



## Notre Dame Law Review

Volume 50 | Issue 1

Article 3

10-1-1974

# Notre Dame Law School Civil Rights Lectures

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### Recommended Citation

R. S. Shriver, *Notre Dame Law School Civil Rights Lectures*, 50 *Notre Dame L. Rev.* 17 (1974).

Available at: <http://scholarship.law.nd.edu/ndlr/vol50/iss1/3>

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# NOTRE DAME LAW SCHOOL CIVIL RIGHTS LECTURES

*R. Sargent Shriver\**

## I. Introduction

I approach this opportunity to deliver the "Civil Rights-Human Rights Lectures" at Notre Dame with humility and misgiving. Misgiving because others are much more qualified by experience and erudition, humility because of the great jurist who inaugurated this lecture series only two years ago—Chief Justice Earl Warren. Not Martin Luther King nor John F. Kennedy nor Lyndon Johnson surpasses Earl Warren in his preeminent place in the history of civil rights in America. To be associated, even as a successor lecturer, with such a historic figure is an honor, but that honor brings heavy responsibilities to maintain the quality of these lectures. Of that burden I am acutely conscious as I speak to you tonight.

Yet, despite my inadequacies for this task, I am joyful to be speaking at this moment and in this place on the subject and challenge of civil and human rights. It is a fitting moment because this year marks the twentieth anniversary of Earl Warren's historic ruling on behalf of a unanimous Supreme Court that equality before the law forbids segregation in the schools, that the bitter heritage of slavery should not enslave another generation.

The place, too, is fitting. First, because Notre Dame's President, the Rev. Theodore M. Hesburgh, in whose honor these lectures are held, has lived the full mission of a Christian vocation in the cause of civil rights: he has been a minister to the nation and has made God's work here on earth truly his own. As the Chairman of the Civil Rights Commission, Father Hesburgh was a conscience for us all. Because he used his power in the pursuit of justice, men who abused theirs could not abide him. But we value him for the truth he teaches, not for the title he had, just as he has valued principle more than any office in the land.

It is also fitting that these civil rights lectures are an annual event at Notre Dame. When others grow weary, you have a responsibility to stay strong. While others surrender, you must continue to resist. For as William Stringfellow reminds us, ". . . the vocation to oppose and transcend the power of death, the calling to live humanly in the midst of death . . . is unceasing and incessant. That resistance goes on wherever human beings truly esteem the gift of their own humanity, which at the same time means . . . wherever human beings esteem the word of God."<sup>1</sup> Notre Dame was founded and flourishes on the word of God. Of all the work given to this world and taken up here, none is

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In the preparation of this lecture, I wish to acknowledge the significant assistance of several close friends who are also experts on the matters I discuss. I am deeply grateful to each of them: John Buggs, Reverend J. Bryan Hehir, Harry Kranz, and Robert Shrum.

<sup>1</sup> W. STRINGFELLOW, *AN ETHIC FOR CHRISTIANS & OTHER ALIENS IN A STRANGE LAND* 126 (1st ed. 1973).

more important than civil rights, for whatever we do to the least of our brethren, we do unto Him.<sup>2</sup>

## II. The Nature of the Question

While it would be proper and productive to take as my task the history of civil rights since 1954, counting the successes and recalling the setbacks, I have chosen instead to broaden the theme, to expand its scope, and to explore the larger implications. I propose in these lectures, first, to examine the relationship between civil and human rights, domestically and internationally and, second, to look not to the distance we have come already but to the miles we must go before we can sleep.

I take this approach because all the experiences of my life, especially my most recent activities, persuade me that no other approach can succeed. Those who have lived during recent decades, from the legally segregated society of the twenties, thirties, and forties, into the dawn of the enlightenment of the fifties and sixties, and who now witness the renewed negations, realize that civil and human rights will not be established or maintained in this land, or in our world, unless we can establish an ethical and moral understanding of man and his destiny, clear and strong enough to sustain a universal, not only a domestic, effort for justice. Nothing less can succeed.

Campaigning for the Vice-Presidency proved to me that only universal values and total honesty can bring the Wallace supporters of Alabama together with the liberals on the West Side of New York City.

Visiting the Soviet Union eight times in the last twelve months convinced me that only universal values and total honesty can match the intelligence and courage of Sakharov and Solzhenitsyn or speak across the seeming void between communism and capitalism.

Traveling the world for the Peace Corps and seeing want in America during the war against poverty convinced me that only universal values and total honesty can touch poor and rich alike within our own country.

Thus, we must always recall and remember that what we call civil rights in America is part of a broader category of human rights which must apply everywhere in the world. While it is important to recognize the legitimate distinction between the whole and its American part, we must at the same time see and understand them together. Human and civil rights are *philosophically* related: Our conception of civil rights flows from deeper conceptions of the nature of man and society, the same sources for our conception of human rights. They are *politically* related: If the United States is to stand as an advocate of human rights abroad, as I think it must, then we must champion civil rights at home. Finally, they are *problematically* related: A series of emerging issues cuts across the traditional distinctions between domestic and foreign policy. Indeed, we now face practical, transnational problems which empirically witness the insights which poets and philosophers have expressed for centuries about the unity of the human family, its solidarity, and its single destiny.

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2 See *Matthew* 25: 34.

Initially, therefore, we must establish a framework for the discussion of human and civil rights questions by examining the problems we face and probing the philosophic foundations of those problems. Without such philosophic foundations, we cannot deal with the dimensions of the issues, domestically or internationally. We need to know where we stand intellectually and morally before we can decide where we want to go and how we are going to get there.

I will argue that the human rights philosophical tradition needs to be expanded in scope, refined in structural articulation, and then applied within the policy-making process of our government both domestically and internationally. I begin with a reaffirmation of the basic elements of this tradition.

At the heart of a human rights view of society stands the concept of the person, a spiritual being set apart from the rest of creation with a capacity for thought, generosity, friendship, and love. The unique nature of the person means that he or she is possessed of a spectrum of rights, moral claims which can be asserted to defend personality, property, and privacy and enhance his or her human potential. Without rights, human dignity is vulnerable to attack from both the organized powers of the state and the disorganized chaos into which human relationships deteriorate when the values of personhood no longer command our respect.

In order for human rights to be respected, however, it is necessary that the concept of the person be supplemented with a certain vision of society as a community, not as a crowd or a mass. The human rights philosophy assumes an interdependence of persons and an interrelationship of rights existing in such a society. This view requires that we be responsible for one another and to one another. The basis of this responsibility is the bond of solidarity existing between all of us who share human existence. Recognition of our mutual responsibility and realization of our common bonds are the basic elements of our interdependence. Implicit in this concept of interdependence is the idea of an interrelationship of rights—that the security of the rights of each is dependent upon the protection of the rights of all.

Both of these ideas—that we are responsible to one another and share a common destiny and that human dignity is not a divisible concept but one which must be protected as a universal value if it is to be possessed as an individual attribute—are the essential elements of a human rights view of society. It is the implication of these ideas in contemporary issues which I intend to explore in these lectures.

