Value Analysis of Legal Decisions

ROBERT S. HARTMAN*

The question under discussion is: what are ethical values, how are they derived, and how do these values affect the decision of cases, the formulation of statutes, and the framing of constitutions? If we want to answer this question thoroughly we are attempting to do so a little too early, I would say, about a generation too early. If we are more ambitious, and want to answer it completely, I would say we are attempting to do so a couple or three centuries too early. The science of values is in a stage today that the science of, say, physics, was around 1650. Just imagine a group of natural philosophers meeting in the year 1650, as they did, for example in the Royal Society of London, and discussing, as they did, the question: what are the laws of nature, how are they derived, and what are their consequences for human action? There *will* come a time when we can answer the question of *values* as definitely as the natural scientists have answered the question of nature. All over the world philosophers are working on the science of value as devotedly as the natural philosophers, of Galileo's and Newton's age, were working on the science of nature. As it turned out, the natural philosophers solved their problems because they developed a super-science from which they were able to select appropriate frames of reference to fit their observations. This super-science was mathematics, and they created it as they went along; thus Newton, for example, invented the calculus. Similarly there will come a time when no person can be a social or humanistic scientist without knowing the super-science of the humanities, which is to the social and humanistic sciences what mathematics is to the natural sciences. This super-science will be the science of axiology or the Theory of Values.

The science of law is one of the humanistic or social sciences. It concerns a body of rules pertaining to human behavior in a particular formalized aspect. The law is the most formalized body of social rules, and the very fact of its formalization is an intrinsic characteristic of the law — in the same way that, say, the corsets were intrinsic characteristics of the Victorian ladies. The corsets are gone, but something else has taken their place. A certain formalization seems to be an intrinsic characteristic of the female in society. So with the law, although I do not want to go as far as calling it the corsets of society. But it is of course, and for similar reasons, let us say the discouragement or redress of impulsive action, the formalization of the given social data.

* Associate Professor of Philosophy, The Ohio State University.

Where for one reason or another, the law is insufficient to account for and regulate the social facts, there recourse must be taken to the moral law. I assume that the moral law is embodied in the science of axiology, and shall develop for you two principles of axiology by which we shall judge our cases — which were selected, of course, for their refusal to conform to established legal rules.

Axiology is the science of value judgments. Value judgments are judgments containing the word "good". Since we have to decide whether the arguments and decisions in our cases are good or bad, a science of value judgments is precisely what we need. There are two main types of good, or value, functional or extrinsic value and substantive or intrinsic value. The difference between extrinsic and intrinsic value can be seen in the difference between the statements "Jones is a good lawyer" and "Jones is good", the latter meaning, "Jones is a good person". "A good person" is of different axiological type than "a good lawyer". A man can be a good lawyer and a bad person or a good person and a bad lawyer; he can be extrinsically good and intrinsically bad or extrinsically bad and intrinsically good, and also, of course, extrinsically good and intrinsically good or extrinsically bad and intrinsically bad. Extrinsic value refers to the *function* and intrinsic value to the *character* of a person. Obviously, the intrinsic value takes precedence over the extrinsic value for it contains the sum total of all extrinsic values. The person contains all the functions. The norm for the extrinsic value is a *science* — a person to be a good lawyer must know the law, to be a good chemist he must know chemistry, to be a good baker he must know baking — and the norm for intrinsic value is the person's own *conscience.* Thus conscience axiologically supersedes science, even the science of the lawyer, formalized or statute law.

The definition of extrinsic value is as follows: "x is a good C if x is a member of the class C and has all the attributes of C." In other words, Jones is a good lawyer if (a) he has passed the Bar examination and (b) he knows the law. If he is a lawyer but does not know the law he is not a *good* lawyer. If he knows the law but has not taken the Bar examination he is not a good *lawyer.* The definition of intrinsic value follows from that of extrinsic value by substituting the class C by the individual himself. In other words, a person is intrinsically good if he is what he is. *Intrinsic value is the human personality itself.* Both extrinsic and intrinsic value presuppose correct subsumption of a species under a class. Such subsumption is itself an extrinsic value, namely the exercise of a function of judgment. In jurisprudence it is accomplished when a case is (a) seen in its proper context or frame of reference and (b) classified under its appropriate legal statute or rule. When extrinsic

value — either of subsumption or of any other functional activity — conflicts in a given case with the intrinsic value of personality, the case must be decided in favor of the intrinsic value. Since extrinsic good is the correspondence of class and attributes, extrinsic *bad* is the non-correspondence of class and attributes, or the transposition of frames of reference to unfitting cases. For example, calling a man a lawyer who doesn't know the law. These two principles, goodness as correct subsumption, which implies badness as transposition of frames of reference, and the supremacy of the human personality, are sufficient for the axiological determination of our cases.

