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Lawyer Roles, Identity, and Professional Responsibility in an Age of Globalism

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ESSAY

LAWYER ROLES, IDENTITY, AND PROFESSIONAL RESPONSIBILITY IN AN AGE OF GLOBALISM

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I. INTRODUCTION[1]

Many people have an intuitive sense of globalism but great difficulty in defining exactly what it is. The most popular and probably misleading way of defining globalism is in terms of the essential changes in sovereign states who are generally considered to be the members of the international or global community. Thus globalism is sometimes defined as a process which serves to erode traditional sovereign borders, and which opens up internal economic activity to larger international, economic and political forces. The meaning of globalism in the aftermath of the transformations in Eastern Europe have emphasized the economic aspects of globalism in terms of opening up markets that were closed or highly regulated by command economies. Globalism is, of course, much more than this. It is a reflection of the way in which the movement of people, goods, services, technologies, families and every aspect of human experience is influenced by conditions that radically telescope the restrictions of time and space in the entire earth-space community. This vast flow of goods, services, capital and labor across all kinds of political boundaries poses immense challenges to the legal profession since almost every local problem might have an international aspect to it and international problems are often localized in their impacts. In myriad ways lawyers are required to make sense out of these vast changes and in order to do so they are required not only to rethink the empirical and normative boundaries of their profession, they are required to virtually rethink the boundaries of what law is, how it is to be taught and what standards of professionalism and moral understandings need to be included in the emerging concepts of professionalism.

The problem of the professional responsibility of lawyers in the 21st century is both vast and important. It is vast because there is incredible diversity and change taking place within the profession itself, from a global perspective. Change and diversification in short are influenced by the conditions of globalism and inspire the globalization of professional lawyer roles. To provide a provisional focus to this discussion, I shall make a threshold distinction relating to the meaning of professional responsibility.

There is the professional responsibility that is structured around the codes of professional responsibility and focus in some depth upon certain ethical constraints on the practice of law. This is an important question, and certainly in a cross-cultural world, cultural perspectives about what is and what is not ethical may differ in substantial degree. In some cultures, bribery is a way of life, and lawyer roles are in some degree influenced by

1. This Essay was initially presented as an address to the National Democratic Lawyers Association of South Africa (NADEL). It was delivered in Durban, South Africa in 1998. This expanded version is for Silas Nkanunu and Templeton Mdlana who inspired it.

it. In other cultures, bribery may be a taboo, and lawyer roles require a rejection of such practices as a part of lawyer role expectations. In some legal cultures, success fees or contingency fees are the *sine qua non* of practice, whereas in other cultures, they may be the grounds for exclusion from the legal profession.

Interesting as these above questions are, I am going to focus upon the second meaning that I wish to give to the idea of professional responsibility. In this meaning, professional responsibility provokes broader and deeper questions of the professional identity of the lawyer in the 21st century, and in particular, how that professional identity relates to the responsibility or obligation to defend or enhance basic or foundational values of culture and civil society. In short, the focus I want to emphasize is, in effect, the public and civic policy foundations of lawyer roles, which are the institutional foundations of the idea or ideal of the rule of law itself.[2]

I am going to assume that the related conceptions of public and civic policy on the one hand, and the rule of law on the other, hold salient and enhanced challenges for whatever meaning is included in the terms "professional responsibility." The challenge to professional responsibility is heightened when we consider that a concern for professional responsibility, influenced by broader issues such as the rule of law and public/civic responsibility must include an important educational factor. "Education" here includes the training of law students, the continuing education of those already admitted to practice, and even more important, a deeper and wider understanding and appreciation of the complexity included in the disarming phrase, "lawyer roles." The idea of lawyer roles reflects not simply the official distinctions between practitioners and judges or different kinds of practitioners such as attorneys, solicitors, barristers or advocates. What we include here is what lawyers, however labeled, actually do. These roles may include litigation and appeals, but they are broader. They include all decisions made by lawyers in chambers or law offices. They include roles as drafters, advisors, planners, and even socio-economic engineers. There is also a normative component to lawyer roles. The normative aspect reflects upon the systems of cultural and professional identifications of lawyers. Do they identify themselves as bureaucrats, as champions, as acolytes, as "friends"[3] or are they influenced by the basic law models of operational systems or the prescribed values of the UN Charter? The values implicated in the UN Charter include concerns for world peace and security, human rights, development and more. These values in some

2. *See* Norman S. Marsh, *The Rule of Law as a Supra-National Concept, in* OXFORD ESSAYS IN JURISPRUDENCE (A.G. Guest ed., 1961).

3. *See generally* William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L.R. 29, 29.

measure constitute the procedural and substantive foundations of the international rule of law.

To appreciate the idea of professional responsibility in the light of rule of law values, it would seem to be important that we know more about what lawyers in fact, will be doing in the early phases of the 21st century. If we can anticipate these roles adequately, we should be able to reshape expectations of professionalism in legal education in ways that provide a more justifiable fit for what lawyers are actually doing in the light of the new challenges and opportunities of globalism. It is perhaps axiomatic that at a theoretical or even unconscious level, lawyer roles are often shaped by the implicit jurisprudence of the lawyer. Thus, one might suggest that natural lawyers may generate a sense of idealism in the lawyer role. Positivism, in its analytical variety, may generate a sense of stability and focus on the conservation of law through rules and principles. Legal realism might be seen as emphasizing the unruly world of behavioral indeterminacy, and thus, generates complexities about exactly who lawyers are and what they do. Still other theories influenced by progressive rationalism might see the lawyer role in terms of institutional development and policy-scientific orientations. Jurists associated with critical conceptions of inclusive citizenship may see through law an agency well-suited to the struggle for equality, respect and justice. However adequate these representations are of the interplay between lawyer roles and legal theory, the one fact that has dominated the post-Cold War world has been the fact of accelerated globalism. This has impacted on lawyer roles as well as the adequacy of legal theory. Indeed, from a practical point of view, it suggests the urgency of better understanding of the scope and character of professional responsibility in the 21st century.

II. PARADIGMS OF "GLOBALISM" AND LAWYER ROLES

There are multiple perspectives of globalism. Indeed, some are juridically inspired. These perspectives may most usefully be understood as implied above, as competing or contending paradigms. Thus the UN Charter represents one important paradigm of international constitutional and public order. That paradigm was challenged by the Cold War and the division of the world, in the view of the major powers, between the capitalist-oriented free market systems, the socialist-oriented peoples' democracies and the more diffuse but no less real, non-aligned block of nations. The world peace through world trade movements, spearheaded by the Trilateral Commission, envisaged a global world order under the direction of the captains of corporate monopoly efficiency, a vision which comprises a diffuse human rights agenda focusing on the role of NGO's and an enhanced role for the corporate side of civil society. In the economic sphere a more direct competition for the global paradigm emerged in the

North-South dialogue and the "South's" claim to a New International Economic Order. The North-South dialogue spawned its Group of 77 nations which seemed to be pitted against an emerging block now known as the G-7 or G-8 at last count. There are of course other "paradigms" of world order predicated upon such prepackaged, but nonetheless arcane ideas, as the clash of "civilizations."

