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FACULTY COMMENT

Sowing the Wind: Rebellion and Violence in Theory and Practice*

ROBERT A. FRIEDLANDER**

For they have sown the wind, and
they shall reap the whirlwind

Hosea 8:7

"I have had it with terrorism."¹ This recent statement by President Gerald R. Ford, quintessentially reflects the constant concern, the omnipresent fear, and the intense frustration of both governments and private citizens over the continuing threat of global terror-violence. Not only democracy, but the very concept of the state itself as the administrative custodian of political power is presently under attack in all areas of the world.² Public protest by bomb and by bullet rather than by ballot and by peaceful demonstration has become an all-too familiar symbol of the last decade. A very real spectre haunting the corridors of power in this age of nuclear stalemate is the feeling that "terrorism will become more than a sporadic disruption to law and order; it will menace the very survival of civilization itself."³

Terrorism, either national or international, is primarily "a weapon of the weak."⁴ It is the strategy by which dissident political groups, unable to achieve power or to influence gov-

* CROZIER, B., *A THEORY OF CONFLICT*, Charles Scribner's Sons, New York, NY 10017 (1974), xvii, 245 p.; BASSIOUNI, M.C. (Editor), *INTERNATIONAL TERRORISM AND POLITICAL CRIMES*, Charles C. Thomas, Springfield, IL 62703 (1975), xxvi, 594 p.; ALEXANDER, Y. (Editor), *INTERNATIONAL TERRORISM: NATIONAL, REGIONAL, AND GLOBAL PERSPECTIVES*, Praeger Special Studies, Praeger Publishers Inc., New York, NY 10003 (1976), xx, 390 p.

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1. Speech before the South Florida Chapter, Federal Bar Association, reported in *Chicago Tribune*, Feb. 15, 1976, at 3, col. 4.

2. B. CROZIER, *A THEORY OF CONFLICT* 3-12 (1974) [hereinafter cited as CROZIER].

3. Alexander, *Introduction*, in *INTERNATIONAL TERRORISM* xvii (Y. Alexander ed. 1976) [hereinafter cited as ALEXANDER]. This feeling was shared by many of the participants at the Department of State Conference on International Terrorism, Washington, D.C., Feb. 25-26, 1976.

4. CROZIER, *supra* note 2, at 129.

ernmental policy through legitimate means, can coerce governments, overturn established regimes, and intimidate entire peoples. Although a precise legal definition has yet to be formulated, international terrorism may be said to be that “[i]ndividual or collective coercive conduct employing strategies of terror-violence which contain an international element or are directed against an internationally protected target and whose aim is to produce a power-oriented outcome.”⁵ It is above all else a technique “for demolishing a State.”⁶

The underlying issue—and one that may never be resolved—is how to divorce terrorism, which is essentially criminality,⁷ from rebellion or revolution, which are generally recognized remedies in international law.⁸ When is rebellion legally and morally permissible? Under what conditions can revolution be legitimized? Can revolutionary violence ever be justified? Or, to view the other side of the coin, “[w]hen is it *wrong* to rebel?”⁹ How does one reconcile America’s revolutionary origins and Thomas Jefferson’s injunction that “[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants” with the United States Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism?¹⁰

The answer, if there is an answer, is that although rebellion cannot be separated from conflict, violence must not be directed at innocent parties. To “endanger, threaten or take

5. Bassiouni *et al.*, *Final Document*, in INTERNATIONAL TERRORISM AND POLITICAL CRIMES xiv (M.C. Bassiouni ed. 1975) [hereinafter cited as BASSIOUNI]. Cf. Paust, *A Survey of Possible Legal Responses to International Terrorism: Prevention, Punishment, and Cooperative Action*, 5 GA. J. INT’L & COMP. L. 431, 432-35 (1975) [hereinafter cited as Paust].

6. CROZIER, *supra* note 2, at 119.

7. Friedlander, *Terrorism*, 2 BARRISTER 11 (1975) [hereinafter cited as Friedlander]; Murphy, *The Role of International Law in the Prevention of Terrorist Kidnapping of Diplomatic Personnel*, in BASSIOUNI, *supra* note 5, at 305-09; S. SCHAFER, *THE POLITICAL CRIMINAL: THE PROBLEM OF MORALITY AND CRIME* (1974) [hereinafter cited as SCHAFER].