Domestically, we have seen in recent years the relationship of philosophical ideals and practical application in the luminous example of Martin Luther King. Above all else, he showed us ourselves as we truly are. He nonviolently forced America to confront what Gunnar Myrdal described a third of a century ago as our dilemma—the dichotomy between the philosophical and religious ideals we espouse as a nation and the social and legal practices we tolerate in our daily existence.<sup>3</sup> Like Lincoln a century earlier, Martin Luther King invoked the values of the ideal America to move the conscience of the real America, and an informed conscience reformed society. This fusion of philosophy and politics

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<sup>3</sup> See generally G. MYRDAL, *AN AMERICAN DILEMMA* (20th anniv. ed. 1962).

in the civil rights struggle of the 1960s was an important landmark. It is now an important learning experience for us as we respond to the issues of the 1970s and the 1980s.

The results of the civil rights movement of the 1960s were built upon the Supreme Court's 1954 decision in *Brown v. Board of Education*.<sup>4</sup> As *Brown* constituted the decisive step in the judicial order, so the 1960s constituted the decisive period for legislative action. However, the momentum of the last decade has slowed and in some areas even reversed. Broad segments of our society are apathetic. Others are exhausted. Many are left not with a commitment to justice but with the sense that enough or too much has been done, that more can be achieved only at the expense of their own interests. On the other hand, the momentum of past legislative accomplishments has taken us perhaps as far as the law alone can go. The challenge of the 1970s is more in the political order, less in law-making endeavor. The pressing need today in civil rights is for leadership, not legislation. We must muster the political will to implement the design we legislated in the struggle of the 1960s. And this calls for much more than a supine policy of "benign neglect."<sup>5</sup> It calls upon those in leadership to think problems through and to have the courage to reorder their thinking not only about the inherent philosophical value of individual human beings but also about their potential to contribute to society as a whole. It requires that stereotypical responses to the question of minority participation in decision-making be discarded in favor of reasoned recognition of individual talents and desires. It requires that each and every man and woman develop a philosophy of humanity which ignores all external bases for differentiation (race, sex, etc.) and focuses on individual merits. This approach proved successful when the Peace Corps, Office of Economic Opportunity, and War Against Poverty were being organized and staffed, and there is no reason to suspect that it would not succeed today.

Perhaps the unique aspect of our day in terms of the demands it places upon us and the possibilities it opens to us is the need to include in our normative vision of civil and human rights not only domestic but also international questions. As we extend our scope from the national entity to the international arena, as we expand our charge to the human rights of which civil rights are a part, we find that the problems are more complex; the structures for dealing with them are rudimentary or nonexistent; and the will to confront them is weaker still. Yet a proposal to think in more than national terms is not a philosophical ideal or a utopian idea. It is a necessity. Anything other than an international conception of society is an inadequate and ineffective frame of reference, even for dealing with domestic issues.

The essence of our dilemma is that we live in a world of transnational problems which is still organized and controlled on the basis of the nation-state. I have no illusions about the international system being radically transformed overnight. But to say this is not to dismiss our urgent need for a common con-

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4 347 U.S. 483 (1954).

5 See Washington Evening Star, Mar. 2, 1970, § A, at 5, col. 1.

ceptual framework to organize a world which has changed faster than our capacity to understand it intellectually, psychologically, politically, or ethically.

The basic strategic reality of the international system is the fact of nuclear deterrent, the mutual death risk in which the superpowers possess the power to destroy people on every side. Traditional notions of defense are obsolete. The idea that a sovereign state can defend its borders and protect its population from attack is not the operative idea of deterrence. Rather, each side depends upon the shared knowledge that in any major conflict, the citizens and the society of both would be destroyed. Without a shared conception among adversaries, this system will not function.

Economically, the same interdependence is evident. No developed nation can stand alone amid the complex web of existing monetary and trade arrangements. Obviously, the economic system does not exhibit a high degree of reciprocal dependence. Instead it is grievously distorted, with islands of affluence in a vast sea of poverty and misery. Yet even here, despite the disparities of power and wealth, a model of interdependence is a more accurate reflection of world realities than a picture of autonomous sovereign units, each in absolute control of its own destiny.

Demographically and socially, the same interdependence appears. The population problem, the emigration problem, and the race problem all defy national borders and cannot be solved by national means. Finally, the most visible transnational issue is probably environmental pollution. No nation can save itself from the effects of environmental damage; only a concerted effort by all can secure clean air and water.

These problems, of course, are more complex than any brief mention can reveal. Yet even without further analysis, they highlight the transnational process at work on this planet. Transnational dynamics, supplemented by global communications systems and technology transfers, are creating a world physically more compressed every day. Yet the fact of material interdependence, created either by economic relationships, communications systems, or technological bonds, does not and cannot inevitably produce an awareness of human or moral interdependence. The transition from material to moral interdependence demands a consensus in society of how we ought to organize our interdependence and how we should share its benefits and distribute its burdens equitably at the national or international level. The conceptual problem we face today is how we can draw upon the accumulated wisdom contained in the human rights tradition to provide a moral framework for our material interdependence. The pressing need for such a philosophical or moral framework derives from the fact that material interdependence is by itself an ambiguous reality: It can push us together in a crowd competing for limited resources or it can be a means of calling us together in a community bound by acknowledged ties of responsibility. The margin of difference between those two options will be determined by whether we can establish a rationale for interdependence as a chosen way of life, nationally and internationally, rather than an imposed fate created by technology and media.

Yet today, clearly, there is no international moral, political, or philosophical

unity. Thus we find ourselves incapable of solving the problems we face. Energy, population, food, money, jobs, trade, and even health defy solution. If we act alone, we have no more than a marginal possibility of protecting human rights and distributing human resources in a just manner.

In light of these two broadly drawn agenda, one domestic, the other international, we come to the question: What philosophical foundation is necessary? What shared vision of society, what criteria for distributing benefits and burdens, what senses of personal responsibility and professional vocation are required to solve these transnational problems? And what is their relationship to civil rights and human rights?

These questions are beyond the capacity of any one person to answer and may not admit of any final answer; but we can point towards certain criteria which may open approaches to a shared vision. The two criteria or test questions I propose to examine concern, first, the scope which our concern for these rights must encompass and, second, the structure or logic of the moral argument supporting civil and human rights.

If the rationale for interdependence is to be worthy of the human dignity which is the moral basis of our life and society, then such a rationale must be rooted in the human rights conception. A human rights conception both broadens the scope of the moral vision of society to a transnational range and provides a multidimensional structure of moral discourse for a diverse range of problems. The scope of our sense of moral responsibility, that is to say, how far our sense of responsibility extends and to whom we extend it, is a fundamental moral and political issue. The reason for its preeminence at this point reflects the factual situation I described earlier: We live in a world of transnational problems but operate in nation-states in which national interest functions as the primary moral and political category. In this framework, the legitimate but limited concept of national interest assumes a position and a weight out of proportion to its value and validity.

The national interest model of moral responsibility tends to see reality through the prism of power, while an alternative model would offer a vision of how society should be rather than how it is. It would seek to direct and control the *de facto* uses of power by the *de jure* norms of principle. Both power and principle are part of the organization of any social structure. The question which the civil and human rights tradition has always raised and with which we must grapple today on a scale never previously equalled is this: Which has priority, power or principle? Do we shape principle to fit existing power realities or shall we strive to direct power through principles? Although this is not a new question, it has taken on a new significance and urgency in our age. Romano Guardini argued twenty years ago that the struggle between power and principle would be the distinguishing mark of our time. As Guardini puts it, the basic challenge is whether we can develop the moral capacity to control and direct the power we have created.<sup>6</sup> This phrasing of the challenge takes seriously the reality of power but refuses to let us live comfortably with a society formed

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<sup>6</sup> See generally R. GUARDINI, *POWER AND RESPONSIBILITY* (1st ed. E. Briefs transl. 1961).

solely by the exigencies of political, military, scientific, or technological power.

