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ARTICLES

THE AXIOLOGY OF THE INTERNATIONAL BILL OF HUMAN RIGHTS

Surya Prakash Sinha†

The purpose of this article is: (i) to show that the axiology of the international bill of human rights consists predominately of the values of individualism and legalism; (ii) to demonstrate that individualism and legalism have been the central values of social organization in the particular historicity of Western civilization, whereas such has not been the case with the value systems of the Chinese, Japanese, Indian, African, and Islamic civilizations, so that the bill's single-catalog approach¹ of prescribing one set of values for all civilizations does not take an adequate account of these different value systems; and, (iii) to argue for a revision of the bill, so as to make it isomorphic to the civilizational pluralism of the world of today. In the process, I shall attempt an explanation for this pluralistic insensitivity of the bill, emphasize the valuable contribution that this bill nevertheless makes toward securing human rights in this multi-civilizational world, and point out the undesirable consequences of its single-catalog approach. Thus, I hope not to have made an argument for the condemnation of the bill but a positive argu-

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¹ See generally, Sinha, *The Missing First Step in the Human Rights Movement*, American Branch, International Law Association, Proceedings and Committee Reports, 71 (1985-86); Sinha, *Freeing Human Rights from Natural Rights*, 70 ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE 342 (1984); Sinha, *Human Rights: A Non-Western Viewpoint*, 67 ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE 76 (1981); Sinha, *Human Rights Philosophically*, 18 IND. J. INT'L L. 139 (1978); Sinha, *The Anthropocentric Theory of International Law as a Basis for Human Rights*, 10 CASE W. RES. J. INT'L L. 469 (Human Rights Issue 1978).

ment for the strengthening of it.

It is no small miracle for the human being living under the society of sovereign States to have achieved the recognition of his human rights by them and to have secured the State's international legal obligations with respect to such rights. The Universal Declaration of Human Rights,² the International Covenant of Economic, Social, and Cultural Rights,³ and the International Covenant on Civil and Political Rights,⁴ along with its Optional Protocol,⁵ are all designed to secure the physical and spiritual existence of the individual.⁶ Besides this international bill of human rights,⁷ there are two regional treaties designed for that purpose, namely, the European Convention on Human Rights and Fundamental Freedoms⁸ and the American Convention on Human Rights.⁹ In addition, the African Charter on Human and Peoples' Rights has been adopted,¹⁰ and has recently come into force. The international lawyer, therefore, is no longer limited merely to seeking a philosophical basis for the

² Adopted and Proclaimed by U.N. GAOR Res. 217 (III) of 10 Dec. 1948.

³ Adopted by the General Assembly of the United Nations on 16 Dec. 1966, *opened for signature* on 19 Dec. 1966, *entered into force* on 3 Jan. 1976 in accordance with art. 27, 993 U.N.T.S. 3.

⁴ Adopted by the General Assembly of the United Nations on 16 Dec. 1966, *opened for signature* on 19 Dec. 1966, *entered into force* on 23 March 1976 in accordance with art. 49 for all provisions except those of art. 41 and on 28 March 1979 for the provisions of art. 41 (Human Rights Committee) in accordance with para. 2, of art. 41, 999 U.N.T.S. 171.

⁵ Adopted by the General Assembly of the United Nations on 16 Dec. 1966, *opened for signature* on 19 Dec. 1966, *entered into force* on 23 Mar. 1976 in accordance with art. 9, 999 U.N.T.S. 171.

⁶ For the position of the individual in international law see S.P. SINHA, *ASYLUM AND INTERNATIONAL LAW* (ch. IV 1971).

⁷ At its first session in London in January 1946, the United Nations General Assembly forwarded a draft Declaration of Fundamental Human Rights and Freedoms to the Economic and Social Council for consideration by the Commission on Human Rights in its preparation of an 'international bill of human rights.' After exploring different views as to the possible form of this bill of rights, the Commission decided that it should take the form of a declaration, a convention to be called the Covenant on Human Rights, and measures of implementation. Eventually, it came to consist of one Declaration and two Covenants, as mentioned above.

⁸ *Signed* on 4 Nov. 1950, *entered into force* on 3 Sept. 1953, 213 U.N.T.S. 222.

⁹ *Signed* on 22 Nov. 1969, *entered into force* on 18 July 1978, O.A.T.S. No. 36 at 1, O.A.S. Official Records OEA/Ser.L/V/II.23, Doc. 21.

¹⁰ *Adopted* on 27 June 1981, Organization of African Unity Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982).

human rights movement, though significant as that basis is,¹¹ but has at his disposal substantial positive law to work with.¹² As a result of these developments, the ideology of human rights has found a significant place in the politics of today's world making it inconvenient for governments to reject it.¹³

The objective of the international bill of human rights is to secure the physical and spiritual existence of the human being on earth, as contrasted with promoting State interests as some have in the past.¹⁴ Different civilizations have produced different ways for securing human existence on earth. However, the bill has adopted what I have disapprovingly called the single-catalog

¹¹ See generally, Sinha, *Freeing Human Rights from Natural Rights*, 70 ARCHIVTUR RECHTS-UND SOZIALPHILOSOPHIE 342 (1984); Sinha, *Human Rights Philosophically*, 18 IND. J. INT'L L. 139 (1970); Sinha, *The Anthropocentric Theory of International Law as a Basis for Human Rights*, 10 CASE W. RES. J. INT'L L. 469 (Human Rights Issue 1978); Compare with Fryer, *Contemplating Sinha's Anthropocentric Theory of International Law on a Basis for Human Rights*, 12 CASE W. RES. J. INT'L L. 575 (1980).

¹² There has been human rights activity previously, both through national legislation and international agreements, and both in the recent as well as in the remote past. See Sinha, *The Anthropocentric Theory of International Law as a Basis for Human Rights*, *supra* note 1, 10 CASE W. RES. J. INT'L L. 470, 470-75 (1978); J. VERZIJL, *HUMAN RIGHTS IN HISTORICAL PERSPECTIVE* (1958); F. VAN ASBECK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND ITS PREDECESSORS* (1949); Z. CHAFEE, *DOCUMENTS ON FUNDAMENTAL HUMAN RIGHTS* (1951); CH. DE VISSCHER, *THEORIE ET REALITES EN DROIT INTERNATIONAL PUBLIC* 158-65 (1955); Rommen, *Vers l'internationalization des droits de l'homme*, 1 JUSTICE DANS LE MONDE 163 (1959); Hamburger, *Droits de l'homme et relations internationales*, 97 RECUEIL DES COURS 293, 303 (1969); Mirkine-Guetzevitch, *Quelques problemes de la mise en oeuvre de la déclaration universelle de droits de l'homme*, 83 RECUEIL DES COURS 255, 268 (1953); A. VERDOODT, *NAISSANCE ET SIGNIFICATION DE LA DÉCLARATION UNIVERSELLE DE DROITS DE L'HOMME* (intro. ch. I n.d.); P. N. DROST, *HUMAN RIGHTS AS LEGAL RIGHTS* (ch. I 1951); H. R. ROBERTSON *HUMAN RIGHTS IN THE WORLD* (1972); Humphrey, *The International Law of Human Rights in the Middle Twentieth Century* in *THE PRESENT STATE OF INTERNATIONAL LAW AND OTHER ESSAYS* 75 (Bos 1973).

¹³ *THE INTERNATIONAL BILL OF RIGHTS* (Henkin 1981) ("[T]he universal acceptance of the idea of human rights and its general content may be only formal and superficial, in some cases even hypocritical, but no government dissents from the ideology of human rights today or offers an alternative to it.").

¹⁴ Earlier provisions for human rights in the international field were adopted to promote state interests. For example, human rights provisions were included in the minority treaties to impose obligations upon the vanquished States while exempting the victorious States from them; or, in the Mandates System, to secure the mandated territories for the mandatory powers; or, in the various labor conventions of the International Labor Organization, to secure the competitiveness of products by ensuring that the costs of improving labor conditions at home are incurred by the competitors as well. See L. HENKIN, *THE RIGHTS OF MAN TODAY* 92 (1978); Sinha, *Freeing Human Rights from Natural Rights*, 70 ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE 343 (1984).

approach,¹⁵ where under primarily one set of values is prescribed for all peoples of the world. This flies in the face of the tenacity with which civilizational pluralism has existed in the world throughout its history and as it continues to exist today.

At any given period in history, three to four civilizations have existed contemporaneously.¹⁶ Between 4000 B.C. and 3000 B.C. to 1700 B.C., Sumer-Akkad-and-Mesopotamia existed along

¹⁵ Sinha, *Human Rights: A Non-Western Viewpoint*, *supra* note 1.

¹⁶ See generally, B. & F.R. ALLCHIN, *THE BIRTH OF INDIAN CIVILIZATION: INDIA AND PAKISTAN BEFORE 500 B.C.* (1968); A.L. BASHAM, *THE WONDER THAT WAS INDIA*, (rev. ed. 1963); BYZANTIUM (Baynes & Moss 1961); G.M. BECKMANN, *THE MODERNIZATION OF CHINA AND JAPAN* (1962); R. BLOCK, *ORIGINS OF ROME* (1960); H. BORTON, *JAPAN'S MODERN CENTURY* (1955); J.B. BURY, *HISTORY OF GREECE TO THE DEATH OF ALEXANDER THE GREAT* (3d ed. 1951); J.F. CADY, *SOUTHEAST ASIA: ITS HISTORICAL DEVELOPMENT* (1964); M. CARY, *HISTORY OF ROME DOWN TO THE REIGN OF CONSTANTINE THE GREAT* (2d ed. 1954); L. CHI, *THE BEGINNINGS OF CHINESE CIVILIZATION* (1957); V.G. CHILDE, *THE DAWN OF EUROPEAN CIVILIZATION* (6th ed. 1958); V.G. CHILDE, *WHAT HAPPENED IN HISTORY* (1946); C.N. COCHRANE, *CHRISTIANITY AND CLASSICAL CULTURE* (1944); M.D. COE, *AMERICA'S FIRST CIVILIZATION* (1968); C.C. COON, *THE ORIGIN OF RACES* (1962); *RECONSTRUCTING AFRICAN CULTURAL HISTORY* (Creighton 1967); D. DAWSON, *THE MAKING OF EUROPE* (1932); *THE AMERICAS ON THE EVE OF DISCOVERY* (Driver 1964); M.I. FINLEY, *THE WORLD OF ODYSSEUS* (1954); H. FRANKFORT, *THE BIRTH OF CIVILIZATION IN NEAR EAST* (1951); J. GERNET, *ANCIENT CHINA FROM THE BEGINNINGS TO THE EMPIRE* (1968); R. GHIRSHMAN, *IRAN FROM THE EARLIEST TIMES TO THE ISLAMIC CONQUEST* (1961); H.A.R. GIBB, *MODERN TRENDS IN ISLAM* (1947); H.A.R. GIBB, *MOHAMMEDANISM: AN HISTORICAL SURVEY* (2d ed. 1953); L.C. GOODRICH, *A SHORT HISTORY OF THE CHINESE PEOPLE* (3d ed. 1959); R. GROUSSET, *THE EMPIRE OF THE STEPPES* (1970); *UNITY AND VARIETY IN MUSLIM CIVILIZATION* (von Gruenbaum 1955); D.G.E. HALL, *A HISTORY OF SOUTHEAST ASIA* (1955); C.H. HASKINS, *THE RENAISSANCE OF THE TWELFTH CENTURY* (1927); I.C.Y. HSU, *THE RISE OF MODERN CHINA* (1970); P.O. KRISTELLER, *RENAISSANCE THOUGHT: THE CLASSIC, SCHOLASTIC, AND HUMANIST STRAINS* (rev. ed. 2 vols. 1961); D.F. LACH, *ASIA IN THE MAKING OF EUROPE, I: THE CENTURY OF DISCOVERY* (1965); B. LEWIS, *THE ARABS IN HISTORY* (1950); R.S. LOPEZ, *THE BIRTH OF EUROPE* (1967); MAJUMDAR & PUSALKER, *HISTORY AND CULTURE OF THE INDIAN PEOPLE, I: THE VEDIC AGE* (1951); W.H. MCNEILL, *THE RISE OF THE WEST* (1963); W.H. MCNEILL, *A WORLD HISTORY* (2d ed. 1971); *CULTURE AND THE EVOLUTION OF MAN* (Momtagu 1962); R. OLIVER & A. ATMORE, *AFRICA SINCE 1800* (1967); R.R. PALMER & J. COLTON, *A HISTORY OF THE MODERN WORLD* (2d ed. 1956); K.M. PANIKKAR, *A SURVEY OF INDIAN HISTORY* (3d ed. 1956); J.H. PARRY, *EUROPE AND A WIDER WORLD 1445, 1415-1715* (1949); *ASPECTS OF CENTRAL AFRICAN HISTORY* (Ranger 1968); E.O. REISCHAUER, J.K. FAIRBANK & A.M. CRAIG, *A HISTORY OF EAST ASIAN CIVILIZATION, II: EAST ASIA: A MODERN TRANSFORMATION* (1965); G.B. SANSOM, *JAPAN: A SHORT CULTURAL HISTORY* (rev. ed. 1962); K.A.N. SASTRI, *A HISTORY OF SOUTH INDIA FROM PREHISTORIC TIMES TO THE FALL OF VIJAYANAGAR* (3d ed. 1966); S.P. SINHA, *NEW NATIONS AND THE LAW OF NATIONS* (1967); V.A. SMITH, *THE OXFORD HISTORY OF INDIA* (3d ed. 1958); W.C. SMITH *ISLAM IN MODERN HISTORY* (1957); P. SPEAR, *INDIA: A MODERN HISTORY* (1961); H. TREVOR-ROPER, *THE RISE OF CHRISTIAN EUROPE* (1965); M. WHEELER, *ROME BEYOND IMPERIAL FRONTIERS* (1955); R.E.M. WHEELER, *EARLY INDIA AND PAKISTAN, TO ASHOKA* (1959); R.E.M. WHEELER, *THE INDUS CIVILIZATION, THE CAMBRIDGE HISTORY OF INDIA*, (3d ed. Supp. vol. 1968).

