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HUMAN RIGHTS AND WORLD PUBLIC ORDER
BY PROFESSORS MCDUGAL, LASSWELL AND CHEN

BOOK REVIEW

by Professor Winston P. Nagan*

[A]ll men have a common humanity . . . there is a oneness in the world which binds all men together.

Justice William O. Douglas, *An Almanac of Liberty* 3 (1954), cited in Thomas I. Emerson, *Justice Douglas and Lawyer with a Cause*, 89 *Yale Law Journal* 619 (1980).

Human rights and its role in contemporary public order evoke passionate commitment from some¹ and scorn from others.² The human rights literature traditionally inspires support for a higher law, and a "morality" of law associated with concepts of natural law, natural rights and natural justice.³ Yet to the positivist or realist

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1. H. Lauterpacht, *An International Bill Of The Rights Of Man* (1945).

2. Professor Antony Flew in a recent piece calls the Universal Declaration of Human Rights "notorious." Flew, *What is a Right*, 13 *Ga. L. Rev.* 1117, 1135 (1979). Flew also maintains that "any formulation of such claims, and any reporting of them, is bound to sound absurd." *Id.* I shudder to think of what he would write about the book under review!

3. J. Maritain, *The Rights of Man and Natural Law* (D. Anson trans. 1943).

it may stand accused of being nothing more than "nonsense on stilts."⁴ To its detractors, human rights are often thought to be unrealistic, without content, vacuous and even, in some circles, dangerous.⁵ Yet we find that the parade of global horror stories impels us to the view that human rights can and should be important, whatever its practical and theoretical flaws. Reality is unpleasant: we are told that terror squads kill 15,000 in Guatemala; that there are 10,000 political prisoners in the Soviet Union; that under the Amin regime in Uganda there were some 50,000 summary executions.⁶ If the reality of practical deprivations were not enough, the articulation of human rights on ideological lines⁷ has further muddied the utility of the human rights perspective.

Are human rights culture-bound? Are human rights a Western invention, based on Lockean concepts of individuality and right, whose impact is to institutionalize class divisions both nationally and globally? Or, are human rights only to be seen through the collectivist vision—a vision embraced by the socialist bloc and now affirmed by Third World theorists as well?⁸

To add to these complexities, it is claimed by some that the use of human rights as an instrument of foreign policy simply broadens the ideological cleavages between the rich industrial West and the Socialist and nonaligned countries.⁹ Worse still is the view that the human rights focus of American foreign policy¹⁰ is a threat

4. J. Bentham, *The Works of Jeremy Bentham* 501 (1843).

5. See Hoffmann, *The Hell of Good Intentions*, 29 *Foreign Policy* 3, 7-9 (1977); Kissinger, *Continuity and Change in American Foreign Policy*, 15 *Society* 97, 102 (1977); Evans & Novak, *Human Rights Zeal That Costs US Jobs*, *Washington Post*, Sept. 18, 1978, at 23, col. 1; Regan, *Argentina's Views on Human Rights*, *The Miami News*, Oct. 20, 1978, at 13, col. 1.

6. Robertson, *Human Rights: A Global Assessment*, in *Human Rights and American Foreign Policy* 9 (D. Kommers & G. Loescher eds. 1979) [hereinafter cited as Kommers & Loescher].

7. See Farer, *On a Collision Course: The American Campaign for Human Rights and the Antiradical Bias in the Third World*, in Kommers & Loescher, *supra* note 6 at 265.

8. Shipler, *Pravda Cautions U.S. on Rights Criticism*, *N.Y. Times*, March 14, 1977, at A1, col. 5. See also Reddaway, *The Theory and Practice of Human Rights in the Soviet Union*, in Kommers & Loescher, *supra* note 6 at 115; Zvobgo, *A Third World View*, in Kommers & Loescher, *supra* note 6 at 90.