The contention between power and principle is central to the theme of interdependence and to all questions of civil and human rights. How shall we determine the scope of our responsibility in an interdependent world, through the perceived requirements of power or the perceived demands of principle? The choice becomes more critical each day as we recognize more and more a common reliance on the same resources in a world whose resources are finite and rapidly being depleted. The energy crisis has given Americans our first experience with shortages of a commodity we consider a basic necessity. The fact of interdependence points us toward the correlative fact of limited economic and natural resources, but neither fact provides a sufficient framework for reflection. We must move from the material and economic order to the level of politics and finally to the level of ethics or moral reflection if we are to make sense out of the recent, perhaps passing, but clearly prophetic episode of energy shortfalls.

The transition from economics to politics requires a change in vocabulary and concepts. Instead of material shortages we must speak of the politics of scarcity. The politics of scarcity assumes limited resources as a fact of future existence. It challenges us to order our society so that it may confront scarcity as a universal fact of life, not the particular fate of the poor. The technical debate here is immensely complicated. Rather than pursuing it to a pointless extreme, I would point out that simply raising the political question—how do we order our life together—forces us to the highest level of political discourse, where politics passes into the realm of ethics. The question of social organization demands as a precondition to any answer that we address another, more fundamental question: By what norm shall we judge our success or failure? What shall our standard be? It is a short trip from the long line at the local gas station to the basic moral issue. As material shortages translate into economic facts, they provoke questions about political processes which in turn are dependent upon moral principles.

The choice of power or principle as an organizing precept will produce very different concepts of moral responsibility and quite different consequences for society. The direct relationship between policy decisions in one part of the globe and consequences in another is the most striking moral attribute of our interdependence. Perhaps it is true that some such relationship always existed in the human community, but today two factors distinguish our situation from the past: First, the bonds of the relationship are more direct and its impact more immediate. Second, we now know, if we care to look, listen, and investigate, how responsible we are for one another. In the face of this knowledge, we can continue to invoke inadequate concepts, to base policy decisions primarily on self-interest, and to ignore the situation. But then we cannot deny our guilt. To understand the consequences of our action wipes away the last shield which guards our innocence. We cannot know the results of our actions and remain without responsibility.

Nothing puts the choice between power and principle more vividly than the question of food, hunger, and consumption—a dilemma which has acquired surprising force and immediacy in the past two years. Food is a typically trans-



national problem for our nationally organized global system. It is a prismatic example of the resource-consumption-population matrix at the heart of the energy crisis and raises the fundamental moral dilemma of starvation versus affluence. For all these reasons I have taken the food question as a test case to think through and illuminate the scope of our moral responsibility in an interdependent world and as a means to ascertain where we stand, where we must go, and why, with respect to questions of civil and human rights.

We are in the midst of a transnational food crisis more terrifying and important than the energy crisis. Its seriousness is manifest not merely in the tragic outbreaks of famine in the sub-Saharan African nations and in India and Bangladesh,<sup>7</sup> but in the rising prices on the international market for principal food commodities such as wheat, rice, feed-grains, and soybeans. There have been poor rice harvests in Asia,<sup>8</sup> a short fall in the Soviet wheat crop,<sup>9</sup> and for two consecutive years a drought of anchovetta off the coast of Peru.<sup>10</sup> In an effort to control rising domestic food prices, the United States in the summer of 1973 announced restrictions on the export of soybeans and related foodstuffs.

Since the grim predictions of Malthus, a relationship between rising population and declining food resources has been a recurrent worry. More and more mouths to feed due to rapid population growth is of course a continual challenge to any nation. But an added challenge is the insatiable affluence which pressures world food resources. Here a startling picture of disproportionate consumption appears. This disproportion is typified by grain consumption, which accounts for more than 70 percent of the world's crop area.<sup>11</sup> Grain consumed directly provides 52 percent of our food energy supply.<sup>12</sup> Agricultural economist Lester Brown notes:

In the poor countries the annual availability of grain per person averages only about 400 pounds per year. Nearly all of this small amount must be consumed directly to meet minimum energy needs. Little can be spared for conversion into animal protein. In the United States and Canada, per capita grain utilization is currently approaching 1 ton per year. Of this total only about 150 pounds are consumed directly in the form of bread, pastries, and breakfast cereals. The remainder is consumed indirectly in the form of meat, milk, and eggs. The agricultural resources—land, water, fertilizer—required to support an average North American are nearly five times those of the average Indian, Nigerian, or Colombian.<sup>13</sup>

The Food and Agricultural Organization of the United Nations periodically issues reports which warn that one-third to one-half of the world's population is ill-fed—undernourished because they do not consume enough calories or mal-

7 See Henriot, *Global Population in Perspective: Implications for U.S. Policy Response*, 35 THEOLOGICAL STUDIES 48, 63 (1974) [hereinafter cited as *Global Population in Perspective*].

8 *Id.* at 63.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.* at 64.

13 *Id.*; BROWN, POPULATION AND AFFLUENCE: GROWING PRESSURES ON WORLD FOOD RESOURCES 7 (Overseas Development Council, Development Paper No. 15, Washington, D.C. 1973).

nourished because their diet is protein deficient.<sup>14</sup> Since the mid-1940s, protein content has increased six percent in the diets of people in the developed countries and decreased six percent in the diets of people in the developing countries.<sup>15</sup> Total protein supply per capita in the United States, Canada, France, Australia, and New Zealand is approximately 100 grams per day.<sup>16</sup> In India, Malaysia, the Philippines, and many parts of Africa and Latin America, it is only half as much.<sup>17</sup>

Although the so-called Green Revolution has brought considerable hope, it is not without serious difficulties. The development of special strains of corn, wheat, and beans has multiplied the food supply of the developing world. But several barriers bound that multiplication: (1) cultivated land suitable for high-yield seeds is becoming scarce; (2) intensive chemical fertilizers pose ecological dangers and their supply is now threatened by the energy crisis; and (3) the displacement of small farmers increases unemployment and aggravates problems of urbanization.

If they are rationally managed, the oceans offer extensive opportunities for harvesting food. But rational management has thus far been a prescription, not a practice. The result has been overfishing that defeats its own purpose as world fish supply and catch continue to stagnate or decline.

Because rising population and rising affluence are straining the world's food supply just as finite limits on food production are becoming a reality, the question of distribution is more and more critical. The attention this question will receive depends upon the moral vision underpinning our view of society. The wide contrast in food consumption between the developing nations and the developed nations poses a typical transnational moral challenge.

There is another dimension to the food crisis which is equally important to an understanding of the demands of our interdependence and the choices which it places before us. We are not only the principal consumer of food in the world but the principal supplier of food for the rest of the world. Some sense of the significance of our position is conveyed by the fact that the United States and Canada today control a larger share of the world's exportable supplies of grain than the Middle East does of oil. In an interdependent world, what is the nature and scope of the responsibility which comes with this position? Is President Nixon's proposed Project Independence<sup>18</sup> a responsive policy or an irresponsible anachronism? Are we to hoard food now to guard against some potential future American famine?

One answer is that we should determine how we exercise our power as a supplier in a seller's market according to the demands of our national interest alone. This proposition is neither wholly invalid nor irrelevant, but I think it important to ask whether it is adequate any longer. Such reliance on calculations of self-interest would result in decisions which most of us and millions of others

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14 See *Global Population in Perspective* at 64.