The first two cases, *Oleff v. Hodapp*[1] and *Everett v. Williams*[2] (1725), concern the application of moral considerations to law. According to our axiological principles, they were both correctly decided, the courts in both cases having avoided possible transpositions of frames of reference.

I start with the *Everett* case, because of its wide implications. This case involved the petition of an accounting by a highway robber against his alleged partner. The brief of the highway robber constructing a robbery agreement as a partnership shows the worst possible transposition of frames of reference, namely that of the legal and the illegal. The indignation of the court is therefore well understandable. Crime cannot be construed as a legal partnership. The axiological rule is that in a lawless situation you cannot have law, in an illegal situation you cannot have legality. Hence the highwayman cannot come with in the class of those entitled to an accounting.

The understanding of the principle involved, that a lawless situation excludes law, has a great number of implications, not only for the many acts of legalizing illegitimate marriages or children, from Anne Boleyn to Ingrid Bergman, and for questions of contract among bandits, smugglers, and outlaws of all kinds, but also for the larger scene of politics, concerning the question whether might makes right, whether statutes are valid in dictatorships, whether there can be any "law" of war and what are the bases for the validity of international law. Obviously a *law* of war is an impossibility for in a criminal situation, particularly one of wholesale murder, law is impossible. The so-called law of war is therefore an entirely different thing from what is usually called law. The case also raises questions as to the necessary equality of parties in contract — here we are reminded of the minimum wage cases. The subject has been treated by Charlie Chaplin in a movie, *Monsieur Verdoux,* where murder is constructed as business. A loving father pursues murder

[1] 129 Ohio St. 432, 195 N.E. 838 (1935).
[2] 9 L. Q. Rev. 197 (1893).

of widows to provide for his family under the motto: "War is the extension of politics, murder is the extension of business."

The *Oleff* case concerns the benefit of a murderer from his crime. Here a nephew had a joint banking account with his uncle. The uncle was killed and the nephew convicted, in Greece, as moral author of the crime. The court awarded him the account. It may seem as if here we had to choose between extrinsic and intrinsic values, but I cannot see what intrinsic value should be at stake. It is exclusively a matter of extrinsic values, namely of the possible application of different frames of reference to the case. The axiological rule of correct subsumption seems to demand that the legally acquired right to the deposit be continued. I agree with the majority when they say "we are a court of law, not a theological institution." They could also have added, we are dealing with a civil law case and not a criminal law case. The nephew will find his *theological* punishment before God and his criminal punishment before the penal courts. The civil judge is not here to assume these non-civil responsibilities. In my opinion, the evil of transposition of frames of reference is greater than the evil of a murderer's civil benefit from his crime. For this benefit is largely fictitious. If he is a murderer and remains free it makes not much difference whether he has or has not money since money is an insignificant value compared to the colossal disvalue of his criminal life — what does it benefit a man to gain even the whole world when he loses his soul. If he does *not* remain free then his money does him no good anyway. Quite legally speaking, I do not see what new benefit in the *Oleff* case arises to the nephew. He was joint owner of the account, and could at any time take out the full amount, and that is all he can do now. The only intrinsic value harmed is the nephew's own conscience or soul. That he deprived his uncle of his life is not a civil law matter, but a penal and theological one. That he deprived his uncle of survivorship is not an intrinsic but an extrinsic evil, for I regard "survivorship with respect to the account" not the same as "life." The question then is only whether the extrinsic evil of his keeping his money outweighs the extrinsic evil of disregarding the statute, and I do not think so. I have to weigh the value of correct subsumption under statute against the harm done by such subsumption. I do not see what harm is done anybody by the nephew's getting the money, the more so since the status of the widows of the uncle is doubtful. It is a principle of both law and axiology that excessive benefit is not as great an evil as actual harm. To prevent the latter, it seems to me, is the core of equity. It must also be remembered that the unsatisfactory result is partly due to the poor judgment of the uncle, and the law is not necessarily here to redress all the wrongs arising