As early as 1975, Professor Richard Falk, in anticipation of an accelerated trend toward globalism, identified several contending paradigmatic options for the world order. These paradigms are as follows: (i) The Paradigm of World Government (Clark-Sohn), (ii) Concert of Great Powers (Kissinger/Pentagon design), (iii) Concert of Multinational Corporate Elites (implicit in the work of Trilateral Commission), and (iv) Global Populism (Falk and like-minded alternative thinkers).[4]

In addition to these generalized models, partial models of regional world order have emerged, such as the idea of an African renaissance in governance and political economy, an Asian century based on self-sustaining processes of economic development and integration (sometimes called and Asian renaissance), as well as a common market type deal for the Americas. All these paradigms may influence how we reconceptualize law, how as observers we redefine lawyer roles, how we educate lawyers for the critical tasks inherent in the global paradigm itself. Lawyers will of course influence globalism by facilitating or constraining it through the discharge of lawyer roles. Lawyers will condition the images, symbols, narratives, myths and normative priority of the competing global paradigms themselves. They will influence a trend toward globalism based on the rule of law or indeed away from that ideal. Lawyer identifications will be challenged by the pressures of parochial localism and the challenges of cosmopolitanism and universalist identifications.[5] Because legal practice in general tends to have a strong "local" emphasis, it may be that the average local practitioner in, for example, Gainesville, Florida or Stellenbosch, South Africa may have no explicit sense of the world of global and continental events and problems which may shape his/her pattern of identification and the changing character of both legal practice and the larger sense of lawyer roles and responsibilities.

4. *See* Richard Falk, *A New Paradigm for International Legal Studies*, 84 YALE L.J. 969, 999-1015 (1975). *See generally* RICHARD FALK, PREDATORY GLOBALIZATION: A CRITIQUE (1999).

5. *See* Falk, *supra* note 4, at 999-1015.

III. LAWYER ROLES, RESPONSIBILITIES, AND GLOBAL CRISES

The millennium also coincides with the post cold war world. George Bush once visualized this world as a kinder and gentler world. Bush's optimism coincided with an unvarnished armed attack on Kuwait by Iraqi dictator Saddam Hussein. The central problem posed by the attack was that it was a clear violation of one of the core principles of international constitutional order (UN Charter Article 2.4) which prohibits and declares unlawful, acts of aggression. Although the cold war world was awash in acts of "indirect" aggression or aggression through surrogates, the specific use of armed forces to extinguish the sovereignty of an independent state immediately raised the stakes of the post cold war world, as a world subject to even the attenuated restraints of the rule of law, and the complete rejection of even those minimal restraints.

As the Gulf War came to an end, the disintegration of the former Yugoslavia and later Rwanda presented the biggest threat to human rights and humanitarian concerns since possibly the depredations of the Hitlers', Stalins', and Maos' of the world. In effect, thoughtful scholars even contemplated a "non-law" state which characterized so-called "ethnic conflicts." At the back of the ethnic cleansing policies of the Serbian and later Rwandan Hutu elites were challenges to the rule of law in a global sense. If ethnic cleansing and ethnic conflict are both incomprehensible and not amenable to the restraints of law, do we not then contemplate the rejection of juridical and normative restraints of the UN Charter itself? Are these crises really matters of global concern or are they indicators of the limits of global concern, and global law?[6] Is the stress on the limits a disguised claim to parochial identifications?

As the international community and the legal profession slowly responded to the problems of South East Europe, the ethnic conflict in Rwanda spiraled out of control as Hutu militias systematically butchered nearly a million of their Tutsi countrymen. These problems (and many others) underlined the idea that the rule of law is not a national or international luxury, but a critical restraining element in the core global issues of peace, security, human rights and a minimal respect for humanitarian concerns.

The crisis of South Eastern Europe and later Rwanda led to a level of international institutional paralysis which culminated, somewhat belatedly, in a renewed interest in the rule of law foundations of basic international human rights and humanitarian law. The establishment of the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda were an important

6. *See generally* NOAM CHOMSKY, THE NEW MILITARY HUMANISM: LESSONS FROM KOSOVO (1999) (for a skeptical appraisal of new world order interventions).

response to these issues, although it may fairly be said that these events and public opinion virtually compelled action of some sort from the United Nations Security Council. The mandate of these tribunals was limited and precluded crimes against the peace. On the other hand, the relative success of these institutions, renewed interest in the idea of an international criminal court as well as a Human Rights Court for Africa. Although the United States strongly supported the creation and work of the Ad Hoc Tribunals, it surprisingly opposed the passage of the Rome statute for creating the International Criminal Court.[7] In particular, it opposed the codification of crimes against the peace (aggression). Although opposition to the Rome statute was motivated by political factors as well as security concerns, it was also highly influenced by the recrudescence of the idea of "sovereignty" and the concern that international obligations are corrosive of this idea. In short, positivism still influences in important ways the legal perspectives of critical actors in the international system. Whatever the full import of these issues, a few general considerations about globalism seem obvious from the perspective of lawyer roles, identities and responsibilities. It seems, for example, that the world of global events, facts and occurrences would require that lawyer roles be more adequately defined for a more comprehensive context and that normative values in some important degree are inherent in the broader identification of lawyer roles and professional identity. If lawyer roles are controversial in context of war and security matters, other areas of globalism may directly impact on lawyer roles and responsibilities, especially in the area of development which often implicates demographics, including population policy and reproductive freedoms. In short, demographics impacts upon development and the capacity of states to deliver an adequate standard of living.

The socio-political reality of globalism can thus be symbolized by numbers and statistics. For example, the tensions between the right to life and the right to a higher quality of life may be given a distinctive perspective when it is considered that every day 365,000 babies are born in the world. Ninety percent of these babies are born in poor, underdeveloped countries. Notwithstanding the scope of global poverty over 2 billion people world-wide have significantly improved their standard of living over the past ten years. India, a country long seen as an economic development basket-case has the world's largest middle class (200 million). However, there are still are 750 million who live in dire poverty. China with a population of 1,273 million people has one-fifth of the earth's population.[8]

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7. Overriding the criticisms, Mr. Clinton signed the Treaty of Rome on December 31, 2000, several hours before the New Year's deadline, set by the United Nations. *See US Signs Treaty For World Court to Try Atrocities*, N.Y. TIMES, Jan. 1, 2001, at A1.

8. *See China Population Information and Research Center* (CPIR) (visited on Mar. 18, 2001) <http://www.cpirc.org.en/eindex.htm>.

And finally, in this regard, it is estimated that in 1804 the world's population stood at 1 billion. In 1927, it was estimated to stand at 2 billion. In 2027, it is projected to increase to about 8 to 9 billion.[9]

The economic and political foundations of global society clearly require the search for an appropriate "developmental" formula or paradigm. Indeed, there is a growing realization that development, population control, democracy, as well as economic liberalization may contribute to progressive social development. These and other global indicators may be a critical component of the promise of peace and dignity on a global basis. These issues have an indirect impact on the new emerging markets model of development. This particular model presents very distinctive challenges for lawyer roles and responsibilities. What role must lawyers play in the neo-liberal economy of emerging markets, or development in general? It should be noted that emerging markets actually require many components of law including basic fundamental institutions of private and public law, if these emerging market models of development are to be given a practical, coherent emphasis. Thus, for illustration, the emerging markets of Africa confront the problems of instability and endemic violence, the problems of food and resource scarcity, ubiquitous poverty and disease, and the specter of "failed" or corrupt states on the one hand and the discernible trend in emerging and rising democratization with nearly half the continent's governments having been elected. The emerging markets model will not work in the former situation. It may work in the latter contexts.