15 *Id.*; cf. P. SIMON & A. SIMON, *THE POLITICS OF WORLD HUNGER: GRASS ROOTS POLITICS AND WORLD POVERTY* 27-28 (1973).

16 See *Global Population in Perspective* at 64.

17 *Id.*; cf. WORLD BANK, *TRENDS IN DEVELOPING COUNTRIES* (1973).

18 Radio and Television Address by President Nixon, November 7, 1973.

in this country and abroad would regard as not only politically dangerous but morally reprehensible. Yet this is precisely what happened last spring when we imposed export controls on soybeans and other foodstuffs for the purpose of controlling domestic inflation. From our point of view, this was an understandable response. In the classic moral dispensation, there is a duty to care for those closest to us before turning to others far away. Yet from another point of view, namely the demands of interdependence and the fact that we exercise considerable control over an essential commodity, the consumption of which cannot be postponed simply by choice, the decision set a precedent in the international system which could turn interdependence into a continuing power struggle of frightening proportions. The immediate effect of our action was to intensify inflationary pressures on food prices in other parts of the world. This caused resentment even in the developed nations, where starvation is not yet a problem. But if we are really to assess the impact of our adjudication of our domestic needs against international needs, we should heed the following comment about the impact of rising food prices on the poorest countries of the world:

When one spends about 80 percent of one's income on food, as a sizeable segment of mankind does today, a doubling in the price of wheat or rice cannot possibly be met by increased food expenditures. It can only drive a subsistence diet below the subsistence or survival level. Today's wheat prices of \$5.00 per bushel will without doubt be reflected in higher death rates in many poor nations in the months ahead.<sup>19</sup>

In an interdependent world forced to live with the politics of scarcity, such stark moral trade-offs between the essential needs of some and the preferences of others will continue to be with us. A human rights view of adjudicating these needs and choices calls upon us to adopt a very specific definition of the community for which we are responsible and to which each of us stands accountable. That view of the concept of the community in turn is based on how we evaluate the role, place, and significance of the person in the political process.

In the national interest framework, the nation-state and the national community have a unique significance in the formulation of policy and the evaluation of duty to the larger international community. Interdependence as a material fact may complicate the implementation of policy, but it does not change the hierarchy of value in its formulation. The national community is seen as having an ultimate and overriding value in the disposition of any issue. Given that judgment, the nation-state may then balance relative domestic needs against absolute foreign needs and still decide in favor of the domestic needs. The scope of responsibility determines the scale of priorities. In this matrix of evaluation, to impose export controls on essential commodities, even though an absolute need exists for them abroad, is a sound judgment. If one has the power and if one's assessment of the national interest ranks relative domestic need over absolute international need, then power should be used to protect the national interest. A human rights view of the organization of society would yield a different standard. It refuses the status of absolute or ultimate value to any national

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19 See Brown, *The Next Crisis: Food*, 13 FOREIGN POLICY 23 (1974).

entity in an interdependent world. It asserts instead a moral premise of universal community even if that community is flawed because it is without public authority to meet the basic needs of the human family. Thus, the human rights view posits an existing community even in the absence of a fully organized society because this view assigns weight and value to the individual person in political society. The human rights view is superior to existing norms and practices precisely because it accords the kind of ultimate status to the person which the national interest view accords to the nation-state. The human rights tradition is rooted in the proposition that the person is the foundation for the political process. So each system of political organization must be tested by how well it protects the dignity of the person and whether it adequately fulfills the rights of the person. And we speak of rights, not privileges—rights which belong to persons solely by virtue of their status as human beings.

This view of the value of the person and his or her significance in the political process is very much part of our own political heritage as a country. The legitimate criticism can be made that America's assessment of rights has been cast more in political than in social or economic terms, but the ideal of judging the political process according to its contribution to the rights and dignity of the person is central to our constitutional system and to the civil rights struggle. The extension of this insight from civil rights to the worldwide human rights which include civil rights is what our interdependence now demands. The primacy of the person in the civil rights tradition lays the foundation for such a transition. It argues, I think, that the ultimate community to which we owe responsibility is the community of all those who possess human dignity. It asserts that within the confines of that ultimate community, in an interdependent world of a limited supply of basic resources, the total community has an obligation to satisfy the fundamental needs of each person before satisfying the acquired tastes of some people. Hence in this model, starvation outside the nation-state takes precedence over a disagreeable but tolerable inflation within the nation-state. The international order is not yet shaped to such a standard, but this is precisely where the moral tradition of the higher law functions. It seeks to bridge the gap by questioning existing organizations and by asserting a sense of moral responsibility even where legal and political norms are still lacking.

In the case at hand, a concept of moral responsibility suggests, among other things, the creation of a common grain reserve upon which nations could lay claim, not in the first instance because they have the power to make demands on other nations or because they have the finances to bargain in the open market, but because they have people who share our human dignity and who must depend for a time upon our sense of human responsibility to sustain their existence at a tolerable level.

Only such a sense of responsibility can transform mere material interdependence into true moral interdependence. Instead of attending to ourselves alone or to our own country, we must place a unique, uncompromising value on the person in a political process which today is dominated by power realities. At the same time, we must clarify the structural relationship among categories of

human rights. There is a moral logic to the human rights tradition which envisions not a random selection of isolated rights, but an intrinsically related spectrum of rights, rooted in the dignity of the person, shaped to protect and enhance that dignity across the entire human life cycle. The spectrum of rights must exist first in the moral order, but it must also be translated into the legal and political order so that moral claims are explicit, institutionalized and subject to effective adjudication.

Yet at this moment in the United States, twenty years after *Brown* and twenty-five years after the United Nations Declaration of Human Rights, we seem to have a weaker grasp on the moral logic of the human rights tradition than at any time in the American past. It is difficult to determine precisely the source of the confusion—whether it is our incomprehension of the basic moral arguments for a human rights philosophy or whether it is an understandable perplexity about how the tradition relates to new issues and to old issues sharpened to a new intensity in the context of interdependency. Whatever the cause, the result is clear. We have no consistent appreciation or application of a human rights philosophy to public policy. The absence of an integrated view leads to selective perception of human rights issues which arise in the political or legal order. Different issues call forth different constituencies, and in any attempt to relate the defense of one right to the defense of another, discussion among the various constituencies resembles a dialogue of the deaf.

The lack of a coherent philosophy of rights, of a consensus on the theory of rights, whether among philosophers, political leaders or the people, is not an aesthetic or esoteric concern. The discordance resonates in the public forum as issues are debated and the human rights debate itself becomes “politicized” at the very time when it should be “philosophized.”

The need for a renewal of the human rights tradition is especially apparent in three major areas of public concern.

First, the cornerstone of the human rights tradition in our constitutional system has been the protection of liberty in the political or civil order. We have sought to protect the individual from the unwarranted intrusion of state power. This issue has commanded more philosophical and jurisprudential reflection in American scholarship than any other element in the spectrum of human rights. Now the experience of Watergate has revealed the strength of the threat to individual political rights which is inherent in the modern bureaucratic state. Leadership is armed with sophisticated technological means of surveillance, unrestrained by private conscience or public duty, and ready to invoke ill-defined notions of national security to use and abuse power for undemocratic purposes. The immediate consequences of Watergate obviously need to be settled in the Congress and the courts. All of us will watch the process closely, but hopefully none of us will lose sight of the larger issue. We must move from fascination with the scandal to an examination of the fundamental question it raises: How can we secure individual freedom within a complex, modern state?

