact of anti-terrorism laws around the world.[44] The articulation of a grand narrative account of global anti-terrorism laws, it seems, can help us better to understand, evaluate and address the structural changes that have taken place in the relationship between state and citizen post-9/11.

3. Challenges to the grand narrative

Whatever the merits of articulating a grand narrative account of global anti-terrorism law, and there are many, this kind of account is problematic.

[42] See generally Powell 'The role and limits of global administrative law'.

[43] Kim Lane Scheppele 'The migration of anti-constitutional ideas: the post-9/11 globalization of public law and the international state of emergency' in Choudhry, *The Migration of Constitutional Ideas*, p. 372.

[44] Eminent Jurists Panel (Arthur Chaskalson, Chair), *Assessing Damage, Urging Action* (Geneva: International Commission of Jurists, 2008), p. 5. The report details the erosion of human rights in many jurisdictions and warns in its conclusion against the 'enduring long term harm' that practices such as 'torture and cruel, inhuman, and degrading treatment, secret detentions, abductions, illegal transfers, *refoulement*, arbitrary, prolonged, and *incommunicado* detention, unfair trials, and enforced disappearances' might have.

For one thing, a formal account of international and domestic anti-terrorism powers is unlikely to provide a full picture to the extent that it disregards the practical consequences of these powers and the disparate informal social and political constraints on them. Consequently, any attempt to provide a theoretical account of global anti-terrorism law is likely to be incomplete. Similarly, any normative assessment of the global anti-terrorism regime will be a limited one if it ignores the unobvious but important ways in which a global anti-terrorism regime might interact with legality beyond the liberal democracies of the West, in some cases possibly even strengthening constitutionalism.

A. The limits of formal legality

The gap between law on the books and law in action is nothing new, but it is particularly important to bear it in mind in the context of international legal regimes because of the profoundly asymmetrical way in which legal norms are realised, or not, in different parts of the world. It might be assumed that in many of the liberal democracies of the West and in other rule-oriented societies, domestic anti-terrorism laws, including laws imposing limits on executive power, have a significant impact on official conduct because that conduct is subject to judicial review or because the legal norms have been internalised by public officials. However, it is not clear that formal laws always have quite the same hold on officials in others parts of the world. The reasons for this may have to do with the inability or unwillingness of officials to abide by formal laws, the relative unimportance of law in those societies, or the political illegitimacy of those laws (e.g. if they are seen as externally imposed). These problems are not unique to global anti-terrorism law, but they are perhaps particularly acute in light of the geopolitical dimensions, inasmuch as the global anti-terrorism regime is regarded as furthering a US or Western agenda.[45]

Consider the problem of capacity. In a recent report on Resolution 1373, the Security Council's Counter-Terrorism Committee has highlighted the difficulties many countries face in implementing the resolution,[46] and the mandate of the Committee itself appears to be shifting from one

[45] Hikmahanto Juwana, 'Indonesia's anti-terrorism law' in Ramraj, Hor and Roach, *Global Anti-Terrorism Law and Policy*, pp. 295–306; see also Hikmahanto Juwana, Chapter 12, this volume.

[46] Counter-Terrorism Committee, 'Survey of the Implementation of Security Council Resolution 1373 (2001) by Member States' (3 December 2009), S/2009/620.

of primarily monitoring to also providing technical assistance.[47] This makes sense if, as the statistics cited earlier suggest, most states take their Resolution 1373 obligations seriously – with every country having filed at least one report. But statistics can be misleading. For instance, Scheppele draws on the following 2009 CTC survey of compliance with the resolution to conclude that there has been 'widespread compliance':

> Most States in the Western Europe and other States [sic], Eastern Europe, and Central Asia and the Caucasus regions have introduced comprehensive counter-terrorism legislation. More than half of the States in South Eastern Europe and almost half of the States in South America have comprehensive counter-terrorism legislation. In Africa, Western Asia, Southeast Asia, Central America and the Caribbean, many States do not have comprehensive counter-terrorism legislation in place, although most do have some elements in place.[48]

But consider this passage again. We can credibly, on the same information, conclude that in Africa, Western Asia, Southeast Asia, Central America and the Caribbean, most states do not have a comprehensive counter-terrorism legislative framework and fewer than half of the states in South America do. The CTC's technical assistance office clearly has its hands full.

