The Thornburgh Doctrine, spiritual heir of Brezhnev and Ceausescu

by Edwin Vieira, Jr.

Within the last few months, a new theory of international law—or, perhaps more accurately put, international lawlessness—has emerged from the fertile minds of Attorney General Richard Thornburgh of the United States Department of Justice and Director of Central Intelligence William Webster of the Central Intelligence Agency. According to this "Thornburgh Doctrine," the United States enjoys an *exclusive* privilege and power, within its spheres of influence throughout the world,

- to *assassinate* leaders of foreign countries in the course of instigating or aiding coups d'états in those countries;
- to *kidnap* alleged fugitives from United States justice from foreign countries, without the permission of the governments of those countries;
- to *invade* with United States military forces any country in which such fugitives may be found; and
- to *offer immense bounties*—not unlike the reward the late Ayatollah Khomeini promised for Salman Rushdie—for the apprehension of such fugitives (apparently, alive *or dead*).[1]

The world has just witnessed the first major implementation of the Thornburgh Doctrine in the recent invasion of Panama, the installation of a new regime subservient to the Bush administration, and the seizure of Gen. Manuel Noriega for trial in the United States on charges of criminally trafficking in narcotics. The ultimate significance—and danger—of the Thornburgh Doctrine, however, lies behind these spectacular media-events in the less-well-known but equally perverse jurisprudential philosophy of Thornburgh and other members of the Bush administration responsible for what has happened, and what surely will happen hereafter, to the standing of the United States in the community of civilized nations.

The MacNeil/Lehrer Newshour of New Year's Day cast a revealing light on this philosophy, in the following interview of Frank Gaffney, former Acting Assistant Secretary of Defense for International Security Policy during the Reagan administration:

Mr. MacNeil: . . . if the Vatican has offered [General Noriega] safe conduct to a third country, does the United States have a right to grab him?

Mr. Gaffney: I think you get into some sticky norms of diplomatic procedure here.

Mr. MacNeil: Or legality here.

Mr. Gaffney: Well, the international legal question seems to me much less important than is the right outcome. . . . I think there is no other third country . . . that has either agreed to take him and that has assured that he will be subjected to the proper judicial proceedings for the crimes he has committed other than the United States, so what we are talking about is trying to ensure, international law aside, if necessary, that justice is served. . . .[2]

Three vicious principles stand out quite plainly in this candid statement of the philosophical essence of the Thornburgh Doctrine—namely,

1) that "justice [may be] served" precisely by putting "international law aside, if necessary";

2) that "the right outcome" is more important than "the international legal question"; and

3) that "the right outcome" requires subordination of everything else to the domestic laws and "proper judicial proceedings" of the United States. Overall, these principles expose the Thornburgh Doctrine as a restatement of the age-old formula for oppression: "Might makes right."

I

In the international arena, the Thornburgh Doctrine is thus an admission that the United States has become, and intends to remain, an *outlaw nation*, lawlessly roving throughout the world committing acts of violence and outrage

to obtain what it considers "the right outcome."[3]

This is no "simplistic" or "extremist" conclusion, either. International law, "the law of nations," is

> of three kinds. . . . The first is universal, or established by the general consent of mankind, and binds all nations. The second is founded on express consent, and is not universal, and only binds those nations that have assented to it. The third is founded on tacit consent; and is only obligatory on those nations [which] have adopted it.[4]

Self-evidently, the Thornburgh Doctrine has not received "the general consent of mankind," so as to "bind all nations." Neither has any nation given "express consent" to it. Nor is it reasonable to believe that any nation has given, or would ever voluntarily give, "tacit consent" to a doctrine that licenses one country, the United States, unilaterally and arbitrarily to impose its domestic laws on the citizens—and, indeed, leaders—of other countries by way of assassination, kidnapping, or seizure by military forces within the territory and in defiance of the laws of those countries. So, the Thornburgh Doctrine is plainly outside of the "law of nations" by definition.

It also contradicts that law in every important particular. *First,* by "sit[ting] in judgment on the acts of the government[s] of [other States] done within [their] own territor[ies]," the Thornburgh Doctrine arrogantly claims to negate the principle that "every sovereign State is bound to respect the independence of every other sovereign State."[5] Thus, it asserts that the United States is the only truly *sovereign* nation on earth, all other nations having been divested of their sovereignties to the extent that their citizens (or, worse yet, leaders) may be assassinated, kidnapped, or arrested in their own countries by armed agents of a hostile foreign power (the United States).[6]

Second, by proclaiming that the United States alone may prescribe rules for all other nations, impose those rules on dissenting states through military force, and otherwise divest such states of the rights to which the common consent of mankind entitles them, the Thornburgh Doctrine denies what international law extols as "the perfect equality of nations."[7] It thus implicitly asserts that through "superior power" enforced by military might the United States "can create obligations for the world," and enforce them, without "the concurrent sanction of [any or all other] nations"[8]—thus setting up the United States as the world's supreme legislator, policeman, judge, and executioner, from the *diktats* and *ukases* of which no appeal is even theoretically possible.