A second area where lack of philosophical or moral agreement impedes our progress is the social and economic rights of the person. The very strength of the American commitment to political rights has tended to distract us from the

task of articulating a charter of socioeconomic rights which would guarantee to all a minimum level of economic welfare. Yet it is precisely this area of rights which both the civil rights movement of the 1960s and the War Against Poverty have forced to the forefront of our public debate. The quality of that debate, reflected in discussions of welfare, income maintenance, tax reform, full employment, and comprehensive health care, reveals a profound dissonance in the moral philosophy of the nation. In the political or civil order we speak easily of rights—of the moral claims a person has on society—but in the socioeconomic order we rarely speak of claims a person can assert, even for basic necessities. We talk of favors which the poor can beg. We need a moral consensus about socioeconomic rights as a prerequisite to decisive action at the political or legal level.

Finally, the most recent and potentially far-reaching challenge posed to the human rights tradition has emerged in the area of biology, genetics, and their attendant technologies. The cracking of the genetic code, the experiments with *in vitro* fertilization, new developments in medical technology, the capabilities to sustain life mechanically far below the point where life support systems function spontaneously—all these raise fundamental issues about the beginnings of human life and its termination. Guardini's<sup>20</sup> question about the relationship of principle and power is now put to us by the biological revolution as urgently as it was after World War II by the nuclear revolution. By what conception of human rights and social morality will we direct and control the far-reaching authority we have acquired over life and death? We are only starting to develop a conceptual framework to apply human rights considerations to some issues. Other issues, like human experimentation and problems of death and dying, have been probed in previous ages, but they reappear today in the new forms of advanced technology.

Already we see a division in the moral discussion of such questions. Fundamentally, it is a split between those who give human life itself primacy in their ethical judgments and those who emphasize the quality of life. This dichotomy, manifest in discussions of population policy, abortion, and death and dying, has several subtle dimensions. Even a cursory exploration of the different positions and their public policy implications clearly reveals the phenomenon of selective perception in the area of civil and human rights. On the philosophical level, the quality-of-life argument is used against the right-to-life argument. On the practical level, right-to-life constituencies, while deeply and legitimately concerned about the human right of a fetus, seem less interested in quality-of-life questions like civil or socioeconomic rights. Conversely, in the past decade we have seen constituencies profoundly committed to the stopping of the destruction of innocent life in Vietnam or even the life of a criminal by capital punishment, while the same constituencies were unmoved by the taking of human life through liberalized abortion legislation.

Such selective perception points to the structural questions of the human rights tradition. The need is for an *aggiornamento* of moral logic to expand and

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<sup>20</sup> See generally R. GUARDINI, *POWER AND RESPONSIBILITY* (1st ed. E. Briefs transl. 1961).

refine the content of the human rights argument in a way which relates it viably and creatively to pressing political, socioeconomic, military, biomedical, and transnational issues.

I have taken some care to point out that this is a need of the moment. It has not yet been met satisfactorily and it certainly is not the work of one man. It is a task for a generation. What we need is an integrated view of human rights, held not simply by specialists or academicians or jurists, but by a consensus of the people. Human rights are secure only in a society where they are the living faith of the electorate, not the esoteric formulations of an elite. A systematic view of human rights must be consistent in structure and comprehensive in scope. The comprehension must include the entire spectrum of rights from womb to tomb. Such a systematic view has the possibility of making a value-of-life ethic and a quality-of-life ethic complementary, not antagonistic. This is the theme which we must explore in search of a coherent structural view of human rights.

### III. The Civil Rights Challenge

Thus far I have examined broad philosophical questions of human rights from a global perspective. Denial of civil rights in the United States provides a more tangible setting for such discussion.

There is economic apartheid in America. In 1969, Blacks owned approximately 163,000 businesses which grossed \$4.5 billion. Thus, although they represent approximately 13 percent of the population and 11.3 percent of the work force, Blacks own but 2/10ths of one percent of the nearly 7.5 million U.S. businesses and gross less than 5/10ths of one percent of the Gross National Product.<sup>21</sup>

The unemployment rate is twice as high for Blacks and other minorities as for Whites, while members of minority groups who are employed occupy the lowest paying jobs. There are massive disparities between the median incomes of Whites, Blacks, and Spanish. In 1970, the typical black worker earned \$4,000 less than the typical white worker. The Spanish-surnamed worker earned \$3,000 less.<sup>22</sup> In 1960, black families earned 54 percent of what white families earned. By 1966 the figure had risen to 58 percent and by 1970 to 60 percent,<sup>23</sup> but regional differences tend to distort the significance of these averages.

There is housing apartheid in America. Minorities, particularly Blacks, have been largely excluded from the development of the suburbs. This exclusion is primarily the product of explicit discrimination in the sale and rental of housing and is perpetuated by both racial and economic bias. Private real estate practices reinforce the existing dual housing market. Financial institutions have discouraged integrated community development both by restrictive practices and by a lack of affirmative programs. The home building industry, for the

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<sup>21</sup> See REPORT OF THE COMMERCE DEPARTMENT: MINORITY OWNED BUSINESSES: 1969-72 (1973).

<sup>22</sup> United States Commission on Civil Rights, Twenty Years after Brown, 1974 (unpublished report).

<sup>23</sup> *Id.*

most part, has not made an attempt to market housing in a nondiscriminatory manner, and many employers have failed to consider the effect of corporate site selection upon low and moderate income employees.

Suburban governments have acted almost exclusively in their own economic interest, often to the detriment of the central city and the metropolitan area as a whole. Such devices as exclusionary zoning, failure to enact or enforce fair housing ordinances, and failure to utilize federal housing assistance programs have become widespread devices for preserving insular suburban interests.

The federal government has also perpetuated housing apartheid by failing to enforce fair housing laws. The Department of Justice has been handicapped by inadequate staffing and has spurned an active role in coordinating Title VI enforcement among federal agencies. The Department of Housing and Urban Development (HUD) has been similarly understaffed and has confined its activities to answering complaints. Until recently, it did not conduct systematic reviews of HUD-funded programs for compliance with Title VI. Finally, HUD has not shaped its own programs to promote fair housing, despite the mandate of Title VIII of the Civil Rights Act of 1968.

This housing apartheid is illustrative of and contributes to the process of racial polarization. The movement of the affluent white population to the perimeters of metropolitan areas has resulted in the creation of the so-called "white nooses" which now mark the point at which cities end and suburbia begins. It also has prompted a movement of business and industry away from the central city, which frequently deprives minorities of job opportunities available in theory but inaccessible in fact. Suburbanization has also drained urban economic resources and thereby crippled urban school financing. It has supported the growth of racially segregated school systems before and since the country was commanded to integrate with ". . . all deliberate speed."<sup>24</sup> Finally, because most of the new housing has been constructed in suburban areas, the exclusion of minorities from the suburbs diminishes their housing alternatives and often forces them to live in substandard inner-city housing.