from bad judgment of individuals. To say that the subsumption would lead to a result that contradicts the moral expectancies of the community is not an axiologically valid statement, for it all depends on the axiological validity of the communal morals. Our moral sense is still rather primitive and in the absence of a science of values quite unreliable. We are prone to neglect the important for the obvious. That a murderer gets money is an obvious evil, but that he loses his personality is more important, and that he loses his freedom or life, according to criminal law, is most important, though not necessarily moral. The morality of retaliation is a most doubtful one. If the moral sense of the community wants to assert itself, it may do so in legislation, as it did later in Ohio. Interesting in this connection is the New York case of *Riggs v. Palmer*,[3] where a husband killed his wife to get her money. The court decided that the statute of descent was inapplicable for such application could not have been the purpose of the legislature. I maintain that the legislature neither thought nor had to think of such a case when making the *civil* law. The civil law is one thing, the penal law is another thing. In the presence of sufficient criminal law and theological sanction — we hope — the judges arrogated to themselves more right than they should have. They did not redress an obvious evil or harm to anybody, but acted as moral agents in a primitive sense of retaliatory morality, overestimating the value of money in the concept of "benefit." When I shoot my wife to get her money it makes no difference to me afterwards whether I get that money or not, for I shall die either in the electric chair or by my own hand, as was the case in the *Riggs* case, or live a life so miserable whether I know it or not, that the money is irrelevant. We overrate the value of money as against the value of life, as comes out more clearly in the minimum wage cases. The *Riggs* case was one of incorrect subsumption in that the statute was re-interpreted without axiological justification. I would agree with the constructive trust idea of the North Carolina case of *Bryant v. Bryant*[4] where the statute of descent was correctly applied but remedied by the equity device of a constructive trust — provided that (a) it is an acknowledged principle of equity not only to avoid and redress harm but also to prevent benefit from criminal action — which it seems to be; (b) if this does not mean to retaliate criminal wrong by civil wrong; and (c) if it can be shown that the nephew does actually benefit from the death of the uncle even legally or materially in spite of his having full joint ownership before the uncle's death.

We now turn to the minimum wage and flag salute cases where

[3] 115 N.Y. 506, 22 N.E. 188 (1889).
[4] 193 N.C. 372, 137 S.E. 188 (1927).

the axiological test is found in the Constitution. Both sets of cases concern the constitutionality of certain rules or statutes. Therefore we must first discuss the axiological function of the Constitution.

So far we have answered three questions of the composite question with which we started our discussion, namely, (1) what are ethical values, (2) how are they derived, and (3) how do these values affect the decisions of cases. One, ethical values are the norms of axiology, based on the definition of good, the correctness of subsumption, and the supremacy of intrinsic personality value over extrinsic functional value. Axiology, particularly when written in logical symbols, is as exact a science as is mathematics and is to the humanities, including the law, what mathematics is to the natural sciences. In another generation a lawyer will have to learn this science as a physicist has to learn mathematics. Two, these norms are derived by logic from formal and universal axioms, just as are those of mathematics, and have their obligation in their validity. Anybody is free to say that $2 \times 2 = 5$, but he would get into an awful mess. It is equally disastrous, though equally easy, to neglect the norms of axiology and morality. These norms are not derived by theology or metaphysics. Axiology is as little metaphysics or theology as is mathematics. There was a time when mathematics was *theology,* from Pythagoras to the early Renaissance, as in Pico della Mirandola, and when mathematics was *methaphysics,* as the imaginary number $\sqrt{-1}$ was even for Leibniz in the 17th century. For many, today, theory of value is still either theology or metaphysics or both. But in the degree that axiology becomes a science it sloughs off both theology and metaphysics. The amount of theology and metaphysics in any science is a sign of the incompleteness of the science. Newton's *Mathematical Principles of Philocophy* still contained a great deal of theology, Laplace's, *Celestial Mechanics,* a hundred years later was pure astronomy. Napoleon was rightly astonished that in Laplace's mathematical system of the heavens God did not appear and Laplace was right in his answer that he did not need the hypothesis of God in astronomy, for astronomy was one thing and theology another. So axiology is one thing and theology another. I would regard it as a confusion of frames of reference if I would inject metaphysics or theology into the discussion of ethical values. I like metaphysics and theology as much as I like value theory. But our subject is *ethical* values and the law in action and not metaphysics or religion and the law in action — even though these too would be highly interesting subjects. I firmly believe that the supremacy of human personality is also grounded in the religious fact that we are children of God and created in His image. But the religious framework

is one thing and axiological science is another thing. Thus I repeat, the ethical values are derived from axiology by logic, and we do not need any other hypothesis. Three, how do these values affect the decision of cases? By the weighing of the relative value of extrinsic functional and intrinsic personal goods and, in particular, of the values of correct subsumption against the evil, either extrinsic or intrinsic, done by such subsumption. Intrinsic value always supersedes extrinsic value.