However much success technical assistance programmes might have in helping states to adopt model counter-terrorism legislation, the superficial penetration of international legal norms into particular legal systems might also be a matter of the relative unimportance of formal law in particular societies. While it is sometimes assumed that the failure to implement formal legal norms and formally ratified international agreements is largely a matter of underdevelopment or lack of capacity (to which technical assistance is the answer), comparative law scholars remind us that there are profound societal differences in the relative importance that is accorded to formal law itself. Here, Mattei's tripartite classification of legal systems into those that privilege 'rule of professional

[47] The Counter-Terrorism Committee is now producing 'technical guides' for implementing Resolution 1373 and describes part of its role as capacity-building, including facilitating 'the provision of technical assistance to Member States by disseminating best practices; identifying existing technical, financial, regulatory and legislative assistance programmes; promoting synergies between the assistance programmes of international, regional and subregional organizations; and, through its Executive Directorate (CTED), serving as an intermediary for contacts between potential donors and recipients and maintaining an on-line directory of assistance providers, all within the framework of resolution 1373 (2001)' (see www.un.org/sc/ctc/capacity.html).

[48] Scheppele, 'The international standardization of national security law', 442–3.

law', 'rule of political law' and 'rule of traditional law' is helpful.[49] Mattei explains that while the Western legal tradition is relatively homogenous in as much as 'the legal arena is clearly distinguishable from the political arena' and 'the legal process is largely secularized',[50] outside of the West, politics and traditional social structures are likely to have greater normative force than formal law. And in these societies, it is unlikely that formal global anti-terrorism laws would have the same impact on actual practices as they would in Western legal systems, where the 'rule of professional law' prevails. For example, in the anti-terrorist financing context, changes in formal banking laws might not be capable of controlling ancient, informal means of transferring funds such as '*hawala*'–type systems – informal systems of money transfer that have been used for centuries in China, India, Southeast Asia and the Middle East to facilitate trade over vast distances;[51] so 'even if authorities make it prohibitively risky for terrorists to transfer funds from Egypt to the United States by way of wire transfer, they may not be able to prevent them from transferring funds through a *hawaladar* from Egypt to an accomplice in Malaysia and then by ordinary wire transfer to the United States via Singapore'.[52] On the other hand, attempting to regulate the informal banking sector risks increasing the cost of these services to poorer households that rely on overseas remittances 'as a means to escape poverty'.[53]

Finally, it may be that the resistance to global anti-terrorism laws is not primarily a matter of lack of capacity or of the lower status of formal law. Rather, it may be that the resistance to adopting or implementing the law is largely political or ideological. In his contribution to the first edition of this volume, Juwana describes the resentment that many Indonesians felt in the wake of the Bali bombings at the external pressure to reform their anti-terrorism laws, sometimes at the expense of human rights protections.[54] In the face of this pressure, the Indonesian Constitutional Court

[49] Ugo Mattei, 'Three Patterns of Law: Taxonomy and Change in the World's Legal Systems' (1997) 45 *American Journal of Comparative Law* 5.

[50] Ibid., 23.

[51] Mohammed El Qorchi, Samuel Munzele Maimbo and John F. Wilson *Informal Funds Transfer Systems: An Analysis of the Informal Hawala System* (Washington, DC: International Monetary Fund, 2003), p. 10.

[52] Kevin E. Davis, Chapter 8, this volume, p. 206.

[53] El Qorchi *et al.*, *Informal Funds Transfer*, p. 3. See also, Kevin E. Davis, Chapter 8, this volume.

[54] Ramraj, Hor and Roach, *Global Anti-Terrorism Law and Policy*, Chapter 14. The external pressure on Indonesia might be contrasted with the absence of such pressure in the Japanese context: see Mark Fenwick, Chapter 16, this volume.

held that the imposition of the death penalty on the bombers was unconstitutional, but its ruling would not apply retroactively,[55] so three of the 'Bali bombers' were eventually executed by firing squad in November 2008. Despite the concerns of many Indonesians about the executions, many remain concerned about terrorism; in fact, since 2001, Indonesia has experienced numerous terrorists attacks, including several devastating attacks in Bali and Jakarta.[56]