The emerging markets model has in fact had a developmental impact.[10] Economic progress is being made; economic growth is discernable; and per capita income is also on the rise in many parts of the world. However, even more importantly, the lackluster effort to make a free market system out of the Commonwealth of Independent States has seen a renewed interest in Africa as a potential, emerging market. The African market of 700,000,000 (an estimate 1 billion after 2000) suggests an important arena of both economic expansion and integration, driven by the major global economic forces. These interests and developments coincide with what some see as an incipient African, or even global Renaissance. These terms are used in the sense of broadening and sustaining the boundaries of respect and

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9. *See generally* NOAM CHOMSKY, PROFIT AND PEOPLE: NEO LIBERALISM AND GLOBAL ORDER (1999) (for a skeptical appraisal of the economic foundations of neo-liberal "globalism").

10. The Economist Intelligence Unit, *Real GDP Growth Around the World* (%) (visited Dec. 1, 2000) <http://www.eiu.com/countrydata/281277.asp>. According to the Economist Intelligence Unit's assessment of "Real GDP growth around the world, Sub Saharan Africa "will be the fastest growing region in the world." *See id.* This will be due mainly to higher commodity prices. *See id.* Mozambique is predicted to be the fastest growing economy in the "world" in 2000. *See id.* Botswana and Angola are also predicted to have rapid growth. *See id.* The Ugandan GDP is predicted to average 6.6% in 2000. *See id.*

dignity. This kind of renaissance reflects a preference for an African democracy that includes the demand and search for structures of governance that are (i) accountable, (ii) transparent, (iii) responsible, and (iv) humane. It reflects a more rational and responsible role for both State and non-State agents of decision-making. These include a balance between private and public sector economic ordering, the strengthening of civil society and the rule of law, and important, the evolving public and private institutionalization of humanitarian precepts and human rights culture. In all of these emergent conditions, it cannot be said that either globalism or localism is an unqualified "good" or "bad" thing. It is in fact a world order challenge and important to lawyer roles and professionalism.

However, it is unclear whether the emerging markets development approach implicit in the concept of globalism is the most sound approach to development as such. For example, does it promote democratic governance, and social responsibility as a sustainable emerging trend? If we are uncertain that this is an emerging trend, what is the role of lawyers in facilitating such a trend? What normative guidance and operational practices can lawyers provide to enhance the interests of global civil society? What is the role of law reform in enhancing respect for constitutive and responsible authority? Perhaps what is implicated here is an expanded vision of the rule of law, and the role of lawyers in the development processes. In short, lawyers may be indispensable for development and for the emergence of more humane structures of world order.

IV. Issues of African Development

The challenges of globalism to lawyer roles, legal education and professional responsibility are often indicated in harsh reality scenarios, as well as the temptations of idealistic visions of substantive and procedural justice. African public order and development potentials present just such a challenge. Let us consider briefly the issues posed by African development and related harsh global realities.

One of the most tragic legacies that modern history has bequeathed to Africa is that its flesh and blood was the cornerstone of Africa's global salience, as human bodies became a critical factor of production and foundation for the capitalization of the "West." Without the coerced export of its human capital during the period of slavery, African trade is now but a minor part of the volume and value of world trade. Thus in 1996, the world trade in goods and services stood as some 6 trillion USD but Africa's portion of world trade was a fraction of this number. Americans, it is said, have 2.8 trillion USD invested abroad, and foreigners own some 3.3. trillion USD of U.S. assets. The world's largest corporations (500) received during this period some 3.2 trillion USD in revenues and some 158 billion USD in profits. In 1996 the USD direct investment in sub-Saharan Africa totaled

a mere 4.9 billion USD and purchased some 16.4 billion USD worth of African goods, 70% of which was mainly crude oil. This may be compared with the reality that half of the people of sub-Saharan Africa suffer from illiteracy, lack drinking water, have no health care, and live on less that $1.00 per day. Africa's total debt is 26 billion USD which in global terms is a paltry debt, and yet it stultifies African development initiatives.[11] Even the much publicized US-Africa Trade bill, which talks of making Africans partners in prosperity obscures the reality that the under-developed world starts with a substantial level of economic disadvantage or disempowerment. It is, I suspect, difficult to have an enduring partnership if the one partner starts out with a tremendous handicap.

Lawyers may be critical "engineers" in the restructuring of command, corrupt and inefficient economies. This is because governance that honors a minimal rule of law concept will prescribe rules for transparency, accountability and responsibility. These "values" are critical for working, effective markets. How are such economies in fact being reorganized? In other words what exactly will be the role of lawyers in the new vision of global economic order? The emphasis on lawyer roles in development should not obscure the challenge for lawyer roles for other problems inherent in the concept of globalism. These are listed for the sake of brevity as follows:

- Law and Global apartheid or global poverty (development, poverty, income distribution, economic equity, population policy, etc.)
- Law and the Global Public Health Crisis (HIV/AIDS)
- Law, emerging markets and the trend toward "harmonization"
- Law and Proliferation and threat of nuclear arsenals
- Law and the global war system (arms race, armed conflict, ethnic conflict, etc.)

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11. *See* Jubilee 2000 Coalition, *A Debt Free Start for a Billion People* (visited May 16, 2000), <http://www.jubilee2000nw.org/debtfacts/html>. According to the fact sheet:

> Africa spends four times as much on debt repayment as she does on healthcare. Every African man, woman and child owes the developed world $357 (USD). Every person in the global South owes about $300 (USD) to foreign creditors. There are 225 billionaires in the world today who have a combined wealth of more than a trillion dollars. That is more than the annual income of half of the poorest of the world's population (about 2.5 billion people). Depending on what figures are used, between 1972 and 1992, borrowing countries paid back $227 billion to $302 billion more than they borrowed — yet their debt burden continued to grow. In 1997 the rich countries lent 8 billion to the poorest countries, while these countries repaid $8.2 billion.

- Law and basic human rights (the epidemic of gross abuse of human rights and human atrocity)
- Law and global constitutional order
- Law and the crisis of the rule of law (failed states, corrupt states, drug controlled states, terrorists states, garrison states, authoritarian states, totalitarian states).[12]

V. EMERGING LAWYER IDENTIFICATIONS, ROLES, AND PROFESSIONAL RESPONSIBILITIES

Let me return to the local and global context of emerging lawyers roles. The central challenge for lawyers is the legal truth, which is also a political truth, that all legal matters that count, just as all political matters that count, are essentially local. That is to say, they are located somewhere in a finite event manifold of space and time. The abstractions, "time" and "space" are especially relevant to changing concepts of lawyer roles. Globalism cannot happen without a comprehension of time and space. The 20th century has witnessed a steady erosion of, for example, territorial ideas about "jurisdiction" because of the influence of modern communications and transportation technologies. The compression of time and space now comes under the influence of the internet and cyberspace. Practical effects include world-wide near instant communication, the growth of internet commerce and more. These all trench on traditional legal ideas which are conditioned by "space" and "time." However, the conditions and events that shape legal responses that used to be purely local are now also conditioned by facts and events of multi-State or transnational significance. Thus, the application of global human rights norms find affirmation in proceedings often involving finite legal actors who claim, respond, decide, and appraise in situations that are local. Even the policies tied to structural adjustment as a condition of economic assistance emerge from distant global fora, but have vast localized consequences. Stated very broadly, the central feature and challenge for lawyers is how to understand the global to local impact of legally relevant events, transactions, and occurrence which often arise in instances of specific application. Lawyers must also appreciate the impact of localized, on-the-ground decisions on the larger international and global environment. One of the important legacies of this trend is the emergence of human rights and humanitarian law. Perhaps global "law" is in effect an agent of change for local law. Here lawyers might perform a kind of midwife function, connecting for the purpose of giving birth to new law,

12. *See generally* MOHAMMED BEDJAOUI, TOWARDS AN INTERNATIONAL ECONOMIC ORDER (1979); RICHARD A. FALK, REVITALIZING INTERNATIONAL LAW (1989); Winston Nagan, *Nuclear Arsenals, International Lawyers, and the Challenge of the Millennium*, 24 YALE L.J. 485, 485 (1999).

promising vistas of international justice firmly rooted in our comparative histories, traditions, modes of cognitive insight which generate a renewal of our theories and methods of inquiry as well as our standards of practical intervention. We must also provide the technical mechanisms for grounding global perspectives and operations in concrete situations, and appraising the impact and consequences of such legal interventions on the larger global environment.