We shall now answer the fourth and fifth parts of our initial question. Namely, how do ethical values relate to the formulation of statutes and the framing of constitutions? The answer is that both statutes and constitutions must conform to the norms of axiology, in particular in their guarantee of the intrinsic value of personality and their guarantee of equality before the law, i.e. of equal and equitable subsumptions. When a constitution contains these rights it is a good constitution and is, insofar, an axiological document. Statutes may then be axiologically measured by their conformity with the Constitution, and we do not have to refer them directly to axiological norms, as we would have to do in countries without any, or with a bad constitution. Measured thus, our constitution is a good constitution and our statutes are good insofar as they are constitutional. For, according to our definition, anything is good which (a) is a member of its class and (b) has the attributes of the class. Hence a constitution is good if (a) it is a constitution, i.e. has behind it the obligatory power of the legalized popular will and (b) has the attributes of a constitution, i.e. among other things follows the norms of axiology. A statute then is good if (a) it is a law, i.e. is passed by constitutional procedure and (b) has the attributes of a law, i.e., among other things, is in conformity with the substance of the constitution, i.e. its axiological normativity.

It is thus axiologically valid to ask whether the minimum wage and the flag salute statutes are constitutional. In both sets of cases we have in the first decision a confusion between intrinsic and extrinsic values. The intrinsic value in both cases is that of personality, in the minimum wage case in its aspects of *health and morality*, in the flag salute case in its aspect of *conscience*. The extrinsic value in the minimum wage case is *money*, in the flag salute case it is national or *collective unity*. In both cases the transposition of values was corrected by the subsequent decision. In both cases the value of the individual person won out over the value of a function. To put the issue in the minimum wage case as one between individualism and collectivism and say that the collectivistic view won out, is in my opinion wrong. The individualistic view won out and the issue was between personal value and functional value or between a moral and an immoral view of the individual.

It is also wrong to say that the so-called social conscience won out. There is no social conscience as the conscience of a community-as-such, but only the aggregate of individual consciences. Thus, even from this point of view, it is the individual that won out, namely those individuals who saw the intrinsic value of the case. Both minimum wage laws in question were concerned with the personal welfare, morality, and health of women and minors, that is to say with their persons as intrinsic values and not with them in their function as sellers of labor. The *Adkins*[5] opinion which held minimum wage legislation unconstitutional is bad according to both of our axiological principles: it disregards the supremacy of personal values over functional values and it contains a number of incorrect subsumptions. It regards the minimum wage law in question as a price fixing law and thus disregards the intrinsic values concerned, committing the moral fallacy already observed by Immanuel Kant of treating persons as things. For the essence of things is their functions, whereas the essence of persons is not their functions but their unique personalities. The transposition of extrinsic and intrinsic values appears clearly when it is stated that "in principle there can be no difference between the case of selling one's labor and the case of selling goods." There is of course all the difference in the world, namely, the difference between people and things. The *Adkins* opinion does not mention the purpose of the laws at all, and thus ignores the intrinsic values at stake. Instead it elaborates the extrinsic value purportedly violated by the law, namely freedom of contract. Thus it is led to a series of bad subsumptions, which proves that bad axiology, in a state with a good constitution, leads to bad law by forcing to bad subsumption. The forced subsumption is the construction of freedom of contract under the concept liberty, which the Constitution guarantees as an intrinsic personality value. Even if the Constitution would guarantee the right of contract it would yet, as an extrinsic value, have to cede before the intrinsic value which is the purpose of the laws in question. As Justice Holmes well states in his dissent, and as Kelly-Harbison and others point out in their works on the American Constitution, the connection of the due process clause with substantive property rights was a misconstruction of the meaning of the 14th Amendment which was passed to protect negroes. In terms of our principles, the class of "property" and of "due process of law" was expanded without axiological justification. Thus not only the Constitution was misinterpreted but also the concept of liberty of contract itself, for liberty of contract does not mean liberty to make disadvantageous contracts, just as liberty does not mean liberty to death but to life, and life does not mean life in a prison but in lib-