The challenge, then, is to address the threat of terrorism within a framework that is fair and reasonable, but equally sensitive to religious and political sentiments. Indonesia has tried, with mixed success, to employ rehabilitation techniques that involve religious counselling of militants (through its controversial elite policing unit, Detachment 88[57]), so as to treat them as 'good men gone astray' and engage them on their distorted and often simplistic views of Islam.[58] At the same time, Indonesia has sought to reassure a suspicious public that it is not blindly following an 'anti-Islamic' Western agenda or abusing its citizens at the behest of Western countries.[59] It may be that in a country with complex ethnic and religious sensitivities such as Indonesia, where the automatic association of 'terrorism' with 'Islam' is deeply resented, some forms of religious counselling may represent a more effective and culturally appropriate response to terrorism than formal criminal prosecution. As Hor argues in the context of Singapore, the authorities seem to be aware that national security detentions must be 'handled in a "discreet and carefully measured" manner' to prevent feelings of victimisation within (in Singapore) the Muslim minority.[60] So the official approach

[55] Hikmahanto Juwana, Chapter 12, this volume, pp. 295–6.

[56] Recent terrorist attacks include attacks in Bali (Kuta, 12 October 2002; Kuta, 1 October 2005) and Jakarta (JW Marriot Hotel, 5 August 2003; Australian Embassy, 9 September 2004; JW Mariott Hotel and Ritz-Carlton Hotel, 17 July 2009).

[57] Hikmahanto Juwana, Chapter 12, this volume.

[58] Hannah Beech, 'What Indonesia can teach the world about counterterrorism' *Time*, 7 June 2010, available at www.time.com/time/magazine/article/0,9171,1992246,00.html.

[59] Hikmahanto Juwana, Chapter 12, this volume. Indonesian resistance to externally-imposed legal reforms is not limited to anti-terrorism legislation. In the wake of the 1997 financial crisis, international financial institutions such as the World Bank insisted on reforms to its bankruptcy laws. While the government formally complied with these requests and the World Bank was able to report success, traditional methods for dealing with financially distressed companies continued unabated: Terence C. Halliday and Bruce G. Carruthers, 'Foiling the financial hegomons: limits of globalisation of corporate insolvency regimes in Indonesia, Korea and China' in Christoph Antons and Volkmar Gessner, (eds.), *Globalisation and Resistance: Law Reform in Asia since the Crisis* (Oxford and Portland, OR: Hart Publishing, 2007), pp. 255–301.

[60] Michael Hor, Chapter 11, this volume, p. 282.

in Singapore seems to be that detainees are treated not 'as criminals – i.e., bad people who chose to do evil – but as misguided individuals who could be salvaged by right teaching. The philosophy was a therapeutic, and not a retributive or deterrent, one.'[61] These sorts of methods are, of course, open to abuse and need to be carefully monitored, but it is less than obvious that the prospects of abuse are always significantly less in a system that formally authorises 'enhanced interrogation techniques' and military tribunals.

B. The assumptions of legal theory

As we have seen, theoretical accounts of anti-terrorism and emergency powers are important in helping us to understand the tension between the modern state's aspirations of legality on the one hand, and the idea of a state of emergency that allows the state to ignore or suspend ordinary law in the face of an acute threat to the state on the other. Some theories of emergency powers, though, make one or more assumptions about the state that limit their explanatory power. Some of these assumptions are contentious within contemporary legal theory, such as debates about the normativity of law and the relative importance of the political; others, however, are particularly important when it comes to the global aspirations of anti-terrorism law, such as assumptions about the liberal–democratic and unified nature of the state.

Some Anglo-American theories assume that they are dealing primarily with liberal democracies, and often with liberal democracies in the common law tradition. There are, of course, important differences between the common law and civil law traditions, differences which can easily be overlooked in studies of counter-terrorism policy.[62] But even if we are justified in assuming some common ground within the 'Western' constitutional tradition, some caution is needed in assuming a particular role for the courts or the legislature within the scope of one's theory when

[61] Ibid.

