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Jeremy Larkins

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Book Note

TORTURE, TERROR, AND TRADE-OFFS: PHILOSOPHY FOR THE WHITE HOUSE, by Jeremy Waldron¹

JEREMY LARKINS

MUCH INK HAS BEEN SPILLED ON THE SUBJECTS of torture and terrorism in the decade since the September 11, 2001 terrorist attacks. The eruption of public discourse in the United States and elsewhere has challenged lawyers, governments, and citizens to reevaluate their attitudes towards liberty and security, and to reflect on the limits of permissible government action in dealing with terrorist threats. Professor Jeremy Waldron has been a prolific contributor to this discourse, and his latest book strives to provide clarity to concepts that are often distorted for political expediency.

Torture, Terror, and Trade-Offs gathers a collection of Waldron's essays written mostly from 2002 to 2007, many of which were published previously in prominent scholarly journals. As such, each chapter can be read as a stand-alone piece. However, it is only by reading the collection as a whole that one begins to understand the currents of thought that comprise Waldron's entire approach to jurisprudence.

In many respects, Waldron offers a unique voice in modern debates around torture. Among his colleagues in moral philosophy and jurisprudence, Waldron regards his beliefs about the absolute prohibition on torture as a minority viewpoint, especially when juxtaposed to those who begin by conceding the appropriateness of torture in a "ticking bomb" situation.² In general, Waldron characterizes the condemnation of torture in modern political discourse as "half-hearted" and "heavily qualified,"³ something he finds a shameful and regrettable state of affairs. Of course, Waldron is not the only public intellectual to oppose the use of torture, but his position stems not just from a belief about the inherent wickedness of torture or the inviolability of persons. In chapter seven, the longest

1. (New York: Oxford University Press, 2010) 357 pages.

2. *Ibid* at 5-6.

3. *Ibid* at 6.

of the book, Waldron analyzes the relationship between torture and positive law, arguing that torture is incompatible with the spirit of the American legal system. Law, for all its forceful and coercive qualities, respects the dignity and agency of those who are its subjects, and does not operate by brutalizing them or trying to break their will. The prohibition on torture serves as “archetype” of this policy, to use Waldron’s words, and to abandon it would weaken the foundations of other areas of law that embody this policy.⁴

Several of the essays in the book set out to explore concepts that remain underdeveloped despite their prevalent use in public discourse. Chapter three explores the definition of terrorism in an attempt to understand what features distinguish it from other morally abhorrent acts that occur in the context of warfare or ordinary domestic crime. Chapter five discusses the meaning of security, a concept Waldron sees as neglected by political philosophy compared to the attention given to its common counterpart, liberty. The chapter explores whether security can be reduced to pure safety and questions whether we can speak meaningfully of a trade-off between liberty and security when the liberty of one group is traded for the security of another. Chapter nine contemplates whether a prohibition on cruel, inhuman, and degrading treatment is meant to be a “broad catch-all dignitarian restraint”⁵ on conduct (as it is sometimes employed), or whether each word has a distinct meaning that is legally significant (Waldron concludes the latter).

These efforts are not undertaken simply to achieve analytical clarity. The final chapter implores new lawyers to reflect upon the Rule of Law and its connection to good lawyering, particularly in government service. The book’s subtitle, *Philosophy for the White House*, indicates that its contents can be a guide to governmental decision making. Sometimes this is strictly definitional: if legislators seek to distinguish terrorist crimes from other crimes like murder or arson, a clear definition is needed to ascertain whether legislation is over- or under-inclusive.⁶ More often, Waldron speaks to something deeper about the dignity and honour of the enterprise of law. Waldron is concerned that products like the infamous torture memos of John Yoo and Jay Bybee are made possible when we lose sight of the animating spirit of the law.⁷ As long as it remains necessary to have a discourse in the legal profession and wider society about the proper responses to terrorism, contributions like *Torture, Terror, and Trade-Offs* will have a valuable place.

4. *Ibid* at 232-233.

5. *Ibid* at 291.

6. *Ibid* at 49.

7. *Ibid* at 188, 207.