There is apartheid in American justice. One measure of the quality of justice is the equality of its administration. Yet wherever they live in significant numbers, members of minority groups always comprise a percentage of the prison population far in excess of their percentage of the total population. In our federal prisons, for example, Spanish-surnamed persons comprise more than 18 percent of the prison population, although they comprise little more than six percent of our total population.<sup>25</sup> American Indians in the Southwest are victims of a similar disproportion. Similarly, in August 1973, 31 percent of all prisoners in federal institutions were black, yet Blacks constitute but 13 percent of the national population.<sup>26</sup> Proponents of the argument that certain racial groups are inherently inferior have a ready explanation: No injustice is involved, no civil rights have been abrogated—it is just that the Spanish Americans, Indians and Blacks are prone to criminal behavior. You and I know

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<sup>24</sup> See *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) [hereinafter, *Brown III*].

<sup>25</sup> See FEDERAL BUREAU OF PRISONS, PROFILE DATA REPORT (Aug. 1973).

<sup>26</sup> *Id.*



this is not true. They are there in such numbers because America has offered many of them few alternatives but those which lead to what we know as a life of crime. All too often discrimination, subtle and overt, sophisticated and blatant, is their birthright.

Finally, there is educational apartheid in America. Our schools, where the struggle for human rights has often focused, are still battlegrounds. In *Brown* the Supreme Court concluded that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."<sup>27</sup> Further:

[T]o separate [black students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.<sup>28</sup>

With regard to the pace of integration, the Court in *Brown II* said that district courts should implement desegregation "with all deliberate speed,"<sup>29</sup> and commented that limited delays in achieving complete desegregation would be acceptable if a school board could "establish that such time is necessary in the public interest."<sup>30</sup>

In 1964, the Court served notice in *Griffin v. County School Board of Prince Edward County*<sup>31</sup> that there was no longer a need for such delays:

The time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.<sup>32</sup>

Four years later, in *Green v. County School Board of New Kent County*,<sup>33</sup> the Court ordered that desegregation take place immediately: "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now."<sup>34</sup>

Techniques to ensure desegregation were outlined in the 1971 *Swann v. Charlotte-Mecklenburg Board of Education* case.<sup>35</sup> The Court approved "a frank—and sometimes drastic—gerrymandering of school districts and attendance zones . . . [which may be] . . . neither compact nor contiguous; indeed they may be on the opposite ends of the city."<sup>36</sup> *Swann* also validated pairing, clustering, or grouping of schools with attendance assignments made deliberately to accomplish the transfer of black students out of formerly segregated black schools and transfer of white students to formerly all-black schools.<sup>37</sup> The

27 347 U.S. at 495.

28 *Id.* at 494.

29 *See Brown II.*

30 *Id.* at 300.

31 377 U.S. 218 (1964).

32 *Id.* at 234.

33 391 U.S. 430 (1968).

34 *Id.* at 439.

35 402 U.S. 1 (1971).

36 *Id.* at 27 (footnote omitted).

37 *Id.*

Court noted that busing of students is "a normal and accepted tool of educational policy . . ."<sup>38</sup> and added that "[d]esegregation plans cannot be limited to the walk-in school."<sup>39</sup> A refusal to bus could be valid only "when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process."<sup>40</sup>

The thrust was clear, but was it implemented? In the fall of 1964, only 2.14 percent of black public school students in 11 southern states—63,890 Blacks out of a total of almost three million—were attending public elementary and secondary schools with Whites.<sup>41</sup> In 1970, only one-third of black public school students attended schools whose student bodies were more than half White.<sup>42</sup> In 1972, 63.7 percent of black students still attended schools whose student bodies were composed primarily of minority students.<sup>43</sup> In the 11 southern states, where the efforts to desegregate have been greatest, 53.7 percent of black public school students in 1972 were in schools where minority groups were a numerical majority.<sup>44</sup>

The segregation of Spanish-surnamed Americans is as serious. In the continental United States in 1972, 56.5 percent of Spanish-surnamed students attended minority schools.<sup>45</sup> In addition, Spanish-surnamed children all too often are placed in educable mentally retarded (EMR) classes, when in fact the source of their difficulty is the language barrier, not a limited learning capacity. The problem is exacerbated by the fact that often they and Indians are prohibited from speaking in their native tongue while in school. The resulting enforced silence inevitably breeds frustration and resentment. The implied denigration of a child's own culture, of the language learned from his parents, invariably damages self-esteem. It is not difficult to understand why only six of ten Chicanos finish high school while eight of ten Whites do;<sup>46</sup> why of 30,000 Puerto Ricans in Boston in 1970, only seven Puerto Ricans completed high school.<sup>47</sup> Nor is it difficult to comprehend how Indians or Mexican Americans deprived of their language, driven from their schools by a hostile environment, feeling like aliens in their own land, unable to compete with the dominant society because the tools of competition were denied, finally turn in frustration to crime and violence.

Those who seek to thwart desegregation have proven imaginative, if nothing else. Standard ploys include filing bogus assurances of compliance, ignoring Health, Education and Welfare (HEW) approved plans which the school

38 *Id.* at 29.

39 *Id.* at 30.

40 *Id.* at 30-31.

41 *See* CONGRESSIONAL QUARTERLY ALMANAC 380 (Dec. 1964).

42 *See* OFFICE OF CIVIL RIGHTS, DEPARTMENT OF HEALTH, EDUCATION & WELFARE, FALL, 1972 RACIAL AND ETHNIC ENROLLMENT IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, TABLE 2-A (1974).

43 *Id.*

44 *Id.*

45 *Id.* at TABLE 2-B.

46 *See* UNITED STATES COMMISSION ON CIVIL RIGHTS, THE UNFINISHED EDUCATION: REPORT II OF THE MEXICAN AMERICAN EDUCATIONAL SERIES 10 (Oct. 1971).

47 *See* MASSACHUSETTS STATE ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS, ISSUES OF CONCERN TO PUERTO RICANS IN BOSTON AND SPRINGFIELD 9 (Feb. 1972).

itself submitted, outright disobedience of court orders, violence, and economic coercion. For a long time the best known device was the freedom of choice subterfuge. It has given way to proposed antibusing amendments to the Constitution and the glorification of the neighborhood school, particularly where housing is segregated and the neighborhood school means maintenance of a dual school system. The Department of Justice has refused to bring suits promptly after HEW referrals of recalcitrant school districts, and HEW itself is understaffed and increasingly less willing to demand action.

Segregation has persisted despite legislative enactments, judicial decisions, and a relatively thorough comprehension of problems and solutions. We know what is wrong, but we have said far more than we have done to set things right. This is not a failure of policy alone, but fundamentally a failure of philosophy. Legislation is postponed because we do not agree on moral imperatives; it is passed in response more to political pressures than to ethical perceptions; and then it is unevenly enforced, increasingly evaded, and finally abandoned in all but name. Sooner or later, self-interest always emerges as the motivating force. People resist sacrificing some of their privileges to protect the human dignity of others. They often deny their moral interdependence without even reflecting on it.

Our greatest task, then, is not to find specific redress for specific denials of rights. Enough remedies have already been developed, tested, and catalogued. Instead, our task in civil rights is the same task we must assume in the cause of human rights in general. It is to shape a consensus among ourselves based on the human rights tradition—an integrated and common view of our mutual moral responsibilities, a systematic balance between the wants of one individual and the rights of another. Our leaders have the duty to lead in this. If they do not, we will be left with partial progress, crisis attention followed by benign neglect, expediency instead of ethics. Our aim now must be not only a strong policy, but a sound philosophy upon which policy can be grounded, a policy which recognizes our moral interdependence.

