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# HUMAN RIGHTS AND WORLD PUBLIC ORDER: HUMAN RIGHTS IN COMPREHENSIVE CONTEXT\*

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*Lung-chu Chen\*\*\*\**

The demands for human rights being made today around the world are heir to all the great historic movements for human freedom, equality and solidarity—including the English, American, French, Russian and Chinese revolutions and the events they set in train. They derive also from the more enduring elements in the traditions both of natural law and natural rights and of most of the world's great religions and philosophies. They achieve support, further, from the findings of modern science about the close link between simple respect for human dignity and the shaping and sharing of all other values.<sup>1</sup> It has been many times observed how

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Brunson MacChesney has long been our friend and valued associate both in inquiry about international law and in promotion of the better protection of human rights. His teaching, scholarly writing and wise leadership in professional organizations have made an immense contribution to the common interest.

Though Professor MacChesney has taught us all, the debt of the most junior of us is multiple and direct: Professor MacChesney was an inspiring teacher and mentor at the beginning of his specialization in international law.

It is a pleasure and honor to be permitted to participate in an issue designed to honor Brunson MacChesney.

<sup>1</sup> See generally *FUNDAMENTAL RIGHTS* (J. Bridge, D. Lasok, D. Perrott & R. Plender eds. 1973); J. CAREY, *UN PROTECTION OF CIVIL AND POLITICAL RIGHTS* (1970); *COMPARATIVE HUMAN RIGHTS* (R. Claude ed. 1976) [hereinafter cited as *COMPARATIVE HUMAN RIGHTS*]; *COMMISSION TO STUDY THE ORGANIZATION OF PEACE, THE UNITED NATIONS AND HUMAN RIGHTS* (1968); *CORNELL LAW SCHOOL, HUMAN RIGHTS: PROTECTION OF THE INDIVIDUAL UNDER INTERNATIONAL LAW* (1970) (Proceedings of the Fifth Summer Conference on

International Law); M. CRANSTON, WHAT ARE HUMAN RIGHTS? (1973) [hereinafter cited as M. CRANSTON]; A. DEL RUSSO, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1971); P. DROST, HUMAN RIGHTS AS LEGAL RIGHTS (1951) [hereinafter cited as P. DROST]; I. DUCHACEK, RIGHTS & LIBERTIES IN THE WORLD TODAY: CONSTITUTIONAL PROMISE & REALITY (1973); INTERNATIONAL PROTECTION OF HUMAN RIGHTS (A. Eide & A. Schou eds. 1968) (Nobel Symposium 7) [hereinafter cited as NOBEL SYMPOSIUM ON HUMAN RIGHTS]; M. GANJI, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1962) [hereinafter cited as M. GANJI]; M. GANJI, THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: PROBLEMS, POLICIES, PROGRESS, U.N. Doc. E/CN.4/1108/Rev. 1 and 30 U.N. ESCDR (Provisional Agenda Item 7), U.N. Doc. E/CN.4/1131/Rev. 1 (1975) [hereinafter cited as ECONOMIC, SOCIAL AND CULTURAL RIGHTS]; HUMAN DIGNITY: THIS CENTURY AND THE NEXT (R. Gotesky & E. Laszlo eds. 1970) [hereinafter cited as HUMAN DIGNITY]; HUMAN RIGHTS, FEDERALISM AND MINORITIES (A. Gotlieb ed. 1970); J. GREEN, THE UNITED NATIONS AND HUMAN RIGHTS (1956); E. HAAS, HUMAN RIGHTS AND INTERNATIONAL ACTION (1970); SOCIALIST CONCEPT OF HUMAN RIGHTS (J. Halasz ed. 1966) [hereinafter cited as SOCIALIST CONCEPT OF HUMAN RIGHTS]; T. HESBURGH, THE HUMAN IMPERATIVE 23-37 (1974); A. HOLCOMBE, HUMAN RIGHTS IN THE MODERN WORLD (1948); RENÉ CASSIN, AMICORUM DISCIPULORUMQUE LIBER (Institut International des Droits de l'Homme, ed. 1969-1972) (4 vols.) [hereinafter cited as RENÉ CASSIN]; INTERNATIONAL LABOUR OFFICE, SOCIAL POLICY IN A CHANGING WORLD: THE ILO RESPONSE (1976) (Selected Speeches by Wilfred Jenks); G. JELLINEK, THE DECLARATION OF THE RIGHTS OF MAN AND OF CITIZENS: A CONTRIBUTION TO MODERN CONSTITUTIONAL HISTORY (M. Farrand trans. 1901); THE HUMAN RIGHT TO INDIVIDUAL FREEDOM (L. Kutner ed. 1970); H. LAUTERPACHT, AN INTERNATIONAL BILL OF THE RIGHTS OF MAN (1945); H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS (1950) [hereinafter cited as H. LAUTERPACHT, 1950]; THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS (E. Luard ed. 1967) [hereinafter cited as E. LUARD]; J. MARITAIN, THE RIGHTS OF MAN AND NATURAL LAW (D. Anson trans. 1943); HUMAN RIGHTS (A. Melden ed. 1970); M. MOSKOWITZ, INTERNATIONAL CONCERN WITH HUMAN RIGHTS (1974) [hereinafter cited as M. MOSKOWITZ, 1974]; M. MOSKOWITZ, THE POLITICS AND DYNAMICS OF HUMAN RIGHTS (1968) [hereinafter cited as M. MOSKOWITZ, 1968]; HUMAN RIGHTS (E. Pollack ed. 1971) [hereinafter cited as HUMAN RIGHTS]; POLITICAL THEORY AND THE RIGHTS OF MAN (D. Raphael ed. 1967); A. ROBERTSON, HUMAN RIGHTS IN THE WORLD (1972) [hereinafter cited as A. ROBERTSON]; HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW (A. Robertson ed. 1968); D. SANDIFER & L. SCHEMAN, THE FOUNDATIONS OF FREEDOM: THE INTERRELATIONSHIP BETWEEN DEMOCRACY AND HUMAN RIGHTS (1966); E. SCHWELB, HUMAN RIGHTS AND THE INTERNATIONAL COMMUNITY (1964); N. SINGH, HUMAN RIGHTS AND INTERNATIONAL COOPERATION (1969); L. SINGHVI, HORIZONS OF FREEDOM (1969); L. SOHN & T. BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1973); UNITED NATIONS, UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS, U.N. Doc. ST/HR/2 (1974); UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, BIRTHRIGHT OF MAN (1969) [hereinafter cited as BIRTHRIGHT OF MAN]; HUMAN RIGHTS (UNESCO ed. 1949); AN INTRODUCTION TO THE STUDY OF HUMAN RIGHTS (F. Vallat ed. 1972); V. VAN DYKE, HUMAN RIGHTS, THE UNITED STATES, AND WORLD COMMUNITY (1970); *Hearings on International Protection of Human Rights Before the Subcomm. on International Organization and Movements of the House Comm. on Foreign Affairs*, 93d Cong., 1st Sess. (1974) [hereinafter cited as *Hearings*]; Bilder, *Rethinking International Human Rights: Some Basic Questions*, 1969 Wis. L. Rev. 170; Humphrey, *The International Law of Human Rights in the Middle Twentieth Century*, in *THE PRESENT STATE OF INTERNATIONAL LAW AND OTHER ESSAYS* 75 (M. Bos ed. 1973).

On the regional level, see R. BEDDARD, HUMAN RIGHTS AND EUROPE (1973); BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1965) (International Law Series No. 5); F. CASTBERG, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (T. Opsahl & T. Ouchterlony eds. 1974); HUMAN RIGHTS AND THE LIBERATION OF MAN IN THE AMERICAS (L. Colonnese ed. 1970); J. FAWCETT, THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1969); F. JACOB, THE

rudimentary demands for freedom from despotic executive tyranny have gradually been transformed into demands for protection against not only the executive but all institutions or functions of government and all private coercion. Early demands for the barest "civil liberties," inherent in the most primitive conception of rule by law, have burgeoned into insistence upon comprehensive "human rights"—that is, into demands for effective participation in all community value processes and for wide sharing in all the values upon which even minimum civil liberties depend.<sup>2</sup> This history can be traced in the changing relation of the individual to the state: from the absolutist state through the liberal or laissez-faire state to the welfare or socialist state, with an increasing perception of political organization as an instrument of all values, and of the importance of government of, by and for all people.<sup>3</sup> From demands for physical security and inviolability of the person, with freedom from cruel and inhuman treatment and freedom from arbitrary arrest and confinement, a progression may be noted to demands for freedom of conscience and religion, of opinion and expression and of association and assembly.<sup>4</sup> With the impact of industrialization, massive concentration of wealth, sprawling urbanization, accelerating change, and the attendant ills of exploitation, disparities in wealth distribution, unemployment and inadequate housing, medical care, education, skills and so on, have come not unnaturally demands for fair and adequate wages, basic income, improved working and health conditions, access to education and skill acquisition, and protection against the hazards of unemployment, sickness, old age and the like.<sup>5</sup>

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EUROPEAN CONVENTION ON HUMAN RIGHTS (1975); MELANGES OFFERTS A POLYS MODINOS (1968); C. MORRISON, THE DEVELOPING EUROPEAN LAW OF HUMAN RIGHTS (1967); A. SCHREIBER, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (1970); SECRETARIAT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, THE ORGANIZATION OF AMERICAN STATES AND HUMAN RIGHTS, 1960-1967 (1972); G. WEIL, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1963).

<sup>2</sup> For an excellent, succinct account, see Claude, *The Classical Model of Human Rights Development*, in *COMPARATIVE HUMAN RIGHTS*, *supra* note 1, at 6-50.

<sup>3</sup> See E. BARKER, *PRINCIPLES OF SOCIAL AND POLITICAL THEORY* 244-52 (1951); K. MANNHEIM, *MAN AND SOCIETY IN AN AGE OF RECONSTRUCTION* 336 (1940).

<sup>4</sup> See E. CORWIN, *LIBERTY AGAINST GOVERNMENT* (1948).

<sup>5</sup> See R. MACIVER, *DEMOCRACY AND THE ECONOMIC CHALLENGE* 29 (1952); Lasswell, *The Interrelations of World Organization and Society*, 55 *YALE L.J.* 889 (1946), reprinted in *THE POLICY SCIENCES* 102 (D. Lerner & H. Lasswell eds. 1951). See also E. BARKER, *THE DEVELOPMENT OF PUBLIC SERVICES IN WESTERN EUROPE, 1660-1930* (1945); M. BEER, *SOCIAL STRUGGLES IN ANTIQUITY* (1922); M. BEER, *SOCIAL STRUGGLES IN THE MIDDLE AGES* (1924); B. GILBERT, *THE EVOLUTION OF NATIONAL INSURANCE IN GREAT BRITAIN: THE ORIGINS OF THE WELFARE STATE* (1966); INTERNATIONAL LABOUR OFFICE, *SOCIAL POLICY IN A CHANGING WORLD: THE ILO RESPONSE* (1976) (Selected Speeches by Wilfred Jenks); C. JENKS, *LAW, FREEDOM AND WELFARE* 1-31, 101-36 (1963); J. ROMANYSHYN, *SOCIAL WELFARE: CHARITY TO JUSTICE* (1971); *SOCIAL WELFARE AND HUMAN RIGHTS: PROCEEDINGS OF THE XIVTH INTERNATIONAL CONFERENCE ON SOCIAL WELFARE, HELSINKI, FINLAND, AUGUST 18-24, 1968* (1969); W. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF*

Different peoples located in different parts of the world, conditioned by varying cultural traditions and employing divergent modes of social organization, may of course assert these fundamental demands in many different modalities and nuances of institutional practice. There would appear, however, to be an overriding insistence, transcending all cultures and climes, upon the greater production and wider distribution of all basic values,<sup>6</sup> accompanied by increasing recognition that a world public order of human dignity can tolerate wide differences in the specific practices by which values are shaped and shared, so long as all demands and practices are effectively appraised and accommodated in terms of common interest. The important fact is that the peoples of the world, whatever their differences in cultural traditions and styles of justification, are today increasingly demanding the enhanced protection of all those basic rights, commonly characterized in empirical reference as those of human dignity, by the processes of law in all the different communities of which they are members, including especially the international or world community.<sup>7</sup>

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SOCIAL WELFARE IN AMERICA (1974); E. WITTE, *THE DEVELOPMENT OF THE SOCIAL SECURITY ACT* (1962).

<sup>6</sup> For specification of the value terms with which we work, see H. LASSWELL & A. KAPLAN, *POWER AND SOCIETY* (1950); Lasswell & Holmberg, *Toward a General Theory of Directed Value Accumulation and Institutional Development*, in *COMPARATIVE THEORIES OF SOCIAL CHANGE* 12 (H. Peter ed. 1966).

<sup>7</sup> Thus, President Carter in his address to the United Nations stated: "The basic thrust of human affairs points toward a more universal demand for fundamental human rights." *Peace, Arms Control, World Economic Progress, Human Rights: Basic Priorities of U.S. Foreign Policy*, 76 DEP'T STATE BULL. 329, 332 (1977); N.Y. Times, Mar. 18, 1977, at A10, col. 6 (city ed.).

For an abundant collection of expressions of the common demands of peoples for values across cultures and through time, see *BIRTHRIGHT OF MAN*, *supra* note 1. On a more formal level, demands for all important values have been eloquently articulated and summarized in the Universal Declaration of Human Rights, the International Covenants on Human Rights and their ancillary expressions, the regional human rights conventions, and the bills of rights embodied in various national constitutions. Useful compilations include: *BASIC DOCUMENTS ON HUMAN RIGHTS* (I. Brownlie ed. 1971); *BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (L. Sohn & T. Buergenthal eds. 1973); *UNITED NATIONS, HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS*, U.N. Doc. ST/HR/1 (1973).

On a less formal level, see M. ADLER, *THE COMMON SENSE OF POLITICS* (1971); C. BAY, *THE STRUCTURE OF FREEDOM* (1966); H. CANTRIL, *THE PATTERN OF HUMAN CONCERNS* 315-22 (1965); N. COHN, *THE PURSUIT OF THE MILLENNIUM* (rev. & expanded ed. 1970); R. FALK, *A STUDY OF FUTURE WORLDS* 11-32 (1975); G. FEINBERG, *THE PROMETHEUS PROJECT: MANKIND'S SEARCH FOR LONG-RANGE GOALS* (1968); K. FOX, *SOCIAL INDICATORS AND SOCIAL THEORY* 8-28 (1974); E. HOBBSAWM, *THE AGE OF REVOLUTION, 1789-1848*, at 81, 218-37, 278-79, 303, 327 (1962); B. MOORE, *REFLECTIONS ON THE CAUSES OF HUMAN MISERY AND UPON CERTAIN PROPOSALS TO ELIMINATE THEM* (1972); Galtung, *Towards New Indicators of Development*, 8 *FUTURES* 261 (1976); Toth, *Human Rights and World Peace*, in 1 RENE CASSIN, *supra* note 1, at 362-82.

Ralph Linton characterizes demands for values in terms of "biological needs," "social needs" and "psychic needs." R. LINTON, *THE STUDY OF MAN* 394-96, 412-17 (1937). In his words: "While human needs, in the abstract, are probably constant, the forms in which they present themselves to the members of societies are rarely twice the same." *Id.* at 414.

## THE RISING COMMON DEMANDS

For a systematic, though necessarily synoptic and impressionistic, review of the empirical content of the demands commonly described as of "human rights," we offer an itemization in terms of the principal features of a number of representative value processes, believed to be indigenous in varying forms of equivalency in most contemporary cultures. Because of its critical importance, we begin with the value of respect. When respect is conceived as the reciprocal honoring of freedom of choice about participation in value processes, it is an indispensable component and determinant in all human rights.<sup>8</sup> With regard to each value, we itemize in comparable pattern:

*Demands Relating to Respect*

- For a fundamental freedom of choice for all individuals regarding participation in all value processes;
- For an effective equality of opportunity that precludes discriminations based on race (color), sex, religion, political opinion, language or other grounds irrelevant to capability, and a social environment that affords conditions enabling people to enjoy a wide range of effective choice in their interactions with others;
- For distinctive recognition of preminent contribution to the common interest;
- For an aggregate pattern of social interactions in which all individuals and groups are protected in the utmost freedom of choice and subjected to the least possible coercion, governmental or private;
- For effective participation in the shaping and sharing of respect, both individually and through groups;
- For freedom to acquire a demand for respect, with appropriate opportunity to discover latent capabilities and to exercise such capabilities;
- For freedom to establish and change identifications;
- For opportunity to achieve realism in expectations;

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In Abraham Maslow's postulation, the demands of human beings find expression in a hierarchy of needs, and the lower level needs must be fulfilled before the higher ones. See A. MASLOW, *MOTIVATION AND PERSONALITY*, 97-104 (2d ed. 1970); A. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* 299-340, 370-90 (1971). We find it unnecessary and counter-productive to indulge in debate about a hierarchy in demands. It suffices to say that the overall trend is clearly toward demands for a wider shaping and sharing of all values.

In his book, *ENDS AND MEANS* (1937), Aldous Huxley observed: "About the ideal goal of human effort there exists in our civilization and, for nearly thirty centuries, there has existed, a very general agreement." Quoted in Reston, *The Condition of the Press in the World Today (I)*, 7 HUMAN RIGHTS J. 593, 595 (1974). Similarly, the late Secretary-General U Thant:

A gradual development is taking place within the United Nations of a common philosophy regarding the right of every individual, without distinction as to race, sex, language or religion, to secure respect for his dignity as a human being whether in the political and civil, or the economic, social and cultural fields.

Quoted in NOBEL SYMPOSIUM ON HUMAN RIGHTS, *supra* note 1, at 267-68.

<sup>8</sup> McDougal, Lasswell, & Chen, *The Protection of Respect and Human Rights: Freedom of Choice and World Public Order*, 24 AM. U.L. REV. 919 (1975) [hereinafter cited as *The Protection of Respect*].

- For freedom to initiate and constitute institutions specialized to respect;
- For freedom of access to institutions specialized to respect;
- For freedom of access to institutions not specialized to respect;
- For protection of respect even under conditions of crisis;
- For the availability of processes of authoritative decision and effective power to defend and fulfill respect;
- For special assistance to overcome handicaps not attributable to merit;
- For freedom to employ the different instruments of policy (diplomatic, ideological, economic, military) in the protection of respect;
- For freedom from imposition of disrespect by the use of the different instruments of policy;
- For freedom from forced labor and from imprisonment for debt;
- For freedom from terrorist activities and other acts of violence.

*Demands Relating to Power*

- For recognition as a human being;
- For admission to group membership (nationality);
- For fullest participation in both the processes of government (including voting and office holding) and effective power;
- For freedom from discrimination in participation;
- For freedom to establish and join groups (including political parties, pressure groups and private associations);
- For protection of minority associations;
- For freedom to change rulers of groups;
- For freedom to constitute a new entity;
- For freedom from coercion external to the group;
- For freedom to acquire a demand for power;
- For freedom of access to, movement within and egress from territory (including asylum);
- For stability of expectations about continuation of rights;
- For freedom to initiate and constitute power and other value institutions;
- For freedom of access to adequate power and other value institutions;
- For freedom from deprivations disproportionate to crisis;
- For the availability of processes of authoritative decision adequate to defend and fulfill all rights;
- For the comparable availability of processes of effective power;
- For freedom to employ the diplomatic and other instruments to enhance the shaping and sharing of power;
- For freedom from arbitrary restraints in the employment of the diplomatic, ideological, economic and military instruments of strategy;
- For freedom from coercive employment of the diplomatic and other instruments;
- For freedom from arbitrary seizure and confinement;
- For the maintenance of, and access to, adequate institutions for making and applying law;
- For protection of equality before the law;
- For the establishment and maintenance of a community that effectively, responsibly and responsively performs all essential deci-

sion functions (intelligence, promotion, prescription, invocation, application, termination and appraisal).

### *Demands Relating to Enlightenment*

- For achievement of an optimum aggregate in the shaping and sharing of enlightenment (in the gathering, dissemination and enjoyment of knowledge and information);
- For the provision of a basic enlightenment to all individuals;
- For additional access to enlightenment on the basis of capability and contribution;
- For general participation in the giving and receiving of enlightenment (knowledge and information);
- For freedom from discrimination in the acquisition, use and communication of knowledge and information;
- For group participation in opportunity to acquire and disseminate knowledge;
- For freedom to acquire the demand for enlightenment;
- For freedom from state or private conditioning;
- For freedom from distorted communications (misinformation);
- For disclosure of special interests;
- For freedom to initiate and constitute institutions specialized to enlightenment;
- For freedom of access to adequate enlightenment and other value institutions;
- For freedom from deprivations of enlightenment disproportionate to crisis;
- For the availability of processes of authoritative decision adequate to defend and fulfill demands for enlightenment;
- For the comparable availability of processes of effective power;
- For freedom to acquire and employ appropriate language;
- For freedom in both small group and mass communications;
- For freedom in the assembly of appropriate resources for enlightenment;
- For freedom from coerced deprivations of enlightenment (censorship, indoctrination, distortion).

### *Demands Relating to Well-Being*

- For an optimum aggregate in the shaping and sharing of well-being;
- For the right to life;
- For a basic minimum in safety, health and comfort, and for additional opportunities in accordance with choice;
- For progress toward optimum somatic and psychological development throughout life;
- For a merciful euthanasia (for freedom to depart or continue life);
- For general participation in the realization of bodily and mental health and development;
- For freedom from restrictions for reasons irrelevant to individual capabilities and contributions;
- For group survival and development;
- For an environment that is conducive to survival and development;
- For freedom to initiate and constitute institutions specialized to well-being;
- For freedom of access to adequate well-being and other value institutions;
- For the availability of processes of authoritative decision adequate to defend and fulfill demands for well-being;



For the comparable availability of processes of effective power;  
 For being a beneficiary of pertinent science and technology;  
 For the employment of appropriate strategies in relation to health for prevention, deterrence, restoration, rehabilitation, reconstruction and correction;  
 For freedom from coerced experimentation and other deprivations;  
 For freedom to accept or reject medical service;  
 For freedom to accept or reject transplantation and repair;  
 For freedom to employ specified strategies in birth control;  
 For the employment of genetic engineering.

*Demands Relating to Wealth*

For the maintenance of high levels of productivity;  
 For a basic minimum of benefits from the wealth process (guaranteed income, social security, abolition of poverty);  
 For the enjoyment of benefits on the basis of contribution;  
 For general participation in wealth shaping and sharing (working, investing, employing resources, enjoying, etc.);  
 For freedom from restrictions irrelevant to capabilities for contribution;  
 For freedom of association in group shaping and sharing (producers, entrepreneurs, laborers, consumers, investors);  
 For freedom to acquire (or reject) a demand to participate in the wealth process;  
 For freedom to initiate and constitute, and freedom of access to, institutions specialized to wealth;  
 For freedom from deprivations of wealth disproportionate to crisis;  
 For the availability of processes of authoritative decision and effective power to defend and fulfill wealth demands (including the right to property);  
 For freedom to accumulate and employ resources for productive purposes;  
 For freedom from wasteful use of resources;  
 For freedom to employ all relevant strategies, without coercion or discrimination, in production, conservation, distribution and consumption.

*Demands Relating to Skill*

For an optimum aggregate in the acquisition and exercise of skills;  
 For acquisition of a basic minimum of skills relevant to effective participation in all value processes;  
 For additional acquisition in terms of talent and motivation;  
 For unrestricted opportunity to acquire and exercise socially acceptable skill;  
 For opportunity to have talent discovered;  
 For opportunity to acquire and exercise skill without discrimination;  
 For accordance of skill to groups;  
 For acquisition of a demand for, and capability of, skill expression;  
 For freedom to initiate and constitute, and freedom of access to, institutions specialized to skill;  
 For the availability of processes of authoritative decision and effective power to defend and fulfill demands for the acquisition and exercise of skills;  
 For special assistance to overcome handicaps;

- For exposure to training, both in content and method, appropriate to a culture of science and technology;
- For freedom from coercive strategies other than those inherent in compulsory education;
- For exposure to a socialization process that enables the individual to acquire the motivations and capabilities appropriate to the performance of adult roles in value processes.

### *Demands Relating to Affection*

- For an optimum aggregate in the shaping and sharing of affection (loyalties, positive sentiments);
- For the basic acceptance necessary for individuals to acquire the motivations and capabilities of functioning effectively in the shaping and sharing of values;
- For additional affection in terms of capability and contribution;
- For giving and receiving affection on a reciprocal basis, free from restrictions irrelevant to capabilities;
- For freedom to give and receive loyalty to groups of one's choice;
- For freedom of association;
- For freedom to acquire (or reject) a demand to participate in the affection process;
- For freedom to initiate and constitute intimate and congenial personal relationships;
- For freedom of access to institutions specialized to affection (adoption, legitimacy, proper spouse);
- For recognition of membership in specialized groups;
- For the availability of processes of authoritative decision and effective power to defend and facilitate affection demand;
- For freedom in the cultivation of positive sentiments and loyalty, free from coercive and discriminatory strategies.

### *Demands Relating to Rectitude*

- For the maintenance of public and civic order in which individuals demand of themselves and others that they act responsibly for common interest;
- For a minimum opportunity to receive positive evaluation of rectitude;
- For movement toward a fuller participation of all in responsible conduct;
- For freedom to participate in the formulation and application of standards of responsibility (religious and secular);
- For freedom from discrimination in the shaping and sharing of rectitude;
- For freedom of association for rectitude purposes;
- For freedom to acquire a demand on the self to act responsibly;
- For freedom to choose among justifications of responsible conduct (secular and religious, transempirical and empirical, etc.);
- For freedom to initiate and constitute, and freedom of access to, institutions specialized to rectitude;
- For the availability of processes of authoritative decision and effective power to defend and fulfill rectitude demands;
- For freedom to employ all relevant strategies, without coercion or discrimination, in the pursuit of rectitude.

## INADEQUATE RESPONSES—DEPRIVATIONS AND NONFULFILLMENT OF HUMAN RIGHTS

All this cumulative upsurge in common demands for human rights has not, in common knowledge, been matched by the effective realization of such rights in the public and civic orders about the world. The responses of both transnational and national processes of authoritative decision to these rising common demands have been most halting and inadequate. Whether one looks with difficulty back into the remote past or considers the more clearly recorded world picture of the last two hundred years, the condition of the great mass of people in terms of the protection of their demands for values has not been good. Even a cursory look at daily events on a global scale leaves no doubt, further, that nonfulfillment of human dignity values still characterizes all cultures and that large-scale deprivations of individuals and groups continue to prevail everywhere.<sup>9</sup> Though the nature, scope and magnitude of values at stake

<sup>9</sup> For example, The New York Times of October 31, 1976, included the following headings:

*U.S. Study Links Rise in Jobless to Deaths, Murders and Suicides*, N.Y. Times, Oct. 31, 1976, § 1, at 1, col. 1;

*State Department Said to Have Urged Korea Inquiry in '75: Investigation of Park Tong Sun Followed Testimony in Senate on Payment by Gulf Oil*, *id.*;

*Protection of Alaska's Wilderness New Priority of Conservationists*, *id.* § 1, at 1, col. 3;

*Human Rights Group Reports Repression in South America*, *id.* § 1, at 3, col. 3;

*Lebanese Fight on as Factions Quarrel Over Peace Plan Terms*, *id.* § 1, at 3, col. 1;

*Devaluation Adding to Mexico's Unrest*, *id.* § 1, at 4, col. 1;

*China Posters Link Left to Killing Plot*, *id.* § 1, at 7, col. 1;

*Three Investigations Begun in Bizarre Tokyo Case Involving Miki, a Judge and a Midnight Telephone Call*, *id.* § 1, at 8, col. 1;

*India Puts Off Parliament Election*, *id.* § 1, at 10, col. 1;

*Indira Gandhi's Aunt Says She is "Profoundly Troubled" at Direction India is Taking*, *id.* § 1, at 11, col. 2;

*Increase in Crime Worries Hungary*, *id.* § 1, at 12, col. 3;

*Thai Purge Results in Climate of Fear: With More Than 5,000 Arrested by the Military Junta, Roundups and Searches Continue Daily*, *id.* § 1, at 13, col. 1;

*Separatists in Quebec May Profit as Popularity of Liberals Declines*, *id.* § 1, at 20, col. 3;

*Military Institute Told to Admit Girls*, *id.* § 1, at 25, col. 1;

*Children's Rights Drive Centered in Courtroom*, *id.* § 1, at 26, col. 1;

*Lower East Side Churches Mobilize Against Vandalism and Fires*, *id.* § 1, at 58, col. 3.

In an unpublicized report to Congress, prepared in connection with the Foreign Assistance Act of 1975, the Department of State indicated: "Repressive laws and actions, arbitrary arrest and prolonged detention, torture or cruel, inhuman or degrading treatment or punishment, unfair trials or other flagrant denials of rights of life, liberty and the security of the person are not extraordinary events in the world community." *Id.*, Nov. 19, 1975, at 14, col. 7.

Emphasizing that "[h]uman rights abuse follow no pattern," the report further pointed out: "They are not limited to types of political regimes or political philosophies. Abuses take place in both the Western and Eastern Hemispheres. They are carried out by and against persons of virtually all races and major religions of the world." *Id.*

The annual comparative survey of freedom (with country-by-country rating) undertaken under the auspices of Freedom House is a valuable source of reference. See Gastil, *The*

may differ from one community to another and from occasion to occasion, the nonfulfillments and deprivations encompass every value sector. We offer selective itemizations:

*Deprivations Relating to Respect*

- Widespread denial of individual freedom of choice regarding participation in value processes including the comprehensive and systematic deprivations inherent in slavery, caste, apartheid and equivalents;<sup>10</sup>
- Persistent discrimination on such invidious grounds as race (racism), sex (sexism), religion, political opinion, language, alienage and age;<sup>11</sup>
- Bestowal or withholding of honor (symbolic recognition) in disregard of actual contribution to common interest;
- Massive encroachments upon the zone of individual autonomy, especially privacy, as a consequence of the trends toward militarization, concentration of power, governmentalization, regimentation and high bureaucratization;<sup>12</sup>
- Suppression of demands for respect by denying opportunity to discover latent capabilities for participation and to acquire and exercise such capabilities;
- Denial of freedom to initiate and constitute, and of freedom of

*Comparative Survey of Freedom VI*, 34 FREEDOM AT ISSUE 11 (1976). For previous surveys, see 29 FREEDOM AT ISSUE 5 (1975); 26 *id.* 15 (1974); 23 *id.* 8 (1974); 20 *id.* 14 (1973); 17 *id.* 4 (1973).

<sup>10</sup> See *The Protection of Respect*, *supra* note 8, at 943-52, 980-84, 994-1004 and the references therein. See generally *Conférence Internationale de Dakar sur la Namibie et les Droits de l'Homme: d'hier a demain*, 9 HUMAN RIGHTS J. 209 (1976).

<sup>11</sup> See McDougal, Lasswell, & Chen, *Human Rights for Women and World Public Order: The Outlawing of Sex-Based Discrimination*, 69 AM. J. INT'L L. 497 (1975); McDougal, Lasswell, & Chen, *The Protection of Aliens from Discrimination and World Public Order: Responsibility of States Conjoined with Human Rights*, 70 AM. J. INT'L L. 432 (1976) [hereinafter cited as *The Protection of Aliens*]; *The Protection of Respect*, *supra* note 8, at 1034-86; McDougal, Lasswell, & Chen, *The Right to Religious Freedom and World Public Order: The Emerging Norm of Non-Discrimination*, 74 MICH. L. REV. 865 (1976) [hereinafter cited as *The Right to Religious Freedom*]; McDougal, Lasswell, & Chen, *Freedom from Discrimination in Choice of Language and International Human Rights*, 1976 S. ILL. U.L.J. 151 [hereinafter cited as *Freedom from Discrimination in Choice of Language*]; McDougal, Lasswell, & Chen, *The Human Rights of the Aged: An Application of the General Norm of Non-Discrimination*, 28 U. FLA. L. REV. 639 (1976); McDougal, Lasswell, & Chen, *Non-Conforming Political Opinion and Human Rights: Transnational Protection Against Discrimination*, 2 YALE STUDIES IN WORLD PUBLIC ORDER 1 (1975) [hereinafter cited as *Non-Conforming Political Opinion and Human Rights*].

See also CASE STUDIES ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: A WORLD SURVEY (W. Veenhoven ed. 1975) [hereinafter cited as CASE STUDIES]; E. VIERDAG, *THE CONCEPT OF DISCRIMINATION IN INTERNATIONAL LAW* (1973).

<sup>12</sup> See McDougal, Lasswell, & Chen, *The Aggregate Interest in Shared Respect and Human Rights: The Harmonization of Public Order and Civic Order*, (forthcoming).

Of a burgeoning literature concerning encroachments upon privacy, see Z. MEDVEDEV, *THE MEDVEDEV PAPERS* 293-470 (V. Rich trans. 1971); A. MILLER, *THE ASSAULT ON PRIVACY: COMPUTERS, DATA BANKS, AND DOSSIERS* (1971); *PRIVACY AND HUMAN RIGHTS* (A. Robertson ed. 1973); A. WESTIN, *PRIVACY AND FREEDOM* (1968); A. WESTIN & M. BAKER, *DATABANKS IN A FREE SOCIETY: COMPUTERS, RECORD-KEEPING AND PRIVACY* (1972). More detailed references are contained in the forthcoming work by McDougal, Lasswell and Chen.

access to, institutions specialized to respect (e.g., suppression of civil rights organizations);<sup>13</sup>  
 Inability of processes of authoritative decision and effective power to defend and fulfill respect;  
 Controversies and difficulties about programs of affirmative action;<sup>14</sup>  
 Widespread practices of forced labor, debt bondage and so on;<sup>15</sup>  
 Occurrences or threats of terrorist activities endangering innocent people (e.g., kidnapping, hijacking, terror bombs, etc.).<sup>16</sup>

<sup>13</sup> See, e.g., N.Y. Times, Apr. 19, 1975, at 7, col. 2 (arrest of members of the small Soviet chapter of Amnesty International by the Soviet security police (KGB)).