[62] There are, of course, important differences within Anglo-American traditions as well. For example, the human rights culture in Australia may not be as strong as in, say, Canada or the United Kingdom. But even accepting these differences, there remains a significant difference between societies where, however important human rights might be, law is regarded as central to the ordering or private and public affairs and those where it is not – as Mattei's tripartite distinction, discussed earlier, suggests. I am grateful to Patrick Emerton for his observation at the symposium in Sydney that Australia is probably more of a populist democracy than a liberal democracy.

extending it further afield.[63] This brings us back to Mattei's point. What is often taken for granted in the construction of a grand narrative is the presence of a legal tradition that firmly embraces the rule of professional law. It may be, however, that thinking theoretically about anti-terrorism law in a way that makes sense globally requires a heightened sensitivity to the social significance of formal law in a given society; we cannot assume that a transplanted legal text or constitutional framework will always (if at all[64]) have the same meaning in different legal systems. So faced with pressure to adopt model anti-terrorism laws, some states may amend their legislation whatever their capacity to implement it; others might amend their laws to satisfy one (say, external) constituency while interpreting those laws to justify existing practices or ignoring them altogether.[65]

Indeed, the Counter-Terrorism Committee's recommendations in its survey of the implementation around the world of Resolution 1373 tend to gloss over the deeper sociological obstacles to anti-terrorism law reform. While it recommends – in the context of Southeast Asia, for instance – encouraging 'states to accelerate the development of comprehensive and coherent counter-terrorism legal frameworks in compliance with the international counter-terrorism instruments and to enhance their criminal justice systems in order to bring terrorists to justice while upholding international human rights obligations',[66] it assumes an important social and political role for law in the first place, both in empowering governments to anticipate and respond to political violence and in constraining its ability to do so. Yet these sorts of assumptions, which in turn inform many Western theories of law, are problematic in other contexts, whether in Thailand with its ongoing political and constitutional instability, or in East Timor, with its nascent institutions and sometimes still volatile internal politics.[67] Even in societies more oriented to

[63] See Werner Menski, 'Beyond Europe' in Esin Örücü and David Nelken (eds.), *Comparative Law: A Handbook* (Oxford and Portland, OR: Hart Publishing, 2007), pp. 189–216, on the need for caution in seeking to extend formal, 'Western' legal principles to Asia and Africa.

[64] See Legrand 'The impossibility of "legal transplants"'. See also Laura Donohue, Chapter 4, this volume.

[65] Chris Oxtoby and C. H. Powell demonstrate, Chapter 22, this volume on East and South Africa, how similar anti-terrorism legislation can have dramatically different consequences in the practice of different states.

[66] Counter-Terrorism Committee 'Survey of the Implementation of Security Council Resolution 1373', p. 28.

[67] Victor V. Ramraj, 'The emergency powers paradox' in Victor V. Ramraj and Arun K. Thiruvengadam (eds.), *Emergency Powers in Asia* (Cambridge University Press, 2010), pp. 21–55.

the rule of professional law, they ignore the gap between a state's formal legislative response to Resolution 1373, as in Singapore's United Nations (Anti-Terrorism) Regulations 2001, and the reality of legal practice, demonstrated by Singapore's continued use of the Internal Security Act as its primary counter-terrorism instrument to detain terrorist suspects without trial.[68] A focus on formal theories of law and legal institutions also obscures informal efforts, such as the Singapore government's efforts, following the arrest of suspected Jemaah Islamiyah terrorists in the months after 9/11, to promote dialogue and trust across religious and ethnic communities through 'Inter-Racial and Religious Confidence Circles' and 'soft' constitutional law measures such as the adoption, following government-initiated inter-faith dialogue and a collaborative drafting process, of a Declaration on Religious Harmony.[69]

Finally, when theorising about anti-terrorism law and emergency powers we need to be especially cautious in our assumptions about the nature of the modern state. Slaughter's thesis that the modern state is 'disaggregating',[70] such that different parts of that state (the courts, legislators, government agencies) are interacting as part of complex government networks with their counterparts in other states in ways that are often inconsistent and contradictory, suggests that the modern state is far from unified in anti-terrorism matters. Although the disaggregation of the modern state is not itself antithetical to a global anti-terrorism regime, it does suggest a higher degree of complexity in understanding the relationship between legal norms at the state, regional and international levels, particularly when the different networks produce inconsistent rules

[68] Michael Hor, 'Terrorism and the criminal law: Singapore's solution' [2002] *Singapore Journal of Legal Studies* 30.