8. Cf. I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 89-108 (2d ed. 1973); J.L. BRIERLY (H. Waldock ed.), *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* 137-61 (6th ed. 1963); *THE INTERNATIONAL LAW OF CIVIL WAR* (R. Falk ed. 1971).

9. CROZIER, *supra* note 2, at 11.

10. Cf. Kutner, *A Philosophical Perspective on Rebellion*, and Murphy, *United Nations Proposals on the Control and Repression of Terrorism*, in BASSIOUNI, *supra* note 5, at 51-61, 493-506; and CROZIER, *supra* note 2, at 13-31.

innocent human lives and to jeopardize fundamental freedoms" of the individual is to disregard public international law, declarations and resolutions of the United Nations relating to human rights, and the basic provisions of the United Nations Charter.¹¹ If innocent civilian populations are to be subjected to random or selective terrorist attack, then terror-violence becomes destructive not only of law and legal systems but potentially of modern civilization itself.

Nonetheless, terrorism has become inextricably intertwined with so-called national liberation movements. On the one hand, to quote the U.N. Secretariat's study of the origins and causes of international terrorism, "the legitimacy of a cause does not in itself legitimize the use of certain forms of violence, especially against the innocent." However, force and, by implication, violence become legitimate if they are utilized by national liberation movements asserting the principles of equal rights and self-determination of peoples.¹² In fact, the United Nations has consistently and repeatedly supported a lawful force exception when it involves "the right to self-determination" and the struggle of "peoples under colonial and racist regimes or other forms of alien domination."¹³ The most pressing problem, which has yet to be resolved, is how to balance the equities between the U.N.-asserted right to self-determination on the one hand, and the maintenance of a minimum standard of world public order on the other.

If terrorism "is normally a central feature of revolutionary war" and a constant element in an ambience of domestic tur-

11. United Nations Secretariat, *Measures to Prevent International Terrorism Which Endangers or Takes Innocent Human Lives or Jeopardizes Fundamental Freedoms, and Study of the Underlying Causes of Those Forms of Terrorism and Acts of Violence Which Lie in Misery, Frustration, Grievance and Despair and Which Cause Some People to Sacrifice Human Lives, Including Their Own, in an Attempt to Effect Radical Changes*, U.N. Doc. A/C. 6/418, Nov. 2, 1973, reprinted in part in BASSIOUNI, *supra* note 5, at 5-10.

12. *Id.*, at 6-9.

13. *Cf. Basic Principles of the Legal Status of the Combatants Struggling Against Criminal and Alien Domination and Racist Regimes*, G.A. Res. 3103 (1973), reprinted in BASSIOUNI, *supra* note 5, at 213-15; *Report of the Special Committee on the Question of Defining Aggression*, 29 U.N. GAOR Supp. 19, U.N. Doc. A/9619, Dec. 14, 1974. For a general analysis of this important declaration, see Comment, *The United Nations Definition of Aggression: A Preliminary Analysis*, 5 DENVER J. INT'L L. & POL. 171 (1975).

moil,¹⁴ then what of legality, whether international or domestic? Must one stand aside until the revolutionary process, to paraphrase Vergniaud, devours everyone? If the cause is anti-colonial under present international law, are there no legal norms that can be applied against the slaughter of the innocent? The answer, of course, is that remedies are possible, if they are equitably applied. Minimum standards of conduct could be developed which would then determine legal guidelines for every member of the world community.¹⁵ Oppressive regimes need not be assisted, insurrections and rebellions are distinguishable from civil wars, and external participation in internal strife can be governed by established principles of international law. "The essential task is to determine the dividing line between civil strife which is basically criminal and that which is an expression of the will of the people."¹⁶

Is an armed revolt *prima facie* a war of national liberation? Is a war of national liberation necessarily a civil war? And what of subversion within the broader rubric of internal war?¹⁷ During the past fifteen years a common bond linking all domestic categories of conflict has been that of terror-violence, with the notable exception of the Biafran secession and Nigerian civil war. In Biafra, as a matter of strategy and tactics, terrorism was consciously avoided. Years later, however, a former high official in the Biafran revolutionary government confided to this writer that "Biafra made a mistake in not trying terrorism. We were wrong. If we had terrorized, we would be independent today. The PLO has shown how effective the use of terror can be in the international arena."¹⁸

Small wonder, then, that the chief observer of the PLO at

14. CROZIER, *supra* note 2, at 127-28.

15. See the proposals of Milte, *Terrorism and International Order*, 8 ANZAS J. CRIMINOLOGY 101, 111 (1975), and Paust, *supra* note 5.