Doubtless lawyer roles in the 21st century and the sense of professional responsibility that accompanies these roles will be influenced by whatever meaning we ascribe to globalism and global law. Practitioners who are either in private practice, private industry, or the public service may be marching headlong into the interstices of globalism without more explicit realization that their local roles are in fact subject to changes. If a practitioner, for a moment, tried to step back and observe the routines that are followed on a day-to-day basis, the practitioner will probably be astounded at the volume of problem-solving demands to which he/she has to respond. He/she may even be more astonished that what he/she delivers, or fails to deliver for that matter, involves the distribution or non-distribution of the valued things in society, and more fundamentally, the values we causally label "human dignity" and "respect." Behind these abstractions there is a social reality of how lawyers interface with the larger social context to reproduce cultures which are highly influenced by both national values and those that lie at the heart of the international system as a whole, including the commitment to human rights on a global basis. In short, it may be that, however direct or indirect our practical legal interventions are in form of advocacy and representation or in the form of adjudicatory responses, lawyer roles are more normatively sensitive to international ideas of shared respect, justice and freedom. The lawyers roles are emerging in some degree as part of a shift from the Westphalian (sovereignty dominated) model of international law to a much more fluid context in which many actors influence the system in addition to the state.

As suggested, this awareness may not always be obvious. In the case, for example, of South Africa the architects of apartheid wanted to rigidly separate the substance and process of the South African law from the concern for the normative standards of international justice. However, the transformation of that country is reflected in South Africa's new Constitution, (a product of struggle and sacrifice) which explicitly seeks to make the connection to global standards and values. In doing so, it says a great deal about how lawyers are to identify and shape their roles to adequately respond to the challenges of globalism and the ideas and challenges of international justice.

Educating students not simply in "international law" or "comparative law," but in the larger context of "globalism" may in the future be an important challenge to professional competence and training. For example,

every practical lawyer knows that in order to practice commercial law effectively, one must know something about commerce. To practice family law, one must know something about families. To practice administrative law effectively, one must know something about bureaucratic culture. To practice constitutional law effectively, one must have an understanding of the structure and process of governance. It may be similarly said that in today's world (where the flow of goods, services, statutes, and all other legally valued things cuts across State and national lines in terms of speed, volume, and distribution that would have been unheard of a decade ago), the need to understand the specialized features of global society, its political underpinnings, and its legal structures of authority and control — be they formal or informal — is becoming an indicator of professional competence. In short, lawyering must now take into account the entire process of interdependence, and in some degree inter-determination, of global conditions which are shaping the law of the 21st century and which in turn is being shaped and directed by the law thus generated. Of course, law has never been neutral with regard to the ends it seeks to secure. Whether interdependence means a progressive realization of the most foundational values of international justice, is by no means assured. Globalism is much an arena of conflict and challenge as the Cold War was an arena of conflict and challenge to the Superpowers and their Surrogates. It is a central arena of conflict and challenge to lawyers.

VI. LEGAL EDUCATION, GLOBALISM, AND PROFESSIONAL RESPONSIBILITY

One of the central issues of legal education in the law schools as well as matter of continuing professional obligation, is the globalization of the curriculum. W. Michael Reisman states that many of the social arrangements we think of as quintessentially domestic in this country are inextricably interwoven with complex process in other countries and regions of the globe.[13] Consider: our security system, our political-economic system: the search to fund and retain external markets for our products; our dependence on the national resources without which an advanced industrial, science-based civilization cannot survive: our health system; our conceptions of fundamental morality . . . even "domestic law" courses can no longer be understood adequately — whether for descriptive or practical professional purposes — without an understanding of the organization and dynamics of the international system.[14]

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13. *See* Michael Reisman, *Designing Curricula: Making Legal Education Continuously Effective and Relevant for the 21st Century*, 17 CUMB. L. REV. 831, 831-58 (1986-1987).

14. *Id.*

There are large scale implications in this challenge. For example, there is the challenge of "transnational comprehensiveness" in the teaching of the law. Do we need more "international law courses"? Should all our existing courses be subject to revisions that account for the complexities of multi-state law or law on a "horizontal plane"?[15] In other words, must we radically revise, for example, how we teach the law of sales to account for the International Convention on the Sale of Goods, or must we create a new course based on this latter instrument? How much specific international or transnational content should be added to a traditional (state-centered) private international course? The short but precise answer is that almost every course in the curriculum of any law school to a greater of lesser degree has a transstate multi-state, transnational dimension to it. Globalization may have to be given a critical curriculum presence by the willingness of "domestic" law teachers to revise their domestic law courses with a sensitivity to the law of multi-state problems.

If realism demands that law school curriculum be more global, it must confront powerfully received ideas, often a part of the implicit jurisprudence of both scholars and practitioners that law and the state are essentially identical. The identification of law with the state has always had technical difficulties with the law of multiple states (both public and private international law). Indeed a distinguished jurist once suggested that if international law really were law, it would also be the vanishing point of legal theory. Of course, an emerging paradigm of global law may be unclear and not intuitively as appealing as the Westphalian/Austinian model of law and state.[16] However literature in World Order studies moves significantly in the direction of global law, building on Judge Jessup's idea of "transnational law" as distinct from state centered international law.[17] The author's own work on the interrelations of public and private international law suggests that they are indispensable and complimentary components of world public order or global law.[18] A practical gloss on these ideas is the recognition that in general the sources of state law rest largely on statute and precedent. The sources of international law as indicated in Article 38 of the statute of the International Court of Justice are much broader, and correspondingly subject to controversy.

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15. By law on a horizontal plane we refer to the still largely decentralized nature of the international constitutional system. It is often suggested that the basis of the system as it involves "sovereigns" is that it works on the principle of reciprocal tolerance. In terms of the U.N. Charter's practice, this incorporates the idea of the good faith obligation to cooperate to achieve the purposes of the U.N.

16. *See generally* Richard Falk, *supra* note 4, at 999-1015.

17. *See* PHILLIP C. JESSUP, TRANSNATIONAL LAW 1-16 (1956).

18. *See* Winston P. Nagan, *Conflicts Theory in Conflict: A Systematic Appraisal of Traditional and Contemporary Theory*, 3 N.Y.L. SCH. J. INT'L & COMP. L. 343, 343-545 (1981).

The sources of international global law which includes international law and their relative weight in legal discourse or decision-making contexts may be a fertile source of broadening the "authority" basis for the interpretation of the law in general. It may also be an important challenge to juridical creativity and innovation in the use of extensive sources of authority not always found in conventional state law sources.