the Tigris and Euphratus rivers, Egypt along the Nile, and Harappa-and-Mohenjodaro in the Indus valley. Between 1700 B.C. and 500 B.C., the Middle Eastern, Indian, Greek, and Chinese civilizations established themselves, providing four distinct life styles and value systems. Between 500 B.C. and 1500 A.D., cross-cultural borrowings and disturbances were not able to displace the autonomous existence of these civilizations. No single center of civilized life achieved a definite preponderance, while the barbarians on the margins of these civilizations only mixed elements of one civilization with another. The life styles within each of these civilizations continued to grow and modify themselves. Contact among them increased over the centuries, cross-cultural borrowings flourished, and even major upheavals occurred, namely: (a) the expansion of the Greek and the Indian civilizations beyond their borders, although the Hellenization of the Middle East and the Indianization of China and Japan remained only superficial and temporary; (b) the rise of Islam and its expansion first into the ancient Middle East, North Africa, and Spain (632-1000 A.D.), and then into India, Eastern Europe, and Central Asia (1000-1453 A.D.); and (c) the rise of the European enterprise. But no one civilization displaced the others. Between 1500 and 1850 A.D., the European society strengthened and expanded its dominion over the globe, subduing, by 1700 A.D., the Islamic peoples, the Hindus, and the Buddhists. By about 1850 A.D., the Ottoman, Mughal, Manchus, and Japanese empires succumbed decisively to the West, all within one single decade.

Inside Europe, beginning in the latter part of the eighteenth century, the twin movements of industrialization and democratization transformed the Western institutions in a fundamental way. Eventually, the European empires extended over nearly all of Africa and much of Asia. Since the end of World War II, these empires have been dismantled to create new nations from the erstwhile colonies of the Western powers. The new nations have adopted the European system of international law.¹⁷ They have launched modernization along selective Westernization. The nature of their political, military, intellectual, cultural, and economic interrelationships is such that some historians see in it

¹⁷ See S.P. SINHA, *supra* note 16.

an age of global cosmopolitanism.¹⁸

However, none of this has eliminated the civilizational pluralism of the world. There still persist different cultures pursuing different life styles along different value systems. For example, the Confucian traditions are still followed in China in that education and persuasion are used as the instrument for social peace rather than the principle of legality. Conflict resolution is sought primarily by appeal to conscience rather than by pursuing rights in courts of law. In Japan, the Western-style law makes sense only to a very small segment of Japanese Society comprising of middle class individuals. These individuals fashion their relations on the basis of freedom and liberty, while most people continue to live within the Confucian idea of hierarchy based on natural order and arrange their personal relations along the traditional *giri-ninjo* (rules of behavior).

Africa witnessed a noticeable activity of modernization along Western models, but eighty or ninety percent of its population continues to live according to ancient custom and are largely unaware of the cities' institutions, and generally unaffected by the reform legislation. It continues to use the traditional procedures of conciliation for disputes rather than state courts.

The Muslim countries vary in the pervasiveness of Islam but, by and large, their peoples continue to pursue life according to the Islamic concept of personal morals and societal order as applied to their own particular social conditions. The Hindus constitute nearly eighty-five percent of the population of India and their life, for the most part, moves along the traditional ways of *Dharma*. The joint-family, rather than the individual, continues to exist as the fundamental unit of social order.

Thus from these examples, civilizational pluralism persists. No plan for human rights can expect to succeed if it ignores this basic fact. Techniques of the West and even its life styles have been adopted by the world in varying degrees. Nevertheless, there continues to exist various value systems among various peoples of the world, manifesting different approaches to human emancipation. In this axiological pluralism, the single-catalog approach of the present international bill of human rights is not

¹⁸ See, e.g., W.H. McNEIL, A WORLD HISTORY (2d ed. 1971).

sufficient. It needs to be amended to accommodate this pluralism.

The fundamental values¹⁹ underlying the structure of the international bill of human rights are predominantly individualism and legalism, although there are some provisions in its instruments which are not so narrowly circumscribed. I will demonstrate this by analyzing the articles of these instruments, at the end of which I will have accounted for all of the thirty Articles of the Universal Declaration of Human Rights (UDHR), the thirty-one Articles of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the fifty-three Articles of the International Covenant on Civil and Political Rights (ICCPR).

For the purpose of this analysis, let me suggest that there are six areas of human existence which are of concern to human rights, namely: (1) integrity of the person; (2) personal relationships; (3) social assertion; (4) economic well-being; (5) political assertion; and (6) conflict resolution.

(1) *Integrity of the person*: Articles 3, 4, 5, 9, and 12 of the UDHR and Articles 6, 7, 8, 9, 10, 11, 12, 13, and 17 of the ICCPR²⁰ address themselves to the integrity of the person as a

¹⁹ On the meaning of values, see generally, B. BLANSHARD, *REASON AND GOODNESS* (1961); W.K. FRANKENA, *ETHICS* (1963); R. FRONDIZI, *WHAT IS VALUE?* (Lipp trans. 1963); A.C. GARNETT, *THE MORAL NATURE OF MAN* (ch. 4 1952); J. LAIRD, *THE IDEA OF VALUE* (1929); *VALUE: A COOPERATIVE INQUIRY* (R. Lepley 1949); *THE LANGUAGE OF VALUE* (Lepley 1957); P.H. NOWELL-SMITH, *ETHICS* (1954).

²⁰ For the practice of The Human Rights Committee, established under art. 28 of the ICCPR see, International Covenant on Civil and Political Rights, Human Rights Committee: Selected Decisions under the Optional Protocol (Second to Sixteenth Sessions), U.N. Doc. CCPR/C/OP/1(1985) [hereinafter Selected Decisions], for art. 6: Comm. Nos. 30/1978, 45/1979; for art. 7: Comm. Nos. 4/1977, 5/1977, 8/1977, 9/1977, 11/1977, 25/1978, 28/1978, 30/1978, 33/1978, 37/1978, 52/1979, 63/1979, 73/1980; for art. 9(1): Comm. Nos. 4/1977, 5/1977, 8/1977, 25/1978, 30/1978, 33/1978, 37/1978, 46/1979, 52/1979, 56/1979, 64/1979, 91/1981; for art. 9(2): Comm. Nos. 33/1978, 44/1979, 46/1979; for art. 9(3): Comm. Nos. 5/1977, 6/1977, 8/1977, 10/1977, 11/1977, 28/1978, 32/1978, 33/1978, 37/1978, 44/1979, 46/1979, 52/1979, 63/1979, 73/1980; for art. 9(4): Comm. Nos. 4/1977, 5/1977, 6/1977, 8/1977, 9/1977, 10/1977, 11/1977, 25/1978, 28/1978, 32/1978, 33/1978, 37/1978, 44/1979, 46/1979, 91/1981; for art. 9(5): Comm. Nos. 9/1977, 91/1981; for art. 10(1): Comm. Nos. 4/1977, 5/1977, 8/1977, 10/1977, 11/1977, 25/1977, 27/1978, 28/1978, 30/1978, 33/1978, 37/1978, 44/1979, 56/1979, 63/1979, 70/1980, 73/1980; for art. 10(2): Comm. No. 27/1978; for art. 11: Comm. No. 91/1981; for art. 12: Comm. Nos. 24/1977, 31/1978, 52/1979, 57/1979, 68/1980; for art. 13: Comm. Nos. 27/1978, 58/1979; for art. 17: Comm. Nos. 24/1977, 27/1978, 35/1978, 68/1980.

human being. They provide for: life, liberty, and security of person; freedom of movement and choice of residence; protection from slavery, servitude, forced labor, torture, inhuman or degrading treatment or punishment; and arbitrary arrest, detention, exile, arbitrary interference with home privacy, and attacks upon honor and reputation. These are not the provisions which are circumscribed within the Western axiology of individualism and legalism to the exclusion of other value systems. However, other provisions are.

(2) *Personal relationships*: Article 16 of the UDHR, Articles 23 and 24 of the ICCPR,²¹ and Article 10 of ICESCR provide protection for personal relationships of the human being, namely, the relationships of family, marriage, and children. In doing so, they regard the individual as the fundamental unit of society and the nuclear family as its fundamental group unit. This is an eloquent expression of individualism, which is fine. But the provisions stop there. They do not go on any further in taking an adequate account of, say: the hierarchical family of China or Japan; the Hindu joint-family; or the African lineage and kinship systems of the Tallensi, Ashanti, Hausa-Fulani, Yoruba, Ibo, Tiv, Ganda, Lugbara, Kikuyu, Nandi, Arusha, Nyakyusa, and Nuer peoples.

(3) *Social assertion*: Articles 1, 2, and 27 of the UDHR, Articles 2, 3, and 18 of the ICCPR,²² and Article 15 of the ICESCR assure social assertion of the human being by treating all human beings similarly based on equality. These Articles eliminate distinctions in human rights on the basis of: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, status, or political status of a person's country. These Articles achieve this by providing for participation in the cultural life of the community and enjoyment of the benefits of scientific progress, by granting equal rights to men and women, and by providing freedom of thought, conscience,

²¹ For the practice of the Human Rights Committee, see Selected Decisions, *supra* note 20, for art. 23: Comm. Nos. 24/1977, 35/1978, 68/1980; for art. 24: Comm. No. 24/1977.

²² For the practice of the Human Rights Committee, see Selected Decisions, *supra* note 20, for art. 2: Comm. Nos. 9/1977, 19/1977, 24/1977, 25/1978, 28/1978, 35/1978, 50/1979, 52/1979, 56/1979, 57/1979, 79/1989, 81/1980; for art. 3: Comm. Nos. 24/1977, 35/1978; for art. 18: Comm. No. 40/1978.

and religion. While most of these provisions are not limited by the individualistic axiology, individualism does assert itself in the provision for equality. This is quite satisfactory for the Western civilization. However, these Articles do not go on further to provide for other civilizations, such as the Japanese,²³ which seek human emancipation on the basis of hierarchical, not equal, relationships and who believe that the notion of equal rights depersonalizes human relations by putting all persons on an equal basis.

