REVIEW ESSAY

Maddening Legalities: subjectivities and the law

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Donahue, Katherine C. (2007) *Slave of Allah: Zacarias Moussaoui vs. The USA*. Ann Arbor, MI and London: Pluto Press. (206 pp., notes, bibliography, index; price: hardcover £50.00; paperback £15.19)

Kelly, Tobias (2006) *Law, Violence and Sovereignty among West Bank Palestinians*. Cambridge: Cambridge University Press. (194 pp., references, index, illustrations; price: hardcover £52.25; paperback £18.99)

Subjectivities in association with the law and anthropology in many regards demonstrate how we may understand the often-overlooked socio-legal dimensions of persons in society. Such concerns are becoming increasingly significant in relation to confronting terrorist subjectivity or even in terms of how some states may undermine the 'subjective' of ethnic minorities over regional conflicts. A recent book by Joseba Zulaika (2009), *Terrorism: the self-fulfilling prophecy*, describes in great detail how counterterrorism has not addressed subjectivity as much as it could have done, especially so 'by not linking the evidence to humiliations, desires, decisions, and the potential for madness and suicide of the despised enemy' (2009: 191). Such perspectives about subjectivity are worth considering when confronted with terrorist madness and many threats from groups like Al-Qaeda. In regard to minorities and the state, some immigrant subjects may be perceived as 'engaged in a mass act of insubordination and an expression of the irreconcilable antagonism that conjoins labour and capital in a mutually constitutive social relation' as De Genova (2009: 453) notes.

This essay, as a review of two books, Katherine Donahue's (2007) *Slave of Allah*, and Tobias Kelly's (2006) *Law, Violence, and Sovereignty among*

West Bank Palestinians, demonstrates how issues of counterterrorism subjectivity as in Zulaika's (2009) book and the subjectivities of labour practices and protests of migrants as the topic of De Genova's (2009) article about immigrant groups in the United States, are significant for the trial of the convicted terrorist Zacarias Moussaoui and the labour issues and lawsuits among West Bank Palestinians. In other words, these ethnographies demonstrate how understanding subjectivities are important in understanding why Moussaoui acted as he did and why many Palestinians wrestle with state over labour rights.

To some extent we may ascribe a kind of madness to the confounding legal conundrums surrounding these issues in what may be seen as difficult attempts to counter terrorist activities and prosecute suspected terrorists, or to legitimize itinerate work forces as Palestinians in Israel. Subjectivity as a notion likewise may be riddled in 'the question of desire, as well as fear, becomes most crucial in rethinking the kind of reality the state might be acquiring at this moment of globalization, not only of capital, services, and culture, but also of security operations and states of emergency' as Aretxaga notes (2005: 256). The late anthropologist, Begoña Aretxaga, describes these social realities as 'subjective dynamics'. Moreover, in legal theory there is a tendency to reconstitute 'subjectivity and objectivity in utopian and optimistic gestures' according to Coombe (2005: 114). In her view, 'we need to examine the differential power that social agents have to make their meanings mean something, and the material factors that constrain signification and its circulation in contemporary societies' (Coombe 2005: 114).

The focus of this review essay is upon critical subject matters—Al-Qaeda, and the Israeli-Palestinian conflict. Each of the anthropological studies about these issues discussed here exemplifies why a public audience may benefit from the anthropological viewpoint, and even how to associate socio-legal issues with subjectivities. The authors reviewed here, Donahue (2007), and Kelly (2006), each demonstrates how "Western academia" may represent their subjects' perspectives. They respectively explore the difficult-to-grasp motives of a terrorist, and rights of the Palestinians over legal rights of citizenship. In my view, the books by Donahue, and Kelly, also provide key insights not only about their subject matter but also offer significant and varying approaches to the anthropology of law.

Donahue's book is about Zacarias Moussaoui's indictment for complicity with 9/11 terrorism. Kelly's ethnography by contrast may be read as the effects of law on the everyday lives of West Bank Palestinians and their interactions Israeli society. The anthropological viewpoints presented here unravel the complexities and the interplay of the legal, social, and political by underlining where the uncertainties happen in the prosecuting of terrorists or in the margins of the state elided with interpretations of legal authority (see Asad 2004).