From the practical lawyers' perspective, developments through United Nations Commission on International Trade Law (UNCITRAL) and the Hague Conference on Private International Law represent developments that are more congruent with specialized areas of law than the general categories of "international" or "comparative" law. To illustrate, the legal instruments developed through the Hague Conference include conventions covering areas such as the form of testimony dispositions (1961), recognition of adoption decrees (1965), foreign service of documents in civil and commercial issues (1965), recognition of foreign judgments (1971), taking evidence abroad (1970), recognition of divorces (1970), traffic accidents (1971), products liability (1973), recognition of marriages (1978), marital property (1978), trusts (1985), child abductions (1980) agency (1978) and much more. Further examples include, UNCITRAL's conventions such as the UN Convention on the Carriage of Goods by Sea (1978), the UN Convention on Contracts for the Sale of Goods (1980), the UN Convention on International Bills of Exchange and International Promissory Notes (1994), the UN Convention on the Liability of Operators of Transport Terminals in International Trade (1991), the UN Convention on Independent Guarantees and Standby Letters of Credit (1998). In addition, UNCITRAL's model codes covering International Commercial Arbitration (1985), International Credit Transfers (1992), Procurement of Goods, Construction Services, etc. (1995), Cross Border Insolvency (1999) and Electronic Commerce (1991) are but an indication of the specific challenges globalism represents for curriculum development, continuing legal education and the basic issues of enhanced lawyer competency in an age of globalism.[19]

VII. THE STRUCTURE OF GLOBAL LAW

Does legal structure have a way of shaping or defining functions or more generally legal "outcomes" of legal interventions or even the nature of legal discourse? Does the structural image of law preempt the particular law-view or jurisprudential perspective? Does structure in short determine or shape the juridical paradigm, or does form track function? These questions are indeed fundamental. They imply further questions about the

19. *See generally* HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, COLLECTION OF CONVENTIONS (1951-1988) (1988).

basic cognitive processes of what law is and how it is communicated. Do our "forms" of thinking determine what we observe, how we observe, and how we respond to what we observe in law? Globalism may mandate that we give more attention to maintaining the distinction between theorizing "about" law, which reflects the observers external point of view, and the internal participants "of" law perspective. It underscores the value of the external perspective for understanding and teaching "globalism."

In terms of conventional or "ordinary law," there is in fact a given, and practically accepted paradigm of law. The average practitioner uses this paradigm almost intuitively to help in shaping the lawyer role and the attendant conceptions of professional responsibility. By ordinary law, we refer to the Austinian influenced paradigm of legal formalism.[20] The distinguished Austrian socialist, Karl Renner, suggested that legal forms such as "contract" or "liability" or "property" are a structural constant in any legal system. However, the content of the form might be variable and even radically changed by changes in perspectives (ideological) or changes in the material and technological conditions of social organization.[21]

The form of conventional law is as indicated in large measure the Austinian paradigm. The Austinian model has been the subject of a vast critique and significant modification, but its structure appeals to a form of conventional scientific perspective, viz., that law must come from a finite source, that it must be a form of intelligible communication and it must have the backing of organized coercion. These practical elements found a comfortable "structural" form which in turn had a powerful intuitive appeal. Indeed, distinguished jurists have described it as simply the conventional law-view. The view posits a source of law (the sovereign); it posits a community of those "in the habit of obedience," and it posits a sanction for those who break the obedience habit, it finally posits a system of communication (top-down) in the form of "commands." The difficulties of grounding "authority" or "validity" in "constitutional law" was finessed by definition. Constitutional law was simply a special form of morality. The challenge of international law was perhaps even sharper. It was also deemed to be a special form of moral imperative rather than law properly defined. As noted earlier, the positivist view of international law was that it would also be the "vanishing point" of legal theory. The beauty, or shall we say the aesthetic, of the conventional Austinian framework lies in its utter simplicity. Its durability as an intellectual and juridical artifact lies in an uncluttered simple conceptual form.

The problems of the model manifested themselves in the theory and practice of both international law and constitutional law. In international

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20. *See* H.L.A. HART, THE CONCEPT OF LAW 78-96 (1961).

21. *See* KARL RENNER, THE INSTITUTIONS OF PRIVATE LAW AND THEIR SOCIAL FUNCTIONS 238-56 (O. Kahn-Freund ed. & Agnes Schwarzs trans., Routledge & Kegan Paul Ltd.1949).

law positivism influenced the generation of elaborate, alternative or modified structures of international law itself. Two dominant, and indeed elegant, structural models emerged that deeply divided as well as influenced the development of international law. The models were economically styled "monist" and "dualist."[22] The monist model seemed to postulate a "criterion" of validation in a conceptual construct that was "meta statal." The assumption was that there "existed" a meta statal "imperative" that determined when, for example, a state was a state, and thus the monist theory had some constitutive properties built into it. The dualist version provided a more anarchic structure for international law by rooting *all* law making competence in the nation-state (sovereign). Since the sovereign might consent to some limitations, withhold consent or withdraw consent already given, international law could be predicated upon formal and informal agreements and understandings.

The question is, how does globalism impact upon these models? How do these models constrain the empirical and normative challenges of globalism? If we conceive of legal theory as in part an inquiring system, do these models limit or enhance legal inquiry? It is obvious that the very large and complex social process mosaic of world order includes not only states, but international and regional organizations, private armies of various levels of competence and capacity, vast corporate enterprises and an even vaster complex of non-governmental civil society associations as well as the individuals who constitute the larger global community. These social facts may require that the implicit state-centered view we hold of law be transformed into a global law whose boundaries and structures are still in the unfolding stage.[23]

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22. Theories of "monism" and "dualism" have been a critical part of the evolving "constitutional" discourse of modern international law. *See generally* HANS KELSEN, PRINCIPLES OF INTERNATIONAL LAW 290-94 (Robert Tucker ed., 2d ed. 1966); *see also* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (4th ed. 1990); MALCOM N. SHAW, INTERNATIONAL LAW (3d ed. 1991). In the United Kingdom the theories of monism and dualism have been loosely identified with the theories of "transformation" or incorporation relationship between domestic law and international law. *Id.* The "transformation" theory holds that international law transforms domestic law, but they are two separate and distinct systems. *See id.* On the other hand the "incorporation" theory holds that international law is part of domestic law without a ratifying procedure. *See* Trentex Trading Corp. v. Central Bank of Nigeria, [1997] 1 Lloyd's Rep 581; *see also* Maclaine Watson v. Dep't of Trade & Indus., [1989] 3 All ER 523 (accepting the incorporation doctrine). Human rights litigation has added to the force of the incorporation doctrine. *See* MURRAY HUNT, USING HUMAN RIGHTS LAW IN ENGLISH COURTS 25 (1998).

23. PHILIP ALLOTT, EUNEMIA: NEW ORDER FOR A NEW WORLD 419 (1990). According to Allott:

> International law has been the primitive law of an unsocial international society. Itself a by-product of that unsocialization, it has contributed to holding back the development of international society as society. Failing to recognize itself as a

Multi-state/transnational law may indeed be structurally more horizontal than vertical. More realistically, there are simply multiple trajectories of law-making, law applying and law-enforcing processes. In loose but convenient formulation, we are dealing with the so-called global to local to global nexus. These connections have horizontal, vertical, and other trajectories. This kind of structural complexity will have a critical impact upon conventional methods of both teaching and inquiry about law and law conditioned processes. In this context, the good news is that the one dimensional paradigm of top-down, hierarchical law is no longer as professionally interesting as it apparently once was. Law operating in planes of multiple intersecting trajectories does represent an impressive challenge to professional competence in theory and practice. An important insight into the structure of the law is indicated by the distinguished legal anthropologist, Leopold Pospisil[24] who showed that multiple law-generating processes may exist in the same state or body politic. Each of these processes would have distinctive criteria that make them relatively discrete. Simultaneously they have points of important intersection and interaction with each other. What therefore seems to be an ostensibly single legal system upon proper investigation may in fact disclose multiple spheres and levels of legal systematics. These ideas suggest that the law in context idea be greatly extended to the law in global context idea. In the following section we seek to tease out these implications in the context of the challenges to legal "meaning," legal interpretation and the relevance of an interdisciplinary sensitivity.