#### IV. The Bureaucratic Barrier

Even assuming that we recognize our interdependence, we may be thwarted in our attempts to structure our policy accordingly, for between resolution and solution, between legislation and implementation, lies the bureaucracy. It is powerful and pervasive, and it limits what the nation can do for any of its citizens. It is a factor which must be considered in determining whether an adequate structural framework exists within which to implement policies grounded in concern for human rights.

Constitutional theory teaches that America has a government of three separate branches and that in principle we are a democracy, where people have a voice in deciding this country's fate. In actual fact, however, individual private citizens have little input into ultimate decisions, and even elected officials participate on only a limited scale in many of the decisions which shape our lives.

Who, then, does make those decisions? It is true that a few elected officials have overall policy-making responsibility, but their focus is essentially macro-political in the sense that they deal with the larger issues of war and peace and the direction of domestic policy. But these represent only a tiny fraction of the thousands of major policy decisions made each day of the year not by elected officials, but by individuals two, three, and four times removed from anyone who can legitimately claim a mandate from an electorate. These are the civil servants, the so-called bureaucrats. What we call them does not matter. What is crucial is that we recognize their paramount importance in America today. They make most of the decisions that affect our daily lives. They are, in effect, a fourth branch of government at the federal, state, and local levels.

A bureaucrat determines which poor families will receive welfare and how much; whether they will have access to medical care and at what price; what kind of public housing they will be permitted to live in and how much rent they will pay; what allowance they will receive for clothing and child care. A bureaucrat determines whether a jobless worker will receive unemployment benefits and how much; whether or not he will be referred to manpower training to learn a new skill, what kind of job he will be trained for and, hence, what his lifetime income will be.

The poor and the unemployed are not the only citizens whose lives are affected by bureaucratic decisions. During the recent energy crisis, for example, bureaucrats determined how gasoline was to be allocated—to which part of the country and even to which service stations. Bureaucrats decide who may obtain television and radio licenses from the government and whether employers and unions are guilty of unfair labor practices. At the state and local levels, the right of people to engage in professions, services, and businesses is often determined by boards and commissions composed of appointed rather than elected officials. Ironically, even admission to the bureaucracy is determined by bureaucrats in the Civil Service Commission and equivalent state and local merit system agencies.

Thus, despite constitutional theory, it is the fourth branch of government, the nonelected bureaucrats, who make most of the important policy decisions. Yet a recent study of federal, state, and local governments<sup>48</sup> has shown that most departments and agencies, particularly in their higher paying professional jobs, are not representative of the populations they serve. For example, although minorities—Blacks, Spanish Americans, Orientals, and Indians—make up 20 percent of the total federal bureaucracy, they are hardly visible in many departments.<sup>49</sup> In Transportation, they represent 9.6 percent of the work force;<sup>50</sup> in Agriculture, 9.7 percent;<sup>51</sup> in NASA, 5.2 percent.<sup>52</sup> Moreover, for the federal government as a whole, minorities are overrepresented in the lowest grades of service, where they hold more than a quarter of all positions, but significantly underrepresented in the seven highest grades.

48 See CIVIL SERVICE COMMISSION, *MINORITY GROUP EMPLOYMENT IN THE FEDERAL GOVERNMENT XI* (Nov. 30, 1972).

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.*

While members of minority groups, including women, no longer encounter legal barriers in pursuing careers in the bureaucracy, they nevertheless must overcome obstacles. The principal obstacle is the merit system administered by the Civil Service Commission, which allegedly ensures that only the most qualified applicants will be appointed to federal, state, and local positions.

For the first hundred years of our nation's history, most appointees were chosen on the basis of political patronage and friendship and such factors as veterans' status and needs. When the Civil Service reforms were enacted in the 1880s, the drive to remove appointments from the realm of politics led to the transfer of the power to appoint public servants from the President and Congress to bureaucratic commissions and boards. The delegation of recruitment, selection, and appointment powers to bureaucratic commissions was consistent with prevalent notions of economy, efficiency, and neutrality in government. The development of psychological testing as a means of identifying those believed most qualified for various public appointments was responsible in part for the widely held belief that those selected represented the best and the brightest of available talent.

However, the fact is that merit has not served as the sole basis for selection. As in the past, political preference is still a factor. Many agencies such as the military, public health service, and foreign service certify their own personnel. A great many employees are selected after a review of their education and employment records, and still others are chosen on the basis of written tests, whose usefulness as an accurate gauge of ability to perform a given job is open to question.<sup>53</sup>

In short, the process of selecting bureaucrats today is still distinguished by the inequitable requirements and provisions associated with it. There are arbitrary height requirements, which automatically exclude many Mexican Americans, Orientals, and women from our police, fire and other public services. There are arbitrary educational and experience provisions which exclude thousands of Americans who could perform adequately in the jobs. Approximately ten years ago the Civil Service Commission agreed to institute a program of hiring the mentally retarded, and in the first year alone, 10,000 such persons were hired. Their work proved outstanding. Had the Commission not waived its education and experience provisions and considered actual ability to perform the assigned tasks, 10,000 able Americans would have been deprived of the opportunity to work and better their lives and the Civil Service would have lost a valuable resource.

To achieve a representative bureaucracy, we must adopt new hiring techniques based on sensitivity to individual potential to contribute. The Supreme Court decision in *Griggs v. Duke Power Co.*<sup>54</sup> requires that every government agency carefully analyze each job to determine what skills it requires. A natural outgrowth of the decision is that the widest possible recruitment of applicants in minority communities be undertaken, and that each agency establish goals and timetables for the employment of minorities and women. Further, to the

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<sup>53</sup> See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

<sup>54</sup> *Id.*

maximum extent possible, selection of personnel should be based on tests which simulate the requirements of the job for which application is made. A typing test for a typist's job is a good example. Finally, appointment preference should be given members of minority groups which are underrepresented in the particular agency in those instances in which there are more candidates capable of performing the work than there are job openings.

We cannot dispense with bureaucracy in the modern world, nor would we want to, but we can demand that it be responsive. We can insist that it reflect moral interdependence instead of resisting it and we can insist that it reflect the composition of society.

### V. The Individual Responsibility

In the midst of so many inescapable demands—of so much wrong to be righted—with a public philosophy to be formed and a bureaucracy to be reformed—we are tempted to the despair Robert Kennedy assailed a decade ago: “the belief that there is nothing one man or one woman can do against the vast array of the world’s ills . . . against misery and ignorance, injustice and violence.”<sup>55</sup> So we are tempted to futility, to surrender to the sense that we are not able, so why should we try. In recent years we have lost a President who inspired us, waged a war which dishonored us, witnessed a reign of violence in our politics, and, finally, we watched a President desperately seek to stay in the White House in order that he could stay out of jail. We decided to end the poverty of the other America, but it is still with us. We planted the seeds of a Great Society, but then our plowshares were beaten into swords. In whatever direction we have sought to bend history, history seems to have moved the other way.

So the danger of futility tempts us to retreat from responsibility. And there we confront the danger of comfort. Many of us are fortunate that we can spurn Bonhoeffer’s command that we must live for others as well as ourselves.<sup>56</sup> Their plight may not often touch us directly. And there are signs that even in our colleges, not long ago a conscience to the nation, comfort has replaced concern.

Yet one man and one woman can make a difference. The setbacks of our time are balanced by advances, some in our times and others throughout history. And it is not just the great who change the course of events, or just great tasks which must be done. A human rights philosophy can be exemplified as well as explored, acted upon as well as advocated. It can be shaped by our deeds as well as our words. Indeed, it can become the faith of the nation and the world only if it is followed in individual lives.