(4) *Economic well-being*: Articles 17, 22, 23, 24, 25, and 26 of the UDHR and Articles 6, 7, 8, 9, 11, 12, 13, and 14 of the ICESCR assure the economic well-being and education of the human being. They provide for the right to: work, choice of employment, fair wages, safe and healthy working conditions, job promotions, rest, leisure, reasonable working hours, holidays, form and join trade unions, social security, an adequate standard of living, physical and mental health, education, and to own property.²⁴ These provisions represent lessons learned and wisdom acquired from practicing industrial economies in the West. Moreover, their relevance is not limited to the West alone, but to all industrialized and industrializing societies. However, these Articles stop short of addressing themselves to other economic styles in the world, such as, for example, the rural India or non-industrial Africa.

(5) *Political assertion*: Articles 13, 14, 15, 18, 19, 20, and 21 of the UDHR and Articles 19, 20, 21, 22, 25, 26, and 27 of the ICCPR²⁵ lay down fine principles of democracy, namely: freedom of opinion and expression, prohibition of propaganda, freedom of association, peaceful assembly, participation in public affairs, access to public service, equal protection of law, protection of minorities, freedom of movement, right to seek asylum,²⁶ right

²³ See *infra* note 33 and accompanying text.

²⁴ The right to own property was included in art. 17 of the UDHR but dropped completely from the Covenants.

²⁵ For the practice of the Human Rights Committee, see Selected Decisions, *supra* note 20, for art. 19: Comm. Nos. 8/1977, 11/1977, 28/1978, 31/1978, 33/1978, 44/1979, 52/1979, 61/1979; for art. 22(1): Comm. No. 52/1979; for art. 25: Comm. Nos. 5/1977, 10/1977, 19/1977, 28/1978, 34/1978, 35/1978, 44/1979; for art. 26: Comm. Nos. 17/1977, 24/1977, 28/1978, 35/1978, 68/1980; for art. 27: Comm. No. 24/1977.

²⁶ See generally, S.P. SINHA, ASYLUM AND INTERNATIONAL LAW (1971); Sinha, *An Anthropocentric View of Asylum in International Law*, 10 COLUM. J. TRANSNAT'L L. 78

to nationality, and freedom of thought, conscience, and religion. These provisions are remarkable in that they are not content with merely making vague references to something called democracy or debating the appropriateness of the nomenclature for a particular government; they lay down specific principles of government most conducive to securing the human being. These principles of politics are very important for achieving human rights, but since our focus here is on the value systems, I shall not dwell upon these principles of politics.

(6) *Conflict resolution*: Articles 6, 7, 8, and 10 of the UDHR and Articles 9, 14, 16, and 17 of the ICCPR²⁷ provide for the means for resolving conflicts and disputes. They choose law as the favored means for this purpose and elaborate the principles of a desirable court system. They thus give a clear expression to legalism as the fundamental value in the sphere of conflict resolution. Once again, however, they stop there and do not provide for the means of conflict resolution practiced in non-Western civilizations. In China, for example, the honorable course is not assertion of rights through recourse to law but conciliation; law being appropriate for dealing with the foreigner who is alien to the Chinese values, the morally perverse, the incorrigible criminal, and the counter-revolutionary.²⁸ In Japan, conciliation procedures of *judan*, *wakai*, and *chotei* are preferred and law is deemed appropriate only for depersonalized matters of business and industry.²⁹ Nor do law and its institutions form part of the traditional modes used by the African peoples for resolving conflicts.³⁰

Thus, these instruments are too restrictive to give expression to the principles used by all of the world's civilizations for securing a human being's personal integrity, personal relation-

(1971).

²⁷ For the practice of the Human Rights Committee, see Selected Decisions, *supra* note 20, for art. 9: *supra* note 20; for art. 14(1): Comm. Nos. 5/1977, 6/1977, 8/1977, 10/1977, 17/1977, 27/1978, 28/1978, 32/1978, 44/1979, 46/1979, 64/1979, 70/1980, 81/1980; for art. 14(2): Comm. Nos. 5/1977, 8/1977, 46/1979; for art. 14(3): Comm. Nos. 4/1977, 5/1977, 6/1977, 8/1977, 10/1977, 27/1978, 28/1978, 32/1978, 33/1978, 44/1979, 46/1979, 52/1979, 56/1979, 63/1979, 70/1980, 73/1980; for art. 14(5): Comm. Nos. 27/1978, 46/1979, 64/1979; for art. 17: Comm. Nos. 24/1977, 27/1978, 35/1978, 68/1980, 79/1980.

²⁸ See *infra* note 32 and accompanying text.

²⁹ See *infra* note 33 and accompanying text.

³⁰ See *infra* note 35 and accompanying text.

ships, social assertion, economic well-being, political assertion, and modes of conflict resolution. The remaining articles of these instruments, namely, Articles 28, 29, and 30 of the UDHR, Articles 1, 4, 5, 15, and 28 to 53 of the ICCPR, and Articles 1 to 5 and 16 to 31 of the ICESR deal with non-axiological matters. The axiological Articles examined above show that they are predominantly grounded in the values of individualism and legalism.

I shall now demonstrate that while individualism and legalism have been the central values of social organization in the particular historicity of the Western civilization; such has not been the case with other major civilizations of the world, such as the Chinese, Japanese, Indian, African, and Islamic, which have developed their own central values in their own particular historicity.

A. The Western Civilization: Two significant tendencies appeared early on in Greek history. The territorial State prevailed over other modes of human association as the most important political organization and the world was explained through the laws of nature. The earliest Greek invaders settled in the Aegean islands and on the mainland. Knossos was destroyed by the Mainland Mycenaeans in 1400 B.C., and for two hundred years thereafter the Mycenaeans plied the coasts of the Mediterranean. Soon after 1200 B.C., the Greek-speaking Dorians from the north invaded the Mycenaean centers of power. The displaced refugees fled across the Aegean to coastal Asia Minor where, in the absence of any pre-existing system of governance, they created a set of laws and governmental systems. The earliest *polis*, or the Greek city-states, were established wherein law became the means of governance and cooperation. The *polis* developed on the mainland as well, though slowly. There, too, law and its magistrates performed a central function in social organization. At Ionia, the philosophers began explaining the phenomena by the exercise of imaginative reason and they replaced gods by natural law as the ruling force of the universe. The Greek mind evolved through four stages, namely: the Heroic Mind, the Visionary Mind, the Theoretical Mind, and the Rational Mind, and it created the notion of man as possessed of reason, freedom of choice, and ability to make decisions. As such, he lived for his own sake and not for the sake of some exalted human being or

supernatural entity. Individualism thus came to be established. This resulted in a polity in which citizens possessed rights which were held in common under the rule of law. Law was the means through which these rights were realized.

In 338 B.C., the sovereignty of the local *polis* was destroyed by the Macedonian conquest. Meanwhile, Rome emerged as a power. Although Latin became the prevailing language in the long period of peace of the Roman Emperors, the Hellenistic civilization spread to Italy, Gaul and Spain. Philosophers like Cicero produced ideas that government originated in a voluntary agreement of citizens and law was the paramount principle of government. Roman law became important. It was codified. Civil war and invasion from the Steppe barbarians, during 235 B.C. to 84 A.D., brought the Roman era to a close. Christianity emerged as an historic force. The Latin (Roman Catholic) and the Greek (Orthodox) Christendoms were formally separated in 1054 A.D., and Latin Christendom spread in Europe through conversion and conquest. Christianity shifted the thought from natural philosophy to revelation. *God's* power sustained both the spiritual and secular orders. Human existence was meaningful only insofar as it reconciled the man with his *Maker*. The individual was subordinated to a collective world order.

Man, however, returned to the center of things with Reformation which, along with its rival movement of Renaissance, engendered a self-transformation of Europe during the period 1500 to 1648 A.D. Individualism reasserted itself. It insisted, as the Protestants did, that man was his own mediator with *God*. It challenged the centralized political authority. It legitimized political needs of the individual rulers. It instituted capitalism in the economic field. Once again, it was law which provided the technique of social organization in this individualistic, non-feudal, non-tribal, non-communal, and non-caste frame of society. During the period 1648 to 1789, both the Church and the State retreated from enforcing conformity to truth. Consequently, trained professionals emerged in all walks of life. It was no longer necessary to create and impose one overall synthesis of all truth and knowledge. Therefore, specialized professions flourished, including that of law.

During the period 1789 to 1914, the industrial revolution and the democratic revolution transformed the Western civiliza-

tion. While the industrial revolution increased the West's wealth and accelerated the growth of its population, the democratic revolution established the notion that governments were man-made. Law played its own significant role in these processes and provided a central mechanism for social organization. Social change further intensified during the period 1914 to 1945, with the discovery that economies could concentrate effort on particular goals and that human societies could be deliberately manipulated for peace as well as war. Consequently, society and economy were no longer considered natural. Instead, they became amenable to conscious control. Law played a central role in the management of these matters. It continues to do so in the period following 1945. Thus, individualism and legalism are an experience of the particular historicity of the Western civilization.³¹

B. The Chinese Civilization: Such is not the case with the Chinese civilization. Although neolithic Black Pottery people are considered ancestral to the historical Chinese and farming began in the Yellow River before 3000 B.C., the Hsia are regarded as the first rulers of China, followed by the Shang dynasty (1523-1028 B.C.), which was overthrown by the Chou in 1501 B.C. A barbarian attack in 771 B.C. destroyed the western Chou dynasty (1501 to 771 B.C.), but the Chinese civilization expanded rapidly with the later or the eastern Chou dynasty (770-256 B.C.), particularly at the end of the period of the warring states (402-221 B.C.). The Chou abolished the Shang rituals and human sacrifice and explained their own power in terms of a mandate from heaven where under the *Son of Heaven* ruled as long as he behaved piously and properly. They adopted a cos-

³¹ See generally, BYZANTIUM (Baynes & Moss 1961); C.M. BOWRA, THE GREEK EXPERIENCE (1957); J.B. BURY, HISTORY OF GREECE TO THE DEATH OF ALEXANDER THE GREAT (1951); M. CARY, HISTORY OF ROME DOWN TO THE REIGN OF CONSTANTINE THE GREAT (2d ed. 1954); V.G. CHILDE, THE DAWN OF EUROPEAN CIVILIZATION (6th ed. 1958); C.N. LOCHRANE, CHRISTIANITY AND CLASSICAL CULTURE (1944); C. DAWSON, THE MAKING OF EUROPE (1932); J.H. FINLEY, JR., FOUR STAGES OF GREEK THOUGHT (1966); C.F.C. HAWKES, THE PREHISTORIC FOUNDATIONS OF EUROPE TO THE MYCENEAN AGE (1940); H.M. McLuhan, THE GUTENBERG GALAXY: THE MAKING OF THE TYPOGRAPHIC MAN (1962); W.H. McNEIL, A WORLD HISTORY (2d ed. 1971); W.H. McNEIL, THE RISE OF THE WEST (1963); G. MURRAY, HELLENISM AND THE MODERN WORLD (1953); S.F. NADEL, A BLACK BYZANTIUM (1942); R.R. PALMER & J. COTTON, A HISTORY OF THE MODERN WORLD (2d ed. 1956); H. TREVOR-ROPER, THE RISE OF CHRISTIAN EUROPE (1965).

mology in which there existed a reciprocal interaction between heaven, earth, and men. The earthly affairs revolved around the emperor just as the heavens turned on the pole star. The emperor was responsible both for war and politics as well as for the terrestrial phenomena that affected human activity, such as weather. It was the emperor's duty to follow the prescribed rites in order to obtain harmony between earth and heaven which would advance human welfare. However, the fact that wars happened brought into question the belief that correct observance of traditional rites would bring order and prosperity. Consequently, the Legalists rose in prominence. They repudiated the pieties of the past. Ultimately, however, it was the conservative piety of the sage Confucius (551-479 B.C.), which prevailed.