VIII. INTERPRETATIVE AND INTERDISCIPLINARY CHALLENGES OF GLOBAL LAW

The perspective of "globalism" necessarily expands the definition of law. This will influence how law is interpreted. Thus the methods of construction, interpretation, as well as the authoritative sources of the "law," all conspire to produce challenges to the appropriate boundaries of our discipline. This could inspire us to rethink the very empirical and normative foundations of domestic law from a global perspective. For example, global law could influence a trend that requires "interpretation" in terms of what is usefully knowable about communications theory which considerably broadens the theory and method of law based

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> society, international society has not known that it has a constitution. Not knowing its own constitution, it has ignored the generic principles of a constitution.

Id.

24. *See* LEOPOLD POSPISIL, ANTHROPOLOGY OF LAW: A COMPARATIVE THEORY (1971).

communications. This in turn may influence what is conventionally labeled "interpretation." It may also stress an approach to law that is more horizontal than hierarchal, making more complex the weight to be given to different sources of authority in particular cases. Globalism also broadens the context of law. If that context is socially constructed, it may stress interdisciplinary skills in our efforts to improve, as responsibly as possible, the "narrative" of global law.

International lawyers have long grappled with the problem of "hard" and "soft" sources of law. The phenomenon has in part been triggered by the communications revolution itself. Resolutions, declarations, directives flow from a vast aggregate of national, regional and global institutions. To some extent they are expectation-creating communications. Some are formulated with the precision of legal precepts and generate authoritative support in preexisting legal precepts or in the weight and seriousness with which they are received in authoritative fora, or more generally in public opinion. These kinds of signs and symbols may gravitate to general acceptance in the relevant professional and specialist discourses. Sometimes these precepts backed by some form of "authority" and "acceptance" may find confirmation in formal institutions of law making or in informal but effective fora. Sometimes the acceptance of such communications that are policy specific, supported by an authority-signal and by some form of controlling animus, has the capacity to create law in a functional sense. This kind of insight suggests that, however, useful the typologies of hard and soft law are, or however broad the boundaries of Article 38 of the International Court of Justice statute are, we could benefit from a more coherent perspective about the relationship of communications theory to the process of global law making and application.

Lawyers in the international law arena have been keenly aware that we are no longer dealing with the sources of international law, but the sources of a (local to global) global law paradigm. This has been expressed as a form of disenchantment even with the "traditional" sources of international law as being perhaps too narrow a basis for marshaling the sources of authority of global or transnational law. However, as has been earlier indicated, a return to the basis of general communications theory might provide a better multi-level, multi-disciplinary framework for meeting this challenge in both theory and practice.[25] The general model of communications theory asks a series of sequential questions:

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25. *See generally* MYRES S. MCDOUGAL ET AL., THE INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER (1967); Winston P. Nagan, *Law and Post-Apartheid South Africa*, 12 FORDHAM INT'L L.J. 399, 399-451 (1989).

Who?
Communicates what?
About what?
Through what channel?
To whom?
With what result?
With what effect?[26]

As applied to global law the model may be graphically illustrated as follows:

Communicators from Global Community	Policy or Prescriptive content Authority signal Controlling Intention	Target Audience in Global Community

This general model has been applied to the interpretation of agreements and world order, as well as to add insight to the question of how global law is functionally made and applied. In the author's article, "Law and Post-Apartheid South Africa,"[27] this approach was used to provide some coherence to the flow of communications relating to black expectations of change as found in the Petition of Right, the Freedom Charter, the UDF Declaration, etc. This model provides a good fit for understanding the impact of the modern communications revolution (the internet for example) on global law. This approach, however, implies a greater appreciation of law in context and the interdisciplinary aspect it implies.

This kind of perspective about law as a process of communication has vast implications for how one describes and uses all possible "sources" of law at any level of inquiry. Indeed, the model throws light upon a neglected aspect of human interaction, viz., that interaction is in substantial measure a communicative enterprise. These communications often involve normative or prescriptive elements, they include value-variables and they contain coded signs and symbols of both authority and expectations of coercion. It is perhaps this core insight that has influenced legal anthropologists to

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26. The revolution in human communications technologies is of central importance to lawyer roles, identities and emerging standards of professionalism. *See generally* HARVEY SAPOLSKY RHONDA CRANE, THE TELECOMMUNICATIONS REVOLUTION: PAST, PRESENT, AND FUTURE (1992); ITHIEL DE SOLA POOL, TECHNOLOGIES WITHOUT BOUNDARIES: ON TELECOMMUNICATIONS IN A GLOBAL AGE (Fl. M. Noam ed., 1990); FRANCIS CAIRNCROSS, THE DEATH OF DISTANCE: HOW THE COMMUNICATIONS REVOLUTION WILL CHANGE OUR LIVES (1997). A recent paper Lloyd S. Etheredge presented at Columbia University (May 10, 1999) provides a specific overview of developments relating to the Internet and globalism: "The Internet and World Politics: Unleasing a Potential For Human Rights."

27. *See generally* Nagan, *supra* note 25, at 399.

explore the empirical foundations of small group law or the "law" of micro social relationships.[28] But the global perspective also is replete with complex communicative processes which have normative or prescriptive force of some sort, designate communications about desired goods, services, honors and indeed basic "values"; and contain coded symbols of authority and control to define expectations of conservation and change. The micro and macro implications, therefore, of a more functional design for a contextualized vision of law-making as a process of communication collaboration and conflict has an immense potential impact on how we reconstruct law in an age of globalism.

When we refocus our lens about the future of professional responsibility from structure to function, we encounter several important matters of substance. First. the "pre" structural context of law encounters the unruly world of global fact, and the problems generated by that world, some of which demand legal responses of some sort. The systematic articulation and understanding of the legal problems of global reach, which demand the Practitioner's attention, will require a refined and sophisticated form of interdisciplinary theory and method. The focus on decision-making and policy in an era of globalism permits a sharper emphasis on such issues as the relevance of context and more specifically the contextual location or mapping of problems that require some sort of legal intervention. The problem of what a legal or potential problem is, is a major issue for theory and practice and it is also a critical component of the multi disciplinary dimension of the delineation of context and the outcomes of context which are the problems to which law must respond.