Futility and comfort are an escape, not merely from responsibility, but from the reality of our own power to dedicate our existence to the principles of moral interdependence. That is what a black lady named Rosa Parks did when she refused to move to the back of the bus; what James Meredith did when he applied to the University of Mississippi; what Ralph Nader did when

<sup>55</sup> Address by Senator Robert F. Kennedy, Capetown, South Africa, June 6, 1966.

<sup>56</sup> See generally D. BONHOEFFER, *ETHICS* (6th ed. N. Smith transl. 1970).

he stood as one man alone against the largest manufacturing corporation in the world; what two reporters for the *Washington Post* did when they found the truth and told it.

Often the man or woman who makes a difference, great or small, does not set out to be important, but to be right. Alexander Solzhenitsyn did not worry about being a great Stalinist or winning a Nobel Prize for being a great anti-Stalinist. His purpose was to be a moral man. He teaches us the lesson of his life in these words:

Simple is the answer of the ordinary courageous human being who will not participate in the lie, or support false actions. What his stand says is: "So be it that this takes place in the world, that it even reigns in the world, but let it not be with my complicity."<sup>57</sup>

Others less famous have refused their complicity, and so must you. What specifically can you do, as citizens and as lawyers? First, as I have suggested, you need to develop a moral philosophy which sees your neighbors' or fellow citizens' problems as your own. Technical skill or knowledge is not enough. You need to be willing to act and in your actions to treat others as you would like to be treated under similar circumstances. You would not want to be assaulted or tortured, to be lied about or spied upon, to be denied the opportunity to make a living merely because of your sex or your race. You should not say that you will do to others as they do to you, but rather, that you will do to others as you wish them to do to you. The difference between those two statements is the difference between the world as it is and world as it should be.

Second, in addition to developing a moral philosophy that deals with every other human being as if he were created in your image, you need to set your goals, both individual and societal, in terms of ideal standards. No society in history has ever achieved maximum freedom. The entire history of human existence on this planet is a story of struggle against repression and for liberty. Yehezkel Dror points out in his book, *Public Policy-Making Reexamined*,<sup>58</sup> that there are seven different ways to measure governmental performance of societal achievements. Comparing ourselves with past or currently existing societies are two of them. A third method, the one traditionally used in the United States, is to plan programs and to measure achievement in terms of survival, or "muddling through," making small improvements in existing programs or activities. None of these comparisons is good enough. You should not be satisfied with how far we have come from some past time, how much progress we have made, nor should you be satisfied that we in this country are better off than the people of some other nations. We may not always attain our ideals, but we should not strive for anything less. Andrei Sakharov reminds us: "You always have to be aware of [ideals], even if there is no direct path to their realization. Were there no ideals, there would be no hope whatsoever. Then everything would be hopelessness, darkness—a blind alley."<sup>59</sup> Some of you can

57 A. SOLZHENITSYN, NOBEL LECTURE (1972).

58 See generally Y. DROR, PUBLIC POLICY-MAKING REEXAMINED (1st ed. 1968).

59 See N.Y. Times, Nov. 4, 1973 (Magazine), at 62.

seek elective office, and, if successful, seek to practice as a direct representative of the people the moral philosophy you have set for yourselves and for society. Or you can seek judicial office, where you can confront injustice in individual cases and treat those before you in the way you would like to be treated as a defendant.

But most of you, I suspect, will practice law, fulfilling your responsibilities outside elective or judicial office. If you enter private practice, I hope that you will spend all or some of your time representing the poor and the oppressed. I hope you will also practice citizenship, using your legal talents outside the office, in community organizations, in the political parties, on school boards, and in a host of voluntary agencies.

Finally, while there is a role for lawyers in elective and judicial office and in activities outside of government, I hope that many of you will consider a career in the bureaucracy. I realize that it is not popular in this time of Watergate scandals and horrors to urge young people to enter government. You have heard one of the Watergate defendants urge you to stay away. I urge you instead to join in—to grasp the chance to change our society. A few lawyers and judges were responsible for *Brown v. Board of Education*.<sup>60</sup> It did not end segregation, but it was an indispensable beginning. And a bureaucratic decision by a few men at HEW could achieve integration of school systems throughout America virtually overnight. The bureaucracy can move America.

Not everything you can do will be glamorous; not all of you can be great; but each of you can make a difference. What is important is not the position you achieve, but the conscience and the consciousness you bring to it. For in a thousand different ways, as lawyers and as citizens, you can serve the cause of moral interdependence.

## VI. Conclusion

In his new book, *The Gulag Archipelago*,<sup>61</sup> Alexander Solzhenitsyn has told the world the truth about the Soviet system of repression. Yet, as we stand with Solzhenitsyn, we must also understand a deeper truth. The Gulag Archipelago is not a piece of geography, but a global condition. Political prisoners are exiled to the Gulag Archipelago of torture in Bolivia and Brazil and, formerly, in Greece. Millions of Blacks inhabit the Gulag Archipelago of apartheid in South Africa. Thousands die each month on the Gulag Archipelago of starvation in India. The Gulag Archipelago surrounds us—and the hard truth is that it also exists among us.

The Gulag Archipelagos of America are not as harsh as a Siberian labor camp or a Bihari refugee center. But the relative nature of our shortcomings does not excuse the absolute reality of the suffering they inflict. Here in our own country, we have allowed the desperate isolation of the urban ghetto, the lonely poverty of Indian reservations, and the corruption of government which commits crimes and then covers up.

60 347 U.S. 483 (1954).

61 A. SOLZHENITSYN, *THE GULAG ARCHIPELAGO* (1st ed. T. Whitney, transl. 1974).



The Gulag Archipelago takes different forms in different lands. But there is a common path to that place in every land. It is the path of official injustice—it is injustice in the name of justice. The injustice of Solzhenitsyn's exile was ratified by the rules of Soviet law. Saigon's jails are filled with dissenters according to the law and the forms of Vietnamese justice. Reporters' telephones are tapped in America in the name of national security and with the support of the Department of Justice.

Yet our condition is different in another, happier sense. As much as any nation in the world, and more than most, we still have the capacity to correct wrongs that have been committed, to widen the writ and the reality of liberty. For we still have freedom to choose and forums in which to express our choice and we still profess the ideals which inspired our forebearers to revolt against injustice and to write into our Constitution a promise to establish justice.

Those ideals are in the human rights tradition. By drawing upon them now to develop a coherent philosophy of rights, by guiding policy in civil rights and in the bureaucracy by that philosophy, by exemplifying it in our own lives, we can find the way to escape the Gulag Archipelago for ourselves. We can help to find a way for all the world.

The journey will be difficult; it will not be finished soon. In making it, we must share the spirit of a Peace Corps volunteer I met years ago in Chile. He was stationed high in the Andes, in a village four hundred miles south of Santiago, and he told me that the people mistrusted him because others like him had left when the snows came. The only ones who ever stayed were the Communists. I asked him how he would change their minds. He replied: "I'm just waiting for the snow to come."

If we have the will to work and the patience to wait, then someday these civil rights lectures will celebrate a nation and a world which, having seen injustice, has corrected it—a nation and a world which have left behind forever the Gulag Archipelago and achieved in that time and for all time the ancient vision of peace on earth, good will among men.