9. Shipler, *Pravda Cautions U.S. on Rights Criticism*, *N.Y. Times*, March 14, 1977, at A1, col. 5.

10. On human rights in American foreign policy see President Carter's

to world peace. The specific reason supporting this conclusion is that the deposition of the Shah could not have occurred without United States acquiescence. It is claimed that American "approval" of his departure was conditioned by our concern for his deplorable record of human rights violations. The departure of the Shah, it is further claimed, increased the instability of the Persian Gulf, inviting military adventurism and endangering world peace.¹¹

In this context of practical urgency, theoretical confusion, and ideological hostility (at home and abroad), Professors McDougal, Chen, and the late Professor Lasswell have rethought the entire conception of human rights, its theoretical foundations, its methodological concerns, and its practical relevance to international law and world order.¹²

The publication of a new book by the New Haven School is always a significant event in international law. Previous works have ranged widely, characterized always by problems that are controversial and of contemporary relevance in the theory and practice of international law. These areas have included jurisprudential controversies about the nature of international law, the relationship of law and power, the management of violence and international security and the control and regulation of resources.

The present book, published almost eleven years after the authors' suggestive piece, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*,¹³ is a substantial book, both in volume (958 pages) and in content. It is literally packed with ideas and insights about the nature of law, justice and international order. Indeed, some of the individual chapters are so "meaty" that they could have been separately published in book

inaugural address, N.Y. Times, Jan. 21, 1977, at B1, col. 1. See also President's Commencement Address at the University of Notre Dame, May 22, 1977, 39 Review of Politics 291 (1977). See also House Subcomm. on Int'l Organizations & Movements of the Comm. on Foreign Affairs, 93rd. Cong., 2d Sess., Human Rights in the World Community: A Call for U.S. Leadership (1974); Vance, *Human Rights and Foreign Policy*, Dep't State Bull. No. 505 at 76 (1977).

11. The specific reference is to a statement made by Governor Reagan on C.B.S. News Thursday, Sept. 25, 1980. The failure of the Nixon administration on the human rights front is well-documented elsewhere. See Cohen, *Human Rights Decision-Making in the Executive Branch: Some Proposals for a Coordinated Strategy*, in Kommers & Loescher, *supra* note 6 at 226.

12. M. McDougal, H. Lasswell & L. Chen, *Human Rights and World Public Order* (1980) [hereinafter cited as McDougal].

13. 63 Am. J. Int'l L. 236 (1969).

form. It is the reviewer's understanding that the original enterprise envisioned multiple volumes. Professor Lasswell's untimely illness and death restricted the scope of the enterprise. Executing the project in these circumstances must have been emotionally and technically difficult. The outcome however is a tightly organized volume rich in understanding and insight.

Human Rights and World Public Order is certainly not an easy book. It took years of mature reflection and sustained intellectual effort to write. The authors bring considerable learning and authority to bear on the central ideas of law, power and justice. It requires a substantial intellectual effort to read. The trip, indeed the odyssey, is a rewarding and recommended experience.

Analytical philosophers and lawyers have sought to narrow the scope of human rights severely by focusing analysis on the criterion of universality.¹⁴ To the extent that there are few, if any, "rights" that hold for all situations, there can correspondingly be few, if any, human rights in "existence." For example, when the Universal Declaration of Human Rights (i.e., its specific provisions) lends itself to either qualifications and exceptions, it cannot claim the imprimatur of being truly universal and therefore there cannot be "human rights" in any absolutist or universal sense.¹⁵ This position is ubiquitous in the philosophic literature on human rights, and remains problematic. Essentially, the perspective works on a particular conception of what rights in general are, and a mode of analysis by which rights are "derived."¹⁶ From an analysis of what rights are, emerge answers to further questions such as: what human rights are, what relationship exists between human rights and moral rights and between human rights and legal rights.¹⁷

14. For an excellent discussion of the philosophical problems of universalisability, see Hare, *Universalisability*, in *Essays on the Moral Concepts* 13-28 (1972).

15. M. Cranston, *What Are Human Rights?* (1962).

16. *Id.* See also Flew, *supra* note 2.