16. Novogrod, *Internal Strife, Self-Determination, and World Order*, in BASSIOUNI, *supra* note 5, at 113. Paust, *supra* note 5, at 459-62, is especially critical of those who would link together self-determination and terror-violence. For a more detailed analysis of self-determination, see Friedlander, *Self-Determination: A Legal-Political Inquiry*, 1975 DET. COL. L. REV. 71.

17. Cf. Dinstein, *Terrorism and War of Liberation: An Israeli Perspective of the Arab-Israeli Conflict*, in BASSIOUNI, *supra* note 5, at 155-59 [hereinafter cited as Dinstein]; CROZIER, *supra* note 2, at 199-211.

18. Statement to the author by C.C. Mojekwu, former Minister of State, Government of Biafra, Jan. 22, 1976. See also J. DE ST. JORRE, *THE BROTHERS' WAR: BIAFRA AND NIGERIA* (1972).

the United Nations claims that “[v]iolence is an essential part of a liberation movement.”¹⁹ The quarrel over who is terrorizing whom in the Middle East has been inexorable, and is by now self-defeating. Whether it is a question of two conflicting claims of right or one of remedying legal (and also moral) wrongs, the Palestinian-Israeli controversy has become part of “super-power” politics and ultimately will be resolved by “super-power” pressures. Arguments can be put forth on both sides, but two inescapable facts remain. Israel as a national entity does exist, regardless of the desires of the Arab leaders, and the April 1976 municipal elections on the West Bank represent a growing Palestinian national consciousness, however much the Israeli government may wish otherwise.

Since 1969, with Israel as the catalyst, a Palestinian national movement has undeniably developed, and the United Nations General Assembly has gone on record, in more than a dozen instances, in support of the right of the Palestinian people to self-determination.²⁰ Given the current dynamics of the international community, terror-violence in the Middle East has been “the vehicle of organized insurgency,” and is, “at its core, a movement toward national sovereignty.”²¹ The unresolved issue is whether terrorism—largely in the form of kidnapping and murder—even if for political ends, should be legitimized as an instrument of nation-building. Is not terrorist activity a political maneuver designed to disrupt personal freedoms and to impair fundamental human rights? If so, then has not the world community opened a political Pandora’s Box, the effect of which may not be readily understood, especially by those who prefer short-run advantage over long-term possibilities? In the words of Raymond Aron, “if men do not know what they can expect from each other, they [can] no longer live in [civilized] society.”²²

19. Kirk, *PLO's Mild-Mannered Aggressor*, Chicago Tribune, Apr. 4, 1976, § 2, at 2, col. 4 (interview with Zehdi Labib Terzi).

20. Cf. Dinstein, *supra* note 17; Mallison & Mallison, *An International Law Appraisal of the Juridical Characteristics of the People of Palestine: The Struggle for Human Rights*, in BASSIOUNI, *supra* note 5, at 160-90; Alexander, *From Terrorism to War: The Anatomy of the Birth of Israel*, and Weisband & Roguly, *Palestinian Terrorism: Violence, Verbal Strategy and Legitimacy*, in ALEXANDER, *supra* note 3, at 211-310.

21. Weisband & Roguly, *id.*, at 259.

22. R. ARON, *PEACE AND WAR: A THEORY OF INTERNATIONAL RELATIONS* 170 (1966).

Deprived of mass communications, terrorism becomes a weapon of the impotent. Terror-violence relies almost exclusively on psychological impact to convey its awful message.²³ Modern technology has greatly assisted the "public purpose terror" of those dissident groups who consider themselves excluded from the mainstream of their country's political life.²⁴ Criminal violence is not purposeful in the broad sense, but rather purposeless—aside from the lure of financial gain or the inner satisfaction of revenge—and it is often senseless. "Terrorism is different from criminal violence in that its purpose is symbolic, its means psychological, and its ends political."²⁵ The medium is truly the message when terror-violence becomes linked with mass communications.

