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RESPONSE

Looking At the World Realistically

by Nicholas N. Kittrie

"While I admire Professor Kittrie's idealism, I vigorously dissent from his societal vision," stated Robert Friedlander in his Rejoinder. By calling my position—which would permit inquiry into the motives of political offenders¹—idealistic, he seeks to damn it with faint praise. I, on the other hand, do not recognize my posture as being even remotely idealistic. Idealism, or more precisely "un-realism," is represented, in my opinion, by Professor Friedlander and many others who believe in the myth of peaceful revolutions. I admire those who seek to ban violence and crime altogether from man's struggle for self-determination and human rights. Yet, the evidence is compelling that Isaiah's prophecy of the lamb and the lion roaming the pasture together remains somewhat premature.

Realities speak clearer than philosophical and academic generalities. I shall abide by the admonition of my colleague and will forego historical analysis in favor of contemporary reality. Jean-Claude Duvalier who, in 1971 and at the age of 19 became Haiti's president for life upon the demise of "Papa Doc," is reported to be systematically looting his impoverished realm.² Rumors of widespread corruption caused the IMF to withhold \$41 million credits.³ Some of these monies were contributed by American taxpayers. Ranking high in the presidential budget are also the needs of the *Volontaires de la Securite Nationale*—popularly known as the Tonton Macoute—a paramilitary private force created by Papa Doc which is the "eyes, ears and iron fist that keep the Haitian populace in line by sheer terror."⁴

In the face of these realities, if the exploited Haitian populace, or any segment thereof, were to become restless, were to rise, and were to seek

¹ I have suggested that offenders motives, be they humanitarian, as in euthanasia cases, or ideological and altruistic, as in political cases, are relevant to a court or jury in determining their guilt. I see no reason, constitutional or jurisprudential, why American or foreign law should continue to limit its attention to the narrow technical issues of an offender's intent, rejecting considerations of his underlying motive.

² Merlis, *Haiti: Government by Greed*, 220 NATION 231 (1978).

³ N. Y. Times, Dec. 7, 1980 § 3, at 1, col. 1.

⁴ Merlis, *supra* note 2.

changes (not by resorting to traditional editorial appeals in the Port-au-Prince newspapers or through orderly popular elections since these institutions no longer exist)—how would we respond? Would we along with the rest of the world community label the resisters as terrorists for taking up arms against their ruler, his corrupt regime and his army of terror?

"This issue, simply put," says Friedlander in his main argument, "is whether terror-violence utilized as a political weapon, wherever or whenever a dissident group is unable to achieve its . . . objectives by any legitimized means, is permissible within the framework of international law.⁵ Friedlander's absolute answer is: "never." My response—and I insist that it is a realistic reply, given the state of the world—remains: much the way domestic criminal law accepts justifiable self-defense, international law must accept the right of individuals and groups to engage in armed struggles against their exploiters.

"Rebellion to tyrants is obedience to God,"⁶ is the heritage we received from this country's third President, Thomas Jefferson. To me, his word still sounds true. Criminal law requires that measures of self-defense be proportionate to the violence wielded by the offender. International law has the equal right and duty to insist on proportionality. But only those of us who are smugly settled in the security of the "haves" and libertarian regimes—where peaceful power sharing and transition are indeed possible—can be sufficiently naive to dictate to the politically, socially and economically underprivileged of the world their means for redemption.

In 1937, after the assassination of King Alexander I of Yugoslavia, at Marseilles three years earlier, the representatives of 11 kings and 13 presidents met in Geneva to draft a convention.⁷ Under the League of Nations' auspices, they set out to prohibit the causing of death or grievous bodily harm to heads of state and all other public functionaries. They also defined as terrorism any destruction of or damage to public property. Public incitement to such acts was also designated terrorism. India was the only participating nation which eventually ratified the convention since the coming of World War II made this effort moot.

Viewing the League of Nations convention today, from the vantage point of some 40 years of subsequent historical development, the shortcomings of that effort are readily apparent. The attempted World War II assassination of Hitler and the subsequent successful execution of Musso-

⁵ Friedlander, *Terrorism and National Liberation Movements*, 13 CASE W. RES. J. INT'L L. 281 (1981).

⁶ Letter from Thomas Jefferson to Edward Evertt (Feb. 24, 1823), reprinted in J. BARTLETT, *FAMILIAR QUOTATIONS* 920 (1980).

⁷ Convention for the Prevention and Punishment of Terrorism, 7 INT'L LEGIS. 862-78 (M. Hudson ed. 1941).

lini could have readily qualified as internationally condemned terroristic acts under the proposed League convention. Many of the post-Second World War liberation movements would certainly have been defined as terroristic under such a definition. Broadcasting to an oppressed people to encourage them to rise against an exploiting regime would have been condemned as an incitement to commit international crime. Thus, it is little wonder that the 1937 document received so little acceptance. The League convention was clearly predicated on the maintenance of the pre-Second World War status quo and reflected a willingness to label any future revolutionary or national liberation movement as terrorist.

Present efforts to combat terrorism must be more realistic, as well as more precise and discriminating. Labeling as terrorists all those who struggle for more racial, religious, economic or ethnic justice (and who resort to wars of national liberation and insurgency, or to guerrilla warfare in response to regimes which impose reigns of terror) will not serve the needs of world order. The 1978 European Convention on the Suppression of Terrorism recognizes the need for flexibility.⁸ Although it defines aircraft hijacking, attacks upon diplomatic personnel and hostage-taking as acts of terrorism which exclude their perpetrators from the benefits accorded to political offenders under international extradition law, the Convention, nevertheless, specifies the right of the signatories to refuse the extradition of those whom they consider political offenders.⁹ Similarly, I remain firm in my conviction that the future reduction of the hazards of international terrorism cannot be attained through wholesale condemnation of any and all implementation of unlawful and violent means.

In a less than perfect world, neither domestic nor international law can proclaim absolute standards. The law should seek, instead, to create and implement balancing tests. In the case of political violence, the balance should be struck between the misconduct of individuals and the misconduct of their oppressors, be they other individuals or the state.

⁸ European Convention on the Suppression of Terrorism, entered into force Aug. 4, 1978, E.T.S. No. 90.

⁹ *Id.* at art. 2.