Confucius rejected Heaven and spirits as proper objects of inquiry, although he accepted their reality and power. Instead, he directed attention to the human aspects of things. His disciples recorded his sayings about what a wise man should do. These were compiled during his lifetime in the Five Classics. The study of the Classics became essential for a well-educated man. The Classics thus provided a common core to the succeeding generations from which grew fundamental attitudes and values which held the Chinese civilization together all the way down to the twentieth century. Confucianism emphasized decorum and self-control. Other schools, especially the contemporary Taoism, emphasized human passion and mysteries of nature. Together, interacting mutually, they provided a stable pattern of thought which remained fundamentally uninterrupted, although enriched with later changes, and which provided the cement of civilization up to the modern times.

During the period 500 B.C. to 200 A.D., the ruler of the state of Chi'n crushed the Steppe barbarians and overthrew his rivals within China, so that he became, in 221 B.C., the First Emperor (Shih Huang-ti) of the new Chi'n dynasty. He opted for the Legalist school and repudiated Confucianism, since it compelled the emperor to govern according to the traditional rites. However, Confucianism was soon reinstated by the emperors of the subsequent Han dynasty (202 B.C.-200 A.D.), and the rival doctrines were suppressed. Under the Confucianist teachings, the educated classes cultivated a remarkably uniform outlook. During the period 200 to 600 A.D., the imperial China was

reconstituted and bureaucracy was organized by the Sui emperors, but this was done without disturbing Confucianism as the principle of social organization.

During the period 600 to 1000 A.D., although the strong central power was disrupted in 755 A.D., the economic development continued undisturbed and the landlord-official class continued in their traditional dominance. Their members were educated in the Classics. They pursued decorum worthy of gentlemen. The gentlemanly idea was further elaborated during the T'ang (618-907 A.D.), and Sung (960-1279 A.D.), periods. In the early T'ang period, Buddhism practically achieved an official status but the Confucianists distrusted it and, after 845 A.D., they persecuted it systematically. Nevertheless, the Confucianists learned from it how to read new meanings in the Classics and the Taoists took from it doctrine as well as monastic organization and schooling. The net result was a Neo-Confucianism whose pre-eminence was assured by the policy of the Sung rulers to preserve things authentically Chinese.

During the period 1000 to 1500 A.D., the later Sung extolled the Neo-Confucianism even further. In the Ming period (1368-1644 A.D.), China first embarked upon its maritime enterprise but, after the expeditions of the court eunuch Cheng-ho (1405-1433 A.D.), the Ming Emperor forbade sea-going. The Ming restored the Neo-Confucian orthodoxy. This meant suffering for the mercantile class. The trading community, however, lost its importance due to the remarkably outstanding productivity of agriculture. Consequently, the conservative Confucianism came to prevail. Its institutions achieved such perfection and inner strength that no upheaval could do more than make a transitory impression. These institutions continued to provide the social organization for the society until the massive social break-down of China in the twentieth century.

During the period 1500 to 1700, the Manchus founded their Ch'ing dynasty. They had originated from a barbarian warband of Manchuria and they distrusted the native Chinese. However, the civil administration employed both the Chinese and the Manchus and, even more importantly, it used recruitment examinations based on the knowledge of the Confucian classics. The restoration of peace brought prosperity. The inner balance of the Chinese culture had achieved such perfection that they took

no more than a casual notice of the novelties brought by the Europeans, such as new geographical information, improved astronomical skills, pendulum clocks, and the Jesuits. They developed critical methods to discover true meanings of the old Confucian texts. The rigorous Han School of Learning discouraged wayward interpretations such as were indulged into by the earlier Neo-Confucianists.

During the period 1700 to 1850, dynastic decay began. Revolts followed revolts, culminating into the disastrous Taiping Rebellion of 1850. Additional problems were brought by the European trade. The British abolished the China trade monopoly of the East India Company and introduced European patterns of commerce at Canton. The Chinese officials forbade the import of opium, but the British and the European traders took to extra-legal forms of trade in this substance. The British gunboats shattered the Chinese coastal defenses in a war and extracted the Treaty of Nanking (1842), where under they obtained all they wanted. Other European powers followed the pattern. In spite of such dislocations, however, the traditional way of life continued uninterrupted until after 1850.

During the period 1850 to 1945, the European adventurers flooded the treaty ports following the opium war of 1839 to 1841. Backed by guns and diplomacy of their respective governments, they refused, in the Confucian tradition, to remain in their humble position assigned to foreign merchants. The Chinese, on their part, could not bring themselves to abandon the Confucian ways in order to deal with the European powers. Their territories were snatched part by part by England, France, Russia, and Japan, and they continually ceded concessions, control, and privileges to the foreigners. Many Chinese saw this as a betrayal by their government. Secret societies sprouted for overthrowing the Manchus. The Boxers attacked the hated foreigners, but the European powers occupied Peking (1900) and extracted an indemnity. In 1911 revolutionaries rose against the discredited Manchus. In 1912 they installed a republic. New kinds of ideas began attracting the educated class.

Legalism reappeared. Western-style codes were adopted in order to beat Western domination. However, in spite of this Western-style legalistic activity, traditional concepts persisted. The codes were followed when compatible with the traditional

ideas of equity and propriety. They were ignored when they conflicted with the tradition. However, Confucianism was abandoned by such intellectual and political leaders as Sun Yat-Sen (d. 1925) and his Kuomintang Party. Chiang Kai-shek of Kuomintang and Mao Tse-tung of the Communists clashed at the end of the Japanese occupation in 1945. The Communists emerged with victory in 1949. The Soviet model of Socialist legality was established in the country. It was adopted in the Constitution of 1954, in spite of attacks made in 1952 to 1953 on such concepts of Western legalism as separation of law from politics, equality before law, independence of the judiciary, limitations of actions, and non-retroactivity of legislation. However, relations with the Soviet Union ruptured in 1960, with the significant consequence that the Soviet model was dropped and a return took place to China's own system of values. In that system priority was given to social transformation over economic growth, persuasion was emphasized over force, the adversary was treated not beyond redemption, and self-criticism was adopted over assertion of rights.

China has thus reverted to its ancient traditions. There are, of course important variations, namely: one, the cosmology of natural phenomenon and human behavior is no longer accepted; two, the earlier methods of mediation (*i.e.*, appeal to the family, the clan, the neighbors, or the local dignitaries) have been replaced by mediation of politically involved bodies, such as the people's mediation committees, of which there are well over 200,000 in the country; and, three, the view that each party in a dispute must sacrifice something of his own for re-establishing harmony has been supplemented by the need to assure success of some policy. In any case, legalism is clearly repudiated in favor of education and persuasion and the honorable course is conciliation, not recourse to law and assertion of individual rights. Law is meant for dealing with the morally perverse, the incorrigible criminal, the counter-revolutionary for whom reform is hopeless, and the foreigner who is alien to the Chinese values.

There is a legend in China that *Fa* (law) was invented by the barbarian tribe of Miao in the twenty-third century B.C. in the time of prophet Shun whom *God* later exterminated. Conflict resolution is sought, for most part, by appeal to conscience and not by pursuing rights in the courts of law. Resort must first

be made to *Ch'ing* (human sentiment), next to *Lii'* (reason), and only lastly to *Fa*. Thus, the definition of Chinese axiology is provided not by individualism and legalism but by the modified Confucianist traditions.³²

C. *The Japanese Civilization*: Similarly, individualism and legalism are not the central values of the Japanese axiology, either. The Japanese, in the beginning of their civilization, raised their agriculture steadily to the level of the Chinese. During the period 600 to 1000 A.D., they adopted Buddhism, Confucianism, and other features of the Chinese culture. The emperors of the Nara Period (645-784 A.D.), copied the T'ang court of China, while the barons of the provinces pursued a more rough style. The Taika era (beginning 646 A.D.), introduced a system of periodic distribution of rice plantations. The society was classified into ranks which were assigned particular tasks for the regime. The compilation of *ritsu-ryo* enumerated the duties of each class. They laid down prohibitions (*ritsu*) and the administrative rules (*ryo*). However, these compilations were not a catalog of legal rights and duties but, rather, a source of enlightenment for the people. The system of sharing public land was replaced by a feudal system in the ninth and tenth centuries. The key institution of that system was the seigneurial unit of *sho*, which was a sovereign domain with fiscal privileges, whose master owned all its land.

During the period 1000 to 1500 A.D., the warrior barons (*samurai*) developed their own warrior ideal whose essential elements were courage in battle, loyalty to the leader, and personal

³² See generally, D. BODDE & C. MORRIS, *LAW IN IMPERIAL CHINA* (1967); TRADITIONAL AND MODERN LEGAL INSTITUTIONS IN ASIA AND AFRICA (Buxbaum 1967); CHU CHENG, *ON THE RECONSTRUCTION OF THE CHINESE SYSTEM OF LAW* (1947); T. CHIN, *LAW AND SOCIETY IN TRADITIONAL CHINA* (1961); Cohen, *Chinese Mediation on the Eve of Modernization*, 54 CAL. L. REV. 120 (1966); H.G. CREEL, *THE BIRTH OF CHINA* (1936); R. DAVID & J.H.C. BRIERLY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* (2d ed. 1978); SOURCES OF CHINESE TRADITION (DeBary 1960); J. ESCARRA, *CHINESE LAW: CONCEPTION AND EVOLUTION, LEGISLATIVE AND JUDICIAL INSTITUTIONS, SCIENCE AND TEACHING* (Browne trans. 1961); J. GERNET, *ANCIENT CHINA FROM BEGINNING TO THE EMPIRE* (1968); J. GERNET, *LE MONDE CHINOIS* (1972); S. LENG, *JUSTICE IN COMMUNIST CHINA* (1967); LI CHI, *THE BEGINNING OF CHINESE CIVILIZATION* (1957); V. Li, *The Role of Law in Communist China*, 44 CHINA Q. 66 (1970); M.A. MACCIOCHI, *DAILY LIFE IN REVOLUTIONARY CHINA* (1972); McAleavy, *Chinese Law*, in *AN INTRODUCTION TO LEGAL SYSTEMS* 115 (Derret 1968); W.H. McNEIL, *A WORLD HISTORY* (2d ed. 1971); Tsien, *La responsabilite civile delictuelle en Chine populaire*, 1967 REVUE INTERNATIONALE DE DROIT COMPARE 875.

dignity of the fighting man. Disputes among different bands were settled by the sword. The substance and the power of the emperor and the courtier class (*kuge*) declined. The warrior class (*buke*, *bushi*, *samurai*) developed its own code of conduct (*buke-ho*). Its basis was the duty of faithfulness to the overlord, not to any Western-style concept of law. *Buke-ho* applied to the warrior class, *ritsu-ryo* to others; a dualism that subsisted until the period of the Ashizaka Shoguns (1333-1573), when *buke-ho* became predominant as the superiority of the warrior was established over the peasant. The landless *samurai* took to sea-roving and piracy. The riches brought from the sea promoted a town life and a self-reliant middle class which developed a high culture based on the *samurai* traditions. The Chinese-import Zen Buddhism mingled with the *samurai* ideal to produce the Pure Land Buddhism that had already begun around 1200 A.D. Its monasteries were often important landholders which defended themselves like a *samurai* clan, crushing peasant uprisings that began occurring after 1400.

Until 1400, the cult of *Sun Goddess* was confined to the imperial court. It was now reinterpreted, acquiring its own metaphysics and theology under the name of *Shinto*. The period 1500 to 1700 began with civil wars and arrival of the Europeans, primarily the Portuguese, bringing Christian baptism and European guns. The cost of armaments soared. That created the need for large territorial sovereigns, so that political consolidation of Japan began with Hideyoshi (d. 1598) and was continued by the Tokugawa Shoguns (1603-1868).

The consequence of the end of warfare was that the *samurai* were now left with no meaningful occupation. They busied themselves with promoting the vulgar culture of the towns. That culture existed alongside the decorous culture of the officialdom. The social order proceeded on the basis of a strict separation of the social classes, which were the warriors, the peasants, and the merchants. The aesthetic *samurai* life-style and the lascivious urban life-style continued in their duality during the period 1700 to 1850.

