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Democratic Responses to International Terrorism

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Democratic Responses to International Terrorism. Edited by David A. Charters. Irvington-on-Hudson NY: Transnational Publishers, Inc., 1991. Pp. viii, 361. Index. \$49.50.

This volume provides a multidisciplinary study of terrorism. The editor notes at the outset the difficulty of definition: "Terrorism is not a one-dimensional problem; it transcends many frontiers: political, jurisdictional, institutional, disciplinary and methodological. So approaching the problem from only one perspective may lead to only partial understanding and an incomplete strategy for developing constructive responses" (p. 3). Note the tendency of even this careful statement to assume that terrorism is always committed by *others*. Also, although legal definition and consideration may be implied by the terms political, jurisdictional, institutional and disciplinary, which are indicated as various dimensions of the problem, law is given short shrift in the study. The disciplines amply represented are criminology, history, international relations and political science. Each includes law as a component, but only on the periphery. Oftimes, indeed, there appears to be antipathy to or distaste for law and lawyers in the discussions.

While law is not a panacea, it is obviously a requirement for any attempt to prosecute perpetrators or even to impose sanctions on groups or nations. Thus, although legal analysis should not be the only type presented, this study would have been well served by fuller legal analysis.¹ Nevertheless, for lawyers and readers from disciplines other than that of the particular chapter's author, the studies are most interesting and helpful.

Some of the authors beg essential legal questions; a majority assume that terrorism is committed only by "enemies." On the other hand, other parts and some of the authors address this difficult set of issues very well. Most of the chapters are interesting from a technical, multidisciplinary perspective. The book's goals are to examine key aspects of terrorism and reaction to it, focusing on policy options, and to establish policy guidelines having universal relevance to dem-

ocratic states. The latter goal essentially assumes that terrorism will not be committed by a "democratic state." It is noted, however, that "terrorism implicitly involves the risk that violent provocation might lead to something far worse" (p. 2). Analysis of this *reaction* to terrorism and whether it constitutes terrorism itself would have been a worthwhile exercise. Indeed, one of the major contributions that democratic states can provide is a democratic response to terrorism. This includes (1) an internal reaction to the crime or threat of crime that does not involve overreaction and diminution of civil liberties and human rights, and (2) establishment of internal, democratic safeguards to protect against conduct at home or abroad that amounts to terrorism. This balanced response, however, requires a neutral (perhaps legalistic) definition.

Chapter 6, by William Vaughn, approaches this vision of democratic response. It discusses the Canadian approach, including the War Measures Act (WMA), the Emergency Preparedness Act, and the Emergencies Act. The WMA was criticized as a heavy-handed overreaction, and its successors are still criticized as giving the government too much discretion to define emergencies and to use a proclamation of emergency in order to take action that otherwise would violate rights and liberties (p. 165). Vaughn traces the history of English/Canadian reaction to terrorism and provides a good study of terrorist threats and national security, and what they mean in terms of "Reason of State."

Thomas Mitchell has the temerity to attempt a definition of terrorism (chapter 1). I applaud him. Many scholars retreat; some consider defining terrorism antagonistic to combating it, or at least an "intellectual quicksand." Some of Mitchell's chapter seems to consider "terrorism" a movement, rather than conduct. I suppose it is my predilection for law and the need to establish specific, concrete elements for prosecution and defense that makes me challenge this view. Mitchell correctly debunks the tendency to use the term "terrorism" to demonize groups, individuals or causes they represent. (Indeed, the term is often used to mask the terrorism committed by the one hurling the epithet.) Mitchell also sees definition as a tool for understanding—an analytical compass. It may be that, but it must be more if governments are to prosecute perpetrators or commit acts of war in reaction. Mitchell's definition expands Michael Stohl's. The latter provides that terrorism is "the purposeful act or the threat of the act

¹ See my attempts to do so in *TERRORISM, DRUGS, INTERNATIONAL LAW AND THE PROTECTION OF HUMAN LIBERTY*, chs. 1, 2 (1992). I have encouraged students to address the conundrums insofar as my coauthors would allow me to be so idiosyncratic in our course book, COVEY T. OLIVER, EDWIN B. FIRMAGE, CHRISTOPHER L. BLAKESLEY, RICHARD F. SCOTT & SHARON A. WILLIAMS, *THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS* (4th ed. 1995).