[69] See Kent Roach, 'Multiculturalism and Muslim minorities' [2006] *Singapore Journal of Legal Studies* 417; Thio Li-ann, 'Constitutional "soft" law and the management of religious liberty and order: the 2003 Declaration on Religious Harmony' [2004] *Singapore Journal of Legal Studies* 414. See also Victor V. Ramraj 'Beyond the Ottawa principles: social and institutional strategies and counter-terrorism' in Nicole LaViolette and Craig Forcese (eds.), *The Human Rights of Anti-Terrorism* (Toronto: Irwin Law, 2008), pp. 371–84. These sorts of approaches have been tried elsewhere, including in Western liberal democracies (see Clive Walker and Javaid Rehman, Chapter 10, this volume), but are often overshadowed by formal legal responses and remain politically contentious; in early February 2011, UK Prime Minister David Cameron declared his dissatisfaction with the failure of mutliculturalism, throwing into question, at least at the level of political rhetoric, the UK government's commitment to 'soft' responses and strategies and its efforts to co-operate with minority communities to contain 'extremists': see 'Bagehot: muscle v multiculturalism', *The Economist*, 12 February 2011, 38.

[70] Anne-Marie Slaughter, *A New World Order* (Princeton University Press, 2004).

or policies, the legal and legal–systemic consequences of which are not immediately clear.[71] Our accounts of anti-terrorism law need to acknowledge not the demise of the modern state, which is far from imminent, but the complexity of the relationships between the domestic, regional and international legal orders, and the asymmetrical and uneven patterns of relationships, particularly in light of the disaggregation (in some states more than others) of the modern state.

C. *Emergency powers and constitutionalism*

A third problem with grand narrative accounts of global anti-terrorism law and, particularly, attempts to provide a normative assessment of it, is the tendency of such accounts to overlook some important ways in which a global anti-terrorism regime might interact with legality and aspirations of legality beyond the liberal West. Consider, for instance, the view that one important legal consequence of the global anti-terrorism regime post-9/11 has been the demise of constitutionalism around the world.[72] This is, on its face, a plausible claim, particularly in light of the Security Council's preliminary attempts to impose a uniform legal response to terrorism without (at least initially) formal consideration of the human rights implications of anti-terrorism law. But there is also reason to think that in some contexts, effective domestic anti-terrorism laws, in the form of an emergency powers regime, might even strengthen constitutionalism and the rule of law, at least in the longer term. Consider two examples: China and East Timor.

In his study of China's recent reforms to its emergency laws, deLisle argues that the introduction of these laws, while in some respects legitimating the state's use of coercive powers, also has the potential to strengthen the regime's commitment to the rule of law. Criticisms of China's emergency power laws, deLisle argues, 'overlook the prospect that Chinese emergency power law could have state-limiting and rights-protecting

[71] For instance, it may be that the executive branch of government, working through horizontal (other governments) and vertical (the UN Security Council) networks produces lists, not formally susceptible to judicial review, of individuals and entities suspected to be associated with Osama bin Laden, whose assets must be frozen, while a European court finds the listing procedure to be inconsistent with human rights norms and thus orders the assets unfrozen, thus throwing into question the relationship among different legal orders. See *Kadi and Al Barakaat International Foundation* v. *Council of the European Union and Commission of the European Communities* (2008) 3 CMLR 41 (Grand Chamber, European Court of Justice).

[72] See above notes 43 and 44, and accompanying text.

features analogous to those asserted by some analysts for liberal constitutional democracies'.[73] For a regime that 'operates in a permanent, but almost never declared, state of emergency',[74] but one that is increasingly rule-of-law oriented, the step of delimiting the powers that accrue to the state in times of crisis and the precise conditions that trigger them, and holding itself accountable to those powers under the increasingly watchful eyes of increasingly demanding citizens, is a remarkable one. While the enumeration of such powers might, in other contexts, be power-expanding, in the context of China's already-powerful executive government, the enumeration of the very same powers may well be power-constraining.