The journalistic glorification of the strange saga of the self-styled Symbionese Liberation Army and of Patty Hearst has disoriented public opinion to such an extent that the victims are subordinated to the victimizers. Never a true revolutionary terrorist movement, the SLA has received a quantum of attention from the news media that makes them appear to have been a major urban guerrilla movement.²⁶

Television, especially, has played an important role in confusing the public mind and promoting violence as an accepted way of life. Does not violence breed violence, and if crime is taken to be the natural order of things, does not this very view engender still more criminal attacks?²⁷ If Western pluralistic societies are confronted with "a saturation by images of violence," then does not some sort of regulation or control become inevitable to ensure survival? The unarticulated premise is that a political price must, of necessity, be paid for regulation

23. Cf. CROZIER, *supra* note 2, at 119-32; Hutchinson, *The Concept of Revolutionary Terrorism*, 16 J. CONFLICT RES. 383 (1972); E. WALTER, *TERROR AND RESISTANCE: A STUDY OF POLITICAL VIOLENCE WITH CASE STUDIES OF SOME PRIMITIVE AFRICAN COMMUNITIES* Chs. 1-3 (1969); R. MOSS, *THE WAR FOR THE CITIES* Chs. 1-2 (1972).

24. The term is taken from Mallison & Mallison, *The Concept of Public Purpose Terror in International Law: Doctrines and Sanctions to Reduce the Destruction of Human and Material Values*, in BASSIOUNI, *supra* note 5, at 67 [hereinafter cited as Mallison & Mallison].

25. Weisband & Roguly, *Palestinian Terrorism: Violence, Verbal Strategy, and Legitimacy*, in ALEXANDER, *supra* note 3, at 258.

26. Johnpoll, *Perspectives on Political Terrorism in the United States*, in ALEXANDER, *supra* note 3, at 40-41. See also editorial in the *Denver Post*, Sept. 21, 1975, at 23, col. 1.

27. Cf. CROZIER, *supra* note 2, at 27-31, 228-30; Friedlander, *supra* note 7, at 12.

and control. The more effective the restraints placed upon the communications industry, the greater the reduction of civil liberties for the individual citizen.

Can individual or group terrorist activity be at all construed to constitute war crimes, crimes against humanity, or crimes of aggression?²⁸ Or, in the alternative, should there be a serious effort made by the international community to reduce the incidence of terrorism by invoking the laws of war and applying them to guerrillas and organized political dissidents? Are the laws of war relevant to control of terrorism, both foreign and domestic? The prevailing view is that "[t]he use of terrorist methods by guerrillas deprives the movement of the privileged status which is conferred to guerrilla warfare by the Geneva Convention. . . ."²⁹ The countervailing argument is that the protection afforded by Articles 3 and 4 of the Geneva Convention should be extended to participants in national liberation movements. The terrorist acting as liberationist, these advocates argue, is entitled to be treated according to the minimum standards for protection of prisoners established by the Geneva Convention of 1949.³⁰

The answer will inevitably depend upon the focus of the inquiry. If emphasis is placed upon the causes of violence and the motive of the actor, then a broadly-based political offense exception is certainly permissible and, perhaps even desirable. But, if the emphasis is centered upon the acts of violence and the resultant social harm, then a different conclusion must be reached. Terrorism is purposely inhumane; it is fundamentally the brutalization and the deprivation not only of human rights, but of life itself. "With the methods used by the IRA against the English people, or the methods used by the PLO against Israeli civilians, even foreign travellers in Israel, we reach a kind of terrorism beyond civilized conception."³¹

28. Tran-Tam, *Crimes of Terrorism and International Criminal Law*, in 1 A TREATISE ON INTERNATIONAL CRIMINAL LAW 499-500 (M.C. Bassiouni & V. Nanda eds. 1973) [hereinafter cited as BASSIOUNI & NANDA]. See also CROZIER, *supra* note 2, at 17, 29-31, 130; Toman, *Terrorism and the Regulation of Armed Conflicts*, in BASSIOUNI, *supra* note 5, at 143, 146-47, 152.