Katherine Donahue's (2007) *Slave of Allah*, is an ethnographic depiction of Zacarias Moussaoui and his highly publicized trial, the first of terror suspects tried for events related to the immense tragedy and suffering of September 11, 2001 in the United States. It may be regarded as both a biography and psychological study of the making of a terrorist. For these reasons *Slave of Allah* is timely and necessary reading providing a knowledgeable account about the legal proceedings of a U.S. terrorist suspect and the manner in which the Moussaoui trial unfolded from 2001 to 2006 when he had a life-sentence conviction. Yet Donahue's book is not confined to the court and how the U.S. government prosecuted its case against Moussaoui or the difficulties of Moussaoui's defence team. Rather, and significantly, it also portrays his childhood and upbringing in France and his post-graduate student life in the United Kingdom. It demonstrates as well how someone like Moussaoui may convert to Islam and succumb to the political ideologies of extremism for joining Al-Qaeda.

It is compelling reading simply because of the subject matter. There is the inside story of an Al-Qaeda member and how the United States made its case against Moussaoui and the extraordinary aspects of the trial's dynamics. For example, the book details the length of time it took to prosecute the case; when Moussaoui decided to represent himself as his own legal counsel; and the judge's ruling to forfeit the death penalty because the prosecution team refused to produce witnesses at the trial from concerns over national security. The book notes that this ruling was reversed; the claim 'that a government lawyer would tamper with witnesses'; and the threat by the judge to have the trial dismissed because of the manner in which the case was being prosecuted (Donahue 2007: 2). All of this makes for fascinating reading and the author ably provides a description of the different phases of the trial without bogging down in legal jargon or unwarranted detail.

Through Moussaoui's own statements, we learn he was not the twentieth hijacker on September 11, 2001 but that he did conspire 'to commit acts of terrorism, to hijack planes, and to destroy aircraft' (Donahue 2007: 4). Even so, his criminal profile and his pattern of behaviour while living in the United States is very much like the profile of other hijackers on 9/11. As the book notes he did attend flight school, bought knives, worked out at gyms and received remittances from overseas. What is more, the evidence shows that he did train as an Al-Qaeda member and travelled to Afghanistan, Pakistan, and Malaysia; he also met with Osama bin Laden and Khalid Sheikh Mohammed. The U.S. government's case against Moussaoui revolved around the fact that he lied and could have prevented the events of September 11, 2001 from occurring if he had been truthful to the U.S. authorities while in custody.

In her exposé about Zacarias Moussaoui, Donahue argues against the explanation that the convicted terrorist ‘Moussaoui and people like him are evil-doers’ or that ‘Moussaoui is crazy, delusional, or psychotic’ or ‘what we have is an example of the clash of civilizations’; and that ‘the cause is structural economic conflict and unemployment’ (Donahue 2007: 7-8). She notes that ‘a related explanation would hold that Moussaoui is a failed, unreliable, ‘wannabe’ terrorist, distrusted even by the planners of September 11’. Even so, it is not entirely convincing in regard to the claim for Moussaoui’s sanity; after all, he aspired to commit terrorist acts, which as Zulaika (2009) has aptly described is in and of itself a kind of madness. At times we hear Moussaoui in court, such as his claim to represent himself as his own lawyer:

In the name of Allah, I, Zacarias Moussaoui, today the 22nd of April, 2002, after being prevented for a long time to mount an effective defense by overly restrictive and oppressive condition of confinement, take the control of my defense by entering a pro se defense set for presentation in order to mount a significant defense of the defense of the life that Allah, the most masterful, has granted me (Donahue 2007: 23-24).