17. Positivists objectify law by isolating a criterion of validity. A rule of law is a rule of law if it can be logically deduced from such a criterion. The criterion itself is usually deemed to be meta-legal. Cf. Kelsen, *General Theory of Law and State* (1945). Moral rights, on the other hand, are not established by a validating criterion, but are "justified." In the positivist lexicon, the Declaration of Human Rights is not law, but something in the nature of positive morality. Once consigned to the realm of moral discourse, its lack of absolute universality throws doubt on its intrinsic moral value. Technically the problem of how A can convince B that A has a moral right is to show that A's moral right is objective. This means that without a criterion of formal

Legal realists realized that an excessively dichotomous approach to law and social science tended to obscure rather than facilitate inquiry and the accretion of knowledge for practical decision-making. McDougal¹⁸ in particular drew attention to the complementarity of the mental devices of "law" (rules, principles, standards, doctrine). Modern analytical theory has remained impervious to these criticisms. For example, Professor Flew, in a recent piece, tells us that the first conceptual "truth" about rights is that they are "entitlements and must possess some kind of objectivity."¹⁹ Apart from the objective-subjective dichotomy, the problem of circularity is obvious: a right is an entitlement is a right is an. . .

The authors of the book under review noted the intellectual confusion (ambiguity, circularity, astigmatism) when they wrote:

Even the very concept of human rights itself does not escape . . . highly technical normative ambiguous . . . concepts which purport to make simultaneous reference to varying factual contexts, to claims made to authority, and to responses by authoritative decision-makers.²⁰

I would suggest that the theory of rights one adopts has vast implications for the adequacy of the forms of inquiry about law and human rights. I suspect that a more detailed analysis of how the authors' conception of rights transcends existent paradigms²¹

validity as in law, one has to justify the existence of the right with reasons that are intrinsic to the self (A).

The nature of morality in the philosophic sense is highly controversial as are the criteria by which moral rights are derived. For example, Kant derived his conception of moral rights from reason; Kierkegaard from religion; Nietzsche from power; Mill from utility; Marx from economic class or history. See Gewirth, *The Basis and Content of Human Rights*, 12 Ga. L. Rev. 1113, 1114 (1979).

18. McDougal, *The Ethics of Applying Systems of Authority: The Balanced Opposites of a Legal System*, in *The Ethics of Power* 221 (H. Lasswell & H. Cleveland eds. 1962).

19. Flew, *supra* note 2 at 1125. Flew also concedes that a theory of rights must have a factual reference. Rights, he says, must also be "grounded in some fact or facts of their bearers."

20. McDougal, *supra* note 12.

21. The relevant discussion is on pp. 63-71 and 73-79. Here the authors attack the model of rules and its traditional mode of exposition-logical syntactic derivation. The key citation in this discussion (190) cites back to note 171, which note tells us that just about everyone writing in the human rights area

of legal and philosophical thought would have been immensely helpful in more adequately understanding what the authors call past confusions,²² and would perhaps make for a fairer and more serious

uses logical syntactical derivation. If this is right, then the importance of the "mode of exposition" to our appreciation of the nature of human rights and how we perceive them is obvious. To the extent that configurative analysis transcends either the metaphysics of dialectical materialism or the astigmatism of reality shrinking syntactical logical derivation, it presents an alternative paradigm that perhaps requires fuller exposition. The late Professor Lasswell firmly believed that a "totally different technique of thinking" was needed, if the social sciences were to be relevant to human purposes. H. Lasswell, *Psychopathology and Politics* 31 (1930). And the problem of a relevant social science was how to connect "actualities" to emergent "potentialities" was in the first instance to be resolved by the imaginative orientation of the self as observer.

22. The conceptual underpinnings of the policy sciences are rooted mainly, though not exclusively, in the pragmatic tradition (other influences include Bentham, Freud, Marx, Whitehead, Merriam and others). I suspect that one of the innovations as well as one of the difficulties with philosophical pragmatism was the effort to collapse the distinction between the world of conceptualism and the world of phenomena in the cause of instrumentalism. Instrumentalism essentially meant practical judgment based on practical action. Pragmatism works on the assumption that knowledge for the sake of knowledge is so often abstracted from the needs of social process that a legitimate philosophic function reposes in the idea of knowledge for human purposes. If this is accepted, theoretical inquiry is more fruitfully directed to collapsing the dualism between the conceptual and normative on the one hand, and the world of "events" on the other. One objective here is that the certitude of moral and conceptual discourse should be conditioned by the insecurity and perhaps impermanence of experience. What makes this idea so theoretically subversive is that the domain of thinking becomes open to the possible creation of alternate symbolologies and alternate myths. Such a perspective would test the central myths and ideologies of a society and open them to reformulation and change. To the extent that a prevailing myth system sustains differential value allocations, change threatens the guardians of the myth and those who benefit from it. The philosophical problem created by this issue is often formulated in terms of the rationality which is presumed to repose in the domain of the world of concepts and the problem of deriving values from the world of cause and effect.