Third, by pretending that the domestic laws of the United States operate within other nations, without those nations' consent and in derogation and even overthrow of their own laws, the Thornburgh Doctrine nominates the United States as the supreme "judge in its own case" of where, when, why, and for how long its laws will supervene the laws and extinguish the rights of the citizens of other countries. Thus, the Thornburgh Doctrine attempts to substitute for the traditional "comity of nations"[9] in a community of equals the cringing subservience of all other nations to whatever demands the United States threatens to enforce with stealth bombers.


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Attorney General Richard Thornburgh. "In the international arena, the Thornburgh Doctrine is an admission that the United States has become, and intends to remain, an outlaw nation, *lawlessly roving throughout the world committing acts of violence and outrage to obtain what it considers "the right outcome."*

Fourth, by preemptively declaring a unique right in the United States to launch military invasions into "foreign territor[ies] against the will of [their] sovereign[s]" specifically to enforce laws of the United States that those sovereigns refuse to recognize as binding on their own citizens, the Thornburgh Doctrine attempts to immunize the United States from the general condemnation of international law that "an army marching into the dominions of another sovereign, may justly be considered as committing an act of hostility."[10] Thus, the Thornburgh Doctrine licenses the United States to engage in aggression in general and legalistic imperialism in particular.

In sum, the Thornburgh Doctrine literally eviscerates the corpus of international law. It strips other nations of their rights to withhold consent to purported "laws" that the United States unilaterally claims are binding on them all. It negates their sovereignties. It denies their equality. And it reduces them to the servile status of satellites—quite as the Brezhnev Doctrine openly treated the Eastern European nations the Soviet Union held captive on essentially the same imperialistic theory of "limited sovereignty." Hardly accidental, then, was Secretary of State James Baker's recent willingness implicitly to resurrect the Brezhnev Doctrine as a pretext for a

Soviet invasion of Romania in ostensible support of the *anti*-Ceausescu rebellion. For the Thornburgh Doctrine *is* the Brezhnev Doctrine, in a new coat of verbal, *quasi*-legalistic whitewash.

As a mimic of the Brezhnev Doctrine, the Thornburgh Doctrine exposes, not only the anachronism, but also and especially the bankruptcy of the present foreign policy of the United States. For a time, the United States may oppose herself, by brute force, to the moral obligations of international law, even in the face of the general opprobrium and hostility of the civilized world. But neither she nor any nation can maintain such opposition, against such hostility, for very long. In the end, even the United States must recognize and accede to mankind's common standards of right conduct. In the interim, however, what irreplaceable moral capital will she squander?

II

The Thornburgh Doctrine is not merely an aberration of willful moral blindness confined to the domain of *inter*national law, however. To the contrary: It represents simply the application in that domain of an attitude all-too-typical of the Department of Justice in the domestic field, too. Indeed, the perverse notion unabashedly expressed by former Reagan administration official Frank Gaffney that "the international legal question . . . is less important than is the right outcome" in a particular case should admonish us that the Thornburgh Doctrine ultimately articulates a license for *general* governmental lawlessness, abroad *or at home*. For international law "is a part of the law of the land"[11]—and if what Department of Justice bureaucrats fancy "the right outcome" can override "international legal question[s]," on the same principle what they deem "the right outcome" can set aside domestic legal questions, as well. That is, if the validity of the Thornburgh Doctrine be admitted at all, it places wholly *above the law* the Department of Justice and the law-enforcement, intelligence, and military agencies that may cooperate with it to achieve "the right outcome[s]" *anywhere in the world.*

Although this appears, at first blush, an "extreme" conclusion, in fact the Department of Justice has long operated here in the United States as if no law limited its power to achieve "the right outcome[s]." In the area of criminal law, the example of the LaRouche prosecution stands out as particularly glaring, involving as it did a systematic perversion of the judicial process at every level from *pre*-trial investigation through sentencing that rivals, if it does not exceed, the Dreyfus case as a miscarriage of simple justice,[12] as well as constituting one of the most arrogant assaults on the fundamental principles of American constitutionalism this nation's history has ever witnessed.

In the area of civil law, too, the Department of Justice has waged unrelenting war against elementary principles of due process of law, with the recent INSLAW case providing an example well-calculated to shock the conscience. In that case, a bankruptcy judge found that the Department of Justice

- had "consciously" made an "outrageous and indefensible decision . . . at the highest level, simply to ignore serious questions of ethical impropriety" by its own officials;
- had taken numerous actions "in bad faith, vexatiously, in wanton disregard of the law and the facts, and for oppressive reasons . . . to drive INSLAW out of business"; and
- had engaged in "treachery," "theft," "trickery, fraud and deceit," and "collective amnesia" about its own extensive wrongdoing.[13]

Examples such as these suffice to paint a detailed, if lurid and disgusting, picture of an agency that, far from striving to be a paradigm of the moral and legal foundation upon which this country was built, rather exults in the abuse, arrogance, and even advocacy of unlimited power aimed at the economic, political, and perhaps even physical annihilation of all opposition, foreign or domestic.