His statements to the court though seem to express his kind of “subjective madness”. The judge in this case, Federal District Judge Leonie Brinkema, at times appeared to be very tolerant of Moussaoui’s outbursts and his wishing to defend himself as his own legal counsel for a period during the hearings. Moussaoui’s ‘words, both spoken and written, were often contradictory, often inflammatory, and often abusive’ (Donahue 2007: 155). As Donahue (2007: 57) explains, ‘the case of Zacarias Moussaoui, and the ways in which Moussaoui represented himself, provide us with a view into the workings of language, metaphor, and the politics of identity in representation of the self’. Moreover, Moussaoui’s defence provides an insight on how this convicted terrorist waged his own personal jihad against the United States justice system by provoking it with rhetoric and words meant to be intentionally subversive. The Moussaoui trial may likewise set precedents in relation to how the United States will prosecute terrorist suspects like Al-Qaeda members. This is significant as President Barack Obama’s administration plans on trying Al-Qaeda suspects, such as Khalid Sheikh Mohammed, the alleged mastermind of 9/11 and his co-conspirators. What is more, Attorney General Eric Holder, and the Obama administration, in general, believe in prosecuting these terrorist suspects on U.S. soil and upholding the rule of law. This is inclusive of his approach to eliminating the use of torture as part of interrogation whenever a suspected terrorist is detained by U.S. law enforcement and unlike that of the previous Bush administration and its alleged uses of water-boarding and extra-ordinary

renditions. Having fair trials for terror suspects, but above all upholding the U.S. Constitution, is something Holder wants to ensure during his tenure as Attorney General (see Mayer 2010). Such impending trials and their prosecution also highlight to the world how the United States conducts itself in terms of jurisprudence and law enforcement.

Beyond how such a trial may be adjudicated, the book considers how someone with the approach of Moussaoui might join a terrorist network like Al-Qaeda. Moussaoui is well-educated with a Master's degree in International Business from South Bank University in London. The last half of the book is devoted to explaining how Moussaoui became an aspiring terrorist by examining his childhood and life prior to his militancy in Al-Qaeda. It is here we find out about Moussaoui's ethnic Moroccan heritage, and how his parents migrated to France. Like some other immigrant families, Moussaoui's family experienced exclusion and racism in French society. It may be that such social stigmatization inspired Moussaoui's conversion to Islam and his adoption of the political views espoused by Al-Qaeda. Donahue carefully depicts these phases in Moussaoui's life as well as portrays the exclusionary treatment of immigrant populations and immigrant policies in France. Yet, as she also points out tellingly: 'Zacarias Moussaoui's experience of exclusion and alienation were particular to him' (Donahue 2007: 137). In other words, he did not have to become a terrorist. Moussaoui could have chosen another path. Even so, 'Moussaoui's dreams were not necessarily being met, and he did feel blocked in his ambitions, but Zacarias Moussaoui's decision to leave France and join Al-Qaeda cannot be directly attributed to a lack of education or a dreary life in the banlieues' [French suburbs, some of which are associated with immigrant populations] (Donahue 2007: 137). What Donahue seems to allude to is that Moussaoui's social alienation only offers partial explanation of his psychological delusions for joining Al-Qaeda.

My critique of Donahue's (2007) work, *Slave of Allah*, has to do with theory and style. In my view, Donahue is too overly reliant upon Pierre Bourdieu for understanding the different facets of structural, everyday, and symbolic violence associated with the exclusionary practices of French policies and the overt French racism against its immigrant populations. She does not mention, for example, other authors who have importantly written about these issues in other contexts such as scholars like Nancy Scheper-Hughes (1992), Paul Farmer (2003), and Arthur Kleinman (2000), among others. This would have been important to demonstrate not only a broad reading of pertinent material but also to make a more forceful presentation of her theoretical point. Neither, does she wrestle with ideas expressed by Mahmood Mamdani (2004), from his well-regarded book, *Good Muslim, Bad Muslim*, nor does she discuss in any depth the meaning of political and politicized forms of Islam and Al-Qaeda propaganda. Theoretically, I was hoping for

more from her work and that it would excavate on a deeper level the different aspects of terrorism, or even how to analyse the ‘war on terror’ from works such as Richard Jackson’s (2005), *Writing the War on Terrorism*.