The discipline of focusing on the problems which demand or require authoritative and controlling decision-making interventions serves to place important limitations and potentials to enhance both scholarship and professionalism. Probably the most important element that problems provide to legal culture from a theoretical point of view is the principle of realism and relevancy. When the cliche "relevancy" is invoked it is usually invoked as an anti-intellectual, crude limitation on inquiry. But in fact, when we tie realism to problems we find that we know very little about problems or indeed the problem of how one determines what a problem is. Even more important, the idea of being able to anticipate or predict problems before they happen could be one of the most important components of

28. *See* DAVID FUNK, GROUP DYNAMIC LAW: EXPOSITION AND PRACTISE 1 (1998); W. MICHAEL REISMAN, LAW IN BRIEF ENCOUNTERS (1999); *see also* Walter O. Weyrauch, *Unwritten Constitutions, Unwritten Law*, 56 WASHINGTON & LEE L. REV. 1211, 1211-42 (1999); Calum Carmichael, *Gypsy Law and Jewish Law*, 45 AM. J. COMP. L. 69, 269 (1997); Walter O. Weyrauch, *The "Basic Law" of "Constitution" of a Small Group*, 25 J. SOC. ISSUES 49 (1971); Walter O. Weyrauch & Maureen Bell, *Autonomous Law Making: The Case of the "Gypsies,"* 103 YALE L.J. 323 (1993).

thoughtful scholarly inquiry that is informed by high intellectual standards of professionalism. The particular slant that realism and relevancy in terms of orientation give to law in a global sense is that it focuses on the unsettling dynamic aspect of law, that is to say, that law as decision is a response to problems that actually arise or maybe reasonably anticipated will arise out of the relevant community context.

No less important to the task of lawyering may be the focus on the indices of decision-making interventions, in particular the "conditions" of decision-making. This too may expand our focus from legalism's reliance on logical syntactical modes of expression and appraisal, to those that focus cross-culturally on such factors as social and professional class, cultural orientation, personality predispositions and conditions of crises which may require interdisciplinary skills to meaningfully appreciate the conditions that shape lawyer roles and lawyer conditioned interventions. A still further concern or interest which may implicate the role of lawyers in this context is the effort to understand the consequences for public order of lawyer interventions. These understandings, imperfect as they may indeed be, cry out for tools and skills of appraisal that are in part interdisciplinary.

One of the important problems posed by partial "law-and" models is that by taking in a selective slice of social organization the consequences of legal or policy decision-making interventions may in fact be astigmatic or myopic since these partial, cognitive and methodological procedures are faced with the disciplinary dilemma of too much exclusion, or if they become too inclusive it is because they take in too much and therefore eviscerate the coherence their approach brings to legal analysis or legal inquiry. Managing a legal context for legal inquiry is therefore a complex business.

Those who emphasize a law and economics approach may have to confront this dilemma. One of the key concerns is the issue of how much economic reductionism law can absorb without significant distortion. This issue has emerged in the form of whether a law and economics approach can digest certain non-economic "values." I am uncertain whether at the back of the economic foundations of the law model there is no testable generalized model of social organization. Possibly this model is well expressed somewhere. If it is there, perhaps it might look something like this: "Human beings purposefully seek to maximize wealth through institutions based on material and technological resources." The basic thrust of this model might be that people maximize wealth to make more wealth. It is of course possible that they maximize wealth for other reasons. Perhaps they want "power." Perhaps they want to maximize their "affective" experiences; perhaps they want to improve their professional or educational opportunities; their health and well being; perhaps they need wealth to promote "God." Perhaps these and other objectives might deeply influence what wealth they seek to maximize, how to maximize it and

where to draw the line. It may of course also be suggested, just to complicate matters, that these other non-economic values may be used to generate wealth. That is to say, we may use power to leverage wealth, or skill or education or social position or even religion. In other words, the conception of "values," i.e. what is desired may be much broader then the scheme of value assumptions implicit in the model of the social process implied in some forms of legal economic inquiry. Thus values and the processes they include suggest that the foundations of "political/social economy" are immeasurably more complex than implied in this model. This insight hopefully suggests that the very idea of contextuality, its inclusivity, its systematics, its amenability to effective mapping onto legal/policy processes remain both vital and controverted. It is an important challenge to how lawyers are educated and how effectively a sense of social/economic realism may be successfully brought into the processes of legal inquiry and legal intervention.[29]

IX. GLOBALISM AND NORMATIVITY

The international or multi-state emphasis also brings into play a level of "normative" discourse that is far from any concept of "neutral" principles which may still deeply influence domestic law courses. In fact, the international constitution is not value neutral. Its major purposes (imperfect as they may be in precise prescription and application) are built around several critical "keynote" concepts which seek to secure peace, security, basic human rights and responsible eco-social progress. If interpretation or reasoned elaboration partakes of the wine of globalism, it will ingest a very extensive "normative" agenda that stands in contrast or represents a challenge to a value-free or partially value-free legal culture. To illustrate this I abstract the delineation of six keynote concepts embedded in the UN Charter. They are as follows:

29. This is an issue that has an interesting parallel in human rights law. Article 17(1) of the Universal Declaration holds that, "Everyone has a right to own property." *See* G.A. Res. 217 (III), U.N. Doc. A/810, at 71 (1948). Is this an unlimited universal right? Of course not, Article 17(2) holds that "no one should be arbitrarily deprived of his property." What does this mean? Does the term "arbitrarily" refer to all the other rights in the Declaration in the sense that property can be limited if limitation is to preserve the other rights in the instrument? Can we know what property means without knowing the content and structure of its limitation? Does the same principle apply to "wealth maximization?" There is a great deal of acceptance of interdisciplinary perspectives in law and practice. But I would suggest that the systematic employment of these perspectives in both education and practice is not a goal that is presently realized. The methodological objective here is, of course, to move from "law and" to an inclusive interdisciplinary, "law is" paradigm.

The opening of the preamble expresses the first standard — that the Charter's authority is rooted in the perspectives of *all* members of the global community, i.e., the peoples. This is indicated by the words, "[w]e the peoples of the United Nations."[30] Thus, the authority for the international rule of law, and its power to review and supervise the nuclear weapons problem is an authority not rooted in abstractions like "sovereignty," "elite," or "ruling class," but in the *actual* perspectives of the people of the world community. This means that the peoples' goals, expressed through appropriate fora, including the United Nations, governments, as well as *public opinion*, are critical indicators of the "principle of humanity" and the "dictates of public conscience" as they relate to the conditions of war (methods and means).

The Charter's second key concept embraces the high purpose of saving succeeding generations from the scourge of war.[31] The drafters clearly did not envision nuclear war in reference to the concept of war here. Nonetheless, as the passage contemplates the destructiveness of war, an enhanced technological capacity for destructive weapons would enhance the relevance of this provision, not restrict its scope. This reflects a reasonable legal interpretation.

The third keynote concept is the reference to the "dignity and worth of the human person."[32] In blunt terms, the eradication of millions of human beings with a single weapon hardly values the dignity or worth of the person. What is of cardinal legal, political, and moral import is the idea that international law based on the law of the Charter be interpreted to enhance the dignity and worth of all peoples and individuals, rather than be complicit in the destruction of the core values of human dignity.

The fourth keynote concept in the preamble is emphatically anti-imperialist. It holds that the equal rights of all nations must be respected.

The fifth keynote in the Charter preamble refers to the obligation to respect international law based not only on treaty commitments, but also on "other sources of international law."[33]

The sixth keynote point in the preamble of the Charter contains a deeply rooted expectation of progress, improved standards of living, and enhanced domains of freedom."[34] In short, to the extent that we see "legalism" as still a vital part of law as a discipline, its influence will be moderated by the

30. UN Charter preamble.

31. *See id.*

32. *See id.*

33. *See id.*

34. These are abstracted from the dissenting opinion of Judge Weeramantry. *See Legality of Nuclear Weapons*, 1996 ICJ 443 (Weeramantry J., dissenting). The specific summary is taken from Winston P. Nagan, *Nuclear Arsenals, International Lawyers and the Challenge of Millenium*, 24 YALE J. INT'L L. 485, 533-35 (1999).

recourse to law as "fundamental policy," and the functional idea of law as a process of authoritative and controlling "decision-making;" guided by a complex but articulate normative agenda.