Neo-Confucianism was made official by the Tokugawa Shoguns, who suppressed other doctrines. The disaffected Japanese denied both Western as well as Chinese thoughts, and used the Neo-Confucianist teaching of obedience to oppose the

Shoguns' usurpation of the Emperor's authority. They practiced Shintoism, instead of Neo-Confucianism. The ideas of individualism and legalism were totally absent in these developments. The *giri*, or the proper rules of behavior, provided the basis for the social order. They were followed because violation brought social reprobation. The *giri* were various. There were the *giri* of father and son, husband and wife, landowner and farmer, lender and borrower, merchant and customer, employer and employee, and so on.

During the period 1850 to 1945, the Western navies prevailed over the Japanese policy of rigorous seclusion and, in 1845, the Tokugawa Shogun had to accept the American terms of opening the Japanese ports to them for travel and coaling stations. The humiliation was immense. It resulted in the overthrow of the Tokugawa government in 1868. The Emperor was restored, inaugurating the Meiji era. The Japanese soon realized that they must adopt Western technology and Western political organization if they were to protect themselves from the West. As a result, a democratic State replaced the feudalism. Western-style laws were enacted. Public institutions were modified by establishing freedom of agriculture in 1871, sale of land in 1872, and a Constitution in 1889. The administrative structure of the country was reorganized along the lines of departments (*kin*) and municipalities. The industrial revolution was launched.

However, it is to be noted that the traditional ways continued in all the three fields of industry, human-relations, and politics. In the industrial field, the *samurai* traditions were adopted in that: (i) the factory managers served the nation, obeyed the superiors, and disciplined and protected the inferiors; (ii) the firms took honor and prestige as their goal; and (iii) the private venturers pursued the old warrior virtues of courage, endurance, and loyalty. In the field of human relations, the *samurai* traditions were followed in that the managers commanded and the workers obeyed and were taken care of throughout their life. In the political field, important authority was exercised behind the scenes by an inner circle of elders descending from the clique of class leaders, in spite of the fact that the Constitution of 1889 introduced universal male suffrage to the Diet.

The modern times begin with the surrender to the United States in August 1945 at the end of World War II. Today, the

Western-style law governs a very small portion of social life comprising the middle class individuals fashion their relations on the basis of freedom and liberty. The majority of the people follow the Confucian idea of hierarchy based on natural order. Personal relations are carried on along the lines of *giri-ninjo*, not law. The notion of legal rights is looked down upon since it depersonalizes human relations by treating all persons on an equal basis. Law is deemed appropriate only for depersonalized matters of business and industry. Conciliation procedures of *jidan*, *wakai*, and *chotei* are preferred for dispute settlement. Under *jidan*, the parties settle the dispute amicably through mediators. Under *wakai*, the judge brings the parties to a settlement. Under *chotei*, the parties request the court to appoint a panel of conciliators charged with preparing an equitable settlement. Arbitration (*chusai*) is avoided in domestic contracts, although, of course, used in foreign trade contracts. Thus, Japan's value system is constituted of its own traditional values and not individualism and legalism.³³

D. The Indian Civilization: The axiology of the Indian civilization is unique, yet, it is not composed of individualism and legalism. Civilization began in the Indus valley shortly after 3500 to 3000 B.C., and the Aryans invaded the Indus cities by about 1500 B.C. The Ganges valley was on its way to civilized complexity by 800 B.C. In this civilization it was caste that emerged as the principle of social organization which, with subsequent modifications, continues to this day. A caste is an exclusive group of persons for intimacies of dining and intermarriage and it has definite rules of how to behave with members of other castes. Strangers, intruders, wanderers, and displaced persons become another caste. New occupations create new castes. A large caste is divided into sub-castes.

³³ See generally, G.M. BECKMAN, *THE MODERNIZATION OF CHINA AND JAPAN* (1962); C.R. BOXER, *THE CHRISTIAN CENTURY IN JAPAN 1549-650* (1951); H. BOSTON, *JAPAN'S MODERN HISTORY* (1955); *TRADITIONAL AND MODERN LEGAL INSTITUTIONS IN ASIA AND AFRICA* (Buxbaum 1967); R. DAVID & J.H.C. BRIERLY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* (1978); D.F. HENDERSON, *CONCILIATION AND JAPANESE LAW: TOKUGAWA AND MODERN* (1964); F. JOUON DES LONGRAIS, *L'EST ET L'OUEST, INSTITUTIONS DU JAPON ET DE L'OCCIDENT EUROPEEN. SIX ÉTUDES DE SOCIOLOGIE JURIDIQUE* (1958); W.H. McNEIL, *WORLD HISTORY* (1971); Y. NODA, *INTRODUCTION AU DROIT JAPONAIS* (1966); A. VON MEHREN, *LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY* (1963).

The system follows three main principles, namely: (i) ceremonial purity, (ii) pyramidal structure, and (iii) *Varna* and reincarnation. There is in it the idea of ceremonial purity with its concomitant fear of contamination by a member of a lower class. The castes are arranged in a pyramidal structure in which each caste has another to look down upon. This yields a psychological satisfaction which is significant for social organization in that there is, thus, no need to compel the newcomers to surrender their ways and be assimilated into the population as a whole. The doctrines of *Varna* and reincarnation are followed. *Varna* divides all people in four large castes in the descending order, namely, Brahmans who pray and perform rituals, Kshatriyas who fight wars and defend the society, Vaisyas who carry on trade, and Sudras who perform unclean tasks. Reincarnation gives a logical explanation of a man's situation in terms of reward or punishment for deeds done in the former lives of the soul. Thus, the foremost identification of a person was with his caste. Consequently, the political and territorial administration was of only secondary importance.

Caste also made it easy for newcomers to come within the fold of the Indian civilization without radical displacement of their own customs and habits. In about 500 B.C., Jainism and Buddhism emerged to challenge the Brahman priests. However, while Jainism became a faith for the elite, the more popular Buddhism ultimately gave way to a transformed Brahmanical religion, namely, Hinduism. The *Dharma Sutras*, or the Hindu manuals of conduct, were composed between the sixth and the second centuries B.C. During the period 500 B.C. to 200 A.D., when the kingdom of Magadha consolidated itself, Emperor Asoka (reigned 274-36 B.C.) gave official patronage to Buddhism. However, although the monks found in it a complete way of life, the ordinary people resorted to Brahmans for the daily rites of their lives. In the period 200 to 600 A.D., the Gupta empire (320-535 A.D.) extended over all of northern India, and the *Dharma Shastras*, or instructions in the sacred law, were compiled, which with subsequent interpretations to meet contemporary needs, have provided the basis for Hindu life ever since. The *Dharma Shastras* gave the theory of caste its classical formulation and laid down duties of the members of different castes. Faithful performance of these duties would lead to the

salvation of the soul, the salvation consisting in the freeing of the soul from the cycle of reincarnation and uniting itself with the *Absolute Soul* or *God*. During the period 600 to 1000 A.D., the Muslims invaded India but the caste organization of the Hindu society kept it politically and militarily weak so that the Hindus were unable to repel the invaders and they peaceably recoiled to conserving their heritage.

In spite of movements for integration, the popular Hinduism remained firmly rooted. During the period 1000 to 1500 A.D., the Muslim conquest of India was decisively completed. The Hindus put their conquerors into another caste-like class and thus fitted them into their social system. Islam resisted the caste system. The itinerant Sufi men preached the egalitarian teachings of Islam, which appealed to the low-caste urban Hindus and to the newcomers to the Indian society along the frontiers, especially in eastern Bengal, who had been put in the lower caste. However, due to the destruction of the Hindu temples by the Muslim invaders, Hinduism took to the street, so that only the fringes of the society were attracted to Islam. Movements such as the Sikh faith attempted a synthesis of the two religions. During the period 1500 to 1700, the Muslim rulers conquered the last independent Hindu state of Vijayanagar in the south (1565), and during the reign of the Mughal Emperor Aurangzeb (1658-1707), Hinduism was deprived of State support. But it was revitalized in the streets by saints and poets; the excitement generated by these movements prevailed over the arguments of the Muslim and the Christian missionaries. Consequently, the overwhelming majority of Indians remained true to the Hindu faith, traditions, and ways of life, including the caste system of social organization. Muslim law was linked to Islam. Therefore, it applied to Muslims but not to non-Muslims, except, of course, in criminal matters.

During the period 1700 to 1850, the Mughal power declined with the revolts of the Marathas and the Sikhs. The European trading companies began equipping their own armed forces. Eventually, the British succeeded in controlling all of India, with no military rivals. They left the social institutions and relationships of the natives alone. The British and the Hindu reformists pioneered initiatives for increased interaction between the Western and the Hindu cultures but the great majority of the popula-

tion remained only vaguely aware of such developments.

During the period 1850 to 1945, the British were faced with the revolt of 1857 which they were able to crush. Thereafter, they established an autocratic civil service which was recruited from British universities and which began imposing a long series of reforms. The reaction of the Indians to Western civilization was peaceful and consistent with their tradition. Accordingly, new ventures of industry and commerce were largely left to the outsiders, such as the Parsis and the Englishmen. The industries were initiated during the two World Wars as a result of necessity caused by the disruption of supply lines from England.

During the British rule, the Hindu sacred law of *Dharma* was applied to such matters as marriage, inheritance, the caste system, and religious usages or institutions. Other aspects of civil administration were governed by a newly created territorial law. English courts were established. They applied Hindu law to the Hindus and Muslim law to the Muslims in matters of inheritance, marriage, caste, and religious usages or institutions. They applied general principles of justice, equity, and good conscience in other matters.

Although the Cornwallis Code of 1793 and the Elphinstone Code of 1827 had already been adopted for India in criminal matters, organized codification began with the Charter Act of 1833. The first Law Commission submitted its famous *lex loci* report which proposed three codes: one for the Muslim law, one for the Hindu law, and one in the nature of territorial law (*lex loci*) for matters where Hindu or Muslim law was not applicable. Serious objections were raised against these proposals. A second Law Commission, established in 1853, made its own proposals. It was only after the revolt of 1857 that an intensive legislative activity for India took place. The Indian National Congress was organized in 1885 with the aim of achieving self-government. After World War I, its leadership passed to Mahatma Gandhi. The Muslim League was organized in 1905 which, in 1940, proclaimed its goal of establishing a separate Muslim State of Pakistan. Independence from the British rule came in 1947, when India was divided into Muslim Pakistan and a secular India. After independence, the Constitution of 1950 provided for the continuity of the existing law (§ 372). New legal activity followed. The modern tendency is for a secular law to replace the religious

laws. However, nearly eighty percent of the population lives in villages and continues to conduct its life through the traditional institutions.