of violence to create fear and/or compliant behaviour in a victim, and/or audience of the act or threat."² Stohl's definition is a bit limited—What are its parameters? War fits the definition. So do many robberies, assaults, batteries, extortions, rapes, and so forth. Mitchell seems to accept this definition, but he calls for its expansion to meet international needs: It is "those terrorist actions carried out by either autonomous or state-supported actors affecting nationals of at least two states" (p. 16). Why would not arbitrary or purposefully directed violence by a state government *against its own nationals or residents* for the purpose of maintaining power, and of such a magnitude that it constituted genocide or threatened international peace, constitute international terrorism? I have so argued. Moreover, what about internal violence against innocent civilian citizens or residents for the purpose of eroding the power of the government? May that not equally be international terrorism, depending on its magnitude or international significance? Thus, the definitions here are deficient, although the attempt is praiseworthy.

Chapter 2 provides analysis of the nature of terrorism. It reviews the empirical research in the field in relation to trends in international terrorism, focusing on eight aspects of the phenomenon: a typology, the number of events and annual trends, the regional and geographical spread of terrorism, the tactics of terrorists, the targets, the various groups engaging in terrorism, the support of terrorist groups, and the future of terrorism (p. 21). This chapter also assumes that only "others" commit terrorism. It is generally just a review of the staid and standard approach.

Chapter 3, a review of terrorism and civil aviation, is fairly comprehensive and interesting. Chapter 4 is on counterterrorism policy making in relation to aircraft hijacking. This chapter seems a bit biased and limited, providing simple, uncritical musings on "successes from Grenada to the Philippines [and Libya]." Chapter 5, a study of counterterrorism contingency planning and incident management by Davidson Smith, is very good; it provides insight into proper reaction. Its purpose is to determine, not so much who is a terrorist, as how to react when we are faced with a terrorist incident. This

writer emphasizes the danger of overreaction that allows the perpetrators to succeed by creating an atmosphere of fear or media sensationalism, by causing the impression of governmental panic or weakness, by prompting governmental erosion of civil liberties, or even by causing the government to take terroristic action itself (pp. 123–34).

Chapter 7 contains an interesting assessment of the police and intelligence-gathering aspects of counterterrorism. Farson elucidates the reasons for confusion of these two roles and provides a framework for developing a sharper focus for making policy choices in this arena. His indications for a reassessment of roles are interesting and persuasive. Chapter 8, on counterterrorism intelligence—sources, methods, process and problems—is fascinating. Charters, the general editor, provides an excellent overview of these aspects of a technical arena that is both dependent on and productive of policy. The same is true of the last two chapters, on terrorism and the media and on military and paramilitary measures. In the latter, analysis of the legality of various measures would be interesting.

In sum, *Democratic Responses to International Terrorism* is interesting and worthy of reading, especially for lawyers, who can benefit from the insight of scholars and policy makers from other disciplines. While much of the book is descriptive, it contains useful analysis, and it is particularly enlightening to see the Canadian perspective on international terrorism.

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The Termination and Revision of Treaties in the Light of New Customary International Law. By Nancy Kontou. New York: Oxford University Press, 1994. Pp. 166. Index. \$55.

This carefully researched contribution to the expanding legal scholarship dealing with aspects of the relationship between treaties and custom examines an important and still-controversial issue in the field: how new customary law can terminate or modify prior, incompatible treaties. Although Kontou addresses the much-discussed questions of automatic termination or abrogation of treaties by supervening custom, and the relevance of fundamental change of circumstances and desuetude, she focuses chiefly on the conditions in which a state party may exercise the unilateral right to call for a treaty's termination or revision in the light of new customary

² See Michael Stohl, *Demystifying Terrorism: The Myths and Realities of Contemporary Political Terrorism*, in *THE POLITICS OF TERRORISM* (Michael Stohl ed., 3d ed. 1988).