Moreover, Donahue’s book is not as rich in comparison to say, Susan Hirsch’s (2006), *In the Moment of Greatest Calamity*, a personal account of an anthropologist’s journey for having survived the U.S. Embassy bombing in Dar es Salaam, Tanzania in 1998 and coping with the loss of her Kenyan husband. Like Donahue, Hirsch describes the trial and prosecution of Al-Qaeda terrorist suspects (plural in Hirsch’s account), but significantly, Hirsch’s exploration grapples with some larger questions about justice and terrorism in a broader and more encompassing manner and for the most part in a more lucid style¹. Nevertheless, and regardless of this particular critique, Donahue’s (2007) book should be read, perhaps alongside Hirsch’s work, for providing greater knowledge about Al-Qaeda-type terrorism and for providing an understanding about the role of justice in prosecuting such senseless crimes.

Donahue’s (2007) account of the Moussaoui trial is based mostly on court transcripts and other official documentation. Very little of the material they gathered was based upon actual interviews. At the same time, it does demonstrate that studying violence from a distance, much like Robben’s (2010) *Iraq at a Distance*, allows for novel possibilities for the ethnographic monograph to portray trial hearings. As such ethnographies do not necessarily have to be interview-based if the relevant information can be gleaned from transcripts and documentation, or attending trials, or meeting with those representing defendants, and by providing ethnographic context from fieldwork in Donahue’s case, France and in Hirsch’s case, Kenya.

There are also practical considerations. In some trials suspects and witnesses may have no desire or wish to speak to the anthropologist. What is more, for felons like Moussaoui, there is no possibility for an academic to have access to a government defendant without government clearance, an unlikely prospect. This is why using material, court documents and other official documentation, and the like through the social lens of anthropology has its advantages for sensitive subject matters. When the social relevance of such happenings is analyzed, then such trials for these crimes may have an important input for societal views but also the social aspects of the law.

Until now, this review has centred on a trial of a terrorist. Such ethnographies have their limitations in so far as being confined to the timeline of the trial and their social meanings and repercussions. Tobias Kelly’s book, *Law, Violence, and Sovereignty among West Bank Palestinians*, on the other hand, portrays the everyday lives of Palestinians, who eke out livings on the borderlands between the West Bank and Israel. His portrayal is truer to the classical concept of ethnography: living with the people of one’s study, and participating and observing the everyday among them. His is an immersion into Palestinian lives and their struggles and “murky existence” of having to

straddle between two-worlds: Israel and Palestinian territories.

For many reasons, Tobias Kelly's monograph, *Law, Violence, and sovereignty among West Bank Palestinians*, is an extraordinary work and a tour de force. There are few studies, I would argue, which are able to express the complexities of the Israeli-Palestinian conflict, and in such a way as to comprehend the legal issues at stake in the borderland areas of the West Bank and Israel. In terms of socio-legal studies and ethnographies, this is an exceptional account of such a protracted conflict. There are also good grounds to consider Kelly's work as already a classic in socio-legal studies and for anthropology of the Middle East.

In all, Kelly spent two years in the field, some months in Ramallah for preliminary fieldwork, and eighteen months between 2000 and 2002 in a West Bank town, Bayt Hajjar, his pseudonym for the place, during the violent upheaval and beginning of the second intifada (Palestinian uprising, the first began in 1987). Kelly is careful to point out though that life in the West Bank is not all about exceptional violent acts but is mostly dominated by the tedium of bureaucratic practices (2006: 7). Such bureaucracy though is determined by 'the right and ability to speak in the name of 'the people'', which is similarly exacerbated by a 'performance of sovereignty', regardless how disjointed and fragmented such claims may be within the fragility of the border regime and the 'repeated Israeli military incursions' (2006: 20-21 and 173). Thereby, 'the promotion of collective rights in a context of unequal collective economic and political resources can see the reproduction of inequalities' (Kelly 2006: 14). Another important aspect of Kelly's socio-legal study is that he identifies the tensions in the everyday lives of West Bank Palestinians following the collapse of the Oslo Accords. For many Palestinians living along the West Bank, Oslo remains a spectre in the subordination of 'individual rights to perceived collective interests' (Kelly 2006: 170). Throughout this work the inequalities between Palestinian subjects and Israeli citizens are underlined and given meaning, wherein the Palestinian National Authority (PNA)'s and the Israeli state's interpretations over whom has the right to have rights within the borderland regime. For Israel the law requires the protection of Israeli citizens but for Palestinians living on the West Bank such legal status excluded Palestinian claims of citizenship in terms of being 'foreign non-residents' or as threats to Israeli security. In addition, the PNA itself 'oscillated between a bureaucratic administration and revolutionary movement but was unable to fulfil either role' (Kelly 2006: 170). In this manner, Oslo tried to separate Israelis and Palestinians into a legal and political framework and 'along ethno-national lines' (2006: 3). Clearly though such rights are not distributed in an