Thus, while India as a political unit has a highly developed legal system, legalism and individualism are not the staple values of a great majority of people in India who continue to live in accordance with the values of the caste system and the joint-Hindu-family system.³⁴

E. The African Cultures: A study of the various cultures of the African peoples, namely: the Tallensi, Ashanti, Hausa-Fulani, Yoruba, Ibo, Tiv, Ganda, Lugbara, Kikuyu, Nandi, Arusha, Nyakyusa and the Nuer, as well as an examination of the general cultural history of Africa leads us to the conclusion that these peoples have their own value systems whose central features are not individualism and legalism.³⁵

³⁴ See generally, A.L. BASHAM, *THE WONDER THAT WAS INDIA* (1956); TRADITIONAL AND MODERN LEGAL INSTITUTIONS OF ASIA AND AFRICA (Buxbaum 1967); V.G. CHILDE, *A STUDY OF INDO-EUROPEAN ORIGINS* (1926); G.E. DANIEL, *THE FIRST CIVILIZATIONS: THE ARCHAEOLOGY OF THEIR ORIGIN* (1968); W.T. DEBARRY, JR., *SOURCES OF INDIAN TRADITION* (1958); J.D.M. DERRETT, *HINDU LAW PAST AND PRESENT* (1967); J.D.M. DERRETT, *HISTORY OF INDIAN LAW* (1973); *THE HYMNS OF RIG VEDA* (Griffith 1892); M.P. JAIN, *OUTLINES OF INDIAN LEGAL HISTORY* (1966); P.V. KANE, *HISTORY OF DHARMASTRA* (2d ed. 7 vols. 1968-75); R. LINGAT, *LES SOURCES DU DROIT DANS LE SYSTÈME TRADITIONNEL DE L'INDE* (1967); *HISTORY AND CULTURE OF THE INDIAN PEOPLE* (R.C. Majumdar & A.D. Pusalker 1951); W.H. McNEIL, *WORLD HISTORY* (1971); K.A.N. SASTRI, *A HISTORY OF SOUTH INDIA FROM PREHISTORIC TIMES TO THE FALL OF VIJAYANAGAR* (3d ed. 1966); P. SPEAR, *INDIA: A MODERN HISTORY* (1961); R.E.M. WHEELER, *THE INDUS CIVILIZATION, THE CAMBRIDGE HISTORY OF INDIA* (3d ed. Supp. 1968).

³⁵ See generally, P. ABRAHAM, *THE MIND OF AFRICA* (1927); R.C. ABRAHAM, *THE TIV PEOPLE* (1940); Ajayi, *The Future of Customary Law in Nigeria*, in *AFRIKA-INSTITUUT, THE FUTURE OF CUSTOMARY LAW IN AFRICA* 42 (1956); A.K. AJISAFE, *THE LAWS AND CUSTOMS OF THE YORUBA PEOPLE* (1946); ALLOTT, *ESSAYS IN AFRICAN LAW* (1960); Allott, *African Law*, in *AN INTRODUCTION TO LEGAL SYSTEMS* (Derrett 1968); J.N.D. Anderson, *Customary Law and Islamic Law in British African Territories*, in *AFRIKA-INSTITUUT, THE FUTURE OF CUSTOMARY LAW IN AFRICA* 70 (1956); D.E. APTER, *THE POLITICAL KINGDOM OF UGANDA* (1961); Baxter & Butt, *The Azandi and Related Peoples of the Anglo-Egyptian Sudan and Belgian Congo*, in *ETHNOGRAPHIC SURVEY OF AFRICA* 120 (Forde 1953); Biobaku, *An Historical Sketch of Egba Traditional Authorities*, 22 *AFR.* 35 (1952); Bohannan, *Political Aspects of Tiv Social Organization*, in *TRIBES WITHOUT RULERS: STUDIES IN AFRICAN SEGMENTARY SYSTEMS* 54 (Middelton & Tart 1958); BOHANNAN, *JUSTICE AND JUDGMENT AMONG THE TIV* (1957); P. BOHANNAN, *SOCIAL ANTHROPOLOGY* (1963); P. BOHANNAN, *TIV FARM AND SETTLEMENT*, *COLONIAL RESEARCH STUDIES* No. 15 (1954); Bohannan, *The Migration and Expansion of the Tiv*, 24 *AFR.* 11 (1954); L. & P. Bohannan, *The Tiv of Central Nigeria*, in *ETHNOGRAPHIC SURVEY OF AFRICA, WESTERN AFRICA* (Forde Part VIII 1954); Busia, *The Ashanti*, in *AFRICAN WORDS* (Forde 1954); K.A. BUSIA,

I cannot possibly present the value systems of these thirteen

THE POSITION OF THE CHIEF IN THE MODERN POLITICAL SYSTEM (1951); TRADITIONAL AND MODERN LEGAL INSTITUTIONS IN ASIA AND AFRICA (Buxbaum 1967); C. CAGNOLO, THE AKIKIYU: THEIR CUSTOMS, TRADITIONS, AND FOLKLORE (1933); K.S. CARLSTON, SOCIAL THEORY AND AFRICAN TRIBAL ORGANIZATION (1968); Cotran, *The Place and Future of Customs in East Africa*, in EAST AFRICAN LAW TODAY 77 (1966); J.B. DANQUAH, AKAN LAWS AND CUSTOMS (1928); Dunder, *Native Laws of Some Bantu Tribes of East Africa*, 51 J. ROYAL ANTHRO. INST. 217 (1921); T.O. ELIAS, THE NATURE OF AFRICAN CUSTOMARY LAW (1956); E.E. EVANS-PRITCHARD, KINSHIP AND MARRIAGE AMONG THE NUER (1951); E.E. EVANS-PRITCHARD, THE NUER: A DESCRIPTION OF THE MODES OF LIVELIHOOD AND POLITICAL INSTITUTIONS OF A NILOTIC PEOPLE (1940); Fortes & Evans-Pritchard, *The Political Structure of the Nandi-Speaking People of Kenya*, 13 AFR. 250 (1940); Fallers, *Social Stratification in Traditional Buganda*, in THE KING'S MEN: LEADERSHIP AND STATUS IN BUGANDA ON THE EVE OF INDEPENDENCE (1964); Fallers, *The Eastern Lacustrine Bantu-Ganda, Saga*, in ETHNOGRAPHIC SURVEY OF AFRICA (Forde Part XI 1960); Forde, *The Yoruba-Speaking Peoples of South-Western Nigeria*, in ETHNOGRAPHIC SURVEY OF AFRICA (Forde Part IX 1951); M. FORTES, THE DYNAMICS OF CLANSHIP AMONG THE TALLENSI (1945); M. FORTES, THE WEB OF KINSHIP AMONG THE TALLENSI (1949); Fortes, *Ritual and Office in Tribal Society*, in ESSAYS ON THE RITUAL OF SOCIAL RELATIONS (Gluckman 1962); AFRICAN POLITICAL SYSTEMS (Fortes & Evans-Pritchard 1940); Forde & Jones, *The Ibo and the Ibibo-speaking People of South-Eastern Nigeria*, in FORDE, ETHNOGRAPHIC SURVEY OF AFRICA 25 (Forde Part III 1950); M. GLUCKMAN, THE IDEAS IN BAROTSE JURISPRUDENCE (1965); M. GLUCKMAN, THE JUDICIAL PROCESS AMONG THE BAROTSE OF NORTHERN RHODESIA (1955); M. GLUCKMAN, POLITICS, LAW, AND RITUAL IN TRIBAL SOCIETY (1965); IDEAS AND PROCEDURES IN AFRICAN CUSTOMARY LAW (Gluckman 1969); P.F. GONDEK, LES DROITS AFRICAINS: EVOLUTION ET SOURCES (1968); M.M. GREEN, IBO VILLAGE AFFAIRS (1947); Greenberg, *Islam and Clan Organization Among the Mansa*, 3 SW. J. ANTHRO. 193 (1947); P.H. GULLIVER, SOCIAL CONTROL IN AN AFRICAN SOCIETY, A STUDY OF THE ARUSHA: AGRICULTURAL MASAI OF NORTHERN TANGANYIKA (1963); Gulliver, *Structural Dichotomy and Jural Processes Among the Arusha of Northern Tanganyika*, 31 AFR. 9 (1961); Henderson, *Onitsha Ibo Kinship Terminology: A Formal Analysis and Its Functional Applications*, 23 SW. J. ANTHRO. 15 (1967); T. HODGKIN, NIGERIAN PERSPECTIVES: AN HISTORICAL ANTHOLOGY (1960); Horten, *God, Man, and the Land in a Northern Ibo Village Group*, 26 AFR. 17 (1956); P.P. HOWELL, A MANUEL OF NUER LAW (1954); G.W.B. HUNTINGFORD, THE NANDI OF KENYA: TRIBAL CONTROL IN A PASTORAL SOCIETY (1953); G.W.E. HUNTINGFORD, NANDI WORK AND CULTURE (1950); Huntingford, *Nandi Witchcraft*, in WITCHCRAFT AND SORCERY IN EAST AFRICA 175 (Middleton & Winter 1963); Jones, *Ibo Age Organization with Special Reference to the Cross River and North Eastern Ibo*, 92 J. ROYAL ANTHRO. INST. 191 (1962); A. KAGWA, THE CUSTOMS OF THE BAGANDA, (Edel, Kalibala trans.1934); J. KENYATTA, FACING MOUNT KENYA: THE TRIBAL LIFE OF THE GIKUYU (1938); H. & L. KUPER, AFRICAN LAW: ADAPTATION AND DEVELOPMENT (1965); H.E. LAMBERT, KIKUYU, SOCIAL AND POLITICAL INSTITUTIONS (1956); Lloyd, *Agnatic Cognatic Descent Among the Yoruba*, J. ROYAL ANTHRO. INST. 484 (new ser. 1966); Lloyd, *Sacred Kingship and Government Among the Yoruba*, 30 AFR. 221 (1900); Lloyd, *The Traditional Political System of the Yoruba*, 10 SW. J. ANTHRO. 365 (1954); Lloyd, *The Yoruba Lineage*, 225 AFR. 234 (1955); L.P. MAIR, AN AFRICAN PEOPLE IN THE TWENTIETH CENTURY (1934); Manoukian, *Akan and Ga-Adangme Peoples of the Gold Coast*, in ETHNOGRAPHIC SURVEY OF AFRICA (Forde Part I 1950); McConnell, *Notes on the Lugwari Tribe of Central Africa*, 55 J. ROYAL ANTHRO. INST. 439 (1925); C.K. MEEK, LAW AND AUTHORITY IN A NIGERIAN TRIBE (1937); J. MIDDLETON, LUGBARA RELIGION: RITUAL AND

peoples within the space of this article, but I shall illustrate our point with three examples, namely, the Ashanti, Yoruba, and Nandi cultures.

For the Ashanti people, the spiritual world is supreme. They adopt a particular form of social order because it is the appropriate mode of linkage with the spiritual world. The action in the tribe and the nation is organized by the means of the family or the lineage. The lineage, the tribe, and the nation represent particular spheres of competence, rather than a struc-