X. GLOBALISM AND LEGAL DECISION-MAKING

One of the most interesting discoveries the domestic practitioner may encounter in the global context of law as decision-making is how developed alternative dispute decision-making methods are in the global environment. For example, apart from adjudication (judicial settlement), well-recognized methods include negotiation, arbitration, mediation, conciliation, good offices, enquiry and more (UN Charter, Article 33.1). More than that, the decision-making emphasis might even inspire an interest in the "anatomy" of decision-making itself as a distinctive field of inquiry. This could include a consideration of such articulate decision functions as intelligence, promotion, prescription, invocation, application, termination and appraisal. These are challenging ideas that permeate the discourse of international law. They provide an impressive challenge to the interdisciplinary foci that is normatively sensitive and might improve our understanding of the role of lawyers and the challenge of the 21st century.

The specific emphasis of law as a species of decision-making has been most insistently promoted in the context of world order studies. It has focused in terms of theory and method on distinctive intellectual tasks critical to the "study" and "understanding of legal decision-making in a world order context. The focus on law as fundamental policy and as decision-focused made an early appearance in the literature in 1943 in the well-known article *Legal Education and Public Policy: Professional Training in the Public Interest.*[35] In that article professional responsibility is tied to the public interest and the defense of democratic freedom. The stimulus for the piece grew out of the war-time experience and the fight against totalitarian fascism. In this piece, lawyer identifications are broader than conventional chauvinistic or parochially nationalist ones. These broader, value-conditioned identifications are considered to be critical to professional responsibility and training in the public interest. The authors also provide a partial inventory of what practical lawyers do and how in doing so, they influence or impact the public interest. What is most important is that these lawyer roles require skills broader than that sanctioned by legalist paradigms of thought. These include a wide range of "skills of thought" (goal thinking, trend thinking, scientific thinking, use of jural technicality). Other skills included are skills of observation, skills of management and organization as well as promotional public relations skills.

35. *See* Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203, 203 (1943).

It is beyond the scope of this presentation to fully outline how these insights about role, policy thinking and all related skill components fit into the culture of law and professional responsibility from a global perspective. But these are suggestive of the imperative that expectations of professional responsibility in the future will not be myopic or chauvinist. If it is grounded in the socio-political reality of globalism then impressive and enriching opportunities await the evolving role and identifications of lawyers in the 21st century as they meditate upon the boundaries of professional responsibility.

XI. CONCLUDING THOUGHTS

Professor Kennedy has most insightfully shown in his recent book, Freedom From Fear (1999) that the tendency to parochial, chauvinist, even nativistic identity has a powerful basis in American political culture. I would suggest that narrow identifications have spin-off effects upon legal culture as well. Americans are not unique in them. However, Americans have in effect "rejected" the International Court of Justice and have withdrawn support for the new International Criminal Court. There is still ambivalence about free trade and immigration. Indeed, the war time experience indicates that some Americans still believe participation in both World War I and II was mistaken. Even that "most unsordid" act of FDR, the lend-lease was preceded by five "neutrality" acts which in pragmatic terms favored Italian aggression in Ethiopia and Japanese aggression in China. Isolation is deeply ingrained in American culture and in some measure, American law. In a revealing reference Representative Grams suggested that the "new" International Criminal Court is a "monster." It is, he said, "The monster that we must slay." He additionally resurrected the key icon of American isolationist success: The U.S. opposition to and lack of support for the League of Nations. Perhaps the UN may be on the list for isolationist action in the future? If one compares Representative Gram's views with the voluble opposition of Senator Helms to the International Criminal Court which expresses terms such as "galls me" or "saved the bacon" of states who now voted "against," or the term "baloney" on the issue of "aggression," as an international crime, one is reminded of the poet Yeats' words in the poem "The Second Coming." In this poem Yeats says that the worst of us are "full of passionate intensity." On the other hand, the Clinton Administration's timid submission to the passionate intensity of the right wing tells us as in Yeats' poem, that the best of us, "lack all conviction." The latest set-back for international responsibility is indicated in the U.S. Senate's rejection of the Comprehensive Nuclear Test Ban Treaty. Senator Helms was a key power broker in the Senate's defeat of the Treaty. It is widely conceded that the defeat of the Treaty had less to do with the merits of the issue, than a concern for partisan advantage. In other words, the

Senators were incapable of a broader sense of identification with the survival of the earth-space community, and their sense of political professional responsibility was correspondingly limited. But the stakes in these matters are very high since as lawyers we have some choice about both alternative visions as well as the strategic and tactical deployment of our resources to realize them. These visions are central to conceptions of professional role and the depth of professional conviction. A vision of professional conviction that supports the rule of law in a global comprehensive sense will seek to vindicate the structure and function of the institutions of humane governance and will be sensitive to the principle that the foundational values of public and civic virtue are achievable. There is of course an alternative vision which is the negation of the rule of law. This other vision is perhaps best expressed in the words of another poet, Alexander Pope. In his depressing satire, "The Dunciad," Pope wrote:

> Lo, thy dread empire chaos is restored,
> Light dies before thy uncreating word;
> Thy hand, great anarch! lets the curtain fall
> And universal darkness buries all.[36]

In conclusion, a key challenge to professional responsibility is rooted in part in the problem of professional identity. How inclusive should a lawyer's professional identity be in an age of "globalism?" I would suggest that parochial, insular or even chauvinistic identities might have a detrimental impact or influence on the lawyers sense of professional identity and attendant moral and ethical convictions.[37] A broader concept of professional identity indeed might be a necessary predicate for a broader or more expansive conception of the rule of law foundations of professional responsibility and the moral understandings that this might include. This might suggest a more searching and comprehensive vision of lawyer roles and the theories that enlighten us about those roles. Thus the jurisprudence of lawyer roles viz., the lawyer as a champion of a client, or a

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36. ALEXANDER POPE, THE DUNCIAD 409 (James Sutherland ed., Methuen & Co. Ltd 1943) (1724).

37. Human beings seem in general to have their identities shaped by the environment as well as experience with psychological development. The lawyer personality also will be similarly influenced. These influences may generate parochial and chauvinist or cosmopolitan and perhaps universalist identities. Charles Kindleberger suggests the following insight from the perspective of an economic historian: "Man in his elemental state is a peasant with a possessive love of his own turf; a mercantilist who favors exports over imports; a populist who distrusts banks, especially foreign banks; a monopolist who abhors competition; a xenophobe who feels threatened by strangers and foreigners. . . ." *See* Charles Kindleberger, *International Public Goods Without International Governement*, 76 AM. ECON. REV., Mar. 1986, at 1.

parabureaucrat in the service of the welfare state, or the lawyer as acolyte,[38] or indeed the lawyer as a special purpose "friend" would seem to be a limited and normatively impoverished discourse outside of the context and challenges of globalism itself, as well as the idea or ideal of a comprehensive conception of the rule of law for the larger world community. That idea or ideal might be quite simply expressed: "Is professional responsibility and the rule of law informed by an inclusive commitment to the principle of human dignity on a global basis"? The scope of professional responsibility and the rule of law is thus an important discourse about the moral and ethical foundations and justifications of a learned and important profession. The discourse is important because the stakes about the rule of law foundations of the kind of public order law defends and promotes are critical ones.

38. Simon, *supra* note 3, at 29.