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Harold D. Lasswell

Myres S. McDougal

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## JURISPRUDENCE IN POLICY-ORIENTED PERSPECTIVE<sup>1</sup>

HAROLD D. LASSWELL\* and MYRES S. McDOUGAL\*\*

### I.

Jurisprudence is most usefully conceived as a theory *about* law, not as a theory of law. The distinction is perhaps best understood in economic theory in which the differences are often striking between the perspectives of academic economists and the working assumptions of businessmen and regulators of business. In the history of theories about law it is obvious that some conceptions of jurisprudence have only slowly achieved influence upon the everyday work of the legal process. Other conceptions have, however, exercised a demonstrable effect from the time they were first formulated.

The fact is that jurisprudential ideas are unavoidable in the daily lives of judges, advocates, administrators and legislators. Consider, for example, the experienced counselor at the bar. He has a rich and varied body of expectations about the probable response of judges to doctrines, styles of argument, and types of party involved in a controversy. He predicts that Judge *A* is heavily disposed to side with the prosecutor and the police, or that Judge *B*, on the other hand, seems to regard the defendant in actions to which the government is party as a weak and tragic figure who stands alone. Whether these perspectives are true or false they are part of a significant set of assumptions *about* legal process which can be distinguished from the conventional language of legal doctrine.

Crucial as the separation is between formulations *about* and formulations *of* a given legal system, it is not to be assumed that the two are without overlap. The terminology employed by systematic jurisprudential thinkers may on occasion be directly borrowed from the conventional legal vocabulary with which they are best acquainted. Research may demonstrate, conversely, that today's conventional discourse was yesterday's innovation, and that the innovator was some systematist in the field of jurisprudence, such as Bentham or Maine.

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\*Edward J. Phelps Professor of Law and Political Science, Yale Law School.

\*\*Sterling Professor of Law, Yale Law School.

1. This statement was first prepared as an introduction to a series of studies by Professor William L. Morison of Sydney University, in exploration of our jurisprudential inheritance. We are indebted to Professor Morison for helpful suggestions in the preparation of this formulation. His forthcoming volume will provide a systematic comparison of the principal historical approaches, thus making explicit their contributions and limitations.

It is futile to hope, as so many scholars have done, that the confusions which so readily arise from multiple usage can be avoided by attempting to coin new terms as the exclusive idiom of jurisprudential theory. Systematic writers are part of society and as such are in more or less direct communication with practitioners who are concerned with the legal process of a local community or of the world community as a whole. Even systems of expression that contain many new words may succeed in making certain conceptions so articulate that these initial idiosyncracies are incorporated within written codes, opinions and briefs. In the process of dissemination these words are likely to become detached from the original definitions put forward by the systematizer. Hence sources of possible misunderstanding are multiplied.

Many specialists in jurisprudence have welcomed misinterpretation in the sense that they have willingly accepted the risks connected with the choice of terms of legal art which are embedded within the structure of one, or more than one, legal system. Hohfeld seized upon such recognizable words as "rights," "duties," "privileges," and "powers," and proceeded to put these labels upon conceptual relationships which bore approximate, though only approximate, congruency of meaning with the definitions current in conventional usage. No doubt Hohfeld's choice of terms was a positive factor affecting the attention given to his affirmative proposals. Yet the subtleties of thought in the formal systematics of Hohfeld frequently elude the ones who resort with greatest fluency to his vocabulary.<sup>2</sup>

If confusions are to be kept at a minimum the prophylaxis is not the adoption of esoteric vocabularies (or, on the other hand, timidity in introducing new terms in order to sharpen distinctions which are dimly perceived in ordinary usage). The appropriate strategy is to propagate intellectual skill. The pertinent skill enables a word-user to locate his position in the total context of communication, and deliberately to choose whether to employ particular terms in a sense that is conventional within a given legal system, or according to definitions that are chosen to perform the distinctive functions of jurisprudence. The well-instructed manipulator of language has intellectual tools enabling him to hold his vocabulary at arm's length and to select the label appropriate to the role which he has chosen to play. Hence the same label will probably be employed—quite deliberately—in several senses; and different labels will be attached to the same conceptual frame. These choices will depend upon a host of factors connected with the many forums in which the individual finds himself participating.