29. *Id.*, at 145-46.

30. Lahey & Sang, *Control of Terrorism Through a Broader Interpretation of Article 3 of the Four Geneva Conventions of 1949*, in BASSIOUNI, *supra* note 5, at 191-200; Mallison & Mallison, *supra* note 24, at 79-83.

31. Howe, *The Ultimate Price of Random Terror*, SKEPTIC, Jan./Feb. 1976, at 15.

The issue of maintaining a political offense exception to the established legal maxim, *aut dedere aut punire*, (extradite or prosecute), remains a divisive one in international law. For example, no one as yet has been able to develop a workable definition of political crimes. Even in the last quarter of the twentieth century, there are no clear guidelines existing in extradition law and practice. In fact, the multiplicity of competing interests and conflicting theories offers a serious impediment to effective criminal law enforcement and to the stability of world public order. The very concept of a political crime has been a two-edged sword from the era of the French Revolution and the Belgian political offense exception statute of 1833. The still unresolved question is whether protections offered the "ideologically motivated offender" will derogate individual rights and personal freedoms. In other words, does national self-interest outweigh the need for a universal procedural due process?³²

The Canadian Federal Court of Appeal has provided a meaningful standard within the context of Anglo-American law. Urban terrorists are held to be common criminals. Murder or the indiscriminate, perpetration of serious bodily harm cannot be considered acts in furtherance of a political uprising. Revolutionary activity must not be confused with homicidal behavior.³³ Thus, to grant any excusing condition to political offenders who have inflicted death and destruction upon innocent third parties is a patent denial of the rule of law, whether national or international. Even V.I. Lenin, before the Bolshevik seizure of power in 1917, eschewed terror-violence as a substitute for revolutionary agitation.³⁴

What, then, is being done; and even more important, what can be done to inhibit the incidence and the increase of terrorist activity? Terrorism, whether national, international, or transnational,³⁵ is on the rise with a concomitant threat to the

32. BASSIOUNI, *The Political Offense Exception in Extradition Law and Practice*, in BASSIOUNI, *supra* note 5, at 398-447. See also M.C. BASSIOUNI, *INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER* 368-434 (1974).

33. *In re State of Wisconsin and Armstrong*, [1972] 28 D.L.R.3d 513 (1972); See also Green, *Terrorism: The Canadian Perspective*, in ALEXANDER, *supra* note 3, at 6-10.

34. V.I. LENIN, *WHAT IS TO BE DONE? BURNING QUESTIONS OF OUR MOVEMENT* 74-77 (New World Paperback Ed. 1969).

35. CROZIER, *supra* note 2, at 109, 130, distinguishes transnational from interna-

maintenance of world public order.³⁶ Creation of an international criminal code defining specific acts of terror-violence as international crimes,³⁷ establishing an international criminal court with jurisdiction over international criminal offenders,³⁸ and proscribing terrorist attacks upon diplomatic personnel,³⁹ have all been subjects of draft statutes and conventions, but they have yet to be enacted into an operative international legal system, and the question of enforcement has inspired continuing debate and profound disagreement. Whatever else may be said, making government officials a protected class while failing to provide for the security of innocent civilians is certainly not the answer.

Three civil aviation conventions have been concluded: Tokyo (1963), The Hague (1970), and Montreal (1971). Yet, there is not at present "any really concerted and energetic international control action, as to aerial piracy, that really has some teeth in it. . . ." ⁴⁰ The contracting state parties have agreed to place conduct which endangers the safety of aircraft within their domestic criminal jurisdiction, but there is no special protective status provided for the passengers or the crew by the state to which the aircraft has been illegally diverted. Likewise, there is no "sanctions convention" directed against states which grant safe haven to skyjackers, although the United States, Canada, the Netherlands, and the United Kingdom have vigorously proposed such action. The United States

tional terrorism in that the former is the conduct of individuals or disparate groups, while the latter indicates a world-wide organizational structure, such as the Socialist or Communist Internationals.

36. A conclusion reached by the Department of State Conference on International Terrorism, Washington, D.C., Feb. 25-26, 1976. It was almost the only point upon which the participants could agree.

