

Alan Dershowitz Takes On the Terrorists

Book Review by Carl F. Horowitz

Is it possible from a civil-libertarian standpoint to support, in measured doses, the use of torture in obtaining a confession from a terrorist suspect? Even raising such a question, until recently, struck most Americans as odious. Yet since the attacks of September 11, 2001, and especially in the wake of the capture this year in Pakistan of al-Qaeda operations chief Khalid Shaik Mohammed, the putative mastermind of those (and other) attacks, it's hard to find someone who doesn't want to ventilate on the subject.

Mohammed's capture was part of a series of high-profile arrests, from London to Lackawanna, of Islamic terror cell members. What he tells the CIA, in addition to information stored in his computers, documents and cell phones, could prevent future atrocities and lead us to his boss, Osama bin Laden. Luckily, Mohammed has been accommodating. "He is giving up so much (information) that we can't scramble fast enough," reported one source. As it turns out, al-Qaeda is much closer than we thought to developing chemical and biological weapons. The CIA only had to employ sleep deprivation and temperature discomfort, at most mild forms of torture, to get Mohammed to talk. But suppose interrogators had to resort to severe techniques to get even rudimentary information. Legalized barbarism, right? Assume, then, an opposite scenario in which we err by omission and, refusing to consider torture of any sort, fail to prevent an act of terrorism costing hundreds of thousands, even millions, of lives. How would those sitting on their high moral dudgeon respond to *that*?

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Alan Dershowitz, Harvard law professor and popular author, for at least a year has been hearing the word "crackpot" from his fellow civil libertarians for trying to get people to think hard about the ugly choices terrorists have forced us to make. With *Why Terrorism Works*, he has put forth a rigorous and honest appraisal of the nature and consequences of responding in different ways to the terror masters. He understands that responses to terrorism, like terrorism itself, can differ by degree as well as type. And while torture might *appear* a cure worse than the disease, no moral equivalence can exist between terrorists and nation-states acting to thwart their ambitions.

The problem with terrorism, put simply, is that it works. That is to say, terrorism has achieved extraordinary success as a diplomatic tool because we have allowed it to do so. Too often, when a terrorist sets off a grenade in a café or a bus terminal, leaders of the free world try to find in such acts expressions of legitimate

grievances. If only we addressed the *root causes* of terrorism and negotiated with the terrorists, they imply, terrorists would refrain from inflicting further carnage. Such a response is a guaranteed recipe for surrender. "Every act of violence, criminality, and evil has root causes," writes Dershowitz. "By addressing and fixing the root causes of a *particular* terrorist group, we may sometimes ... reduce or eliminate the terrorist threat of that group ... But in doing so, we encourage other potential terrorists to resort to this unacceptable means of having their root causes addressed and fixed." Enabling Palestinian terrorists to enter the halls of power during the '70s boosted the confidence levels of contemporaries such as the Red Brigades and the IRA, and virtually assured the rise of Islamic fundamentalist monstrosities such as Hamas, Hezbollah and al-Qaeda.

Why Terrorism Works: Understanding the Threat, Responding to the Challenge

by Alan M. Dershowitz
New Haven, CT: Yale Univ. Press
271 pages, \$24.95



The age of terrorism as an instrument of foreign policy began on July 22, 1968, notes Dershowitz, when three armed terrorists belonging to the Popular Front for the Liberation of Palestine hijacked an Israeli jetliner from Rome to Tel Aviv. The terrorists commandeered the plane to Algiers, and held passengers and crew hostage for five weeks. They released the hostages after negotiating the release of their comrades from Israeli prison, plus winning their own immunity. It was a public-

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relations coup that quickly led to similar acts, worst of all the massacre of Israeli athletes by Palestinian terrorists at the 1972 Summer Olympics in Munich. Despite the Israeli government’s eventual hunting down and killing of escaped perpetrators, terrorism won the day. The Black September group, which carried out the massacre, took note of West Germany’s – and the world’s – timorousness. “The choice of the Olympics, from the purely propagandistic standpoint, was 100 percent successful,” noted a group communique. “It was like painting the name of Palestine on a mountain that can be seen from the four corners of the earth.” How contagious was government timidity? Of the 204 terrorists arrested outside the Middle East during 1968-75 only three remained in prison by the end of that period. Very often European governments happily released terror suspects immediately after a brief “interrogation.” The UN General Assembly, for its part, welcomed PLO Chairman Yasser Arafat as a guest speaker and conferred observer status upon his organization.

This passivity established a pattern that continues to this day, raising the issue of why civilized peoples insist on reading reasonable intentions into terrorist acts. Anti-Americanism, hatred of Israel, and radical Third World

anti-colonialism each offer some measure of explanation. Yet even taken together, a complete picture seems to be lacking. Dershowitz, a superb amateur psychologist as well as constitutional scholar, provides the missing link: the Stockholm Syndrome. In this scenario, hostages bond with their captors, and resist rescue, while the predators glow with invulnerability.