equitable mode of implementation. As Kelly (2006: 3) articulates: 'it is the intrinsic tensions of attempts to make the distinction between those who do and those who do not have particular rights that produces much of the fear and violence of everyday life in the region'.

Thus, the everyday aspects of the Israeli-Palestinian conflict are for the most part a 'conflict over legal rights' (Kelly 2006: 2). Many anxieties for Palestinians are thereby centred on accessing rights and claiming rights, which are likewise shaped by Israeli military-checkpoints within the West Bank; this is the continual performance of having the right documentation to bypass a checkpoint, or even by dangerously avoiding or trying to escape the checkpoints altogether. To this degree, 'legal status is always a spatial practice, since the checking of documents takes place in particular locations' (Kelly 2006: 172).

It is in this context we are to understand the lives of the people of Bayt Hajjar, many of whom as day-labourers in Israel found it difficult to maintain Israeli-contracted work on a stable basis as the second intifada began. Kelly explores the legal claims of several residents of Bayt Hajjar, especially in terms of lost employment and wages owed and subsequent attempts at litigation. Legal notions are given local meanings such as the case of Khalid in wanting backpay from Marwan, a contract labourer-employer in the village: Khalid's claims also aimed at restitution from the Israeli state, but also worsened by the second intifada and the lack of means for gainful employment. Such issues of economic loss which occurred because of Israeli contracted-labour ending without paying Palestinian workers were commonplace. An Israeli contractor sometimes did not pay for work done: both the mediating Palestinian-contractor such as Marwan and employees such as Khalid may lose income, often without repercussions to the Israeli employer. Such fallibilities of the employment system did not have proper legal channels in which to enforce the law. 'The shari'a courts in Ramallah were limited to personal status issues of marriage and inheritance. While these courts continued to function throughout the second intifada, they had no jurisdiction over business and employment disputes, which were under the civil courts' (Kelly 2006: 34). If a Palestinian employee decided to take a legal claim over an employment dispute to an Israeli court, there might be issues in trying to get through Israeli checkpoints, and/or a long process, which might take years to adjudicate.

There are, of course, many inherent ironies in the system of employing Palestinians in Israel. 'The Israeli settlements depend on Palestinian labour, Israeli courts apply PNA law and, perhaps most importantly, the status of Israel as a 'Jewish state' depends on the PNA taking responsibility for the Palestinian residents of the West Bank. The spaces of Israeli citizenship depend on the non-spaces, non-citizens and non-rights of West Bank Palestinians' (Kelly 2006: 79). In other words, there is considerable exploitation of Palestinian labour, whilst aggravating the evident inequalities

and the potentiality of fear within the border regime. The lives of the residents of Bayt Hajjar were therefore marked by a promise of 'legal protection, but access to its potential benefits was mediated by a border regime established in the name of Israeli security' (Kelly 2006: 111). Some residents of Bayt Hajjar tried to manipulate the system by obtaining illegal driver-licenses, or holding onto foreign passports, and sometimes used Israeli identity-cards in order to bypass the Israeli checkpoints. These instabilities and contradictions also meant that for workers from Bayt Hajjar their legal status was always an uncertain question. 'The Israeli state made claims to the territory of the West Bank, but not to all the people in that territory. In doing so it tried to establish a border regime that allowed movement for Israeli citizens while preventing it for Palestinians. In this regime it was often unclear where the borders were or who was allowed to pass' (Kelly 2006: 111). As such, residents of Bayt Hajjar often lived in fear from the potential violence of the Israeli state.