<sup>14</sup> The controversy has generated extraordinary interest in the academic community, as well as proliferation of debate among legal commentators. See B. BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973); DE FUNIS VERSUS ODEGAARD AND THE UNIVERSITY OF WASHINGTON (A. Ginger ed. 1974); N. GLAZER, *AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY* (1975); R. O'NEIL, *DISCRIMINATING AGAINST DISCRIMINATION* (1975); Askin, *Eliminating Racial Inequality in a Racist World*, 2 CIV. LIB. L. REV. 96 (Spring 1975); Bell, *Black Students in White Schools: The Ordeal and the Opportunity*, 1970 U. TOL. L. REV. 539; Cohen, *The De Funis Case: Race and the Constitution*, THE NATION, Feb. 8, 1975, at 135; *De Funis Symposium*, 75 COLUM. L. REV. 483 (1975); Ely, *The Constitutionality of Reverse Racial Discrimination*, 41 U. CHI. L. REV. 723 (1974); Graglia, *Special Admission of the "Culturally Deprived" to Law School*, 119 U. PA. L. REV. 351 (1970); Kaplan, *Equal Justice in an Unequal World: Equality for the Negro—The Problem of Special Treatment*, 61 NW. U.L. REV. 363 (1966); Karst & Horowitz, *Affirmative Action and Equal Protection*, 60 VA. L. REV. 955 (1974); Morris, *Equal Protection, Affirmative Action and Racial Preferences in Law Admission: DeFunis v. Odegaard*, 49 WASH. L. REV. 1 (1973); O'Neill, *Racial Preference and Higher Education: The Larger Context*, 60 VA. L. REV. 925 (1974); O'Neill, *Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education*, 80 YALE L.J. 699 (1971); Pelikan, *Quality and Equality*, N.Y. Times, Mar. 29, 1976, at 29, col. 2; Pollock, *On Academic Quotas, id.*, Mar. 4, 1975, at 33, col. 3; Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 SUP. CT. REV. 1; Redish, *Preferential Law Admissions*, 22 U.C.L.A. L. REV. 343 (1974); "Reverse Discrimination" Has It Gone Too Far?, U.S. NEWS & WORLD REPORT, Mar. 29, 1976, at 26-29; Rosen, *Equalizing Access to Legal Education: Special Programs for Law Students Who Are Not Admissible by Traditional Standards*, 1970 U. TOL. L. REV. 321; Sandalow, *Racial Preferences in Higher Education: Political Responsibility and the Judicial Role*, 42 U. CHI. L. REV. 653 (1975); Sowell, *Black Conservative Dissents*, N.Y. Times, Aug. 8, 1976, § 6 (Magazine), at 14-15 *et seq.*; Summers, *Preferential Admissions: An Unreal Solution to a Real Problem*, 1970 U. TOL. L. REV. 377; *Symposium—DeFunis: The Road Not Taken*, 60 VA. L. REV. 917 (1974); *Symposium—Disadvantaged Students and Legal Education—Programs for Affirmative Action*, 1970 U. TOL. L. REV. 277; Totenberg, *Discriminating to End Discrimination*, N.Y. Times, Apr. 14, 1974, § 6 (Magazine), at 9; *Bakke v. The Regents of the Univ. of Cal.*, 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976) (en banc), *cert. granted*, 97 S. Ct. 1098 (1977).

<sup>15</sup> See C. GREENIDGE, *SLAVERY* 66-73 (1958); G. MYRDAL, *ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS* 273-81, 745-49 (1971); UNITED NATIONS & INTERNATIONAL LABOUR OFFICE, *REPORT OF THE AD HOC COMMITTEE ON FORCED LABOUR*, U.N. Doc. E/2431 (1953); *AD HOC COMMITTEE ON SLAVERY AND SERVITUDE, FORMS OF INVOLUNTARY SERVITUDE IN ASIA, OCEANIA AND AUSTRALIA*, U.N. Doc. E/AC.33/R.11 (1951); Gullick, *Debt Bondage in Malaya, in SLAVERY: A COMPARATIVE PERSPECTIVE* 51-57 (R. Winks ed. 1972); N.Y. Times, Oct. 5, 1973, at 10, col. 1; *id.*, Dec. 8, 1968, § 1, at 7, col. 1.

<sup>16</sup> See J. AREY, *THE SKY PIRATES* (1972); C. BAUMANN, *THE DIPLOMATIC KIDNAPPINGS: A REVOLUTIONARY TACTIC OF URBAN TERRORISM* (1973); J. BELL, *TRANSNATIONAL TERROR*

*Deprivations Relating to Power*

Arbitrary denial or deprivation of nationality causing numerous unprotected, stateless persons;<sup>17</sup>

Denial of full participation in the processes of government by exclusion from voting and office holding;<sup>18</sup>

Manipulation of elective machinery through various devices, making elections a mockery of democracy;<sup>19</sup>

(1975); INTERNATIONAL TERRORISM AND WORLD SECURITY (D. Carlton & C. Schaerf eds. 1975); R. CLUTTERBUCK, *LIVING WITH TERRORISM* (1975); P. CLYDE, *AN ANATOMY OF SKYJACKING* (1973); R. GAUCHER, *THE TERRORISTS: FROM TSARIST RUSSIA TO THE O.A.S.* (1968); E. HYAMS, *TERRORISTS AND TERRORISM* (1975); B. JENKINS, *INTERNATIONAL TERRORISM: A NEW MODE OF CONFLICT* (1975); REPORT OF THE AD HOC COMMITTEE ON INTERNATIONAL TERRORISM, 28 U.N. GAOR, Supp. (No. 28), U.N. Doc. A/9028 (1973); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, FIFTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS, GENEVA, 1-12, SEPTEMBER 1975, at 1,3,15-16, 52, U.N. Doc. A/CONF.56/10 (1976) (report prepared by the Secretariat) [hereinafter cited as *THE PREVENTION OF CRIME*]; U.S. FEDERAL BUREAU OF INVESTIGATION, NATIONAL BOMB DATA CENTER, *BOMB SUMMARY: A COMPREHENSIVE REPORT OF INCIDENTS INVOLVING EXPLOSIVE AND INCENDIARY DEVICES IN THE NATION, 1974* (1975); 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, 27 U.N. GAOR (Agenda Item 92), U.N. Doc. A/C.6/418 (1972) (study prepared by the Secretariat); Alexander, *Some Perspectives on International Terrorism*, 14 INT'L PROBLEMS 24 (Fall 1975); *Around the Globe: Outbreaks of Terror*, U.S. NEWS & WORLD REPORT, Sept. 29, 1975, at 76-79; Franck & Lockwood, *Preliminary Thoughts Towards an International Convention on Terrorism*, 68 AM. J. INT'L L. 69 (1974); Howard, *Terrorists: How They Operate a Worldwide Network*, PARADE, Jan. 18, 1976, at 12; Jenkins, *Do What They Ask and Don't Worry. They May Kill Me But They Are Not Evil Men*, N.Y. Times, Oct. 3, 1975, at 35, col. 2; Rovine, *The Contemporary International Legal Attack on Terrorism*, 3 ISRAEL Y.B. HUMAN RIGHTS 9 (1973); *Terrorism and Political Crimes in International Law*, 1973 PROC., AM. SOC'Y INT'L L. 87; *World Terrorism Flares Anew*, U.S. NEWS & WORLD REPORT, Mar. 17, 1975, at 25-26; N.Y. Times, July 16, 1976, at 1, col. 1 (the arming and training of world terrorists by Libyans); *id.*, July 23, 1976, at A2, col. 3 (improvement of terrorists' techniques).

<sup>17</sup> See McDougal, Lasswell, & Chen, *Nationality and Human Rights: The Protection of the Individual in External Arenas*, 83 YALE L.J. 900, 941-76 (1974).

The denationalization and forcible exile on February 13, 1974, of Alexander I. Solzhenitsyn by the Soviet Union for the publication in December 1973 in the West of his book *THE GULAG ARCHIPELAGO 1918-1956*, is a most dramatic recent example. For further detail and pertinent references, see McDougal, Lasswell, & Chen, *supra*, at 959 n.280.

<sup>18</sup> See H. SANTA CRUZ, *RACIAL DISCRIMINATION* 45-48, U.N. Doc. E/CN. 4/Sub. 2/307/Rev. 1 (1971) [hereinafter cited as *RACIAL DISCRIMINATION*]; H. SANTA CRUZ, *STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS* 26-42, U.N. Doc. E/CN. 4/Sub. 2/213/Rev. 1 (1962) [hereinafter cited as *H. SANTA CRUZ*].

For an attempt by a distinguished political scientist at classifying and rating countries (114 in total) according to "eligibility to participate in elections and degree of opportunity for public opposition," see R. DAHL, *POLYARCHY: PARTICIPATION AND OPPOSITION* 231-45 (1971).

<sup>19</sup> See, e.g., the practice of the Nationalist Chinese regime in Taiwan: L. CHEN & H. LASSWELL, *FORMOSA, CHINA AND THE UNITED NATIONS* 132-36, 151, 164-65, 170-73, 251-53, 275-77 (1967); Axelbank, *Chiang Kai-shek's Silent Enemies*, HARPER'S MAGAZINE, Sept., 1963, at 46-53.

- Suspension of elections in the guise of national emergency;<sup>20</sup>
- Denial of full participation in the process of effective power because of disparities in the distribution of base values among members of the community;
- Denial or severe restrictions on participation in the power process on invidious grounds, especially through intolerance of political non-conformists;
- Prevalence of one-party rule, de jure or de facto;
- Total suppression of opposition parties or toleration only of token opposition parties;
- Denial or severe restrictions on freedom of association and assembly;
- Suppression of minority groups;
- Severe sanctions against efforts to change incumbent power elites or to form a new entity;
- Denial or severe restrictions on freedom of access to, movement within and egress from territory (e.g., emigration of minorities, restrictive immigration policies);<sup>21</sup>

<sup>20</sup> See, e.g., N.Y. Times, Oct. 31, 1976, § 1, at 10, col. 1 (India); *id.*, Nov. 6, 1976, at 3, col. 1 (India); *id.*, Nov. 8, 1976, at 1, col. 1 (India); *id.*, Oct. 14, 1976, at 8, col. 1 (Thailand).

<sup>21</sup> See J. INGLES, STUDY OF DISCRIMINATION IN RESPECT OF THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY 18-63, U.N. Doc. E/CN. 4/Sub.2/229/Rev. 1 (1963); *Expulsion and Expatriation in International Law: The Right to Leave, to Stay, and to Return*, 1973 PROC., AM. SOC'Y INT'L L. 122-40; Higgins, *The Right in International Law of an Individual to Enter, Stay In and Leave a Country*, 49 INT'L AFFAIRS 341 (1973); Partsch, *The Right to Leave and to Return in the Countries of the Council of Europe*, 5 ISRAEL Y.B. HUMAN RIGHTS 215 (1975); Pettiti, *The Right to Leave and to Return in the USSR*, 5 ISRAEL Y.B. HUMAN RIGHTS 264 (1975); Plender, *The Ugandan Crisis and the Right of Expulsion Under International Law*, 9 REV. INT'L COMM'N JURISTS 19 (Dec. 1972); Silverstein, *Emigration: A Policy Oriented Inquiry*, 2 SYRACUSE J. INT'L L. & COM. 149 (1974); Toman, *The Right to Leave and to Return in Eastern Europe*, 5 ISRAEL Y.B. HUMAN RIGHTS 276 (1975); Weis, *The Right to Leave and to Return in the Middle East*, 5 ISRAEL Y.B. HUMAN RIGHTS 322 (1975); N.Y. Times, Nov. 19, 1976, at A1, col. 4 (restrictions on emigration to the West by East Germans); *id.*, Dec. 26, 1974, at 8, col. 3 (the new internal passport system in the Soviet Union); *id.*, Dec. 27, 1974, at 4, col. 6.

Recently, the principal focus of attention has centered upon the problem of emigration of Soviet Jews. See V. CHALIDZE, TO DEFEND THESE RIGHTS: HUMAN RIGHTS AND THE SOVIET UNION 92-114 (1974); W. KOREY, THE SOVIET CAGE: ANTI-SEMITISM IN RUSSIA 184-200 (1973); Z. MEDVEDEV, *supra* note 12, at 173-270; A. SAKHAROV, MY COUNTRY AND THE WORLD 51-61 (G. Daniels trans. 1975); A. SAKHAROV, SAKHAROV SPEAKS 159-63 (H. Salisbury ed. 1974); T. TAYLOR, COURTS OF TERROR: SOVIET CRIMINAL JUSTICE AND JEWISH EMIGRATION (1976); Dinstein, *Freedom of Emigration and Soviet Jewry*, 4 ISRAEL Y.B. HUMAN RIGHTS 266 (1974); Higgins, *Human Right of Soviet Jews to Leave: Violations and Obstacles*, 4 ISRAEL Y.B. HUMAN RIGHTS 275 (1974); Knisbacher, *Aliyah of Soviet Jews: Protection of the Right of Emigration Under International Law*, 14 HARV. INT'L L.J. 89 (1973); Pettiti, *The Administrative Practice, the Measures Taken and the Harassments Applied Following the Request for a Visa*, 4 ISRAEL Y.B. HUMAN RIGHTS 288 (1974); Shroeter, *How They Left: Varieties of Soviet Jewish Exit Experience*, 2 SOVIET JEWISH AFFAIRS 3 (1972); Vazquez, *The Soviet Jewish Minority and the Right to Leave*, 4 ISRAEL Y.B. HUMAN RIGHTS 302 (1974); N.Y. Times, Feb. 17, 1976, at 6, col. 2; *id.*, Oct. 20, 1976, at 1, col. 1; *id.*, Oct. 22, 1976, at A2, col. 3; *id.*, Oct. 26, 1976, at 16, col. 1.

A dramatic recent example of suppression of freedom to travel abroad is the denial of such freedom to Andrei D. Sakharov by the Soviet government for acceptance in person of

Mass expulsion of resident aliens (expulsion of Asians in Uganda);  
 Vast numbers of refugees fleeing persecution amidst deterioration  
 of the practices of asylum;  
 Imposition of restrictions on freedom to initiate and constitute, and  
 freedom of access to institutions specialized to power;<sup>22</sup>  
 Governmental institutions closed to free access;  
 Deprivation or suspension of important human rights through spuri-  
 ous invocation or abusive application of national security, as  
 through declarations of martial law (state of siege);<sup>23</sup>

the 1975 Nobel Peace Prize. See N.Y. Times, Oct. 11, 1975, at 1, col. 2; *id.*, Dec. 11, 1975, at 10, col. 1; *id.*, Dec. 13, 1975, at 6, col. 3.

<sup>22</sup> See C. FRIEDRICH & Z. BRZEZINSKI, *TOTALITARIAN DICTATORSHIP AND AUTOCRACY* 27-39 (1961) [hereinafter cited as C. FRIEDRICH & Z. BRZEZINSKI]; H. SANTA CRUZ, *supra* note 18. See generally REGIMES AND OPPOSITIONS (R. Dahl ed. 1973); *AUTHORITARIAN POLITICS IN MODERN SOCIETY: THE DYNAMICS OF ESTABLISHED ONE-PARTY SYSTEMS* (S. Huntington & C. Moore eds. 1970). See also R. DAHL, *supra* note 18; N.Y. Times, Dec. 3, 1974, at 6, col. 1; *id.*, June 10, 1976, at 8, col. 1; *id.*, July 15, 1976, at 11, col. 3 (from the strict ban of political parties to legalization of political parties in Spain).

<sup>23</sup> INTERNATIONAL COMMISSION OF JURISTS, *THE HUNGARIAN SITUATION AND THE RULE OF LAW* (1957); UNITED NATIONS, 1959 SEMINAR ON JUDICIAL AND OTHER REMEDIES AGAINST THE ILLEGAL EXERCISE OR ABUSE OF ADMINISTRATIVE AUTHORITY, U.N. Doc. ST/TAO/HR/6 (1960); UNITED NATIONS, *REMEDIES AGAINST THE ABUSE OF ADMINISTRATIVE AUTHORITY, SELECTED STUDIES* (1964); Azad, *A Letter from Mrs. Gandhi's India*, *THE NEW REPUBLIC*, Aug. 7 & 14, 1976, at 19-23; Butler, *Political Repression in South Korea—1974*, 13 *REV. INT'L COMM'N JURISTS* 37 (1974); *Human Rights in the World, Uruguay*, 16 *REV. INT'L COMM'N JURISTS* 19-22 (June 1976); *Indira's Next Decade*, *NEWSWEEK*, Feb. 16, 1976, at 37; N.Y. Times, July 4, 1975, at 3, col. 1 (city ed.); *id.*, Sept. 8, 1975, at 1, col. 1 (late city ed.); *id.*, Dec. 26, 1975, at 1, col. 1; *id.*, Sept. 15, 1976, at 18, col. 1; *id.*, Nov. 3, 1976, at 45, col. 8 (India). But see Kaul, *In Which Reasons for the State of Emergency are Explained and Defended*, *id.*, July 28, 1975, at 21, col. 1; *Prime Minister Indira Gandhi Responds to Charges that Democracy in India is Dead*, *SATURDAY REV.*, Aug. 9, 1975, at 10.

For abuse of power under pretext of national security in connection with the Watergate scandal, see *WATERGATE: SPECIAL PROSECUTION FORCE REPORT* (October, 1975) (containing a detailed bibliography of Watergate source materials at 265-73); *Hearings and Final Reports, Pursuant to H. Res. 803, of the House Comm. on the Judiciary*, 93d Cong., 2d Sess. (1974) (Impeachment Hearings). See also J. DEAN, *BLIND AMBITION: THE WHITE HOUSE YEARS* (1976); L. JAWORSKI, *THE RIGHT AND THE POWER: THE PROSECUTION OF WATERGATE* (1976); E. RICHARDSON, *THE CREATIVE BALANCE: GOVERNMENT, POLITICS, AND THE INDIVIDUAL IN AMERICA'S THIRD CENTURY* 1-47 (1976).

Abuse of governmental power is the common thread that runs through the composite experience of the deceptions which made possible the drift into Vietnam, the long contempt for the law by the Federal Bureau of Investigation under its late director J. Edgar Hoover, the persistent violations of its own charter and of fundamental civil liberties by the Central Intelligence Agency and similar transgressions by the Internal Revenue Service.

*Above the Law*, N.Y. Times, Dec. 28, 1975, § 4, at 10, col. 1 (editorial). See FINAL REPORT OF THE SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, S. REP. NO. 755, 94th Cong., 2d Sess. (1976); P. AGEE, *INSIDE THE COMPANY: CIA DIARY* (1976); N. BLACKSTOCK, *COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM* (1976); M. HALPERIN, *THE LAWLESS STATE: THE CRIME OF THE U.S. INTELLIGENCE AGENCIES* (1976); V. MARCHETTI & J. MARKS, *THE CIA AND THE CULT OF INTELLIGENCE* (1974); REPORT TO THE PRESIDENT BY THE COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES (June, 1975) (Rockefeller Commission Report); S. UNGAR, *FBI* (1976); Calamaro, *The Way the Government is Going*, N.Y. Times, Mar. 17, 1976, at 41, col.



- Subverting the normal civilian processes of government by declarations of martial law (or state of siege);<sup>24</sup>
- Inability of the processes of authoritative decision and effective power to defend and fulfill particular rights;<sup>25</sup>
- Total breakdown of the process of authoritative decision (no rule of law);<sup>26</sup>
- Oppressive or totalitarian character of the processes of authoritative decision and effective power;
- Controversies about proportional representation or quota representation in the power process;<sup>27</sup>
- Monopolization by a particular "class" or caste of both the processes of authoritative decision and effective power, because of disparities in the distribution of base values;
- Imposition of arbitrary restraints upon the employment of the relevant instruments of policy;
- Prevalence of the reign of terror, as sustained by monopoly of the

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2; Donner, *Electronic Surveillance: The National Security Game*, 2 CIVIL LIB. REV. 15-47 (Summer 1975); Halperin, *National Security and Civil Liberties*, 21 FOREIGN POLICY 125 (1975); Ungar, *The Intelligence Tangle: The CIA and the FBI Face the Moment of Truth*, THE ATLANTIC, Apr., 1976, at 31-42; *Summary of Rockefeller Panel's C.I.A. Report*, N.Y. Times, June 11, 1975, at 18-20; *id.*, Mar. 29, 1976, at 1, col. 1 (FBI's burglarization of the offices of the Socialist Workers Party); *id.*, June 27, 1976, § 1, at 16, col. 3.

<sup>24</sup> See generally J. HUREWITZ, MIDDLE EAST POLITICS: THE MILITARY DIMENSION (1969); M. JANOWITZ, THE MILITARY IN THE POLITICAL DEVELOPMENT OF NEW NATIONS (1964); THE ROLE OF THE MILITARY IN UNDERDEVELOPED COUNTRIES (J. Johnson ed. 1962); G. KENNEDY, THE MILITARY IN THE THIRD WORLD (1975) (containing an appendix on "Military Interventions in the Third World 1945-72," at 337-44); MILITARY PROFESSION AND MILITARY REGIMES (J. Van Doorn ed. 1969); Lerner, *Military Rule—Can It Spark a New Latin Self-Reliance?*, SATURDAY REV./WORLD, Oct. 23, 1973, at 12-15.

See also De Onis, *Latin America, the Growing Graveyard for Democracies*, N.Y. Times, Mar. 28, 1976, § 4, at 1, col. 4; *Human Rights in the World, Argentina*, 16 REV. INT'L COMM'N JURISTS 1-4 (June 1976); *In 10th Year, Brazil Regime Gives No Sign of Restoring Civil Rule*, N.Y. Times, Apr. 4, 1973, at 8, col. 1 (city ed.); *Chile: The System of Military Justice*, 15 REV. INT'L COMM'N JURISTS 1 (Dec. 1975); *The Legal System in Chile*, 13 REV. INT'L COMM'N JURISTS 45 (Dec. 1974); Zalaguet, *Human Rights in Chile*, N.Y. Times, May 26, 1976, at 39, col. 2; *Chile Gives Free Rein to Secret Police*, *id.*, May 12, 1975, at 1, col. 5; *Chile Junta Resisting Critics*, *id.*, Sept. 21, 1975, at 1, col. 3; George, *For Marcos, The Lesser Danger*, FAR EASTERN ECONOMIC REV., Jan. 8, 1973, at 23-25; Kattenburg, *Marcos Said They "Chose to Stay" in Prison*, N.Y. Times, July 24, 1974, at 41, col. 1; *Marcos Says He Must Keep Martial Law*, *id.*, June 17, 1974, at 7, col. 1; *Troubles for Marcos*, *id.*, July 5, 1974, at 3, col. 1 (city ed.); *High Court in Philippines Upholds Marcos's Martial-Law Regime*, *id.*, Feb. 2, 1975, § 1, at 12, col. 4; *Marcos Says Martial Law Stands Despite Gains*, *id.*, Aug. 28, 1976, at 2, col. 4; *One More Infant Democracy Dies in the Cradle*, THE ECONOMIST, Oct. 9, 1976, at 55 (Thailand); N.Y. Times, Oct. 7, 1976, at 1, col. 1 (Thailand); *id.*, Oct. 8, 1976, at A1, col. 2 (Thailand); *id.*, Oct. 9, 1976, at 3, col. 4 (Thailand); *id.*, Oct. 23, 1976, at 2, col. 3 (Thailand).

<sup>25</sup> See INTERNATIONAL COMMISSION OF JURISTS, JUSTICE ENSLAVED: A COLLECTION OF DOCUMENTS ON THE ABUSE OF JUSTICE FOR POLITICAL ENDS (1955) [hereinafter cited as JUSTICE ENSLAVED].

<sup>26</sup> See H. ARENDT, THE ORIGINS OF TOTALITARIANISM (1958); B. CHAPMAN, POLICE STATE (1970); TOTALITARIANISM (C. Friedrich ed. 1964); C. FRIEDRICH & Z. BRZEZINSKI, *supra* note 22; F. HAYEK, THE ROAD TO SERFDOM (1950); J. TALMON, THE ORIGINS OF TOTALITARIAN DEMOCRACY (1960).

<sup>27</sup> See generally J. LAPONCE, THE PROTECTION OF MINORITIES 111-31 (1960).

means of violence (secret police, military and para-military organizations, etc.);  
 Widespread practices or arbitrary arrest, detention, imprisonment and torture;<sup>28</sup>  
 Subversion of the procedures of due process and of fair and public trial;  
 Subjection of civilians to court-martial;  
 Arbitrary arrest and detention of individuals, kept incommunicado, without the filing of charges;  
 Widespread failure to establish and maintain community structures that effectively and responsibly perform all essential decision functions.

### *Deprivations Relating to Enlightenment*

Continuing high illiteracy rate in many communities around the world,<sup>29</sup>

<sup>28</sup> See UNITED NATIONS, STUDY OF THE RIGHT OF EVERYONE TO BE FREE FROM ARBITRARY ARREST, DETENTION AND EXILE, U.N. Doc. E/CN.4/826/Rev. 1 (1964); *Freedom from Arbitrary Arrest, Detention and Exile*, [1955] Y.B. ON HUMAN RIGHTS (United Nations) (1st Supp. Vol. 1959).

See also W. BUTLER & G. LEVASSEUR, HUMAN RIGHTS AND THE LEGAL SYSTEM IN IRAN (1976); *Hearings on Human Rights in South Korea: Implications for U.S. Policy Before the Subcomms. on Asian and Pacific Affairs and on International Organizations and Movements of the House Comm. on Foreign Affairs*, 93d Cong., 2d Sess. (1974); Amalrik, *Arrest on Suspicion of Courage: Detention by the KGB*, HARPER'S MAGAZINE, Aug. 1976, at 37-44, 49-56; Shelton, *The Geography of Disgrace: A World Survey of Political Prisoners*, SATURDAY REV./WORLD, June 15, 1974, at 14; N.Y. Times, Oct. 12, 1975, § 1, at 1, col. 2 (Ethiopia); *id.*, Oct. 16, 1976, at 1, col. 6 (Thailand); *id.*, Oct. 21, 1976, at 1, col. 2 (Thailand); *id.*, Nov. 22, 1975, at 6, col. 3 (political prisoners around the world).

For the recent tragic events, including the large-scale arrest and imprisonment of opposing political leaders in the name of national security and emergency, in India once the world's most populous democracy, see *id.*, June 13, 1975, at 1, col. 1; *id.*, June 27, 1975, at 1, col. 6; *id.*, June 28, 1975, at 1, col. 6; *id.*, Aug. 5, 1975, at 10, col. 3.

On perversion of judicial systems, see L. DOWNIE, JUSTICE DENIED: THE CASE FOR REFORM OF THE COURTS (1972); C. GOODELL, POLITICAL PRISONERS IN AMERICA (1973); O. KIRCHHEIMER, POLITICAL JUSTICE: THE USE OF LEGAL PROCEDURE FOR POLITICAL ENDS (1961); J. LIEBERMAN, HOW THE GOVERNMENT BREAKS THE LAW (1972); THE TRIAL OF THE FOUR: A COLLECTION OF MATERIALS ON THE CASE OF GALANSKOV, GINZBURG, DOBROVOLSKY & LASHKOVA, 1967-68 (P. Litvinov comp. & P. Reddaway ed. 1972); J. NEWFIELD, CRUEL AND UNUSUAL JUSTICE (1974); WITH JUSTICE FOR SOME: AN INDICTMENT OF THE LAW BY YOUNG ADVOCATES (B. Wassersstein & M. Green eds. 1970); P. ZIMROTH, PERVERSIONS OF JUSTICE: THE PROSECUTION AND ACQUITTAL OF THE PANTHER 21 (1974).

<sup>29</sup> According to the Final Act of the International Conference on Human Rights, adopted in Teheran, "over 700 million persons in the world" were, in 1968, "still illiterate." FINAL ACT OF THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, TEHERAN, 22 APRIL TO 13 MAY 1968, at 12, U.N. Doc. A/CONF.32/41 (1968). According to a recent United Nations report:

The literacy situation varies considerably from one country to another; whereas in some countries a relatively high level of literacy has been achieved, in others, the existing low percentage of literates is not rising fast enough to keep pace with the increase in population. The over-all percentage of adults, i.e., persons of 15 years of age or over, who are illiterate declined from 39 per cent in 1960 to 34 per cent in 1970 (table 140). The number of literate adults in the world rose by over 370 million. However, because the total adult population grew during the same period by some 420

- Unequal and limited opportunity in access to institutions of high learning;<sup>30</sup>  
 Wholesale indoctrination (thought control, brainwashing, conditioning);<sup>31</sup>  
 Deliberate fabrication and dissemination of misinformation (distorted information) especially by the government;<sup>32</sup>  
 Politicization of enlightenment;<sup>33</sup>  
 Withholding or suppression of information essential to independent appraisal of governmental policies and decisions;<sup>34</sup>

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million, the actual number of illiterates also increased by nearly 50 million. The illiteracy rate among females is higher than among males. The present male illiteracy rate is 28 per cent, whereas the female illiteracy rate stands at 40 per cent. The highest illiteracy rates are found in Africa (74 per cent) and the Arab States (73 per cent) followed by Asia (47 per cent) and Latin America (24 per cent) and this order has not changed between 1960 and 1970.

UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, 1974 REPORT ON THE WORLD SOCIAL SITUATION 224-25, U.N. Doc. E/CN.5/512/Rev. 1 (ST/ESA/24) (1975) [hereinafter cited as 1974 REPORT ON THE WORLD SOCIAL SITUATION].

See also L. BROWN, IN THE HUMAN INTEREST: A STRATEGY TO STABILIZE WORLD POPULATION 104-05 (1974) [hereinafter cited as IN THE HUMAN INTEREST]; L. BROWN, WORLD WITHOUT BORDERS 116 (1972) [hereinafter cited as WORLD WITHOUT BORDERS]; LITERACY IN TRADITIONAL SOCIETIES (J. Goody ed. 1968); B. RUSSETT, H. ALKER, K. DEUTSCH, & H. LASSWELL, WORLD HANDBOOK OF POLITICAL AND SOCIAL INDICATORS 221-26 (1964) [hereinafter cited as B. RUSSETT, et al.]; C. TAYLOR & M. HUDSON, WORLD HANDBOOK OF POLITICAL AND SOCIAL INDICATORS 323-35 (2d ed. 1972) [hereinafter cited as C. TAYLOR & M. HUDSON]; UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, 1970 REPORT ON THE WORLD SOCIAL SITUATION 198-99, U.N. Doc. E/CN.5/456/Rev. 1 (ST/SOA/110) (1971) [hereinafter cited as 1970 REPORT ON THE WORLD SOCIAL SITUATION]; UNESCO, LITERACY 1969-1971: PROGRESS ACHIEVED IN LITERACY THROUGHOUT THE WORLD (1972); N.Y. Times, Sept. 4, 1975, at 12, col. 4.

<sup>30</sup> See C. AMMOUN, STUDY OF DISCRIMINATION IN EDUCATION 1-89, U.N. Doc. E/CN.4/Sub.2/181/Rev. 1 (1957); ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *supra* note 1, at 81-86. See also HARVARD EDUCATIONAL REVIEW, EQUAL EDUCATIONAL OPPORTUNITY (1969); C. JENCKS, INEQUALITY; A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA (1972).

<sup>31</sup> See generally T. CHEN, THOUGHT REFORM OF THE CHINESE INTELLECTUALS (1960); A. DALLIN & G. BRESLAUER, POLITICAL TERROR IN COMMUNIST SYSTEMS (1970); R. LIFTON, THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF "BRAINWASHING" IN CHINA (1961); A. MEERLOO, THE RAPE OF THE MIND: THE PSYCHOLOGY OF THOUGHT CONTROL, MENTICIDE, AND BRAINWASHING (1956); S. NEUMANN, PERMANENT REVOLUTION: TOTALITARIANISM IN THE AGE OF INTERNATIONAL CIVIL WAR 205-29 (2d ed. 1965); W. SARGANT, BATTLE FOR THE MIND: A PHYSIOLOGY OF CONVERSION AND BRAINWASHING (1957); T. YU, MASS PERSUASION IN COMMUNIST CHINA (1964).

<sup>32</sup> See D. WISE, THE POLITICS OF LYING: GOVERNMENT DECEPTION, SECRECY, AND POWER (1973).

<sup>33</sup> For attempts by the Third World nations to pool their government-controlled news agencies in order to replace coverage by the existing major news gathering and disseminating organizations and to liberate "information and mass media from the colonial legacy," see N.Y. Times, July 14, 1976, at 3, col. 5. See also *id.*, Jan. 25, 1976, § 1, at 13, col. 1; *id.*, Aug. 2, 1976, at 20, col. 4. For a reaction to such an attempt, see *Muzzling the World's Press*, Wall St. J., July 23, 1976, at 10, col. 1 (editorial).

<sup>34</sup> For vivid illustration, see H. SMITH, THE RUSSIANS 344-74 (1976). Smith observes: "The absence of such routine and obviously necessary information is typical. Russians take it as a fact of life that much of the information they need to know just to get along day by day does not appear in their press." *Id.* at 345.

Dissemination of information calculated to win blind public support rather than create public enlightenment;  
 Monopoly of the instruments of public enlightenment (the media of mass communication) by the ruling power elites;<sup>35</sup>  
 Politicization and governmental domination of universities and denial of academic freedom;<sup>36</sup>  
 Excessive concentration in private ownership of the instruments of mass communication;  
 Systematic undertaking of drastic measures to curb freedom of opinions and expression (freedom to acquire, use and communicate knowledge and information) under the pretext of national security and internal order;<sup>37</sup>  
 Exploitation of the process of authoritative decision to support and defend practices suppressing freedom of expression;<sup>38</sup>  
 Suppression of nondominant languages;<sup>39</sup>  
 Keeping people ignorant and content, by severe restrictions on

Smith further states:

In the West, Soviet censorship has a reputation for suppressing bad news like airplane crashes or political purges, or for turning Trotsky, Khrushchev, and other foes of the regime into nonpersons. But what is more important is that on behalf of the Soviet elite, the system of censorship suppresses the facts of life in many areas that seem to have no obvious connection with national security or the political secrets of Soviet rulers—and this cripples independent public discussion of almost any serious issue.

*Id.* at 373.

The profound consequence of withholding or suppressing information was explored by one of the authors many years ago:

Cut off from the means by which statements can be tested in reality, cut off from the quickening support of institutions of genuine inquiry, independent minds are cast adrift from their moorings. They are no longer in a position to exercise the kind of criticisms which they themselves most respect; for mature independent minds respect information and inquiry. The impoverished pabulum available to the ego first weakens the ego and typically ends in transforming the conscience. The ego is constrained to admit that given the miserable sources of current intelligence, the individual has little more than his suspicions to contribute to the consideration of public policy. And the coercive menaces of the ruling regime provide strong incentives against speaking up and demanding wider access to intelligence sources.

Lasswell, *Propaganda and Mass Insecurity*, in PERSONALITY AND POLITICAL CRISIS 21 (Å. Stanton & E. Perry eds. 1951).

<sup>35</sup> Needless to say, totalitarian regimes distinguish themselves by monopolizing the media of mass communication. See C. FRIEDRICH & Z. BRZEZINSKI, *supra* note 22, at 107-17; F. HOUN, *TO CHANGE A NATION* (1961) (China); A. INKELES, *PUBLIC OPINION IN SOVIET RUSSIA* 150-56 (1951); B. MURTY, *PROPAGANDA AND WORLD PUBLIC ORDER: THE LEGAL REGULATION OF THE IDEOLOGICAL INSTRUMENT OF COERCION* 39-44 (1968); *THE PRESS IN AUTHORITARIAN COUNTRIES* 28-43 (International Press Institute Survey No. 5, 1959).

<sup>36</sup> See, e.g., *Human Rights in the World, Uruguay*, 16 REV. INT'L COMM'N JURISTS 19-22 (June 1976); *400 Professors Ousted in Korea: Seoul Forces Resignations or Dismissals under New Tenure Law*, N.Y. Times, Mar. 14, 1976, § 1, at 1, col. 2; *id.*, Nov. 30, 1976, at 1, col. 1 (Latin American universities).

<sup>37</sup> See, e.g., Irani, *The Indian Press Under Pressure*, 30 FREEDOM AT ISSUE 7 (1975). See also notes 23-24 *supra*.

<sup>38</sup> See N.Y. Times, June 2, 1974, § 1, at 18, col. 1 (Singapore); *id.*, Sept. 6, 1974, at 8, col. 4 (Peru); *id.*, Apr. 11, 1976, § 1, at 2, col. 3 (Nigeria); *id.*, Aug. 15, 1976, § 1, at 1, col. 3 (South Africa); *id.*, Oct. 26, 1975, § 1, at 14, col. 4 (Latin America).

<sup>39</sup> See *Freedom from Discrimination in Choice of Language*, *supra* note 11, at 152-55 and pertinent references therein. See also *Spanish Regions Bitter at Ruling on Languages*, N.Y. Times, Nov. 17, 1975, at 1, col. 6; *Seoul, to "Purify" Language, Acts Against Foreign Words*, *id.*, May 21, 1976, at A6, col. 4.

travel abroad and contact with foreigners, and by constant surveillance, jamming of transnational radio broadcasting and control over access to foreign publications (books, periodicals and dailies),<sup>40</sup>

Suppression of dissenters and nonconformists through coercive measures;<sup>41</sup>

Manipulated standardization (requisitioning) of taste and style to suppress diversity and innovation;<sup>42</sup>

Widespread practices of censorship.<sup>43</sup>

<sup>40</sup> See, e.g., N.Y. Times, Sept. 28, 1975, § 1, at 23, col. 1 (Soviet curbs on import of Western publications).

<sup>41</sup> Such activities are increasingly carried out transnationally as well as internally. For transnational operations by South Korean governmental agents against Koreans residing in the United States and against Korean-Americans, see *id.*, Oct. 29, 1976, at A1, col. 3; *id.*, Oct. 30, 1976, at 1, col. 2. For coercive suppression of dissidents within South Korea, see Falk, *Seoul's Repression*, *id.*, Apr. 25, 1976, § 4, at 15, col. 2; Kim, *From a Seoul Prison*, *id.*, Dec. 17, 1975, at 45, col. 3; *25 Years after War South Korea Mixes Progress and Repression*, *id.*, June 25, 1975, at 10, col. 1; *Curbs are Tighter on South Koreans*, *id.*, Sept. 22, 1975, at 1, col. 4; *11 Critics of Regime are Seized in Seoul*, *id.*, Mar. 11, 1976, at 1, col. 1; *South Korea Dissidents Tell of Threats and Fear in Days of Nonstop Grilling by Intelligence Agents*, *id.*, Mar. 12, 1976, at 7, col. 1; *South Korea Begins Trial of 18 Opposition Leaders*, *id.*, May 5, 1976, at 3, col. 5; *12 in Clergy are Reported Detained in South Korea*, *id.*, June 25, 1976, at A3, col. 3; *Seoul Adamant Over Dissidents*, *id.*, Aug. 23, 1976, at 7, col. 1; *Seoul Sentences Expected to Intimidate Park's Foes*, *id.*, Aug. 29, 1976, § 1, at 3, col. 1.

Regarding India, see Borders, *India's Usual Dissenters Fall Silent*, *id.*, Aug. 10, 1975, § 4, at 3, col. 3; X, *Dismay in India*, *id.*, Apr. 9, 1976, at 37, col. 2; *id.*, July 5, 1975, at 1, col. 4; *id.*, May 26, 1976, at 1, col. 1; *id.*, Aug. 25, 1976, at 4, col. 4.

See also C. BELFRAGE, *THE AMERICAN INQUISITION, 1945-1960* (1973); *THIRTY YEARS OF TREASON: EXCERPTS FROM HEARINGS BEFORE THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, 1938-1968* (E. Bentley ed. 1971); C. MEE, *THE INTERNMENT OF SOVIET DISSIDENTS IN MENTAL HOSPITALS* (1971); Jacoby & Astracham, *Soviet Dissent: An Ebb Tide*, *WORLD*, June 19, 1973, at 13-19; *Human Rights in the World, Yugoslavia*, 16 *REV. INT'L COMM'N JURISTS* 17-19 (June 1976); N.Y. Times, May 10, 1976, at 7, col. 1 (city ed.) (imprisonment of journalists in 17 countries); *East Germany Tightening Curbs, But Dissidents Say They'll Fight On*, *id.*, Nov. 30, 1976, at 3, col. 2; *id.*, Sept. 16, 1974, at 1, col. 5 (late city ed.) (disruption of a nonconformist, modern art show by the Soviet government through bulldozers, dump trucks and water spraying trucks); *id.*, Sept. 14, 1975, § 1, at 15, col. 1 (arrest of Andrei Amalrik, a dissident writer, by the Soviet police); *id.*, Oct. 10, 1976, § 1, at 3, col. 4 (Thailand); *id.*, Feb. 16, 1975, § 1, at 12, col. 3 (purge of academic dissidents in Yugoslavia).

<sup>42</sup> This has been most vividly illustrated by Mao's China. See A. SAKHAROV, *PROGRESS, COEXISTENCE, AND INTELLECTUAL FREEDOM 59-62* (The New York Times trans. 1968) [hereinafter cited as A. SAKHAROV].

<sup>43</sup> "A recent study of the world's press has concluded that only 16 of the 132 nations now represented in the United Nations have a press that can be said to be 'free to a degree.'" Reston, *The Condition of the Press in the World Today* (1), 7 *HUMAN RIGHTS J.* 593, 596 (1974).

See A. SAKHAROV, *supra* note 42, at 62-65; *Press Freedom 1970-1975*, 16 *REV. INT'L COMM'N JURISTS* 45 (June 1976) (covering many countries); *Human Rights in the World, Brazil*, *id.* at 7.

Regarding India, see *Censorship in India: Grim Editors, Lifeless Papers*, N.Y. Times, July 3, 1975, at 4, col. 5; *Indian Censorship Upsets U.S. Press*, *id.*, July 22, 1975, at 7, col. 1; *India Parliament Approves Curbs*, *id.*, July 24, 1975, at 1, col. 7; *India Seeking to Tighten Control over the Press*, *id.*, Dec. 21, 1975, § 1, at 1, col. 1; *Permanent Censorship Approved in Indian Parliament*, *id.*, Jan. 30, 1976, at 3, col. 5.

*Deprivations Relating to Well-Being*

Persistence of human misery from disease and hunger (starvation),<sup>44</sup>  
 High mortality rate and low life expectancy in many parts of the world;<sup>45</sup>  
 Frequent occurrences of death by violence;  
 Continued employment of death penalty;<sup>46</sup>  
 Inadequate provision for safety, health and comfort;  
 Unhealthy psychosomatic development because of malnutrition;<sup>47</sup>

<sup>44</sup> See G. BORGSTROM, *THE HUNGRY PLANET: THE MODERN WORLD AT THE EDGE OF FAMINE* (rev. ed. 1970); G. BORGSTROM, *TOO MANY: A STUDY OF EARTH'S BIOLOGICAL LIMITATIONS* (1969); L. BROWN, *BY BREAD ALONE* (1974); J. SHEPHERD, *THE POLITICS OF STARVATION* (1975); A. SIMON, *BREAD FOR THE WORLD* (1975); TRANSNATIONAL INSTITUTE, *WORLD HUNGER: CAUSES AND REMEDIES* (1974); *Africa's Other Crisis: Ethiopia's Right to Famine, THE INTERDEPENDENT*, Feb. 1976, at 1 *et seq.*; *Forecast: Famine? CIA Report, TIME*, May 17, 1976, at 85 *et seq.*; Johnson, *Hunger: A Historical Perspective, THE INTERDEPENDENT*, Apr. 1975, at 1, 3; Rothschild, *Food Politics*, 54 *FOREIGN AFFAIRS* 285 (1976).

See also Maloney, *The Ghost of Malthus in South Asia*, *N.Y. Times*, Feb. 14, 1974, at 41, col. 1; Murphy, *Starving Children and the Catholic Church*, *id.*, May 31, 1974, at 33, col. 2; Rensberger, *32 Nations Close to Starvation*, *id.*, Oct. 20, 1974, § 4, at 4, col. 1; Silver, *Sub-Sahara Africa Waits for Help*, *id.*, Sept. 22, 1974, § 4, at 17, col. 1; Weinraub, *Bangladesh, the Hungriest of Them All*, *id.*, Dec. 29, 1974, § 4, at 4, col. 4 (city ed.); *I-Hunger in America*, *id.*, July 8, 1974, at 28, col. 1 (editorial); *II-Hunger in the World*, *id.*, July 9, 1974, at 36, col. 1; *Ethiopian Famine Hits Millions*, *id.*, Feb. 15, 1974, at 1, col. 2; *Food an Obsession in Misery-Ridden Calcutta*, *id.*, Sept. 5, 1974, at 39, col. 1; *id.*, Sept. 19, 1974, at 1, col. 6; *Bangladesh Is Faced With Large-Scale Deaths from Starvation*, *id.*, Oct. 11, 1974, at 3, col. 1; *Anguish of the Hungry Spreading Across India*, *id.*, Oct. 27, 1974, § 1, at 1, col. 5 (city ed.); *World Food Crisis: Basic Ways of Life Face Upheaval*, *id.*, Nov. 5, 1974, at 1, col. 3.

<sup>45</sup> See B. RUSSETT, *et al.*, *supra* note 29, at 196-201; C. TAYLOR & M. HUDSON, *supra* note 29, at 253-55.

<sup>46</sup> See *THE DEATH PENALTY IN AMERICA: AN ANTHOLOGY* (H. Bedau ed. rev. ed. 1967); C. BLACK, *CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE* (1974); *THE HANGING QUESTION: ESSAYS ON THE DEATH PENALTY* (L. Blom-Cooper ed. 1969); CANADA, DEPT. OF JUSTICE, *CAPITAL PUNISHMENT: NEW MATERIAL: 1965-1972* (1972); B. COHEN, *LAW WITHOUT ORDER: CAPITAL PUNISHMENT AND THE LIBERALS* (1970); E. FATTAH, *A STUDY OF THE DETERRENT EFFECT OF CAPITAL PUNISHMENT WITH SPECIAL REFERENCE TO THE CANADIAN SITUATION* (1972); *THE PENALTY IS DEATH* (B. Jones comp. 1968); J. JOYCE, *CAPITAL PUNISHMENT: A WORLD VIEW* (1961); J. MCCAFFERTY, *CAPITAL PUNISHMENT* (1972); M. MELTSNER, *CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT* (1973); *CAPITAL PUNISHMENT* (T. Sellin ed. 1967); N. ST. JOHN-STEVAS, *THE RIGHT TO LIFE* (1964); Bedau, *Problem of Capital Punishment*, 71 *CURRENT HISTORY* 14 (1976); *Death Penalty Rebounds*, *THE INTERDEPENDENT*, March 1976, at 1, 6.

<sup>47</sup> Protein malnutrition is an important cause of infant and young child mortality, stunted physical growth, low work output, premature aging and reduced life span in the developing world. Recent research has also revealed a link between malnutrition in infancy and early childhood and impaired learning and behaviour in later life. The widespread occurrence of protein malnutrition especially among infants, pre-school children, and expectant and nursing mothers in many developing nations spells grave danger to the full expression of the genetic potential of the population of large sections of the world community.

UNITED NATIONS, DEPT OF ECONOMIC AND SOCIAL AFFAIRS, *STRATEGY STATEMENT ON ACTION TO AVERT THE PROTEIN CRISIS IN THE DEVELOPING COUNTRIES* 7, U.N. Doc. E/5018/Rev. 1 (ST/ECA/144) (1971).

See FOOD AND AGRICULTURE ORGANIZATION, *LIVES IN PERIL: PROTEIN AND THE CHILD*

Recurrences of communicable diseases in parts of the world;<sup>48</sup>  
 High incidences of mental and emotional disturbances in stress-laden societies;<sup>49</sup>  
 Intense anxieties generated by threats of violence, both large-scale and small-scale;  
 Indiscriminate mass killings in armed conflict and other situations;<sup>50</sup>  
 Deliberate destruction of group members (genocide);<sup>51</sup>  
 Globalization of torture as a deliberate instrument of policy;<sup>52</sup>

(1970); 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 211-12; *Hunger's Lifelong Effects*, N.Y. Times, May 5, 1974, § 4, at 5, col. 3; *Malnutrition is up Sharply Among World's Children*, *id.*, Oct. 6, 1974, § 1, at 1, col. 6.

<sup>48</sup> See 1970 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 164-67.

<sup>49</sup> 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 221-22. The Report indicates:

The conflicts and contradictions inherent in rapid social change, urbanization and the difficulties in adapting to the urban style of life, crowding, the increased pace and stress of life, changing social structures and a growing proportion of old persons are factors responsible for an increasingly heavy toll of mental disorders in the developed and developing world.

*Id.* at 221.

<sup>50</sup> See, e.g., J. GOLDSTEIN, B. MARSHALL, & J. SCHWARTZ, *THE MY LAI MASSACRE AND ITS COVER-UP: BEYOND THE REACH OF LAW?* (1976); C. TAYLOR & M. HUDSON, *supra* note 29, at 110-15; Emerson, *The Fate of Human Rights in the Third World*, 27 *WORLD POLITICS* 201, 213-21 (1975); *Argentine Extremists Kill 46 in 2 Mass Executions*, N.Y. Times, Aug. 21, 1976, at 1, col. 1.

<sup>51</sup> Undoubtedly the Third Reich remains the archetype of genocide, but events of the recent years in Tibet, Indonesia, Nigeria, Burundi, Rwanda, East Pakistan (now Bangladesh), the Middle East, and other areas suggest that genocidal practices are far from a thing of the past. See C. AGUOLU, *BIAFRA: ITS CASE FOR INDEPENDENCE* (1969); N. AKPAN, *THE STRUGGLE FOR SECESSION, 1966-1970* (1972); M. BOWEN, G. FREEMAN, & K. MILLER, *PASSING BY: THE UNITED STATES AND GENOCIDE IN BURUNDI, 1972* (1973); L. DAWIDOWICZ, *THE WAR AGAINST THE JEWS, 1933-1945* (1975); R. HILBERG, *THE DESTRUCTION OF THE EUROPEAN JEWS* (1967); R. HILBERG, *DOCUMENTS OF DESTRUCTION: GERMANY AND JEWRY 1933-1945* (1971); A. KIRK-GREENE, *CRISIS AND CONFLICT IN NIGERIA* (1971); J. OYNIBO, *NIGERIA: CRISIS AND BEYOND* (1971); J. PAUST & A. BLAUSTEIN, *WAR CRIMES TRIALS AND HUMAN RIGHTS: THE CASE OF BANGLADESH* (1974); *THE SECRETARIAT OF THE INTERNATIONAL COMMISSION OF JURISTS, THE EVENTS IN EAST PAKISTAN, 1971* (1972); S. SLOAN, *A STUDY IN POLITICAL VIOLENCE: THE INDONESIAN EXPERIENCE* 13 (1971); Melady, *Death in Burundi, and U.S. Power*, N.Y. Times, Oct. 27, 1974, § 4, at 17, col. 3; Salzberg, *U.N. Prevention of Human Rights Violations: The Bangladesh Case*, 27 *INT'L ORG.* 115 (1973).

<sup>52</sup> Amnesty International has rendered important contributions in undertaking world survey of torture, and exposing the growing barbarism of contemporary practices country by country. See AMNESTY INTERNATIONAL, *ANNUAL REPORT, 1974-75* (1975); AMNESTY INTERNATIONAL, *REPORT ON TORTURE* (1975).

See *Hearings on Human Rights in Chile Before the Subcomm. on Inter-American Affairs and on International Organizations and Movements of the House Comm. on Foreign Affairs*, 93d Cong., 2d Sess. (1974); *Hearing on Torture and Oppression in Brazil Before the Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs*, 93d Cong., 2d Sess. (1974); Baraheni, *Terror in Iran*, N.Y. REV. BOOKS, Oct. 28, 1976, at 21-25; Buckley, *Colonels' Torture: Use in Greece*, NATIONAL REV., July 23, 1976, at 803; Colligan, *New Science of Torture*, SCIENCE DIGEST, July 1976, at 44-49; Dolan & van den Assum, *Torture and the 5th UN Congress on Crime Prevention*, 14 *REV. INT'L COMM'N JURISTS* 55 (June 1975); *Human Rights in the World: Torture Continues*, 10 *REV. INT'L COMM'N JURISTS* 10 (June 1973); *Lawyers Against Torture*, 16 *REV. INT'L COMM'N JURISTS*

Inadequate medical care and services, especially for the handicapped and the aged;<sup>53</sup>  
 Poor and overcrowded housing and other living conditions (e.g., poor sanitation);<sup>54</sup>  
 Deterioration of the environment that endangers health and human survival (ecocide);<sup>55</sup>  
 Unequal access to the benefits of modern medical science and technology;

29 (June 1976); McCarthy, *Complicity in Torture*, 103 COMMONWEALTH 200 (1976); Styron, *Torture in Chile*, THE NEW REPUBLIC, Mar. 20, 1976, at 15-17; Styron, *Uruguay: The Oriental Republic*, NATION, Aug. 14, 1976, at 107-11; *Torture as Policy: The Network of Evil*, TIME, Aug. 16, 1976, at 31-34.

See also Baraheni, *Torture in Iran: It is a Hell Made by One Man for Another Man*, N.Y. Times, Apr. 21, 1976, at 37, col. 2; Laber, *Torture and Death in Uruguay*, *id.*, Mar. 10, 1976, at 39, col. 1; Lewis, *The Meaning of Torture*, *id.*, May 30, 1974, at 37, col. 5; Majuda, *Torture and Harassment in Brazil*, *id.*, July 11, 1975, at 29, col. 2; Solomon, *Torture in Spain*, *id.*, Nov. 25, 1974, at 31, col. 2; *id.*, Nov. 4, 1974, at 2, col. 4 (Brazil); *id.*, Nov. 20, 1976, at 1, col. 1 (Brazil); *id.*, July 28, 1974, § 1, at 2, col. 3 (Chile); *id.*, Sept. 11, 1974, at 15, col. 1 (Chile); *id.*, Oct. 24, 1974, at 11, col. 1 (Chile); *id.*, Dec. 10, 1974, at 8, col. 3 (Chile); *id.*, Oct. 19, 1975, § 1, at 3, col. 4 (Chile); *id.*, June 8, 1976, at 1, col. 1 (Chile); *id.*, Feb. 29, 1976, § 1, at 5, col. 1 (Iran); *id.*, Sept. 3, 1976, at A4, col. 6 (finding by the European Commission on Human Rights that the British government was guilty of torturing suspected terrorists in Northern Ireland in 1971).

<sup>53</sup> See 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 218-20.

<sup>54</sup> See *id.* at 232-35; UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, WORLD HOUSING SURVEY 1974, at 5-7, 28-57, U.N. Doc. ST/ESA/30 (1976) [hereinafter cited as WORLD HOUSING SURVEY 1974].

See generally D. HUNTER, THE SLUMS: CHALLENGE AND RESPONSE (1964). See also N.Y. Times, Nov. 6, 1976, at 1, col. 4 (Latin America); *id.*, Oct. 20, 1974, § 1, at 21, col. 1 (city ed.); *id.*, May 31, 1976, at 3, col. 1; *id.*, June 9, 1976, at 4, col. 4.

<sup>55</sup> See R. CARSON, SILENT SPRING (1962); THE ENVIRONMENTAL HANDBOOK (G. De Bell ed. 1970); P. EHRlich & A. EHRlich, POPULATION, RESOURCES, ENVIRONMENT 117-97 (1970); R. FALK, THIS ENDANGERED PLANET 21-36 (1971); F. GRAHAM, SINCE SILENT SPRING (1970); LAW, INSTITUTIONS AND THE GLOBAL ENVIRONMENT (J. Hargrove ed. 1972); THE ENVIRONMENTAL CRISIS: MAN'S STRUGGLE TO LIVE WITH HIMSELF (H. Helfrich ed. 1970); WORLD ECO-CRISIS: INTERNATIONAL ORGANIZATIONS IN RESPONSE (D. Kay & E. Skolnikoff eds. 1972); MAN'S IMPACT ON THE GLOBAL ENVIRONMENT (Report of the Study of Critical Environmental Problems) (1970); THE ENDANGERED ENVIRONMENT (A. Montagu comp. 1974); M. NICHOLSON, THE ENVIRONMENTAL REVOLUTION (1970); H. SPROUT & M. SPROUT, TOWARD A POLITICS OF THE PLANET EARTH (1971); STOCKHOLM AND BEYOND (Report of the Secretary of State's Advisory Committee on the 1972 United Nations Conference on the Human Environment) (1972); B. WARD, et al., WHO SPEAKS FOR EARTH? (1973); B. WARD & R. DUBOS, ONLY ONE EARTH: THE CARE AND MAINTENANCE OF A SMALL PLANET (1972); Problems of the Human Environment (Report of the Secretary-General), 47 U.N. GAOR, Annex (Agenda Item 10), U.N. Doc. E/4667 (1969); Report of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14 (1972); J. Schneider, World Public Order of the Environment: Toward an International Ecological Law and Organization, 1975 (unpublished Ph.D. dissertation, Yale University Library); McDougal & Schneider, *The Protection of the Environment and World Public Order: Some Recent Developments*, 45 MISS. L.J. 1085 (1974); Strong, *One Year After Stockholm: An Ecological Approach to Management*, 51 FOREIGN AFFAIRS 690 (1973); *The Concorde Furor*, NEWSWEEK, Feb. 16, 1976, at 16-21; Hill, *A Look at the Man-Made Mess*, N.Y. Times, May 30, 1976, § 4, at 7, col. 4.



Inability to anticipate and cope with natural disasters;<sup>56</sup>  
 Inadequacy in community performance of the tasks of prevention,  
 deterrence, restoration, rehabilitation, reconstruction and correc-  
 tion in regard to well-being;<sup>57</sup>  
 Human experimentation without informed consent;<sup>58</sup>  
 Difficulties associated with family planning and restrictions on birth  
 control;<sup>59</sup>  
 Controversy about genetic engineering, euthanasia, etc.<sup>60</sup>

<sup>56</sup> Recent examples include the disastrous earthquakes in China and Turkey. See *China's Killer Quake*, NEWSWEEK, Aug. 9, 1976, at 30-32; N.Y. Times, Nov. 26, 1976, at 2, col. 3; *Turkish Quake Toll Passes 3,000 Mark*, *id.*, Nov. 26, 1976, at A1, col. 6.

<sup>57</sup> See 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 222-23; 1970 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 167-71.

<sup>58</sup> See B. BARBER, RESEARCH ON HUMAN SUBJECTS: PROBLEMS OF SOCIAL CONTROL IN MEDICAL EXPERIMENTATION (1973); C. LEVY, THE HUMAN BODY AND THE LAW: LEGAL AND ETHICAL CONSIDERATIONS IN HUMAN EXPERIMENTATION (1975); EXPERIMENTATION WITH HUMAN SUBJECTS (P. Freund ed. 1970); B. GRAY, HUMAN SUBJECTS IN MEDICAL EXPERIMENTATION: A SOCIOLOGICAL STUDY OF THE CONDUCT AND REGULATION OF CLINICAL RESEARCH (1975); N. HERSHEY & R. MILLER, HUMAN EXPERIMENTATION AND THE LAW (1976); J. KATZ, EXPERIMENTATION WITH HUMAN BEINGS: THE AUTHORITY OF THE INVESTIGATOR, SUBJECT, PROFESSIONS, AND STATE IN THE HUMAN EXPERIMENTATION PROCESS (1972); NATIONAL ACADEMY OF SCIENCE, EXPERIMENTS AND RESEARCH WITH HUMANS: VALUES IN CONFLICT (1975); M. PAPPWORTH, HUMAN GUINEA PIGS (1967); U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, PUBLIC HEALTH SERVICE, FINAL REPORT OF THE TUSKEGEE SYPHILIS STUDY AD HOC ADVISORY PANEL (1973); *Hearings on Quality of Health Care—Human Experimentation Before the Subcomm. on Health of the Senate Comm. on Labor and Public Welfare*, 93d Cong., 1st Sess. (1973); Adams & Cowan, *The Human Guinea Pig: How We Test New Drugs*, WORLD, Dec. 5, 1972, at 20-24; Capron, *Informed Consent in Catastrophic Disease Research and Treatment*, 123 U. PA. L. REV. 340 (1974); Katz, *Experiments on Humans*, N.Y. Times, Feb. 20, 1975, at 33, col. 2; *Symposium: Medical Experimentation on Human Subjects*, 25 CASE W. RES. L. REV. 431 (1975).

<sup>59</sup> See R. GARDNER, ABORTION: THE PERSONAL DILEMMA (1972); R. GORNEY, THE HUMAN AGENDA 197-312 (1972); ABORTION IN A CHANGING WORLD (R. Hall ed. 1970); D. KENNEDY, BIRTH CONTROL IN AMERICA: THE CAREER OF MARGARET SANGER (1970); D. LOWE, ABORTION AND THE LAW (1966); THE MORALITY OF ABORTION: LEGAL AND HISTORICAL PERSPECTIVES (J. Noonan ed. 1970); G. TAYLOR, THE BIOLOGICAL TIME BOMB (1968); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, HUMAN FERTILITY AND NATIONAL DEVELOPMENT: A CHALLENGE TO SCIENCE AND TECHNOLOGY, U.N. Doc. ST/ECA/138 (1971); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, SOCIAL WELFARE AND FAMILY PLANNING, U.N. Doc. ST/ESA/27 (1976); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, STATUS OF WOMEN AND FAMILY PLANNING: REPORT OF THE SPECIAL RAPPORTEUR APPOINTED BY THE ECONOMIC AND SOCIAL COUNCIL UNDER RESOLUTION 1326 (XLIV), U.N. Doc. E/CN.6/575/Rev. 1 (1975); Kutner, *Due Process of Abortion*, 53 MINN. L. REV. 1 (1968); Peterson, *Family Planning in Poor Nations*, N.Y. Times, Aug. 2, 1976, at 23, col. 2; Prescott, *Abortion or the Unwanted Child: A Choice for a Humanistic Society*, THE HUMANIST, March/April 1975, at 11-15; Peterson, *Family Planning in Poor Nations*, N.Y. Times, Aug. 2, 1976, at 23, col. 2; *Text of Pope Paul's Encyclical Reaffirming the Prohibition Against Birth Control*, *id.*, July 30, 1968, at 20, col. 1; *id.*, Oct. 28, 1976, at 14, col. 3 (deaths resulting from riots connected with compulsory sterilization in India).

<sup>60</sup> See J. FLETCHER, THE ETHICS OF GENETIC CONTROL: ENDING REPRODUCTIVE ROULETTE (1974); P. RAMSEY, THE ETHICS OF FETAL RESEARCH (1975); P. RAMSEY, FABRICATED MAN: THE ETHICS OF GENETIC CONTROL (1970); P. RAMSEY, THE PATIENT AS

*Deprivations Relating to Wealth*

Prevalence of poverty around the globe, except in some pockets of affluence;<sup>61</sup>  
 Inadequate provision of a basic income and social security;<sup>62</sup>

PERSON: EXPLORATION IN MEDICAL ETHICS (1970); GENETICS AND THE FUTURE OF MAN (J. Roslansky ed. 1966); Capron, *Legal Considerations Affecting Clinical Pharmacological Studies in Children*, CLINICAL RESEARCH, Feb. 1973, at 141-50; Note, *Fetal Experimentation: Moral, Legal, and Medical Implications*, 26 STAN. L. REV. 1191 (1974).

On the controversy concerning euthanasia, see a comprehensive bibliography: C. TRICHE & D. TRICHE, *THE EUTHANASIA CONTROVERSY 1812-1974: A BIBLIOGRAPHY WITH SELECT ANNOTATIONS (1975)*. See also EUTHANASIA AND THE RIGHT TO DEATH: THE CASE FOR VOLUNTARY EUTHANASIA (A. Downing ed. 1970); GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, *THE RIGHT TO DIE: DECISION AND DECISION MAKERS* (1974); E. KLUGE, *THE PRACTICE OF DEATH* (1975); M. KOHL, *THE MORALITY OF KILLING, EUTHANASIA, ABORTION AND TRANSPLANTS* (1974); M. MANNES, *LAST RIGHTS* (1974); G. WILLIAMS, *THE SANCTITY OF LIFE AND THE CRIMINAL LAW* (1957); Kutner, *Due Process of Euthanasia: The Living Will*, A Proposal, 44 IND. L.J. 539 (1969); Morris, *Voluntary Euthanasia*, 45 WASH. L. REV. 239 (1970); Silving, *Euthanasia: A Study in Comparative Criminal Law*, 103 U. PA. L. REV. 350 (1954); Williams, *Euthanasia and Abortion*, 38 U. COLO. L. REV. 178 (1966).

<sup>61</sup> See E. EAMES & J. GOODE, *URBAN POVERTY IN A CROSS-CULTURAL CONTEXT* (1973); G. MEIER, *STUDIES IN INTERNATIONAL POVERTY* (2d ed. 1970); G. MYRDAL, *ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS* (1968); G. MYRDAL, *THE CHALLENGE OF WORLD POVERTY* (1970); 1970 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 211-19; 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 202-06; ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *DEVELOPMENT CO-OPERATION: EFFORTS AND POLICIES OF THE MEMBERS OF THE DEVELOPMENT ASSISTANCE COMMITTEE 52-54* (1975) (report by Maurice J. Williams) [hereinafter cited as DEVELOPMENT CO-OPERATION]; B. SCHILLER, *THE ECONOMICS OF POVERTY AND DISCRIMINATION* (2d ed. 1976); A. SHONFIELD, *THE ATTACK ON WORLD POVERTY* (1960); *THE CONCEPT OF POVERTY: WORKING PAPERS ON METHODS OF INVESTIGATION AND LIFE-STYLES OF THE POOR IN DIFFERENT COUNTRIES* (P. Townsend ed. 1970); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, *ATTACK ON MASS POVERTY AND UNEMPLOYMENT: VIEWS AND RECOMMENDATIONS OF THE COMMITTEE FOR DEVELOPMENT PLANNING*, U.N. Doc. ST/ECA/162 (1972) [hereinafter cited as ATTACK ON MASS POVERTY]; U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, *SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY PROGRAMS THROUGHOUT THE WORLD* (1969) (Research Report No. 31); Daniel, *Can World Poverty Be Abolished?*, 12 WORLD JUSTICE 31 (1970); Simpson, *The Dimensions of World Poverty*, SCIENTIFIC AMERICAN, Nov. 1964, at 27.

Even in what is commonly regarded as the most affluent country—the United States—poverty has not disappeared. For the classic that exposed poverty in the United States and was instrumental in the initiation of the "war on poverty," see M. HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1962).

In the same vein, Peter Drucker observes:

What impresses the outside world about the United States today is not how our rich men live—the world has seen riches before, and on a larger and more ostentatious scale. What impresses the outside world is how the poor of this country live.

"Up to Poverty" is the proper slogan . . .

P. DRUCKER, *LANDMARKS OF TOMORROW* 160-61 (1959).

Concerning the extent and distribution of poverty in the United States, see M. ARNOLD & G. ROSENBAUM, *THE CRIME OF POVERTY* (1973); A. BATCHELDER, *THE ECONOMICS OF POVERTY* (1966); *POVERTY IN AMERICA* (L. Ferman, J. Kornbluh, & A. Haber eds. rev. ed. 1968); *POVERTY AMID AFFLUENCE* (L. Fishman ed. 1966); L. GALLAWAY, *POVERTY IN AMERICA* (1973); *POVERTY IN THE AFFLUENT SOCIETY* (H. Meissner ed. 1966).

<sup>62</sup> See ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *supra* note 1, at 94-97.

Enjoyment of benefits of goods and services disproportionate to actual contribution;<sup>63</sup>  
 Serious problems of mass unemployment;<sup>64</sup>  
 Lack of freedom in seeking and changing employment, especially in completely state-controlled economies;  
 Limitations on freedom of association in group shaping and sharing of wealth (e.g., restrictions on laborers' right to organize, purge of "capitalists"),<sup>65</sup>  
 Denial of private ownership;  
 Arbitrary deprivations of wealth, especially at times of crisis;  
 Lack of or inadequate protection of the rights of property;  
 Rampant inflation;<sup>66</sup>  
 Denial of freedom to accumulate and employ resources for productive purposes;  
 Disparities in the distribution of wealth;<sup>67</sup>  
 Overconcentration of wealth in a few private hands;  
 Wasteful use of resources;  
 Depletion of available and potential resources without adequate regard for future generations;

<sup>63</sup> See *id.* at 67-78.

<sup>64</sup> See ATTACK ON MASS POVERTY, *supra* note 61; 1970 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 200-04; 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 39-41, 62-63, 137-40, 153-57, 194-97; N.Y. Times, Nov. 6, 1976, at 1, col. 6.

<sup>65</sup> See Allegations Regarding Infringements of Trade Union Rights, 54 U.N. ESCOR ANNEX (AGENDA ITEM 18(b)), U.N. Doc. E/5245 (1973). See generally, E. HAAS, HUMAN RIGHTS AND INTERNATIONAL ACTION: THE CASE OF FREEDOM OF ASSOCIATION (1970); C. JENKS, HUMAN RIGHTS AND INTERNATIONAL LABOUR STANDARDS 49-69 (1960).

<sup>66</sup> See Chapman, *Inflation Around the World*, SATURDAY REV./WORLD, July 27, 1974, at 14; Rolfe, *The Great Inflation*, SATURDAY REV./WORLD, July 27, 1974, at 12; N.Y. Times, July 7, 1974, § 4, at 1, col. 3 (inflation around the world, including a map of rising world inflation rates).

<sup>67</sup> The enormous differential between the world's rich and poor is widening rather than narrowing. In 1970, an individual living in the richest part of the world (defined so as to include one tenth of the world's population) had 13 times more real income than an individual living in the poorest part (defined in a similar way).

REVIEWING THE INTERNATIONAL ORDER (RIO): INTERIM REPORT 5 (June 1975). The RIO project was initiated in response to increasing demands for a New Economic Order by Dr. Aurelio Peccei, Chairman of the Club of Rome, in February 1974. Professor Jan Tinbergen has been the project coordinator. See also the group's final report: RIO: RESHAPING THE INTERNATIONAL ORDER 86-88 (1976) (A Report to the Club of Rome) [hereinafter cited as RIO].

Disparities in the distribution of wealth are manifested between states as well as within states. See DEVELOPMENT CO-OPERATION, *supra* note 61, at 55-56, 61-63; ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, *supra* note 1, at 114-16; THE GAP BETWEEN RICH AND POOR NATIONS (G. Ranis ed. 1972); J. REES, EQUALITY 28-36 (1971); 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 46-53, 64-70, 80-89, 106-12, 123-28, 140-43, 157-60, 175-77; B. WARD, THE RICH NATIONS AND THE POOR NATIONS (1962); Barraclough, *The Haves and the Have-Nots*, N.Y. REV. BOOKS, May 13, 1976, at 31-41; Kravis, *A World of Unequal Incomes*, 409 ANNALS 61 (1973); Kuznets, *Economic Growth and Income Inequality*, 45 AM. ECON. REV. 1 (1955); Grant, *While We Fertilize Golf Courses*, N.Y. Times, Aug. 28, 1974, at 31, col. 1; *id.*, Dec. 12, 1975, § 1, at 18, col. 3 (city ed.); Hofman, *The Misnamed "Third World" Has Divisions All Its Own*, *id.*, May 23, 1976, § 4, at 3, col. 4; *id.*, Sept. 26, 1976, § 1, at 1, col. 4.

Massive diversion of resources for destructive purposes (for military overkill or for suppression of internal opposition);<sup>68</sup>  
 Severe restrictions on the employment of relevant strategies in production, conservation, distribution and consumption;  
 Continuing practices of forced labor;<sup>69</sup>  
 Expropriation without adequate compensation.<sup>70</sup>

### *Deprivations Relating to Skill*

The requisitioning of talent and skill;

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<sup>68</sup> "World Military expenditures are now approaching \$300 billion a year—nearly \$35 million every hour of every day—and they continue to rise. . . . The net transfer of financial resources from rich to poor countries amounts to about one thirtieth of world military expenditures and they are 163 times more than the sum spent on peace and development through the United Nations system." RIO, *supra* note 67, at 25.

See THE MILITARY BALANCE, published annually by the Institute for Strategic Studies; R. SIVARD, WORLD MILITARY AND SOCIAL EXPENDITURES (1976); UNITED NATIONS, ECONOMIC AND SOCIAL CONSEQUENCES OF THE ARMS RACE AND OF MILITARY EXPENDITURES (Report of the Secretary-General), U.N. GAOR, U.N. Doc. A/8469/Rev. 1 (1972); UNITED NATIONS, REDUCTION OF THE MILITARY BUDGETS OF STATES PERMANENT MEMBERS OF THE SECURITY COUNCIL BY 10 PER CENT AND UTILIZATION OF PART OF THE FUNDS THUS SAVED TO PROVIDE ASSISTANCE TO DEVELOPING COUNTRIES (Report of the Secretary-General), U.N. GAOR, U.N. Doc. A/9770/Rev. 1 (1975); WORLD MILITARY EXPENDITURES, published annually by United States Arms Control and Disarmament Agency; Benoit & Lubell, *World Defense Expenditures*, 3 J. PEACE RESEARCH 97 (1966); Epstein, *The Disarmament Hoax*, WORLD, Apr. 10, 1973, at 24-29. See also N.Y. Times, Mar. 1, 1976, at 1, col. 1 ("World's Spending on Arms Reported at Record Levels: Study Places Annual Outlay at \$300 Billion—Fastest Rise in Developing Lands"); *id.*, Mar. 7, 1976, § 4, at 4, col. 1 (containing the comparative figures of per capita 1973 expenditures in dollars by governments of 128 nations in the military, educational and health fields).

On the global arms trade, see J. STANLEY & M. PEARTON, THE INTERNATIONAL TRADE IN ARMS (1972); STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, THE ARMS TRADE WITH THE THIRD WORLD (1971); STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, THE ARMS TRADE WITH THE THIRD WORLD (rev. & abr. ed. 1975); G. THAYER, THE WAR BUSINESS: THE INTERNATIONAL TRADE IN ARMAMENTS (1969); *Anatomy of the Arms Trade*, NEWSWEEK, Sept. 6, 1976, at 39; Luck, *The New Regional Arms Merchants*, THE INTERDEPENDENT, Jan. 1976, at 1, 3. See also Vance, *Controlling U.S. Arms Sales*, N.Y. Times, May 13, 1976, at 35, col. 2; *Mindless Arms Sales*, *id.*, Aug. 11, 1976, at 34, col. 1 (editorial); *id.*, Oct. 19, 1975, § 1, at 1, col. 2 ("U.S. Arms-Sale Rise Stirs Capital Concern") (the rise of American arms sales abroad from \$2 billion in 1967 to about \$11 billion in the 1974 fiscal year); *id.*, Aug. 8, 1976, § 1, at 1, col. 1 ("Iranians Plan to Purchase \$10 Billion in U.S. Arms").

For a penetrating study of the pervasive impacts of the American military establishment on American society, see A. YARMOLINSKY, THE MILITARY ESTABLISHMENT: ITS IMPACTS ON AMERICAN SOCIETY (1971). See also R. BARNET, THE ECONOMY OF DEATH (1969); R. LAPP, THE WEAPONS CULTURE (1968); THE WAR ECONOMY OF THE UNITED STATES: READINGS IN MILITARY INDUSTRY AND ECONOMY (S. Melman ed. 1971).

<sup>69</sup> See W. KLOOSTERBOER, INVOLUNTARY LABOUR SINCE THE ABOLITION OF SLAVERY (1960).

<sup>70</sup> See Weston, *International Law and the Deprivation of Foreign Wealth: A Framework for Future Inquiry*, in 2 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 36-182 (R. Falk & C. Black eds. 1970). For further references, see *The Protection of Aliens*, *supra* note 11, at 435 n.13.

Compulsory assignment of skill training to fit a particular role and reduction of the freedom of job choice;  
 Alienation from work—intense feelings of meaninglessness because of high degree of automation in modern process of production;<sup>71</sup>  
 Restrictions on freedoms of skill groups to organize and function;  
 Inadequacy in overcoming hardships caused by rapid obsolescence of skills amid accelerating change in science-based technology;<sup>72</sup>  
 Lack of exposure to training, both in content and method, appropriate to a culture of science and technology;  
 The problem of the brain drain.<sup>73</sup>

### *Deprivations Relating to Affection*

The requisitioning of loyalty in the name of the state;  
 Intense demands for submission to regimentation on behalf of the institutions of power;  
 Undermining or weakening of the rival groups competing for loyal service of the individual;  
 Calculated administration of hate;  
 Denial or severe restrictions on freedom of association;  
 The family in crisis at a time of rapid social change;<sup>74</sup>

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<sup>71</sup> See R. BLAUNER, *ALIENATION AND FREEDOM: THE FACTORY WORKER AND HIS INDUSTRY* (1964); D. JENKINS, *JOB POWER: BLUE AND WHITE COLLAR DEMOCRACY* 36-61 (1st ed. 1973); J. LOPREATO & L. HAZELRIGG, *CLASS, CONFLICT, AND MOBILITY: THEORIES AND STUDIES OF CLASS STRUCTURE* 303-38 (1972); B. MURCHLAND, *THE AGE OF ALIENATION* 14-23 (1971); R. SCHACHT, *ALIENATION* 168-73 (1970); *MAN AGAINST WORK* (L. Zimpel ed. 1974).

<sup>72</sup> See *AUTOMATION AND TECHNOLOGICAL CHANGE* (J. Dunlop ed. 1962); G. FRIEDMANN, *THE ANATOMY OF WORK: LABOR, LEISURE, AND THE IMPLICATIONS OF AUTOMATION* (W. Rawson trans. 1961); L. GOODMAN, *MAN AND AUTOMATION* (1957); *INTERNATIONAL LABOR OFFICE, AUTOMATION AND NON-MANUAL WORKERS* (1967); A. JAFFE & J. FROOMKIN, *TECHNOLOGY AND JOBS: AUTOMATION IN PERSPECTIVE* (1968); R. MACMILLAN, *AUTOMATION: FRIEND OR FOE?* (1956); F. MANN & R. HOFFMAN, *AUTOMATION AND THE WORKER* (1960); F. POLLOCK, *AUTOMATION: A STUDY OF ITS ECONOMIC AND SOCIAL CONSEQUENCES* (W. Henderson & W. Chaloner trans. 1957); C. SILBERMAN, *THE MYTHS OF AUTOMATION* (1966); C. WALKER, *TECHNOLOGY, INDUSTRY, AND MAN: THE AGE OF ACCELERATION* (1968); Hoffer, *Automation is Here to Liberate Us*, in *TECHNOLOGY AND SOCIAL CHANGE* 64-74 (W. Moore ed. 1972); Perrucci, *Work in the Cybernetic State*, in *THE TRIPLE REVOLUTION EMERGING* 174-94 (2d ed. R. Perrucci & M. Pilisuk eds. 1971); Raskin, *Pattern for Tomorrow's Industry?*, in *TECHNOLOGY AND SOCIAL CHANGE* 54-63 (W. Moore ed. 1972).

<sup>73</sup> See *THE BRAIN DRAIN* (W. Adams ed. 1968); *THE BRAIN DRAIN AND TAXATION: THEORY AND EMPIRICAL ANALYSIS* (J. Bhagwati ed. 1975); *ECONOMIC, SOCIAL, AND CULTURAL RIGHTS*, *supra* note 1, at 121-22; Kannappan, *The Brain Drain and Developing Countries*, 98 *INT'L LAB. REV.* 1 (1968); Watanabe, *The Brain Drain from Developing to Developed Countries*, 99 *INT'L LAB. REV.* 401 (1969); *N.Y. Times*, Nov. 1, 1976, at 14, col. 3 (Nigeria's effort to stop an African "brain drain").

<sup>74</sup> See J. BERNARD, *THE FUTURE OF MARRIAGE* (1972); D. COOPER, *THE DEATH OF THE FAMILY* (1971); *THE NUCLEAR FAMILY IN CRISIS: THE SEARCH FOR AN ALTERNATIVE* (M. Gordon ed. 1972); B. MOORE, *POLITICAL POWER AND SOCIAL THEORY* 160-78 (1958); *THE FAMILY IN SEARCH OF A FUTURE: ALTERNATIVE MODELS FOR MODERNS* (H. Otto ed. 1970); *FAMILY IN TRANSITION* (A. Skolnick & J. Skolnick eds. 1971); B. YORBURG, *THE CHANGING FAMILY: A SOCIOLOGICAL PERSPECTIVE* (1973); Goode, *Family Disorganization*, in *CONTEMPORARY SOCIAL PROBLEMS* 479-522 (2d ed. R. Merton & R. Nisbet eds. 1966); Keller, *Does the Family Have a Future?*, in *INTIMACY, FAMILY, AND SOCIETY* 114-28 (A. Skolnick & J. Skolnick eds. 1974); Hendin, *The Ties Don't Bind*, *N.Y. Times*, Aug. 26, 1976, at 33, col. 1.

Practices of involuntary or disguised marriage and sham adoption;<sup>75</sup>  
 Prohibition of interracial marriages or interreligious marriages;<sup>76</sup>  
 Confusion and difficulties associated with the search for alternative  
 modes of affection in lieu of the traditional affection unit—the  
 nuclear family;<sup>77</sup>  
 Unreasonable limitations on freedom to terminate uncongenial per-  
 sonal relationships;<sup>78</sup>  
 Social ostracism by tactics of presuming “guilt by association”;<sup>79</sup>  
 Frustration (stifling) of congenial personal relationships, by manip-  
 ulating fear and anxiety in a pervasive atmosphere of mutual  
 suspicion sustained by a network of the secret police and in-  
 formers.<sup>80</sup>

### *Deprivations Relating to Rectitude*

The politicization of rectitude;<sup>81</sup>  
 Widespread tactics of ostentatious conformity in evading individual  
 responsibility of conscience;  
 Denial of freedom to worship;<sup>82</sup>

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See also Crosby, *The Death of the Family—Revisited*, THE HUMANIST, May/June 1975, at 12-14; Mace, *In Defense of the Nuclear Family*, *id.*, at 27-29; Pickett, *The American Family: An Embattled Institution*, *id.*, at 5-8; Whitehurst, *Alternative Life-Styles*, *id.*, at 23-26.

<sup>75</sup> See C. GREENIDGE, *supra* note 15, at 94-116; J. GULLICK, DEBT BONDAGE IN MALAYA (1958). See generally M. WOLF, WOMAN AND THE FAMILY IN RURAL TAIWAN (1972).

<sup>76</sup> See S. ANANT, THE CHANGING CONCEPT OF CASTE IN INDIA 104-18 (1972); G. CARTER, THE POLITICS OF INEQUALITY: SOUTH AFRICA SINCE 1948, at 76-81 (rev. ed. 1962); L. DUMONT, HOMO HIERARCHICUS: AN ESSAY ON THE CASTE SYSTEM 109-29 (M. Sainsbury trans. 1970); R. SICKELS, RACE, MARRIAGE AND THE LAW 10-91 (1972); L. THOMPSON, POLITICS IN THE REPUBLIC OF SOUTH AFRICA 32 (1966).

See generally N.Y. Times, June 8, 1976, at 19, col. 1 (a joint Roman Catholic-Anglican report on mixed marriages urging relaxation of the requirements for recognition of such marriages).

<sup>77</sup> See M. CARDEN, ONEIDA: FROM UTOPIAN COMMUNITY TO MODERN CORPORATION (1969); W. HEDGEPEETH & D. STOCK, THE ALTERNATIVES: COMMUNAL LIFE IN NEW AMERICA (1970); R. KANTER, COMMITMENT AND COMMUNITY: COMMUNES AND UTOPIAS IN SOCIOLOGICAL PERSPECTIVE (1972); R. KANTER, COMMUNES: CREATING AND MANAGING THE COLLECTIVE LIFE (1973); C. NORDHOFF, THE COMMUNISTIC SOCIETIES OF THE UNITED STATES (1965); B. ZABLOCKI, THE JOYFUL COMMUNITY (1971); N.Y. Times, Sept. 2, 1976, at 26, col. 1 (“Cohabitation and the Courts: The Stigma Begins to Fade”).

<sup>78</sup> See N.Y. Times, May 6, 1975, at 44, col. 1 (“Divorce Around the World: Even When Easy, It Carries a Stigma”).

<sup>79</sup> See *Non-Conforming Political Opinion and Human Rights*, *supra* note 11, at 10-11.

<sup>80</sup> See generally C. FRIEDRICH & Z. BRZEZINSKI, *supra* note 22, at 239-89; J. HAZARD, THE SOVIET SYSTEM OF GOVERNMENT 136-52 (3d ed. 1964); S. NEUMANN, *supra* note 31, at 142-204; A. SOLZHENITSYN, THE GULAG ARCHIPELAGO, 1918-1956 (T. Whitney trans. 1974); A. SOLZHENITSYN, THE GULAG ARCHIPELAGO, Two (1975).

<sup>81</sup> See N.Y. Times, Aug. 28, 1976, at 2, col. 3 (“Church-State Conflict Troubles Latin Lands”).

<sup>82</sup> See Jancar, *Religious Dissent in the Soviet Union*, in DISSENT IN THE USSR: POLITICS, IDEOLOGY, AND PEOPLE 191 (R. Tokes ed. 1975); Reddaway, *Freedom of Worship and the Law*, in IN QUEST OF JUSTICE: PROTEST AND DISSENT IN THE SOVIET UNION TODAY 62 (A. Brumberg ed. 1970); *Religions in the Soviet Union (1960-71)*, in THE FOURTH WORLD: VICTIMS OF GROUP OPPRESSION 218-68 (B. Whitaker ed. 1972).

Adoption of atheism as a national policy;<sup>83</sup>  
 Intolerance and persecution of heretics or nonbelievers;  
 Intolerance and persecution of religious minorities;<sup>84</sup>  
 Discrimination regarding participation in value processes on religious grounds;<sup>85</sup>  
 Restrictions on formation of association for rectitude purposes;  
 Warfare over religious conflicts;<sup>86</sup>  
 Coercion to worship and compulsory conversion;<sup>87</sup>  
 Imposition of religious or atheistic instruction;  
 Arbitrary restrictions on modalities of worship, places of worship and the performance of rites;  
 Caprice in recognizing or rejecting conscientious objection to military service.<sup>88</sup>

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<sup>83</sup> This is characteristic of communist societies. See J. BENNETT, *CHRISTIANITY AND COMMUNISM TODAY* (rev. ed. 1970); R. BUSH, *RELIGION IN COMMUNIST CHINA* (1970); H. CHAMBRE, *CHRISTIANITY AND COMMUNISM* (R. Trevett trans. 1960); M. D'ARCY, *COMMUNISM AND CHRISTIANITY* (1957); A. GALTER, *THE RED BOOK OF THE PERSECUTED CHURCH* (2d ed. 1957); G. MACEOIN, *THE COMMUNIST WAR ON RELIGION* (1951); D. MACINNIS, *RELIGIOUS POLICY AND PRACTICE IN COMMUNIST CHINA* (1972).

<sup>84</sup> At the fifth assembly of the World Council of Churches held in December, 1975, in Nairobi, Kenya, the enduring problem of religious persecution was "the most nettlesome issue." Allegations of religious persecution came from every part of the world, ranging from "restrictions on preaching to outright physical punishment of believers," and affecting Protestants, Catholics and Jews. *N.Y. Times*, Dec. 13, 1975, at 13, col. 3.

See *The Right to Religious Freedom*, *supra* note 11, at 870-71; *N.Y. Times*, Dec. 22, 1975, at 3, col. 1 (organized religion branded by Yugoslav Communist leaders as "a dangerous domestic enemy").

<sup>85</sup> See *The Right to Religious Freedom*, *supra* note 11, at 865-72.

<sup>86</sup> It is a dismal truth that probably half or more of the wars now being fought around the world are either openly religious conflicts or involved with religious disputes. And, since virtually all formerly organized creeds are monotheistic, this means that at this very instant men are killing other men in the name of an identical, if variously named, God.

Sulzberger, *Death in the Name of God*, *N.Y. Times*, Jan. 24, 1976, at 27, col. 2. Examples include: the conflict between Christians and Moslems in Lebanon, the conflict between Protestants and Catholics in Northern Ireland, the Arab-Israeli conflict, the conflict between Turkey and Greece on Cyprus, intermittent civil conflicts involving Christian tribesmen in Burma, occasional outbursts between largely Hindu India and Moslem Pakistan, the guerilla campaign of Moslems in the southern Philippines seeking freedom from Catholic Manila's control.

See R. HULL, *THE IRISH TRIANGLE: CONFLICT IN NORTHERN IRELAND* (1976); C. O'BRIEN, *STATES OF IRELAND* (1972); D. SMITH, *RELIGION, POLITICS, AND SOCIAL CHANGE IN THE THIRD WORLD 170-93* (1971); Jackson, *The Two Irelands: The Problem of the Double Minority—A Dual Study in Inter-Group Tensions*, in *THE FOURTH WORLD: VICTIMS OF GROUP OPPRESSION 187-216* (B. Whitaker ed. 1973). See also Markham, *Lebanon: The Insane War*, *N.Y. Times*, Aug. 15, 1976, § 6 (Magazine), at 6-7 *et seq.*; Weinraub, *The Violence in Ulster Never Ends*, *id.*, July 25, 1976, § 4, at 3, col. 3; *id.*, Sept. 11, 1975, at 1, col. 3 (the Moslems rebel in the southern Philippines).

<sup>87</sup> See *The Right to Religious Freedom*, *supra* note 11, at 867; *N.Y. Times*, Sept. 18, 1974, at 12, col. 1 (charges of compulsory conversion to Islam in Malaysia).

<sup>88</sup> See COUNCIL OF EUROPE, CONSULTATIVE ASSEMBLY, *THE RIGHT TO CONSCIENTIOUS OBJECTION* (1967); A CONFLICT OF LOYALTIES: THE CASE FOR SELECTIVE CONSCIENTIOUS OBJECTION (J. Finn ed. 1968); W. GAYLIN, *IN THE SERVICE OF THEIR COUNTRY: WAR RESISTERS IN PRISON* (1970); E. LONG, *WAR AND CONSCIENCE IN AMERICA* (1968); M. PUSEY,

## CONDITIONS AFFECTING DEPRIVATIONS AND NONFULFILLMENT

The conditions which have resulted in these great disparities between the rising common demands of people for human dignity values and the degree of achievement of these values are both environmental and predispositional. The relevance of the environmental factors derives from the limitations which such factors impose upon peoples' achievement, irrespective of their predispositions. The relevance of predispositional factors derives from the maximization postulate—that human beings act in social process in such a way as to maximize all basic values, conscious and unconscious. Though the predispositional factors and significant features of the environment are in constant interaction, it is useful for the present purpose to recognize and highlight their relative distinctiveness.<sup>89</sup>

*Environmental Factors*

From a comprehensive perspective, the environmental factors relate to every feature of social process. Among the most important are, of course, population, resources, and institutional arrangements and practices.

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THE WAY WE GO TO WAR (1969); J. RAE, CONSCIENCE AND POLITICS: THE BRITISH GOVERNMENT AND THE CONSCIENTIOUS OBJECTOR TO MILITARY SERVICE 1916-1919 (1970); J. ROHR, PROPHETS WITHOUT HONOR: PUBLIC POLICY AND THE SELECTIVE CONSCIENTIOUS OBJECTOR (1971); CONSCIENCE IN AMERICA: A DOCUMENTARY HISTORY OF CONSCIENTIOUS OBJECTION IN AMERICA, 1757-1967 (L. Schlissel ed. 1968); HANDBOOK FOR CONSCIENTIOUS OBJECTORS (A. Tatum ed. 1972); LAW AND RESISTANCE (L. Veysey ed. 1970); R. WILLIAMS, THE NEW EXILES: AMERICAN WAR RESISTERS IN CANADA (1971); H. ZINN, DISOBEDIENCE AND DEMOCRACY: NINE FALLACIES ON LAW AND ORDER (1968).

<sup>89</sup> The principal thrust of B.F. SKINNER, BEYOND FREEDOM AND DIGNITY (1971) would not appear to affect our thesis. Skinner emphasizes the tremendous importance of environmental variables in affecting behavior but continues himself to make reference to subjectivities. *Id.* at 62, 199. At times, he seems largely to be quibbling about the appropriate words for referring to subjectivities. *Id.* at 94-95, 107. The references he makes to "genetic endowment" and "environmental circumstances" are not always accorded clear indices. His conception of "autonomous man" or "an autonomous controlling agent," *id.* at 20, 101, would appear a factitious dummy. He too often uses "control" as an absolute, with no continuum between "control" and "non-control." *Id.* at 82. For establishing the importance of environmental variables that affect behavior, it would scarcely appear necessary to belittle the role of predispositional variables. There are more indices for subjectivities than Skinner recognizes and more different ways of referring to and generalizing these indices than he seems to understand. His vague references to Freud indicate a minimal conception of man's subjective events. *Id.* at 62-63, 85, 211-12.

In contrast, for a more realistic approach to the problem, see F. ALEXANDER, OUR AGE OF UNREASON (1942); T. DOBZHANSKY, MANKIND EVOLVING: THE EVOLUTION OF THE HUMAN SPECIES (1962); R. DUBOS, BEAST OR ANGEL? CHOICES THAT MAKE US HUMAN (1974); R. DUBOS, SO HUMAN AN ANIMAL (1968); E. FROMM, ESCAPE FROM FREEDOM (1963).

Contemporary psychoanalytic thought, while continuing to emphasize predispositional factors, certainly gives prominent attention to environmental factors. *See, e.g.*, E. ERIKSON, CHILDHOOD AND SOCIETY (1950); K. HORNEY, THE NEUROTIC PERSONALITY OF OUR TIME (1937); A. KARDINER, THE PSYCHOLOGICAL FRONTIERS OF SOCIETY (1945); H. SULLIVAN, THE INTERPERSONAL THEORY OF PSYCHIATRY (1953).



The explosive growth of the population is one of the most salient trends in human history.<sup>90</sup> Though population increase has in various contexts served to promote development and fulfill human rights, it is causing considerable difficulties in the contemporary worldwide context. The more people for whom human rights have to be secured and maintained, the greater the difficulties. The world population problem today is characterized by large numbers, continuing high rates of growth (given present limitations of the earth's resources in the perspective of contemporary technology), and uneven distribution, both globally and nationally.<sup>91</sup> Prior to 1800, the population grew sporadically, and it took at least a million years for human numbers to reach the billion mark. The second billion took only 130 years and the third billion took only 30 years.<sup>92</sup> In 1976, there were approximately 4 billion people on this finite planet, with an expected annual increase of some 70 million persons. Despite recent efforts at family planning and fertility control, the population growth rate remains intolerably high when evaluated in terms of developments in technology during at least the immediate future. Given the prevailing rate, the world population is projected to double in 35 years. The rates of population growth differ from region to region and from state to state. What exacerbates the present population dilemma is that high growth rates concentrate in the areas that are already congested and have the least capacity to absorb increased population. Of the total world population of 4 billion, more than two-thirds inhabit the developing countries, which are characterized by low per capita income and poverty. With very few habitable open spaces remaining, given current and prospective levels of demand and production, and with the universal erection of national barriers to immigration, the present disparities in the distribution of the world population are likely to continue for the foreseeable future. Within particular territorial communities, there have been overwhelming trends

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<sup>90</sup> Of the burgeoning literature on population, useful citations include: *POPULATION: THE VITAL REVOLUTION* (R. Freedman ed. 1964); *THE STUDY OF POPULATION: AN INVENTORY AND APPRAISAL* (P. Hauser & O. Duncan eds. 1959); D. HEER, *SOCIETY AND POPULATION* (2d ed. 1975); *POLICY SCIENCES AND POPULATION* (W. Ilchman, H. Lasswell, J. Montgomery, & M. Weiner eds. 1975); 1, 2, & 3 *WORLD POPULATION: BASIC DOCUMENTS* (J. Joyce ed. 1975-76); *POPULATION: A CLASH OF PROPHETS* (E. Pohlman ed. 1973); *THE WORLD POPULATION CRISIS: POLICY IMPLICATIONS AND THE ROLE OF LAW* (Proc. Am. Soc. Int'l L. & John Bassett Moore Soc'y Int'l L. Symposium 1971).

On the history of population growth, see A. CARR-SAUNDERS, *WORLD POPULATION: PAST GROWTH AND PRESENT TRENDS* (2d ed. 1964); *POPULATION IN HISTORY: ESSAYS IN HISTORICAL DEMOGRAPHY* (D. Eversley & D. Glass eds. 1965); *POPULATION AND SOCIAL CHANGE* (D. Glass & R. Revelle eds. 1972); UNITED NATIONS, *THE DETERMINANTS AND CONSEQUENCES OF POPULATION TRENDS* (1953); E. WRIGLEY, *POPULATION AND HISTORY* (1969).

<sup>91</sup> See G. BREESE, *URBANIZATION IN NEWLY DEVELOPING COUNTRIES* (1966); J. CLARKE, *POPULATION GEOGRAPHY* (1965); *THE STUDY OF URBANIZATION* (P. Hauser & L. Schnore eds. 1965).

<sup>92</sup> UNITED NATIONS, *HUMAN FERTILITY AND NATIONAL DEVELOPMENT: A CHALLENGE TO SCIENCE AND TECHNOLOGY* 11, U.N. Doc. ST/ECA/138 (1971).

toward rapid urbanization—a continuous, swelling flow of people from the rural to urban area—culminating in overconcentration and overcrowding.<sup>93</sup>

The present world population problem, as manifested in its various dimensions, has profound implications for the protection and fulfillment of human rights. The situation is perceived as alarming by many outspoken world leaders. In the words of Robert S. McNamara, President of the World Bank:

The end desired by the Church and by all men of good will is the enhancement of human dignity. That is what development is all about. Human dignity is threatened by the population explosion—more severely, more completely, more certainly threatened than it has been by any catastrophe the world has yet endured.<sup>94</sup>

The problem is not confined to the Malthusian dimension of food supply. It affects the entire quality of life, or the shaping and sharing of all important values. In brief illustration, the population-resource-technology imbalances have significantly contributed to the deprivations and nonfulfillment of human rights: widespread hunger and malnutrition; existence of slums and shantytowns, poor housing, crowded living conditions; spread of disease and emotional stress; poor health and leisure facilities and services; the deterioration of the environment (well-being); the widening gap between the rich and the poor (both individually and nationally); depletion of finite resources; widespread poverty; substandard living conditions (wealth); rising levels of unemployment and underemployment (skill); persisting widespread illiteracy and inadequate educational facilities and opportunities (enlightenment); practices of discrimination, especially racism (respect); confusion in rectitude standards and the rising rate of crime (rectitude); pervasive sense of loneliness and dislocation of families (affection); popularity of political extremism; propensity toward recourse to violence (internal and external); increasing potential for transnational conflicts (power and security).<sup>95</sup>

In relation to the burgeoning population, the resources of the world

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<sup>93</sup> See note 91 *supra*. See also L. BROWN, *WORLD WITHOUT BORDERS* 73-87 (1972); T. CHANDLER & G. FOX, *3000 YEARS OF URBAN GROWTH* (1973); K. DAVIS, *WORLD URBANIZATION, 1950-1970* (1972); H. HOYT, *WORLD URBANIZATION: EXPANDING POPULATION IN A SHRINKING WORLD* (1962); 1974 REPORT ON THE WORLD SOCIAL SITUATION, *supra* note 29, at 58-62, 83-85; WORLD HOUSING SURVEY 1974, *supra* note 54, at 5-6, 16-17; Davis, *The Urbanization of the Human Population*, in *CITIES* 3-25 (1969) (a Scientific American book).

<sup>94</sup> R. MCNAMARA, *ONE HUNDRED COUNTRIES, TWO BILLION PEOPLE: THE DIMENSIONS OF DEVELOPMENT* 46 (1973).

<sup>95</sup> See R. MCNAMARA, *THE ESSENCE OF SECURITY* 141-58 (1968); Caldwell, *Population*, in *4 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* 32, 34-53 (C. Black & R. Falk eds. 1972); Dyckman, *Some Aspects of Civic Order in an Urbanized World*, *DAEDALUS*, Summer, 1966, at 797-812; Falk, *World Population and International Law*, 63 *AM. J. INT'L L.* 514 (1969).

See also Lee, *Law, Human Rights and Population: A Strategy for Action*, 12 *VA. J. INT'L L.* 309 (1972); Sipila, *Population and Human Rights*, 7 *HUMAN RIGHTS J.* 222 (1974).

appear to diminish in quantity, to deteriorate in quality because of misexploitation and to distribute themselves unevenly globe-wide.<sup>96</sup> A salient reality of the earth, given the levels of technology at hand or in immediate prospect, is the apparently finite quantity of resources essential to human existence and fulfillment. The resources of the earth can be divided into three categories: renewable resources, nonrenewable resources and spatial-extension resources.<sup>97</sup> Until quite recently, it was generally assumed that our planet had ample carrying capacity to accommodate any number of people, and very little attention was given to "the limits of the earth."<sup>98</sup> Because of the continuing debate concerning "the limits to growth,"<sup>99</sup> especially in the wake of the energy crisis, it has increasingly been recognized that, on certain assumptions about the relationship of the earth to its solar and trans-solar environment, the earth is finite and that some of currently vital resources are not inexhaustible. With the expansion and acceleration of industrialization and development, the depletion of resources presently perceived as essential quickens at an alarming rate. Despite divergent forecasts, it would appear that many of the key resources may in the not too distant future be depleted, or become too costly to exploit, given the present rate of resource consumption within existing frameworks of knowledge and technique.

In addition, the existing miseries of nonfulfillment are due in signifi-

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<sup>96</sup> On the relation between population and resources, see *RESOURCES AND POPULATION* (B. Benjamin, P. Cox, & J. Peel eds. 1973); G. BORGSTROM, *THE HUNGRY PLANET: THE MODERN WORLD AT THE EDGE OF FAMINE* (1965); H. BROWN, *THE CHALLENGE OF MAN'S FUTURE* (1954); L. BROWN, *IN THE HUMAN INTEREST: A STRATEGY TO STABILIZE WORLD POPULATION 28-98* (1974); P. CONNELLY & R. PERLMAN, *THE POLITICS OF SCARCITY: RESOURCE CONFLICTS IN INTERNATIONAL RELATIONS* (1975); P. EHRLICH & A. EHRLICH, *supra* note 55.

*See A Symposium on Primary Resource Scarcity Effects on Trade and Investment*, 24 *AM. U.L. REV.* 1087 (1975).

<sup>97</sup> *See* M. MCDUGAL, H. LASSWELL, & I. VLASIC, *LAW AND PUBLIC ORDER IN SPACE* 776-81 (1963). *See also* S. CIRIACY-WANTRUP, *RESOURCE CONSERVATION: ECONOMICS AND POLICIES* 35 (1952); COMMITTEE ON RESOURCES AND MAN, NATIONAL ACADEMY OF SCIENCES-NATIONAL RESEARCH COUNCIL, *RESOURCES AND MAN* (1969).

<sup>98</sup> F. OSBORN, *THE LIMITS OF THE EARTH* (1953).

<sup>99</sup> *See* D. MEADOWS, *THE LIMITS TO GROWTH* (1972) (A Report for the Club of Rome's Project on the Predicament of Mankind). *See* W. OLTMANS, *ON GROWTH* (1974) and W. OLTMANS, *ON GROWTH II* (1975), for a divergence of views. *See generally* J. MADDOX, *THE DOOMSDAY SYNDROME* (1972); M. MESAROVIC & E. PESTEL, *MANKIND AT THE TURNING POINT* (1974) (The Second Report to the Club of Rome); E. SCHUMACHER, *SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED* (1975); *The Limits to Growth Controversy*, 5 *FUTURES*, Nos. 1-2 (1973); *The No-Growth Society*, *DAEDULUS*, Fall 1973 (entire issue); *The Ups and Downs of "Growth is Good,"* *THE INTERDEPENDENT*, Dec. 1975, at 1. *See also* Dubos, *On Growth*, *N.Y. Times*, Nov. 11, 1975, at 31, col. 1; Esfandiary, *Homo Sapiens, the Manna Maker*, *id.*, Aug. 9, 1975, at 17, col. 2; *id.*, Oct. 17, 1974, at 14, col. 1 ("Scientist Sees World Ready for 'New Mode of Life'"); *id.*, Oct. 18, 1974, at 4, col. 3 "Scholars Rebut Computer View that Disaster Awaits Mankind"); *id.*, Oct. 21, 1975, at 18, col. 3 ("Conference Debates the Limiting of Economic Growth to Conserve Resources"); *id.*, Apr. 13, 1976, at 1, col. 5 ("Scholars Favor Global Growth: Members of Club of Rome Say Further Rise Is Needed to Fight World Poverty").

cant measure to mismanagement and misuse of available resources. Because of the continuing ascendancy within the global military area of contending blocs, sustained by persisting expectations of violence and war, a disproportionately large share of world's resources has continued to be diverted for military purposes.<sup>100</sup> Barriers of various kinds have been erected to restrict the free flow of people, ideas, technology, goods and services across national boundaries. Consequently, the management of resources (both sharable and nonsharable) tends to be so fragmented and impaired as to fail to achieve maximum efficiency.

The mismanagement of resources has, further, helped to create an ecological crisis of world proportions that seriously threatens the quality of life on this planet.<sup>101</sup> The nature, degree and tempo of environmental deterioration differ from region to region and from community to community, but the crisis is global in scope and impact. This unprecedented crisis is characterized by the combined scourges of "the population bomb;"<sup>102</sup> air, water, noise and other pollution; the shrinkage of open spaces; the deterioration of agricultural lands; urban congestion; the growing danger of extinction of many forms of nonhuman life; destruction of natural beauty; and the poor integration of advanced technology with environmental requirements. The plants, homo sapiens and other animals, and microorganisms that inhabit the planet are united with each other and with their nonliving surroundings by a network of complex and interdependent natural and cultural components which comprise a planetary ecosystem.<sup>103</sup> But this delicate ecological unity of the entire earth-space environment is widely believed by many competent experts to be in grave jeopardy today.<sup>104</sup>

The available resources of the world, like the populations, are unevenly distributed, with glaring discrepancies in the pattern of resource

<sup>100</sup> See note 68 *supra*.

<sup>101</sup> On the ecological crisis, see note 55 *supra*. See also ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *ECONOMICS OF TRANSFRONTIER POLLUTION* (1976); ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *PROBLEMS IN TRANSFRONTIER POLLUTION* (1974); McDougal & Schneider, *Priorities for Public Order of the Environment*, in *ENVIRONMENT AND SOCIETY IN TRANSITION: WORLD PRIORITIES* 81-114 (B. Pregel, H. Lasswell, & J. McHale eds. 1975) (Annals of the New York Academy of Sciences, Volume 261).

<sup>102</sup> P. EHRLICH, *THE POPULATION BOMB* (1968). See also P. APPLEMAN, *THE SILENT EXPLOSION* (1965).

<sup>103</sup> In the words of Ward and Dubos:

There is a profound paradox in the fact that four centuries of intense scientific work, focused on the dissection of the seamless web of existence and resulting in ever more precise but highly specialized knowledge, has led to a new and unexpected vision of the total unity, continuity, and interdependence of the entire cosmos.

B. WARD & R. DUBOS, *supra* note 55, at 30. See also J. MCHALE, *THE ECOLOGICAL CONTEXT* (1970); H. SPROUT & M. SPROUT, *supra* note 55, at 13-31.

<sup>104</sup> Sauvy compiled an inventory of some current book titles: "*The Hungry Future, Standing Room Only, Born to Starve, Our Polluted World, Murderous Providence, Beyond Repair, Timetable for Disaster, The Vanishing Air, We Can't Breathe.*" A. SAUVY, *ZERO GROWTH?* 137 (1975).

consumption.<sup>105</sup> While arable land, fresh water (including rainfall), fossil fuels (coal, oil and natural gas), ferrous, nonferrous and nonmetallic minerals and other natural resources are relatively abundant in some areas of the world, they are either absent or scarce in other areas. Similar disparities also characterize the distribution of the knowledge of science, technology, skills and machinery, resulting in varying stages of development and different levels of productivity and consumption.<sup>106</sup> When the prospects of "limitless growth" appear to run high, "growth" is the global catchword: with patience and effort, it is counseled, the less developed areas would sooner or later enjoy the benefits of growth. However, as the finiteness of critical resources and the limits to growth (including knowledge) are taken with increasing seriousness, the focus of attention is expected to shift markedly from enlarging the aggregate pie to dividing the existing pie, with possible "wars of redistribution,"<sup>107</sup> becoming characteristic of the global arena.<sup>108</sup> Although the importance of any particular resource is a function of many other factors, including the state of technology, available manpower and efficiency in social organization, it is clear that the competition for scarce resources of all kinds—land, water, air, food, energy, materials and so on—will accentuate unless populations are brought rather promptly into balance and scientific expansion is maintained. All this will carry ominous implications for the general fulfillment of human rights.

Confronted with the unprecedented challenges of our planetary ecosystem that require integrated global solutions, the value institutions and practices of humankind appear to be inadequate and faltering. The human institutions and practices are, geographically, too state-centered and, functionally, too tradition-bound to make timely responses and adjustments to the accelerating pace and dimensions of change generated by the universalization of science and technology and the ever increasing global interdependences. There appears to be a lack of appropriate balance in institutional arrangements and activities at the national, regional and global levels. Ever since the rise of the modern state system in the mid-seventeenth century, the world arena has been characterized by the predominance of territorially organized nation-states. The quality of transnational interaction has largely been shaped by the pattern of cooperation and coercion among elites representing states of varying sizes,

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<sup>105</sup> See note 67 *supra*. See also C. HENSMAN, RICH AGAINST POOR: THE REALITY OF AID (1971); THE WIDENING GAP: DEVELOPMENT IN THE 1970'S (B. Ward, J. Runnalls, & L. D'anjou eds. 1971); L. ZIMMERMAN, POOR LANDS, RICH LANDS: THE WIDENING GAP (1965); Spengler, *Allocation and Development, Economic and Political*, in *POLITICAL AND ADMINISTRATIVE DEVELOPMENT* 588-637 (R. Braibanti ed. 1969).

<sup>106</sup> See W. ROSTOW, THE STAGES OF ECONOMIC GROWTH (1960). See generally W. ROSTOW, HOW IT ALL BEGAN: THE ORIGINS OF THE MODERN ECONOMY (1975). See also A. ORGANSKI, STAGES OF POLITICAL DEVELOPMENT (1965).

<sup>107</sup> R. HEILBRONER, AN INQUIRY INTO THE HUMAN PROSPECT 43 (1974).

<sup>108</sup> See W. OLTMANS, ON GROWTH 285 (1974) (remark of Noam Chomsky).

capabilities and orientation. Despite the increasingly varied and important roles played by a multiplicity of nonstate participants, especially international organizations (both governmental and functional), the nation-states (especially the large ones) continue to dominate the world arena. Anchored in the nation-state system, the organizations that pursue specific power objectives, or that concentrate on values other than power, adjust themselves to the territorial context. The ascendancy of the nation-state has been such that it has built into the perspectives of the world community a bias in favor of perceiving advantages and disadvantages in terms of the individual nation-state. Because of this, the search for, and the discovery of, common interests is impaired. The emphasis on state "sovereignty" in expression of excessive "nationalism" has further been exacerbated by the rival ideologies representing the contending systems of public order. The centrality of the state affects and is manifested in every feature of the world constitutive process of authoritative decision (with which we propose to deal in detail later).<sup>109</sup>

### *Predispositional Factors*

Closely linked to the inadequacies of the institutional arrangements and practices in meeting the contemporary challenges for the defense and fulfillment of human rights are basic predispositional factors. In constant interaction with the environmental factors, the predispositional variables include the more fundamental demands, identifications and expectations of the peoples of the world. Too often and too intensely they continue to demand special interests at the expense of common interests. Their identifications are fragmented, testifying to the continuing vigor of the syndrome of national parochialism.<sup>110</sup> It is generally perceived that special interest demands will continue to pay off in the contemporary unorganized world arena without necessity for paying heed to long-term aggregate consequences.

As previously indicated, common demands for human dignity values have been rising on a world scale. Nevertheless, the actual patterns of demand vary in kind and in scope from community to community and from culture to culture. Many of the demands that are most intensely promoted are often less than comprehensive. Divided by the contending ideologies and systems of public order (especially in the wealth process),

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<sup>109</sup> For preliminary indication, see McDougal, Lasswell, & Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, 63 AM. J. INT'L L. 237, 258-64 (1969); McDougal, *Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies*, 14 VA. J. INT'L L. 387, 415-19 (1974). See generally McDougal, Lasswell, & Reisman, *The World Constitutive Process of Authoritative Decision*, in 1 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 73-154 (R. Falk & C. Black eds. 1969) [hereinafter cited as *World Constitutive Process of Authoritative Decision*].

<sup>110</sup> See Lasswell, *Introduction: Universality Versus Parochialism*, in M. MCDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* xix-xxvi (1961).

conditioned by many variations of parochialism and oriented toward the calculation of short-term payoffs, the constellation of effective demands gives emphatic priority to the assertion of special interests in defiance of the common interests that give expression to human dignity values.

Attenuated conceptions of common interest are sustained by, and in turn foster, systems of identification that give primacy to national loyalties that fall short of embracing the whole of humankind. In a dynamically interactive world community, human beings cannot fail to be partially linked to one another and to many territorial and pluralized groups; and under various circumstances priorities may vary among different identities. At times conflicts of loyalty arise, especially when the claims of larger and smaller entities seem to be incompatible with one another. Although the accelerating pace of global intercourse would seem to pave the way toward greater identification with a universal vision and with realistic programs of common humanity, the countervailing trends associated with national parochialism retain their strength.<sup>111</sup> It is often noted that in a world of growing communication and interdependence, the sharing of common sets of identifying symbols makes it possible for larger numbers of people to act together more quickly than ever before—even people possessing different backgrounds of culture, class, interest, personality and crisis experience. The sheer fact of interaction does not signify the automatic expansion of primary identities from the national to the world community of humankind. In a divided world the increasing interdependence does not necessarily undermine parochialism during the initial period of contact. On the contrary, contacts with contrasting ways of life not infrequently enhance preoccupation with the self, as distinct from the other.<sup>112</sup> Interacting with and counteracting the trend toward universalization and inclusivity, the syndrome of parochialism, ultimately inherited from folk society, continues to flourish in the present epoch of nationalism and nation building. This syndrome is characterized by apprehensive expectations about the intentions and capabilities of strangers (aliens, others) and an intense demand to fight if required to defend the value position of the collective self.<sup>113</sup> In short, it appears that the

<sup>111</sup> For detailed elaboration, see Lasswell, *Future Systems of Identity in the World Community*, in 4 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* 3-31 (C. Black & R. Falk eds. 1972). See also Taylor, *Strangers in the World Community*, *WORLD*, July 17, 1973, at 30-31.

<sup>112</sup> Harold Isaacs observes:

This fragmentation of human society is a pervasive fact in human affairs and always has been. It persists and increases in our own time as part of an ironic, painful, and dangerous paradox: the more global our science and technology, the more tribal our politics; the more universal our system of communications, the less we know what to communicate; the closer we get to other planets, the less able we become to lead a tolerable existence on our own; the more it becomes apparent that human beings cannot decently survive with their separateness, the more separate they become. In the face of an ever more urgent need to pool the world's resources and its powers, human society is splitting itself into smaller and smaller fragments.

H. ISAACS, *IDOLS OF THE TRIBE: GROUP IDENTITY AND POLITICAL CHANGE* 2 (1975).

<sup>113</sup> See Lasswell, *supra* note 110, at xxi-xxvi.

identifications are characteristically ambivalent, simultaneously exhibiting both expanding and contracting identifications with the inclusive community. We refer to ourselves and others with labels (such as race, color) having no rational relation to basic humanity or to potential contributions to the common interest.

Fragmented identifications have been sustained and fortified by persisting expectations of violence and other coercions that are widely shared by leaders and the led.<sup>114</sup> Coercive expectations profoundly affect the pattern of cooperative activities implicated in the shaping and sharing of values. The expectation of violence is the assumption that, whether we like it or not, many conflicts are going to be settled by recourse to large-scale organized violence. It remains true in the world arena that the power elites do not expect to be as well off by making the sacrifices required to change the situation as they are by allowing it to continue. Perceiving the expectation of violence (and hence the institution of war) as a basic fact of life and knowing their own vulnerability, the effective elites are hypersensitive about openly initiating a change in world public order that would appear to subordinate them to other powers. Amid the unceasing anxieties of a global war system, with its popular socialization of risk, the balancing of police and military power continues to dominate policy.<sup>115</sup> The paramount objective of maintaining national security (freedom from external coercion and dictation) necessitates the perpetual appraisal and reappraisal of all social values and institutional practices with fighting effectiveness in view.<sup>116</sup> Many deprivations or nonfulfillments of human rights occur as a consequence of the general preoccupation with the real or imagined needs of national security and internal order.

The expectations of the peoples of the world differ markedly in the realism with which they perceive the conditions that affect the achievement of human dignity. Accustomed to calculations of short-term payoff rather than long-term aggregate consequences, the effective elites of the world, wittingly or unwittingly, share the perceptions of monopoly advantage by affording the rank and file only a minimal opportunity necessary to the maintenance of minimum order. Instead of clarifying and implementing common interests, people assert special interests that are destructive of the common interest. In sum, there is a failure in under-

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<sup>114</sup> See generally R. BARNET, *THE ROOTS OF WAR* (1972); 3 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* (C. Black & R. Falk eds. 1971) ("Conflict Management"); G. COCHRAN, *THE WAR SYSTEM* (1965); R. FALK, *LEGAL ORDER IN A VIOLENT WORLD* (1968); T. GURR, *WHY MEN REBEL* (1970); C. JOHNSON, *REVOLUTIONARY CHANGE* (1966); C. LEIDEN & K. SCHMITT, *THE POLITICS OF VIOLENCE: REVOLUTION IN THE MODERN WORLD* (1968); *LAW AND CIVIL WAR IN THE MODERN WORLD* (J. Moore ed. 1974); Lasswell, *The Garrison State Hypothesis Today*, in *CHANGING PATTERNS OF MILITARY POLITICS* 51 (S. Huntington ed. 1962).

<sup>115</sup> See Reisman, *Private Armies in a Global War System: Prologue to Decision*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 252-303 (J. Moore ed. 1974).

<sup>116</sup> See H. LASSWELL, *NATIONAL SECURITY AND INDIVIDUAL FREEDOM* (1950).



standing—and taking seriously—the interdependences of the world social process.

### *Interdependences*

The most striking fact about the global social process in which contemporary man pursues his basic values is in its comprehensive and ineradicable interdependences.<sup>117</sup> These interdependences are of two distinct kinds: first, the interdependences of peoples transnationally within a particular value process; and second, the interdependences of peoples everywhere as between different value processes. The growth of these various interdependences has established that if any peoples are to realize their values over time they must be achieved on a transnational scale. Sustained global interaction renders the stable existence and the quality of life of every individual dependent upon numerous factors operating beyond his local community and national boundaries and, hence, affecting what others can achieve.

The most decisive value process in the world community is the world *power* process, in which the state is still the predominant partici-

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<sup>117</sup> Nearly two centuries ago, Kant wrote: "The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it." I. KANT, *PERPETUAL PEACE* 142 (M. Smith trans. 1903).

In the words of Bloomfield and Bloomfield:

What is interdependence? What do we mean when we use that word? Usually the emphasis is on economic relationships. But interdependence exists in other relationships as well—political, strategic, military, environmental and cultural. Indeed, some of the most difficult problems of our age are posed by the linkages between or among these relationships.

L. BLOOMFIELD & I. BLOOMFIELD, *THE U.S. INTERDEPENDENCE AND WORLD ORDER* 10 (1975) (Foreign Policy Association Headline Series No. 228).

For an eloquent statement on global interdependence, see *An Introduction by R. Buckminster Fuller*, in E. HIGBEE, *A QUESTION OF PRIORITIES: NEW STRATEGIES FOR OUR URBANIZED WORLD* xviii-xxxiv (1970). See also ASPEN INSTITUTE FOR HUMANISTIC STUDIES PROGRAM IN INTERNATIONAL AFFAIRS, *COPING WITH INTERDEPENDENCE: A COMMISSION REPORT* (1976); L. BROWN, *THE INTERDEPENDENCE OF NATIONS* (1972) (Foreign Policy Association Headline Series No. 212); M. CAMPS, *THE MANAGEMENT OF INTERDEPENDENCE: A PRELIMINARY VIEW* (1974); R. COOPER, *THE ECONOMICS OF INTERDEPENDENCE: ECONOMIC POLICY IN THE ATLANTIC COMMUNITY* (1968); *A DECLARATION OF INTERDEPENDENCE: AN AMERICAN RESPONSE TO NEW GLOBAL IMPERATIVES* (1976) (a program of The World Affairs Council of Philadelphia for the Bicentennial Era: 1976-1989); A. ETZIONI, *THE ACTIVE SOCIETY: A THEORY OF SOCIETAL AND POLITICAL PROCESSES* 553-78 (1968); Cooper, *Economic Interdependence and Foreign Policy in the Seventies*, 24 *WORLD POLITICS* 159 (1972); Katzenstein, *International Interdependence: Some Long-Term Trends and Recent Changes*, 29 *INT'L ORGANIZATION* 1021 (1975); Keohane & Nye, *International Interdependence and Integration*, 8 *HANDBOOK OF POLITICAL SCIENCE* 363-414 (F. Greenstein & N. Polsby eds. 1975); Morse, *The Politics of Interdependence*, 23 *INT'L ORGANIZATION* 311 (1969); Rosecrance & Stein, *Interdependence: Myth or Reality?*, 26 *WORLD POLITICS* 1 (1973); Waldheim, *Toward Global Interdependence*, *SATURDAY REV./WORLD*, Aug. 24, 1974, at 63-64 *et. seq.*; Waltz, *The Myth of National Interdependence*, in *THE INTERNATIONAL CORPORATION: A SYMPOSIUM* 205-23 (C. Kindleberger ed. 1970).

pant. How power is structured internally in a state, how the individual human being is related to centrally organized coercion, affects importantly how that state seeks to exercise power in the world arena, whether by violent or peaceful procedures. All too recent history makes it clear that elites who come to power and maintain internal rule by violence are also prone to regard violence as the principal instrument of change in the external arena. Complementarily, their intimidated masses are all too ready to turn their repressed and accumulated hatreds against their fellow men across some arbitrary boundary line.<sup>118</sup> Conversely, the respect for individual human dignity which even a democratic state is able to maintain is in large measure a function of the state's position in an inclusive world arena. When expectations of violence and war are high, the requirements of self-preservation may move even the best-intentioned individuals and groups toward a garrison police state, which carries with it wholesale trampling of human rights. On examination it is apparent that the power of every state or transnational political party is tied to the changing levels of discontent in the emerging nations as well as in the "internal proletariat" of the historic powers. In an earth-space arena in which humankind is intimidated and threatened by mass destructive means, and in which state elites are so obsessed by expectations of impending violence that they calculate every proposed measure of cooperation about wealth, enlightenment or other values in terms of possible effects on fighting power and defense capability, it takes no great insight to know that no people can be fully secure unless all peoples are secure.

The world *wealth* process manifests a similarly high degree of interdependence.<sup>119</sup> No contemporary state can achieve or sustain a

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<sup>118</sup> Franz Alexander offered this incisive analysis:

A peculiarly vicious circle in socio-dynamics can be observed here. An authoritarian state is created which deprives its citizens of self-expression in the interests of economic competition with other nations. This injury to self-esteem requires aggressive action and war becomes an inevitable compensation. Diplomatic victories achieved by compromise no longer suffice, for the heroic life of conquest and domination for their own sake and the myth of the superior race are incompatible with anything but martial victory. In order to make some compensation to those who have lost their normal means of self-expression, the ideology of the victorious super-race was invented. This was an appeal to the destructive emotional forces in human nature, especially hate, which had been simmering for years in an impoverished and over-disciplined people who had been forced to sacrifice but for guns, individual expression for cringing subordination, self-esteem for awe, and conscience for blind obedience. This hate was generated in the barracks under the sadistic drill of the sergeants, in the factories by the abolition of recently acquired political rights, in a demoralized middle-class which had sunk to the level of the proletariat and needed someone to look down upon as inferior. The awakened Frankenstein's monster of hate must move against the rest of humanity to save the Führer and his small camarilla from destruction. Hate once mobilized knows no barriers and cares little who are its victims. If an object is lacking, it may even react against the hater himself and occasion suicide.

F. ALEXANDER, *supra* note 89, at 268-69.

<sup>119</sup> For an exposition of economic interdependence, see RIO, *supra* note 67, at 43-45. For interdependencies between development policies, see UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, CONTINUITY AND CHANGE: DEVELOPMENT AT MID-DECADE 11-14, U.N. Doc. ST/ESA/25 (1975) (Comments and Recommendations of the Committee for Development Planning). See note 117 *supra*; Rose, *Third World "Commodity Power" Is a Costly Illusion*, FORTUNE, Nov., 1976, at 147-50.

desired level of economic activity as a self-sufficient unit: it needs and seeks resources, skill, labor, goods and markets beyond its borders. The unsettling impact precipitated by the energy crisis continues to reverberate around the globe after the gradual subsidence of the initial shock.<sup>120</sup> The economic cycle is global in its impact: depression or protracted recession in any significant area of the world makes it correspondingly difficult in all other areas to maintain high levels in the production and sharing of goods and, hence, in the conditions under which liberty and human personality can flourish. The economic welfare of the peasant, the farmer, the factory worker, as of every category of producer, is affected by the fluctuating level of prices at the principal trading centers and especially by the rise and fall of the dollar, the pound and other monetary units. The intricacies of global economic interdependences have been aptly described<sup>121</sup> as a "formidable agenda of complex, interrelated and well-nigh impossible questions."

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<sup>120</sup> Michael Field characterizes the oil crisis unfolding during the weekend of October 6-7, 1973, as the "twelve days that changed the world." M. FIELD, *A HUNDRED MILLION DOLLARS A DAY* 9 (1975).

See M. ADELMAN, *THE WORLD PETROLEUM MARKET* (1972); *THE WORLD ECONOMIC CRISIS* (W. Bundy ed. 1975); B. COMMONER, *THE POVERTY OF POWER: ENERGY AND THE ECONOMIC CRISIS* (1976); C. CONCONCI, D. OSTERHOUT, & S. UDALL, *THE ENERGY BALLOON* (1974); G. CRAWLEY, *ENERGY* (1975); *DIALOGUE ON WORLD OIL: HIGHLIGHTS OF A CONFERENCE ON WORLD OIL PROBLEMS* (E. Mitchell ed. 1974); *THE ENERGY QUESTION: AN INTERNATIONAL FAILURE OF POLICY* (E. Erickson & L. Waverman eds. 1974); S. FREEMAN, *ENERGY: THE NEW ERA* (1974); *HIGHER OIL PRICES AND THE WORLD ECONOMY: THE ADJUSTMENT PROBLEM* (E. Fried & C. Schultze eds. 1975); R. GARDNER, *THE WORLD FOOD AND ENERGY CRISES* (1974); A. HAMMOND, W. METZ, & T. MAUGH II, *ENERGY AND THE FUTURE* (1973); N. JACOBY, *MULTINATIONAL OIL: A STUDY IN INDUSTRIAL DYNAMICS* (1974); J. MADDOX, *BEYOND THE ENERGY CRISIS* (1975); *ENERGY AND DEVELOPMENT: PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON THE ECONOMICS OF ENERGY AND DEVELOPMENT* (R. Mallakh & C. McGuire eds. 1974); R. MANCKE, *THE FAILURE OF U.S. ENERGY POLICY* (1974); L. MOSLEY, *POWER PLAY: OIL IN THE MIDDLE EAST* (1973); P. ODELL, *OIL AND WORLD POWER: BACKGROUND TO THE OIL CRISIS* (1975); *ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ENERGY BALANCES OF OECD COUNTRIES, 1960-74* (1976); T. RIFAI, *THE PRICING OF CRUDE OIL: ECONOMIC AND STRATEGIC GUIDELINES FOR AN INTERNATIONAL ENERGY POLICY* (1974); L. ROCKS & R. RUNYON, *THE ENERGY CRISIS* (1972); A. SAMPSON, *THE SEVEN SISTERS: THE GREAT OIL COMPANIES AND THE WORLD THEY MADE* (1975); E. STEINBERG & J. YAGER, *ENERGY AND U.S. FOREIGN POLICY* (1974); T. SZULC, *THE ENERGY CRISIS* (1974); M. TANZER, *THE ENERGY CRISIS: WORLD STRUGGLE FOR POWER AND WEALTH* (1975); *A TIME TO CHOOSE: AMERICA'S ENERGY FUTURE* (Final Report by the Energy Policy Project of the Ford Foundation) (1974); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, *PETROLEUM IN THE 1970s*, U.N. Doc. ST/ECA/179 (1974); UNITED NATIONS, DEP'T OF ECONOMIC AND SOCIAL AFFAIRS, *WORLD ECONOMIC SURVEY, 1975; FLUCTUATIONS AND DEVELOPMENT IN THE WORLD ECONOMY 23-27*, U.N. Doc. E/5790/Rev. 1 (ST/ESA/49) (1976); *THE OIL CRISIS* (R. Vernon ed. 1976); M. WILLRICH, *ENERGY AND WORLD POLITICS* (1975); Barraclough, *The Great World Crisis I*, N.Y. REV. BOOKS, Jan. 23, 1975, at 20-29; Barraclough, *Wealth and Power: The Politics of Food and Oil*, N.Y. REV. BOOKS, Aug. 7, 1975, at 23-30.

<sup>121</sup> W. OLTMANS, *ON GROWTH* 478 (1974) (remarks by Aurelio Peccei, Chairman of the Club of Rome).

They include nothing less than the reorganization of the international monetary system, the role of the dollar and special drawing rights and perhaps of gold, essential questions of multinational trade, trade blocks, incentives, preferences, reciprocity, tariff and nontariff barriers for both industrial and agricultural products, questions of government procurement and discrimination against foreign bidders, balance of payments, international investments, capital movements, fiscal policies, burden sharing of defense costs, harmonization of antipollution standards and regulations, and the operation and future of the multinational enterprise—plus many other collateral issues, and of course the question of the overall aid needed by the less-developed nations.<sup>122</sup>

Physical *well-being* depends upon the efficiency of the health services of the globe in spotting the origin of epidemics and in adopting measures to prevent their spread along the routes of traffic by land, sea and air. Effective control of narcotics cannot be achieved merely by tight border surveillance and other internal measures—it requires transnational coordination and cooperation in coming to grips with all of the associated problems, including illicit production, manufacture, transport, sale and use.<sup>123</sup> Polluted air and water know no national boundary. Hunger cannot be coped with without mobilizing the total food production and supply of the world.<sup>124</sup>

With regard to *enlightenment*, accurate knowledge of other peoples' demands, identifications and expectations and a clear understanding of worldwide interdependences are indispensable to rational decisions about security, power and other values. No scientific or advanced educational enterprise can maintain its creativity or keep its integrity without keeping in touch with the transnational network of laboratories, periodi-

<sup>122</sup> *Id.* at 478-79.

<sup>123</sup> See generally P. LOWES, *THE GENESIS OF INTERNATIONAL NARCOTICS CONTROL* (1966); *COMMENTS BY GOVERNMENTS ON THE DRAFT PROTOCOL ON PSYCHOTROPIC SUBSTANCES*, U.N. Doc. E/CN.7/525 (1969) (Note by the Secretary-General); *THE PREVENTION OF CRIME*, *supra* note 16, at 2-3, 7, 12-15, 54; UNITED NATIONS OFFICE OF PUBLIC INFORMATION, *THE UNITED NATIONS AND THE FIGHT AGAINST DRUG ABUSE* (1972); *The Drug Vigilantes*, *NEWSWEEK*, Aug. 16, 1976, at 56-57; Fooner, *Cocaine: The South American Connection*, *WORLD*, Feb. 27, 1973, at 22-26; *N.Y. Times*, Apr. 21, 1975, at 1, col. 1 ("Latins Now Leaders of Hard-Drug Trade: Operators of Rings Supplying U.S. Virtually Immune from Prosecution"); *id.*, Apr. 23, 1975, at 1, col. 6 ("Argentine Filled Key Role in Latins' Drugs Network"); *id.*, Apr. 24, 1975, at 1, col. 4 ("Lack of Treaties Hinders Drug Control Effort Here").

<sup>124</sup> See *THE WORLD FOOD SITUATION: PROBLEMS AND PROSPECTS TO 1985* (J. Willett comp. 1976); UNWFC, *ASSESSMENT OF THE WORLD FOOD SITUATION—PRESENT AND FUTURE*, ROME, 5-16 NOVEMBER 1974, U.N. Doc. E/CONF.65/3 (1974) (Staff Report); UNWFC, *REPORT OF THE WORLD FOOD CONFERENCE, ROME, 5-16 NOVEMBER 1974*, U.N. Doc. E/CONF.65/20 (1975). See also G. BORGSTROM, *FOCAL POINTS: A GLOBAL FOOD STRATEGY* (1973); G. BORGSTROM, *THE FOOD AND PEOPLE DILEMMA* (1974); L. BROWN & E. ECKHOLM, *BY BREAD ALONE* (1974); *International Law and the Food Crisis*, 1975 PROCEEDINGS, AM. SOC'Y INT'L L. 39-63 (1975); Note, *World Hunger and International Trade: An Analysis and a Proposal for Action*, 84 *YALE L.J.* 1046 (1975).

cals and books. The elite newspapers (or radio-TV programs) cover Washington, Moscow and the other world capitals and create transnational expectations as a regular routine.<sup>125</sup> The broad category of professional intellectuals in each society can no longer comment accurately, usefully and creatively on any aspect of a domestic scene without a thorough appreciation of the comprehensive global arena which affects and is affected by each of its component parts. The lay citizen, a role common to all, is increasingly alive to the fact that world events affect his life and that the mundane events of his immediate existence affect the world.

In a world of universalizing science and technology, new technologies and *skills* developed in one community have application far beyond its borders; they travel with the increasing tempo throughout the globe. Although there are recognized centers of creativity, no single state has the monopoly of innovation in technology and skill. Hence, programs for transfer of technology and skill (technical exchange or assistance) flourish.

As transnational mobility grows, families are widely dispersed across boundary lines for purposes of work, travel or study; and the continuity of the family unit is influenced by speed of communication and visitation. Increasingly, especially among the elites in different sectors, the network of friendship (*affection*) is established transnationally, with circles of friends scattered in different parts of the globe. As the life styles of the elite everywhere in the world continue to converge, more and more people (top managers, engineers, scientists, public figures and so on) appear to have more major contacts in the principal cities of the world than within the territorial communities to which they belong.

The crisis in *rectitude* does not stop at national borders. Much armed conflict about the world today exhibits a deep religious motivation. The ecumenical movement, with its zigs and zags, is global in scope.<sup>126</sup> To the devout Muslim the transnational pilgrimage to Mecca remains the crowning experience of this life. Indeed, a world public order of human dignity can be a feasible hope only if people's perspectives of responsibility are global in scope.

Finally, coming explicitly to the value of *respect* itself, recent scientific studies confirm the common-sense notion that the degree to which individuals are treated with simple human dignity affects all their responses, predisposing them either to violence, war and revolution or to their utmost exertion in the peaceful production of values.<sup>127</sup> One of the

<sup>125</sup> See J. MERRILL, *THE ELITE PRESS: GREAT NEWSPAPERS OF THE WORLD* (1968).

<sup>126</sup> See *The Right to Religious Freedom*, *supra* note 11, at 894-96; N.Y. Times, May 11, 1975, § 1, at 35, col. 1 ("A World Council of Churches Founder Says the Ecumenical Movement Is Still Viable as a Religious Force"); *id.*, Dec. 1, 1975, at 14, col. 4; *id.*, Oct. 21, 1975, at 39, col. 1. See *TWENTIETH CENTURY THEOLOGY IN THE MAKING: III, ECUMENICITY AND RENEWAL* (J. Pelikan ed. 1971).

<sup>127</sup> See the classic work: J. DOLLARD, *FRUSTRATION AND AGGRESSION* (1939). See also E.

major factors in world politics today, affecting every decision, is the accumulated resentment of countless millions of people, and even whole nations, arising from long endured discriminations, deprivations and humiliations—a resentment capable of being discharged against many targets, internal and external.<sup>128</sup> It may be recalled also that aggression, brutality and violations of human dignity, such as devised by the Nazis, are as contagious as germs. Models of disrespect for human dignity anywhere in the world can be copied everywhere. It is not too much, therefore, to say in summary that because of man's deep, rising demands for consideration and because of all these interdependences, it is questionable whether a world half-slave and half-free can endure.

The ever intensifying transnational interdependences *within* particular value processes are fully matched by the interdependences of peoples everywhere as *between* value processes. In constant interaction with all other value processes, each particular process affects and is affected by the others.

Thus, the *power* of any participant in the world arena is obviously influenced by the levels of physical and mental *well-being* within its own community and in other communities. Since rational decision making is unattainable without access to a flow of comprehensive, dependable and pertinent knowledge and information, the dependence of *power* upon the production and distribution of *enlightenment* is evident. The influence of *wealth* on *power* is indicated by the changing roles of industrialism and the allocation of resources in the contemporary world, as exemplified by the dramatic upsurge of the influence on the part of OPEC countries in the wake of the global energy crisis.<sup>129</sup> The impact of *respect* on *power* has been cogently demonstrated by the postwar movements of decolonization and nation building. The breakdown of traditional systems of society has upset former respect relationships and engendered the respect revolution of our time. Intense demands for equality (not merely for non-discrimination, but also for effective opportunities in the shaping and sharing of values) are widely distributed throughout the world community.<sup>130</sup> Demands for individual fulfillment are particularly pronounced wherever conditions favoring social mobility are found. The effect of *skill* is occasionally decisive and always significant. In modern politics the dissolution of traditional patterns of authority and control created vast

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FROMM, ESCAPE FROM FREEDOM (1941); A. KARDINER, THE PSYCHOLOGICAL FRONTIERS OF SOCIETY (1945); H. LASSWELL, POWER AND PERSONALITY (1966); E. MAYO, THE SOCIAL PROBLEMS OF AN INDUSTRIAL CIVILIZATION (1945); H. SULLIVAN, CONCEPTIONS OF MODERN PSYCHIATRY (1947).

<sup>128</sup> See H. LASSWELL, WORLD POLITICS AND PERSONAL INSECURITY 23-104 (1965). See generally O. KLINEBERG, THE HUMAN DIMENSION IN INTERNATIONAL RELATIONS (1964); R. WEST, INTERNATIONAL LAW AND PSYCHOLOGY (1974).

<sup>129</sup> See note 120 *supra*.

<sup>130</sup> See Z. BRZEZINSKI, BETWEEN TWO AGES: AMERICA'S ROLE IN TECHNETRONIC ERA 111-15 (1970); H. GANS, MORE EQUALITY (1973); J. REES, *supra* note 67.

audiences of conflict-ridden persons eager to find a new world view.<sup>131</sup> Hence specialists upon mass communication are able to exploit their propaganda skills on behalf of nationalism, proletarianism, anarchism and other rival ideologies. *Power* is, similarly, affected by the pattern of *affection* and loyalties in society. The component groupings in society often conflict with one another to control the sentiments of the individual. Excessive loyalty to the family or to the tribe, coupled with preoccupation with the fulfillment of family or tribal obligations, are frequent barriers to modernization and national development.<sup>132</sup> Finally, *power* is modified by effective conceptions of *rectitude*. Unhappy recent events make it clear that confrontations and confusions in *rectitude* standards (e.g., whether waging a particular war is morally just or unjust) can frustrate the fighting will and capability of a great power to conduct a war.<sup>133</sup>

The distribution of *respect* in any society is affected by *power* factors. The alteration of *respect* relations in the course of social revolution is one of the conspicuous features of the process as a whole. The history of radical socialist and communist movements in modern times shows that the systematic inculcation of disrespect for the older generation, for the ruling classes and for the law is a deliberate strategy of successful revolutionaries. After the seizure of power, active manifestations of contempt for the vestiges of the old regime are mobilized to consolidate the revolutionary order. It is evident on reflection and study that *respect* relations are deeply affected by the prevailing degree of *enlightenment*. The *respect* systems of the globe evolved under circumstances in which parochial assumptions about the past, present and future were unchecked by broader perspectives. Many traditional biases have been sustained through generations simply because they have never been challenged by contradictory experience. *Wealth* has a profound influence on the structure of *respect* in the national communities and in the world community. Obviously in many cultures the control of material instru-

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<sup>131</sup> See THE EMERGING NATIONS: THEIR GROWTH AND UNITED STATES POLICY 3-90 (M. Millikan & D. Blackmer eds. 1961). See generally THE POLITICS OF THE DEVELOPING AREAS (G. Almond & J. Coleman eds. 1960); D. APTER, POLITICS OF MODERNIZATION (1965); C. BLACK, THE DYNAMICS OF MODERNIZATION: A STUDY IN COMPARATIVE HISTORY (1966); A. INKELES & D. SMITH, BECOMING MODERN: INDIVIDUAL CHANGE IN SIX DEVELOPING COUNTRIES (1974); D. LERNER, THE PASSING OF TRADITIONAL SOCIETY: MODERNIZING THE MIDDLE EAST (1958); M. LEVY, MODERNIZATION AND THE STRUCTURE OF SOCIETY: A SETTING FOR INTERNATIONAL AFFAIRS (1966); L. PYE, ASPECTS OF POLITICAL DEVELOPMENT (1966); MODERNIZATION: THE DYNAMICS OF GROWTH (M. Weiner ed. 1966).

<sup>132</sup> For example, in traditional Chinese civilization family obligations frequently stood in rather direct opposition to impersonal administration. Another example is found in Burma. See L. PYE, POLITICS, PERSONALITY, AND NATION BUILDING: BURMA'S SEARCH FOR IDENTITY 177-86 (1962).

<sup>133</sup> The antiwar movement against the involvement of the United States in the Vietnam War is a case in point. For the ambiguities of the legal, moral and other issues involved, see THE VIETNAM WAR AND INTERNATIONAL LAW (R. Falk ed. 1968-1976) (4 vols.). See also R. HULL & J. NOVOGROD, LAW AND VIETNAM (1968); J. MOORE, LAW AND THE INDO-CHINA WAR (1972).

ments of production and consumption does not confer the highest claim to *respect*. However, with the rise and spread of modern methods of production, high premiums have been put upon the control of material resources. The distribution of *respect* is influenced by demonstrations of *skill*. Demonstrations of excellence in sports, in music, in arts and in other spheres have modified some stereotyped derogatory images of national and ethnic groups. *Respect* is subject to changes rooted in *affection*. In an epoch of expanding nationalism, the older structures of *respect* are greatly modified as traditional barriers are relaxed and social intercourse is greatly simplified. The same process appears among co-revolutionaries and among those who come to share a positive tie with any collective symbols of identification. *Rectitude* factors enter into the patterning of *respect* relationships. The vision of common humanity, as projected by the great religions and philosophies, has been a driving force in the contemporary movement for human dignity and human rights.<sup>134</sup> Finally, we note that *respect* is affected by *well-being*. Apart from the state of health, physiological factors (*e.g.*, pigmentation) are continually seized upon to justify and guide the allocation of respect to the self and others.<sup>135</sup>

*Enlightenment* is affected by *power*. When the gathering and dissemination of information is in the hands of governments and political parties, the content of the stream is decisively affected by power calculations. Totalitarian elites appraise and control every phase of the gathering, processing and dissemination of information in terms of its political usefulness to them.<sup>136</sup> Besides power considerations, *enlightenment* is also influenced by *wealth*. Where the media of communication are owned and operated for private profit, characteristic distortions occur. News and editorial policy are greatly influenced by calculated interests in obtaining advertisement, promoting circulation and cutting production costs.<sup>137</sup>

<sup>134</sup> See authorities cited in note 1 *supra*, especially BIRTHRIGHT OF MAN.

<sup>135</sup> See *The Protection of Respect*, *supra* note 8, at 1042-50.

<sup>136</sup> See C. FRIEDRICH & Z. BRZEZINSKI, *supra* note 22, at 107-15.

<sup>137</sup> As George Kennan sharply stated:

[The] phenomenon of American advertising . . . has been permitted to dominate and exploit the entire process of public communication in our country. It is to me positively inconceivable that the whole great, infinitely responsible function of mass communication, including very important phases of the educational process, should be farmed out—as something to be mined for whatever profit there may be in it—to people whose function and responsibility have nothing to do with the truth—whose function and responsibility, in fact, are concerned with the peddling of what is, by definition, untruth, and the peddling of it in trivial, inane forms that are positively debauching in their effect on the human understanding. After the heedless destruction of natural environment, I regard this—not advertising as such, but the consignment to the adviser of the entire mass communication process, as a concession to be exploited by it for commercial gain—as probably the greatest evil of our national life. We will not, I think, have a healthy intellectual climate in this country, a successful system of education, a sound press, or a proper vitality of artistic and recreational life, until advertising is rigorously separated from every form of legitimate cultural and intellectual communication . . . .

G. KENNAN, DEMOCRACY AND THE STUDENT LEFT 231-32 (1968).



Where the press is not monopolized, the competitive structure of the communications industry permits a great deal of freedom in news coverage and editorial outlook. Where competitive news gathering and dissemination are possible through these diversified channels, the result is likely to be a realistic public image. *Respect* factors affect the sources and interpretations of information. For instance, lower classes may be overlooked entirely as sources of information; contemptuous attitudes toward other peoples may result in gross distortions of reality.<sup>138</sup> An important factor in *enlightenment* is the pattern of *skills* for obtaining and evaluating information. Given appropriate access, journalists are enabled to make indispensable contributions to the appraisal of national and world affairs.<sup>139</sup>

The role of journalistic skill becomes much less, however, when "curtains" descend and shut off the sources indispensable to the reporter. Positive and negative sentiments (*affection*) affect the sources and interpretations of information. It is notorious that love distorts an image in one direction, while hatred distorts it another way. The inculcation of group loyalties (and group enmities) results in the false perception of the target objects.<sup>140</sup> Finally, standards of *rectitude* affect the stream of intelligence available in national and world affairs. It is demonstrable that common codes of conduct affect the flow of intelligence in many direct and indirect ways. If the world itself is perceived as the scene of the triumph of evil over good, the result may be extreme pessimism about the political prospects of the righteous. By contrast, some communities

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*See generally* N. JOHNSON, HOW TO TALK BACK TO YOUR TELEVISION SET (1970); J. MERRILL & R. LOWENSTEIN, MEDIA, MESSAGES AND MEN: NEW PERSPECTIVES IN COMMUNICATION 79-88 (1971); E. TURNER, THE SHOCKING HISTORY OF ADVERTISING (1953); Editors of the Atlantic Monthly, *The American Media Baronies*, THE ATLANTIC MONTHLY, July 1969, at 82-86, reprinted in SOCIOLOGY IN THE WORLD TODAY 89-96 (J. Kinch ed. 1971).

<sup>138</sup> As late as 1937, for example, some American officers were so biased against the Japanese that they kept reiterating the idea that the Japanese would never make first class airplane pilots "because of their eyes." This was reminiscent of the appraisals made on the eve of the Russo-Japanese War by Russian officers.

Conversely, respect factors may work to give added resonance to realistic evaluation of the situation. When Herman Rauschnig published his disillusioned estimate of the Nazis, much of its impact on official circles in Great Britain was not unrelated to the fact that the author was no "mere journalist" or even a scholar, but a man with a substantial official career.

<sup>139</sup> The role played by the press in the unfolding drama of Watergate is a vivid testimony. For insight into a team of reporters that played the key role, see C. BERNSTEIN & B. WOODWARD, ALL THE PRESIDENT'S MEN (1974).

<sup>140</sup> *See* B. EPSTEIN & A. FORSTER, THE NEW ANTI-SEMITISM (1974); B. EPSTEIN & A. FORSTER, "SOME OF MY BEST FRIENDS..." (1962); O. KLINEBERG, *supra* note 128, at 3-57. *See also* G. ALLPORT, THE NATURE OF PREJUDICE (1958); PREJUDICE U.S.A. (C. Glock & E. Siegelman eds. 1969); M. HERSKOVITS, THE MYTH OF THE NEGRO PAST (1958); A. MONTAGU, MAN'S MOST DANGEROUS MYTH: THE FALLACY OF RACE (5th ed. 1974); G. SELZNICK & S. STEINBERG, THE TENACITY OF PREJUDICE: ANTI-SEMITISM IN CONTEMPORARY AMERICA (1969).

emphasize the impending triumph of good and cast politics into a moralizing approach that maintains a tone in public life in which emphasis upon difficulties or limitations are unwelcome, even if seriously proposed by competent observers.

The level of mental and physical *well-being* is influenced by *power* factors. Aside from the direct effect of destructive weapons, wars and other political crises tend to foster anxiety and to upset the personality equilibrium of the individual.<sup>141</sup> Health is influenced by national and world economic conditions (*wealth*). A striking demonstration of the impact of economic fluctuations and health is the relation between prosperity, depression and suicide. There are direct correlations between high unemployment and the incidence of mental problems and suicide.<sup>142</sup> Health is also affected by the distribution of *enlightenment*. Modern efforts to control epidemics have frequently encountered local beliefs that have stood in the way of immediate success. Health is likewise influenced by the patterns of *respect*. Deprivations of respect (*e.g.*, the humiliation of failure resulting from bankruptcy or protracted unemployment) often lead the individual to turn his destructive tendencies against himself.<sup>143</sup> Health is directly affected by the world distribution of *skill*; this is particularly obvious among peoples who lack medical and sanitation experts. Health is also affected by whatever influences the congeniality of the immediate environment. The dependence of human beings on the continuing exchange of *affection* in intimate groups is a matter of fundamental importance for mental and physical health. Health is, finally, affected by the distribution of *rectitude* standards. One striking result of modern research on psychosomatic disorders has been the discovery of the frequent connection between illness and guilt. When the individual

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<sup>141</sup> See, *e.g.*, C. LIMPKIN, *THE BATTLE OF BOGSIDE* (1972); W. VAN VORIS, *VIOLENCE IN ULSTER* (1975).

<sup>142</sup> A recent congressional study for the Joint Economic Committee suggests that a significant number of suicides, deaths and murders from 1970 to 1975 were related to a sharp increase in unemployment in 1970. The study stresses that "actions which influence national economic activity—especially unemployment rate—have substantial bearing on physical health, mental health and criminal aggression. . . ." N.Y. Times, Oct. 31, 1976, § 1, at 1, col. 1.

See E. DURKHEIM, *SUICIDE, A STUDY IN SOCIOLOGY* (J. Spaulding & G. Simpson trans., G. Simpson ed. 1951); *POVERTY AND MENTAL HEALTH* (M. Greenblatt, P. Emery, & B. Glueck, Jr. eds. 1967); R. HURLEY, *POVERTY AND MENTAL RETARDATION: A CAUSAL RELATIONSHIP* (1970); *POVERTY AND HEALTH: A SOCIOLOGICAL ANALYSIS* (rev. ed. J. Kosa & I. Sola 1975).

<sup>143</sup> This is affected by the values of a highly competitive society in which "strive and succeed" is the maxim and where respect is accorded or withheld on the basis of success or failure. In Japanese civilization suicide is a well-established escape from situations in which honor is imperiled or lost. In the case of people who have been suddenly deprived of all self-respect and who are left impotent, aggressions may be directed against the self. See R. BENEDICT, *THE CHRYSANTHEMUM AND THE SWORD: PATTERNS OF JAPANESE CULTURE* 151, 166-68, 199-205 (1974).

suffers from "guilt feelings" components of his personality are in conflict.

*Wealth* is affected by the world *power* process. The degree of concern about national security affects the armament race, and the burden of armaments is reflected in the degree to which the potential standard of living of the entire population is sacrificed. The speedy universalization of modern production patterns is due in no small measure to political factors.<sup>144</sup> *Enlightenment* affects the continuity and levels of economic life which were formerly dependent upon interactions that were poorly reported and, hence, inadequately understood. Today vast fact-gathering agencies survey crop conditions, industrial output, employment, consumption standards, saving, investment, public revenue and expenditures, and related activities whose economic character is obvious. Under these circumstances the fluctuations in economic life are less unanticipated, and the effectiveness of measures of prevention and recovery can be continually appraised. *Respect* factors influence the direction and magnitude of economic activity. Advertising, through which consumer demand is managed,<sup>145</sup> relies largely on respect appeal.<sup>146</sup> And advertising is a major business function in a system of free private enterprise. The inventive exuberance of modern science and technology has not resulted in complete self-sufficiency for even the largest states. *Affection* influences wealth production and consumption. The importance of congenial human relationships upon the maintenance of high levels of productivity cannot be overemphasized.<sup>147</sup> A pervasive sense of alienation impedes productivity.<sup>148</sup> *Rectitude* also influences the economic process. Though not uncontroverted, the impact of "the Protestant ethic" on the evolution of modern capitalistic economies has gained wide recognition.<sup>149</sup> Finally, *well-being* also has an impact on wealth. The deviations from health to be found in a given population put an obvious limit upon the productive potential of the economy. Lack of physical vitality may also act as a drag on the growth of new levels of aspiration for goods and services.

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<sup>144</sup> The old elites of ancient civilizations (like China and Japan) tried to block the penetration of their territories by the products and the processes of the West. They failed, mainly because the governments of Western nations stood behind their traders, miners and planters. It was superior coercive power that led to the comparatively rapid spread of modern technology throughout the globe.

<sup>145</sup> For a brilliant exposition of the management of specific consumer demand, see J. GALBRAITH, *THE NEW INDUSTRIAL STATE* 198-212 (2d ed. 1971). See generally E. BURTON, *PROMISE THEM ANYTHING: THE INSIDE STORY OF THE MADISON AVENUE POWER STRUGGLE* (1972).

<sup>146</sup> For instance, this is very much evident in cigarette advertising.

<sup>147</sup> In his famous experiments, Elton Mayo made convincing demonstrations of the importance of the primary group upon output, as well as upon enjoyment in work. See E. MAYO, *THE HUMAN PROBLEMS OF AN INDUSTRIAL CIVILIZATION* (1933).

<sup>148</sup> See note 71 *supra*.

<sup>149</sup> See M. WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (T. Parsons trans. 1958).

In regard to *skill*, *power* relations play an influential and occasionally a decisive role. Power considerations have affected skill development in the areas most closely related to the balancing of power: the control of energy (nuclear and other). The correlation of total power with power over energy is very close. The overriding need of national security and the institution of war have led to the introduction and improvement of various skills and technologies, many of which have much wider application than to the specific tasks of fighting. *Skill* is affected by the state of *enlightenment*. Dramatic illustration of the significance of unrestricted intellectual exchange as the basis of scientific development has been provided by twentieth-century examples of the effect of censorship in the reduction of scientific "give and take." Censorship practices result in extensive scientific and cultural impoverishment.<sup>150</sup> *Wealth* affects the pattern and the pace of *skill* development. The development of modern techno-scientific culture requires the investment of vast sums. As the division of labor grows more complex, the skills connected with science, engineering and management become more numerous and refined. Without a great economic base, it is impracticable for any community to keep pace with the evolution of the wealthier centers. *Respect* factors, too, modify the distribution of skills. The introduction of modern industrial society over the globe is affected by the respect patterns that prevail in many cultures and classes. It is notorious, for instance, that nomadic hunters and herders are averse to "demeaning" themselves by becoming "mere peasants" or "petty tradesmen." And in some cultures, manual skill has no place in the life of the intellectual.<sup>151</sup> The cultivation of meditative skill has been a principal feature of civilizations with strong internalizing trends.<sup>152</sup> Skills are modified by the prevailing patterns of *affection* and loyalties. The expansion of nationalistic sentiment has typically resulted in mobilizing the younger generation to serve the cause

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<sup>150</sup> Censorship in the services of the Nazi orthodoxy culminated in the decisive decline of German science. State withdrawal of "non-Aryan" sources of enlightenment from the main stream of scientific communication seriously impaired research in such fields as psychology and physics which could perforce resort to Freud and Einstein only by indirection. More serious results flowed from the increasing imposition of the practice of secrecy in research, stifling free exchanges between the German scientists.

In regard to such phenomena in contemporary Russia, see H. SMITH, *THE RUSSIANS* 361-68 (1976). Smith writes:

Soviet science is hurt, they [Soviet scientists] said, by poor communications among Soviet scientists who are terribly compartmentalized. Normally it takes a year or two for new findings to get into scholarly journals, a process that in the West can be cut to weeks or days for important breakthroughs and thus speed scientific progress. The ferment and fast moving exchange of ideas prevalent in Western science, I was told, is largely absent in Soviet science.

*Id.* at 363.

<sup>151</sup> In pre-Communist China the life of the scholarly official found no place for manual skill; hence it was difficult to give practical as well as theoretical training to engineers. The enormous prestige of passing literary examinations turned the energies of bright and ambitious young people toward sedentary reading, memorizing and recalling.

<sup>152</sup> Deference has thus gone to the withdrawn Holy Man.

of national liberation and development. And the pursuit of modernization leads to the study of all the skills believed to be part of the culture of an advanced society. Finally, the development of *skill* is influenced by *rectitude* factors. In every known area of human experience, the enforcement of standards of orthodoxy or secrecy has been seen to be inimical to an untrammelled scientific development dependent upon a wide exchange of information.<sup>153</sup>

*Affection* is influenced by *power* factors. The power balancing process in any arena often creates difficulties in the adjustment of loyalties and friendships to new conditions. The consequences of power for family life and friendship have often been reviewed, especially in their more tragic aspects. Military service reaches into the home and may disrupt family circles for a long period of time. We know, of course, of the perpetual complaint of those in high positions of authority and control who find themselves suffering from loneliness. *Affection* is influenced by the sources and content of *enlightenment*. The influence of information on the formation of attitudes has been studied from many points of view. The single most immediate factor that guides the sentiments of human-kind are the limitations upon enlightenment that are very largely a function of parochialism. *Wealth* modifies the distribution of sentiment patterns. When traders and merchants are in no position to intimidate potential customers, they find that the cultivation of amicable relationships is good business.<sup>154</sup> *Respect* factors influence the distribution of *affection*. The narrowing effect of social class upon the permissible range of friendship and marriage are well known in all societies. *Skill* is a factor in the distribution of friendly attitudes. Many of the skills connected with modern science and technology are developed and applied by practitioners who identify with one another and keep in close association (within politically feasible limits). *Rectitude* is a factor shaping the distribution of *affection*. Worshiping the same god, especially in the same church or temple, helps to forge a tie of affection. Finally, *well-being* influences the distribution of *affection*. Tensions in world affairs and in human relations are caused in part by many neurotic, psychopathic and even

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<sup>153</sup> Medieval Christendom stifled a widespread development of learning under a variety of vicissitudes, not least of which was the suppression of "heresy." The reign of the Holy Inquisition did little to encourage the utilization of records of experience which diverged from the contemporary models of orthodoxy. Avicenna's and Averroes's interpretations of Aristotle were consigned to temporary oblivion; contact with the scientific achievements of the Arab world was fraught with danger; science could be equated with magic in the official mind; and scientific development languished in this atmosphere. In contrast, the neighboring Moslem civilization encouraged the unrestricted absorption of all available skill models—and witnessed a flourishing era of scientific development. The result was the development of eleventh century Arab medicine, to take one example, to a height not reached by its European counterpart until the late Renaissance.

<sup>154</sup> On the other hand, when markets can be obtained by force, the calculation of economic advantage may lead to an unfriendly attitude toward commercial rivals and a positive attitude toward partners.

psychotic factors that operate in the lives of elites and members of the rank and file.<sup>155</sup>

Conceptions of *rectitude* frequently adjust themselves to the prevailing patterns of *power*. Power and rectitude myths are in constant interplay. Clearly, *enlightenment* based upon scientific methods of verification undermines traditional justifications of *rectitude* patterns. The search for standards of responsibility has led from theological doctrines to the growth of "man centered" conception.<sup>156</sup> Economic relations (*wealth*) modify *rectitude* standards.<sup>157</sup> *Respect* factors influence the patterns of *rectitude*. The "internal proletariat" of great empires have been the cradles in which many new ideologies have taken root in the name of protests against injustice.<sup>158</sup> The propagandists of religious or secular cults have worked from the "top" when the upper elite has been judged to be strong enough to carry the whole community in their wake in case of conversion. And social revolutions typically occur where the upper class

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<sup>155</sup> Historically, this has been most apparent in the lives of certain outstanding personages. The grandiosity or the suspiciousness of a ruler or of a ruling clique may bring about policies that provoke crises of such intensity that the result is disastrous. On the other hand, the "tendency to love masochistically" may carry with it an urge to give in to the aggressor; decision makers possessing such personality systems may temporize.

See generally K. HORNEY, *THE NEUROTIC PERSONALITY OF OUR TIME* (1937); K. HORNEY, *OUR INNER CONFLICTS: A CONSTRUCTIVE THEORY OF NEUROSIS* (1945); R. MAY, *THE MEANING OF ANXIETY* (1950).

<sup>156</sup> See generally R. BAKER, *THE DIGNITY OF MAN* (1947); E. CASSIRER, *THE INDIVIDUAL AND THE COSMOS IN RENAISSANCE PHILOSOPHY* (M. Domandi trans. 1972); P. GAY, *THE ENLIGHTENMENT: AN INTERPRETATION, VOL. II: THE SCIENCE OF FREEDOM* (1969); G. MIRANDOLA, *ORATION ON THE DIGNITY OF MAN* (A. Caponigri trans. 1956).

<sup>157</sup> At one time, advocates of free world trade were confident that the way to a peaceful and prosperous world was by the expansion of commerce. It is true that the seller has a continuing interest in the buyer if he expects to do business with him again. And it is also true that the buyer is interested in sellers in order to maintain healthy price and quality competition. Traders are notoriously "broadminded" in the sense that "money talks" whether it comes from Christian or Jew, white man or black man, rich or poor. The common concern for a peaceful exchange has resulted in the holding of great fairs at accessible centers and the development of codes of conduct suitable to the perpetuation of the institution. Procedures of arbitration and settlement were devised to cover the many differences of claim between sellers and buyers. "Client nursing" is an ancient custom and this means binding the prospect by catering to his whims and tastes, even when such whims and tastes are in many ways offensive to the traditional code in which the trader was reared.

For McNamara's theory of the close link between the level of violence and the level of poverty, see Rosenfeld, *Robert S. McNamara and the Wiser Use of Power*, *WORLD*, July 3, 1973, at 18, 24.

<sup>158</sup> The "proletariat" in the sense described by Toynbee is recruited from the lower levels of the social structure and, therefore, includes those who suffer in physical health and who endure poverty and other experiences connected with a lowly status. But the accelerating factor appears to be connected in particular with respect considerations. An examination of the spread of the Christian cult in the Roman World indicates that it spread, in part, among persons of position who were disaffected with their society. Persons of lower status were greatly encouraged by recruits from the upper classes and found corroboration of their resentment against discrimination.

is divided, having lost a unified sense of mission. Conceptions of *rectitude*, moreover are continually modified by *skill* factors. Religious and moral sentiment have given rise to many works of art which have contributed to the consolidation of established orders. Conversely, factors of skill and taste have contributed to the undermining of entrenched codes. *Affection* factors also influence *rectitude* standards. It has often been assumed that the ties of a primary circle are the dominant ones and take precedence over such formal obligations as obedience to law. It is devotion to large secondary groups that creates a demand to act for its preservation and extension, and this becomes crystallized into rectitude standards by enlarging the established rectitude patterns to include the "true" interests of the lesser groups. Finally, it may be noted that the intensity with which considerations of *rectitude* enter into world and national affairs may be influenced by the mental health (*well-being*) of significant figures in decision process.

The facts outlined above clearly establish interdetermination on a global scale in the sense that everybody affects everybody else. The degree to which any particular individual can, in the long run, secure and maintain enjoyment in any particular value process is a function of the degree to which other individuals differentially situated about the globe can secure and maintain a corresponding enjoyment both in that process and other processes. No one can achieve security—when security is defined as high position, expectancy and potential with regard to all values—unless others do.<sup>159</sup> When John Donne asked for whom the bell tolled, he rightly answered that it tolled for one and all alike.

#### INADEQUACIES IN INQUIRY: THE INTELLECTUAL CONFUSION ABOUT HUMAN RIGHTS

One of the most important of the many conditions affecting the transnational community's failures in securing the protection of human rights may be described as that of simple intellectual confusion.<sup>160</sup> Schol-

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<sup>159</sup> In a letter sent to the New York Times from Novosibirsk, U.S.S.R., in support of Andrei Sakharov, Victor D. Kurdin stressed: "If today you do not energetically put an end to aggression wherever it takes place and if you do not energetically support human rights of any person anywhere in the world—then, soon enough you'll have aggression and servitude in your homes." N.Y. Times, Aug. 22, 1976, § 4, at 16, col. 5.

<sup>160</sup> Moskowitz has issued a formidable challenge:

[I]nternational human rights is still waiting for its theoretician to systematize the thoughts and speculations on the subject and to define desirable goals. Intelligent truisms do not necessarily add up to a theory. No one has yet arisen to draw together into a positive synthesis the facts and fancies which emerge daily from events of bewildering complexity and to carry on an authentic debate. International concern with human rights is still very much a theme begging for a writer. And the scholar has not yet appeared to redress the distortions through a calm and systematic application of facts, to ground abstractions in the specific, and to define the limits of discourse. In the absence of a definite body of doctrine, as well as of deeply rooted convictions, international human rights have been dealt with on the basis of the shifts and vagaries of daily affairs and of evocations of daily events. There is a great need for technical resources and ability to channel the facts to greater effect. Human rights as a matter of international concern is an untrodden area of systematic research. But still a greater

ars and others charged with performance of the intelligence function have not adequately formulated the more fundamental problems or performed the necessary intellectual tasks for assisting in establishing and maintaining appropriate constitutive processes and public order policies. They have neither adequately clarified a common interest in the greater production and wider sharing of all human rights values nor created among community members the appropriate perceptions of such common interest. They have not met their responsibilities for clarifying and promoting the demands, identifications and expectations among the peoples of the world which are an essential precondition of a public order of human dignity.

It is in the substantive definition of human rights that the greatest confusion and inadequacy prevail. Little effort has been made to create a comprehensive map of the totality of human rights, and there has been little discussion of the detailed content of particular rights.<sup>161</sup> Often even the very conception of human rights is left obscure. Sometimes no specification is offered of what is meant by human rights.<sup>162</sup> When specification is attempted it commonly exhibits a broad range of confusions.<sup>163</sup> Sometimes human rights are conceived in terms of natural law

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need is for superlative virtuosity to deal with international human rights in their multiple human dimensions.

M. MOSKOWITZ, 1968, *supra* note 1, at 98-99.

See also M. MOSKOWITZ, 1974, *supra* note 1, at 1-37; Cohn, *A Human Rights Theory of Law: Prolegomena to a Methodology of Instruction*, in 4 RENÉ CASSIN, *supra* note 1, at 31-60; Devall, *Social Science Research on Support of Human Rights*, in COMPARATIVE HUMAN RIGHTS, *supra* note 1, at 326, 329-33; Moskowitz, *Toward an Integrated Approach to International Human Rights*, in 4 RENÉ CASSIN, *supra* note 1, at 61-68; Toth, *Les Droits de l'Homme et la Theorie du Droit*, in 4 RENÉ CASSIN, *supra* note 1, at 69-90; Vegleris, *Preliminaire a la Methodologie des Droits de l'Homme*, 4 RENÉ CASSIN, *supra* note 1, at 19-30.

<sup>161</sup> The importance of definition is appropriately emphasized by Bilder: "The issue of definition is not trivial. For what we think human rights really are will inevitably influence not only our judgment as to which types of claims to recognize as human rights, but also our expectations and programs for implementation and compliance with these standards." Bilder, *supra* note 1, at 174.

Similarly, Walter Weyrauch writes:

A difficulty with definitions, for example efforts to define universal human rights, might be that they purport to reveal something *essential* about the matter under consideration. Yet the definitions often fail to yield the clarification we thought was attainable. There is a tautological quality in many definitions, which in the last analysis can reduce them to cryptic circular statements—in our context, human rights are human rights. The reason may be in part that definitions, as well as more lengthy explanations, equate certain words with other groups of words.

Weyrauch, *On Definitions, Tautologies, and Ethnocentrism in Regard to Universal Human Rights*, in HUMAN RIGHTS, *supra* note 1, at 198.

<sup>162</sup> E.g., M. GANJI, *supra* note 1; L. SOHN & T. BUERGENTHAL, *supra* note 1; V. VAN DYKE, *supra* note 1.

<sup>163</sup> In the words of Maurice Cranston: "Human rights is a twentieth-century name for what has been traditionally known as natural rights or, in a more exhilarating phrase, the rights of man. Much has been said about them, and yet one may still be left wondering what they are." M. CRANSTON, *supra* note 1, at 1.



absolutes and buttressed by transempirical justifications, both theological and metaphysical.<sup>164</sup> At other times human rights are confined to the demands which particular peoples make at a particular time in their particular, unique communities.<sup>165</sup> Still again, human rights are often conceived as merely the rights which a particular system of law in a particular state in fact protects.<sup>166</sup> Sometimes this positivist conception is not even extended to all individual rights, but is limited only to certain specified rights distinguished by arbitrary criteria.<sup>167</sup> Characteristically, the particular rights regarded as human rights are not explicitly related to the value features and institutional features of social process, and no procedures are specified for ascribing an empirical reference to the different categories of rights.<sup>168</sup> Human rights are, further, often discussed as operative within a national or subnational context, without appropriate reference being made to any relevant larger community con-

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Similarly, Claude observes:

[T]he scope of the field of human rights remains in dispute. Must the expression of a human need be translated into a legally enforceable claim before we can properly call it a right? Is a legal demand entitled to the designation of human right only if we can somehow philosophically justify it in terms of human dignity? We do not believe such difficult questions need to be finally answered before enlisting the term, human rights, as a worthy generic title for cross-national comparative study of various moral and politico-legal claims.

*Editor's Introduction*, in *COMPARATIVE HUMAN RIGHTS*, *supra* note 1, at 71-72.

For a diversity of perspectives, see *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* (UNESCO ed. 1949); Bilder, *supra* note 1, at 173-76. *See also* Edel, *Some Reflections on the Concept of Human Rights*, in *HUMAN RIGHTS*, *supra* note 1, at 1; Nagel, *The Social Consequences of Basic Legal Rights*, in *id.* at 306; Pollack, *What are Human Rights?*, in *id.* at 82; Weyrauch, *supra* note 161.

<sup>164</sup> *See* M. CRANSTON, *WHAT ARE HUMAN RIGHTS?* 36 (1962); Bilder, *supra* note 1, at 173; Castberg, *Natural Law and Human Rights: An Idea-Historical Survey*, in *NOBEL SYMPOSIUM ON HUMAN RIGHTS*, *supra* note 1, at 13-14 [hereinafter cited as Castberg]. *See also* Blackstone, *The Justification of Human Rights*, in *HUMAN RIGHTS*, *supra* note 1, at 90-103; De Cervera, *Natural Law Restated: An Analysis of Liberty*, in *HUMAN RIGHTS*, *supra* note 1, at 55-79; Edel, *Some Reflections on the Concept of Human Rights*, in *HUMAN RIGHTS*, *supra* note 1, at 1-13.

<sup>165</sup> In the words of Cranston: "A right presupposes a claim; if the claim is not made, the question of right does not arise." M. CRANSTON, *supra* note 1, at 81. *See* Doyle, *Personal Claims, Human Rights, and Social Justice*, in *HUMAN RIGHTS*, *supra* note 1, at 38-39; Edel, *supra* note 164, at 6-9.

<sup>166</sup> *See* M. CRANSTON, *supra* note 1, at 4-7; P. DROST, *supra* note 1, at 11-13, 39; Bilder, *supra* note 1, at 173-74.

<sup>167</sup> Cranston contends that economic and social rights are not "universal human rights" since they "cannot be transformed into positive rights" for failing "the test of practicability." M. CRANSTON, *supra* note 1, at 54, 66. For his detailed argument, *see id.* at 65-71. *See also* Cranston, *Human Rights, Real and Supposed*, in *POLITICAL THEORY AND THE RIGHTS OF MAN* 43-53 (D. Raphael ed. 1967).

<sup>168</sup> It could be suggested that even the emphasis on "rights" is a misleading focus since that suggests a reference only to an application of law in a particular instance. A comprehensive perspective must require a concern not merely for application but for all the other functions (prescription, intelligence, promotion, invocation, appraisal and termination) of the constitutive process of authoritative decision. A more relevant term might be that of "human interest" if interests are conceived as demands for values plus supporting expectations about the conditions under which such demands can be secured and fulfilled.

text, global or regional. Similarly, it is not always recognized that the honoring of certain rights may require limitations of other rights. No intellectual procedures are devised, much less employed, for calculating the costs and benefits in terms of value consequences of a particular option in decision. The assumption is far too common that inherited technical, legal terms for the description of human rights can carry a reasonably precise and consistent empirical reference ascertainable by all.

The principal focus of attention, in a vast literature, has been upon what is called the problem of implementation.<sup>169</sup> Even upon this problem, however, the range of alternatives considered has been highly partial and fragmented. The major emphasis in most recommendations for improvement in implementation has been upon isolated features of rule and procedure, without appropriate relation to the larger processes of effective and authoritative power which condition the impact of all changes in rules and procedures. The literature affords little recognition of the comprehensive, interpenetrating constitutive processes (global, regional, national, local) which identify authoritative decision makers, specify basic community policies, establish necessary structures of authority, allocate bases of power, authorize appropriate procedures and make provision for many different, indispensable types of decisions.<sup>170</sup> Similarly, very little effort has been made to inquire into the processes of effective power that establish and maintain such constitutive processes and, hence, into how the predispositions of effective elites may be managed to cause them to demand or accept the changes in constitutive processes necessary to the better protection of human rights.

The failure of inquiry, with regard to both the definition of substantive content and the implementation of human rights, to adopt a configurative, problem-solving approach, employing all relevant intellectual skills, is as conspicuous as it is unfortunate.<sup>171</sup> In the absence of an explicit relation of particular rights to specific value processes and of a comprehensive conception of global constitutive processes, it has not been possible to formulate problems precisely in terms either of factual

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<sup>169</sup> See, e.g., J. CAREY, *supra* note 1; M. GANJI, *supra* note 1; E. HAAS, *supra* note 1; M. MOSKOWITZ, 1974, *supra* note 1; A. ROBERTSON, *supra* note 1; L. SOHN & T. BUERGENTHAL, *supra* note 1; V. VAN DYKE, *supra* note 1.

<sup>170</sup> See note 169 *supra*.

<sup>171</sup> The overriding emphasis is on logical derivation. This reflects the legacy of the major traditional jurisprudential approaches. See generally E. BODENHEIMER, *JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW* (rev. ed. 1974); A. BRECHT, *POLITICAL THEORY: THE FOUNDATIONS OF TWENTIETH CENTURY POLITICAL THOUGHT* (1959); H. CAIRNS, *LEGAL PHILOSOPHY FROM PLATO TO HEGEL* (1949); W. FRIEDMANN, *LEGAL THEORY* (5th ed. 1967); C. FRIEDRICH, *THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE* (2d ed. 1963); G. PATON, *A TEXTBOOK OF JURISPRUDENCE* (4th ed. 1972); 1 R. POUND, *JURISPRUDENCE* (1959) [hereinafter cited as R. POUND]; G. SABINE, *A HISTORY OF POLITICAL THEORY* (3d ed. 1961); J. STONE, *HUMAN LAW AND HUMAN JUSTICE* (1965).

disparities in the achievement of demanded values or of rational and available options in effecting improvements in decision. This failure in the appropriate formulation of problems has in turn made difficult the performance of the various intellectual tasks of relevant inquiry. There has been little successful effort to postulate and clarify basic general community policies at all the necessary different levels of abstraction or to devise and employ appropriate principles of content and procedure for relating high level abstractions to the unique circumstances of particular instances of application. The description of past trends in decision has been highly anecdotal rather than in terms of approximation to clarified policies, permitting little effective comparisons of successes and failures at different times and places. Performance of the scientific task of identifying the factors affecting decision has built more upon intuition than upon systematic inquiry about both environmental and predispositional variables. Anticipations of the future have consisted more of pessimistic forebodings and utopian fantasies than of disciplined developmental constructs, designed to promote creativity in the choice of decision options. The invention and evaluation of alternatives in process and decision have—because of all these underlying failures in performance—been, as indicated above, most limited and halting, confined to relatively few of the many features of effective power and constitutive process.

For a more detailed exposition of the inadequacies in intellectual inquiry which appear importantly to have conditioned the general community's failures in achievement of human rights, we make reference to the unique emphases about and contributions to human rights theory proffered by certain major jurisprudential approaches.

### *The Natural Law Approach*

The natural law approach begins with the assumption that there are natural laws, both theological and metaphysical, which confer certain particular rights upon individual human beings.<sup>172</sup> These rights find their

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<sup>172</sup> See C. BECKER, *THE DECLARATION OF INDEPENDENCE* 24-79 (1942); A. PASSERIN D'ENTREVES, *NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY* 51-64 (2d ed. 1970); J. MARITAIN, *MAN AND THE STATE* 76-107 (1951); J. MARITAIN, *supra* note 1; 4 R. POUND, *supra* note 171, at 61; D. RITCHIE, *NATURAL RIGHTS* (1895) [hereinafter cited as D. RITCHIE]; H. ROMMEN, *THE NATURAL LAW, A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY* (T. Hanley trans. 1948) [hereinafter cited as H. ROMMEN]; L. STRAUSS, *NATURAL RIGHT AND HISTORY* (1953); Midgley, *Natural Law and Fundamental Rights*, 21 *AM. J. JURIS.* 144 (1976).

For the classic exposition of the impact of natural law upon the American Declaration of Independence and the United States Constitution, see E. CORWIN, *THE HIGHER LAW BACKGROUND OF AMERICAN CONSTITUTIONAL LAW* (1955) [hereinafter cited as E. CORWIN].

In the words of Jacques Maritain:

The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural

authority either in divine will or in specified metaphysical absolutes. The natural law constitutes a "higher law" which is "the ultimate standard of fitness of all positive law, whether national or international;"<sup>173</sup> decisions by state elites which are taken contrary to this law are regarded as mere exercises of naked power.

The great historic contribution of the natural law emphasis has been in the affording of this appeal from the realities of naked power to a higher authority which is asserted to require the protection of individual rights.<sup>174</sup> The observational standpoint assumed by those who take this approach has commonly been that of identification with the whole of humanity. A principal emphasis has been upon a common human nature that implies comparable rights and equality for all. For many centuries this approach has been an unfailing source of articulated demand and of theoretical justification for human rights. Its preeminent contribution to both constitutional and international law, and especially to the protection of individual rights within these interpenetrating processes of authoritative decision, has been many times recorded.<sup>175</sup>

The principal inadequacies of the natural law approach stem from its conception of authority.<sup>176</sup> When authority is conceived in terms of divine will or metaphysical absolutes, little encouragement is given to that comprehensive and selective inquiry about empirical processes which is indispensable to the management of the variables which in fact affect decision.<sup>177</sup> It is not to be expected, further, that scholars and decision

law, the human person has the right to be respected, is the subject of rights, possesses rights. There are things which are owed to man because of the very fact that he is man.

J. MARITAIN, *supra* note 1, at 65.

<sup>173</sup> H. LAUTERPACHT, 1950, *supra* note 1, at 74. Castberg writes: "There is one eternal and immutable law, which will apply to all peoples at all times. God is the source of this law." Castberg, *supra* note 164, at 14.

<sup>174</sup> Ritchie offered this observation nearly a century ago:

The appeal to natural rights, which has filled a noble place in history, is only a safe form of appeal if it be interpreted, as just explained, as an appeal to what is socially useful, account being taken not only of immediate convenience to the existing members of a particular society, but of the future welfare of the society in relation, so far as possible, to the whole of humanity.

D. RITCHIE, *supra* note 172, at 103. See also E. CORWIN, *supra* note 172, at 20.

<sup>175</sup> See E. BODENHEIMER, *supra* note 171, at 57-59; E. CORWIN, *supra* note 172; H. LAUTERPACHT, 1950, *supra* note 1, at 94-141.

<sup>176</sup> See generally C. BECKER, THE HEAVENLY CITY OF THE EIGHTEENTH CENTURY PHILOSOPHERS (1932); A. PASSERIN D'ENTREVES, *supra* note 172; L. FULLER, THE MORALITY OF LAW (rev. ed. 1969); H. ROMMEN, *supra* note 172; Chroust, *On the Nature of Natural Law*, in INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES 70-84 (P. Sayre ed. 1947); Northrop, *Naturalistic and Cultural Foundations for a More Effective International Law*, 59 YALE L.J. 1430 (1950).

<sup>177</sup> See M. CRANSTON, *supra* note 1, at 13. In the words of Ritchie:

And the voice of God and Nature in the heart of every mortal is thought of as a universal revelation: it professes to mean, not what any chance person happens to feel, but what approves itself to calm, reflective reason, and what can be shown to be in accordance with the essential nature of things.

D. RITCHIE, *supra* note 172, at 86.

makers, whose primary concern is to put into effect on earth either divine will or the import of transcendental essences, will devote much attention to the formulation of human rights problems in terms of the shaping and sharing of values or to the location of such problems in the larger community processes which affect their solution. Similarly, the establishment of the most basic, overriding and abstract goals of the community by the use of exercises in faith, rather than by the empirical exploration of common interest, can only provoke the assertion of different, and perhaps opposing, goals by those who profess a different faith.

The intellectual task most relied upon in the natural law approach is syntactic derivation.<sup>178</sup> Though appropriate concern is exhibited for the establishment and clarification of goals, the method by which clarification is sought for decision in particular instances is not by the disciplined, systematic employment of a variety of relevant intellectual skills, but rather by derivation from postulated norms achieved by techniques such as the revelation of divine will, messages obtained by consultation of oracles or entrails, transcendental cognition of absolutes and participation in natural reason.<sup>179</sup> In a frame of reference so inexplicitly and anecdotally related to human choice and empirical decision, it would be incongruous to expect more than a modest orientation toward the other intellectual tasks—such as the descriptive, scientific, predictive and

<sup>178</sup> This emphasis pervades, for example, HUMAN RIGHTS, *supra* note 1.

For an example of a natural law approach fused with linguistic analysis, see Hart, *Are There Any Natural Rights?*, in HUMAN RIGHTS 61-75 (A. Melden ed. 1970). See H. HART, THE CONCEPT OF LAW 181-207 (1961). For criticism of Hart from another natural law perspective, see L. FULLER, *supra* note 176, at 184-86.

<sup>179</sup> For an excellent demonstration of the irrelevance of philosophical derivation, see Munster, *A Critique of Blackstone's Human Right and Human Dignity*, in HUMAN DIGNITY, *supra* note 1, at 65-94, especially at 65, 70.

Rights considered to be natural differ widely from author to author, depending upon their conceptions of nature. In the words of Ritchie: "The words 'nature' and 'natural' are constantly bandied about in controversy as if they settled quarrels, whereas they only provoke them by their ambiguity." D. RITCHIE, *supra* note 172, at 20.

Similarly, Patterson observed:

The ambiguity of 'nature' has been the chief source of the fertility of natural law theories. Sometimes nature is physical nature in general, either as a model of the kind of order, stability and universality which men should seek to attain in their political laws . . . , or as a part of man's environment setting inexorable limitations upon what human laws can do . . . . Sometimes nature has meant the biological make-up of man, as in Ulpian's famous passage.

E. PATTERSON, JURISPRUDENCE: MEN AND IDEAS OF THE LAW 362 (1953).

Patterson continued: "The peculiarly human attributes or qualities of man are the ones which most natural-law theories refer to and rely upon. Now men have long differed as to the basic traits of human nature, and assumptions about human nature often give a natural-law theory its basic slant." *Id.* at 363.

Hugo Grotius is "said to have marked the transition from the metaphysical to the rationalist natural law." H. ROMMEN, *supra* note 172, at 70.

Insofar as natural lawyers purport to build upon the nature of man and to use scientific inquiry to ascertain the nature of man, we would not quarrel. The difficulty is that too many natural lawyers tend to ground their concepts of authority in theological or metaphysical sources.

inventive—which are required for effective inquiry and rational decision. The abiding difficulty with the natural law approach is that its assumptions, intellectual procedures and modalities of justification can be employed equally by the proponents of human dignity and the proponents of human indignity in support of diametrically opposed empirical specifications of rights, and neither set of proponents has at its disposal any means of confirming the one claim or of disconfirming the other.<sup>180</sup>

### *The Historical Approach*

In the frame of reference known as the “historical approach” human rights are conceived in terms of the factual demands of community members for participation in different value processes. This approach finds “authority” in the finite perspectives—the “living law”—of the members of a particular community and emphasizes that the human rights demanded and protected within any given community are a function of many cultural and environmental variables unique to that community.<sup>181</sup>

The major contribution of the historical approach has been to provide a framework of theory for the realistic and contextual examination of particular situations in which the degree of protection of human rights is under challenge or at stake. It has stressed the importance of the time and space dimensions of human rights problems and afforded knowledge of trends in degrees of realization through time and in different communities. It has also presented a modest, preliminary approximation of the causal analysis that is characteristic of social science.

The principal difficulty with the historical approach has been in the almost total immersion of inquiry within an undifferentiated community process. Some exponents of this approach do not distinguish the demands of the individual human being from the demands made in the name of the aggregate of community members. Further, many proponents do not isolate the authoritative decision or constitutive process from the whole flow of particular choices by which values are shaped and shared in the community. Thus, it is sometimes said that the collectivity has “a real

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<sup>180</sup> Ritchie wrote:

And all abstract theories about human society admit of divergent and conflicting application. Thus the theory of social contract is used by Hobbes to condemn rebellion, and by Locke to justify it. The conception of social organism is used by Plato to justify the extremist interference with individual liberty, and by Mr. Herbert Spencer to condemn a very moderate amount of State control. And so the theory of natural rights is used by Anarchists to condemn the existing inequalities of social conditions, and by Conservatives to check attempts on the part of governments to remedy these inequalities . . . .

D. RITCHIE, *supra* note 172, at 14-15. See A. ROSS, ON LAW AND JUSTICE 261-62 (1959); L. STRAUSS, *supra* note 172, at 185-86.

<sup>181</sup> See J. CARTER, LAW: ITS ORIGIN, GROWTH, AND FUNCTION (1907); H. MAINE, ANCIENT LAW (1963); R. POUND, INTERPRETATIONS OF LEGAL HISTORY (1923); 1 R. POUND, *supra* note 171, at 8-87; P. VINOGRADOFF, OUTLINES OF HISTORICAL JURISPRUDENCE (1920-1922); Kantorowicz, *Savigny and the Historical School of Law*, 53 LAW Q. REV. 326 (1937).

mind, a real will and a real power of action',<sup>182</sup> and that the rights of the individual find expression only through this collectivity. The individual is subsumed within the state and has no rights apart from the state.<sup>183</sup> Similarly, authority is often found not so much in the actual perspectives of particular community members about the course of future decision as in some mythical *geist*, which is said to emanate out of the people like language, religion, poetry and music, and to be unique to every community.<sup>184</sup>

The deep and pervasive determinism in the historical approach has made difficult the adequate performance of all the relevant intellectual tasks. The deference to mysterious and ineluctable social forces is completely inimical to deliberate postulation and detailed clarification of policies about human rights. Sole emphasis upon the demands of community members as the empirical content of human rights ignores the fact that individuals may be conditioned to demand even the values of human indignity. The not infrequent assertion that the individual achieves his rights only through the state ignores the point that states may be in varying degree totalitarian, and that, even in a public order of human dignity, the accommodation of the rights of the individual with the rights of the groups of which he is a member is a difficult and delicate task. In the absence of a clear focus upon authoritative decision, as both affecting and being affected by specific value processes, the spokesmen of the historical approach have devised a largely anecdotal method which fails to perform the historical, much less the scientific, task. An approach so deeply passive could hardly be expected to muster the courage to under-

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<sup>182</sup> G. PATON, *supra* note 171, at 414.

Maitland offered this summation of Gierke's group theory:

[O]ur German Fellowship is no fiction, no symbol, no piece of the State's machinery, no collective name for individuals, but a living organism and a real person, with body and members and a will of its own. Itself can will, itself can act; it wills and acts by the men who are its organs as a man wills and acts by brain, mouth and hand. It is not a fictitious person; it is a *Gesamtperson*, and its will is *Gesamtwille*; it is a group-person, and its will is a group-will.

*Translator's Introduction*, in O. GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE* xxvi (F. Maitland trans. 1900). Maitland's introduction is an excellent account of Otto Von Gierke's theory of group personality and group association. See *id.* at vii-xiv.

For further elaboration of Von Gierke's theory, see S. MOGI, *OTTO VON GIERKE: HIS POLITICAL TEACHING AND JURISPRUDENCE* 107-221 (1932); G. PATON, *supra* note 171, at 414-19; I R. POUND, *supra* note 171, at 313-18; Coker, *Pluralistic Theories and the Attack upon State Sovereignty*, in *A HISTORY OF POLITICAL THEORIES: RECENT TIMES* 80, 89-98 (C. Merriam & H. Barnes eds. 1924). See generally O. VON GIERKE, *THE DEVELOPMENT OF POLITICAL THEORY* (B. Freyd trans. 1939); O. VON GIERKE, *NATURAL LAW AND THE THEORY OF SOCIETY, 1500-1800* (E. Barker trans. 1934).

<sup>183</sup> The historical approach is highly nationalistic in perspective. See McDougal, Lasswell, & Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J. INT'L L. 188, 230-33, 241 (1968) [hereinafter cited as McDougal, Lasswell, & Reisman]. See also 1 F. SAVIGNY, *SYSTEM OF THE MODERN ROMAN LAW* 68-72 (W. Holloway trans. 1867).

<sup>184</sup> See C. ALLEN, *LAW IN THE MAKING* 87-151 (7th ed. 1964); D. LLOYD, *THE IDEA OF LAW* 251-55 (1964); F. SAVIGNY, *supra* note 183, at 16-17.

take the tasks of deliberately forecasting decisions or of inventing new policy options. The emphasis, finally, upon the uniqueness of every community vastly underplays the universal character of problems of human rights and tends to minimize the importance of transnational concern for and experience with the protection of these rights.

### *The Positivist Approach*

The positivist approach assumes that the most important measure of human rights is to be found in the authoritative enactment of a system of law sustained by organized community coercion.<sup>185</sup> Within this approach authority is found in the perspectives of established officials, and any appeal to a "higher law" for the protection of individual rights is regarded as utopian or at least as a meta-legal aspiration.<sup>186</sup> The explicit emphasis is upon the institutions of the modern state, and it is inspired by and inflated with exaggerated notions of sovereignty. It is this viewpoint whose champions have most strenuously insisted that only nation-states, and not individual human beings, are appropriate subjects of international law.<sup>187</sup>

The great contribution of the positivists has been in recognizing the importance of bringing organized community coercion, the state's established processes of authoritative decision, to bear upon the protection of human rights. By focusing upon deprivations in concrete situations and by stressing the importance of structures and procedures, as well as prescriptions, at phases of implementation, the positivists have enhanced the protection of many particular rights and strengthened explicit concern for more comprehensive means of fulfillment.

The fatal weakness of the positivist approach is in its location of authority in the perspective of established officials. The rules of law expressing these perspectives are commonly assumed to have a largely autonomous reference, different from community policy in context. The same rules are supposed to describe what past decisions have been, to predict what future decisions will be and to state what future decisions ought to be.<sup>188</sup> From this standpoint, the deliberate postulation and

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<sup>185</sup> P. DROST, *supra* note 1; H. LAUTERPACHT, 1950, *supra* note 1, at 75.

Positivists base "obligation simply upon the external authority of the State. In this 'sophistic' theory, custom or usage becomes explicit as the mere arbitrary will of the sovereign." D. RITCHIE, *supra* note 172, at 85.

<sup>186</sup> See J. AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED AND THE USES OF THE STUDY OF JURISPRUDENCE* (1954) (introduction by H.L.A. Hart and bibliographical note); J. GRAY, *THE NATURE AND SOURCE OF LAW* (2d ed. 1931); H. HART, *THE CONCEPT OF LAW* (1961); T. HOLLAND, *THE ELEMENTS OF JURISPRUDENCE* 1-13 (13th ed. 1924); H. KELSEN, *GENERAL THEORY OF LAW AND STATE* (1945); E. PATTERSON, *supra* note 179.

<sup>187</sup> See H. LAUTERPACHT, 1950, *supra* note 1, at 75-77; Castberg, *supra* note 164, at 30; Manner, *The Object Theory of the Individual in International Law*, 46 AM. J. INT'L L. 428 (1952); Szabo, *The Theoretical Foundations of Human Rights*, in NOBEL SYMPOSIUM ON HUMAN RIGHTS, *supra* note 1, at 35, 38; Tucker, *Has the Individual Become the Subject of International Law?*, 34 U. CIN. L. REV. 341 (1965).

<sup>188</sup> Hohfeld's book, W. HOHFELD, *FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN*



clarification of basic community policies about human rights are perceived as superfluous or as tasks to be performed by inexplicit intuition, rather than by systematic inquiry.<sup>189</sup> Actually, in the positivist approach the task of specifying the detailed content of the human rights protected in a community goes forward very much as in the natural law approach—by logical, syntactic derivation.<sup>190</sup> The difference is that, while the natural lawyer takes off from theological or metaphysical absolutes, the positivist takes off from assumptions about the empirical reference of traditional legal concepts.

The difficulties inherent in clarifying the content of human rights, either as a whole or in particular, by relying on logical derivation from highly abstract and traditional legal concepts are multiple. The most obvious difficulty is that the inherited concepts may embody not the values of human dignity, but those of human indignity.<sup>191</sup> A second difficulty is that traditional legal conceptions and principles commonly travel in pairs of opposites from which only antithetical conclusions can be drawn.<sup>192</sup> Even in a legal system whose content is predominantly that of a free society, the over-elaborate manipulation of doctrinal technicalities may produce consequences inimical to the realization of human dignity. Still another difficulty is that one-sided stress put upon derivations from legal technicalities emphasizing the role of the nation-state can produce the intolerable view that the individual has no rights under international law.<sup>193</sup>

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JUDICIAL REASONING, AND OTHER LEGAL ESSAYS (W. Cook ed. 1919), is a dramatic demonstration of the tautology of "rights" and comparable concepts (immunities, powers, privileges).

As Judge (formerly Dean) Hardy Dillard pointed out:

To ask, however tentatively, "what are rules?" is unwittingly to endow them with a kind of reality or existence, even a metaphysical existence, which is illusory. Rules of law do not "exist" in the sense in which a tree or a stone or the planet Mars might be said to exist. True, they may be articulated and put on paper and in that form they exist, but, whatever their form, they are expressed in words which are merely signs mediating human subjectivities. They represent and arouse expectations which are capable of being explored scientifically. The "law" is thus not a "something" impelling obedience; it is a constantly evolving process of decision making and the way it evolves will depend on the knowledge and insights of the decision makers. So viewed, norms of law should be considered less as compulsive commands than as tools of thought or instruments of analysis. Their impelling quality will vary greatly depending on the context of application, and, since the need for stability is recognized, the norms may frequently provide a high order of predictability. But this is referable back to the expectations entertained and is not attributable to some existential quality attaching to the norms themselves. In other words, our concept of "law" needs to be liberated from the cramping assumption that it "exists" as a kind of "entity" imposing restraints on the decision maker.

Dillard, *The Policy-Oriented Approach to Law*, 40 VA. Q. REV. 626, 629 (1964).

<sup>189</sup> See A. ROSS, *supra* note 180, at 253.

<sup>190</sup> See note 171 *supra*.

<sup>191</sup> Note, for example, the "legality" of the apartheid policy and practice in today's South Africa and of the anti-Semitic measures under the Third Reich.

<sup>192</sup> See McDougal, *The Ethics of Applying Systems of Authority: The Balanced Opposites of a Legal System*, in *THE ETHICS OF POWER 221* (H. Lasswell & H. Cleveland eds. 1962).

<sup>193</sup> Lauterpacht observed that "the recognition, by the State, of fundamental human

The positivistic conception of authority is equally incompatible with the performances of other problem oriented tasks pertinent to human rights. The elaborate presentation of accumulated systems of legal technicality, allegedly describing the perspectives of established officials, falls far short of carefully describing past uniformities in the decision of comparable cases according to degrees of approximation toward clarified community goals. The tragic facts of human deprivation in consequence of inadequate decision may be left unexposed. Similarly, when it is assumed that formal rules are the factors that predominantly affect decision, the effort expended in search of other factors in predisposition and environment tends to be insubstantial. Again, when decision makers are asserted to be under an "obligation" to align future decisions with the rules employed in justifying past decisions, the prediction of future outcomes becomes mere extrapolation, as simple-minded as it is unreliable. The ultimate, integrative task of inventing and evaluating new practices and institutions that are better designed to protect and fulfill human rights, is not likely to succeed if attempted in the absence of the adequate performance of the other relevant tasks.

### *The Marxist (Communist) Approach*

The Marxist approach projects human rights as the inevitable realization of a metaphysical determinism that proceeds in harmony with the laws of dialectical materialism.<sup>194</sup> In this frame of reference the world social process is conceived as a continuing class struggle generated by the concentrated control of production in a comparatively few hands.<sup>195</sup> In a society in which the bourgeois class monopolizes the means of pro-

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rights must remain precarious and incomplete, in fact and in law, unless such recognition is supported by the twin sanction of the law of nature and the law of nations." H. LAUTER-  
PACHT, 1950, *supra* note 1, at 94.

<sup>194</sup> On the socialist approach to human rights, see V. CHALIDZE, *supra* note 21, at 3-49; SOCIALIST CONCEPT OF HUMAN RIGHTS, *supra* note 1; G. TUNKIN, THEORY OF INTERNATIONAL LAW 79-83 (W. Butler trans. 1974) [hereinafter cited as G. TUNKIN]; *Fundamental Rights*, in 4 MARXISM, COMMUNISM, AND WESTERN SOCIETY: A COMPARATIVE ENCYCLOPEDIA 55 (C. Kernig ed. 1972) [hereinafter cited as *Fundamental Rights*]; Movchan, *The Human Rights Problem in Present-Day International Law*, in CONTEMPORARY INTERNATIONAL LAW 233 (G. Tunkin ed., G. Ivanov-Mumjiev trans. 1969) [hereinafter cited as Movchan]; Przetacznik, *The Socialist Concept of Protection of Human Rights*, 38 SOCIAL RESEARCH 337 (1971) [hereinafter cited as Przetacznik].

For an excellent history of human rights from a Marxist perspective, see Szabo, *Fundamental Questions Concerning the Theory and History of Citizens' Rights*, in SOCIALIST CONCEPT OF HUMAN RIGHTS, *supra* note 1, at 2-81 [hereinafter cited as Szabo]. See also I. LAPENNA, STATE AND LAW: SOVIET AND YUGOSLAV THEORY (1964); Douglas, *Proletarian Political Theory*, in A HISTORY OF POLITICAL THEORIES: RECENT TIMES 178 (C. Merriam & H. Barnes eds. 1924); Hazard, *Soviet Law and Its Assumptions*, in IDEOLOGICAL DIFFERENCES AND WORLD ORDER 192 (F. Northrop ed. 1949); Murphy, *Ideological Interpretations of Human Rights*, 21 DE PAUL L. REV. 286 (1971); Panczuk, *Human Rights and the Soviet Union*, 10 WORLD JUSTICE 224 (1968).

<sup>195</sup> C. FRIEDRICH, *supra* note 171, at 143-53.

duction, human rights are alleged to be little more than illusion.<sup>196</sup> Only in a society where the means of production are publicly owned, it is asserted, can human rights become a reality.<sup>197</sup> The ultimate achievement of a commonwealth of free men (defined as a classless society enjoying communal ownership of the instruments of production) is perceived as depending on the inevitable processes of history which mobilize and pass through the proletarian revolution. In its more detailed theories about human rights, the Marxist framework incorporates various elements (including inadequacies) from the natural law, positivist and historical systems.<sup>198</sup>

The enduring contribution of the Marxist theory has been its initial intense concern for human dignity. The theory and the movement evolved in the nineteenth century in response to a sense of injustice brought into being by a highly exploitative, industrial society. Marxists sought to extend certain human rights to the vast numbers of a hitherto deprived group, the working class. The manifest content of the theory, whatever its covert uses, was directed toward the promotion of human dignity and the realization of free men. Irrespective of its limitations, the movement sought to relate human rights to causal constellation in social process and to confer operational meaning upon protected claims of right. Underscoring the interdetermination among empirical variables in social process, attention was drawn to the importance of material values in the defense and fulfillment of human rights. By reiterating the crucial role of the sharing of material values (especially wealth, well-being and skill), Marxists have defined an indispensable agenda for the enlargement of human rights everywhere.

Nevertheless, this approach, certainly as exemplified in some contemporary states, is seriously afflicted with inadequacies, unique and otherwise. In some perspectives it can be interpreted as denying even the most fundamental notion of human rights. A persistent theme in Marxist-Communist literature is that human rights appertain not to the individual person but to the collectivity, and especially to that collectivity known as

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<sup>196</sup> M. CRANSTON, *supra* note 1, at 3; *Fundamental Rights, supra* note 194, at 61; Peteri, *Citizen's Rights and the Natural Law Theory*, in SOCIALIST CONCEPT OF HUMAN RIGHTS, *supra* note 1, at 83, 85, 97; Szabo, *supra* note 194, at 34, 37-38.

<sup>197</sup> W. FRIEDMANN, *supra* note 171, at 367; *Fundamental Rights, supra* note 194, at 60; Kóvacs, *General Problems of Rights*, in SOCIALIST CONCEPT OF HUMAN RIGHTS, *supra* note 1, at 7, 16; Szabo, *supra* note 194, at 53-81.

<sup>198</sup> In the words of Szabo:

The third main trend concerning human rights—to be outlined here—is the socialist concept based on Marxism. This concept is alternately branded as being of the natural-law or the positivist type, although in fact it is neither. A few analogous elements may be found in it, but basically it is a radically new, different theory.

Szabo, *The Theoretical Foundations of Human Rights*, in NOBEL SYMPOSIUM ON HUMAN RIGHTS, *supra* note 1, at 39.

For the affinity of the Marxist approach to the historical approach, see McDougal, Lasswell, & Reisman, *supra* note 183, at 229-30.

the nation-state. Apart from the state, it is often asserted, there are no human rights.<sup>199</sup> The concern of this literature for humanity extends to the human being conceived as an abstract "species being,"<sup>200</sup> it does not run to particular "individuals with separate inalienable rights."<sup>201</sup> As the chosen instrument for subordinating the individual to the collectivity, the Communist state and the ruling party are charged with playing a strong parental role in every value sector. The party is regarded as an embodiment of infallible wisdom in every domain.<sup>202</sup>

Similarly, even though the Marxist approach does purport to relate human rights to empirical social process, the distorting effects of the dialectical dogma are so severe that the resulting map of society seems a caricatured resemblance to a disciplined scientific product. The primacy accorded materialistic over symbolic values is so exaggerated that values other than wealth, and especially power, are not adequately appraised for their impacts upon the achievement of human rights.<sup>203</sup>

By asserting that human rights are an illusion unless they are brought under the protection of the state, the theorists of Marxism have borrowed heavily from the positivist approach. In fact, though Marxists sometimes disparage law as a superstructure of verbalisms depending on an economic base, the notion of law that is actually used is largely positivistic. The emphasis upon rules is inordinate. The conception of authority is formulated more in terms of the expectations of established elites than of community members, and the idea of effective control is warped by the overwhelming stress laid upon the variable of wealth.

In much Marxist theory about human rights the attempt is made to confine the global constitutive process of authoritative decision to the prescribing of high-level norms. Communist writers characteristically

<sup>199</sup> See J. COHEN & H. CHIU, *PEOPLE'S CHINA AND INTERNATIONAL LAW* 97-98 (1974); E. HAAS, *supra* note 1, at 15; J. HAZARD, *COMMUNISTS AND THEIR LAW: A SEARCH FOR THE COMMON CORE OF THE LEGAL SYSTEMS OF THE MARXIAN SOCIALIST STATES* 139 (1969); J. HAZARD & I. SHAPIRO, *THE SOVIET LEGAL SYSTEM* 13-58 (1962); H. KELSEN, *THE COMMUNIST THEORY OF LAW* 179-82 (1955); S. LENG, *JUSTICE IN COMMUNIST CHINA* 171 (1967); G. TUNKIN, *supra* note 194, at 82-83; Movchan, *supra* note 194, at 239-40; Przetacznik, *supra* note 194, at 338-41; Tsou, *The Values of the Chinese Revolution*, in *CHINA'S DEVELOPMENTAL EXPERIENCE* 27-32 (M. Oksenberg ed. 1973).

<sup>200</sup> M. CRANSTON, *supra* note 1, at 3.

<sup>201</sup> *Id.* See also *Fundamental Rights*, *supra* note 194, at 63.

<sup>202</sup> It is apparent that the Soviet emphasis on the educational role of law presupposes a new conception of man. The Soviet citizen is considered to be a member of a growing, unfinished, still immature society, which is moving toward a new and higher phase of development. As a subject of law, or a litigant in court, he is like a child or youth to be trained, guided, disciplined, protected. The judge plays the part of a parent or guardian; indeed, the whole legal system is parental.

H. BERMAN, *JUSTICE IN THE U.S.S.R.: AN INTERPRETATION OF SOVIET LAW* 284 (rev. ed. 1963). See also L. LLOYD, *INTRODUCTION TO JURISPRUDENCE* 643-46 (3d ed. 1972); *Fundamental Rights*, *supra* note 194, at 62-63.

<sup>203</sup> See V. CHALIDZE, *supra* note 21, at 41.

insist that by its nature the detailed protection of human rights is a matter of domestic jurisdiction, lying within the exclusive domain of a particular nation-state and involving no matter of international concern.<sup>204</sup> While the larger community of humankind is accorded competence to formulate high level prescriptions outlining a transnational interest in human rights, the detailed application of these norms is held to be a matter of exclusive national concern and competence.<sup>205</sup> The Communist doctrine of peaceful coexistence which projects one system of international law to govern relations between Communist states and another system for governing relations between Communist and non-Communist states is a further hindrance to the acceptance of a comprehensive global decision process designed to protect human rights.<sup>206</sup>

The Marxist approach, finally, contributes very little to the performance of the relevant intellectual tasks. The deliberate postulation and detailed clarification of goals is as incompatible with this as it is with any natural law theory. The specification of policy is more a function of philosophical derivation from metaphysical absolutes than a disciplined, configurative examination of context. Further, trends in past decisions are described more in relation to class struggle than according to the degree of approximation to more comprehensive policies that affect the shaping and sharing of all values. The adequate performance of the scientific task is thwarted by exaggerated deference to the weight of the economic variable. Explanations that stress the predominating significance of a single causal factor are in a peculiarly vulnerable position as knowledge advances, and it has become increasingly clumsy to divide all factors in psychological and social processes into the "material" and the "non-material." A two-term system can, of course, be made to serve some purposes of investigation. However, its utility is modest in any case, and the hazards of rigidifying an entire approach into empty verbal dialectic are greatly increased in such a limited system. Since the dogma of dialectical materialism is not open to challenge or continuing assessment, the future course of human rights development is not acknowledged to be problematic. Rather, future events are affirmed to be inevitable. The

<sup>204</sup> See J. COHEN & H. CHIU, *supra* note 199, at 97-98, 607-10; G. TUNKIN, *supra* note 194, at 82-83; Movchan, *supra* note 194, at 239-40; Przetacznik, *supra* note 194, at 351; Tedin, *The Development [of] the Soviet Attitude Toward Implementing Human Rights Un[sic] Under the Charter*, 5 HUMAN RIGHTS J. 399 (1972).

<sup>205</sup> Przetacznik, *supra* note 194, at 351-59. See M. MOSKOWITZ, 1974, *supra* note 1, at 4.

<sup>206</sup> See generally E. McWHINNEY, "PEACEFUL COEXISTENCE" AND SOVIET-WESTERN INTERNATIONAL LAW (1964); G. TUNKIN, *supra* note 194, at 21-87; Hazard, *Codifying Peaceful Coexistence*, 55 AM. J. INT'L L. 109 (1961); Kartashkin, *Human Rights and Peaceful Coexistence*, 9 HUMAN RIGHTS J. 5 (1976); Lipson, *International Law*, in 8 HANDBOOK OF POLITICAL SCIENCE 415, 430-32 (F. Greenstein & N. Polsby eds. 1975); Lipson, *Peaceful Coexistence*, 29 LAW & CONTEMP. PROB. 871 (1964); Tunkin, *Peaceful Coexistence and International Law*, in CONTEMPORARY INTERNATIONAL LAW 5-35 (G. Tunkin ed.; G. Ivanov-Mumjiev trans. 1969).

eventual realization of a commonwealth of free men is cast in categorical, inevitable terms rather than in the language of alternative constructs that concede a wide range of potential developments.<sup>207</sup> In a world so fixed and certain there is little scope for the invention, evaluation, and recommendation of policy alternatives in the defense and fulfillment of human rights at national, much less transnational, levels.

### *The Social Science Approach*

The contemporary social science approach builds upon the theories and techniques of modern science to enhance our knowledge of the factors that affect failures and successes in the protection of human rights. This approach seeks to formulate relevant theories and techniques for investigating cause and effect in relation to human rights in the larger social process context. It gives prominence to theoretical models and empirical procedures by which data can be gathered and processed to supplement the more traditional philosophical and historical inquiries.<sup>208</sup>

The principal contributions of this approach are its concern for the whole process of community interaction in which human rights are shaped and shared and its invention of procedures potentially capable of wider application in performance of other relevant tasks of inquiry. Many of its efforts to improve the performance of the scientific task and, in general, to specify the empirical components of human rights protection anticipate research methods employed more recently to aid broader and more policy-oriented inquiry.<sup>209</sup>

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<sup>207</sup> Our approach toward the future is that of developmental constructs. For comparison with the Marxist model, see H. LASSWELL, *A PRE-VIEW OF POLICY SCIENCES* 67-69 (1971).

<sup>208</sup> *COMPARATIVE HUMAN RIGHTS*, *supra* note 1 (edited by Richard P. Claude), represents the most ambitious attempt yet to achieve a larger map of human rights in the social process context which would facilitate performance of all the relevant intellectual tasks, especially the scientific task, by devising categories and identifying variables.

See also I. DUCHACEK, *supra* note 1; E. HAAS, *supra* note 1; S. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974); Danelski, *A Behavioral Conception of Human Rights*, 3 *LAW IN TRANSITION Q.* 63 (1966) [hereinafter cited as Danelski]. See generally Feeley, *The Concept of Laws in Social Science: A Critique and Notes on an Expanded View*, 10 *LAW & SOC'Y REV.* 497 (1976); Nonet, *For Jurisprudential Sociology*, 10 *LAW & SOC'Y REV.* 525 (1976).

Some of these books, such as that by Scheingold, misconceive law, power and authority. Law is conceived as a body of rules distinct from political process; power as naked power only, including no element of authority; and authority as the perspectives of established officials only, and not of community members. It is small wonder that little fruitful inquiry is achieved.

The various emphases subsumed under "sociological jurisprudence" and "the sociology of law," all inspired by accelerating developments in the natural and social sciences, have sought to bring inquiry about law, as well as law itself, into a more realistic relation to the facts of social process. For our present purposes, these emphases can be properly subsumed under "the social science approach." The classic presentation of the sociological approach is of course that of Dean Pound: 1 R. POUND, *supra* note 171, at 289-358. See also E. EHRLICH, *FUNDAMENTAL PRINCIPLES OF THE SOCIOLOGY OF LAW* (W. Moll trans. 1912); N. TIMASHEFF, *AN INTRODUCTION TO THE SOCIOLOGY OF LAW* (1939).

<sup>209</sup> See Claude, *Comparative Rights Research: Some Intersections between Law and the*

The major failure of those who rely on the scientific approach is that they have been slow in evolving a comprehensive map of or framework of inquiry about human rights in social process. Thus far the social science approach offers neither precise, empirical definitions of particular human rights, nor a comprehensive categorization of all the important rights, together with needed indications of how particular rights are interrelated.<sup>210</sup> Users of scientific methods are too often confounded by abiding misconceptions about the more fundamental interconnections of law and social process. A clear focus has not emerged on the role of authoritative decision in the protection of human rights. In consequence there is disproportionate emphasis upon legal rules and insufficient regard for the often complementary and ambiguous reference of such rules to actual outcomes in decision. Authority is often defined, after the manner of the positivists, in reference to the perspectives of official elites rather than to those of community members.<sup>211</sup> The distinction between the degree of control that is indispensable to authoritative decision and the exercise of mere naked power is not always maintained. In general, there is a sense of pessimism about the potential role of authority.<sup>212</sup> The concept of control may be left unclarified in terms of the variables that actually affect decision, and there appears to be little notion of a comprehensive process of constitutive decision that both reflects and affects the value outcomes of human dignity or indignity. Too often the focus of inquiry about relevant community processes is confined to nation-states and neglects the hierarchy of interpenetrating communities from local and national to transnational and global levels.

The exponents of the social science approach characteristically underestimate the importance of deliberately postulating and clarifying human rights goals, as distinct from justifying those goals by transempirical postulates of faith or by outright incorporation of community preferences. Some existing studies assume that the only sources of goals are community acknowledgment<sup>213</sup> or preferences acceptable to nation-state elites.<sup>214</sup> In the absence of clear and explicit postulation of goals, it is not surprising to find that little attention is paid to the detailed specification of recommended policies. Goal clarification may itself be eschewed as an unscientific operation and may be permitted to regress toward unalleviated adoption of traditional modes of philosophical speculation. Further, in the absence of detailed specification of particular rights, there

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*Social Sciences*, in *COMPARATIVE HUMAN RIGHTS*, *supra* note 1, at 382-407 [hereinafter cited as *Claude*]; Strouse & Claude, *Empirical Comparative Rights Research: Some Preliminary Tests of Development Hypotheses*, in *id.* at 51-67. See also Danelski, *supra* note 208, at 72.

<sup>210</sup> For an attempt, see *Claude*, *supra* note 209, at 392-93. The categories of rights *Claude* offers, though comprehensive, are less than homogeneous.

<sup>211</sup> See, e.g., E. HAAS, *supra* note 1, at vii-viii, 127-31.

<sup>212</sup> See *id.* at 120-21, 127-29.

<sup>213</sup> Danelski, *supra* note 208, at 66-68.

<sup>214</sup> E.g., E. HAAS, *supra* note 1, at 4, 130-33.

is no adequate performance of the task of describing historic flows of decision in terms of varying degrees of approximation to clarified goals. Obviously, the most conspicuous task is that of scientific inquiry, but lacking a comprehensive map of human rights and a realistic conception of the interrelations between law and social process, it is impossible to perform even this task adequately.<sup>215</sup> Certainly no viable, overall theory has been developed that includes both predispositional and environmental variables as they relate to human rights. Sometimes the search for conditions has degenerated into a miscellaneous search for the "natural laws" of social interaction. It is difficult to relate the part to the whole and vice versa when the part and the whole are not clearly identified. Much scientific speculation is devoted to relating high-level "ought" statements to high-level "is" statements, with a minimum intermediate specification.<sup>216</sup> Even when attempted, many projections of future events have been unsystematic and elliptical, often confined to fantasies of future horror.<sup>217</sup> The range of policy invention, evaluation and recommendation has been relatively circumscribed and commonplace. In the absence of realistic notions of either the constitutive process or of the effective power process that maintains the constitutive process, the performance of these tasks, if they are performed at all, is necessarily left to others.

#### HUMAN RIGHTS IN POLICY-ORIENTED PERSPECTIVE

The framework of inquiry that appears necessary to escape our inherited confusions about human rights and to meet the enormous contemporary challenge to scholarship is one that would: (1) offer a comprehensive map of what is meant by human rights in terms of the shaping and sharing of all values; (2) relate such rights to all community contexts which affect their achievement; (3) specify in detail the past and potential role of processes of authoritative decision at all community levels in clarifying and securing such rights; and (4) mobilize and integrate all appropriate intellectual skills for the better clarification and protection of all rights. The broad outlines of such a deliberately policy-oriented, contextual and multi-method approach may be indicated in terms of four major features:

The establishment of observational standpoint;

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<sup>215</sup> See Claude, *supra* note 209, at 401-05.

<sup>216</sup> E. HAAS, *supra* note 1, offers no comprehensive map of rights and no detailed procedures for description in particular instances. There is, further, a complete underestimation of the role of authority in the implementation of human rights and of the role of custom in creating authority. No effort is made to clarify goals; values must, apparently, be taken from the "consent" of established elites.

The Claude book, *COMPARATIVE HUMAN RIGHTS*, *supra* note 1, seeks to improve performance of the scientific task but offers little specification of the other intellectual tasks necessary to the deliberate use of law as an instrument of policy.

<sup>217</sup> Claude, *supra* note 209, at 398.



The delimitation of the focus of inquiry;  
 The explicit postulation of public order goals; and  
 The performance of intellectual tasks.<sup>218</sup>

### *Establishment of Observational Standpoint*

The necessary observational standpoint is that of a citizen of the largest earth-space community who identifies with the whole of human-kind. In this largest community the human rights that any one individual can enjoy are, as we have indicated above, a function of what others can enjoy, and the greater protection of certain particular rights may upon occasion require the lesser protection of other rights. The responsibility of the scholar who is concerned with enlightenment, as well as of the decision maker who is concerned for all the consequences of his decisions through time, is that of ascertaining and specifying the common interests of all peoples—in all their interpenetrating communities, both territorial and functional—in the better protection of the whole range of individual rights. It is indispensable that both the scholarly inquirer and the established decision maker achieve an observational standpoint, as free as possible from parochial interests and biases, which will enable them to ascertain and clarify for the active participants in the different communities common interests that they themselves have not been able to perceive. The clarity and fidelity with which this standpoint is maintained affects every other feature of inquiry: how problems are defined, what goals are postulated and what intellectual skills are employed.

### *The Delimitation of the Focus of Inquiry*

An appropriate focus for a policy-relevant inquiry about human rights will be both comprehensive and selective.<sup>219</sup> The comprehensiveness and the realism in detail with which a focus is delimited may affect both how particular problems are formulated and the dependability and economy with which the different relevant intellectual tasks can be brought to bear in inquiry. The broadest reach of an appropriately contextual, configurative approach will relate human rights to the whole of the

<sup>218</sup> For general formulation of this approach, see Lasswell & McDougal, *Criteria for a Theory About Law*, 44 S. CAL. L. REV. 362 (1971). For detailed development of this approach in reference to international law in general, see McDougal, Lasswell, & Reisman, *supra* note 183. See also Lasswell & McDougal, *Jurisprudence in Policy-Oriented Perspective*, 19 U. FLA. L. REV. 486 (1966-67); McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1 (1966).

<sup>219</sup> In referring to the Ptolemaic paradigm, Thomas Kuhn observes: "What a man sees depends both upon what he looks at and also what his previous visual-conceptual experience has taught him to see." T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 113 (1962).

It may be noted that the conception of human rights outlined by Secretary of State Vance, in an address on "Human Rights and Foreign Policy" to the University of Georgia School of Law, embraces all values. See *Human Rights and Foreign Policy*, 76 DEP'T STATE BULL. 505 (1977).

social and community processes in which they are demanded and in which authoritative decision is invoked for their protection. Yet a viable theory must offer concepts and procedures which will facilitate a focus, with whatever precision may be necessary, upon both value interactions in social process and particular decisions or flows of decisions.

We outline a possible focus of inquiry in terms of the following emphases.

### *The Relation of Human Rights to Social Process*

An appropriate, empirical conception of human rights must refer to the interactions in social process by which values are shaped and shared. In any community the interdeterminations between different particular values in the shaping and sharing of all values are such that whatever the basic preferences of community members about the honoring of individual freedom of choice, some human rights dimension would appear to be at stake in every particular instance of interaction in social process.<sup>220</sup> A deliberately policy-oriented framework of inquiry which would concern itself with all the human rights of all individuals must, accordingly, seek a comprehensive map of social process which will permit the precise location of particular rights in their larger context. It is only by the aid of such a map that problems in disparities between aspiration and achievement can be formulated in ways to facilitate performance of the various relevant intellectual tasks and to afford comparisons through time and across boundaries.<sup>221</sup>

The most general conceptualization of social process we recommend is in terms of certain value and institutional categories which can be given detailed operational indices that refer to specific empirical relations between human beings in the shaping and sharing of values. The value

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<sup>220</sup> As James Coolidge Carter stated more than half a century ago:

Law, Custom, Conduct, Life—different names for almost the same thing—true names for different aspects of the same thing—are so inseparably blended together that one cannot even be thought of without the other. No improvement can be effected in one without improving the other, and no retrogression can take place in one without a corresponding decline in the other.

J. CARTER, *supra* note 181, at 320.

<sup>221</sup> For the comprehensive map we have outlined, see McDougal, Lasswell, & Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, 63 AM. J. INT'L L. 237, 246-57 (1969); McDougal, *Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies*, 14 VA. J. INT'L L. 387, 406-21 (1974).

Given the dynamic nature of human rights and the continuing gap between aspiration and achievement, the provisional map we have outlined is, as in any other comparable attempt, subject to constant review. As Georges Burdeau points out: "[I]n any given society at any given time, the dominant sociopolitical thought results in reinforced weighting of certain rights as these rights become reflected in the legal value structure by which they are enforced. Consequently, the listing of rights appears to be contingent and subject to constant revision." *Editor's Introduction*, COMPARATIVE HUMAN RIGHTS, *supra* note 1, at 71, 72 (quoting Georges Burdeau).

terms we employ, though any comprehensive set of equivalents would suffice, are as follows:

Respect:	freedom of choice, equality and recognition;
Power:	making and influencing community decisions;
Enlightenment:	gathering, processing and disseminating information and knowledge;
Well-being:	safety, health and comfort;
Wealth:	production, distribution and consumption of goods and services, control of resources;
Skill:	acquisition and exercise of capabilities in vocations, professions and the arts;
Affection:	intimacy, friendship, loyalty, positive sentiments;
Rectitude:	participation in forming and applying norms of responsible conduct.

The categorizations of institutional practices we recommend for the detailed description of any and all particular value processes include:

- Participation (individual and group, governmental and nongovernmental);
- Perspectives (demands, identifications and expectations);
- Situations (geographic, temporal, institutional and crisis);
- Bases of power (authoritative, controlling);
- Strategies (diplomatic, ideological, economic, military);
- Outcomes (shaping and sharing values).

By appropriate subcategorizations and refinement these categorizations may be made to serve the purposes of description of whatever comprehensiveness and precision may be necessary.

The most useful subcategorization, for human rights inquiry, of the outcomes of each particular value process would appear to be as follows:

- (1) A basic share of participation and enjoyment;
- (2) Positive opportunity for further participation and enjoyment free from discrimination for reasons irrelevant to capabilities;
- (3) Further recognition or reward for actual meritorious contribution;
- (4) The largest possible aggregate shaping and sharing.<sup>222</sup>

The degree to which any particular community, whether global or local, achieves these outcomes in any particular value process is a function not only of the other institutional features of *that* process but of such features in all other processes and especially of the features of all relevant constitutive processes of authoritative decision.

### *The Conception of Authoritative Decision*

In any community the application of organized, community-wide coercion is, as the positivists rightly insist, an indispensable component of the effective protection of human rights, however broadly or narrowly such rights may be conceived. A deliberately policy-oriented approach

<sup>222</sup> For its application to the respect value, see *The Protection of Respect, supra* note 8.

will, accordingly, characterize law, not as mere rules embodying ambiguously ascribed perspectives, but as *decision* which embodies both perspectives (the subjectivities attending choice) and operations (the choices actually made and enforced by threats of severe deprivations or promises of extreme indulgences). The most realistic inquiry requires a focus both upon technical myth and actual practice. A policy-oriented approach will be concerned, further, not with effective decision alone, but with *authoritative decision*, that is, decision in which elements of authority and control are appropriately balanced. By authority, we refer to the expectations of community members about who is to make what decisions, in what structures, by what procedures and in accordance with what criteria. By control we refer to effective participation in the choices that are in fact put into community practice. In the absence of decision characterized by authority, human rights are left dependent upon mere naked power or arbitrary whim. When control does not accompany decision, the protection of human rights may become mere illusion and mockery, as in some modern constitutions.

#### *Comprehensiveness in Conception of Processes of Authoritative Decision*

It is not, further, mere occasional or isolated decisions which, in any community, determine the aggregate protection of human rights, but rather a comprehensive and continuous flow of authoritative decisions. In any community the process of authoritative decision, as an integral part of a more comprehensive process of effective power, may be observed to comprise two very different kinds of decisions. The first, or constitutive decisions, are those which establish and maintain a comprehensive and continuing process of authoritative decision. The second, or public order decisions, are those which, continuously emerging from constitutive process, shape and maintain the protected features of the community's various value processes (respect, enlightenment, wealth, well-being and so on).

It is easily observable in any community that there is a human rights dimension—that human rights are at stake—in every authoritative decision, whether constitutive or public order. The decisions by which the constitutive process is established and maintained must in all their features and modalities reflect in varying degree basic human rights policies; thus, the “due process” of procedures for the making of different types of decisions is always relevant. The character and economy of the constitutive process as a whole, further, most directly affect the character and comprehensiveness of the public order protection it affords. Human rights are, finally, most explicitly at stake in the particular public order decisions emerging from the constitutive process for regulating the shaping and sharing of each particular value.

The appropriate general description of a community's constitutive process must, as with respect to any social process, make reference to all

its features and component practices. The basic outline of constitutive process we recommend is, thus, in terms of established authoritative decision makers, the basic perspectives (demands, identifications and expectations) for which the process is maintained, the structures of authority provided, the bases of power (in authority and control) placed at the disposal of different decision makers, the procedures authorized for the making of different kinds of decisions, and the various kinds of decision functions regarded as necessary to the making and administering of general community policy. These necessary decision functions are commonly described in conventional terms as "legislative," "executive," "judicial" and "administrative," but these words appear to refer more to structures of authority than to functions. For more comprehensive and precise description we distinguish the following:

- Intelligence: Obtaining information about the past, making estimates of the future, planning;
- Promoting: Advocacy of general policies, urging proposals;
- Prescribing: Projecting authoritative community policies;
- Invoking: Provisional characterization of a concrete situation in terms of a prescription;
- Applying: Final characterization and execution of prescriptions in concrete situation;
- Terminating: Ending a prescription or arrangement within the scope of a prescription;
- Appraising: Comparison between goals and performance in decision process.<sup>223</sup>

The most comprehensive and economic description of public order decisions—the decisions which most directly express the human rights achieved or not achieved in a community—may, as anticipated above, be sought in terms both of the basic values and the detailed institutional practices affected. The categorizations we recommend are the same as for such values and practices: for values in terms of respect, power, enlightenment, well-being, wealth, skill, affection and rectitude, or their equivalents; and for institutional practices in relation to each such value in terms of participation, perspectives, situations, bases of power, strategies and outcomes, or their equivalents. Such categorizations may be expanded or made more precise by ascription of appropriate operational indices to serve the purposes of all relevant intellectual tasks.

### *The Relation to Community Processes*

The net aggregate in protection of human rights that a particular individual can achieve today is observably a function, not merely of the operation of social and decision processes within any single territorial community, but of the operation of such processes within a whole

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<sup>223</sup> For elaboration on these seven decision functions, see H. LASSWELL, *THE DECISION PROCESS: SEVEN CATEGORIES OF FUNCTIONAL ANALYSIS* (1956); *World Constitutive Process of Authoritative Decision*, *supra* note 109, at 131-54.

hierarchy of interpenetrating communities—from local, regional and national to hemispheric and global or earth-space. The contemporary, accelerating intensity of global interaction, not to mention the spectre of nuclear holocaust, renders even the life and stable existence of every human being dependent upon a multitude of factors beyond the boundaries of any single territorial community.

From an anthropological perspective, the whole of humankind presently constitutes, in the sense of indetermination with regard to all values, a single community, however primitively organized. This largest community of humankind operates through and has impacts upon all the lesser communities, both territorial and functional, and these lesser communities reciprocally affect each other and the character of the most comprehensive process of interaction. The ultimate actor in all social interaction is the individual human being, but individuals identify and affiliate with and make demands upon and on behalf of a whole range of groups and associations—including not merely nation-states, but also the lesser territorial communities, international governmental organizations, political parties, pressure groups, tribes, families and private associations of all kinds. A most important component of this largest community process of humankind is an effective power process, entirely global or earth-space in its reach, in which decisions are in fact taken and enforced by severe deprivations or high indulgences irrespective of the wishes of particular individuals and groups. Observable within this comprehensive process of effective power is, further, a transnational process of authoritative decision in the sense of a continuous flow of decisions made from perspectives of authority—that is, made by the people who are expected to make them, in accordance with community expectations about how they should be made, in established structures and by authorized procedures. This transnational process of authoritative decision includes both constitutive and public order decisions and, like its embracing transnational social processes, is maintained at many different community levels and in many different interpenetrating patterns of perspectives and operations and of authority and control affecting and being affected by the value and decision processes in all the component communities of the larger earth-space community.

The public order established and maintained by this most comprehensive process of transnational authoritative decision affects the internal public order of all its constituent communities. The internal public order of each constituent community, in turn, affects the global public order. In such a context, the effective securing of human rights must depend, not merely upon the protection afforded by and within national communities, but also upon that afforded by and within transnational communities, regional and global, as well as by functional and pluralistic organizations of the greatest range and variety. When matters of “international concern,” regarded as appropriate for transnational

decision, are considered a factual question dependent upon the interdetermination of value processes transcending nation-state boundaries, there can be few matters in the contemporary world relating to human rights which can be accurately described as of "domestic jurisdiction" only, confined exclusively to the competence of nation-state officials.<sup>224</sup> Any relevant conception of the implementation of human rights in the contemporary world will extend to the configurative, deliberate management of all features of the whole hierarchy of interpenetrating effective power and constitutive processes, as well as of the features of the affected, and affecting, social processes.

A viable, policy-oriented framework of inquiry about human rights will employ theories such as we have recommended above, or their equivalents, for investigation of all these complex transnational interrelationships.

### *The Explicit Postulation of Basic Public Order Goals*

The comprehensive set of goal values we recommend for postulation, clarification and implementation are those which today are commonly characterized as the basic values of human dignity or of a free society. This is not an idiosyncratic or arbitrary choice, but a product of many heritages. These values are, as indicated above, those which have been bequeathed to us by all the great democratic movements of humankind and which are being ever more insistently expressed in the rising common demands and expectations of peoples everywhere.<sup>225</sup> As projected in the United Nations Charter, the International Bill of Human Rights (the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights and its Protocol, and the International Covenant on Economic, Social, and Cultural Rights) and their host of ancillary expressions, these values are formulated at many different levels of abstraction and in many different cultural and institutional modalities.<sup>226</sup> The basic thrust of all such formulations is, however, toward the greatest production and widest possible distribution of all important values, with a high priority accorded persuasion rather than coercion in such production and distribution.

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<sup>224</sup> See McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1 (1968). See also R. HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS 58-130 (1963); H. LAUTERPACHT, 1950, *supra* note 1, at 166-220; M. RAJAN, UNITED NATIONS AND DOMESTIC JURISDICTION (2d ed. 1961); V. VAN DYKE, *supra* note 1, at 105-56; Chen, *Self-Determination as a Human Right*, in TOWARD WORLD ORDER AND HUMAN DIGNITY 198, 219-24 (M. Reisman & B. Weston eds. 1976); Ermacora, *Human Rights and Domestic Jurisdiction (Article 2, § 7, of the Charter)*, 124 HAGUE RECUEIL 375 (1968); Fawcett, *Human Rights and Domestic Jurisdiction*, in THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 286-303 (E. Luard ed. 1967).

<sup>225</sup> See notes 1-8 and accompanying text *supra*.

<sup>226</sup> See note 7 *supra*.

The basic goal values postulated for clarification of human rights in the largest community of humankind cannot of course be representative only of the exclusive, parochial values of some particular segment of the larger community of humankind, but must admit a very great diversity in the institutional practices by which they are sought and secured. In different particular communities and cultures, very different institutional practices may contribute equally to overriding goals for the increased production and sharing of values. When appropriate overriding goals are accepted, experimentation and creativity may be encouraged by the honoring of a wide range of functional equivalents in the institutional practices by which values are sought.

It may be noted that the postulation of basic goal values we recommend differs from a mere exercise in faith. We do not expect to acquire new knowledge by postulation alone. It is only by the systematic and disciplined exercise of the various relevant intellectual skills that new knowledge can be acquired. The more comprehensive the map of basic goal values and the more it admits of refinements and equivalences at different levels of abstraction, the more effective can be the exercise of the different intellectual skills. We emphasize the postulation and clarification of public order goals in contradistinction to their derivation. Infinitely regressive logical derivations from premises of theological, metaphysical or other highly ambiguous references contribute little to the detailed specification of human rights in the designative sense of demanded relations between human beings which is required for rational decision. Peoples subscribing to very different styles in derivation have long demonstrated that they can cooperate for promotion of the values of human dignity, irrespective of the faiths or creeds which they employ for justification. The importance of a deliberate, explicit postulation of a comprehensive set of goals about human rights lies in its possible facilitation of the performance of all the intellectual tasks relevant to policy-oriented inquiry.

### *The Performance of Intellectual Tasks*

The intellectual tasks requisite to a policy-oriented framework of inquiry about human rights extend beyond the derivational exercises and restrictive conceptions of science to a whole series of interrelated activities, indispensable both to effective inquiry and to rational choice in decision. These tasks include the detailed clarification of goals, the description of past trends in decision, the analysis of conditions affecting decision, the projection of future trends in decision, and the invention and evaluation of policy alternatives. It is our recommendation that all these tasks be performed systematically and configuratively in relation to specified problems in context. The rational employment of any particular task requires both the disciplined location of specific problems in human rights in their larger context and the systematic testing of the formulations



and findings achieved in the performance of that particular task against the formulations and findings achieved by the other tasks with respect to every significant feature of the context. The performance of all tasks must, thus, relate to the same events in the shaping and sharing of values and in measure go forward concurrently, but with clear discrimination in purpose of observation and particular skill employed.

### *The Clarification of Community Policies*

The detailed specification of preferred policies about human rights, in terms that make a clear empirical reference to the shaping and sharing of values in social process, is necessary both to relate broad postulated goals to specific instances and to facilitate performance of other relevant intellectual tasks. To the degree that economy permits, every choice in alternatives recommended will be related to its larger community context and to all important community interests which may be affected. The time dimensions of clarification will be made explicit, where appropriate, by distinguishing short-term, middle-range and long-range objectives. Efforts at clarification will build upon the concurrent and systematic performance of all the other relevant intellectual tasks and will employ the knowledge so acquired about past trends in decision, past conditioning factors, future probabilities and possible alternative solutions.

### *The Description of Past Trends in Decision*

The description of past trends in decision about human rights, in terms of approximation to preferred policies about both the constitutive process and public order, is indispensable to ascertaining where any particular community stands at any given time in achievement and also to drawing upon the wisdom of the past for future guidance. For the most effective comparison of decisions and their consequences through time and across community boundaries, the events about human rights which precipitate recourse to authoritative decision, the detailed claims which participants made to such decision, the factors which appear to condition decision, and the immediate and longer-term consequences of decision for the participants and others must, as we have recommended above, all be categorized factually in terms of value-institution processes, including all the different detailed phases of such processes. A comprehensive map of the community process in which values are shaped and shared is as necessary for the descriptive as for the other intellectual tasks.

### *The Analysis of Factors Affecting Decision*

Knowledge of the factors affecting past trends in decision is important, not merely for understanding the past, but for the projection of future developments and alternatives. In a policy-relevant performance of

the scientific task, inquiry will be made for the interplay of the multiple factors affecting decision: overwhelming importance will not be ascribed to any one factor or category of factors (such as those relating to wealth). Guided by the "optimalization postulate" that all responses are, within the limits of capabilities, a function of net value expectation, emphasis will be placed upon both predispositional and environmental variables. The significance of factors deriving from culture, class, interest, personality and previous exposure to crisis will be explicitly examined. Many different vantage points and both extensive and intensive procedures will be employed in data gathering and processing.

### *The Projection of Future Trends*

The projection of possible future developments in decision about human rights is important for stimulating creativity in the invention and evaluation of alternatives. In policy-relevant inquiry, expectations about the future will be made as conscious, explicit, comprehensive and realistic as possible. Developmental constructs, embodying varying alternative anticipations of the future, will be deliberately formulated and tested in the light of all available information. The simple linear or chronological extrapolations made in conventional theory will be subjected to the discipline of knowledge about conditioning factors and past changes in the composition of trends.

### *The Invention and Evaluation of Policy Alternatives*

The final task of policy-relevant inquiry, toward which all the others are cumulative, relates to the deliberate invention, assessment and recommendation of new alternatives in policy, institutional structures and procedures for the better protection or optimal realization of human rights. In such an inquiry, every phase of decision process, whether of constitutive process or relating to public order, and every facet of conditioning context will be examined for opportunities in innovation which may influence decision toward greater conformity with clarified goals. Assessment of particular alternatives will be made in terms of gains and losses with regard to all clarified goals and disciplined by the knowledge acquired of trends, conditioning factors and future probabilities. All the other intellectual tasks will be synthesized and brought to bear upon the search for and promotion of integrative solutions characterized by maximum gains and minimum losses.<sup>227</sup>

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<sup>227</sup> The policy-oriented approach described in this article has been employed in our prior publications (*see* notes 8, 11 and 12 *supra*), and will be employed in our forthcoming book, *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY*, to which this article is the introductory chapter.