Modern philosophers find it unhelpful to "confuse" statements that are conceptual (or normative) with statements of fact, because the truth of a concept or norm can only be derived from logic, not the empirical world, whereas the validation of an empirical statement lies in the world of cause and effect. From the modern philosophical perspective statements that confuse norms and facts are "nonsense" statements which do not communicate either knowledge or meaning in an acceptable philosophical sense. It should be noted,

assessment of their own contribution.

It appears to this reviewer that *Human Rights and World Public Order* looks at the concept of a right as an outcome of the myth-system of a political and legal culture. A fuller appreciation

however, that the pragmatist is not asking the ultimate question of knowledge or meaning: he is concerned with practical knowledge and practical meaning located phenomenally in actual space and time. This does not obviate the larger question about knowledge and meaning—and the various forms that philosophic inquiry has assumed in elucidating these notions. It becomes more problematic when this philosophic task presumes to deny the capacity of man to make practical judgments because we cannot know—at this time—what absolute knowledge and meaning encompass. Lasswell himself gave careful thought to establishing a philosophically justifiable predicate for practical judgment—for practical decision-making. See Lasswell, *Clarifying Value Judgment: Principles of Content and Procedure*, in 1 *Inquiry* 87 (1958). Lasswell preferred the phrase “practical rationality.” *Id.* Key insights in this article were inspired by John Dewey. See Dewey, *Reconstruction in Philosophy* (1957) especially the introductory section (v-xli). Dewey believed that we could develop concepts and normative values in instrumental terms; in terms that were not so transcendent as to be unrelated to human affairs. He talks of the notion of “relational universality.” *Id.* Dewey of course was demanding a philosophy that would weave together theory and practice. In the McDougal-Lasswell system the influence of Dewey’s philosophy is striking: social process is for example defined in terms of relative universality viz., “the totality of value processes for all values important in society.” See Lasswell & Kaplan, *Power and Society* 71 (1950). Policy is seen in terms of the nexus between theory and practice: “Policy is a projected program of goal values and practices.” *Id.* And the mode of thinking required for this enterprise is “configurative” requiring standpoints that are both “manipulative” and contemplative—the essential prerequisites of configurative analysis.

Most practical lawyers know that the relationship between concept and fact has been a major practical problem for any pleader schooled under the code system of pleadings. Code pleaders were familiar with the pitfalls of pleading either conclusions of law (conceptual) or evidentiary facts (factual) which were bad, and finding the golden mean—symbolized by the term “ultimate fact” which was good. The operational significance of the latter often was a matter of practical reason. To say, for example, that A did “assault” and “batter” Y makes simultaneous reference to factual as well as formal conditions. McDougal has called this the problem of normative ambiguity for which there is no formal solution.

It may be finally noted that Hare himself admits that the “whole problem of the relationship between the prescriptive and the descriptive elements in the meaning of moral judgments continues to tax ethical thinkers.” See Hare, *supra* note 14 at 54. See also his essay on “Descriptivism,” *supra* note 14 at 55-75.

of the concept of myth provides a clearer perception of "what rights are."²³ To the extent, therefore, that myth is a creature of the shared perspectives of a community through time, it is an outcome of the shared subjectivities of that community. The roots of myth are therefore an outcome of the shared perspectives of a community. If myth is an outcome of shared subjectivities and rights are an outcome of myth, then expectations codified in the notion of "right" or "entitlement" are themselves an outcome of shared subjectivities. Rights are a function of human experience; indeed, they are a consequence and a condition of human experience. When we regard rights as having an objective existence, we effectually assume that rights are "something" independent of human experience and human perspective.²⁴

The consequence of such a view is to underwrite a set of expectations which codify certain types of entitlement (right) as an objective datum without regard to the social processes that spawned them. It obfuscates the essential point that human experience has given us diverse systems of public order with various myths, ideologies and entitlements. It is perhaps natural that in seeking to preserve a particular myth-system, theorists might seek to objectify its existence. But to do so is in practical effect to support one form of entitlement rather than another. It begs the question of what a preferred form of entitlements should be because *inter alia* the premise of such a position contains its own conclusion. The salience of the restrictive view of human rights is that it purports to objectify a drastically limited expectation of the conditions of human deprivation; of rising common demands, and the realistic potentials for actualizing as just and humane a social order as men and women can reasonably postulate.