Sovereign nations in America, Europe, and elsewhere would seem as much subject to this syndrome as bank tellers or airline passengers. It is easy here in the U.S. to forget how many liberals in high positions during the late ‘60s and early ‘70s lauded the Black Panthers and the SDS Weathermen as noble, if misguided, messengers “trying to tell us something.” It is likewise easy to forget that far-right paramilitary groups, such as the Michigan Militia, strutted like peacocks immediately after the April 1995 Oklahoma City federal building bombing, knowing they were receiving aid and comfort from above. Then-House Speaker Newt Gingrich actually refused to allow Rep. (now Sen.) Charles Schumer, D-N.Y., to hold an official hearing on the dangers of the militia movement. Popular support for terrorists almost inevitably reaches a pinnacle when they win. Osama bin Laden likes to put it this way: “People prefer a strong horse to a weak horse.”

Jean Raspail’s classic novel, *The Camp of the Saints*, comes to mind. The insistence by terrorists that we adapt to *their* demands bears more than a passing resemblance to the lectures from the high priests of Diversity on our obligation to adapt to “inevitable” Third World mass immigration. As terrorists cannot be convinced to change their tactics any more than their beliefs, liberty-loving nations must avail themselves of this national Stockholm Syndrome, or what Canadian columnist Mark Steyn likes to call “Battered Westerner Syndrome.” The issue is not whether to crush terrorism, but how.

The U.S. conceivably could strike back at terrorism, argues Dershowitz, by emulating police states such as Egypt and Jordan, whose governments rarely lose sleep over such concepts as due process, reasonable search and seizure, and freedom of the press. We *could* institute tight media censorship, restriction of internal movement by citizens, monitoring of all phone, e-mail and other communications, punishment of family members of terror suspects, secret military tribunals, and torture. As much as one hates to admit it, even torture – the hard-core kind

– can foil a plot, hence the temptation to employ it almost indiscriminately. In 1995, for example, police in the Philippines captured a terrorist, and tortured him into confessing his role in a plot to assassinate the pope, crash eleven commercial jetliners into the Pacific Ocean, and ram a Cessna plane armed with explosives into CIA headquarters. Authorities for weeks beat, and broke, the suspect's ribs with a chair and a long piece of wood, forced water into his mouth, and crushed lighted cigarettes into his private parts until they got the lifesaving information, and turned him over to the U.S.

Dershowitz knows that by making such methods of confession routine we would cease to be a free people. Such a policy would bring no guarantee of results either. Some terror suspects will not crack no matter how far pushed; others may give false information to avert further punishment; still others may not be terrorists at all. So we have to consider context. Do we apply the same methods to a bit player like John Walker Lindh as to a key al-Qaeda operative? How can we be certain a suspect is being truthful? And at what point do we cease torturing a suspect, sensing that further efforts may be fatal as well as futile? Such questions don't yield quick answers. But in getting Americans at least to think in such terms, Dershowitz has taken a major step in explaining why the choice before us is *not* creating a police state vs. living in constant fear of becoming terror victims.

A sensible strategy to combat terrorism, one that respects the rights of the innocent, must make terrorists and their allies alone pay the price, the author argues. Many terrorists are rational enough to engage in a rough cost-benefit calculation of the certainty and severity of punishment, and as such can be deterred through such measures as tighter border controls and mandatory national ID cards. When we make terrorism too risky to get away with, those contemplating it often will not get beyond the talking stage. Other terrorists, however, fueled by maddened, apocalyptic visions of child sacrifice and mass murder as fulfilling a heavenly mandate, likely won't be dissuaded by policy changes. For them, Dershowitz advocates assassinating terrorist leaders rather than bombing terrorist enclaves, as the latter might inflict heavy civilian losses.

While Dershowitz lays out a commendable course of action, it's what he omits – the possibilities for immigration restriction – that is his key shortcoming. He fails to grasp that terrorism has occurred on our soil

because our lax post-1965 immigration policy allowed terrorists and many sympathizers to get in. He also supports another round of amnesty for illegal immigrants, citing as a reason that good citizens often are descended from those who enter under suspicious circumstances. Indisputably, this is so. But is admitting potential terrorists worth the gamble because their progeny might become model Americans? Common sense and experience would dictate otherwise.

That said, *Why Terrorism Works* remains a convincing brief for protecting the civilized world. Terrorists are both evil and powerful, and thus must be overpowered; negotiation only emboldens them. Few understand this as well as Dershowitz. But even the best-

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conceived set of deterrents and punishments may achieve only modest success if we fail to place curbs on entry by the foreign-born. All of the 9/11 hijackers came here legally on temporary visas, and blended easily into established Islamic Arab communities. There is no question al-Qaeda has a sizable share of sympathizers in the United States. Had we more carefully vetted potential entrants, all this talk of torture – not to mention the current reality of war against Iraq – might not exist.

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