AUTHORITY AMONG AN EAST AFRICAN PEOPLE (1960); Middleton, *Some Social Aspects of Lugbara Myth*, 24 AFR. 189 (1954); Middleton, *The Central Tribes of the North-Eastern Bantu*, in ETHNOGRAPHIC SURVEY OF AFRICA (Forde Part V 1953); Middleton, *The Concept of Bewitching in Lugbara*, 25 AFR. 525 (1955); Middleton, *Witchcraft and Sorcery in Lugbara*, in WITCHERY AND SORCERY IN EAST AFRICA (Middleton & Winter 1963); TRIBES WITHOUT RULERS: STUDIES IN AFRICAN SEGMENTARY SYSTEMS (Middleton & Tair 1958); Morton-Williams, *An Outline of the Cosmology and Cult Organization of the Oyo Yoruba*, 34 AFR. 243 (1964); R. OLIVER & A. ATMORE, *AFRICA SINCE 1800* (1967); N.A. OLLENU, *PRINCIPLES OF CUSTOMERY LAND LAW IN GHANA* (1962); Partridge, *Native Law and Custom in Egbaland*, 10 J. AFR. SOC'Y 422 (1911); Poirier, *L'analyse des espèces juridiques et l'étude des droits coutumiers Africains*, in IDÉES ET PROCEDURES DANS LES SYSTÈMES LEGAUX AFRICAINS 110 (Gluckman 1969); A.H.J. PRINS, *EAST AFRICAN AGE-CLASS SYSTEMS* (1953); ASPECTS OF CENTRAL AFRICAN HISTORY (Ranger 1968); R.S. RATTRAY, *ASHANTI* (1923); R.S. RATTRAY, *ASHANTI LAW AND CONSTITUTION* (1929); E.O. REISCHAUER, J.K. FAIRBAN, & A.M. CRAIG, *A HISTORY OF EAST AFRICAN CIVILIZATION* (1965); Richards, *Traditional Values and Current Political Behavior*, in *THE KING'S MEN: LEADERSHIP AND STATUS IN BUGUNDA ON THE EVE OF INDEPENDENCE* 294 (Fallers 1964); J. ROSCOE, *THE BAGANDA: AN ACCOUNT OF THEIR NATIVE CUSTOMS AND BELIEFS* (1911); W.S. ROUTLEDGE, *WITH A PREHISTORIC PEOPLE: THE AKIYU OF EAST AFRICA* (1910); Schwab, *Kinship and Lineage Among the Yoruba*, 25 AFR. 352 (1955); M.G. SMITH, *THE ECONOMY OF THE HAUSA COMMUNITIES OF ZARIA* (1955); Smith, *Hausa Inheritance and Succession*, in *STUDIES IN THE LAWS OF SUCCESSION IN NIGERIA* 230 (Derrett 1965); M.G. SMITH, *GOVERNMENT IN ZAZZAN 1800-1950* (1960); G.S. SNELL, *NANDI CUSTOMARY LAW* (1954); Southwold, *Leadership, Authority, and the Village Community*, in *THE KING'S MEN: LEADERSHIP AND STATUS IN BUGUNDA ON THE EVE OF INDEPENDENCE* 210 (Fallers 1964); D.J. STENNING, *SAVANNAH NOMADS* (1959); Stenning, *Transhumance, Migratory Drift, Migration; Patterns of Pastoral Fulani Nomadism*, 87 J. ROYAL ANTHRO. INST. 58 (1957); Tate, *The Native Law of the Southern Gikuyu of East Africa*, 9 J. AFR. SOC'Y 233 (1909-10); N.W. THOMAS, *ANTHROPOLOGICAL REPORT ON THE IBO-SPEAKING PEOPLES OF NIGERIA* (1913); Verdier, *Chef de terre et terre de lignage*, in *ÉTUDES DE DROIT AFRICAIN ET DE DROIT MALGACHE* 333 (Poirier 1965); Wilson, *Introduction to Nyakyusa Law*, 10 AFR. 16 (1937); Wilson, *The Nyakyusa of South-Western Tanganyida*, in *SEVEN TRIBES OF BRITISH CENTRAL AFRICA* 261 (Colson & Gluckman 1951); M. WILSON, *COMMERCIAL RITUALS OF THE NYAKYUSA* (1959); M. WILSON, *GOOD COMPANY: A STUDY OF NYAKYUSA AGE-VILLAGES* (1951); Wilson, *Divine Kings and the 'Breath of Men'*, *FRAZER LECTURE* (1959); Wilson, *Nyakyusa Kinship*, in *AFRICAN SYSTEMS OF KINSHIP AND MARRIAGE* (Radcliff-Brown & Forde 1950); Worshey, *The Kinship System of the Tallensi: A Reevaluation*, 86 J. ROYAL ANTHRO. INST. 37 (1956).

ture of hierarchical authority. The concept of *ntoro* provides the bond with the spiritual world and the concept of *mogya* provides the bond with the world of the flesh. The *mogya* makes the child member of its lineage, which is a group descending from a common original female ancestor. The lineage group forms a part of the clan. The clan is composed of matrilineal descendants from a common female ancestor. The lineage head, or the elder, is elected by the senior members of the lineage. His functions include, among others, deciding disputes among the lineage members. The tribe is composed of various clans. The *Asantehene*, or the Ashanti chief is entrusted with the performance of rituals to propitiate the spirits and the gods, and to lead his tribe in war. These various units of society are assigned specific competence by tradition and they are called to action when appropriate.

The individual is placed both in the world of his ancestors as well as in the world of his family and clan. Life is a matter of performance of obligations. Thus, land is held with the obligation to use it. Property is held with the obligation to employ it for the benefit of those sharing one's blood. The obligations of the Ashanti male are to till the land, render services to those who have a link with the spiritual world, serve the *Asantehene* in war, assist in performing rituals, pay levies duly imposed, raise the offspring, and so on. The norms to protect the social order and avoid injury to gods are laid down by tradition. Violation results in inquiry into the family, the tribe, and the nation. Tribal offenses call for severe sanctions because of the great risk of injury to the tribe through displeased gods.

The Yoruba people live in three types of settlement patterns: (i) a central town surrounded by farm lands and hamlets, with subordinate towns at the periphery of the kingdom; (ii) numerous independent villages beyond the central town and its short belt of farm lands; and, (iii) central townspeopled largely by refugees, surrounded by farm land, with no subordinate towns, and with widely spread hamlets. The *oba*, or the king, lives in metropolitan towns. The smallest group is the domestic family of the man. This family is part of a larger group composed of descendents of a common male ancestor, which, in turn, is part of the *idile* or the *ebi*, that being the largest lineage group of all who descended from a founding male ancestor. There are intermediate patrilineal segments in the *idile* known

as *isoko*. The *isoko* members cultivate the lineage land allotted to them, pursue a lineage craft, and jointly worship ancestors and gods. *Ifa*, the god of divination, has the power of ameliorating the harmful effects of the supernatural if the social norms are respected. The reports of Eshu, the messenger of gods, result into punishment which could be averted by proper behavior. Offenses and punishment are defined by custom. Decisions concerning the use and allocation of land among the members of the family, the community, and the kingdoms are made by the head of the lineage, the chief, and the *oba*, respectively.

The Nandi people live in scattered homesteads organized into groupings called *korotinwek* (singular, *koret*) and the *koret* members are identified by territorial location, not by lineage relationship. The *tiliet*, or the relationship system, identifies the interrelationships of persons united by blood and marriage. The *kokwet* (plural, *kokwotinek*), or the council of elders, governs the *koret*. It is headed by the *poiyo ap kokwet*, or the elder of the council, and its decisions are obeyed because of: (a) the force of public disapproval for non-compliance, (b) the fear of the power of the spirits, and (c) private acknowledgement of guilt by the offender. A general standard of approved behavior is laid down by *karuret*, or custom. The living, the ancestral spirits, and the supreme god *Asis* are joined together to reinforce moral standards.

Thus, the examples of the Ashanti, the Yoruba, and the Nandi cultures illustrate our point that legalism and individualism are not part of the value systems of the peoples of Africa.

By the middle of the nineteenth century, Africa began experiencing powerful changes as the Muslims surged upon it from the north and the east and the Europeans from the west and the south. Vigorous state-building occurred as a result of three factors, namely: one, a substantial increase in food production which supported larger populations; two, suppression of the slave trade; and, three, increase in demand for African products, such as ivory and palm oil. Guns destroyed the older military systems, such as those of the spear-wielding Zulus of Natal or the armored horsemen of Bornu. The Muslim movement and the Christian missionaries further contributed to the changes.

Through the nineteenth and the twentieth centuries, the rulers in much of east and west Africa extended their power

with the help of the Muslim ideas of law, as, for example, the Ashanti kingdom. However, these ideas did not displace the traditions and customs of the land in the villages. The Muslim movements often came in conflict with the European Christians. The Christian missionaries brought schools, hospitals, and knowledge of Western civilization. However, the Europeanization of the sub-Saharan Africa remained insignificant, except in Algeria in the north and the Boer Republic in the south. The interior was still controlled by the ancient kingdoms, such as the Kingdom of Bornu near Lake Chad, or by the new regimes, such as that of the Zulu founded in 1817, by Shaka (1787-1828). However, between 1875 and 1914, the European colonial administrations grew rapidly and the Africans were defeated in all their wars against the colonizing powers, except for Ethiopia, whose Emperor Menelik II defeated Italy in 1896. In spite of their political subjugation, however, the social structures of the African societies continued in their traditional ways.

During World War I (1914-1918), the German colonies were easily taken over by the British and the French without causing much disruption. During the inter-war period, rebellions were minimal. The result of the exposure of the Africans to the European experience was the movement of hundreds of thousands of people to an environment in which old customs did not fit as peoples of different tribes began living together in mission schools, mines, and towns. Old kinships and tribal patterns could not provide a basis for mutual accommodation. The other possibilities were the Islamic and the Western models. While the Islamic model prevailed in parts where it had been established for many centuries, the Western model competed strongly with the Islamic model in most of sub-Saharan regions. Independence came after the end of World War II. Since then, the new nations of Africa have demonstrated a tendency for modernization along the European principles and new legislation has been adopted to change the traditional ways. However, despite this modernization, eighty to ninety percent of the population continues to live by traditions and customs and not by individualism and legalism. They are generally unaffected by the reform legislation and are largely unaware of the laws and institutions of the cities.

F. The Islamic Civilization: The core of the Islamic axiology is duties, not individualistic rights. Muslim societies are many and they differ in their social conditions, traditions, and pervasiveness of Islam. These societies may be classified in three types: one, those, such as Albania and the central Asian socialist republics, which make no attempt to preserve the Muslim concepts of social order and personal values; two, those, such as Iran, Afghanistan, the Persian Gulf Emirates, or the countries of the Arabian peninsula, which maintain a very strong adherence to these concepts; and three, those, such as India, Bangladesh, Indonesia, Pakistan, and the like, which apply the Islamic precepts in conjunction with modern concepts.

Regardless of this variety among Muslim societies, the essentials of the Islamic theory are³⁶ that Islam is the direct rule of *Allah* and *His* law, the *Sharia*, is the only criterion of conduct. The authority of the temporal ruler is not only derived from *Sharia* but is subservient to it as well. Islamic law consists of a system of religious duties, although there are in it such legal relationships as are distinguishable from purely religious duties. There are five qualifications (*al ahkam al khamsa*) through which all acts and relationships are viewed: (1) obligatory (*wajib, fard*); (2) recommended (*mandub, mustahabb*); (3) indifferent (*mubah*); (4) reprehensible or disapproved (*makruh*); and (5) forbidden (*haram*).

An act is valid (*sahih*), disapproved (*makruh*), defective (*fasid*), or invalid (*batil*). It is valid if both its nature (*asl*) and its circumstances (*wasf*) correspond with *Sharia*, the law. It is disapproved if it is associated with something forbidden, even though it corresponds with the law in its nature and circumstances. It is defective if its nature corresponds with the law but its circumstances do not. It is invalid if it does not correspond with the law in both its nature and its circumstances.

Under the orthodox *Sunni* doctrine, both the ruler and the subjects owe a common obedience to the law. It is the duty of the *Imam* (the religious leader) to govern according to the *Sharia*. The *Shi'a* sect regards the *Imam* infallible, whereas the *Kharijis* make him subject to election and removal by the will of

³⁶ See generally, J. SCHACHT, AN INTRODUCTION TO ISLAMIC LAW (1964); N.J. COULSON, HISTORY OF ISLAMIC LAW (1964).

the community. It is the duty of the judge, or the *qadi*, to settle disputes by reconciliation of the parties rather than through assertion of their rights. As a fallible human being, he must not be too eager to define the law of *Allah* with certainty. Thus, it is duty, not individualistic rights, which is the central value in the Islamic concept of social order. That is why the essential institutions of the State are construed not as functions of the community but as duties of the individual. That is also why we do not find in the Islamic law any legal concept that would correspond to authority, dominion, or power of the ruler.

Thus, an examination of the above civilizations demonstrate above that there exists a plurality of value systems in the world, each grown in the particular historicity of its respective civilization. Thus, while individualism and legalism are the fundamental values in the Western civilization, the Confucianist traditions are in China, the *Samurai* traditions are in Japan, the caste and the joint-family system are in India, the particular customs and traditions of the African peoples are in Africa, and the *Sharia* principles of duty are in the Islamic societies. However, as seen above, although some of the provisions of the international bill of human rights are not circumscribed within the axiology of individualism and legalism, the bill is predominantly based on this axiology and it does not take an adequate account of the other major value systems of the world.

Why did the bill adopt the single-catalog approach based predominantly on the Western value system? I offer two explanations. Firstly, there was an unfortunate insensitivity on the part of the key drafters of the instruments of this bill which made them ignore the value systems of civilizations other than Western. Take, for example, the case of John P. Humphrey. He was the author of the first draft of what eventually became the Universal Declaration of Human Rights. He reveals in his autobiography that in 1947, the Chinese Vice-Chairman of the Commission on Human Rights, P.C. Chang, requested him to study Chinese philosophy before writing his draft. However, Humphrey boasts that "I didn't go to China nor did I study the writing of Confucius!"³⁷ He then went on to preparing his draft.

