



PROJECT MUSE[®]

role played by the first combat deployment of the new helicopter-borne anti-tank missiles, known as TOW (Tube-launched, Optically-tracked, Wire-guided) missiles. This experimental unit—call sign “Hawk’s Claw”—deployed directly from the United States to Kontum to help stem the armor onslaught. The unit immediately proved highly successful, so decimating the North Vietnamese armor that by the end of the battle few enemy tanks had survived.

Besides enhancing our understanding of this crucial battle for South Vietnam’s survival, McKenna’s book also provides an important look at the outstanding efforts of the hardy U.S. advisers, the last Americans to fight side-by-side with South Vietnamese forces. We can only hope that, emboldened by McKenna’s outstanding achievement, more of the advisers from those terrible days of the 1972 Easter Offensive will tell their stories.



Thomas Michael McDonnell, *The United States, International Law, and the Struggle against Terrorism*. New York: Routledge, 2011. 298 pp.

Reviewed by Matthew Evangelista, Cornell University

Although the phenomenon of terrorism dates back millennia and the Cold War witnessed many examples, Thomas McDonnell’s valuable book, originally published in 2009, focuses mainly on the period after the attacks of 11 September 2001. The author, a professor of law at Pace University, offers a sophisticated analysis of the legal and pragmatic implications of the reactions of the George W. Bush administration to 9/11.

The core of the book consists of several chapters analyzing the legality of many of the practices associated with what the Bush administration called the Global War on Terrorism (following a critique of that designation in chapter two): indefinite detention, trials before military commissions, torture, and targeted killing of suspected terrorists; a preventive war in Iraq; and the invasion and occupation of Afghanistan for being a “haven state” for al Qaeda terrorists. Part I includes chapters devoted to “torture light,” “torture heavy,” and the specific scenario of the “ticking time bomb.” McDonnell exhibits a solid command of the legal literature and the history that has emerged from declassified documents and the investigative journalism of Ron Suskind, Jane Mayer, Dana Priest, and others. Chapter six addresses the question of indefinite detention without trial by exploring the status of the detainees and the relevant international law. Among the controversial issues he confronts are to what extent the laws of war—international humanitarian law (IHL)—apply to the people the U.S. government has detained. Some were picked up on the battlefields of Afghanistan, but others were arrested in places like Pakistan and John F. Kennedy Airport in New York, and some were kidnapped in Bosnia or Italy. In the categories of the Geneva Conventions, the author probes whether the “global war on terrorism” is an armed conflict of an international or non-international character or whether it fails to rise to the level of

an armed conflict at all because of its insufficient duration or intensity. These are difficult issues, and the author handles them with great sophistication and subtlety.

Part III of the book, titled “Stopping Terrorists on the Ground,” contains a chapter on targeted killing (including by drones) and a chapter on “collateral damage.” The latter chapter focuses on the relatively meager law governing aerial bombardment and other attacks in which civilians are put at risk. McDonnell makes an observation about the 1999 Rome Statute (the basis for the International Criminal Court) that is not much noted elsewhere in the literature. In 1977 the guidelines on distinction (between civilian and military targets) and proportionality adopted in the First Additional Protocol to the 1949 Geneva Conventions had prohibited “launching any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, *which would be excessive in relation to the concrete and direct military advantage anticipated*” (p. 142; emphasis in original). McDonnell points out that the Rome Statute, in defining war crimes, used much the same language but substituted “clearly excessive” for “excessive” and “overall military advantage” for “concrete and direct military advantage.” He argues that the Additional Protocol “provides relatively little protection for civilians. The Rome Statute of the ICC provides even less” (p. 142). However, the point might be moot because the United States is not a party to either instrument.

Two of the most original analyses in the book are versions of pieces the author has published in law journals. The first is an argument that the U.S. use of the death penalty is counterproductive to its anti-terrorism efforts because of the potential to create martyrs. The second is a critique of the practice of ethnic and racial profiling on legal and pragmatic grounds.

Among the more thought-provoking themes in the book is McDonnell’s comparison of the relative importance of IHL governing warfare and human rights law. Many legal specialists would claim that IHL constitutes *lex specialis* for situations of armed conflict and thereby overrides the greater protections afforded to civilians during peacetime (most notably the fundamental right to life). McDonnell avers that trends in human rights law, particularly the creation of the European Court of Human Rights, have led to a greater legal sensitivity to civilian harm during conflicts, particularly ones characterized as counterterror operations. He describes a number of cases in which the Court has ruled against Turkey and Russia for causing excessive harm to the civilian population in their conflicts against Turkish and Chechen separatists.

The paperback edition of 2011 reviewed here includes a new preface updating the analysis to take into account how the administration of Barack Obama has pursued its counterterrorism policies. In an assessment that will ring true for many readers, McDonnell revises his earlier prediction that Obama—a lawyer who taught constitutional law at the University of Chicago—would adhere to law more fully than his predecessors did. McDonnell contends that “the Obama administration has definitely moved towards stricter compliance with international law in the struggle against terrorism, but at the same time it has clung to many of the previous administration’s

counter-terrorism policies, including indefinite detention, the preference of military commissions rather than civilian courts to try alleged terrorists, and the use of military rather than law enforcement as the major counter-terrorism practice” (p. xix). Whatever administration is in office, the issues explored in this insightful study will, for better or worse, remain timely.



Daniel Weimer, *Seeing Drugs: Modernization, Counterinsurgency, and U.S. Narcotics Control in the Third World, 1969–1976*. Kent, OH: Kent State University Press, 2011. 328 pp.

Reviewed by Russell Crandall, Davidson College

In 1993 the Colombian cocaine kingpin Pablo Escobar was killed by police while attempting to flee from a rooftop in his hometown of Medellín. Some two decades later, Escobar’s inimitable image as a drug producer extraordinaire still dominates our understanding (and, at times, Hollywood’s depiction) of the U.S.-led war on drugs in Latin America and across the globe. In more recent years, the nihilistic and savage Mexican narcotics “capos” and Afghani guerrillas-cum-heroin producers have added additional flavor to our understanding of these illicit actors who provide the drugs so readily consumed in the United States.

Yet, as Daniel Weimer deftly shows in his exhaustive and timely tome, *Seeing Drugs*, Washington’s “source country” antidrug campaign started in Southeast Asia and Mexico in the early 1970s, well before more recent but often controversial U.S.-led campaigns in Escobar’s Colombia in the 1980s. Weimer takes the reader back to the presidential administrations of Richard Nixon and Gerald Ford when, he posits, Washington’s belief in source control efforts was rationalized by a “drugs-as-disease” metaphor that conveniently placed the responsibility for American’s drug scourge overseas. In turn, this characterization rationalized aggressive antidrug efforts in Third World producer and transit states, most notably Thailand, Burma, and Mexico.

Weimer painstakingly shows how Washington’s “supply side” drug war in Thailand, Burma, and Mexico took place against the backdrop of the ignominious U.S. withdrawal from a prolonged, arduous counterinsurgency and modernization campaign in Vietnam. Weimer believes the growing discrediting of “blind anti-communism” ensured that the drug war would emerge as a more palatable justification for interventionism. That is, the “logic of source control” (p. 217) meant that U.S. officials were bound to identify a new monster to slay, and nothing served as a more convenient foe than the murky illicit drug trade.

Weimer writes about how the prescriptions of modernization (i.e., economic development) and counterinsurgency central to the antidrug campaigns attempted to produce good governance, economic development, and internal security. More than simply stemming drug production and trafficking, the antidrug campaigns—which