The nature of human rights as conceived in *Human Rights and World Public Order* is to see human rights in symbolic terms, and to see this symbolic significance in world society within the

23. A myth may be broadly defined as a pattern of symbols in a given culture. Key myths are the fundamental assumptions behind a "whole body of beliefs." McDougal, *supra* note 12 at 117 citing A. Dicey, *Law and Public Opinion* 20 (1926). Ideology is the political myth functioning to preserve the social structure. McDougal, *supra* note 12 at 123. For the analysis of symbols see Lasswell & Kaplan, *Power and Society* 103-141 (1950). In its most general significance a symbol is whatever has "meaning or significance in any sense." *Id.* at 10. Probably the most important symbols are linguistic ones. *Id.*

24. See Dillard, *The Policy Oriented Approach to Law*, 40 Va. Q. Rev. 626, 629 (1964), cited also in McDougal, *supra* note 12 at 74 n. 188.

framework of contending myth systems. The principal task then of the myth or ideology of human rights, if it is to have a relevant place in global public order, is to give it content drawn from the human experience and a framework for practical application in the social process. The book shows that human rights may serve as an instrumental symbology in the transformation of social, political and economic practices in ways that promote the common interest in the establishment of international justice for all.

The perspective about human rights developed in this book breaks radically with the past. It is in large measure a response to a challenge issued by Professor Moskowitz twelve years ago when he said:

[I]nternational human rights is still waiting for its theoretician to systematize the thoughts and speculations on the subject and to define its desirable goals. Intelligent truisms do not necessarily add up to a theory. No one has yet arisen to draw together into a positive synthesis the facts and fancies which emerge daily from events of bewildering complexity and to carry on an authentic debate. International concern with human rights is very much a theme begging for a writer. And the scholar has not yet appeared to redress the distortions through a calm and systematic application of facts, to ground abstractions in the specific, and to define the limits of discourse. In the absence of a definite body of doctrine, as well as of deeply rooted convictions, international human rights have been dealt with on the basis of the shifts and vagaries of daily affairs and the evocations of daily events. There is a great need for technical resources and ability to channel the facts to greater effect. Human rights are a matter of international concern in an untrodden area of systematic research. But still a greater need is for superlative virtuosity to deal with international human rights in their multiple dimensions.²⁵

25. Moskowitz, *The Politics and Dynamics of Human Rights* 98-99 (1968).

To meet this formidable challenge the authors structure the book around the clarification of policies for a conception of human rights in its most comprehensive sense. Technically, the authors reject not only as inadequate past formulations from a juridical perspective, but also reject the modes of analysis by which past theorists have sought to "objectify" moral and legal rights. In its place they present their configurative approach to human rights and international law. This is presented with such disarming simplicity (contextuality, problem-orientation, multiple methodologies) that one is apt to forget that what is presupposed here is a new paradigm of thinking for law, society, and social philosophy.²⁶

26. The theoretical basis of the configurative approach to international law is also illustrated in McDougal, Lasswell & Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 Va. J. Int'l Law 188, 196-98 (1968). The major characteristics are its emphasis on contextuality, its problem-orientation; its integration of multiple methodologies across disciplinary lines. The development of the configurative mode of analysis may be seen from the following excerpts of Professor Lasswell's writings:

Now the whole world of "causation" is implicated in any event, and the whole number of significant mechanisms which may be discerned in the "mind at the moment" is infinite. So our hypothetical volume might conclude by accepting the assumption that some events can be brought about by more than chance frequency, subject to the reservation that experimental confirmation is never reliable as to the future. *The critical configurations may never "reappear"?* We commonly say that the probability of an event's future repetition is greater if it has been oft repeated in the past. *But there is no means of demonstrating that the future contains analogous configurations to the elapsed.* The probability of the future repetition of an event is "no probability." If events appear to be predictable, this is so because our knowledge of contingencies is limited, and our sequences of similar configurations may still be treated as special instances of "no sequence." The stable is a special case of the unstable, to put the ultimate paradox.