³⁷ J.P. HUMPHREY, HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE 29 (1984).

This was a great pity.³⁸ As fundamental an instrument as the UDHR set out to prescribe human rights for all peoples of the world but axiologically ended up ignoring most of them.

The second explanation for the single-catalog approach lies in the attractiveness of the previously successful models, namely, the English Bill of Rights (1689), the American Declaration of Independence (1776), and the French *Déclaration des Droits de l'Homme et du Citoyen* (1789). The attraction is understandable, since these documents had been remarkably successful. However, the context of these documents was one single society in the sense that: that society was held together by one dominant culture that defined its values; it espoused one dominant ideology; it regarded itself as one historical unit unifying its historical experiences; it possessed one single economic system managing the production and distribution of its goods; it entertained but one prevailing notion of priorities in the satisfaction of its needs; and it had one legal system to administer the rights so declared. These subsumptions do not obtain for the context of the present international bill of human rights. Quite to the contrary, it is characterized by the tenacity of civilizational pluralism, as shown above. Consequently, inspiring as the above models are, their single-catalog approach is totally unsuitable for providing protection to the human being on a world-wide scale.

It must, nevertheless, be emphasized that the bill makes a valuable contribution in securing human rights in this multi-civilizational world. Firstly, it does not merely represent exclusively Western values. There is nothing exclusively Western about the security of the person's life and liberty, protection against torture, decent working conditions, adequate standard of living, protection from hunger, or education. Secondly, the documents of the bill do give an eloquent expression to the values issuing from the Western ethical and social systems wherein the individual is regarded as the basic unit of society and wherein legalism provides the dominant principle of his social organization. This is a valuable contribution, since the Western civilization has as much a claim to be included in a global scheme of human rights as any other civilization. Thirdly, the discovery

³⁸ Sinha, Book Review, *INT'L J. LEGAL INFORM.* 158 (1984) (reviewing J.P. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE* (1984).

and perfection of the technique of mass production by the Western societies in the last two hundred years represents an unprecedented achievement in the civilized history which has made good life possible for the masses. Consequently, societies all over the world are adopting the Western-style industrialization.

However, industrialization has also produced ills for human existence, such as long working hours, child labor, and so on. The Western societies have struggled with those ills in their own experience and have come up with measures for protecting the human being from those ills. The whole cluster of provisions in the human-rights documents concerning work and the workplace represent these measures. They articulate the fruits of Western learning in this respect which have usefulness for all societies engaged in industrialization.

However, the single-catalog approach of the bill results in several undesirable consequences. Firstly, such an approach necessarily seeks universals among all cultures. The result is a least common denominator which dilutes the human rights to the minimal of commonality, thereby ignoring the deeper dynamics that exist variously in the inner folds of various cultures with respect to the matters of these rights. Secondly, the universality of many concepts claimed in this approach is fake. For example, the meaning of inhumane treatment is not the same in all cultures. Or, even such a basic concept as life has a different meaning in those cultures which see it in the foetus from those which see it only after delivery. Thirdly, this approach can only adopt one model of human emancipation. It dismisses others which, too, seek the physical and spiritual security of the human being but on the basis of other values. A sound approach must allow various cultures to follow their own respective models. My critics on this point³⁹ have fallen prey to the fallacy of identifying the culture of a society with the government of the State. Each culture has its own values, ideals, and models for human emancipation and the government must be made accountable for those values rather than for values which are alien to the people whom it governs. Fourthly, some specific human rights resulting from this approach employing Western axiology possesses no meaning

³⁹ *Contra Fryer, Contemplating Sinha's Anthropocentric Theory of International Law as a Basis for Human Rights*, 12 CASE W. RES. J. INT'L L. 575, 585-86 (1980).

for other cultures. For example, Article 16(2) of the UDHR, Article 10(1) of the ICESCR, and Article 23(3) of the ICCPR require that marriages be entered into by the consent of the intending spouses. This makes very good sense in Western societies where young men and women socially mix with each other, select their own marital partners, and enter into marriage in this way. But this is meaningless as a general rule in societies, such as the village India, where that sort of social pattern is not only not followed but is held in contempt and where the normal means of marriage are for the families to seek the bride and groom and arrange the marriage. Fifthly, the present bill is not sufficiently sensitive to the human-rights problems of non-Western cultures. It sometimes totally ignores some very grave ills. For example, in marriages among the Hindus of India the family of the bride is obliged to pay an onerous dowry, often beyond its means, to the family of the bridegroom. This brings many miseries. However, the documents of the bill have nothing to say about it at all. Finally, the present approach results in a dogmatism in which accommodation of opposite values is not possible, with the unfortunate consequence that sometimes a value is totally abandoned. This point is poignantly illustrated by the treatment of the right to own property. Article 17(1) of the UDHR provides that everyone has the right to own property. This clearly is a very important human right in the capitalistic-private-enterprise societies but quite repugnant in socialist-communist societies. As a result of objections by the communist States, the provision was completely dropped from the Covenants. That deletion is as wrong for the private-ownership societies as its inclusion for the communist societies. The present single-catalog approach is unable to deal with the situation satisfactorily.

Our investigation cannot be complete without making inquiry of whether the actual practice of the Human Rights Committee has overcome the axiological deficiency of the bill by applying different value systems for cases coming from different civilizations respectively. The Human Rights Committee was established on September 20, 1976, in accordance with Article 28 of the ICCPR. Its tasks (Articles 40-45) are to study reports on the measures adopted by party States for effectuating the human rights and on the progress made in the enjoyment of

these rights; to transmit its reports and comments to party States; to perform certain functions for settling disputes among party states concerning the application of the Covenant; and, to establish an ad hoc conciliation commission to make available its good offices to party States involved in a dispute concerning the application of the Covenant.

Under Article 41, a State may recognize the competence of the Committee to receive and consider communications concerning violations of its obligations alleged by another State. Under the Optional Protocol to the ICCPR, the Committee may consider communications received from individuals of a State which has recognized the competence of the Committee to do so. The Committee has recently published a report of its Selected Decisions covering its second to sixteenth sessions, which correspond to the reports it submitted to the thirty-second through thirty-seventh sessions of the U.N. General Assembly (1977-1982).⁴⁰ Although all of the annual reports of the Committee are published as Supplement No. 40 of the Official Records of the General Assembly, the Selected Decisions is a fair sample for our purposes. The States involved in these decisions have been Canada, Colombia, Finland, Mauritius, Sweden, and Uruguay. Thus, the only case involving a non-Western State has been *S. Aumeeruddy-Cziffra v. Mauritius*.⁴¹ Obviously, therefore, the Committee has not had a sufficient number of cases from various non-Western civilizations in which to fill the axiological gap left by the ICCPR. Moreover, neither the issues raised in this particular case by the alleged victims and the government of Mauritius were focused upon the axiological question, nor did the Committee feel compelled on its own to seize in this case involving immigration and deportation laws an opportunity for providing an axiological corrective to the ICCPR. One, therefore, cannot say that the practice of the Committee has rectified the axiological deficiency of the Covenant.

It is sometimes suggested that the regional systems of

⁴⁰ See *supra* note 20. See also, Meron, Book Review, 80 AM. J. INT'L L. 267(1986) (reviewing International Covenant on Civil and Political Rights, Human Rights Committee: Selected Decisions under the Optional Protocol (Second to Sixteenth Sessions), U.N. DOC. CCPR/C/OP/1 (1985)).

⁴¹ See Selected Decisions, *supra* note 20, at Comm. No. 35/1978.

human rights have filled this axiological gap. For example, in adopting my study on *The Missing First Step in the Human Rights Movement*,⁴² the Committee on Human Rights of the American Branch of the International Law Association⁴³ noted that certain of its members felt that "the impressive development of regional protection of human rights evidences growing concurrence in the scope and content of human rights notwithstanding cultural and other divergencies."⁴⁴ We must examine this argument closely.

It probably makes two points. In the first place, it is looking toward a civilizational uniformity which would guarantee human rights in this world through a concurrence notwithstanding cultural divergencies. However, this is not isomorphic to our world. I have, above, pointed out the tenacity with which civilizational pluralism has existed throughout civilized history and continues to do so. While there are certain aspects of human existence in which cultural concurrence exists, such as, for example, protection of person from physical violence, there are major areas of personal and social relationships where different civilizations practice their own particular historically developed value systems. Moreover, even in matters where an apparent concurrence might exist on the surface, its uselessness is exposed when we consider the specifics of the value involved, which is practiced variously in different cultures. For example, as pointed out above, one might argue a cultural concurrence on a right to life, but this is of no assistance when we are faced with the problem of abortion in a culture which considers that life begins with the fetus or a culture which sees the human being only after birth. Or, one might point to a cultural concurrence against inhumane treatment, but the meaning of inhumane treatment is very different in many cultures. It is an illusion to hope for a civiliza-

⁴² Sinha, *The Missing First Step in the Human Rights Movement*, American Branch, I.L.A. Proc. & Comm. Reports 71, 73 (1985-86).

⁴³ The Committee was composed of James A.R. Nafziger (Chairman), Robert L. Bard, Thomas Buergenthal, Lung-Chu Chen, Anthony D'Amato, Thomas H. Franck, Malvina Halberstam, Hurst Hannum, Joan F. Hartman, Louis Henkin, Farrokh Jhabvala, Sidney Liskofsky, Bert B. Lockwood, David A. Martin, Jordan J. Paust, W. Michael Reisman, Charles D. Siegal, S. Prakash Sinha, Louis Sohn, and Amy Young. See *id.* at 72.

⁴⁴ See *id.* at 71.

tional uniformity in the world, nor is that uniformity necessary for securing human existence on earth.

Secondly, the regional argument is probably pointing to the fact of regional treaties as filling the axiological gap that exists in the international bill. However, as seen above, there are two regional treaties in operation, the European the Convention on Human Rights and Fundamental Freedoms and the American Convention on Human Rights. Both of these variations are within the folds of the Western civilization. Therefore, it cannot be said that the regional systems have provided for the civilizational pluralism for which we have argued. In addition to these two treaties, the African [Banjul] Charter on Human and Peoples' Rights has recently come into effect. Although this Charter has its own vagueness and inadequacies, it does make a conscious reference to the historical tradition and the values of African civilization in its preamble and it mandates the African Commission on Human and Peoples' Rights to undertake research on African problems in this field (Article 45(1)(a)) and to apply African customs and practices (Article 61). However, civilizations other than the Western and the African cannot be said to have been accounted for by the regional systems. In any case, if the objective of the international bill is to provide protection to the human being on a world-wide scale, it is incongruous for it to pass the buck to non-existent regional systems.

A PLURALISTIC APPROACH TO HUMAN RIGHTS

The International Covenants must provide a structure of international legal accountability on the part of States for the physical and spiritual protection of the human beings living within their jurisdiction, and a precise specification of that protection for all the peoples of the world living in different civilizations where these States operate. These Covenants have come a long way in achieving both of these objectives. The achievements are especially remarkable when we remind ourselves that we live in a society of States. However, the Covenants are in need of enhancing their axiological relevance by rewriting their specification of the protection sought for the human being.

The areas of human existence which are of concern to these Covenants are: integrity of the person, personal relationships, social assertion, economic well-being, political assertion, and

conflict resolution. A plurality of approaches exists in our multi-civilizational world with respect to these matters, each civilization being possessed of its own value system governing these matters which has been produced by its own particular historicity. Although the Covenants cannot be condemned for being exclusively of Western values, they are predominantly so and they do not take an adequate account of other value systems. Nor do they contain sufficient awareness of some of the particular problems of human existence in non-Western societies, such as, for example, the ruinous system of dowry in India.

The argument of this article is to strengthen these Covenants by abandoning their single-catalog approach for enumerating the specific values protected for the human being and by amending these instruments to provide a pluralistic design suitable for our multi-civilizational world.