[5] Adkins v. Children's Hospital, 261 U.S. 525 (1923).

erty. We thus have again the coordination of a class to unfitting attributes, or a transposition of frames of reference, which we called "bad." Another such transposition is calling contracts between necessitous women and their employers free contracts, and hence subsuming them under the rule of liberty of contract, which itself rested on false subsumption. In other words, we have here a false subsumption in the second power. There cannot be liberty of contract where the parties are not equal. "Necessitous men," as Lord Northington already said in *Vernon v. Bethell,* "are not truly free men but, to answer a present exigency, will submit to any terms that the crafty may impose on them."[6] The whole argument reminds one of Anatole France's dictum that we are all free to sleep under the bridges of Paris. Other bad subsumptions in the case are the alleged difference between a regulation of hours and a regulation of wages and the use of the Nineteenth Amendment to show that there is no difference between men and women.

The *Parrish*[7] case which reversed the *Adkins* decision puts the right value in its place and sees the case as one concerning intrinsic value. "What can be closer to the public interest than the health of women and their protection?" Since here the court was axiologically correct it also was legally correct and avoided and corrected all the false subsumptions of the *Adkins* case.

Our axiological analysis of both cases has implications for other decisions where the human value aspects and the difference between persons and functions are of importance, such as the interpretation of corporations as persons in the sense of the Fourteenth Amendment, and the Taft-Hartley Act, which is now before the Court, where trade unions, or associations of individual persons for the betterment of their personal status are treated like corporations organized for the production and sale of things.

In the first flag salute case[8] we have a transposition between the intrinsic value of conscience and the extrinsic value of national unity or the collectivity of the State, and hence according to our axiological principles, this case was badly decided. The second case[9] reversed the first and hence was well decided. It rectified the confusion of values. From our axiological principle, as expressed by the Constitution, of the supremacy of human conscience over statute law, it is of course obvious that the statutes in these cases are unconstitutional.

A community may be regarded as either an intrinsic or an extrinsic value; in both cases, however, the intrinsic value of the

---

[6] 28 Eng. Rep. 838, 839 (1762).

[7] West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

[8] Minersville School District v. Gobitis, 310 U.S. 586 (1940).

[9] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

individual is supreme. The strength of a community lies in the degree in which its members freely and strongly adhere to its principles. In this sense the community is an aggregate of intrinsic values, each unique in its kind and all achieving solidarity *only* by the play of their full potentialities and rational capacities. Any violation of individual freedom — except in cases of emergency or by due process of law — is a weakening of the community. Hence freedom of speech, worship, and conscience are not so much individual rights but the very foundations of a healthy community, as Spinoza saw long ago. There is no difference between the health of the community and the welfare of the citizens. Hence also the "general welfare" clause of the Constitution is primarily a matter of individuals rather than of a collectivity. As an aggregate of intrinsic values the community *may* be said to be an intrinsic value itself. On the other hand, the community can be regarded as an extrinsic value, since an individual is a member of a community only as a function, such as "voter," "citizen," etc., but not with the totality of his entire personality. In this case the intrinsic value of the individual takes precedence over the extrinsic value of the community. No matter, therefore, how we look at the community, the intrinsic personality value takes precedence over community values. Justices Jackson and Murphy follow this formula, Justice Frankfurter does not. Justice Jackson rightly says, in the opinion of the second case which reverses the first, that in order to get strong community from free individualities we must accept some queer individuals. As long as they do not cause us clear and present danger we must let them alone. In the flag salute case there was no emergency. First of all there was no war — it was 18 months before Pearl Harbor, — secondly the action of a handful of children is no clear and present danger to the community under any conceivable circumstances. On the contrary, says the opinion, the *denial* of freedom of conscience is the beginning of a clear and present danger, namely, that of totalitarianism. "Those who begin coercive elimination of dissent soon find themselves exterminating dissenters." For this reason Justice Murphy holds that "as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches." In other words, both judges follow the axiological norm of the supremacy of individual conscience over statute law and state another axiological principle that free consciences make free societies. Both arguments are therefore good. Justice Frankfurter's opinion and dissent on the other hand are shot through with what I would call collectivistic reasoning, namely the illicit valuation of collective over individual values. I cannot go into details but only want