H. Lasswell, *Psychopathology and Politics* 260 (1930). (Italics added.)

Now it is impossible to abolish uncertainty by the refinement of retrospective observations, by the accumulation of historical detail, by the application of precision methods to elapsed events; the crucial test

The book is divided into four parts. Part I delineates the human rights problem in contemporary terms. The notion of a "problem" in this scheme is essentially the gulf—as perceived by a disengaged observer—between what people in fact want and what they in fact get. In the human rights context this means the difference between meeting expectations (common demands) and the actualities of deprivation and nonfulfillment. The authors set out the key conditions affecting human rights deprivations as developed in their comprehensive scheme.²⁷ In a highly technical analysis the authors

of adequate analysis is nothing less than the future verification of the insight into the nature of the master configuration against which details are constructed. Each specific interpretation is subject to redefinition as the structural potentialities of the future become actualized in the past and present of participant observers. The analyst moves between the contemplation of detail and of configuration, knowing that the soundness of the result is an act of creative orientation rather than of automatic projection. The search for precision in the routines of the past must be constantly chastened and given relevance and direction by reference to the task of self-orientation which is the goal of analysis.

H. Lasswell, *World Politics and Personal Insecurity* 17 (1935).

Any problem-solving approach to human affairs poses five intellectual tasks, which we designate by five terms familiar to political scientists—goal, trend, conditions, projection, and alternative. The first question, relating to goal, raises the traditional problem of clarifying the legitimate aims of a body politic. After goals are provisionally clarified, the historical question arises. In the broadest context, the principal issue is whether the trend of events in America or throughout the world community has been toward or away from the realization of preferred events. The next question goes beyond the simple inventories of change and asks which factors condition one another and determine history. When trend and factor knowledge is at hand, it is possible to project the course of future developments on the preliminary assumption that we do not ourselves influence the future. Finally, what policy alternatives promise to bring all preferred goals to optimal fulfillment?

H. Lasswell, *The Future of Political Science* 1-2 (1963).

27. The Law Science and Policy value scheme (power, wealth, respect,

show the core interdependence of values, a fact which is central to the configurative mode of analysis for a viable jurisprudence of human rights. This analysis also suggests the inadequacy of logical syntactical modes of derivation, and decision when one seeks to elucidate seriously the content of human rights and secure its practical application in given situations. After providing a critique of earlier theoretical formulations the authors develop a systematic and comprehensive taxonomy of claims that have human rights significance. The first part of the book concludes with an imaginative identification of agencies of decision specialized to responding to human rights claims. The authors conceptualize this as "the global constitutive process of authoritative decision."

The second part of the book seeks to clarify the basic policies that attend human rights in such a way as to respond to their comprehensive map of human rights claims. Perhaps the most original section of this part of the book is the effort to develop a means by which abstract principles may be applied to concrete problems within the framework of the configurative scheme. The authors develop a set of principles of content and procedure designed to guide the application of choice in ways that rationally and consciously promote the common interest. This section of the book may perhaps be the most difficult and trying for the novice. It is also one of its most significant features; it goes a long way toward complementing advances made in decision theory.

Part III deals with selected claims to which the preceding framework is applied. These claims encompass those relating to respect which is seen as the core value of a viable human rights program. The outcomes of the failure to honor the respect value reflect well-known deprivations such as slavery, apartheid, sexual, religious and racial discrimination and the like. Respect is defined as "An interrelation among individual human beings in which they reciprocally recognize and honor one another's freedom of choice about participation in the value processes of the world community or any of its component parts." The authors go on to stress that, "Respect includes not only . . . perceptions of worth by which the individual is characterized by himself and others, but also the translation of these perspectives into the operative facts of social process."²⁸ The handling of specific respect-related claims such

affection, enlightenment, well-being, rectitude, skill) were developed as essentially functional categories. They bear a close resemblance to the "values" in the Declaration of Human Rights.