37. Palmer, *Codification of Terrorism as an International Crime*, in BASSIUNI, *supra* note 5, at 507-18 (draft statute proposed); Johnston, *Problems in the Enforcement of World Criminal Law*, 8 ANZAS J. CRIMINOLOGY 87, 96-100 (1975).

38. De Schutter, *Problems of Jurisdiction in the International Control and Repression of Terrorism*, in BASSIUNI, *supra* note 5, at 377-90; Kos-Rabcewicz Zubkowski, *The Creation of an International Criminal Court*, in BASSIUNI, *supra* note 5, at 519-36.

39. Murphy, *The Role of International Law in the Prevention of Terrorist Kidnapping of Diplomatic Personnel*, in BASSIUNI, *supra* note 5, at 285-313. Cf. C.E. BAUMANN, *THE DIPLOMATIC KIDNAPPINGS: A REVOLUTIONARY TACTIC OF URBAN TERRORISM* (1973).

40. E. McWHINNEY, *THE ILLEGAL DIVERSION OF AIRCRAFT AND INTERNATIONAL LAW* 116 (1975).

has set an example in this regard by enacting more stringent measures than any other country aimed at control of air piracy.⁴¹ It is regrettable that the proposal of the International Federation of Airline Pilots to suspend all commercial service to any country providing refuge for skyjackers has not been implemented, for this would serve notice to all nations that sheltering such offenders would be a tortious act subject to international economic sanctions.

At issue throughout this entire discussion is the role of law and its operative limitations. As long as "what is terrorism to some is heroism to others," as long as the preservation of minimum world public order is subordinated to the national interest, and as long as there is no international superstructure which is capable of dealing with international crime, the strategies of terror-violence are certain to increase. The hard fact and cold reality is that the maintenance and preservation of international law and order can only be achieved through a voluntary reduction of national sovereignty.⁴²

Liberal democracy also faces some hard choices. In order for pluralistic societies to deal with the challenge of rebellion and terror-violence in the last quarter of the twentieth century, the fundamental freedoms which they take so much for granted will have to be restricted in some measure—and most likely reduced—if the current attack on the international state system is to be brought under control. The cost of waging terrorism, for governments and people, is high. Rebellion and terror-violence are, in effect, war waged against the state. Thus, "the real problem, for a pluralistic society, is how to contain subversion while maintaining the freedoms and avoiding the alternative dangers of the authoritative solution or the totalist horror."⁴³

41. Cf. Evans, *Aircraft Hijacking: What is Being Done*, and Lee, *International Suppression of Hijacking*, in BASSIOUNI, *supra* note 5, at 219-56; Sundberg, *Piracy and Terrorism*, in 1 BASSIOUNI & NANDA, *supra* note 28, at 455-90; and Finger, *International Terrorism and the United Nations*, in ALEXANDER, *supra* note 3, at 327-46.

42. Bassiouni, *Methodological Options for International Legal Control of Terrorism*, in BASSIOUNI, *supra* note 5, at 485-92; Friedlander, *Power Politics and the Rule of Law: Professor Schwarzenberger Reconsidered*, 24 DE PAUL L. REV. 836 (1975).

43. CROZIER, *supra* note 2, at 205. Cf. Alexander, *Introduction*, in ALEXANDER, *supra* note 3, at xvi-xix. The latter reluctantly concludes: "[a]ll that can be done is to make terrorism less inviting and more costly to its precipitators and supporters."

Political violence will abide no limitations placed upon it. Though very few political criminals ever “achieve the monumental climax of their efforts,” their historical role has been to act out their fantasies encompassed by an all-consuming hatred.⁴⁴ Those who worship the cult of force ultimately make force itself the greater truth. Destruction becomes a way of life and a way of death. In the words of historian E.J. Hobsbawm, the worst kind of violence “is the violence which gets out of anyone’s control.”⁴⁵ Terrorism throughout the world is getting out of control. If not restrained in time the end result may leave humanity a Hobson’s choice—either a global Orwellian future, or none at all.

44. SCHAFER, *supra* note 7, at 15.

45. E. HOBSBAWM, *REVOLUTIONARIES: CONTEMPORARY ESSAYS* 215 (1973).