III

Indeed, it is perhaps no exaggeration to conclude from evidence such as this that the United States is constructing, if it has not already constructed, in the Department of Justice and allied agencies, a species of uniquely American *Securitate* (or secret police), perhaps less obvious in form and operations, but no less malignant in purpose or malevolent in execution than that which served the mad dog of the Carpathians, Ceausescu. Although in principle such a development should be unlikely, if not impossible, in a supposedly "open" society, important steps have already been taken by America's evolving secret police to defeat discovery and prosecution of their crimes:

First, as Iran-Contra Independent Counsel Lawrence E. Walsh recently complained to Congress in a 61-page report, the ritualistic invocation by Attorney General Thornburgh of secrecy for alleged reasons of "national security" in trials of CIA and other intelligence officers "jeopardizes any prosecution of . . . government officers heavily involved with classified information," and thereby "create[s] an unacceptable enclave that is free from the rule of law."[14] *Second*, the Supreme Court's recent decision that government records are protected from release under the Freedom of Information Act if the agency that compiled those records simply transfers them to the Department of Justice for some supposed "law-enforcement" purpose[15] broadly licenses withholding of essentially any records that might plausibly be of interest to the FBI.[16] Taken together, these doctrines enable the government

to frustrate disclosure in court or through the FOIA by pretextually classifying documents or transferring them to a supposed "law-enforcement" file.

Obviously, these privileges to suppress evidence uniquely empower the Department of Justice, together with the intelligence agencies and the military, and such other "law-enforcement" agencies as the IRS,[17] to plan, perpetrate, and cover up wrongdoing safe from public scrutiny, investigation, and exposure. But when agencies with broad legal or illegal "police powers" such as those enjoyed by the Department of Justice, the FBI, the IRS, and (in practice) the CIA can operate under a cloak of self-imposed and self-serving secrecy *beyond legal challenge*, the necessary and sufficient conditions have been met for the formation of a true *secret police* in the Nazi-Communist totalitarian sense of that term.

This, of course, is not the *result* of the Thornburgh Doctrine. Rather, the Thornburgh Doctrine is one further piece of unmistakable evidence that a secret-police apparatus *has been* assembled and *is* operating in the United States. Indeed, the very blatantness of the Thornburgh Doctrine evidences the confidence of those in charge of this apparatus that nothing can now be done to thwart them in their day-to-day abuses of power, let alone to strip them of the unconstitutional and immoral prerogatives they have arrogated to themselves.

In a sense, these spiritual brethren of Ceausescu may be, for the moment, correct. The American people initially welcomed the invasion of Panama and the abduction of General Noriega with chauvinistic applause, not realizing that the bell has begun to toll for themselves and their children, too. And as Frederick Douglass so insightfully warned,

> [p]ower concedes nothing without a demand. It never did and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress.[18]

Hopefully, with education, enough among the American people will soon reach the limits of their endurance and put an end both to the Thornburgh Doctrine and to the political careers of those who support it.

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Notes

1. Emphasis is warranted on the adjective "exclusive," because the United States clearly does not recognize reciprocal rights of this kind for other nations.
2. MacNeil/Lehrer Newshour, Show No. 3636 (Monday, 1 January 1990), "Strictly Business" Transcription, at 7.
3. Cf. Dale County v. Gunter, 46 Ala. 118, 138.
4. Ware v. Hylton, 3 U.S. (3 Dall.) 199, 227 (1796).
5. Oetjen v. Central Leather Co., 246 U.S. 297, 303 (1918).
6. See The Exchange, 11 U.S. (7 Cr.) 116, 136 (1812).
7. See The Antelope, 23 U.S. (10 Wheat.) 66, 122 (1825).
8. See The Scotia, 81 U.S. (14 Wall.) 170, 187 (1871).
9. See Hilton v. Guyot, 159 U.S. 113, 163-66 (1895).
10. The Exchange, 11 U.S. (7 Cr.) 116, 140 (1812).
11. The Nereide, 13 U.S. (9 Cr.) 388, 423 (1815). *Accord*, The Paquete Habana, 175 U.S. 677, 700 (1900).
12. See Friedrich-August von der Heydte, "LaRouche Case Like Dreyfus Affair," Commission to Investigate Human Rights Violations pamphlet, 1989.
13. *In re* INSLAW, Inc., 83 B.R. 89. 149, 150, 151, 152, 157 (Bkrtcy. D.D.C. 1988).
14. Second Interim Report to Congress (11 December 1988) at 53.
15. John Doe Agency v. John Doe Corporation, 58 U.S.L.W. 4067 (12 December 1989).
16. See Pratt v. Webster, 673 F.2d 408, 420-21 (D.C. Cir. 1982)(FBI's "law-enforcement" purpose need have only "a colorable claim, of rationality"); Williams v. FBI, 730 F.2d 882, 883 (2d Cir. 1984) (court may not substitute its judgment for view of FBI that records serve "law-enforcement" purpose).
17. See United States v. Bisceglia, 420 U.S. 141, 148-51 (1975) (IRS may conduct investigations even without suspicion that anyone has broken the law).
18. Speech at Canandaigua, New York, 4 August 1857, in Philip S. Foner, *The Life and Writings of Frederick Douglass* (1950), Vol. 2, at 437.