Along similar lines, it may be that in nascent, post-conflict states, emergency powers of the sort that might be of concern in stable states play an important role in establishing 'the basic conditions of relative stability in which a legal structure and culture of accountability can take hold'.[75] East Timor provides a textbook example of how, in a post-conflict context, emergency powers can be invoked for the limited purpose of restoring political stability and quickly rolled back as soon as conditions permit. Thus on 11 February 2008, following an assassination attempt on the President and Prime Minister by a rebel group, a nation-wide state of emergency was imposed for forty-eight hours with restrictions on assemblies and demonstrations, and a curfew was imposed.[76] The nation-wide state of emergency was renewed on 13 February and again, on 22 February, as a nation-wide 'state of siege' under Article 25 of the Constitution.[77] As the rebel group was contained by government forces, the state of siege was renewed again in March, but only in seven districts, and again in April, but only in the district of Ermera.[78] Although the presence in East Timor of UN and international NGOs meant very close scrutiny of how

[73] Jacques deLisle 'State of exception in an exceptional state' in Ramraj and Thiruvengadam, *Emergency Powers in Asia*, pp. 342–90, 344.

[74] Ibid., p. 342.

[75] Victor V. Ramraj, 'The emergency powers paradox', pp. 21–55, 23.

[76] Ibid., p. 32.

[77] Article 25, para. 1 of the Constitution of the Democratic Republic of East Timor provides that '[s]uspension of the exercise of fundamental rights, freedoms and guarantees shall only take place if a state of siege or state of emergency has been declared as provided by the Constitution'. The other paragraphs of art. 25 set out the circumstances in which a state of siege or state of emergency may be declared (para. 2), the obligation to specify limits on rights, freedoms, and guarantees (para. 3), the maximum duration of 30 days and possibility of renewal (para. 4), the non-derogability of particular rights, freedoms, and guarantees (para. 5), and the obligation to restore constitutional normality as soon as possible (para. 6).

[78] Ramraj, 'The emergency powers paradox', p. 32.

this emergency unfolded, the relatively successful execution of exceptional powers by a nascent democracy sent precisely the right signal to the Timorese – that emergency powers could be invoked (notably, in a post-9/11 context) in a manner consistent with the liberal–democratic aspirations of a young nation.

These are but two examples, and there is much more that could be said about each of them. But they demonstrate an important point – that however much emergency powers under the banner of 'anti-terrorism' laws might contribute to the erosion of constitutionalism in the United States and many of its closest allies, there are other stories that could be told about the emergence of constitutionalism even in the face of novel emergency-powers regimes. Indeed, it would not be absurd to claim that the creation and invocation of emergency powers in China and East Timor might even contribute to the strengthening of constitutionalism in the longer term.

4. The complexity of transnational legality

Global anti-terrorism law is therefore much more complex than the grand narrative might suggest. And this complexity itself can be seen as part of the rise of transnational legality, consisting of both the increasingly tangled web of international, regional and domestic legal norms and the emergence of legal norms and practices that cross borders but do not fall squarely within our traditional conception of inter-state law. This legal complexity makes a sophisticated and comprehensive account of global anti-terrorism law and policy a moving target precisely because the status of legal norms and of the modern state itself are in flux. But it makes it all the more imperative that we seek to understand it as fully as possible so that our approach to empowering and constraining national governments, international bodies and complex networks of transnational bodies in their anti-terrorism activities are equally malleable and adaptable.

What, then, are the elements of a sophisticated and comprehensive account of global anti-terrorism law and, crucially, policy? First, the account would acknowledge the disaggregation of the state;[79] it would attempt to map formal legal norms at the international, regional and domestic (including sub-state) levels; and it would articulate the multiple, complex relationships between and among these levels. The account

[79] Slaughter, *A New World Order*.

would acknowledge both the pluralism of legal norms and the asymmetry of those norms in different parts of the world. The pluralism of anti-terrorism norms is increasingly evident, and as Roach observes, 'one of the fascinating features of comparative anti-terrorism law is its complex blend of international, regional, and domestic sources of law'.[80] An ambitious account of this aspect of anti-terrorism law might also engage with debates about transnational law and consider whether an emerging regime of global anti-terrorism law is part of a regime of transnational law that is '*neither* national nor international nor public [nor] private at the same time as being *both* national and international, as well as public and private'.[81] But the asymmetric nature of anti-terrorism laws is also critical.[82] To take one important example, as *Kadi*[83] shows, the European Union is in a much stronger position to resist (formally) the imposition of international legal norms than are other countries, although there are also informal ways of resisting international pressure while appearing formally to comply.[84]

Second, a sophisticated and comprehensive account would acknowledge both in theory and in practical application the gap between law and society in many countries and thus of the disparate impact of formal legal norms on state and non-state actors and practices. This will, of course, make policy development and implementation more challenging; it borders on the absurd to think we could develop global 'legislation' for 195 or so countries that is sensitive both to their capacity to implement those laws and, more importantly, to the social significance of law such that the substantive objectives of 'global' law can be translated into formal and informal norms appropriate to that society and, in many cases, to particular sub-regions within a particular state. Our accounts of global anti-terrorism law and policy, then, must be comfortable with the idea that there are different concepts of the state and different ways of governing,

[80] Roach 'The post-9/11 migration', p. 402.