to mention the two occasions where he mentions values.[10] In the first he says that "national unity", "national cohesion", etc., are values that are "inferior to none in the hierarchy of legal values." In the light of our axiological principles this is wrong. They are inferior to the intrinsic value of personality. In the second he says that all agree on the necessity of a free society, but there is no science yet to show us how to achieve it, hence the flag salute may as well do. But we know enough about values to know that free men cannot be coerced into love of country — as little as children can be spanked into love of parents. We need the interplay of free opinions to evolve love of country and also the interplay of legislative trial and error to evolve laws. But while the Constitution has set limits to the freedom of lawmakers and put it under supervision of the judiciary, it has put no limits to the freedom of opinion makers in free speech or of worship to one's Maker in individual conscience. It is for this very reason that we accepted the Constitution as an axiological instrument. It was wisdom itself for the framers of the Constitution to guarantee the freedom of conscience over the freedom of lawmakers to make laws, for the laws are (a) compromises of consciences and (b) more dangerous to the community than individual thought expressions. Individual thought expressions can only rarely lead to disaster, but wrong laws can do so quickly. There is a limit to the legal experimentation with democracy. It can end in the ruins of a country, such as Germany. It is absurd, namely a transposition of frames of reference, for Justice Frankfurter to appeal to the freedom of legislatures in a case where he denies the freedom of conscience. The view of Justice Frankfurter that "law is concerned with external behavior and not with the inner life of man. It rests in large measure upon compulsion," should have brought him to the conclusion that for this very reason the inner life of man was exempted from the law by the Constitution. Instead he uses this statement to subject conscience under law.

The *Shoshone*[11] case shows again the transposition of legality and illegality which we found in the brief of the highway robber, and that of freedom of contract and inequality of the parties which we had in the minimum wage case, only on the higher level of nations. I shall not treat this case as a matter of international law for the term "international law" does not exist in axiology. I shall treat it within the categories we developed, namely, those of

---

[10] For a fuller discussion of this case see the *Second Report of the Committee for Cooperative Research in Values,* Department of Philosophy, Wayne University, Detroit, November, 1950.

[11] Northwestern Bands of Shoshone Indians v. United States, 324 U.S. 335 (1945).

good and bad, might and right. The only difference between these categories as used in the previous cases is that the parties are nations rather than individuals. This has axiological consequences concerning the rights of the individual Indian, but I shall not discuss them for they do not immediately concern the present case. The majority decision in the *Shoshone* case is bad since it is based on the same kind of transposition of frames of reference as in the cases mentioned. The Shoshone "contract" on which the decision is based lacks the essential attributes of a contract, in particular equality of the parties. Hence, though it looks like a contract it lacks the attributes of a contract according to our definition. It is even less a contract than that between necessitous women workers and their employers. It is a contract only in the sense of that of the highway robbers on Black Heath with a gentleman who had several things to dispose of which, "after some small discourse with the said gentleman were dealt for at a very cheap rate." In other words, they are based on pure might and therefore far from being contracts are not even law according to our axiological principle that an illegal situation has no room for legality. Even if, however, the contract would be regarded as law and as a valid contract, the decision would be false because of false subsumption. The text of the contract, in my opinion, clearly shows that it acknowledges the territorial rights of the Indians. Hence their claims should be honored, — either as a moral and social obligation of the United States, — or as a legal obligation.

The problem of the Indians is of course much deeper than is indicated by the case. It is really the problem whether and how a primitive society can survive as an island within a modern society, and whether and how the tribal being that the Indian is today should be made into the responsible individual, subject only to his own conscience. From a moral point of view Indian society is as good as is modern society, only the frame of reference is different. Hence again we have the problem of frames of reference. The axiological problem is: how can two frames of reference coexist within one higher frame of reference. I cannot go into the details except by stating that the answer is mutual adaptation. Ae we have interplay of individual minds making democracy, so we have interplay of societies, making international democracy. At present our international life does not evince the creative give and take of mutual recognition of values.

So much, and very cursory indeed, to our cases. It is to be hoped that as the science of axiology will be developed and the theology and metaphysics of today's ethics will be translated into the detailed norms of a science of human behavior, our morality will become as definite as our science and judges and legislators,

as well as the general public, will have definite guideposts for their decisions. Such a science is now in the making. In another generation it will be a definite body of possible frames of reference for all kinds of situations — a "mathematics" of the humanities, based on a logic not of quantity but of quality, and known to all scholars and practitioners of the law as their ultimate frame of reference. There are those, of course, who say that such a science is impossible. Far from taking issue with them we accept their statement and apply to it the words of Goethe: "The possible will be attempted only because we have postulated the impossible."