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2. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS (Cook ed. 1964).

## 2.

From a therapeutic perspective the proper role of systematic jurisprudence is to discover and disestablish the contradictions, confusions, errors and omissions of unsystematic conceptions of law. More comprehensively expressed, the constructive role of systematic jurisprudence is to delimit the frame of reference appropriate to the study of law, and to specify in detail the intellectual tasks whereby the opportunities presented by the proper focus of inquiry can be seized.

Fortunately for anyone who at the present day addresses himself to the problems of jurisprudence there is a long history of systematic reflection and writing on the subject. Owing to the advances made in recent decades in the integration of historic and prehistoric data it is even possible to locate the origin of serious jurisprudential thinking. In all probability theories about law grew up concurrently with the discovery, articulation and enunciation of legal prescriptions in urban civilizations. It appears that the invention of cities was an epochal date which marked the beginning of the modern phase of man and his culture. Cities make their appearance about the same time in a few river valleys, notably the Tigris-Euphrates, the Nile and the Indus. Other subsequent and seemingly independent developments can be dated in the New World.

A fundamental point about cities is that they gave rise to the division of labor which is prerequisite to the bringing of civilization into existence. It must be noted, further, that this achievement is recent. As V. Gordon Childe puts it, man lived about ninety-five per cent of his life as a species in roving or settled bands and tribes, and has spent only five per cent of his time seeking to adapt himself to the complex and dynamic city environment that he has created.<sup>3</sup> The urban division of labor permitted skill specialization and production. With the city came scribes and writing; and as tribal control broke down the modern territorial community took shape, with its written codes, administrative hierarchies, tax arrangements and organized armies. Side by side with the appearance of more complex authoritative decision processes there arose theories about law or jurisprudence.<sup>4</sup> With the exception of various ideas about natural law, the legal tradition of the Mediterranean and Western European

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3. See I SINGER, HOLMYARD & HALL, *A HISTORY OF TECHNOLOGY* 42 (1954).

4. Although no significant writing *about* law as distinct from the prescribing of law has survived from the earliest civilizations, it is impossible to escape the view that the drafters of the code by King Ur-Nammu (2050 B.C.) were highly sophisticated minds. For a brief presentation see KRAMER, *FROM THE TABLETS OF SUMER* (1956). The full text is established by Kramer in *ORIENTALIA, NEW SERIES* 23, 40-51.

world owes most of its juristic conceptions to one dominant tradition, the tradition of Rome; and scholarship has made it possible to restore the sequence by which Rome passed through tribal phases of growth and eventually received the fructifying impact of civilizations further East, which enabled Rome to consolidate the huge edifice whose major lineaments are so well known to us.

Although systematic thought and publication about law has a long tradition it must be conceded that much early writing is on a somewhat rudimentary level. Early conceptions of authority, and of the relations between authority and control, are diffuse and indiscriminating. However, intellectual speculations about the policy problems connected with problems of stability in systems of public order have exerted an intermittent and enduring effect upon man's efforts to understand human nature and society. If we owe many if not most of our specifically legal conceptions to Rome, we recognize that we must join with Rome in acknowledging an obligation to Greece for the speculative examination of social life. When we examine the stream of juristic thought in global perspective it is startling to realize how little we benefited from some of the most impressive writers and schools of thought. Only today, for instance, have we become cognizant of the monumental systematizations put forward with Islamic civilization by Ibn Khaldûn.<sup>5</sup> Our tradition was not enriched by the refined and extensive literature of India or, for that matter, of China. The tempo of jurisprudence began to pick up among us in connection with the long battle between sacred and secular authority in the Holy Roman Empire, and the recovery of classical learning at the threshold of the modern era. The pace quickened as the modern Nation-State came into view. The transformation of the great feudal holdings into modern territorial communities created the context in which the centralizing doctrines of Roman Law received rejuvenation and reapplication. Feudal society was at one time highly decentralized in the sense that many intermediate authorities stood between the bottom of the pyramids of power and the top (or tops). Effective and formal power criss-crossed in patterns of enormous complexity. From this tangle there arose the Nation-State, possessing largely contiguous territory (on any continent). Often the national domain is punctuated by rather autonomous city states. