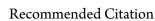1977

The Social Setting of Human Rights: The Process of Deprivation and Non-Fulfillment of Values

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THE SOCIAL SETTING OF HUMAN RIGHTS: THE PROCESS
OF DEPRIVATION AND NON-FULFILLMENT OF VALUES*

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The existence in fact of a world community, in the sense of the long-term interdetermination of all individuals with regard to all values, is today commonly recognized. This larger community of humankind may be observed to comprise a whole hierarchy of interpenetrating lesser communities, of many different sizes and characteristics, with the larger communities affecting the lesser communities contained within them and the lesser communities, in turn, affecting the larger communities which they compose. In the comprehensive social process which transcends all these different communities, individual human beings, affected by constantly changing environmental and predispositional factors, are continuosly engaged in the shaping and sharing of all values, with achievement of many different outcomes in deprivation and fulfillment. It is these outcomes in deprivation and fulfillment in the shaping and sharing of values which constitute, in an empirical and policy-oriented conception, the human rights which the larger community of humankind protects or fails to protect.

The first indispensable step in relevant and effective inquiry must be that of creating a map or model of world social process, as the larger context of human rights, which will permit empirical reference to human rights problems in

whatever degrees of comprehensiveness and precision that performance of the necessary intellectual tasks may require. It is this most comprehensive social process which affects, not merely degrees in the achievement of human rights, but also the kinds of claims that are made to authoritative decision for redress of deprivations and non-fulfillments, as well as the responding outcomes in decision. With a map of world social process, which both exhibits broad outlines and points to relevant detail, a scholarly observer may be able to formulate the claims which participants make to authoritative decision in factual terms of discrepancy between community aspiration and achievement and, hence, to facilitate comparisons in flows of authoritative decisions through time and across community boundaries.

The map of comprehensive worla social process we recommend, in expansion of the generalized image of "man" striving to maximize "values" by applying "institutions" to "resources", includes, as previously noted, a number of distinguishable, but interrelated, features:

(1) Participation.
Individual and group actors.

(2) Perspectives.
The subjectivities of the actors that give direction and intelligibility to interaction.

(3) Situations.
The geographic, temporal, institutional, and crisis features of interaction.

(4) Base values.
The values and resources (potential values) available to different actors in shaping interactions.

(5) Strategies.
The modalities employed in managing base values.

(6) Outcomes.
The shapings and sharings of values achieved.[1]

In more detailed exposition of the reference and potential significance of

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[1] For exposition of the theoretical system *see* H. Lasswell & A. Kaplan, *Power and Society: A Framework for Political Inquiry* (1950). For preliminary applications of the theory in various fields, *see*, for instance, R. Arens & H. Lasswell, *In Defense of Public Order: The Emerging Field of Sanction Law* (1961); L. Chen & H. Lasswell, *Formosa, China, and the United Nations* (1967); M. McDougal & W. Burke, *The Public Order of the Oceans: A Contemporary International Law of the Sea* (1962); M. McDougal & F. Feliciano, *Law and Minimum World Public Order: The Legal Regulation of International Coercion* (1961); M. McDougal, H. Lasswell, & J. Miller, *The Interpretation of Agreements and World Public Order: Principles of Content and Procedure* (1967); M. McDougal, H. Lasswell, & I.

these features, we emphasize items that may especially effect deprivations and non-fulfillments in the achievement of values.

I. Participants

The principal participants in the world social process, in which human rights are both deprived and fulfilled, are individual human beings with all their many different group identifications. Individual human beings are the ultimate actors in any social process; but they affiliate, voluntarily or involuntarily, with many different groups (both territorial and functional) and act through the form of, or play roles in, organizations of the greatest variety, including not only nation-states but also international governmental organizations, political parties, pressure groups, and private associations of all kinds. Individuals operate through all these groups in many different interacting circles (which may or may not overlap each other), playing multiple roles under dynamically changing circumstances, either in their own behalf or on behalf of groups, and increasingly with transnational consequences.[2] Aside from prominent figures who make headlines, millions and millions of human beings daily make their own choices regarding participation in different value processes, travel beyond particular territorial communities, and communicate and collaborate, transnationally as well as nationally, in pursuit of all values.

The individual human being, as the basic actor in all interactions, is always potentially both a deprivor and a deprivee of human rights. The extent to which particular individuals become deprivors or deprivees relates importantly to the broader features of the context: the roles they play (governmental or private), the perspectives they entertain (human-dignity or anti-human-dignity), the

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Vlasic, *The Public Order of Space* (1963); B. Murty, *Propaganda and World Public Order: The Legal Regulation of the Ideological Instrument of Coercion* (1968); W. Reisman, *Nullity and Revision* (1971); *Toward World Order and Human Dignity: Essays in Honor of Myres S. McDougal* (W. Reisman & B. Weston eds. 1976) [hereinafter cited as *Toward World Order and Human Dignity*]; A. Rogow & H. Lasswell, *Power, Corruption, and Rectitude* (1963).

    For comparable maps by other social scientists, *see Political Development and Change: A Policy Approach* (G. Brewer & R. Brunner eds. 1975); A. Etzioni, *The Active Society: A Theory of Societal and Political Processes* (1968); J. Galtung, *Theory and Methods of Society Research* (1967); P. Kelvin, *The Basis of Social Behaviour* (1970); R. Merton, *Social Theory and Social Structure* (3d ed. 1968); R. Nisbet, *The Social Bond: An Introduction to the Study of Society* (1970); G. Mead, *Mind, Self, and Society* (C. Morris ed. 1943); T. Parsons, *The Social System* (1951); N. Smelser, *Theory of Collective Behavior* (1971).

    [2] For the many roles individuals play in everyday life, *see* the brilliant works by Erving Goffman, including: E. Goffman, *Encounters* (1961); E. Goffman, *The Presentation of Self in Everyday Life* (1959). *See also* P. Kelvin, *supra* note 1, at 139-67; R. Nisbet, *supra* note 1, at 148-80.

situational dynamics (crisis or non-crisis), the authority and other base values at their disposal (concentrated or non-concentrated), and the strategies employable (persuasive or coercive). With the vast increases in population described above, the number of people with the predispositions and capabilities to impose deprivations has increased enormously with cumulating tension and conflict in human relations.[3] Similarly, as more and more individuals become available as targets, the number of people who in fact sustain deprivations and cannot secure fulfillment of important values has significantly multiplied.

Because of an enormous diversity in both cultural environment and biological endowment, individuals exhibit a comparable diversity in the detailed patterns of activities by which they pursue different cherished values. While this diversity undoubtedly enriches the quality of life and culture, it has simultaneously contributed to the present state of deprivation and non-fulfillment of values. Consider, for example, the various grounds in the name of which discriminatory deprivations are commonly imposed, including: biological characteristics (race, sex, age), culture (nationality), class (in reference to wealth, power, respect, rectitude, and all other values), interest (group memberships), and personality.[4]

The groups which individuals create in the pursuit of values, like the individuals themselves, today proliferate in great abundance. Group interactions are those in which individuals identify in the pursuit of collective activities with other persons and concurrently establish relatively stable patterns of subjectivity and operation. The interaction between one individual and another typically

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[3] *See* McDougal, Lasswell, & Chen, *Human Rights and World Public Order: Human Rights in Comprehensive Context,* 72 Nw. U.L. Rev. 227 (1977).

[4] See McDougal, Lasswell, & Chen, *The Protection of Respect and Human Rights: Freedom of Choice and World Public Order,* 24 Am. U. L. Rev. 919, 1034-86 (1975) [hereinafter cited as *The Protection of Respect*]; 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) [hereinafter cited as *Human Rights for Women*]; McDougal, Lasswell, & Chen, *The Right to Religious Freedom and World Public Order: The Emerging Norm of Non-Discrimination,* 74 Mich. L. Rev. 865 (1976); McDougal, Lasswell, & Chen, *Non-Conforming Political Opinion and Human Rights: Transnational Protection against Discrimination,* 2 Yale Studies in World Public Order 1 (1975); McDougal, Lasswell, & Chen, *Freedom from Discrimination in Choice of Language and International Human Rights,* 1976 So. Ill. U: L. J. 151 (1976); 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); 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).
     See also The Fourth World: the Imprisoned, the Poor, the Sick, the Elderly and Underaged in America (L. Hamlian & F. Karl eds. 1976); P. Van den Berghe, *Man in Society: A Biosocial View* 93-124 (1975); 1 & 2 *Case Studies on Human Rights and Fundamental Freedoms: A World Survey* (W. Veenhoven ed. 1975); E. Vierdag, *The Concept of Discrimination in International Law* (1973); *The Fourth World: Victims of Group Oppression* (B. Whitaker ed. 1973).

results in value indulgence and deprivation. Viewed in the perspective of group to group interaction—which is typically a multi-individual to multi-individual phenomenon—the results are both value indulgent and value deprivational.[5]

Organized Groups

The significant groups in the world context are *organized* and *unorganized* (or partially organized). The organized groups are conspicuous in the processes specialized to government, law and politics (political power) because the organizations involved include all the members and are comparatively easy to identify as participants. The unorganized groups do not completely coincide with persons who share the common characteristics that define the groups.

We employ five categories of organized groups whose interactions of value indulgence and deprivation can be described in detail. We identify nation-states, international governmental organizations, political parties, pressure groups, and private organizations. In addition, we single out terror groups and gangs for special attention.

Nation-states

In a territorially organized world, the nation-state remains, despite the growing roles of other groups, a dominant participant in the shaping and sharing of all values. The kinds and magnitudes of deprivations and non-fulfillments of human rights to which individuals are today subjected are largely determined by the nation-states of which they are members. Subject to certain reservations to be specified as we proceed, the degree to which demands for human dignity values are fulfilled is still largely dependent upon the performance of governmental functions within territorially organized communities.

In spite of the myth of formal equality, the nation-states of the world are far from congruent with one another. Nation-states vary tremendously in terms of size, population (number and composition), resources, complex matrix of institutions, and stages of development measured by science and technology.[6] It

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[5] On group interaction, *see* R. Bales, *Interaction Process Analysis: A Method for the Study of Small Groups* (1952); C. Cooley, *Social Organization: A Study of the Larger Mind* (1909); G. Homans, *The Human Group* (1964); *Group Relations and Group Antagonisms* (R. MacIver ed. 1944); E. Malecki & H. Mahood, *Group Politics* (1972); M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (rev. ed. 1971); G. Simmel, *The Sociology of George Simmel* (K. Wolff ed. & transl. 1950); S. Stoljar, *Groups and Entities: An Inquiry into Corporate Theory* (1973).

For convenient summaries of various group theories, *see* Greenstone, *Group Theories,* in 2 *Handbook of Political Science* 243-318 (F. Greenstein & N. Polsby eds. 1975); Homans & others, *Groups,* 6 Int'l Encyc. Soc. Sc. 259 (1968).

[6] *See* B. Russett, *et al., World Handbook of Political and Social Indicators* 293-303 (1964), for quantitative comparison.

is noteworthy that political boundaries are far from congruous with ethnic, linguistic, cultural, religious and other boundaries.[7] In terms of the public order system demanded and projected, particularly in the structure of power shaping and sharing, states differ profoundly in characteristics that range from totalitarian or authoritarian to the patterns of democracy.

At the end of World War I a rapid proliferation of nation states occurred as the ancient Empires of Europe divided their continental domains. World War II initiated a fantastically accelerated process which was mainly characterized by the break-up of extra-European Empires.[8] At the same time the numerous demands to bring into effective being a transnational network of effective cooperation fell far short of the dreams and challenges of the world political arena. Failing to achieve sufficient agreement on common purposes, nation-states, like private groups, often give expression to special interests. The massive transformation of ex-colonies into independent states has typically failed to combine nationalism, democracy and development into coherent and effective programs.[9] The world community is sensitized to generation of "petty tyrants", who are determined to hold on to power at all cost.[10] Sheltered

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[7] *See* L. Doob, *Communication in Africa: A Search for Boundaries* (1961);*Ethnicity: Theory and Experience* (N. Glazer & D. Moynihan eds. 1975) [hereinafter cited as *Ethnicity*]; Claydon, *The Transnational Protection of Ethnic Minorities: A Tentative Framework for Inquiry,* 13 Canadian Y.B. Int'l L. 25 (1975); Connor, *Ethnology and the Peace of South Asia,* 22 World Politics 51 (1969); Connor, *Nation-Building or Nation-Destroying?,* 24 World Politics 319 (1972); Connor, *The Politics of Ethnonationalism,* 27 J. Int'l Affairs 1 (1973); Possony, *Nationalism and the Ethnic Factor,* 10 Orbis 1218 (1967); Hughes, *The Real Boundaries in Africa Are Ethnic, Not Lines on a Map, N.Y. Times,* June 15, 1975, Sec. 4, at 4, col. 4.

[8] *See* Chen, *Self-Determination as a Human Right,* in *Toward World Order and Human Dignity, supra* note 1, at 198-261. *See also* A. Cobban, *The Nation State and National Self-Determination* (1969); R. Emerson, *From Empire to Nation* (1960); R. Emerson, *Self-Determination Revisited in the Era of Decolonization* (Occasional Paper No. 9, Harvard University Center for International Affairs, 1964); D. Gordon, *Self-Determination and History in the Third World* (1971); H. Johnson, *Self-Determination within the Community of Nations* (1967); A. Sureda, *The Evolution of the Right of Self-Determination* (1973); U. Umozurike, *Self-Determination in International Law* (1972).

[9] For difficulties associated with contemporary nation-building, *see* D. Apter, *The Politics of Modernization* (1965); L. Binder, *et al., Crises and Sequences in Political Development* (1971) (Other contributers are: James S. Coleman, Joseph LaPalombara, Lucian W. Pye, Sidney Verba, and Myron Weiner); C. Black, *The Dynamics of Modernization* (1966); S. Huntington, *Political Order in Changing Societies* (1968); A. Inkeles & D. Smith, *Becoming Modern: Individual Change in Six Developing Countries* (1974); D. Lerner, *The Passing of Traditional Society: Modernizing the Middle East* (1963); M. Levy, *Modernization and the Structure of Society: A Setting for International Affairs* (1966); Lasswell, *The Policy Sciences of Development,* 17 World Politics 286 (1965).

[10] *See e.g.,* Hills, *Amin Is a Tyrant, but Not without Admires, N.Y. Times,* July 11, 1976, Sec. 4, at 3, col. 3; Sulzberger, *No Antidote to 'Big Daddy', id.,* June 29, 1975, Sec. 4, at 15, col. 2; *Africa Can't Afford Him. id.,* July 12, 1975, at 24, col. 1 (editorial); *id.,* July 10, 1976, at 3, col. 1; *id.,* Oct. 5, 1975, Sec. 1, at 2, col. 3 (Ambassador Daniel Moynihan's criticism of Amin).

behind the relative indifference of many elements in the outside world, local rulers have given effect to measures of deprivation and non-fulfillment.

Parallel tendencies have made their presence felt in the older nation-states, some of which were commonly assumed to be insulated from the impact of factors that undermine authority and control. The growing role of government in society, which has frequently gone hand in hand with the centralization of power and the concentration of effective decision making in a few hands, has often led to bureaucratic rigidity and regimentation, corruption and loss of confidence in the body politic.[11]

International governmental organizations

Under the pressures generated by interdependence, nation-states have found it expedient to organize a network of transnational intergovernmental structure to accomplish a range of specific objectives. Being creatures of nation-states, these organizations are generally handicapped in activities relating to human rights by the acute concern of the most influential elements in particular nation-states to avoid either a formal or an effective loss of power. Though formal competence for the promotion or protection of human rights may be conferred upon those organizations, their actual capacity for furthering value fulfillment is commonly curtailed by the limited resources made available to them.[12]

The disappointing developments to which brief allusion has been made are especially painful to the large number of articulate spokesmen of human interest values in the non-totalitarian or ex-colonial powers who cooperated to achieve international or local treaties and statutes that put into authoritative language the aspirations of many generations of humanizing and revolutionary politicians

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See also Uganda: Amin vs. the World. Newsweek, Aug. 9, 1976, at 35-36; *N.Y. Times,* Dec. 5, 1976, Sec. 1, at 15, col. 1 (city ed.) (the transformation of the Central African Republic to the Central African Empire and of Salah Eddine Ahmed Bokassa from president for life to Emperor Bokassa I).

11 *See* M. Halperin, *et al., The Lawless State: The Crime of the U.S. Intelligence Agencies* (1976); J. Lieberman, *How the Government Breaks the Law* (1972); D. Wise, *The Politics of Lying: Government Deception, Secrecy, and Power* (1973); A. Wolfe, *The Seamy Side of Democracy: Repression in America* (1973).

12 The 1972 budget of the United Nations was $213 million. *N.Y. Times,* Dec. 2, 1972, at 13, col. 4. In U.N. circles, the U.N. budget is compared to that of the Fire Department of New York City. According to Professor Karl W. Deutsch's estimate, as based on data in B. Russett, *supra* note 6, at 56-68, the total governmental expenditures (governments at all levels—national, state or provincial, and local) of nation-states are between approximately one-quarter and one-third of the GNP of the non-Communist countries. On the other hand, the total expenditures of all the international organizations are roughly one percent of the GNP of these same countries. Deutsch, *The Probability of International Law,* in *The Relevance of International Law* 60 (K. Deutsch & S. Hoffmann eds. 1968).

and lawyers. The Charter of the United Nations (and the many accompanying declarations and conventions about human rights) are the most influential, conspicuous and therefore the most important sources of hope, action, and partial disappointment.[13]

As we shall have occasion to demonstrate, the turbulence, confusion and conflict connected with human rights have created a state of affairs that multiplies participants in the world (including local) processes of politics that are more dynamic than ever before as factors in issues pertaining to human dignity.

Whatever the words of authority that authorize action on behalf of human rights, the somber story is that, so far, the resources of manpower, facilities and support have been insufficient to take advantage of the growing complexities of the situation.

Political Parties

The world situation relevant to human dignity is affected by the positive, negative or indifferent roles played by political parties that cooperate or coordinate across national lines.[14] In totalitarian states that share the tradition of international socialism the language of the constitution is consonant with the doctrines and procedures of human rights. When the actual situation in the society is investigated, however, it is far from obvious that the prescriptive norms are put into effect. Underground political parties include organizations that protest as vigorously as they can under the circumstances against the contradictions between proclamation and practice. However, it is not to be taken for granted that every vestige has disappeared of sociopolitical orders that were pushed aside by revolutionary programs that championed the cause of

     [13] Relevant human rights prescriptions are conveniently collected in *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).

     [14] *See generally* W. Chambers, *Political Parties in a New Nation* (1963); R. Dahl, *Political Oppositions in Western Democracies* (1966); *Regimes and Oppositions* (R. Dahl ed. 1973); M. Duverger, *Political Parties* (1954); V. Key, *Politics, Parties, and Pressure Groups* (5th ed. 1964); *Political Parties and Political Development* (J. LaPalombara & M. Weiner eds. 1966); H. Lasswell & A. Kaplan, *supra* note 1, at 169-73; D. MacRae, *Parliament Parties, and Society in France, 1946-1958* (1967); S. Neuman, *Modern Political Parties* (1956); J. Saloma & F. Sontag, *Parties: The Real Opportunity for Effective Citizen Politics* (1972); Epstein, *Political Parties,* in 4 *Handbook of Political Science* 229-77 (F. Greenstein & N. Polsby eds. 1975).

     See also Laqueur, *Eurocommunism and Its Friends,* 62 Commentary 25 (Aug. 1976); Seligman, *Communism's Crisis of Authority,* Fortune, Feb. 1976, at 92-95 *et seq.;* Seligman, *Communists in Democratic Clothing,* Fortune, March 1976, at 116-19 *et seq.;* Birnbaum, *The New European Socialism, N. Y. Times,* May 15, 1976, at 25, col. 2 (city ed.); Gordon, *Changes in Communist Parties in Developed Capitalist Nations, N. Y. Times,* Mar. 21, 1976, Sec. 4, at 17, col. 1.

human dignity. Underground movements continue in the hope of reinstating as much as possible of previous systems. These residual fragments make common cause with one another, and with the reactionary elites of the world arena. These party programs may speak in the name of ancient programs of caste and class, and of value and religion. On the whole, however, it is correct to affirm that political parties are more heavily weighted in favor than in opposition to human rights.

It is worth taking note of a distinction that can usefully be made between genuine political parties and monopoly organizations that may be called political parties. The latter are more properly known as political orders. Political parties are institutions that evolved in arenas where organized participation in the decision process of the nation-state is relatively open.

Pressure Groups

Unlike political parties many organizations concentrate on a single demand rather than upon comprehensive programs of public order. Socialism or liberalism, for instance, is translated into inclusive conceptions of governmental structure and function by political parties. Pressure groups concentrate on particular details, such as the abolition of slavery, the graduated income tax, women's suffrage, free public education, and so on through scores of proposals.[15] Almost every measure that has a recognized relation to human dignity has been, or is currently, a target of pressure group action. Sometimes the political system permits a "one-issue group" to call itself a political party and to nominate candidates. Strictly speaking the "conventional" labels are misleading. In a functional sense, these are pressure groups.

It is not to be overlooked that pressure groups, like political parties, may operate on all sides of an issue. We are not surprised to find that collective action is directed *against* as well as *for* human rights. In practice the true orientation of

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[15] *See* J. Lador-Lederer, *International Group Protection* 373-417 (1968); L. White, *International Non-Governmental Organizations* (1951); *Interest Groups in International Perspective,* 413 The Annals 1 (May 1974); *Non-Governmental Organizations* (Report of the Secretary-General), U.N. Doc. E/4476 (1968).

See more generally C. Astiz, *Pressure Groups and Power Elites in Peruvian Politics* (1969); H. Eckstein, *Pressure Group Politics: The Case of the British Medical Association* (1960); *Interest Groups on Four Continents* (H. Ehrmann ed. 1958); A. Holtzman, *Interest Groups and Lobbying* (1966); V. Key, *supra* note 14; *Private Government: Introductory Readings* (S. Lakoff ed. 1973); J. LaPalombara, *Interest Groups in Italian Politics* (1964); G. McConnell, *Private Power and American Democracy* (1966); *Voluntary Associations* (J. Pennock & J. Chapman eds. 1969); H. Ziegler & G. Peak, *Interest Groups in American Society* (2d ed. 1972); *Pressure and Interest Groups,* in *Comparative Politics* 388-430 (H. Eckstein & D. Apter eds. 1963) (articles by Almond, Eckstein, and LaPalombara); Salisbury, *Interest Groups,* 4 *Handbook of Political Science* 171-228 (F. Greenstein & N. Polsby eds. 1975).

a group may be disguised by the rhetoric of "liberalism," "moderation" or "progressivism."

Private Associations

A comprehensive inventory of organizations with transnational impact quickly establishes the fact that political power is only one of the value-outcomes that is chiefly pursued by private or mixed public and private associations. Nation states, political parties and pressure groups emphasize power. Yet it is apparent that their distinctive accent on political power in no way implies that their impacts on enlightenment, wealth, or any other value-institution sector is trivial. The same pattern is present in associations that are primarily private (in the civic order). Scientific societies, both local and transnational, are distinctively aimed at the cultivation and dissemination of knowledge. At the same time it is perceived that they require funds and manpower to get on with their goals; and that they contribute to the economy of the territories where they are based.

The point is especially evident when we consider the multinational corporations, i.e., those transnational corporations and associations that frequently operate in finance, transportation, communication, mining, fishing, agriculture, manufacturing, wholesaling and retailing, and in other branches of economic life. They employ a wide variety of modern technologies, in activities ranging from production and marketing to financing and management. Thanks to these new technological developments, new management techniques and the transnational network of communication and transportation, multinational corporations have grown in number, size, activities, and importance. As they operate across many state boundaries, multinational corporations serve as a global vehicle for the transfer and dissemination of capital and skill, as well as of technology. They have greatly contributed to the internationalization of production, finance and ownership, and to the growing integration of national economies into a world economy.[16]

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[16] The increasing attention accorded the roles of multinational corporations is clearly demonstrated by the rapid proliferation of literature. *See The Multinational Corporation and Social Change* (D. Apter & L. Goodman eds. 1976); *Global Companies: The Political Economy of World Business* (G. Ball ed. 1975) [hereinafter cited as *Global Companies*]; *World Business: Promise and Problems* (C. Brown ed. 1970) [hereinafter cited as *World Business*]; *The Multinational Enterprise* (J. Dunning ed. 1971); N. Fatemi, G. Williams, & T. De Saint-Phalle, *Multinational Corporations* (2d ed. 1976); B. Ganguli, *Multinational Corporations* (1974); International Labour Office, *Multinational Enterprises and Social Policy* (1973); *The Multinational Corporation* (C. Kindleberger ed. 1970); E. Kolde, *The Multinational Company* (1974); J. Stopford & L. Wells, *Managing the Multinational Enterprise* (1972); C. Tugendhat, *The Multinationals* (1972); L. Turner, *Multinational Companies and the Third World* (1973); United Nations, Department of Economic and Social Affairs, *The Impact of Multinational Corporations on Development and on*

Multinational corporations, since they may possess more resources than many nation-states, have sometimes been seen as posing threats to nation-states.[17] Their actual and potential impact on deprivations and non-fulfillment in the shaping and sharing of values has provoked increasing alarm. Multinational corporations, profit-oriented as they have to be, are variously perceived as exploiters of the labor and physical resources of the developing countries, practitioners of corrupt business practices, environmental polluters, manipulators of currencies and commodities, tax dodgers, instruments of their national governments, and supporters of reactionary regimes.[18] In recent times they have

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International Relations, U.N. Doc. E/5500/Rev. 1 (ST/ESA/6) (1974) [hereinafter cited as *The Impact*]; United Nations, Department of Economic and Social Affairs, *Multinational Corporations in World Development*, U.N. Doc. ST/ECA/190 (1973) [hereinafter cited as *Multinational Corporations in World Development*]; United Nations, Department of Economic and Social Affairs, *Summary of the Hearings Before the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations*, U.N. Doc. ST/ESA/15 (1974); R. Vernon, *Sovereignty at Bay: The Multinational Spread of United States Enterprises* (1971); Seidl-Hohenveldern, *Multinational Enterprises and the International Law of the Future*, [1975] Y.B. World Affairs 301; Cary, *Multinational Corporations as Development Partners, N.Y. Times*, Nov. 8, 1975, at 27, col. 2 (city ed.)
[1975] Y.B. World Affairs 301; Cary, *Multinational Corporations as Development Partners, N.Y. Times*, Nov. 8, 1975, at 27, col. 2 (city ed.).

   [17] Starting from the assumption that "The men who run the global corporations are the first in history with the organization, technology, money, and ideology to make a credible try at managing the world as an integrated unit," Barnet and Muller argue that "the goal of corporate diplomacy is nothing less than the replacement of national loyalty with corporate loyalty. If they are to succeed in integrating the planet, loyalty to the global enterprise must take precedence over all other political loyalties." R. Barnet & R. Muller, *Global Reach: The Power of the Multinational Corporations* 13. 89 (1974). For detail, see *id.* at 72-104.
   Raymond Vernon dramatizes the threat of the multinational enterprises in these words:
       Suddenly, it seems, the sovereign states are feeling naked. Concepts such as national
       sovereignty and national economic strength appear curiously drained of meaning.
R. Vernon, *supra* note 16, at 3.
   See also J. Behrman, *National Interests and the International Enterprise: Tensions Among the North Atlantic Countries* (1970); *The Nation-State and Transactional Corporation in Conflict, with Special Reference to Latin America* (J. Gunnemann ed. 1975); T. Moran, *Multinational Corporations and the Politics of Dependence: Copper in Chile* (1974); Ball, *Introduction,* in *Global Companies, supra* note 16, at 1-2; Behrman, *Multination Corporations and National Sovereignty,* in *World Business. supra* note 16, at 114-25; Barnet & Muller, *Planet Earth, a Wholly-Owned Subsidiary, N.Y. Times,* Jan. 23, 1975, at 33, col. 1 (city ed.).
   [18] *See* R. Barnet & R. Muller, *supra* note 17, at 123-84. 278-83. 334-62. For a case study, *see* A. Sampson, *The Sovereign State of ITT* (1973).
   As Katzenbach points out, "[t]he earlier literature tended to regard the so-called multinational corporation as a new form of internationalism which would have beneficent results in terms of rationalizing the world economic order irrespective of political boundaries, of transferring technology from the haves to the have-nots, and being a sort of great engine for economic development in the post-war period." "More recently," he continues, "for a variety of reasons, multinational corporations have been viewed as

achieved notoriety by the exposure of the widespread business practices of bribery, regarded as corrupting and conspiring with power elites to the detriment of the masses of the population.[19]

The foregoing examples of private groups have dealt chiefly with *power* and *wealth*, with a brief allusion to scientific *enlightenment*. Specialized operations connected with the gathering, processing and dissemination of current information is often in the hands of news associations. These activities are especially germane to the focussing or distraction of attention on matters that pertain to human rights. The number of topics that may arouse the curiosity of human beings, and which initiate the formation of groups, is infinite. In an important sense a long range drive is to explore the total environment of mankind, and—almost as a by-product—to discover the interconnectedness c^r human lives.

Private as well as governmental groups are absorbed with all aspects of *well-being*. These range from the survey of health threats and opportunities to the cultivation of diversions that counteract any tendency toward boredom. Another enormously variegated sector of value and institutional practice is related to *skill*. Skills are occupational and professional; and they include all manner of artistic expression, since a relatively distinctive use of skill implies the completion of acts and of physical arrangements in ways that emphasize the pattern of internal adjustment rather than the impact on wealth, power or other discussions of social process. The "human right to enjoy and pursue excellence in the arts" is a manifestation of deep-lying initiatives in human personality.

Unquestionably the institutions related to intimacy and loyalty are deeply intertwined with human rights. Wherever there is human contact it is probable that friendship and intimacy will appear; and these commitments are frequently such that barriers are pushed aside that seek to block these culminations.

With the intensification of association on a global scale it is clear that the

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instruments of a new imperialism in which the rich exploit the poor and the haves exploit the have-nots." Katzenbach, *"Law-Making for Multinational Corporations,"* in C. Black *et al., A New World Order?* 25 (World Order Studies Program Occasional Paper No. 1, Princeton University, Center of International Studies, 1975).

On tax problems involving multinational corporations, see a study prepared by Carl S. Shoup for the United Nations: United Nations, Department of Economic and Social Affairs, *The Impact of Multinational Corporations on Development and on International Relations—Technical Papers: Taxation,* U.N. Doc. ST/ESA/11 (1974).

19 *See N. Y. Times,* Feb. 15, 1976, sec. 3, at 1, col. 1 (containing a compilation of reported payments abroad by American corporations for bribes, political contributions, sales commissions, and other purposes); *id.,* May 5, 1975, at 1, col. 1 (city ed.) ("U.S. Company Payoffs Way of Life Overseas"); Cohen, *Lockheed Cover-Up?, id.,* Mar. 29, 1976, at 29. col. 2; Barnet, *Not Just Your Corner Drugstore, id.,* June 19, 1975, at 35, col. 1. *See also Political Corruption: Readings in Comparative Analysis* (A. Heidenheimer comp. 1970).

interplay of admiration and contempt are differentiated, and that the giving and receiving of respect become major demands that affect the patterns of respect. In the same way global exposure modifies targets and judgments of decency and belief (rectitude). These are among the parameters that define the content and significance of human rights.

We note that the linkages between public and civic order are subtle, hence visible only when special procedures are used to bring them to the focus of an observer's attention. Complex socialist societies give relative prominence to the role of government, hence of public order. As a rule the official doctrine attempts to modulate the passage of public into private and of private into explicity public activities. The pattern of ultimate regimentation on a world scale would approximate a global prison camp in which the top hierarchy would do everything it could to specify in detail the daily calendar of individual and small group, as well as large-group, contact and mobilize every means for the purpose of regimenting behavior in conformity with these detailed prescriptions.[20] Thus far, at least, regimentation of this kind is rarely approximated.

Terror Groups and Gangs

We single out for special mention terror groups and gangs. Depending as they do on the use of violent coercion it is obvious that they are functionally related to power and can be thought of as closely akin to pressure groups. They differ, however, in that although they rely on a form of power, they do not necessarily limit themselves to the pursuit of power as the principal value toward which their efforts are directed.[21] Some terror gangs are focussed on wealth, as in the notorious instance of the slave trade,[22] or the organized criminal

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[20] This garrison state hypothesis was originally presented by one of the authors in 1937. *See* Lasswell, *Sino-Japanese Crisis: The Garrison State versus the Civilian State,* 2 China Q. 643 (1937); Lasswell, *The Garrison State,* 46 Am. J. Sociology 455 (1941); Lasswell, *The Garrison State Hypothesis Today,* in *Changing Patterns of Military Politics* 51-70 (S. Huntington ed. 1962). *See also* Fox, *Harold D. Lasswell and the Study of World Politics: Configurative Analysis, Garrison State, and World Commonwealth,* in *Politics, Personality, and Social Science in the Twentieth Century: Essays in Honor of Harold D. Lasswell* 367-81 (A. Rogow ed. 1969).
   Cf. A. Huxley, *Brave New World* (Bantam classic ed. 1958); A. Huxley, *Brave New World Revisited* (1965); G. Orwell, *1984* (1949); *1984 Revisited: Prospects for American Politics* (R. Wolff ed. 1973).

[21] *See* United Nations, Department of Economic and Social Affairs, *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975* (Report prepared by the Secretariat) 10-15, U.N. Doc. A/CONF. 56/10 (1976); W. Whyte, *Street Corner Society* (1943); Tyler, *The Roots of Organized Crime,* 8 Crime and Delinquency 325 (1962), *reprinted* in *Social Problems in a Changing World* 198-214 (W. Gerson ed. 1969); *N.Y. Times,* Nov. 7, 1976, Sec. 1, at 1, col. 4 (city ed.).

[22] *See* B. Davidson, *Black Mother: The Years of the African Slave Trade* (1961); C. Greenidge, *Slavery* 49-57 (1958); S. O'Callaghan, *The Slave Trade Today* (1961);

associations whose dealing in drugs or prostitution, for example, penetrate the boundaries of many countries. Value objectives other than power or wealth are seldom of major importance. In the past, however, we know of tribal societies whose members engaged in mutual raiding that was principally a matter of respect. It was a necessary act to demonstrate the readiness of a youth to become a man.

In the contemporary world terror gangs have become particularly prominent participants in the processes of politics, reflecting a complex constellation of factors that condition, and in turn are conditioned by, the social process as a whole.[23]

Unorganized Groups

The organizations mentioned heretofore include in their membership those who by formally binding themselves together share significant traits. Unorganized participants in the world social process share certain common characteristics even though they are not typically joined together for joint operations. We consider culture, class, interest, personality and crisis groups, and give particular attention to the fact that they interact as conditioning factors with the organized groups enumerated above.

Culture

The term culture is employed to designate distinctive and stable patterns of values and institutions that are deployed around the globe.[24] Each culture may assign value priorities in a somewhat distinctive manner, as when we find that nomadic tribesmen glorify power whereas neighboring agriculturalists emphasize

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Schakteton, *The Slave Trade Today*, in *Slavery: A Comparative Perspective* 188 (R. Winks ed. 1972).

[23] *See* J. Bell, *Transnational Terror* (1975); *International Terrorism and World Security* (D. Carlton & C. Schaerf eds. 1975); 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); Rovine, *The Contemporary International Legal Attack on Terrorism*, 3 Israel Y.B. Human Rights 9 (1973); *Terrorism and Political Crimes in International Law*, [1973] Proceedings, Am Soc'y Int'l L. 87.
  See also N.Y. Times, Oct. 12, 1975, Sec. 1, at 1, col. 1 ("Organized Crime Reaps Huge Profits from Dealing in Pornographic Films"); *id*, July 7, 1975, at 1, col. ("Key Mafia Figure Tells of 'Wars' and Gallo-Colombo Peace Talks"); *id*, May 29, 1974, at 53, col. 1 (city ed.) ("Kidnapping a Lucrative Crime in Argentina").

[24] *See* H. Lasswell & A. Kaplan, *supra* note 1, at 47-51. *See generally* B. Malinowski, *A Scientific Theory of Culture, and Other Essays* (1960); R. Benedict, *Patterns of Culture* (1959); J. Honingmann, *Understanding Culture* (1963); A. Kroeber, *The Nature of Culture* (1952); *The Science of Man in the World Crisis* (R. Linton ed. 1945) (especially articles by Clyde Kluckhohn and William H. Kelly and by Abram Kardiner); E. Tylor, *Primitive Culture* (1871); L. White, *The Science of Culture: A Study of Man and Civilization* (1949).

the production of wealth and the gratifications of peace. Institutional practices vary greatly from culture to culture and from value to value.

In earlier times—notably in the fourth or fifth millennium B.C. —the urban division of labor supplemented tribal cultures with civilization. In more recent years science and technology have moved toward universality, with the result that communities throughout the globe exhibit an enormous variety of transitional patterns. This distinctiveness has been described in many different ways: "primitive, archaic, historic, pre-modern, or modern;"[25] traditional or modern; nomadic, agricultural, industrial, or post-industrial.[26] The accent may be on traditional collectivities or upon a multitude of functional (pluralized) groups. The class structure may be limited to a two-class model, or diversified into a multiple class system. There may be low or high social mobility.[27]

In an increasingly interactive world the cultural factors play complicating and contradictory roles. It is easy to recognize the trends toward instantaneous news, transnational travel, or world science, for example. At the same time observant individuals perceive that trends toward technological universalization has not meant peace, understanding and cooperation for the common interest; rather it often signifies the use of universal culture traits to enhance parochial demands and identities, accompanied by partial adaptation to a limited number of common activities. Abiding parochialism has meant that surviving or novel practices are not always tolerated as functional equivalents. Conflicts arise over different ways of doing the same thing and the aggregate common interest is not discovered.

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[25] J. Peacock & A. Kirsch, *The Human Direction: An Evolutionary Approach to Social and Cultural Anthropology* vi (1970).

In his analysis of religious evolution, Bellah conceptualizes in terms of five stages: "primitive religion," "archaic religion," "historic religion," "early modern religion," and "modern religion." Bellah, *Religious Evolution,* 29 Am. Sociological Rev. 358 (1964). *See also* R. Bellah, *Beyond Belief: Essays on Religion in a Post-Traditional World* 20-50 (1976).

[26] The classic work on the "stages" theory of economic growth, W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (1960), characterizes the stages as "the traditional society, the preconditions for take-off, the take-off, the drive to maturity, and the age of high mass consumption" (at 4). *Cf.* A. Hirschman, *The Strategy of Economic Development* (1968), which suggests the limitations of Rostow's theories. *Cf. also* A. Organski, *The Stages of Political Development* (1965).

The term "post-industrial" is employed, and made popular, by Daniel Bell. For a comprehensive treatment, *see* D. Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting* (1973). Other scholars prefer other designations. For example, Brzezinki prefers "technetronic" to "post-industrial:" Z. Brzezinski, *Between Two Ages: America's Role in the Technetronic Era* 9 (1971).

[27] For an outstanding account of different approaches to class and mobility in contemporary societies, *see* R. Dahrendorf, *Class and Class Conflict in Industrial Society* (1959).

For a standard work on this subject, *see* S. Lipset & R. Bendix, *Social Mobility in Industrial Society* (1959). Also, *cf.* T. Bottomore, *Classes in Modern Society* (1966).

It may be worth emphasizing that urban civilization evolved only seven or eight thousand years ago, and that prior to that time, prodigious emphasis was put on identifying with small groups.[28] This was a necessary means of socializing individuals to incorporate the demands of others, and prepared the way for cooperation on a much larger scale. In civilization writing and other modes of transmitting knowledge become dynamic factors in accelerating the evolution of social institutions.[29]

Anxieties are generated by the unceasing challenge to change by modifying value priorities and institutional arrangements.[30] "Culture shock" is a continuing cost of innovation and complicates the task of those who strive for effective action in the field of human rights.[31]

Class

Within any given society, classes are formed according to the degree of control individuals exercise over values. All known societies are more or less class-ridden, although the character and magnitude of stratification differ from one community to another.[32] Rigidity of stratification exhibits a wide spectrum that ranges from a highly hierarchized, closed society to an open society that is highly mobile.[33]

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[28] V. Gordon Childe stresses the central importance of the creation of cities for the emergence of civilization. The invention is tentatively located in a few river valleys (notably the Nile, the Tigris-Euphrates, and the Indus) about 7,000 years ago. *See* V. Childe, *New Light on the Most Ancient East* (1935). *See also* R. Redfield, *The Primitive World and Its Transformations* (1953).

[29] *Cf.* L. Mumford, *The City in History* (1961); L. Mumford, *The Culture of Cities* (1938).

[30] This theme has been dramatically popularized by a recent best-seller: A. Toffler, *Future Shock* (Bantam ed. 1971). *Cf.* C. Walker, *Technology, Industry, and Man: The Age of Acceleration* (1968).

[31] *See* A. Toffler, *supra* note 30, at 10-11, 347-48.

[32] A valuable anthology that combines fragments of many of the classics and empirical studies is *Class, Status, and Power* (R. Bendix & S. Lipset eds. 2d ed. 1966). For a critique of the class system in Communist countries by a top Yugoslav official in disgrace, *see* M. Djlas, *The New Class: An Analysis of the Communist System* (1959).

See also B. Bernard, *Social Stratification: A Comparative Analysis of Structure and Process* (1957); *Social Inequality* (A. Beteille ed. 1969); *The Impact of Social Class* (P. Blumberg ed. 1971); R. Brown, *Social Psychology* 101-51 (1965); A. Hollingshead & F. Redlich, *Social Class and Mental Illness* (1958); *Comparative Perspectives on Stratification: Mexico, Great Britain, Japan* (J. Kahl ed. 1968); G. Lenski, *Power and Privilege: A Theory of Social Stratification* (1966); J. Lopreato & L. Hazelrigg, *Class, Conflict and Mobility* (1972); J. Schumpeter, *Social Classes* (1951); A. Tuden & L. Plotnicov, *Social Stratification in Africa* (1970); T. Tumin, *Social Stratification: The Forms and Functions of Inequality* (1972).

[33] Highly hierarchized, closed societies are exemplified by societies in which the caste system or the practice of apartheid prevails. For further factual background and pertinent references, *see The Protection of Respect, supra* note 4, at 980-1034.

From the time of their first appearance urban civilizations have accentuated class differences with special reference to wealth and power. The rich and the poor, the strong and the weak became the criteria of identification, superseding family and kinship as bases of loyalty.

The class divisions of modern urban and industrial society combined with the structure of feudalism to lend plausibility to political movements in the name of class. Class distinctions, however, continue to clash with other perspectives. Upper, middle and lower class attitudes are often in conflict with conceptions of equal opportunity for all.[34]

Interest

The factor of interest cuts across both culture and class lines. Less comprehensive than either culture or class groupings, interest groups are formed in reference to particular values, institutional perspectives and operations. In a modern technological society a great number of interest groups is continually generated as a consequence of the division of labor and the multiplication of patterns of both symbols and operations. Consequently, perspectives about interest have tended to cut across and dissolve large cultural and class groupings. The result is to increase the frequency and fluidity of the coalitions involved in the shaping and sharing of values.[35] The individuals who constitute the core of an interest group may be widely distributed over the globe. Typically they are surrounded by persons whose perspectives are nebulous and whose conduct is little influenced by the central perspective. Contemporary processes, dynamic as they are, confront individuals with a bewildering variety of interests. Collective programs—focussed on human rights, for example—suffer corresponding difficulties.

Personality

The conception of personality is not to be confused with the individual as a biological entity.[36] The biological entity that appears at birth is equipped with

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Concerning open, mobile, societies, *see, e.g.,* G. Carlsson, *Social Mobility and Class Structure* (1958); *Social Mobility in Britain* (D. Glass ed. 1955); S. Lipset & R. Bendix, *supra* note 27.

[34] Systematic inquiry on class has owed significantly to Lloyd Warner and associates, who stressed upper-class exemptions from law enforcement. On middle—and upper-class violations in general, *see* D. Cressey, *Other People's Money* (1953); A. Sutherland, *White Collar Crime* (1949). The late Svend Ranulf employed quantitative methods to investigate the impact of changes in class structure upon the scope and severity of criminal legislation. *See* S. Ranulf, *Moral Indignation and Middle Class Psychology: A Sociological Study* (1964). Research on class remains relatively undifferentiated, focusing largely upon wealth, respect and skill.

[35] *See* H. Lasswell & A. Kaplan, *supra* note 1, at 40-45. *Cf.* note 15 *supra*.

[36] Personality has been given a wide range of references. A useful compendium of

dispositions to initiate and to respond to the various components of the body and also of the surrounding environment. The physical individual becomes a "person" in the process of interaction. When an act is rewarded by a value indulgence—such as food and cuddling—the result is to strengthen the tendency to initiate or complete the rewarded act. If the completed act is met with value deprivations rather than indulgences the resulting tendency is to avoid or cut the act short. Taken as a whole, the dispositions of the person to interact in a discernible manner are "personality."

Without going into detail it is nevertheless useful to recognize that a personality system, viewed as an entirety, includes three categories of acts. The ego covers all the moods and images that are fully conscious. The super-ego includes the norms that are automatically implied to bar the completion of act or to expedite completion as a compulsive or obsessional occurrence. The id refers to basic impulses, especially to those that are denied expression by the superego.[37]

Personality structures are formed in interaction with patterns of culture. At any given time the exposure of the person to the value indulgences or deprivations of the culture environment results in the formation of an ego and superego system that incorporates the value priorities and practices. To the degree that "socialization" is successful personalities monitor themselves in accordance with the identities, demands and expectations of the culture.[38]

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articles on this subject is *Personality in Nature, Society, and Culture* (C Kluckhohn & H. Murray eds. 2d ed. 1953).

The major theoretical positions are well described in M. Deutsch & R. Krauss, *Theories in Social Psychology* (1965). *See also* G. Allport, *Becoming: Basic Considerations for a Psychology of Personality* (1955); G. Allport, *Personality and Social Encounter* (1960); G. Hall & G. Lindzey, *Theories of Personality* (1957); R. Lazarus, *Personality* (1963); A. Maslow, *Motivation and Personality* (1954).

[37] *See* S. Freud, *The Complete Introductory Lectures on Psychoanalysis* 521-75 (J. Strachey transl. 1969) [hereinafter cited as S. Freud]; S. Freud, *The Ego and the Id* (J. Riviere transl. J. Strachey ed. 1962). *See also* C. Brenner, *An Elementary Textbook of Psychoanalysis* (rev. ed. 1974); H. Lasswell, & A. Kaplan, *supra* note 1, at 10-15.

[38] An excellent overview of socialization and personality development is *Socialization and Personality Development* (E. Zigler & I. Child eds. 1973) (containing a comprehensive bilibography). *See also* R. Brown, *supra* note 32, at 193-417; F. Greenstein, *Children and Politics* (1965); *Personality and Socialization* (D. Heise ed. 1972); H. Hyman, *Political Socialization* (1959); G. Mead, *supra* note 1; P. Mussen, J. Conger, & J. Kagan, *Child Development and Personality* (1963); T. Parsons & R. Bates, *Family: Socialization and Interaction Process* (1955); *Personality and Social Systems* (N. Smelser & W. Smelser eds. 1963); Scars, *Political Socialization*, in 2 *Handbook of Political Science* 93-153 (F. Greenstein & N. Polsby eds. 1975).

For an understanding of the different worlds of childhood, *see* P. Aries, *Centuries of Childhood* (1962). *See also* U. Bronfenbrenner, *Two Worlds of Childhood* (1972) (an interesting comparative study); *Childhood in China* (W. Kessen ed. 1975); J. Whiting & I. Child, *Child Training and Personality: A Cross-Cultural Study* (1953).

It is apparent that if violations of human rights are component elements of a culture, it is essential to bring about the reconstruction of culture before the norms compatible with human rights are effectively realized. Within the broad framework of a culture many of the established class and interest group differences must be changed before human rights can become embedded in culture.

It has often been argued that human beings include natural "slaves" and that the demand to move toward a public and civic order of human dignity is a chimera. Much evidence has accumulated to show that the biological inheritance is relatively plastic, and that persons who are subjected to a culture of slavery will conform to their socialization. However, there is ample evidence that the culture of slavery is not an inevitable outcome.[39] The variety of human motivations are such that varying degrees of rejection have culminated in "slave revolts" and in the substitution of cultures of freedom. In particular, there is evidence that personalities who are totally power-indulged or power-deprived exhibit characteristics that limit the potential creativity of the persons concerned.

The personality structure of the oppressor (depriver) is of particularly direct concern to the analyst of human rights and of the circumstances in which cultures are altered in ways that discourage the formation of value deprivers. The modern study of personality growth recognizes the important consequences of early experiences of deprivation of affection, respect and other significant outcome opportunities.[40] Persons who occupy an advantaged social position often respond to the ordinary misadventures of life by intense overreactions that seize every occasion to reaffirm the significance of the weakened ego by attacking the self-respect of other human beings, and especially by adopting an intransigent attitude toward anyone who, occupying an inferior position in society, attemps to improve his status or to alter the established routines of the social structure. These truly "reactionary" personalities stand in the way of relatively peaceful readjustment of the system of value shaping and sharing, and therefore seek to block the spread of effective adoption and enforcement of norms compatible with human rights.[41]

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[39] *Cf.* A. Kardiner & L. Ovesey, *The Mark of Oppression* (1951).

[40] *Cf.* O. Fenichel, *The Psychoanalytic Theory of Neurosis* (1945); K. Horney, *Our Inner Conflicts: A Constructive Theory of Neurosis* (1945); H. Lasswell, *Power and Personality* (1962).

[41] For broad, sometime questionable, expositions of the basic point, *see* R. Ardrey, *The Territorial Imperative* (1966); K. Lorenz, *On Aggression* (1966); D. Morris, *The Naked Ape: A Zoologist's Study of the Human Animal* (1967).

For more hopeful views of human nature, *see* A. Alland, *The Human Imperative* (1972); R. Dubos, *So Human an Animal* (1968); R. Dubos, *Beast or Angel?* (1974); E. Fromm, *The Anatomy of Human Destructiveness* (1973).

Crisis

The connotations of a crisis include stress generated by conflict and the likelihood that some members of a group, at least, will suffer value deprivation. Among the most evident factors in the study of world change are the crises that are internal or external to organized or unorganized groups. Many crises fail to correspond to any definite line of demarcation since they involve participants who are widely scattered in accord with culture, class or similar characteristics.

The recurring crises among organized groups receive the greatest attention, whether the value frame of reference is power, wealth, or other. Among the more subtle crises are the tensions elicited between traditional and innovative sharers of an established culture, or between the compulsive-obsessional mechanisms and the innovative mechanisms at the disposal of personalities in decision-making elites.[42]

Studies of crisis tend to confirm the view that a moderate level of tension is a valuable incentive for well-considered change. The fact of crisis is enough to open many minds to the probability that prevailing values and institutions are less than perfect; and the modesty of the crisis permits the rational use of the mind—and of collective policy processes—in the search for solutions.[43]

Perspectives

It is the perspectives of the individuals who participate in the world social process that constitute the predispositional variables which in interaction with the environmental factors affect the flow of deprivations and fulfillment of values. These perspectives may be described in terms of demands for values, the identities of these for whom such values are demanded, and expectations about the conditions affecting the fulfillment or non-fulfillment of values.

Demands

The demands people make for preferred events in the contemporary world cover a wide range of values, whatever the particular characterizations employed,

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[42] See, for instance, a brilliant case study probing the tension between tradition and modernity among the Dinka, a Nilotic people in the Republic of the Sudan: F. Deng, *Tradition and Modernization: A Challenge for Law among the Dinka of the Sudan* (1971).

[43] In the words of Dubos:

Crises are practically always a source of enrichment and of renewal because they encourage the search for new solutions. These solutions cannot come from a transformation of human nature, because it is not possible to change the genetic endowment of the human species. But they can come from the manipulation of social structures, because these affect the quality of behavior and of the environment, and therefore the quality of life.

Dubos, *The Humanizing of Humans,* Saturday Rev./World, Dec. 14, 1974, at 76, 80.

and embrace every variety of nuance in institutional practice in the shaping and sharing of values. It has already been shown that in many parts of the world people increasingly share rising common demands for human dignity values.[44] In other parts of the globe countertrends may predominate. The different demands that are made for values are sometimes inclusive, in the sense that they affect many people, and are linked with expectations of reciprocity for all those comparably situated. Sometimes demands are exclusive in the sense that they are made on behalf of rather limited identities and actually affect very few participants in the world process. On occasion demands may be special rather than common, since they are made without regard for the value consequences affecting others, whether they are few or many. Similarly, demands may be constructive and expansionist, designed to increase aggregate values for all, or defensive, intended to protect existing values, whether of all or of relatively exclusive groups. In chosen modality, demands may vary from the most manifest and explicit to the latent and the covert.[45]

In most of the world today, there is, as a consequence of socialization, a high and continuing acquiescence in the prevailing pattern of equality or inequality in the shaping and sharing of values. Millions of the earth's population are socialized to acquiesce in whatever plight of deprivation and non-fulfillment they have come to know in their cultural environment. Established deprivations and non-fulfillments tend to be internalized and tolerated by the middle and lower classes.[46] Many people are so cut off from the outside world, and so

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[44] In very recent times, as decolonization, nation-building, and the expanding role of government have gone hand in hand, hitherto deprived groups and peoples in every continent have made insistent demands for wider participation in the shaping and sharing of values. Contemporary demands for human rights, especially freedom and equality, are made in both positive and negative terms, in both individual and collective terms, and in both national and transnational terms. For further elaboration, see McDougal, Lasswell, & Chen. *supra* note 3.

Long ago Tocqueville pointed out the distinctively dynamic and expanding character of the demand for equality. Once human beings achieve equality in some respects, their quest becomes "totalistic," moving toward equality in all respects. See A. de Tocqueville, *Democracy in America* (J. Mayer ed. 1969). *See also* T. Marshall, *Class, Citizenship, and Social Development* 65-122 (1964); Fallers, *Equality, Modernity, and Democracy in the New States*, in *Old Societies and New States: The Quest for Modernity in Asia and Africa* 158, 204-19 (C. Geertz ed. 1963).

[45] *Cf.* R. Brown, *supra* note 32, at 358-59; S. Freud, *supra* note 37, at 113-25; R. Merton, *On Theoretical Sociology* 73-138 (1967).

[46] A miscellany of researches tends to corroborate the broad hypothesis that "the lower the value position of the participant who suffers a value deprivation the less probable the resort to official arenas; and, once there, the less likely to obtain a value-indulgent result." We need remind ourselves only of the continuing deprivations to which the powerless, the uninformed, the poor, the weak, the untrained, the unloved, the disrespected and the heretics are subjected. For a preliminary approach to an appraisal of the working of our "criminal" and "civil" codes, see R. Arens & H. Lasswell, *supra* note 1. On other dimensions, see A. Rogow & H. Lasswell, *supra* note 1.

conditioned by internal routines, that their latent demands for greater participation in the shaping and sharing of values are suppressed or repressed. This continues to characterize the world scene in spite of growing discontent based on widened experience and exposure to agitational activity.[47]

The demand for total subordination to a governing elite continues in many localities and among many functional groups. Many elite are trained to take no notice of the fact that they are imposing deprivations on others or denying the fulfillment of values. In part this seeming callousness is to be understood as a standard result of a process of socialization that displaces private motives on public objects and rationalizes these objectives in terms of common interest.[48]

Identifications

People demand values for particular identities, with various levels of inclusiveness. Changing perspectives of demand and expectation bring about changes in conceptions of the self. The self-system of each individual is composed of the primary ego symbol (of the "I," "me") and the symbols of reference singly or collectively to those egos who are included in a common "we".[49] The self-system also includes symbols that identify the "non-self other," such as members of other nation states. It is clear on analysis that individuals have multiple identifications, some of which may cross cut and latently conflict with one another.[50] While some identifications are ascriptive, and reflect the traditional routines of a social context, more and more identifications appear to be matters of individual choice.

As indicated above, the identifications of many individuals express high ambivalence, exhibiting both expanding and contracting empathy with the inclusive community.[51] Sometimes human dignity demands are made on behalf of lesser groups, even tiny localities and small functional groups.

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[47] Since Plato and Aristotle attention has focussed explicitly upon the problem of maintaining public order by fostering an appropriate "character". The problem is that of creating self-systems in which the primary ego identifies with the body politic sufficiently to demand of the self and others that behavior conform to what is required to defend and extend the value position of the body politic. In industrialized societies failures of political socialization in the early years are alleged to encourage "alienation." Transition from traditional to industrial societies is alleged to depend on "empathetic" personalities and on "achievement" orientation. The pertinent context is sketched in G. Almond & S. Verba, *Civil Culture* (1963); F. Greenstein, *supra* note 38; E. Hagen, *The Theory of Social Change* (1962); D. Lerner, *supra* note 9; D. McClelland, *The Achieving Society* (1961).

[48] *See* H. Lasswell, *supra* note 40, at 20-38.

[49] An outstanding compendium containing various theories about the self system is *The Self in Social Interaction* (C. Gordon & K. Gergen eds. 1968). *See also* R. Merton, *supra* note 1; P. Rose, *They and We* (1965); S. Schachter, *The Psychology of Affiliation* (1959).

[50] *See* H. Guetzkow, *Multiple Loyalties* (1955); G. Simmel, *Conflict and the Web of Group-Affiliation* (K. Wolff & R. Bendix transl. 1955).

[51] *See* McDougal, Lasswell, & Chen, *supra* note 3.

In an epoch of exacerbated nationalism and accelerated nation-building, it must be recognized that dominant identities (loyalties) remain parochial, not universal. Sentiment on behalf of "spaceship earth" remains scattered and weak.[52] It is relatively unusual for people to evolve a system of identities that ranges from the importance of the individual human being to the whole of humankind.

Exaggerated images of the difference between the "self" and "other" help to account for the continuing vogue of large scale deprivation. How the deprivor perceives and identifies the deprivee (target) is crucial. The deprivee may be perceived as possessing common humanity, or as a "sub-human" "thing." When human beings are perceived as sub-human, it is easy to magnify perspectives of hatred and contempt, and to further denigrate the "humanity" of the target.[53]

In the early stages, at least, of a rapidly expanding technological society, local symbols of identity may weaken. However, this is usually for the benefit of intermediate entities (like nation-states) that are intermediate between the older territory and the inclusive world community.[54]

A persisting residue of the ancient past and of more recent conflict is the practice of imaging both the self and other in terms of characteristics that bear no rational relation to basic humanity and to potential contributions to the common interest. Random characteristics, having no relation to capability, are seized upon to justify deprivations, to exclude participation, and to deny fulfillment. Notable examples are phrased in reference to race, color, sex, religion, political or other opinion, language, nationality, age, and life style.[55]

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[52] *Cf.* B. Ward, *Spaceship Earth* (1966).

[53] Reflecting upon the Nazi atrocities against the Jews, Yosal Rogat suggests that
to be capable of ultimate cruelty men must first cut off sympathy for and
identification with their victims by perceiving them as beings fundamentally different
in kind from themselves; or, perhaps more accurately, not as beings at all, but as
things.
Y. Rogat, *The Eichmann Trial and Rule of Law* 9 (1961).
Similarly, Chief Albert Luthuli observes:
We Africans are depersonalised by the whites; our humanity and dignity is reduced in
their imaginations to a minimum. We are 'boys,' 'girls,' 'Kaffirs,' 'good natives' and
'bad natives.' But we are not, to them, really quite people, scarcely more than units
in a labour force and parts of a 'Native Problem.'
A. Luthuli, *Let My People Go* 155 (1962).
Cf. M. Buber, *I and Thou* (W. Kaufmann transl. 1970); O. Klineberg, *The Human Dimension in international Relations* 33-48 (1965); Berkowitz & Green, *The Stimulus Qualities of the Scapegoat,* 64 J.Abnormal & Social Psychology 293 (1962).

[54] *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).

[55] *See* note 4 *supra.*

Expectations

The degree to which peoples can attain their demanded values is deeply affected by the comprehensiveness and realism of their expectations about the conditions under which these values can be secured. It cannot be denied that peoples of today's world exhibit almost every conceivable degree of comprehensiveness and realism in their expectations about the circumstances that determine the realization of human dignity.

The expectations of the great bulk of humankind are still fragmented and uninformed. Few individuals have a cognitive map of the world social process of value shaping and sharing. Relatively few have access to the information (intelligence) essential to the attainment of such a map. Comparable to the absence of inclusive identification with the global community, there is a failure to achieve a shared vision of the conditions and potentialities of a comprehensive, concerted program for the realization of dignified, humane existence for humankind as a whole.

Despite a growing perception of interdependence, the signigicant facts of global interdependence are not widely understood. The intimate interdependences that condition the inner and external relations of particular value processes at all levels of geographic and functional interaction are rarely explored and articulated with the necessary comprehensiveness and realism.[56] Even when common values are objects of demand, the effort to clarify and implement common interest falters, with result that participants in the total interaction do not necessarily recognize their common interests, both inclusive and exclusive. In consequence assertions of special interest are often made that are destructive of the common interest.[57] Further, they exhibit varying degrees of willingness or unwillingness to engage in the task of clarifying, articulating, and implementing common interest. Too many individuals, living in too many parts of the world, continue to expect to gain more by perpetuating the practices of human indignity rather than by transforming the routines of the world community by promoting human dignity through cooperative activities.

In a divided world where pervasive expectations of violence generate chronic anxiety and personal insecurity, many individuals and groups still expect to be better off by strategies of violence rather than of peaceful cooperation. Many governing elites, preoccupied with the consolidation and expansion of power, are determined to exclude most of the population from participating effectively in important value processes. They therefore continue to impart a distorted world

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[56] For an attempt at articulation of interdependences, *see* McDougal, Lasswell, & Chen, *supra* note 3.

[57] For our concepts on interests, *see* M. McDougal, H. Lasswell, & I. Vlasic, *supra* note 1, at 145-67.

view to their people. They not infrequently mobilize the masses in ways that encourage docility despite persisting circumstances of deprivation and non-fulfillment. They cultivate international tension as a means of deflecting latent hostility against foreign targets.[58]

There are, more happily, increasing numbers of people who realistically perceive the interdependences of the world, and who expect to achieve human dignity values through peaceful cooperation. Closely connected with this perception of interdependence is the revolution of "rising expectations," and its frequent accompaniment of "rising frustrations." A view that distinguishes the contemporary world, from the outlook of traditional societies, is the assumption that within ever widening limits it is possible for human beings to control their destiny. This is attributable in part to the explosive expansion of scientific knowledge and in part to the realization that historic inequalities have no anchorage in an immutable decree of nature. In consequence the middle and lower strata of the global community, such as the undeveloped nations, are stirred by a spark of hope that is fanned by a sense of injustice at their traditional predicament. Despite elite efforts to hold the rank and file of the population in check, more people are coming to entertain the expectation that the endurance of deprivation and non-fulfillment of values is no rational answer to deprivation, and that things can be changed for the better.[59]

Contending systems of public order

All these competing demands, ambivalent identifications, and conflicting expectations of individuals and groups today interact and culminate in contending systems of public order. It is the great diversity in the demands, identifications, and expectations of peoples that underlies the contemporary contention of different systems of world public order, a contention which render the fulfillment of human dignity values increasingly difficult.

Rhetorically, the major contending systems are in many fundamental respects already unified. All systems proclaim the dignity of the human individual and the ideal of a worldwide public order in which this ideal is authoritatively pursued and effectively approximated. They differ, however, in

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58 *Cf.* Wicker, *Jobs and Crimes, N.Y. Times,* Apr. 4, 1975, at 33, col. 5 (city ed.).

For development of the theme that revolutionary elites, once in power, seek scapegoats to lower people's expectations because of limited resources available for fulfilling popular aspirations for equitable distribution, *see* H. Arendt, *On Revolution* (1963).

59 *See* J. Skolnick, *The Politics of Protest* (1969); Williams, *The Rise of Middle Class Activism: Fighting "City Hall,"* Saturday Rev., Mar. 8, 1975, at 12-16; *N.Y. Times,* Dec. 11, 1974, at 18, col. 4 (city ed.) ("New Militance Bringing Gains for Japan's 'Outcasts'"); *N.Y. Times,* Dec. 9, 1976, at 1, col. 5 (city ed.) (growing and intense demands for land by Mexican peons).

many details of the institutionalized patterns of practice by which they seek to achieve such goals both in specific areas and in the world as a whole.[60]

Universal words in praise of human dignity obviously do not imply universal deeds in harmony with the rhetoric. The crux of the matter is that operational practices in the shaping and sharing of values diverge widely from professed goals. Special interests continue to assert themselves in effective sabotage of proclaimed objectives. There remains chronic tension among competing common interests, interests whose accommodation is always necessary.[61] The realization of the overriding prescriptions of an authoritative legal system depends upon compatible structures in the decision process as a whole, and in the everyday mustering of support in coalitions that give effect to aspiration.

Situations

The fundamental dimensions of the social process set the parameters within which the shaping and sharing of values must proceed. These parameters are not immutable. Even the geographic constraints that affect life on this planet are in flux, and the temporal sequences and juxtapositions of interactive factors are of decisive significance. We have made previous references to the tangle of institutional practice, and the levels of crisis action that circumscribe results.

Geographic features

The geographical ramifications of value deprivations and non-fulfillment may be universal, regional, national, or sub-national in either origin or impact. Within particular communities, further, these impacts may be central or peripheral, omnipresent or occasional. The global scene has never before been the stage for interactive events of such frequency, intensity, and impact. More and more occurrences ignore state boundaries and generate repercussions beyond the limits of a single state.[62] The movement of people, goods and services, and

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[60] *See* McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order,* 53 Am. J. Int'l L.(1959); *reprinted* in *International Law in the Twentieth Century* 169-97 (L. Gross ed. 1969). *Cf.* K. Boulding, *The Meaning of the Twentieth Century* 156-79 (1965); W. Friedmann, *The Changing Structure of International Law* 325-40 (1964); R. Higgins, *Conflict of Interests: International Law in a Divided World* (1965); C. Jenks, *The Common Law of Mankind* ch. 2 (1958); Lissitzyn,. *International Law in a Divided World,* 542 Int'l Conciliation (1963); Pachter, *The Meaning of Peaceful Coexistence,* Problems of Communism, Jan.-Feb. 1961, at 1-8.

[61] *See* McDougal, *Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies,* 14 Va. J. Int'l L. 387 (1974); McDougal, Lasswell, & Chen, *The Aggregate Interest in Shared Respect and Human Rights: The Harmonization of Public Order and Civic Order,* 23 N.Y.L.S.L. Rev. 183 (1977). *See also* M. McDougal, H. Lasswell, & J. Miller, *supra* note 1, at 35-77.

[62] *See* United Nations, Department of Economic and Social Affairs, *1974 Report on the World Social Situations* 8-13, U.N. Doc. E/CN. 5/512/Rev. 1 (ST/ESA/24) (1975).

ideas involve several nation states. The cumulative impact of even the most local-seeming event may be transnational in scope. Parallel events may be observable on a world-wide scale. This means that in contrast to previous times when the shock wave generated by war, natural disaster or other significant events could be contained within a particular locality (or the adjacent area), contemporary events tend to reverberate with great rapidity throughout the globe. In actuality the transnational community is a complex matrix of situations whose spatial limits have begun to transcend "habitat earth" and to implicate other components of the solar system.[63] To take one another into account is the most enlightened form of interaction; and it is evident today that the inhabitants of the globe constitute a whole that take one another progressively into consideration.

We must not, however, exaggerate the degree to which awareness has been universally achieved. Many peoples remain outside the major forums of interaction; they are, for one reason or another, anchored in their localities without significant contact with the outside environment. Even now there are large blocks and pockets that permit little penetration by "outsiders." As a result the world at large is totally uninformed about the deprivations and non-fulfillments that persists in those areas.[64] We cannot therefore asume that

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[63] *See* M. McDougal, H. Lasswell, & I. Vlasic, *supra* note 1.

[64] For example, the tight control exercised by the Soviet elite over all forms of communication made it possible to conceal from most Russians, as well as the outside world, the true scope of the famine of 1932-33. Rumors could not be confirmed because of the restriction upon freedom of movement inside the Soviet Union. Foreign correspondents stationed in Moscow could not hold their post if they tried to send out dispatches at variance with Soviet policy. To smuggle such reports out of the country opened the correspondent to retaliation by the goverment (withdrawal of visa and other essential privileges). Persistent filing of dispatches with censorable material simply meant that the home paper received nothing from its correspondent, since the censors interfered with transmission. Hence the home newspaper or press association was confronted by the dilemma of encouraging foreign staffs to conform to the official line, or of ceasing to maintain a news contact.

For more recent examples in the Soviet Union, *see* H. Smith, *The Russians* 344-74 (1976). After providing a list of examples, Smith concludes:

> What is striking about such a list is that the Soviet people are being denied an accurate general picture of their own life and their own society, let alone a chance to compare it with other societies. Censorship prevents that.

Id. at 374.

Comparable problems exist in China and other relatively closed societies. As Marva Shearer writes: "Since 1969, more Americans have landed on the moon than have visited Tibet in the People's Republic of China." Shearer, *A Journey to the Roof of the World,* Parade, Dec. 12, 1976, at 6.

Similarly, after a massive earthquake (the initial shock measured at 8.2 on the Richter scale, "the world's worst earthquake in twelve years") struck Tangshan in northern China (a thriving coal and steel city inhabited by more than one million people) in July 1976, no casualty figures were released. It was only in January 1977, more than five months later, that "Peking confirmed for the first time that the quake had taken as many as 700,000

parochialism is overcome as a direct consequence of accelerated communication. It is, in fact, typical to find that symbols of local references have multiplied so rapidly at the focus of attention that wider aspects of the world are effectively excluded.

Over a longer interval it is to be assumed that the annihilation of distance by modern technology will accentuate the sense of relative deprivation in a particular area and magnify the importance of non-fulfillment everywhere. In the words of NcNamara:

> For centuries stagnating societies and deprived peoples remained content with their lot because they were unaware that life was really any better elsewhere. Their very remoteness saved them from odious comparisons. The technological revolution changed all that.Today, the transistor radio and the television tube in remote corners of the world dramatize the disparities in the quality of life. What was tolerable in the past provokes turbulence today.[65]

Temporal Features

Value deprivation and non-fulfillment have temporal dimensions. The duration of a particular practice may be temporary or permanent, and its manifestation may be sporadic or continuous. The more permanent and continuous the deprivation the greater is the destruction of human dignity values and the danger of destructive response.

Instantaneous global communication informs the world about itself. The world community is in effect becoming an open forum in constant session on matters of value deprivation and indulgence.[66] When deprivations occur it is no

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lives." *Hua's Crackdown,* Newsweek, Jan. 17, 1977, at 33. *See China's Killer Quake, id.,* Aug. 9, 1976, at 30-32.

[65] R. McNamara, *One Hundred Countries, Two Billion People* 90 (1973).

[66] In the words of Marshall McLuhan:
   Today, after more than a century of electric technology, we have extended our central nervous system itself in a global embrace, abolishing both space and time as far as our planet is concerned.
M. McLuhan, *Understanding Media: The Extensions of Man* 3 (1964).
   Similarly, Cater observes:
   The Gutenberg communicator—for the past 500 years patiently transmitting experience line by line, usually left to right, down the printed page—is no longer relevant. TV man has become conditioned to a total communication environment, to constant stimuli which he shares with everyone else in society.
Cater, *The Intellectual in Videoland,* Saturday Rev., May 31, 1975, at 12, 15.
   For a perceptive analysis of the instantaneity and totality of contemporary communication as revolutionalized by television, *see* T. Schwartz, *The Responsive Chord* (1973)

longer necessary—in a host of specific instances—to wait for days or weeks before hearing, for example, of imprisonment without a trial.[67]

It is important, however, to recognize that, while instantaneity in communication has grown, many interferences prevent realization of the full potential of instantaneity. Countering the growing demand to spread information quickly is the no less intense demand by many elites to stifle information. Trapped in a pervasive sense of insecurity, many power elites attempt to maintain their ascendency by keeping the levels of aspiration of their peoples low and to accomplish this by insulating the rank and file of the population from open exposure to the outside world. Messages that originate in the outside community are carefully scrutinized and tightly controlled in the hope of forestalling any "contamination" of established perspectives.[68]

More positively, it seems to be impracticable for apprehensive ruling classes to prevent "leakage" of information from the outside world into their domains. This occurs as an incident to any contact in the spheres of science, music, sport, medicine, and so on. Further, modern instruments enable compatible political persons and groups to maintain covert, if not overt, communication with one another and to coordinate strategies of change.[69]

Institutionalization

As the intensity of contact increases in space and time, institutional changes are initiated, diffused or restricted as means of protecting or extending the value

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For an interesting study of humankind's temporal environment from historical and comparative perspectives, *see The Future of Time: Man's Temporal Environment* (H. Yaker, H. Osmond, & F. Cheek eds. 1971).

[67] In reporting upon the closed nature of the Soviet society, Hedrick Smith wrote:
    It [the Soviet government] has stopped jamming selected Western radio stations but has kept sufficient controls at home to prevent the contamination of free ideas from stirring new creativity among the intelligentsia, many of whose members seem more interested in the latest Western fashions than in dissident ideas.
N.Y. Times, Dec. 23, 1974, at 1, col. 1, col. 4; at 16, col. 1 (city ed.).
    He continued:
    Censorship remains tight. Except for brief, chance encounters, foreigners are allowed to mingle with only a selected segment of society.
Id., at 16, col. 1.

[68] Recently, for instance, most Eastern European countries have intensified efforts to curb the "bourgeois ideological plague." *N.Y. Times,* Dec. 12, 1976, Sec. 1, at 6, col. 1 (city ed.).

[69] In the words of Claydon:
    Recent improvements in transportation and communications have enabled groups in different parts of the world to recognize their common inferior status, have facilitated their mobilization into organizations capable of pressing effectively for remedial action, and have secured the dissemination of potentially useful methods for rectifying such situations.
Claydon, *supra* note 7, at 29.

positions of participants. The cultural matrix of deprivations and non-fulfillment may or may not be institutionalized. Deprivations or non-fulfillment may be organized or unorganized, patterned or unpatterned, centralized or decentralized, secret or open. The pattern of deprivation and non-fulfillment may be occasional or systematic and routinized.[70] Sometimes deprivations and non-fulfillment are so deeply ingrained in cultural practices that members of the community are hardly conscious of their existence.[71] At other times, in contrast, deprivations and non-fulfillment may be made a deliberate and manifest instrument of oppression and of monopoly.[72]

In a technologically differentiated society, both public and private activities have become highly complex and institutionalized. Organizational complexity in government, in the corporate world, and in other sectors of life is subjecting people to intense organizational pressures. They respond by feeling like cogs in a machine, or simple accessories to the technology and organization. Their autonomy, integrity, and spontaneity as human beings are in jeopardy. It is quite evident that big organizations follow a logic of their own. Stressing the purposes and efficiency of the organization as paramount, they tend to adopt a purely instrumental view of the human beings at their disposal. In extreme cases, they have practically taken possession of the lives of their members, directing their basic political orientation, controlling the information that reaches their focus of attention, and decisively influencing their opportunities for work and livelihood, education, health and recreation, recognition, friendship, family activities, and religious observances.[73]

The psychological impacts of large scale organization are compounded by

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[70] Both apartheid and caste epitomize a pattern of systematic, routinized deprivation. *See The Protection of Respect, supra* note 4, at 980-84, 994-1004.

[71] For instance, it may seem paradoxical that, despite the liberation movement, many of the sex-based deprivations continue to be accepted, consciously or unconsciously, as an inescapable fact of life by vast segments of the female population around the world. *See Human Rights for Women, supra* note 4, at 498-507.

[72] Amnesty International's country-by-country survey indicates that torture is increasingly becoming a deliberate instrument of policy in many communities:

> Policemen, soldiers, doctors, scientists, judges, civil servants, politicians are involved in torture whether in direct beating, examining victims, inventing new devices and techniques, sentencing prisoners on extorted false confessions, officially denying the existence of torture, or using torture as a means of maintaining their power. And torture is not simply an indigenous activity, it is international; foreign experts are sent from one country to another, schools of torture explain and demonstrate methods, and modern torture equipment used in torture is exported from one country to another.

Amnesty International, *Report on Torture* 21 (1975) [hereinafter cited as *Report on Torture*].

[73] *See* R. Presthus, *The Organizational Society* (1962); *The Dilemma of Organizational Society* (H. Ruitenbeek ed. 1963); W. Whyte, *The Organization Man* (1958).

the tensions that have been generated by changes in the relations between the public and private sectors of society. In a divided and militarized world where expectations of violence persist, there has been a persistent trend toward greater governmentalization, centralization, concentration, bureaucratization, and regimentation.[74] Governments multiply functions in response to intensifying demands upon public authorities. The tendency accelerates even in societies which have traditionally been resistant to "encroachment" by the state. Within nation states the centralized decisions are taken and implemented at the top level of highly concentrated authority and control. This does not, however, imply that a direct trend exists to centralize decisions in a world-inclusive political organization. Since effective power in the global arena is monopolized in the hands of nation-states, vested and sentimental interests oppose further centralization, which would involve supra-national entities. Within any nation state the concentration of authority and control in the hands of a few officials or structures at a given level varies from one entity to another. The most concentrated structure in a political arena is a hierarchy in which effective decisions are made by one person and a limited number of advisors.

When there is a relatively low circulation of officials through a hierarchy, we speak of bureaucracy. Governmentalizing, centralizing, and concentrating tendencies foster hierarchy; and the stabilization of large hierarchies is almost certain to spell bureaucracy.[75] Bureaucratization is typically followed by regimentation, meaning that the state seeks to restrict all areas of private and individual as well as organized choice by using measures that depend on varying degrees of coerciveness. It is often alleged that a new "organization man" has emerged, a dedicated person who submerges his individuality to fit the requirements of large scale action programs.[76] The trend toward governmental-

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[74] See H. Lasswell, *National Security and Individual Freedom* (1950); Lasswell, *The Garrison-State Hypothesis Today,* in *Changing Patterns of Military Politics* 51-70 (S. Huntington ed. 1962).

[75] See generally P. Blau, *The Dynamics of Bureaucracy* (2d ed. 1963); P. Blau & M. Meyer, *Bureaucracy in Modern Society* (2d ed. 1971); M. Crozier, *The Bureaucratic Phenomenon* (1964); *A Sociological Reader on Complex Organizations* (A. Etzioni ed. 1969); H. Jacoby, *The Bureaucratization of the World* (E. Kanes transl. 1976); *Bureaucracy and Political Development* (J. LaPalombara ed. 2d ed. 1967); R. Merton, *supra* note 1, at 249-60; F. Morstein-Marx, *The Administrative State: An Introduction to Bureaucracy* (1957); D. Silverman, *The Theory of Organizations* (1971); Weber, *Bureaucracy,* in *From Max Weber: Essays in Sociology* 214 (H. Gerth & C. Mills eds. 1958); *Bureaucracy Explosion,* U.S. News & World Rep., Aug. 16, 1976, at 22-26.

[76] See W. Whyte, *supra* note 73.

In his analysis of the social structure of bureaucracy, Robert Merton indicates that "the bureaucratic social structure exerts a constant pressure upon the individual to be methodical, prudent, disciplined." As a consequence, "discipline, readily interpreted as conformance with regulations, whatever the situation, is seen not as a measure designed for specific purposes but becomes an immediate value in the life-organization of the

ization—which is sustained by the associated syndromes of centralization, concentration, bureaucratization, and regimentation—has upset the traditional balance between the public and the private sector, and the change is largely at the expense of civic order and personal autonomy.[77] In the extreme case, such as a totalitarian regime, society is practically swallowed up by government.[78]

Confronted with the frontal assaults of large scale organization and especially of expanding governmentalization (with its associated syndromes), various counter-movements are set in motion. Popular demands are for less governmentalization, less bureaucratization, less regimentation, and for more decentralization and deconcentration, more spontaneity, and more personal autonomy. They demand more widespread and effective participation, through various strategies, in power and other value processes intended to make government responsive and responsible. Where private organizations are fortified by traditions of social diversity, the drift toward "big government" is rather successfully opposed by vigorous private organizations. Wherever the established political practice favors decentralization within government—as in a federal system—any fundamental change in the structural balance is achieved with difficulty. In consequence, the tension between the public and the private sector persists; and the balance between the two is fluid, dynamic, and shifting.[79]

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bureaucrat . . . develop[ing] into rigidities and an inability to adjust readily." R. Merton, *Social Theory and Social Structure* 198, 199 (rev. ed. 1957).

The changing significance of bureaucratization is articulated by Daniel Bell in these words:

> In the broadest sense, the most besetting dilemma confronting all modern society is bureaucratization, or the "rule of rules." Historically, bureaucratization was in part an advance of freedom. Against the arbitrary and capricious power, say, of a foreman, the adoption of impersonal rules was a guarantee of rights. But when an entire world becomes impersonal, and bureaucratic organizations are run by mechanical rules (and often for the benefit and convenience of the bureaucratic staff), then inevitably the principle has swung too far.

D. Bell, *supra* note 26, at 119.

[77] For the threat to personal autonomy posed by growing bureaucratization resulting from the expanding role of government in various value-institutional sectors, *see* R. Nisbet, *Twilight of Authority* (1975). *See also* McDougal, Lasswell, & Chen, *supra* note 61.

[78] As Bracher puts it:

> Another important feature also distinguishing totalitarian systems from older forms of dictatorship, is the degree to which individual and private life is controlled and subjugated to a "new morality" of collective behavior. The regime demands quite openly the complete politicizing of all realms of life, and its success in performing this part of totalitarian control reveals the degree to which the regime is able to realize its claim to fuse state and society, party and people, individual and collective into the ideal of total unity.

Bracher, *Totalitarianism,* 4 *Dictionary of the History of Ideas* 406, 410 (P. Wiener ed. 1974).

[79] Within the Soviet world, on the other hand, while the elite structure has remained tenaciously in favor of the formal principle of civilian supremacy, the Party continues to be the major ladder up the authority and control pyramid. Within the Party, of course, it is the

Crisis

The direction and rapidity of institutional change are closely linked to the spread and intensity of the crises that accompany the evolution of an interdependent world. Crises are situations in which impending large scale value deprivations are expected, and, in which acute stress toward action is generated. Crises exhibit many differing degrees in the intensity of expectation about the threat of damage. In security crises all values are critically at stake. Obviously the growing militarization of the world arena has pervasive and far-reaching impacts upon the fulfillment and non-fulfillment of every value. It is commonplace to acknowledge that humankind is today living in the shadow of nuclear war and the possible annihilation of humanity and civilization.[80] Reflective minds recognize that the commonplaceness of this perception should in no way dull the sense of the reality of danger.[81] A partial consequence of the delicate balance of nuclear terror is that limited violence by private armies and private groups has increased tremendously, and the destructive potentiality of chemical and biological weapons is not neglected.[82]

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specialist on the political-police function who has a distintic advantage, because central power elements look to the police to protect them from the challenges that arise in a totalitarian system. Established elites in such a system typically perceive themselves as threatened by demands for decentralization, deconcentration, democratization, pluralization and deregimentation. *See* M. Fainsod, *Smolensk under Soviet Rule* (1958); N. Leites & E. Bernaut, *Ritual of Liquidation* (1954); B. Meissner & J. Reshefar, *The Communist Party of the Soviet Union* (1956); *The Soviet Secret Police* (S. Wolin & R. Slusser eds. 1957).

[80] In the words of a Nobel laureate: "We live-while that is permitted us-in a balance of terror. The United States and the Soviet Union together have already stockpiled nuclear weapons with the explosive force of ten tons of TNT for every man, woman and child on the earth." Wald, *'It Is Too Late for Declarations, for Popular Appeals'*, N. Y. Times, Aug. 17, 1974, at 23, col. 1 (city ed.).
    Cf. *The Absolute Weapon: Atomic Power and World Order* (B. Brodie ed. 1946); *The Effects of Nuclear Weapons* (S. Glasstone ed. 1962); M. Halperin, *Limited War in the Nuclear Age* (1963); H. Kahn, *On Thermonuclear War* (1960); H. Kissinger, *Nuclear Weapons and Foreign Policy* (1957); H. Kissinger, *The Necessity for Choice: Prospects of American Foreign Policy* (1962); T. Schelling & M. Halperin, *Strategy and Arms Control* (1961); *Arms, Defense Policy, and Arms Control*, Daedalus, Summer 1975 (including articles by Graham T. Allison, Les Aspin, Harvey Brooks, Barry Carter, Abram Chayes, Paul Doty, Richard A. Falk, F.A. Long, Frederic A. Morris, G.W. Rathjens, Thomas C. Schelling, Marshall D. Shulman, John Steinbruner, R. James Woolsey); Ikle, *Can Nuclear Deterrence Last Out the Century?*, 51 Foreign Affairs 272 (1973); Note, *The SALT Process and Its Use in Regulating Mobile ICBM's*, 84 Yale L.J. 1078 (1975).

[81] For the continuing community concern for disarmament, *see* United Nations, Department of Political and Security Council Affairs, *The United Nations and Disarmament, 1945-1970* (1970); United Nations, Department of Political and Security Council Affairs, *The United Nations and Disarmament, 1970-1975* (1976); United Nations, Office of Public Information, *Disarmament: Progress Towards Peace* (1974); United Nations, *Comprehensive Study of the Question of Nuclear-Weapon-Free Zones in All Its Aspects: Special Report of the Conference of the Committee on Disarmament*, U.N. Doc. A/10027/Add. 1 (1976).

[82] *See* J. Cookson & J. Nottingham, *A Survey of Chemical and Biological Warfare* (1969); *CBW—Chemical and Biological Warfare* (S. Rose & D. Pavett eds. 1969); United

The more important crises in the contemporary world can be analytically related to every important value. Such an itemization would include:

Power—war, internal violence, breakdown in internal order;

Wealth—depression, speculative booms, rampant inflation, acute and wide-spread poverty, acute shortage of food and other goods;

Well-being—epidemics, famines, and other natural disasters, and stress created by overcrowding;

Enlightenment—the communications revolution, exposing many people to the stress of new maps of man, environment, and nature, large-scale breakdown in communication, systematic manipulation of information;

Skill—the rapid obsolescence of skill because of the technical revolution, excessive automation and sudden displacement, critical shortages in educational facilities and manpower, the brain drain;

Affection—the massive dislocations of the family caused by refugee movements and by mass migration from rural to urban areas, vast increase in unwanted children precipitated by the disintegration of the family;

Respect—confrontations between castes, classes, and ethnic groups, collective defamation;

Rectitude—conflicts between the church and the state, conflicts between different religions.

In the contemporary world crises in different value sectors (such as expansion and contraction in wealth processes) become more severe and rapid. Millions of human beings are exposed to contrasting life styles, conjoined with the possibility of obtaining at least short range advantage by experimenting with variations from the culture norms in which they were socialized. Sub-cultures of mutual approbation spring into ephemeral and excited existence, only to recluster around a new and equally transient model. Thousands of individuals shift from one religious belief to another or from one secular ideology to another. Millions have been soldiers, gangsters, refugees, prisoners, vagabonds, and drifters. Millions have been unemployed, forced out of jobs by technological change, converted to new and uncomprehended tasks, uprooted from homes and shelters, jammed into crowded vehicles and moved in and out

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Nations, *Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use* (1969); United Nations, Department of Political and Security Council Affairs, *Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use* (Report of the Secretary-General), U.N. Doc. A/8803/Rev. 1 (1973); Larson, *Biological Warfare: Model 1967,* 46 Military Rev. 31 (1966); Meselson, *Chemical and Biological Weapons,* Scientific American, May 1970, at 15-25.

of confinement. The weapons of the nuclear age contribute to the death threat that is permanently symbolized in the mushroom cloud over Hiroshima.[83]

Critical to crises are the perceptions of the people involved. People must be aware of intense demands and of the necessity to act before situations become full-blown crises. The elites and the rank and file may diverge radically in their perception of the same situation. Elite members are disposed to use crisis terms prematurely in a developing situation as they attempt to secure popular support and maintain their ascendancy. Real or imagined crises impel ruling elites to take disproportionately severe measures. Elite overreactions take various forms: initially justifiable measures of deprivations may be retained long after the alleged crisis is over; excessive measures cause more destruction than conservation of values; arbitrary measures may bear no rational relation whatever to the actual dangers involved in the alleged crisis.[84] Preoccupied with the task of maintaining their ascendancy in a highly insecure world, elites may go beyond the exploitation of crises to the fabrication of crises for exploitation. It is not uncommon for harsh measures of deprivation and non-fulfillment to be justified in the name of national security. It is notorious that many dictatorial regimes have arbitrarily declared and maintained martial law (a "state of siege" or a "state of emergency") as an excuse to suppress and liquidate dissenters and to consolidate the regime.[85]

In a world of instantaneous communication, crises are generated by the mass media themselves through the use of sensationalism or over-reporting.[86] While genuine crises may positively effect the mobilization of public support and

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[83] *See* R. Lifton, *Death in Life: Survivors of Hiroshima* (1968). *See also* Lifton, *The Hiroshima Connection,* The Atlantic, Nov. 1975, at 83-88.

[84] For instance, in India, what began in June 1975 as "temporary" authoritarian measures adopted in the name of national security were, after 16 months, becoming "permanent." These measures include tight press censorship, concentration of power, suppression of dissents, and suspension of a parliamentary election. *N.Y. Times,* Nov. 8, 1976, at 1, col. 1 (city ed.).

For further background, *see N.Y. Times,* July 4, 1975, at 3, col. 1 (city ed.), *id.,* Sept. 8, 1975, at 1, col. 1; *id., Dec.* 26, 1975, at 1, col 1; *id.,* Sept. 15, 1976, at 18, col. 1; *id.,* Nov. 3, 1976, at 45, col. 6. *See also* Nanda, *The Constitutional Framework and the Current Political Crisis in India* 2 Hastings Const. L. Q. 859 (1975); *Indira's Next Decade,* Newsweek, Feb. 16, 1976, at 37-41.

[85] *See* G. Kennedy, *The Military in the Third World* (1974); *Military Profession and Military Regimes* (J. Van Doorn ed. 1969); *Chile: The System of Military Justice,* 15 Rev. Int'l Comm'n Jurists 1 (1975); George, *For Marcos, the Lesser Danger,* Far Eastern Economic Rev., Jan. 8, 1973, at 23-25; *One More Infant Democracy Dies in the Cradle,* The Economist, Oct. 9, 1976, at 55; De Onis, *Latin America, the Growing Graveyard for Democracies, N.Y. Times,* Mar. 28, 1976, Sec. 4, at 1, col. 4.

[86] Boorstin has characterized this in terms of "a flood of pseudo-events." *See* D. Boorstin, *The Image, or What Happened to the American Dream* 7-44 (1962). *Cf.* Tannenbaum & Lynch, *Sensationalism: the Concept and Its Measurement,* 37 Journalism Q. 381 (1960).

collective action,[87] the perpetual pseudo-crises fabricated by hyper-active mass media may become so routinized as to interfere with the future capacity of the media to arouse attention. Audiences may be so overwhelmed by sensational trivialization as to become numbed, apathetic, impotent, and immobilized; they may lose a legitimate sense of outrage, withdrawing effective identity with the larger self, and remain unresponsive in times of genuine crisis.[88]

Base Values

Potentially, all values—respect, power, enlightenment, well-being, wealth, skill, affection, and rectitude—may be bases of power affecting deprivations and fulfillments. In different contexts different participants in world social process may employ any one or all of these values in imposing deprivation or seeking fulfillment of human rights. The degree to which any given value is important in a particular instance is a function of context.

Power is a principal base for nation-state officials, who typically utilize both authority and effective control. The effective control at the disposal of these officials is a combination of all values. Differences in the internal constitutive processes of states bear directly upon the configuration of authority and effective control. The degree to which authority and effective control are concentrated or non-concentrated (totalitarian or democratic) affects the patterns of deprivation and fulfillment. In recent times there has been a tremendous expansion of totalitarian and authoritarian regimes. By their nature totalitarianism and authoritarianism involve the employment of authority in deprivation of human rights. Totalitarian regimes are notorious for arrogating all choices into the sphere of public order, and for exercising practically unlimited authority over the value deprivation of individuals.[89] It must be recognized that in polities that proclaim themselves to be democracies

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87 The positive or negative effect of a crisis to an individual often depends upon whether he experiences it singly or collectively. Such communal disasters as a flood or an earthquake can have various beneficial effects upon individuals involved. For instance, physical illnesses may suddenly disappear and altruism may prevail upon selfishness.

88 Given the complexities of contemporary life and the media overload, people, including the educated, may become so bewildered as to be indifferent and lose the capacity for outrage and commitment in the face of massive atrocities and deprivations. This state of affairs is in turn apt for exploitation by ruling elites. Similarly, there is danger, amidst abiding parochialism, of contributing to the strength of a local development by magnifying its significance, and hence enhancing its appeal to other local elements who share nothing more tangible than a generalized resentment against outsiders, and the assumption that what-ever worries the foreigners deserves support.

Cf. Baker, *Stomach-Bulge Defense, N.Y. Times,* Apr. 5, 1975, at 29, col. 1 (city ed.); Baker, *After the Flood, id.,* Apr. 19, 1975, at 31, col. 1.

For assessment of the implications of "communication overload," *see* D. Bell, *supra* note 26, at 316-17; A. Toffler, *supra* note 30, at 350-55.

89 On totalitarianism, *see generally* H. Arendt, *The Origins of Totalitarianism* (1958); K. Bracher, *The German Dictatorship* (1970); H. Buchheim, *Totalitarian Rule: Its Nature*

individuals may at times be victimized by the misuse and abuse of authority. Governmental officials may act without authority, under pretended authority, or under authority incompatible with human dignity; they may exercise authority arbitrarily to impose deprivations and deny fulfillment.[90] In extreme cases, law may be perverted into an instrument of oppression.

Participants in the world social process who are not state officials may, of course, draw upon authoritative decisions as power assets in support of their activities. Primarily, however, non-governmental participants depend on values other than power (notably wealth, knowledge, and skill). The degree to which individuals are vulnerable to deprivation and are capable of achieving the fulfillment of their human rights depends largely upon the kind of public order system—totalitarian, authoritarian, or democratic—in which they live and the base values at their disposal. The degree to which authority is available for the defense of human rights, especially in challenge of deprivations, varies substantially from community to community.[91]

The distribution of base values within the world social process obviously conditions the deprivation and fulfillment of values. The influence extends to the distribution *among* and *within* states. As between states, the distribution is glaringly discrepant. Within a particular state, discrepancy extends not only to power and wealth but also to all other values which comprise effective power. Many countries have an abundance of resources and potential values, while others appear almost hopelessly deprived. Thus important technology is still monopolized by the developed countries; nuclear power and other technology are still closely held. New scientific discoveries, technological developments, and access to the outer space are bases for only a few communities. There has been increasing recognition of the importance of knowlegde and skill as

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and Characteristics (R. Hein transl. 1968); B. Chapman, *Police State* (1970); C. Friedrich & Z. Brzezinski, *Totalitarian Dictatorship and Autocracy* (1961); C. Friedrich, M. Curtis, & B. Barber, *Totalitarianism in Perspective: Three Views* (1969); E. Fromm, *Escape from Freedom (1941-1965)*; F. Hayek, *The Road to Serfdom* (1944); S. Neumann, *Permanent Revolution: Totalitarianism in the Age of International Civil War* (2d ed. 1965); W. Reich, *The Mass Psychology of Facism* (1946); L. Schapiro, *Totalitarianism* (1972); J. Talmon, *The Origins of Totalitarian Democracy* (1960); E. Tannenbaum, *The Facist Experience: Italian Society and Culture 1922-1945* (1972); *Totalitarianism* (C. Friedrich ed. 1964); *World Revolutionary Elites: Studies in Coercive Ideological Movements* (H. Lasswell & D. Lerner eds. 1966).

[90] For abuse of power associated with the Watergate syndrome, *see Watergate: Special Prosecution Force Report* (October, 1975) (containing a detailed bibliography of Watergate source materials); *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 While 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). *See also* note 11 *supra.*

[91] *Cf. e.g.,* V. Chalidze, *To Defend These Rights: Human Rights and the Soviet Union* (G. Daniels transl. 1974); T. Taylor, *et al., Courts of Terror: Soviet Criminal Justice and Jewish Emigration* (1976).

bases of power; but these values are not widely and evenly spread about the globe. The cumulative result is the deep disparities between have and have-not countries (as summarized in North-South division).[92] Consequently, such countries differ in priority and direction in their respective programs for facilitating various human rights.[93]

The uneven distribution of values and resources as between territorial communities is carried forward within even the best of states. Within many national communities disparities in the distribution of wealth and other values are a commonplace phenomenon. The disparity is especially pronounced in the relationship between the power elite and the rank and file. While ruling elites tend to achieve overwhelming power, the masses of people remain powerless. The masses, in whose name the elite rules, become more often than not mere objects of deprivation rather than subjects of fulfillment, whatever the official rhetoric may allege.

In the light of the structure of effective power in the contemporary world, it is certain that no individual can control sufficient base values to be immune from deprivations emanating from various sources and to achieve the utmost fulfillment of values. Every individual depends upon the groups (nation-state, political party, union, trade association, educational institution, church, family, and so on) of which he is a member for his value position.

In examining the entire spectrum of base values available for value

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[92] In the words of Lester Brown:

In effect, our world today is in reality two worlds, one rich, one poor; one literate, one largely illiterate; one industrial and urban, one agrarian and rural; one overfed and overweight, one hungry and malnourished; one affluent and consumption-oriented, one poverty-stricken and survival-oriented. North of this line, life expectancy at birth closely approaches the Biblical threescore and ten; south of it, many do not survive infancy. In the North, economic opportunities are plentiful and social mobility is high. In the South, economic opportunities are scarce and societies are rigidly stratified.

L. Brown, *World Without Borders* 41 (1973).

See generally C. Hensman, *Rich Against Poor: The Reality of Aid* (1971); J. Pincus, *Trade, Aid and Development: the Rich and Poor Nations* (1967); *The Gap Between Rich and Poor Nations* (G. Ranis ed. 1972); P. Uri, *Development Without Dependence* (1976); B. Ward, *The Rich Nations and the Poor Nations* (1962); *The Widening Gap: Development in the 1970's* (B. Ward, J. Runnalls, & L. D'anjou eds. 1971); Barraclough, *The Haves and the Have Nots,* N.Y. Rev. Books, May 13, 1976, at 31-41; Hansen, *The Political Economy of North-South Relations: How Much Change?,* 29 Int'l Org. 921 (1975); Reisman, *The Third World's Fading Dream,* The Nation, June 12, 1976, at 716-20.

[93] For some of the pertinent issues raised, see the statements and comments made at the panel on *Economic Development and Human Rights: Brazil, Chile, and Cuba,* [1973] Proceedings, Am. Soc'y Int'l L. 198. *See also* M. Ganji, *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress,* U.N. Doc. E/CN.4/1108/Rev. 1 (E/CN.4/1131/Rev. 1) (1975); *Human Rights and the 'Single Standard'* (editorial), *N.Y. Times,* Jan. 11, 1977, at 32, col. 1 (city ed.).

deprivations and indulgences, special attention must be given to the unique position of science-based technology. The impact of technology on the fulfillment and deprivations of values is widely felt and appreciated. Great contributions have of course been made to human rights by the technology which has eliminated so much physical labor (depending upon political power and social structure) and released tremendous manpower and leisure for creative and rich pursuits of values. On the other hand, increasing threats to human rights have obviously come from the spectacular developments of modern science and technology. These threats may be exemplified in multiple detail, including such items as: the sophisticated techniques of physical, psychological, and data surveillance that penetrate the traditional zones of privacy and jeopardize the very core of personal autonomy;[94] the reign of terror made possible by modern weapons; the horrible techniques of torture that dehumanize, intimidate and oppress;[95] the routinization of work caused by widespread automation;[96] the absolescence of skill caused by the technical revolution; and the ambivalent potentialities of the burgeoning science and technology of genetic engineering.[97]

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[94] *See* 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 and Privacy* (1972). For further references, *see* McDougal, Lasswell, & Chen, *supra* note 61.

   In his classic study, Edward T. Hall observes that a person exists, in effect, within an invisible bubble of "personal space," which varies in size from individual to individual, depending upon his personality, his culture, and other situational factors in a particular context. *See* E. Hall, *The Hidden Dimension* (1966).

[95] *See Report on Torture, supra* note 72, at 39-69. *See also 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); *Hearings 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; Colligan, *New Science of Torture,* Science Digest, July 1976, at 44-49; *Human Rights in the World: Torture Continues,* 10 Rev. Int'l Comm'n Jurists 10 (1973); Shelton, *The Geography of Disgrace: A World Survey of Political Prisoners,* Saturday Rev./World, June 15, 1974, at 14 *et seq.;* Styron, *Torture in Chile,* The New Republic. March 20, 1976, at 15-17; Styron, *Uruguay: The Oriental Republic,* The Nation, Aug. 14, 1976, at 107-11; *Torture as Policy: The Network of Evil,* Time, Aug. 16, 1976, at 31-34.

[96] *See Automation and Technological Change* (J. Dunlop ed. 1962); International Labor Office, *Automation and Non-Manual Workers* (1967); A. Jaffe & J. Froomkin, *Technology and Jobs: Automation in Perspective* (1968); C. Silberman & others, *The Myths of Automation* (1966); Hoffer, *Automation Is Here to Liberate Us,* in *Techology and Social Change* 64-74 (W. Moore ed. 1972).

[97] *Cf.* J. Fletcher, *The Ethics of Genetic Control: Ending Reproductive Roulette* (1974); P. Ramsey, *The Ethics of Fetal Research* (1975); P. Ramsey, *Fabricated Man* (1971); *Genetics and the Future of Man* (J. Roslansky ed. 1966); *Human Rights and Scientific and Technological Development,* U.N. Doc. E/CN.4/1173 (1975) (Report of the World Health Organization to UN Commission on Human Rights).

As modern science and technology move toward universality, certain uniformities are imposed upon world attention, and attitudes are molded in similar ways. Long a monopoly of Western Europe, modern science and technology are spreading throughout the globe, although at present inhibited by factors that find expression through the contending systems of public order. Certain consequences follow inexorably from the appearance in a community of the "machine," or modern techno-scientific complex. The machine, with all the problems it brings, confers a sense of mastery. Even those who at first are mastered do not fail to observe and presently to admire the impersonal strength and precision of mechanical, electrical, and other forms of energy applied to production. On the basis of direct experience, certain inferences sprout into belief and harden into faith, such as the speculation that if the brain of man can grasp and shape the hidden dynamics of Nature, man is capable of controlling himself and his gadgets for the common good. This inference comes not from propaganda or pedagogy alone, or even principally; rather it rises from indelible impressions left by association with man's handiwork. From glimpses of the possible develop demands that authority be induced or coerced to make whatever provision is necessary to share the fruits of knowledge with the "common man." However supine the traditional outlook of any culture, contact with the machine touches off a dynamic approach to life.[98]

Strategies

The strategies employed by both deprivors and deprivees to manage base values in the pursuit of their objectives in the shaping and sharing of values embrace the whole range of possible instruments of policy. All the different types of strategy—commonly characterized as diplomatic, ideological, economic,

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[98] For a provocative, penetrating analysis of the contemporary technical civilization that borders on "technological determinism", *see* J. Ellul, *The Technological Society* (J. Wilkinson transl. 1964). In Ellul's words:

> Technique has penetrated the deepest recesses of the human being. The machine tends not only to create a new human environment, but also to modify man's very essence. The milieu in which he lives is no longer his. He must adapt himself as though the world were new, to a universe for which he was not created.

Id. at 325.

For differing views, *see* V. Ferkiss, *Technological Man: The Myth and the Reality* (1969); H. Muller, *The Children of Frankenstein: A Primer on Modern Technology and Human Values* (1970); L. Mumford, *The Pentagon of Power* (1970).

See also L. Berkner, *The Scientific Age: The Impact of Science on Society* (1964); G. Foster, *Traditional Cultures and the Impact of Technological Change* (1962); *Technology and Social Change* (W. Moore ed. 1972); L. Mumford, *The Myth of the Machine: Technics and Human Development* (1967); L. Mumford, *Technics and Civilization* (1963); C. Haskins, *The Scientific Revolution and World Politics* (1964); D. Loth & M. Ernst, *The Taming of Technology* (1972); *Modern Technology and Civilization* (C. Walker ed. 1962); Lasswell, *The Political Science of Science: An Inquiry into the Possible Reconciliation of Mastery and Freedom*, 50 Am. Pol. Sc. Rev. 961 (1956).

and military—are employed, singly and in varying combinations, with many
differing degrees of coerciveness and persuasiveness.[99] Each particular type of
strategy differs in terms of the degree to which it relies upon symbols or material
resources. Diplomacy in the broadest sense depends primarily upon symbols in
the form of offers, counter-offers and agreements (deals) among elite figures.
Ideological strategy also uses symbols as the principal means of action, its
distinctiveness being communications directed to large audiences.[100] Economic
instruments involve goods and services; military strategy employs means of
violence and destruction. While diplomacy and ideology are especially concerned
with perspectives, economic and military instruments are based upon capabili-
ties. No instrument, however, is restricted to its most distinctive modality.
Similarly, any organization primarily specialized to one instrument finds it
expedient to make use of all. Every strategy can be employed, singly or in
combination with other strategies, for productive, constructive purposes as well
as for deprivational, destructive purposes.

Agreements (deals) of various types are made by group participants as well
as individuals with varying degrees of explicitness and reciprocity. Deals are
frequently made by governmental officials, business tycoons, gang leaders, and
so on. As interaction accelerates about the globe, there would appear a new
intensity in the use of agreements of all kinds to promote the shaping and
sharing of values. Given the ubiquity of the effective power processes operating
at all levels of communities and organizations, it is no surprise that practices of
deprivations and non-fulfillment are frequently effected through secret, as well
as overt, deals of one kind or another. Among the elite who engage in such
practice there is of course a shared expectation of silence and reciprocity—a
consensus about not asking too many questions.

Improved techniques in communication enhance potential not only for a
richer and wider fulfillment of values but also for deprivations. Such

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[99] Some violence may be done to ordinary usage when one speaks of the diplomatic,
ideological, economic and military strategies of some of the participants whom we have
identified in the world arena, or when we refer to the internal rather than to external arenas.
The most obvious discrepancies are in reference to the strategies of an individual. We do not
usually think of a person as engaged in diplomacy when he is negotiating a deal on his own
behalf. Nor do we speak of the use of propaganda by an individual to advance a private
project as an example of "ideological" strategy. It is more in tune with everyday discourse
to assess someone's private "economic" policies. Moreover, the term "military" seems to
overstate the degree of control that the individual exercises over destructive instruments
which he employs for private purposes. We accept these inconveniences to underscore that
strategies operate with the same values as bases whether the objectives sought are identified
with the "primary ego" or with the larger self shared by a collectivity.

[100] *Cf.* L. Fraser, *Propaganda* (1957); B. Murty, *Propaganda and World Public Order:
The Legal Regulation of the Ideological Instrument of Coercion* (1968); J. Whitton & A.
Larson, *Propaganda: Towards Disarmament in the War of Words* (1963); Lasswell,
Propaganda, 12 Encyc. Soc. Sc. 521 (1934).

deprivational potentiality has been manifested in various ways. In many communities in which the media of mass communication are more or less monopolized by power elites, the gathering, processing, and dissemination of information are made a deliberate and vital instrument of thought conditioning and coerced conformity; generally, censorship prevails, information may be fabricated, distorted, restricted, and blocked out, and non-conforming opinions are suppressed.[101] In parallel, in some communities in which the media of mass communication are concentrated in the hands of wealth elites, the gathering, processing and dissemination of information tend to be dominated by profit considerations and colored by inordinate commercialism, thereby debasing the quality of enlightenment.[102] Under contemporary conditions, the ideological instrument is often closely associated with instruments of physical destruction. It has, further, accentuated the sense of relative deprivation and non-fulfillment.[103] To minimize the deepening sense of relative deprivation and non-fulfillment, power elites in relatively closed societies take measures to prevent and interfere with the flow of information from dangerous or "undesirable" sources (both internal and external) and to restrict the free movement of people both beyond and within national boundaries.[104]

It may be noted that, despite the difficulty in gaining effective access to the mass media, deprivees have increasingly resorted to the ideological instrument (the mass media of communication) to dramatize their grievances and aspirations and to gain wider attention (locally, nationally, regionally, or globally).[105] The politically persecuted, when denied internal channels of attention, seek to gain attention and support through the available media abroad.[106]

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[101] See C. Friedrich & Z. Brzezinski, supra note 89, at 107-17; A. Sakharov, Progress, Coexistence, and Intellectual Freedom 62-65 (The New York Times transl. 1968); H. Smith, supra note 64, at 344-74; Press Freedom 1970-1975, 16 Rev. Int'l Comm'n Jurists 45 (1976); Reston, The Condition of the Press in the World Today (1), 7 Human Rights J. 593 (1974).

[102] See E. Epstein, News from Nowhere: Television and the News 78-130 (1973); 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); Editors of the Atlantic Monthly, The American Media Baronies, in Sociology in the World Today 89-96 (J. Kinch ed. 1971).

[103] For development of the theme of relative deprivation, see T. Gurr, Why Men Rebel (1971).

[104] See V. Chalidze, supra note 91, at 92-114; W. Korey, The Soviet Cage: Anti-Semitism in Russia 184-200 (1973); Z. Medvedev, The Medvedev Papers 173-270 (V. Rich transl. 1971); A. Sakharov, My Country and the World 51-61 (G. Daniels transl. 1975); H. Smith, supra note 64, at 344-74, 464-88.

[105] See Protest and Discontent (B. Crick & W. Robson eds. 1970); S. Eisenstadt, Modernization: Protest and Change 31-35, 61-64, 74-75, 104-09 (1966); The Politics of Confrontation (S. Hendel ed. 1971).

[106] The controversy concerning the emigration of Soviet Jews is a well known example.
Cf. Amnesty International, Annual Report 1974/75 (1975); P. Litvinov, The Trial of

Goods and services may of course be managed to impose deprivations not only of wealth, but also of all other values. Individuals are highly vulnerable to deprivations stemming from the manipulation and withholding of goods and services. The breakup of family and traditional organizations in the production of goods and services (especially rural organizations) makes the individual largely dependent upon a new economic system against which the lone-individual is commonly powerless.[107] The damage that can be done by mismanagement of goods and services is recently exemplified in the rampant corrupt practices of bribery in many parts of the world.[108]

In an insecure world of persisting expectations of violence, many people (elite and non-elite alike) not only expect violence, but preach violence, as the key to solution of human miseries, injustices and inequalities (transnationally and nationally).[109] Convinced that their ascendancy depends upon a monopoly of the organization and means of violence and destruction, power elites in many communities have achieved high degrees of concentration and control. It is such monopoly that enables many dictatorial regimes and military juntas to stay in power despite intense popular resentment and opposition; overwhelmed by a vast network of terror, as buttressed by the modern military, para-military, and police organizations of the state, individuals have little choice but to conform and be silent.[110]

Despite widespread attempts by power elites to monopolize the means of violence, the fact remains that the cheapness and easy availability of military hardware have put violence and terror at the disposal, not merely of state elites, but of individuals and small groups as well. This has made possible a transnational network of terror and has enhanced the danger and range of deprivation and destruction.[111]

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the Four (P. Reddaway ed. 1972); T. Taylor, supra note 91; Scoble & Wiseberg, Human Rights and Amnesty International, 413 The Annals 11 (1974).

[107] Karl Polanyi maintains that the emergence of the "market mentality" under the laissez-faire climate of the Industrial Revolution led to a fundamental change in the relationship between the public and the private sector. See K. Polanyi, The Great Transformation (1944).

[108] See note 19 supra.

[109] A well-worn quotation of Mao Tse-tung typifies this expectation: "Political power grows out of the barrel of a gun."
Cf. K. Lang, Military Institutions and the Sociology of War (1972). Cf. also American Violence (R. Brown ed. 1970); Assassination and Political Violence (J. Kirkham, S. Levy, & W. Crotty eds. 1970) (A Report to the National Commission on the Causes and Prevention of Violence); G. Sorel, Reflections on Violence (1961); Violence: An Element of American Life (K. Taylor & F. Soady eds. 1972); F. von der Mehden, Comparative Political Violence (1973).

[110] See E. Bramstedt, Dictatorship and Political Police: The Technique of Control by Fear (1945). See also note 89 supra.

[111] See note 23 supra. See also M. Willrich & T. Taylor, Nuclear Theft: Risks and Safeguards (1974); Howard, Terrorists: How They Operate a Worldwide Network, Parade,

Outcomes

The outcomes of the process of interaction are a continuing flow of deprivations and fulfillment with regard to all values, as manifested in variable patterns of value accumulation and distribution. From a long historical perspective, it would appear that just as science and technology move toward universalization, so the overall trend is toward the wider shaping and sharing of major values, despite zigzag patterns occuring at different times and in different communities. Yet, the contemporary world has scarcely begun to mobilize its full potential to fulfill the rising common demands of humankind; though the nature, scope and magnitude of the values at stake differ from one community to another and from one occasion to another, large-scale value deprivations and non-fulfillments of individuals and pluralistic groups continue to prevail. Deprivation and non-fulfillment appear to characterize the value institutional processes of vast segments of the world's population, and a rich flow of fulfillment is enjoyed by only a small segment of that population. In a previous article, we have already itemized in summary outline the flow of deprivations and non-fulfillment in regard to all values, by reference to the distinctive features of each of the value processes.[112]

Because of the interdependences brought about by accelerating changes in science and technology (particularly in communication), in population growth, in the demands and identifications of peoples, and in techniques of organization, there continue to be rising, common demands among peoples about the world for the greater production and wider sharing of all the basic values and an increasing perception by them of their inescapable interdependence in the shaping and sharing of all such demanded values.[113] Peoples everywhere (elites and non-elites alike), while cherishing parochial identifications, are also exhibiting increasing identifications with larger and larger groups, gradually extending to the whole of humankind. In an earth-space arena in which predispositional and environmental factors are in constant interplay, and in

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Jan. 18, 1976, at 14 *et seq.;* Laqueur, *The Futility of Terrorism,* Harper's Magazine, March 1976, at 99-105; *New Haven Register,* Sept. 17, 1972, at 24G, col. 1 ("Terrorists With Atomic Bomb Could Hold World for Ransom").

See also Fisk, *The World's Terrorists Sometimes Are United, N.Y. Times,* Aug. 17, 1975, Sec. 4, at 3, col. 3; Middleton, *Could a U.S. Atom Bomb Be Stolen?, id.,* Sept. 22, 1974, Sec. 4, at 3, col. 3; *id.,* July 23, 1976, at A2, col. 3 ("Terrorists' Techniques Improve, and So Do Efforts to Block Them"); *id.,* July 16, 1976, at 1, col. 1 (city ed.) ("Libyans Arm and Train World Terrorists").

[112] For the itemization and ample documentation of the flow of deprivations and non-fulfillments in regard to all values, *see* McDougal, Lasswell, & Chen, *supra* note 3.

[113] For further elaboration, *see id.* An eloquent statement on global interdependences is: *An Introduction by R. Buckminster Fuller,* in E. Higbee, *A Question of Priorities: New Strategies for Our Urbanized World* xvii-xxxiv (1970).

which mass destructive means intimidate and threaten humankind and civiliza-
tion, no people can fully be secure unless all peoples are secure. Even in these
days of wars and revolution, and of genocide and arbitrary internal violence, the
basic interrelationship of human rights and security (peace) is not difficult to
discern: that interrelationship is one, not of contraposition or indifference, but
rather of an interdependence so comprehensive and intense as to approximate
identity.[114] In increasingly common conception human rights and peace
(security) are today regarded, not as static and independent absolutes or vague
and utopian goals, but rather as the shared aspirations of peoples engaged in a
cooperative community enterprise and inspired both by identifications with the
whole of humankind and by realistic perceptions of a complete interdetermina-
tion in the achievement of such aspirations. Even when conceived in the minimal
sense of freedom from the fact and expectation of arbitrary violence and
coercion, peace is increasingly observed to be dependent upon maintaining
people's expectations that the processes of effective decision in public order will
be responsive to their demands for a reasonable access to all the values
commonly characterized as those of human dignity or of a free society.[115]
When peace is more broadly conceived as security in position, expectation, and
potential with regard to all basic community values, the interrelationship of
peace and human rights quite obviously passes beyond that of interdependence
and, as suggested, approaches that of identity. To President John F. Kennedy's
question: "Is not peace, in the last analysis, basically a matter of human
rights? " there can be but one rational answer. In the light of all the pervasive
interconnections of both predispositional and environmental factors, as previ-
ously elaborated, it would appear incontestable that in today's world, without a
more secure peace and continuing expectations of peace, there can be little hope
of an improved and sustained protection of human rights and, conversely, that

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114 *See* note 113 *supra. See also* McDougal & Leighton, *The Rights of Man in the World Community: Constitutional Illusions Versus Rational Action,* 14 Law & Contemp. Prob. 490 (1949), *reprinted* in M. McDougal & Associates, *Studies in World Public Order* 335, 335-43 (1960); McDougal & Bebr, *Human Rights in the United Nations,* 58 Am. J. Int'l L. 603, 603-08 (1964); Toth, *Human Rights and World Peace,* in 1 *Rene Cassin Amicorum Discipulorumque Liber* 362-82 (Institut International des Droits de l'Homme ed. 1969).

115 Dismissing the trap of "a semantic jungle" that tends to "identify security with exclusively military phenomena and most particularly with military hardware." McNamara conceives security in broad terms of "development" in the contemporary modernizing context:

> In a modernizing society security means development. Security is not military hardware, though it may involve it; security is not traditional military activity, though it may encompass it. Security is development, and without development there can be no security. A developing nation that does not, in fact, develop simply cannot remain secure for the intractable reason that its own citizenry cannot shed its human nature.

R. McNamara, *The Essence of Security,* 150, 149 (1968).

without a more extensive protection of human rights, there can be little realistic hope of a better peace.

The comprehensive world social process, which includes the processes of all its componet communities from local to global and which determines the degree to which individuals can achieve their demanded values through time, is a dynamic and changing, not static and changeless, process. It embraces the whole manifold of historic events, extending from the past, to the present, and to the future. In this comprehensive process, each feature is constantly changing and interacting with the other features:

participants are constantly changing in characteristics, as they affect, and are affected by, the changing variables of culture, class, interest, personality, and crisis;

the perspectives of participants are in continuous flux and revision in the light of changing conditions—they shift in the intensity and scope of their demands, expand or contract their identifications, and modify their world views and maps of reality;

changing dimensions of time, space, institutionalization and crisis exert constant pressures on the situation of interaction;

the significance of resources and other base values, extending from the earth to the outer space, continues to change under the impact of science and technology;

strategies are employed and manipulated in varying combinations to cope with ever changing contexts;

and the varied outcomes find expression in changing aggregate patterns of value accumulation and distribution and in differing impacts on different individuals, groups and communities.

The impacts of this ongoing process of deprivation and fulfillment of values reach beyond immediate deprivees and deprivors, affecting in the long run the aggregate patterns in innovation, diffusion and restriction of value-institutional practices at all levels of communities (local, national, regional, and global) in the earth-space arena. Beyond even living generations, impacts extend to all future generations of humankind; ultimately at stake is the entire pattern of balance or imbalance among people, institutions, resources, technology, and the eco-system.[116]

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[116] In the words of Secretary-General Kurt Waldheim:
> One of the most unfortunate aspects of modern society is the increasing tendency to see problems solely in immediate terms. We are fascinated and obsessed by the suddenness and drama of events; we seldom look deeply into their causes, and hardly ever into those elements which could lead to future crises. Yet the Roman adage that great disputes often result from small events but never from small causes remains

Given this dynamism of change inherent in the world social process, with its constant feedback of the flow of continuing events, immediate value outcomes, and long-term consequences, it is apparent that rational inquiry about world social process requires a continuing, systematic monitoring by reference to each of its main features.[117] This monitoring and appraising task is indispensable to the creation and maintenance of a continuing map of the interactions that constitute the events from which claims for freedom from deprivations and for value fulfillments emanate, and to which the process of authoritative decision responds. A continuing monitoring of the world social process which would present a dynamic world map with adequate comprehensiveness, selectivity, and realism would enhance effective performance of all the necessary intellectual tasks—clarification of goals, description of trends, analysis of conditioning factors, future projection and recommendation of alternatives—necessary to facilitate and optimalize the defense and fulfillment of human rights.

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absolutely valid. The majority of the great issues that confront mankind are profound, complex, and, above all, long-term problems. They cannot be resolved swiftly or dramatically; they are closely interrelated; and they bear directly upon the lives of all. For the great problems are the global problems, and they require a concerted global approach.

Waldheim, *Toward Global Interdependence,* Saturday Rev./World, Aug. 24, 1974, at 63.

[117] *See* Snyder, Hermann, & Lasswell, *A Global Monitoring System: Appraising the Effects of Government on Human Dignity* 20 Int'l Studies Q. 221 (1976). *Cf.* Lasswell, *Toward Continuing Appraisal of the Impact of Law on Society,* 21 Rutgers L. Rev. 645 (1967).

To keep abreast of the changing context of world social process, it is vital to improve the coverage provided by surveys of trends that use relatively "extensive" methods of continuous observations. More "intensive" studies need to be made periodically to disclose changing "predispositions" in depth. For a research design of the kind required, though adapted to another field, *see* Brodbeck & Jones, *Television Viewing and Norm- Violating Practices and Perspectives of Adolescents: A Synchronized Depth and Scope Program of Policy Research,* in *Television and Human Behavior* 98-135 (L. Arons & M. May eds. 1963).

TOWARD A GENERAL THEORY OF CONTROL

Dora Nevares-Muñiz *

Introduction

Any attempt to develop a general theory of control should consider: a) The etiology and historical emergence of control systems[1] and institutions;[2] b) the character of control; and c) definitions and processing of deviance[3] within society.

Control systems and institutions are viewed by this student both as a reflection of society and as a device to achieve political and economic goals at a particular historical moment. Therefore, the present paper posits, and shall further demonstrate a reciprocal relationship between society and control institutions and systems. The main vector for the study of control will thus be the nature of society. The concept of the nature of self will be a secondary vector.

Conceptual Framework

It is our premise that historically America is becoming a totalitarian society.[4] Thus, its control institutions (total or partial) are not only a reflection

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[1] A control system is understood within the context of this paper as the set of practices, relationships, beliefs, and institutions utilized by the infrastructure to impose and maintain both its ideology and political order.

[2] Control institutions are the physical or symbolic social structures which serve as the instrumental expression of the control system.

[3] Deviance is the act of challenging the operation of society toward its fundamental goals. Historically deviants have been divided into two major groups: social dynamite (criminal deviant) and social junk (insanes, retardates, old ages).

[4] Hereinafter the terms totalitarian society and total society will be used as synonymous.

of this phenomenon but assume characteristics similar to those of the total society.

A total institution may be defined as "a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life".[5] Adopting Goffman's categorical division,[6] total institutions can be classified as:

a) Institutions to protect the community against those who are considered intentional harmers, e.g,. jails, penintentiaries, P.O.W. camps, concentration camps. Also juvenile detention centers.

b) Places established to care for pesons felt to be both incapable of looking after themselves and a threat to the community, e.g., T.B. sanitaria, mental hospitals or asylums, and leprosaria.

c) Institutions established to care for persons both incapable and harmless, e.g., homes for the blind, the aged, the orphaned, and the indigent.

d) Institutions established to pursue an instrumental work-like task, e.g., army barracks, ships, work-camps, colonial compounds; and

e) Retreats from the world, e.g., abbeys, convents, monasteries, and other cloisters.

Apart from total institutions there also exist partial control institutions. These institutions, similarly called social institutions, are physical (e.g., schools, work place, church) or non-physical (e.g., family, sports, media) structures which exert control upon certain areas of human activity.

The phenomenon of deviance processing within society exists in a dialectical relationship with control. Due to this dynamic relationship both the definitions of deviance and the nature of control have changed historically according to the goals of the political and economic structure.[7]

A total society is that which attempts to encompass all the areas of activities of its members. In this society the productive apparatus determines the socially needed occupations, skills and attitudes, also individual needs and aspirations.[8] The values are those created by the political and ideological structure.[9] The state and the society become one and the same. Control is increasingly transferred

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[5] Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Anchor, 1961) p. 1.

[6] *Id.,* pp. 4-5.

[7] See Steven Spitzer, "Toward a Marxian Theory of Deviance", *Social Problems* (June 1975) p. 638. Although this author refers to this relationship as reciprocal, we prefer to call it dialectical, due to its dynamic nature.

[8] See Herbert Marcuse, *One-Dimensional Man* (Boston: Beacon Press, 1964).

[9] See Jules Henry, *Culture Against Man* (New York: Vintage, (1965).

from the organs of civil society to the organs of political society, i.e., the state.[10] Also, control becomes more subtle with increasing reliance placed on psychological forces, such as, feelings of automation, atomization, alienation, intimidation, and terror. It also operates in anticipation of deviance.

In a total society, social institutions (e.g., family, schools, sports, etc.) are turned into means of political, ideological, and economic control, while total institutions—the ultimate form of control over people—function as a complement to partial institutions in encompassing human activities. Such a total society becomes irrational and closed to alternatives, although control is vested with a semblance of rationality. In essence, this shall be the framework within which some insights toward a general theory of control will be offered.

Etiology and Historical Emergence of Control Systems and Institutions

The study of the etiology and evolution of control will lead us to explore the following issues: a) how the nature of society gives rise to particular groups of people who become the subject of institutionalized control; b) how particular models of control respond to the political, economic, and ideological organization within society; and c) why segregated control institutions emerge.

A joint consideration of these issues—due to their reciprocal relationship—will be employed in the development of our paradigm. Our steppingstone will be the two principal paradigms that have been used in the study of the historical evolution of control, i.e., functional idealism and historical materialism.

According to the functional perspective, social control (i.e., punishment) emerges from the underlying structure of beliefs. The moral beliefs system is considered primary, while the political structure is randomly related to the evolution of punishment and society. Accordingly, responses to deviant behavior "will move increasingly toward reliance on restitution rather than repression as societies become increasingly technologized, complex and heterogeneous."[11] As collective sentiments—which are very strong in simple communities—weaken, the focus of the offense changes from the collectivity to the individual.[12]

This paradigm has proved to be inadequate. First, anthropological evidence suggest that "when the law of simpler local communities is compared with the law of the more complex state systems, [of] which they bec[o]me a part, the direction of legal change is from emphasis on restitutive to a greater reliance on repressive criminal law."[13] Further evidence is provided by a cross-cultural

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[10] See S. Spitzer, *op. cit.,* n. 7.

[11] E. Durkheim, *The Division of Labor in Society* (Glencoe: Free Press, 1949)

[12] E. Durkheim, "Two Laws of Penal Evolution," *Economy and Society* (August 1973) p. 285.

[13] Fred DuBow, "Nation-Building and the Imposition of Criminal Law," discussion

study[14] of fifty one societies ranging from non-industrialized to highly industrialized, where it was shown that restitutive sanctions—damages and mediation—which Durkheim[15] believed to be associated with an increasing division of labor, are found in many societies that lack even rudimentary specialization. On the other hand, in capitalist societies no significant trend has been shown toward reliance on restitution as a replacement for repressive law. Moreover, the trend has been toward an increasing use of penal laws to regulate all kind of disputes, including matters of personal morality (e.g., homosexual relationships, abortion, etc.).[16]

Second, Durkheim's definition of repressive law as that which "in any degree invokes against its author the characteristic reaction which we term punishment"[17] is a limited one. This definition does not encompass the wide range of forms in which repression can occur. Repression is more than either the physical punishment or the mere deprivation of liberty which Durkheim saw. Indeed, it is also psychological deprivation of the ability to act independently, regimentation and compartmentalization of certain areas of human activity, and both physical and symbolic containment of certain population groups within society.

Although Durkheim appropriately identified the state as a collective entity, he failed to consider the notion of political structure. Therefore, we are unable to include in his paradigm the historical fact that the focus of the offense has moved through the evolution of society from the collectivity to the individual and once more to the state.

Finally, Durkheim's notion of beliefs could be reformulated in terms of Weber's concept of rational legal authority.[18] That is, the state, by saying it is acting on behalf of the people, gives a rational authority to the control which it is exercising. Therefore, beliefs come to be the functional instrument of the state to legitimate the existing legal and social order. However, the reality is that such a rational legal order sometimes becomes very irrational.[19]

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draft of a paper delivered at the American Sociological Association Annual Meeting (Montreal, August 1974) p 8.

[14] R. D. Schwartz and J. C. Miller, "Legal Evolution and Societal Complexity," 70 *American Journal of Sociology* 166 (1964).

[15] E. Durkheim, *op. cit.,* n..11.

[16] For further development of this argument see William J. Chambliss,"Functional and Conflict Theories of Crime," 17 *MSS Modular Publications* 1 (1974).

[17] E. Durkheim, *op. cit.,* n. 11, p. 70.

[18] Max Weber, *From Max Weber: Essays in Sociology,* H. H. Gerth and C. W. Mills, eds. (New York: Oxford U., 1946).

[19] Solid supporters of this premise are: David Gordon, "Class and the Economics of Crime," 3 *The Review of Radical Political Economics,* no. 3 (Summer 1971); Richard Quinney, *Critique of Legal Order: Crime Control in Capitalist Society* (Boston: Little Brown, (1973).

The materialistic conception of history provides us with a better tool to deal with the evolution of control. According to this perspective, the etiology, evolution, and nature of control are directly related both to the economic order and to the relations between rulees and rulers.[20] This dialectical model suggests that the contradictions in a given social order—which in the capitalist society are found in the modes and relations of production—will express themselves in a particular form of control. This perspective indeed serves as the foundation of our paradigm.

The following table[21] is an attempt to trace the historical evolution of control. Note that the historical period is considered as a function of the economic, ideological, and political order within society. The control system for a particular period is understood in terms of the nature of society, the character and etiology of control, and the definitions of deviance. The inclusion in the table of two historical periods of control in Europe is designed to provide additional evidence on our previous argument about the inadequacy of the functional perspective. Yet, our paradigm will emanate from the scheme concerning the evolution and etiology of social control in America.

As the following table shows, the evolution of control in America has been in a curvilinear form. That is, the nature of control has moved from restitutive to repressive to repressive-restitution as America has acquired a totalitarian character. This model is dialectical in nature. Its internal dynamics thus involve a thesis which is historically placed at the colonial period, an antithesis that is found during the early capitalism, and a synthesis occurring in the present total society.

Similarly, the control mechanisms have shifted from primary socializing institutions (family, community) in the colonial period, to formal total control institutions (legal and therapeutic) during the early capitalism, and to both total and social control institutions in the present. However, social institutions during the advanced total capitalism have a different character than those of the colonial period. During the latter the emphasis was on primary socializing agencies, the former puts more emphasis on the secondary ones (school, media, sports, work). Besides, the present social institutions rely basically on symbolic controls which respond to the state ideology. Moreover, the phenomenon has been a take-over by the state of most of the functions of the primary socializing agencies.

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20 See Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Russel & Russel, 1939).

21 Sources: Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Vintage, 1973); Anthony Platt, *The Child Savers: The Invention of Delinquency* (Chicago: U of Chicago, 1969); David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little Brown, 1971), Rusche and Kirchheimer, ibid; and Erik Olin Wright, *The Politics of Punishment* (New York: Harper-Torchbooks, 1975).

HISTORICAL EVOLUTION

CONTROL SYSTEM	EUROPEAN FEUDALISM	MERCANTILISM	AMERICAN COLONIAL
Nature of Society	Land-basis Agriculture	Emergence of national states Market economy	Colony Rural, agriculture
Etiology of Control	Maintain order Maintain class structure based on the land	Maintain order within an economically oriented society Make the population economically useful Discipline the people in labor skills Use of the people to colonize un-inviting lands Maintain wages low	Maintain colonial order
Nature of Control	Restitutive- dispute set- tlement Integrated hand- ling—fines, poor relief, penance Jails—for pre- trial detention	Repressive Emergence of primitive total institutions Segregated Handling house of corrections, galley slavery, trans- portation Work-productive institu- tions	Restitutive and repressive Integrated handling fines, whip, relief for the poor and incapables, ostra- cism Primary socializing institutions— family, community Private and public handling
Deviants	criminals, poor, vagrants	criminals, dependent classes (those who are an economic burden).	criminals, dependent classes Deviance is seen as normal within society

OF CONTROL

EARLY CAPITALISM (End.18c. and 19c.)	ADVANCED CAPITALISM (20c.)

Capitalist state
Transforming from rural to urban
Wage intensive economy
Frontiers expanding
Centralization of political
  authority
Emergence of meritocracy
Emergence of racism
	Developed capitalism
	Urban
	Capital Intensive
	Technocracy, bureaucracy,
	  consumption oriented, racist,
	  irrational, closed to alternatives
	    Totalitarian

Search for order and rationality
Search for causes, therefore,
  erradicate deviance
Emergence of disease model
Emergence of professionals
Rationalization of deviance in
  moral terms—Moral Reformers
Increase in surplus population
Breakdown of primary social
  control institutions
Belief in self-improvement,
  therefore, in the cure and
  reform of deviants
Enlightenment influence—rational
  application of punishment
	Maintain the present total
	  system
	Further development of
	  capitalism
	To legitimate the system
	Maintenance of professional
	  class, surplus population,
	  people without questioning
	  the system, patterns of
	  consumption, racism, class
	  division, alienation, etc.
	.·. to mold people

Repressive; Segregated handling
Total institutions—prisons
  insane asylums, reformatories
  orphanages
Some institutions were privately
  sponsored in the beginnings
Non productive-work institutions
Institutions aimed to discipline,
  cure and reform; therefore,
  rehabilitative and therapeutic
Control is exercised after the
  commission of the act
	Repressive + repressive
	  restitution
	Partial or social + total
	  control institutions
	Movement toward decarceration,
	  partial integration, and
	  certain kind of government
	  sponsored private handling
	Tension, anxiety, atomization,
	  and terror maintained as
	  sources of control
	Preventive control—exercised
	  through informal institutions
	State took-over the functions
	  of the primary socializing
	  agencies
	.·. Total institutions ⟷ Total
	    Society

Criminal, insane, old age
  juvenile, poor
Deviance is seen as pathological;
  a symptom that society should
  erradicate
	Criminal, insane, old age,
	  poor, juvenile delinquent,
	  orphans, retardate, and
	  anyone who threatens the
	  goals of the system

The same curvilinear trend is shown in the shift from integrated (colonial period) to selected segregated handling (capitalist state) to the more recent de-carceration movement, attempts of partial integration within the community (e.g., half-way houses, ambulatory treatment units, day care centers), and general preventive handling of prospective deviants. Also a tendency has been seen toward a return to certain forms of private handling, e.g., franchised old age centers.

Worth noting is the fact that, due to the dialectial character of this model, control during the modern totalitarian capitalism assumes a character which retains, in a renovated form, features present in both the colonial period and the period of early capitalism.

In terms of the focus of the offense the movement has been from the community in the colonial period, to the individual in the early capitalism, and to the state in the present society. Due to this dialectical dynamics, the state is not neutral anymore but transcends the individual and becomes the victim of almost any form of deviance.

Finally, definitions of deviance in America are characterized throughout their historical evolution by notable expansion. From the criminal offender of the colonial period, the term has broadened-up to include criminals, insanes, mental retardates, juveniles, old ages, homosexuals, and other groups of people who are considered to be a threat to the system. Such an expansion well explains the increasing trend in the use of informal controls by the state and its later reliance on pro-active repression.

The paradigm that we attempted to develop can be finally summarized as:

HISTORICAL PERIOD

Evolution of:	Colonial (1600-1776)	Early Capitalism (1776-1920)	Total Capitalism (1920-)
Punishment	restitutive	repressive	repressive; repressive-restitution
Control Institution	partial (primary)	total	partial (primary and secondary); total
Form of Control	coercive; symbolic	coercive	symbolic; coercive
Form of Handling Deviants	integrated	segregated	segregated; partially integrated

Character of Control

Our incursion into the character of control will be done through exploring the nature of both social and total institutions. As established earlier, our paradigm relies on the fact that control institutions are a reflection as well as a product of the political, economic, and social order. Therefore, the characteristic features, the selective processes for identifying their members, and the internal and external policies of control institutions are similar to those of the total society.

In this symbiotic relationship between control institutions and society various levels of control shall be distinguished. Concepts such as human nature, self-concept, levels of rationality, reward-punishment, and power, shall serve as bases for cross-comparisons.

Total institutions (e.g., prisons, reformatories, mental and old age asylums, etc.) are characterized by their closedness in encompassing all the activities of their members. Although partial institutions (e.g., school, family, sports, media, etc.) are not totally closed, they are not very far from it. Due to the totalitarian nature of the American society, partial institutions operate as back-up mechanisms of social control which reinforce and complement the total control institutions.

The very nature of total institutions produces a destruction of one's self identify, destruction of commitments with the rest of the world,[22] and loss of memory.[23] In a reciprocal way, people in a closed society lose their ability to think critically.[24] It becomes impossible to define alternate directions which can be accepted as normal since any alternative comes to be considered as being deviant or co-opted as alternative expressions of normality. The definitions of what is considered normal are supplied by the social control institutions which are directed to impose an "appropriate" model of "normal self". Their emphasis is directed toward the cognitive level of people within society and thus shape their conception of reality. The consequence is a reduction of the options for self development either because the state repressively constrains[25] or transforms them,[26] or because the culture destroys them.[27]

Total therapeutic and penal institutions are similarly intended to create a particular kind of self. In these the inmate's self is dismantled, damaged and

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[22]See E. O. Wright, *op cit.*, n. 21.

[23] See J. Henry, *op. cit.*, n. 9.

[24] H. Marcuse, *op. cit.*, n. 8.

[25] Karl Marx, *Karl Marx: Selected Writings in Sociology and Social Philosophy*, T. B. Bottomore and M. Rubel, eds. (New York: McGraw-Hill, 1964).

[26] H. Marcuse, *op. cit.*, n. 8.

[27] J. Henry, *op. cit.*, n. 9.

contaminated. As part of this process the person faces a loss of identity (e.g., identified by a number; not being called by his name), property dispossession personal defacement, physical and psychological indignities (e.g., physical aggression by the guards and personnel; being exposed naked within the mental institutions), denial of heterosexual activities, loss of sense of personal safety, loss of self determination, and a destruction of memory orientation (particularly in mental and old age asylums). These institutions not only lead to the destruction of the prior self but also to the development of a "new self".[28] Yet this process is simply a reflection of what is happening outside. The following table provides a more succinct illustration.

Total Institution	Total Society
The deviant self is molded through:	The normal self is maintained as "normal" through:
loss of identity	atomization
loss of self-determination	alienation
loss of life control	regimentation, automation
loss of personal safety	intimidation, terror
physical contamination	pollution
interpersonal contamination	pervasive influence of media

Within total institutions arise subcultures[29] which reflect external social and cultural differences. The inmate subculture emerges as a means to enhance their chances of survival within the total closed system.[30] It may also be seen as a response by the inmates to the limited opportunities offered by this environment.[31] Yet, the inmate subculture has a counterpart in the guard subculture which emerges to help the guards in coping with the necessity to use power which is not based on real authority. Both inmate and guard subcultures come to exist in a dialectical nature. The product of this process is a dynamic relationship

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[28] This process is analyzed in E. Goffman, *op. cit.*, n. 5, also in *Stigma: Notes on the Management of Spoiled Identity* (New Jersey: Prentice-Hall, 1963). For different interpretations of this process see: Dorothea Braginsky and Benjamin Braginsky, *Hansels and Gretels: Studies of Children in Institutions for the Mentally Retarded* (New York: Holt, Rinehart and Winston, 1971) (people are labelled as deviant but they are capable to avoid the dehumanizing effects and to influence on the development of their selves); and Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison in New Jersey* (Princeton: U. of Princeton Press, 1958) (although their selves are not destroyed people are shaped into different roles).

[29] A subculture is a set of beliefs, values, practices, "laws", relationships, etc., which are distinguished from the dominant established culture. It emerges from the latter and may either be at variance or opposed to it.

[30] See E. O. Wright, *op. cit.*, n. 21.

[31] G. Sykes, *op. cit.*, n. 28.

between these two groups, where one relinquishes power for limited authority and the other dignity for survival.

Similarly, institutions for mentally retarded manifest a dialectical subcultural relationship between the inmates and the institutional personnel. Braginsky and Braginsky[32] conceptualized the behavior of the retardates as an instrumental rationality where they "begin to *act* retarded" as a way to cope with their regimentalized environment and "gain the favor of the attendants and matrons."[33] The latter, on the other hand, are not aware that the retardates are actually manipulating them. Consequently, the result of this process is the labelling and stigmatization of the retardates and the relinquishment of power by the personnel through manipulations by part of the former.

So far we have dealt with the exercise of control for shaping behavior or molding people's self. Yet, another level of control is that of regulating human conduct. There is no doubt that mental asylums, prisons, and reformatories attempt to restrain people from committing certain acts which are considered harmful either to society or to themselves. However, when the case is that of partial institutions their function in controlling and regulating behavior is more subtle. The partial institutions operate in the anticipation of deviance, while total institutions become functional after the occurrence of deviance.

The reward-punishment mechanism is the principal tool for achieving regulatory control within total institutions. In prisons it is excercised through disciplinary proceedings, the operation of probation, and the concession of privileges. Privileges and punishment are also common to mental asylums and senile institutions.

In order to channel hostilities and hold these institutions together in the Durkheiman[34] sense, reward structures are occasionally employed to provide what Goffman called "role release activities."[35] Some of these activities are parties, open houses, theatrical performances, and sport events. Yet, these role release activities are also a symbolic way to both impose the control ideology of the system and to project to the outside world an image of normality within the institutions.

A similar reward-punishment structure exists in society at large. The welfare system is a prime example where services and benefits are made conditional on acceptable social behavior. They are also competitive, while control is exercised through containing and pacifying the people by maintaining them as recipients of welfare at a minimum economic level.[36]

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[32] *Op. cit.,* n. 28.

[33] *Id.,* p. 173.

[34] E. Durkheim, *Rules of Sociological Method* (Glencoe: Free Press, 1950).

[35] Goffman, *op. cit.,* n. 5, p. 94.

[36] This premise is developed and substantiated by Frances Fox Piven and Richard A.

Among partial institutions, schools are a clear illustration of both the regulatory and shaping features of control. On the one hand, schools teach values, create patterns of behavior, and provide knowledge and skills; on the other, they serve as a holding facility for keeping people out of the labor market.[37] Their power in terms of shaping conduct is enormous, since it is directed toward breaking down people's allegiance to institutions and systems other than those of the state (e.g., family, religion).

The institution of colonization is also an interesting one which sheds light on our analysis of control. In the development of the concept of self exists a dialectical relationship between the colonized and the colonizer.[38] As a consequence of this relationship the colonized starts defining himself through the categories of the colonizer. Therefore, his self goes throughout a transformation process in which some of his idiosyncratic features are either destroyed or transformed into "colonized" ones. Similarly, the colonizer, in order to be accepted by the colonized and to remove from himself the stigma of being and of feeling being the oppressor, relinquishes some of his power into the hands of the colonized (e.g., through internal agencies such as the police).

Thus, within this dialectical relationship there exist internal dynamic forces which are specific to each group. That is, on one level, there is a development of both the colonized and the colonizer's self as a function of the power relationships between oppressor and his subordinates. On another level there are groups and agencies neutralizing, reinforcing, and liberating tensions within these groups. This dynamic of internal and external domination is similar to the one existing between total society and control institutions on the external level, and between rulers and rulees within institutions in the internal level. The result is, therefore, transformations in both the concept of self and the means of power of each of the groups.

Internal colonialism, which this writer identifies with the discriminatory and segregative treatment that has been employed against blacks in America, could very well be understood in terms of the above described dialectical relationship. Yet it should be distinguished from the distinct geo-political element present in external colonialism.

Other patterns of segregated control are found in reservations and concentration camps. These institutions encompass culturally defined groups and control is exercised for containment and regulation, with no direct intent in shaping behavior. In this sense, these institutions have a similarity with those for

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Cloward, *Regulating the Poor* (New York: Vintage, 1971).

[37] See Ivan Illich, *Deschooling Society* (New York: Harper and Row, 1972) and Joel H. Spring, *Education and the Rise of the Corporate State* (Boston: Beacon Press, 1972).

[38] Albert Memmi, *The Colonizer and the Colonized* (Boston: Beacon Press, 1965).

mental retardates and old people, where it is believed that nothing can be done to either re-socialize or make them useful to society.

After exploring the nature of control institutions, it can be concluded that there is not doubt about the totalitarian character of the present American society. It has evolved into an irrational society where people can no longer use their substantive rationality to choose among positive and negative alternatives, but instead are symbolically controlled to act instrumentally for socially administered and defined ends.

Nature of Deviance

Criminal deviance in America is a rational response to the structure of the institutions on which the society is based. The most important examples of this rational response to the competitiveness and inequality of life are the ghetto crimes, organized crime, and corporate crimes.[39] However, non criminal deviance (i.e., social junk) is the irrational product of the totalitarian capitalist society.

Establishing linkages between the social structure, control systems, and deviant behavior is a difficult task. Durkheim set the link in the beliefs system,[40] but in so doing he missed the contribution of the political structure. The anomie theorists, e.g., Merton, [41] Cloward and Ohlin,[42] talked about a limited opportunity structure; however, they could not relate it to the particular individual conduct. Marx[43] and Bonger,[44] among the conflict theorists, established the nexus in the social structure which was seen as the cause of deviance. However, they did not include in their analysis the motivational behavior of the "insane" and "mentally retarded."

Our paradigm atttempts to enhance the conflict perspective. As we conceive it, criminal deviance is produced by the structural conditions of society, which both create the material conditions for its occurrence and operate upon certain psychological conditions in the individual that predispose him toward deviance. The indigents and the aged should be seen as the product of this irrational society which makes them obsolete. On the other hand, the mental retardates and the insanes, in most cases, are definitional categories created by the social

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[39] D. Gordon, *op. cit.,* n. 19.

[40] E. Durkheim, *op. cit.,* nn. 11, 35.

[41] Robert Merton, *Social Theory and Social Structure* (Glencoe: Free Press, 1957).

[42] Richard Cloward and Lloyd Ohlin, *Delinquency and Opportunity: A Theory on Delinquent Gangs* (New York: Free Press, 1960).

[43] Marx, *op. cit.,* n. 25.

[44]Wiliam Bonger, *Criminality and Economic Conditions* (New York: Agathon Press, 1967).

and political structure to enhance its realm of control as well as to deal with persons who are not productive within a society which is organized on economic terms.

Conclusion

The present paradigm suggests only one conclusion—the development of a society where deviance will be substantially reduced and its causes will be traceable both to the individual and to the society. This society should be an open one in which people relate to themselves and to the world productively. Critical thinking should be emphasized and the person should be able to create his own social being and to orient his social values toward the utility of the community. Social values should be placed in a primary position when making decisions about economic matters. Production processes should be oriented toward the social well-being of the collectivity rather than toward materialistic productivity.

The basis of order should be some sort of decentralized political organization. Yet it should not be instituted to benefit a particular group, but rather to benefit the collectivity. It should also lie on democratic foundations. Control would be an instrument of social justice exercised primarily at the community level. It would emanate from the community and would treat the deviant as an integral part of the society by incorporating him to function as part of it. Therefore, the responsibility for control should rely on the community.

LA PELIGROSIDAD Y EL DERECHO PENAL*

*Olga Elena Resumil de Sanfilippo***

El concepto de peligrosidad

La peligrosidad, en general, se puede definir como la actitud de un ser o de una cosa, de una acción o de un hecho a producir, ante los ojos de quien juzga, un evento dañino. La primera noción de peligrosidad fue formulada bajo el nombre de *temibilidad* por Rafael Garófalo durante la segunda mitad del pasado siglo. Desde su punto de vista se trataba de un nuevo criterio positivista de penalidad. Con este término quiso señalar la perversidad activa y permanente de un individuo y la cantidad de daño posible que se puede temer en él.

Adolphe Prins formuló indirectamente la noción de peligrosidad en su discurso de apertura al primer congreso nacional belga en 1892 al decir que "la verdadera tarea del juez es aquélla de apreciar el carácter más o menos antisocial del culpable y el grado de intensidad del motivo antisocial que lo empujó a cometer la acción delictiva."[1]

En sus albores el concepto de peligrosidad no se propuso como una teoría general capaz de reemplazar las concepciones clásicas de imputabilidad y responsabilidad moral, sino únicamente como una doctrina aplicable a una cierta categoría de delincuentes: el psicópata y el delincuente habitual. A fines del siglo diecinueve se manifestó como un fenómeno dado la insuficiencia de la pena a los fines de reeducación o rehabilitación. La reincidencia presentaba cifras notables

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    1 Citado por Jiménez de Asúa en *L'etat dangereux ou la pericolosité et le droit pénal,* en Revue Internationale de Criminologie et Police Tecnique, n. 3, 1954, pág. 67.

que fueron concretadas por Prins[2] en 1899 como un 62% de la población
carcelaria belga. En particular, a menudo se tomaba como pretexto un supuesto
vicio de mente, que de ser reconocido —como sucedía en la mayoría de las
ocasiones— tenía como consecuencia la exclusión de la responsabilidad,
teniéndose como resultado la impunidad en una gran cantidad de delitos graves.
El vagabundaje y la miseria, resultado del movimiento urbanístico, fueron una
causa de la delincuencia.

Frente a este fenómeno social, la escuela positiva declaraba la guerra a los
principios fundamentales de la legislación penal en la convicción de que estaban
superados. Ferri consideró el delito como un síntoma de personalidad anormal.
Basándose en la teoría de la responsabilidad social concluyó que el estado tenía
el derecho y la obligación de reprimir al delincuente normal o anormal,
subordinando la represión en la forma y medida que el hecho delictivo fuera
cometido y de acuerdo con la potencia ofensiva del autor, o sea, su peligrosidad.

La escuela clásica no ignoró la necesidad de internar en un manicomio al
loco peligroso, simplemente afirmaba que la internación constituía una medida
extra-penal dirigida únicamente a la prevención de la criminalidad y de
competencia exclusiva de los órganos administrativos. Puede concluirse entonces
que la diferencia entre escuela clásica y escuela positiva se funda en la naturaleza
jurídica de la medida y no en la existencia de un peligro en la persona y en el
tomar medidas tendientes a la prevención del delito y a su control. Podemos,
pues, concluir que las medidas existían como una realidad relevante para el
derecho cuando fue declarado el concepto de peligrosidad.

Varias teorías sobre peligrosidad

Según Ferri la peligrosidad consistía en una potencialidad sobresaliente que
poseía el individuo hacia la comisión de acciones punibles y que se resolvía en
una mayor probabilidad (mayor respecto al hombre medio) de cometer un
delito. Esta apreciación necesitaba, sin embargo, para su formulación una
subjetivación que se refiriese a una entidad propia del individuo, o sea, encontrar
en él una cualidad que fuese la causa del peligro. Consciente de ello, Grispigni[3]
definió la peligrosidad como la capacidad de una persona de convertirse en un
probable autor de un delito. Consideró aplicable este concepto a tantos casos en
los cuales se había cometido un delito y a aquellos donde existía peligrosidad sin
delito ya que, desde su punto de vista, las dos situaciones eran idénticas y
cambiaban exclusivamente en lo que respecta a los elementos constitutivos de la
peligrosidad y a las medidas que debían adoptarse. Se refiere, sin embargo, a una

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2 Prins, *La defensa social,* Madrid, 1912, pág. 87.

3 "La pericolositá criminale e il valore sintomatico del reato" en *Scuola Positiva,* 1920,
pág. 100.

categoría especial de individuos: los anormales psíquicos. Por ello consideró que desde el punto de vista psíquico la peligrosidad es una forma de ser del sujeto, una cualidad que definió como la condición psíquica de una persona, probable causa de un delito.

Jiménez de Asúa[4] creyó difícil la tarea de dar una definición exacta del concepto de peligrosidad. No defendió ninguna fórmula concreta y concibió únicamente una fórmula amplia que incluyese todos los individuos que tuvieran necesidad de un tratamiento tutelar como consecuencia de su actividad.

Florían[5] en términos generales concuerda con la definición de Grispigni y considera la peligrosidad como atributo subjetivo propio del autor constituido por una tendencia a delinquir. Rechazó, sin embargo, el concepto que consideraba peligrosos únicamente a los individuos psíquicamente anormales ya que ni todos los peligrosos son psíquicamente anormales ni todos los anormales psíquicos son peligrosos o se muestran antisociales. Afirma que la peligrosidad se encuentra únicamente en la personalidad del autor sin tener en cuenta el hecho delictivo. La peligrosidad es para él, por tanto. la suma del hecho delictivo y la personalidad del autor.

En contraposición a estas teorías encontramos los objetivistas que ven la peligrosidad como un estado objetivo descrito por la norma y no como una tendencia o probabilidad de daño existente en una persona, y por tanto, un delito en sí misma.[6]

El verdadero sistematizador de esta tendencia fue Sabatini quien distinguió entre peligrosidad e inmanencia criminal.[7] Esta última es presupuesto obligado de la peligrosidad: es el complejo de las condiciones biopsicopatológicas de las cuales surge la actividad criminal de los sujetos anormales. Por su naturaleza es interna y determinada por los elementos individuales de carácter psíquico que tienden hacia la permanencia. La peligrosidad criminal para Sabatini no es atributo del delincuente sino uno especial y verdadero del delito, la peligrosidad criminal, propia únicamente de una cierta categoría de delincuentes. En la base del delito está el complejo de conducta antisocial fruto de la inmanencia criminal del autor. Entonces, la peligrosidad es algo objetivo previsto por una fórmula legislativa, como lo son las formas de culpabilidad, los delitos dolosos y culposos, por lo cual se puede hablar de delitos peligrosos causados por un estado de inmanencia criminal.

Petrocelli[8] define la peligrosidad como un complejo de condiciones

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[4] *La pericolositá (nuovo criterio per il trattamento repressivo e preventivo).* Torino, 1923, pág. 128.

[5] *Note sulla pericolositá criminale,* en *Scuola Positiva,* 1927, p. 401.

[6] Longhi, *Repressione e prevenzione nel diritto penale attuale,* Milano, 1911, p. 887.

[7] *La pericolositá criminale* en *Scuola Penale,* 1927, III, p. 15.

[8] *La pericolositá criminale e la sua posizione giuridica,* Padova, 1940, p. 47.

objetivas y subjetivas bajo las cuales es probable que el individuo cometa un hecho socialmente dañoso o peligroso. Esta definición niega especialmente el carácter de cualidad, propiedad, capacidad o tendencia. Olesa Muñido critica a Petrocelli afirmando que tal concepción de peligrosidad eminentemente jurídica la desvincula del individuo haciéndola depender de un complejo de condiciones que hacen posible la conducta.[9] El considera la peligrosidad como "la situación en la persona adecuada a hacerle realizar con probabilidad acciones que constituyen infracciones a la norma."[10]

El diagnóstico de peligrosidad

La exposición hecha en la sección precedente ha demostrado que la doctrina se divide en dos teorías en el tema de la definición de peligrosidad: la objetiva, que pretende encontrarla en previsiones legislativas así como se encuentran los conceptos de dolo y culpa, y la subjetiva, la cual encuentra el status de peligrosidad en el individuo.

Ante la necesidad de tener que tomar posición para establecer cuál de las dos principales corrientes es la más adecuada al fenómeno que nos ocupa, tenemos que rechazar la teoría objetiva. De hecho, si se acepta como presupuesto que la peligrosidad es la *condictio sine qua non* para la aplicación de las medidas de seguridad, no se la puede considerar como un concepto objetivo fijado por una norma.

¿Qué significa medida de seguridad? Significa una medida que si bien prevista por el derecho positivo (por razones ligadas al principio de legalidad), únicamente puede ser aplicada cuando el individuo se encuentre en situaciones de hecho particulares; en una posición que, relevante para el derecho, sea definida como un status, status de individuo peligroso. ¿Cómo ha de ser determinado este status? Naturalmente, haciendo referencia a la norma jurídica. Este es el punto central de la cuestión; el error en el cual, desde nuestro punto de vista, cae la teoría objetiva, error que trae su origen en el ver la peligrosidad únicamente en la norma, o sea, creer que los elementos determinantes de la peligrosidad constituyen la peligrosidad misma.

La previsión legislativa abstracta constituye un modelo genérico ya que se funda en cálculos de probabilidad que son a su vez abstractos y, por tanto, sin un diagnóstico concreto de una futura repetición del actuar delictivo.

Además, una concepción de peligrosidad que se concreta a estos puntos no puede satisfacer puesto que:

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[9] *Las medidas de seguridad,* Barcelona, 1951, p. 73.
[10] *Id.,* pág. 75.

a) descuida el hacer una investigación acerca del material humano que podría o no dar los indicios de peligrosidad; y

b) se acontenta, al explicar un fenómeno que es exquisitamente humano, de connotaciones jurídicas, las cuales no pueden ser otra cosa que medio y no fin en el momento en que se utilizan.

En adición, aun cuando se asemeje la posición de la peligrosidad al dolo o a la culpa, no se adelanta en la definición del concepto ya que tanto la culpa como el dolo, en cuanto a la intensidad o grado se determinarán después del examen concreto del autor, salvo los casos de responsabilidad objetiva. Si luego esta teoría desea ir más allá tratando de establecer una ecuación entre peligrosidad y delito (en el sentido que la peligrosidad deba verse como un título de delito), aparecería todavía más clara la desviación del principio básico que rige el ordenamiento jurídico-penal ya que la peligrosidad puede existir sin los elementos necesarios en cada figura de delito.

Por todo lo anteriormente expuesto no podemos aceptar la teoría objetiva de peligrosidad.

Para poder presentar correctamente el problema hemos considerado útil partir de la concepción de Olesa Muñido[11] modificándola para no dar lugar a la posibilidad de aplicación de medidas de seguridad pre-delictuales.

La peligrosidad es, según nuestro punto de vista, una cualidad humana que se verifica en una situación especial bajo condiciones especiales que hacen probable la reincidencia en un autor de acción punible. Afirmamos lo anterior ya que la experiencia demuestra que en cierto sentido en cada hombre hay una posibilidad de causar cualquier tipo de daño; por lo tanto, si definimos la peligrosidad en manera genérica de posibilidades, todos formaríamos parte de la categoría de individuos peligrosos; y como tales seríamos todos pasibles de medidas de seguridad: en vez de vivir en una sociedad libre y democrática, nos convertiríamos en súbditos de un estado terapéutico constituido a su vez por hombres peligrosos, convirtiéndose también el estado en sujeto de medidas de seguridad. Esta extensión al absurdo nos sirve para darnos cuenta que dentro del contexto del derecho penal no podemos incluir a todos los peligrosos latentes, peligrosos en potencia, puesto que solamente la probabilidad o la casi certeza de la reincidencia por parte de un delincuente particular constituye el verdadero estado de peligro.

Se ha discutido si la peligrosidad subsiste únicamente en quien haya cometido acciones punibles o si el hecho delictivo es innecesario. Olesa, como otros autores, retienen exacta esta última tesis ya que para ellos el único elemento característico de la peligrosidad es la posible verificación de un evento

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11 *Supra,* nota 9.

delictivo, constituyendo el delito cometido un indicio más sobre el cual basarse al hacer un juicio de peligrosidad. Pero para que subsista la peligrosidad (ya sea genérica o específica según la capacidad de cometer un hecho previsto por la ley como delito[12] se refiera a cualquier delito en una determinada categoría) es necesario que la llamada capacidad a cometer el delito sea tal que pueda suscitar alarma en la sociedad, lo que sucede cuando las posibilidades positivas de verificación del evento son numéricamente superiores a las posibilidades negativas, como es el caso del que ha cometido delito o alguna acción que no constituyó delito, como en el caso del inimputable peligroso.

Entonces, la hipótesis de peligrosidad individuada con anterioridad a la comisión del delito no encuentra lugar, desde nuestro punto de vista, en el ordenamiento jurídico penal; si acaso, pudieran disciplinarse como parte de las medidas de policía.[13] Aquí caen aquellos casos en los cuales la persona pueda presentar un grado de peligrosidad, (existe en él la probabilidad) pero que todavía no ha cometido acciones punibles. Entrarían también aquellos casos de peligrosidad transitoria[14] para los cuales se justifica un largo tratamiento. Aquí

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[12] El concepto capacidad se usa en sentido naturalístico, y no en el sentido específico que se le atribuye en el campo del derecho como capacidad jurídica.

[13] Como ha sido tratado y reglamentado por la legislación italiana con disposiciones relativas a personas peligrosas para la sociedad (artículos 153-156 del texto único de leyes de seguridad pública y 272-284 del reglamento). "El artículo 153 obliga a los médicos a denunciar a la autoridad de policía (a los fines de la vigilancia que compete a dicha autoridad) a las personas enfermas de mente o que presenten una grave enfermedad psíquica, las cuales demuestren o den sospechas de ser peligrosas a sí o a los demás . . . por lo cual se prevé una internación. . . . Hasta que no surja el peligro para la incolumidad del mismo enajenado o de extraños, o haya escándalo público, el cuidado y custodia se llevará a cabo preferiblemente en casa de familiares del enajenado, a los fines de evitar, en cuanto posible, restricciones a la libertad personal. . . . En el caso contrario se prevé la internación en una institución siguiendo un procedimiento especial. . . . [L]a obligación de la denuncia subsiste también para aquellas personas que resulten afectadas por intoxicación crónica producida por alcohol o estupefacientes . . . también para estos . . . con las mismas modalidades previstas . . . previa sujeción a atención y cura desintoxicante idónea. Se precisa que en tales casos, es muy rara la posibilidad de internación de urgencia de parte de la policía. . . . [También se considera la mendicidad] bajo un dúplice perfil en relación al peligro social que puede derivar de ella y en relación al deber de prestar ayuda a los necesitados. El artículo 154 prohibe la mendicidad pública reproduciendo el precepto contenido en el artículo 670 del código penal. . . [con] sanción más grave prevista. . . cuando. . . cometido simulando enfermedad. . . justificada por la mayor peligrosidad social de esta forma de mendicidad que sofoca en los niños cualquier sentimiento de dignidad, habituándolos al ocio y a la hipocresía, factores que pueden favorecer la formación irregular del carácter de los menores y el surgir de tendencias criminosas . . ." Extracto de Bonichi, E. Le leggi di Púbblica Sicurezza, Roma, 1973.

[14] Se distinguen fundamentalmente como formas de peligrosidad, la permanente y la transitoria. Se entiende por permanente aquella situación en la persona (en palabras de Olesa Muñido) de un individuo consistente en la perduración de la probabilidad de cometer delitos. No exige un carácter de perpetuidad sino únicamente que sea de naturaleza tal que necesite de una actuación externa al individuo que modifique la situación. La peligrosidad, sin embargo, puede desaparecer sin acción externa por curación espontánea o por autocorrección del individuo, sin embargo permaneciendo una tendencia a subsistir derivada no de una excitación sino de un verdadero estado de la personalidad que no desaparecerá sino por medio de una acción externa que se actuará sobre los estímulos internos para

el problema es distinto: la intervención del estado no se tiene para determinar una condición (el estado de peligrosidad) que sobre todo sirve para etiquetar y cualificar negativamente al individuo, sino que se justifica en el amplio poder de intervención a los fines de prevención general (porque protege la sociedad) y especial (porque ayuda a la persona a que no cometa delitos, sin lesionar los derechos subjetivos de los ciudadanos que no han violado la norma, sometiéndolos a una disciplina prevista por la ley en cuanto se dirige a personas peligrosas a la moralidad y seguridad públicas).

El derecho penal deberá entrar en juego únicamente allí donde se haya cometido una acción punible, culpable o no, según el juicio que se haga del autor. El estudio de la prevención indirecta es competencia del criminólogo y no del penalista práctico, como bien decía Jiménez de Asúa refiriéndose a los estados de peligrosidad predilectual: "Se trata de individuos más descontentos que malvados, los cuales deben interesar al estado más bien como mendigos, vagabundos, prostitutas y enfermos de mente que como posibles criminales."[15]

Estamos de acuerdo con la Dra. Silving cuando afirma que para que el derecho penal entre en acción —cuando existe un diagnóstico de peligrosidad— la probabilidad de daño debe referirse a un daño previsto por la norma penal, teniéndose en cuenta que no todos los daños previstos por la ley requieren la intervención del estado cuando se trata de una mera posibilidad de peligro."[16]

Cualquier daño justifica una sanción después que se haya efectuado pero no cuando se verifica como una mera posibilidad de acción futura.

Los indicios de peligrosidad

Para que el estado de peligrosidad pueda ser diagnosticado y evaluado, es necesario que el mismo se revele. Los indicios sobre los cuales se funda el juicio de peligrosidad, no pueden ser predeterminados en manera absoluta y categórica en cuanto éstos variarán en concreto dependiendo de los individuos particulares. Existen todavía indicios fundamentales que deben tenerse en cuenta al momento de emitir un diagnóstico de peligrosidad. Uno de estos indicios es la modalidad

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modificar las circunstancias consistentes o determinantes (véase Olesa Muñido, *op. cit.*, pág. 87). La peligrosidad transitoria, por el contrario, es externa a la personalidad y adolece de continuidad en el tiempo, o sea, producida por una excitación a la cual la acción delictiva subyace. Ejemplos de esta peligrosidad transitoria lo son la embriaguez, la intoxicación y el estado mental transitorio. El individuo que se encuentra en estos estados es un perturbado momentáneo, peligroso sí, pero con una peligrosidad que será adjudicada diversamente al momento de actuar las medidas que habrán de ser aplicadas en cada caso. Así la peligrosidad transitoria no ameritaría una medida de naturaleza jurídica como sería el caso de la peligrosidad permanente.

[15] Traducido de *L'etat dangereux ou la pericolosité et le droit pénal, loc. cit.*, pág. 170.

[16] *Constituent elements of crime,* Thomas publisher, pág. 170, 1967.

de la acción, el despliegue de conducta o comportamiento capaz de justificar una alarma en quien hace el diagnóstico. Sin la manifestación extrínseca del individuo, todas las demás circunstancias, inherentes al individuo, podrán determinar un juicio de peligrosidad eventual y no uno de peligrosidad concreta y efectiva. Es necesario, sin embargo, discutir si la acción punible implica siempre y necesariamente un estado de peligrosidad. Dirigiendo el problema hacia la permanencia de la peligrosidad después de la comisión de la acción, la cual puede no persistir como en el caso de la peligrosidad transitoria, existente también al momento de la perpetración del hecho, no hay duda de que el individuo revela su concreta capacidad a delinquir tal que se hace evidente la peligrosidad. La importancia de la comisión de la acción punible para la determinación de la peligrosidad proviene del complejo de elementos subjetivos (motivos determinantes como la intención vista en el despliegue de conducta o comportamiento) y objetivos (naturaleza y entidad del daño) que la cualifican y la caracterizan en concreto.

El indicio fluentísimo para el juicio de peligrosidad es la personalidad del individuo, deducida además de por la modalidad de la acción, por la constitución bio-psíquica y por las condiciones objetivas de vida. A este propósito asumen también una importancia notable los precedentes judiciales, el ambiente familiar y social, el grado de instrucción del individuo, así como los demás requisitos que a los fines de la individualización de la pena habrá de tomar en consideración el juez al determinar la sentencia según el artículo 60 del código penal de Puerto Rico.[17]

El profesor argentino Osvaldo Loudet presentó en el Congreso de Criminología de París de 1950 un plan metodológico de investigación sobre el diagnóstico del estado peligroso. En su obra clasifica los indicios de peligrosidad en: indicios sociales, legales y médico-psicológicos, considerando este último como el más grave, el más permanente y el menos sujeto a modificación porque se traduce en la personalidad del sujeto y en sus reacciones a un medio social determinado. Por indicios médico-psicológicos del estado de peligro entiende "las entidades psíquicas o las simples faltas de armonía de la misma naturaleza" (de las entidades psíquicas precedentes) "que en circunstancias determinadas o

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[17] "Fijación de las penas

Dentro de los límites establecidos por la ley, las penas se fijarán de acuerdo a la mayor o menor gravedad del hecho cometido y tomando en consideración, entre otras, las siguientes circunstancias:

(a) La naturaleza de la acción u omisión delictuosa.
(b) Los medios empleados.
(c) La importancia de los deberes transgredidos.
(d) La extensión del daño del peligro causado.
(e) La edad, educación, historial social y reputación del autor.
(f) La conducta relacionada con el delito antes, durante y después de la comisión del mismo.
(g) La calidad de los móviles del hecho.
(h) La conducta de la víctima relacionada con la transacción delictuosa."

indeterminadas permiten pronosticar una reacción antisocial".[18] Incluye entre enajenados psíquicos los semi-enajenados y los sujetos de constitución psicopática, apoyando su tesis en numerosas estadísticas que demostraban que los reincidentes (antisociales) presentan anomalías de conducta que se traducen en reacciones antisociales pequeñas o de poca gravedad. Esta tesis, sin embargo, está dirigida totalmente a individuos que presentan anomalías mentales y tenemos que tener presente, como bien dice Hesnard,[19] que la dificultad se presenta no en el diagnosticar el estado peligroso de un paranoico confirmado o de un esquizofrénico indiscutible sino en el diagnóstico de peligrosidad del delincuente normal que no presenta síntomas de enfermedad mental. Criticamos, por tanto, esta clasificación enteramente patológica hecha por Loudet ya que es necesario tomar en consideración al hacer el diagnóstico de peligrosidad que no se está haciendo un diagnóstico de enfermedad mental más o menos grave ni de una peligrosidad derivada de un diagnóstico psiquiátrico. Se trata también de hacer un diagnóstico de peligrosidad derivado de una cualidad humana verificada bajo condiciones especiales que llevan a la reincidencia y es necesario recordar que esta cualidad o situación especial no es únicamente de carácter patológico. Basta pensar en los casos de habitualidad en el delito donde en el delincuente así tipificado no existe anomalía mental. El delincuente promedio, no psicópata, no revela su peligrosidad a través del diagnóstico de un psiquiatra en condiciones normales de pericia.

Luego de la descripción de los indicios de peligrosidad que llama médico-psicológicos en individuos sometidos a pericia psiquiátrica especialmente, Loudet describe los indicios sociales, proporcionados a los factores ambientales; indicio social que aparece muy a menudo como dominante. Es innegable que el desorden familiar es uno de tantos factores criminógenos; en el mismo modo es innegable la influencia del factor económico como criminógeno, por ejemplo, en los delitos contra la propiedad; y mucho menos la influencia de la mala educación, de la sugestión y de la imitación (se llama la atención a las llamadas asociaciones diferenciales[20]) en los medios caracterizados por el abandono, la vagancia y las condiciones de vida anormales; sobre todo en las barriadas pobres

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[18] Loudet, Osvaldo, *El diagnóstico del estado peligroso - metodología* (12°informe del congreso internacional de Criminología de París, 1950).
"Las entidades psíquicas o las simples faltas de armonía de la misma naturaleza, etc. Esto significa que existen modelos psíquicos patológicos algunas veces presentes en individuos y más allá de ellos una falta de concordancia en la psiquis (reconducibles desde el punto de vista psíquico a los modelos patológicos en cuestión) que, allí donde el sujeto se enfrente o no a una situación precisa) permiten diagnosticar en él una reacción antisocial".
Sobre el mismo tema véase Semerari e Citterio, "Reazioni abnorme al avvenimento", cap. 13 en *Medicina Criminologica e Psichiatria Forense,* Milano, Valladi, 1975, Págs. 295-315.

[19] *Psicología del crimen,* Parte II, Barcelona, Zeus, 1963, pág. 230.

[20] Manheim, *Trattato di Criminologia Comparata,* Vol. II, Torino, 1975 pág. 591 *et. seq.*

donde se presenta mayor la delincuencia juvenil y, por último, donde la formación imitativa conduce a una vida que se protracta en un esquema de conducta criminal. De ahí la justa subdivisión que hace la Dra. Silving de la reincidencia condicionada sociológicamente, donde clasifica al reincidente no psicópata cuya situación especial revela una cualidad humana especial resultante de las condiciones ambientales en la cual transcurre su infancia que le hicieron formar un ideal delincuencial (ego ideal).[21] Es necesario, por lo tanto, tomar en consideración los indicios sociales al hacer el diagnóstico de peligrosidad ya que dotado de estas experiencias particulares podrá el observador vislumbrar en la personalidad particular del individuo colocado en situación especial, los primeros síntomas de reincidencia.

En última instancia coloca Loudet los llamados indicios legales, los cuales se refieren a los antecedentes de policía y a los antecedentes judiciales del delincuente. Critica a este respecto los órdenes que de valores revela Ferrari en sus tres criterios y propone colocar el criterio personalidad del delincuente con prioridad a la gravedad del delito y a los motivos que determinaron la acción punible. El delito para Loudet no constituye el elemento principal de individuación de la peligrosidad ya que existe una multitud de pequeños delitos cometidos por individuos peligrosos (psicópatas, delincuentes habituales por tendencia congénita) y viceversa delitos muy graves cometidos por sujetos no peligrosos como en el caso de delincuentes pasionales. En definitiva, los indicios legales, en la mayoría de los casos no hacen otra cosa que contribuir como elementos complementarios a los médico-psicológicos y sociales y son a menudo subordinados a éstos. Es necesario estar atentos a los indicios legales que pueden contradecir los demás indicios; como por ejemplo, una persona que ha sido condenada por delitos de la misma naturaleza más de dos veces podría sugerir un delincuente habitual mientras que los indicios médico-psicológicos y sociales revelarían un delincuente ocasional susceptible de resocialización mediante el tratamiento de la pena. El legislador puertorriqueño cae en un error cuando presume la peligrosidad en todas las categorías de delincuentes peligrosos (haciendo excepción del caso del absuelto por incapacidad mental) basándose únicamente en la cantidad de delitos cometidos que sean de la misma naturaleza.[22]

Claro está, que estos indicios legales no pueden ser ignorados ya que son

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[21] *Repeated Offender,* categoría que subdivide en delincuente habitual y reincidente. Incluye en el primer grupo los delincuentes anormales o mentalmente incapaces y en el último los considerados normales incluyendo dentro de esta categoría la *Sociologically Conditioned Repeated Criminality,* grupo compuesto por delincuentes normales cuyas circunstancias de vida los han hecho aceptar esquemas de conducta criminal, particularmente debida al crecimiento en ambientes criminogenéticos.

[22] Artículos 72, 73 y 74, Código Penal de Puerto Rico. Son los casos del delincuente sexual peligroso, el delincuente compulsivo y el delincuente habitual.

necesarios para la determinación de la peligrosidad de retorno[23] una vez declarada la reincidencia.

En tema de indicios psicológicos, aun cuando éstos sean los indicios más aproximativos para la determinación de peligrosidad, es necesario evitar el caer en el "patologismo" recordando que también los individuos normales cometen acciones punibles como lo reconoció el mismo Grispigni.[24]

Las acciones punibles calificadas o no de delito, además del posible síntoma de enfermedad mental, son el síntoma jurídico de peligrosidad. Naturalmente, el delito es una revelación parcial psíquica del individuo (en palabras de Grispigni) en la medida que demuestra la existencia en el autor de una capacidad de cometer hechos previstos como delito por la ley. Aquél que ha cometido acciones punibles es el delincuente probable del futuro.

De la exposición precedente se hace forzoso concluir que el juicio de peligrosidad (diagnóstico de peligrosidad individual y pronóstico de una conducta futura probable) será más exacto según el quantum de los elementos indiciarios utilizados. Es necesario siempre recordar que se trata de un juicio más que de certeza de probabilidad y que será necesario basarlo sobre todo en la personalidad del autor desde los distintos ángulos de ésta, los aspectos morfológico-fisiológicos, conativos y afectivos del individuo según el rol que ocupa en su ambiente social, reconstruyendo la vida precedente al acto cometido y conociendo las motivaciones que concluyeron en la acción punible; sin olvidar, al aplicar los criterios objetivos y subjetivos, el criterio importante de la personalidad moral del sujeto que según los psicólogos falta en el examen de la personalidad.[25]

El órgano llamado a hacer el diagnóstico de peligrosidad

Como se ha dicho hasta ahora, la verdadera peligrosidad es aquella que puede derivarse del hecho que el individuo haya cometido una acción punible. La norma jurídica da un camino al órgano adjudicador sobre los casos en los cuales la peligrosidad deberá ser determinada: los llamados indicios legales, que ciertamente dependerán de la reglamentación que haya seleccionado el legislador para regir en esta materia según la política legislativa. En general, los tipos delincuenciales sujetos a medidas especiales se dividen en dos grandes categorías:

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[23] Término acuñado por Hesnard, *op. cit.,* pág. 243.

[24] ". . . los autores de delito no se distinguen morfológicamente ni psicológicamente de las demás personas que tienen a su alrededor, por el contrario, ocurre reconocer que la mayoría de los delincuentes son normales". *Derecho Penal Italiano.*

[25] "En particular, los exámenes psicológicos encaminados a descubrir la peligrosidad adolecen de una falta . . . en materia de psicología criminal: la falta de exploración psíquica profunda del comportamiento ético: del estado de concepción moral, personal y social". Hesnard, *op. cit.,* pág. 234.

los inimputables y los reincidentes, incluyendo en esta última categoría una cantidad heterogénea de tipos delincuenciales tales como el delincuente habitual, el toxicómano o alcohólico habitual, el delincuente profesional o por tendencia, el delincuente sexual peligroso, el compulsivo, etc. Este camino es, sin embargo, sólo un aspecto del cual tomar consideración al emitir el juicio de peligrosidad, ya que, como dice Vassalli al hablar de la peligrosidad presunta,[26] la rígida aplicación de las normas jurídicas prescindiendo de la evaluación individual del sujeto falsea el diagnóstico y, en consecuencia, el pronóstico sobre el cual se apoya el juicio de peligrosidad y la prevención de la reincidencia. El órgano competente para la adjudicación de la peligrosidad deberá apreciar al sujeto en toda su personalidad teniendo en cuenta la acción, las motivaciones que lo condujeron a la comisión de la acción, para constatar si el tratamiento resocializante tendrá éxito a través de la pena establecida por la ley o si es necesario someterlo a una medida diversa.

En el caso contrario, se emitirían juicios sobre la conducta futura del individuo inadecuados a la realidad, asistiéndose a una disparidad de tratamiento donde individuos con capacidad e instancias antisociales reducidas permanecen sujetos a medidas sancionadoras por más tiempo que otros que por su predisposición a la conducta antisocial y por factores ambientales particulares mantienen una actuación delictiva.[27]

El problema no reside únicamente en el formular un juicio de peligrosidad teniendo consideración de los indicios objetivos y subjetivos varios ni dando prioridad a unos sobre otros. El principio de legalidad impone que la determinación de la peligrosidad se base en indicios objetivos que sean, sin embargo, conectados lo más posible con la personalidad del individuo de modo que entre los indicios dados por la norma (la cual prevé abstracta y objetivamente los indicios) y la conducta o comportamiento desplegados por el autor del hecho (que ofrece la posibilidad de desunir indicios subjetivos que es necesario confrontar con aquéllos previstos por la norma) se establezca una *liason*, haciéndose en definitiva lo que provee el artículo 60 de nuestro código penal para la fijación de las penas.

El núcleo de la discusión hasta ahora seguida se centra en otro problema: la competencia del órgano adjudicador para emitir el juicio de peligrosidad.

El código penal de Puerto Rico en sus artículos referentes a las medidas de seguridad atribuye exclusivamente al juez la tarea de adjudicar específicamente la peligrosidad según la presunción que el legislador ha establecido en la norma. La peligrosidad en el derecho penal sirve como base a la imposición de medidas privativas de libertad de la misma forma que la pena se basa en la determinación

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[26] *Misure di sicurezza nella esperienza italiana e argentina* en *Archivio Penale*, 1972, pág. 18.

[27] *Ibid.*

de culpabilidad. No por ello se debe hacer equivalente el juicio de culpabilidad al juicio de peligrosidad. En el juicio de culpabilidad, se deben tomar en consideración dos cosas: la imputabilidad y la comisión del hecho por la persona que se juzga. Para dar la categoría de peligroso a un individuo basta la comisión de una acción punible, independientemente de si el individuo fuera o no imputable. El juicio de imputabilidad para la culpabilidad no ofrece dificultad desde el punto de vista del tratamiento jurídico cuando la prueba pericial demuestra que el individuo cometió la acción a causa de enfermedad o defecto mental, o sea, que el individuo *al momento de la comisión de la acción* a causa de enfermedad o defecto mental carecía de capacidad suficiente para comprender la criminalidad del acto o para conducirse de acuerdo con el mandato de ley, según los requisitos del artículo 30 de nuestro código penal. Basta con esta determinación para que el juez, basándose en la opinión del perito psiquiatra, declare a un individuo culpable o no y lo someta a una sanción penal. El juicio de peligrosidad, sin embargo, va más allá de la simple declaración de culpabilidad: la peligrosidad revela la probabilidad de reincidencia y no cambia el juicio emitido por el perito sobre el estado anímico del autor al momento de la comisión de la acción.

Vista la novedad del tema en el ordenamiento jurídico penal puertorriqueño y habiendo constatado la carencia de tratamiento de la materia en nuestra literatura penal, nos referimos a la experiencia italiana fruto de 46 años de aplicación en el campo de las medidas de seguridad con la esperanza que estas experiencias positivas o negativas puedan servir de ejemplo que contribuya a una exitosa aplicación en nuestra legislación naciente.

En la práctica italiana el juez pronuncia el juicio de peligrosidad basándose en los argumentos formulados por el perito incluyendo en la fórmula con la cual encarga al perito la determinación del estado mental para el juicio de culpabilidad la siguiente frase: "Diga además si el individuo que se juzga es una persona socialmente peligrosa."[28] Por tanto, el juez remite al perito aquella decisión que por ley cometía a él en base, no ya de las consideraciones que la ley le obligaba (el artículo 133 equivalente a nuestro 60) basando el juicio de peligrosidad en los requisitos de la imputabilidad.

Hacemos nuestra en este momento la preocupación de Vassalli en el artículo citado, observándolo desde un ángulo visual diferente al expresar que quizás el juez no emite el juicio de peligrosidad porque no se reputa idóneo a hacerlo, faltándole las disposiciones necesarias a las estructuras técnico-jurídicas. No hay duda sobre la competencia del juez en lo que respecta al análisis cualitativo y cuantitativo del delito: la intensidad del dolo y el grado de la culpa y las modalidades de la acción, circunstancias que respectan a la acción punible. La

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28 Semerari e Citterio, *op. cit.*, pág. 340.

duda aparece por lo que respecta a las circunstancias pertinentes al autor, circunstancias que el juez no podría evaluar por sí mismo en términos del estado peligroso, ya que, en palabras de Hesnard[29] "la peligrosidad puede ser estudiada y descubierta sólo si el observador que debe ocuparse del sujeto logra obtener la confianza de éste", confianza que ciertamente no lograría obtener el juez dada la relación meramente circunstancial que existe entre juez y acusado. Unicamente mediante un contacto íntimo con el sujeto en examen podrá el adjudicador reconstruir las circunstancias y motivos de la acción o acciones anteriores que constituyen, como hemos ya visto, los primeros síntomas de peligrosidad.

Continúa diciendo Hesnard: "La peligrosidad se revela en la apreciación de posibles cambios aparentes en la personalidad del delincuente. Se entiende que él busca una posibilidad de situación criminógena, realizando una especie de selección entre los acontecimientos y circunstancias de su ambiente actual, de situaciones y de compañeros y de enemigos que los hacen recordar la antigua situación criminógena. . . . Existe [en él] una fuerza de repetición que reproduce la oportunidad de la reincidencia."[30] Todo lo hasta ahora dicho no significa más que lo siguiente: para determinar un eventual estado de peligrosidad es necesario evaluar al individuo no sólo relacionándolo con el hecho delictivo cometido sino también con su actividad subsiguiente. Y esto en virtud de una observación de parte de individuos especializados que sepan recoger y clasificar aquellos "posibles cambios aparentes de la personalidad", indicios de peligrosidad.

La norma que encamina el juicio de peligrosidad exige la determinación de la forma de vida del individuo antecedente al delito. En este caso no nos encontramos ante un pronóstico de conducta futura basado sobre la determinación de un despliegue de conducta o comportamiento al momento de la comisión de la acción ni de un análisis psicológico de la conducta *post-factum*, sino de un análisis de la historia del individuo desde su nacimiento, a través de su vida, hasta el momento de la comisión del hecho por el cual se le enjuicia. Un análisis a hacerse a través de una pericia psicológica que, además de que debe hacerse por un juez especializado, retrasaría los procesos adjudicativos.

Analicemos otro parámetro que nos da la norma en cuanto al carácter del individuo. Como dice Leggeri[31] basándose en la definición que de carácter da Gemelli: "el todo dinámico que resulta de la estructura de los elementos psíquicos individuales que explican la conducta humana", el carácter en particular representa un elemento de investigación delicadísimo para la comprensión del individuo y para la evaluación de su conducta. Un diagnóstico de peligrosidad basado únicamente en la norma o en el parecer de un perito, como sucede en la jurisdicción italiana, o como proyectado por la legislación

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[29] *Op. cit.*, pág. 243.

[30] *Ibid.*

[31] "Pericolositá sociale e norma giuridica" en Semerari, *op. cit.*, págs. 430-433.

puertorriqueña que hace obligatoria la imposición de una medida de seguridad a unas categorías específicas de delincuentes, cuyo resultado es etiquetar al delincuente sin determinación de peligrosidad con excepción del caso del absuelto por incapacidad mental, no es exacta ni recomendable, sobre todo si se deja en manos de un órgano incompetente.

La peligrosidad, como resulta del precedente orden de ideas, implica un diagnóstico científico y para emitir un juicio ponderado que responda a las finalidades de prevención general y especial de la medida de seguridad, el juez necesita de una prueba científica que deberá consistir en una evaluación de la personalidad del individuo que se somete al juicio. Evaluación que, como afirma la Dra. Silving,[32] habrá de desembocar en una predicción de las actividades delictivas que en términos tipificados, el individuo podría desempeñar en el futuro.

El juicio de peligrosidad se funda en un diagnóstico clínico muy particular: no únicamente en la patología como en el caso de la pericia psiquiátrica, sino en el conocimiento concreto de la personalidad y del comportamiento ético de todos los delincuentes.

En conclusión, a diferencia del juicio de imputabilidad para la culpabilidad, aunque fundado en los mismos datos fácticos, el juicio de peligrosidad está dirigido con mayor acentuación a individuar la presumible conducta futura del individuo. Se exige en él a este objetivo, una mayor intensidad de investigación, una apreciación más delicada.

La diferencia descansa entonces no ya en los elementos a tomar en consideración sino en el valor que habrá de darse a los mismos ya sea al momento de su adquisición (se asumen para un fin, la determinación de peligrosidad) que al momento de su evaluación (se evalúan justamente para saber si el individuo es peligroso): una diferencia que conduce, por cuanto hemos dicho, a consecuencias notables por lo que respecta al hombre que se enjuicia.

No es difícil persuadirse, según lo que aquí se ha expuesto, que si en la peligrosidad determinada por el juez, la evaluación no alcanzará jamás las finalidades sociales que fundan su determinación, mucho menos se lograrán a través del dictamen de una peligrosidad presunta por el legislador. Unicamente a base de investigaciones llevadas a cabo con rigurosos métodos científicos (psicología experimental, sociología clínica, exámenes morfológicos y psiquiá-tricos) se puede contar para alcanzar la meta representada por el pronóstico penal.

Se recomienda, por tanto, no una determinación de peligrosidad hecha por un juez con base en simples impresiones, adivinanzas o intuiciones en el ejercicio

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[32] *Op. cit.,* pág. 301.

de una discreción ilimitada, que hemos visto en la realidad práctica deleteria, sino que abandonando la peligrosidad presunta por el legislador, junto al juez, para hacer el diagnóstico de peligrosidad, desde nuestro punto de vista debería existir un equipo de técnicos especializados en las materias citadas que tenga bajo observación al individuo durante el período que dura el juicio, teniendo presente que la finalidad de este equipo no es aquella de sustituir al juez al hacer el juicio de peligrosidad; lo que se busca y se quiere es poner a disposición de los jueces instrumentos de trabajo. La selección no es entre órganos adjudicadores sino entre procedimientos de prueba basados uno en el rol del juez y el otro en experiencias científicas.