[81] Craig Scott, '"Transnational law" as proto-concept: three conceptions' (2009) 10 *German Law Journal* 859–76, 873.

[82] I am exploring the asymmetrical nature of law in other work: e.g. 'Asymmetric transnationalism: the multiple roles of law in a complex world', presented at the annual Center for Transnational Legal Studies Conference, which in May 2010 was held at the Faculty of Law at the University of Torino.

[83] See above note 71.

[84] Halliday and Carruthers, 'Foiling the financial hegemons', pp. 255–301, 263–73, referring to the Indonesian experience following the 1997 financial crisis.

and that law might have a distinct place and social significance in different societies.

Third, and closely linked to the previous point, a sophisticated and comprehensive account of global anti-terrorism law and policy would acknowledge the importance of a multidisciplinary approach to the prevention of political violence and the limiting of state and other forms of 'public' power intended to prevent such violence. Here I have in mind not only the increasingly trite observation that it is necessary to address the root causes of 'terrorism' but also that non-legal means of constraining the state might also be important. A viable account of global anti-terrorism law and policy must be capable of encompassing two distinct kinds of observations. On the one hand, it must be able to make sense of Tushnet's observation that whatever the shortcomings of the post-9/11 military commissions in Guantánamo Bay, sociological context was critically important; the professional training of military lawyers and the sense of military honour and reciprocity were such that legal shortcomings would have been compensated, in part, by a legal culture that was 'increasingly comfortable as procedural formality increases'.[85] The erosion of legal rights in the United States post-9/11 may well have been resisted, at least in part, by a socially embedded political culture in which procedural fairness is central. At the same time, a viable account must also be sensitive to the observation that, in a country as vast and diverse as Indonesia, without a deeply embedded culture of legal formality, locally sensitive policing techniques and softer strategies, if carefully monitored and infused with a professional ethos, might be more important and effective (in that particular context, at that particular time) than high-level law reform in preventing political violence.

The kind of account of global anti-terrorism law and policy envisioned here is a rather tall order, and the idea of a comprehensive account is more of an aspiration than a realistic goal. But even in less-than-comprehensive accounts, it is worthwhile to be mindful of the limits of positing a one-size-fits-all global anti-terrorism law regime, whether aimed at enabling or constraining the state, and the dangers of assuming that anti-terrorism laws, policies and strategies can easily be transplanted from one society to another.

[85] Mark Tushnet 'The political constitution of emergency powers: some conceptual issues' in Ramraj, *Emergencies and the Limits of Legality*, pp. 145–55.

5. Conclusion

It is not the argument of this chapter that global perspectives are unhelpful; rather, approaching law from a global perspective enriches our understanding of law and is imperative in the formulation of sophisticated and effective policies. The argument advanced here is that thinking about global anti-terrorism law requires a nuanced and sophisticated approach, one that is mindful of local differences and particularities that transform the way legal norms are understood, articulated, implemented and resisted in different parts of the world. The introduction to the first edition of this volume observed that 'students of anti-terrorism law and policy will have to be attentive to the complex interplay between international, regional, and domestic laws and structures'.[86] What has become clear in the decade since that terrible September morning is that anti-terrorism law, like many areas of law from environmental law to international commercial law, is increasingly and unavoidably *transnational*. This in itself presents a host of challenges for how we think about law and society and, in particular, about co-ordinated responses to problems that extend across borders and vastly different societies. Despite the globalisation of popular culture, business transactions, telecommunications, travel and, for that matter, political violence, the legal world is as complex as it has ever been. It is worth bearing this reality in mind as we reflect on the current state of anti-terrorism law and policy.

[86] Victor V. Ramraj, Michael Hor and Kent Roach 'Introduction in Ramraj, Hor and Roach, *Global Anti-terrorism Law and Policy*, p. 5.