28. McDougal, *supra* note 12 at 451-52.

as the elimination of slavery, racial discrimination and apartheid are all significant contributions to our understanding of these phenomena from an international perspective and a realistic perception (understanding) of what the potentials of collective action are for their elimination. The sections dealing with apartheid and racial discrimination are particularly good. In a rare lapse the authors define apartheid as a "comprehensive and systematic pattern of racial discrimination."²⁹ Yet on page 523 the authors declare that apartheid is "much more than mere racial discrimination." The inconsistency appears to detract from what the authors themselves correctly show to be the basic nature of the apartheid system: "a complex set of practices of domination and subjection, intensely hierarchized and sustained by the whole apparatus of the state, which affects the distribution of all values."³⁰ While the chapters on both racial discrimination and apartheid are excellent from a lawyer's perspective, they appear to fall short on the integration of scientific data to throw light on the deeper significance of the phenomena of race prejudice. If these and other chapters relating to the selected claims have a drawback, they seem to minimize the scientific component of the law science and policy paradigm. Notwithstanding this drawback, the book makes a significant contribution to the literature of the social sciences. The isolation of the comprehensive taxonomy of claims-in-fact suggests fruitful lines for theory construction and directions for empirical inquiry. Additionally, the location of key problems in a contextual setting is enormously suggestive of the possible inadequacy of preexisting theory about, e.g., race relations, the nature of "sexuality" and "aging." I would suggest that where preexisting theories are formulated in the absence of contextual and developmental considerations, especially considerations of control and authority, the knowledge thus generated may be very partial and even possibly misleading. This section of the book contains chapters that deal with the problems of sex discrimination, religious discrimination, language discrimination, age discrimination, discrimination against aliens, etc.

The last part of the book provides us with a reevaluation of the entire notion of privacy. The authors develop in substitution for the limited conception of privacy, the notion of the civic order.

29. *Id.* at 521.

30. *Id.* at 523.

The penultimate section³¹ of the book gives us a glimpse of the "future prospects" for the realization of a conception of transnational order and justice that seeks to transcend existent paradigms of public order. The authors conceptualize this as the "civic order." The authors see the incipient elements of the civic order in the doctrine of privacy. But the concept of a civic order is much broader and richer than the limited and somewhat confusing doctrine of privacy. The basic idea behind the civic order is the conception of "a freeman's common wealth." This conception perceives a social process in which the coercive power of the state is highly circumscribed. In this view the key choices about the distribution of values are made according to conceptions of private ordering in which the expectations of sanction application are mild and in which coercion is limited.

This then is the broad outline of the book itself. Perhaps its most salient contribution to the literature of international law lies in its effort to relate the human rights program of the world community to a viable jurisprudential framework which accounts for and critiques the contributions of prior approaches and its effort within the framework of an alternative paradigm to illustrate the practical utility of human rights in the making and application of law. In this sense, then, the authors demonstrate that law-making is a dynamic ongoing process and that a wide range of indicia are crucial to what they call the prescribing function, if law is to be defined in terms of perspectives of expectation and change. More important, they underscore the point that human rights perspectives are an indispensable component of international law when defined in terms of process rather than rules. The book itself is meant to be a part of the prescribing process in action. *Human Rights and World Public Order* is not just a book about the they and method of human rights inquiry (the contemplative aspect of configurative analysis); it also seeks to create and recreate a human rights "law" for the world community. The book is part of the law-making process itself.

Human Rights and World Public Order is a profoundly good book. It is inspired by a high sense of civic responsibility and an insistent demand that intellectual rigor should be joined with an

31. The last chapter in the book is labeled Appendix and is based on the authors' pioneering piece: McDougal, Lasswell & Chen, *Nationality and Human Rights: The Protection of the Individual in External Arenas*, 83 Yale L.J. 900 (1974).

inclusive conception of the indivisibility of man and his quest for justice. The book is a fitting culmination to Professor Lasswell's creative genius. It is also a landmark contribution to the literature of human rights. For Professor Lasswell, McDougal and Chen there is the satisfaction of knowing that they have been controversial, unsettling, and in all probability right.