Other employment cases involved Palestinian labourers and local chapters of the Palestinian General Federation of trade Unions (PGFTU) and a stone-cutting plant, Al-Quds factory over worker layoffs. In this instance, the PGFTU was able to successfully argue on behalf of the laid off workers despite the internal dynamics and divisions within the PGFTU. Such legal claims also point to larger issues whereby the PNA in its attempts to build a Palestinian state could not at the same time maintain its own civil courts as having sovereign status in 'the enforcement of the law' (Kelly 2006: 136). Palestinian institutions, and even bureaucratic bodies such as the PGFTU, 'had to compete and co-operate with groups rooted in a history of armed mobilisation that claimed to act in the name of the Palestinian people' (2006: 136). Therefore, many times bureaucratic processes were also reliant upon those supporting revolutionary struggle and other coercive practices while being mediated through local powerbrokers (2006: 137).

Similar tensions were also evident in the teachers' strike in the late-1990s between the Higher Co-ordinating Committee for Teachers (HCCT) and the Palestinian National Authority (PNA) over the implementation of the Civil Service Law. Kelly (2006: 150) explains: 'the Civil Service Law was not applied because it would have disadvantaged the very people who were supposed to enforce it'. In this instance, teachers with years of experience demanded more pay than bureaucrats working for the PNA because of the latter's supposed inexperience. Hence, assertions by the teachers were met with opposition as unwarranted demands against the interest of the Palestinian authority and the national interests of Palestinians. Such situations also demonstrated that under the Oslo Accords the PNA was not viewed as a state but as 'an interim authority'. The PNA was also 'weak, corrupt, and ineffective' (2006: 167-168). Thus villagers such as those in Bayt Hajjar were uncertain how to deal with the PNA: 'On the one hand it had many of the

manifestations of statehood, and therefore should be held accountable as other states. On the other hand it was not yet a state and therefore should not be expected to behave as one' (2006: 167). The teachers in Bayt Hajjar, thus, supported the PNA in its putting down the civil service strike even though knowing the weaknesses of the PNA as an institution.

In sum, Kelly's ethnography clarifies the meanings and limitations of the distribution of legal rights by Palestinians living in the West Bank by providing a clear scope of the Israeli-Palestinian conflict in the wake of the second intifada and the Oslo Peace Process. A brief comparison of Kelly's ethnography to Bornstein's (2002), *Crossing the Green Line between the West Bank and Israel*, brings out that Kelly's portrayal is far more rich as a study in the sense that it does not limit the border regime to economic explanations as Bornstein has done in his work. Of course, it also should be noted, Kelly's study pre-dates Hamas' election to power within the Palestinian Parliament in 2006 and the subsequent Fatah-Hamas conflicts in 2007. Perhaps in later printings Kelly will write an afterward to his study and update readers on the internal Palestinian conflicts and the recent struggles for nationalist identity. Other books such as Bucaille's (2004), *Growing Up Palestinian*, and Sufian and LeVine's (2007), *Reapproaching Borders*, should be read alongside Kelly's work to have a broader perspective on the Israeli-Palestinian conflict. The former book provides for an intimate portrayal of Palestinian violence from the biographies of young Palestinian activists and the latter for an understanding of the many other nuances of the borderland areas of Israel and the Palestinian territories.

In concluding, there is much to consider about the fecundity of interpreting varying legal domains and their social significance. As mentioned in the beginning understanding the subjectivities of terror suspects may help in counterterrorism measures; likewise analysing Palestinians from their subjective points of view may help in easing the regional conflict in Israel/Palestine. It is through analyses and comprehending subjectivities as part of socio-legal studies and legal anthropology, wherein the subjective person makes ethnography valuable. Both Donahue's (2007) and Kelly's (2006) ethnographies are therefore exemplar socio-legal studies for considering how the law may be ascertained and interpreted through what Aretxaga has termed the 'subjective dynamics' of law and society.

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Note

1. On 7 August, 1998, the U.S. Embassies in Nairobi, Kenya, and in Dar es Salaam, Tanzania, were bombed almost simultaneously by Al-Qaeda operatives, bringing worldwide attention to the security problems associated with this international terrorist network. Hundreds of people were killed in these mass tragedies and their victimization is portrayed with care in Hirsch's (2006) book.

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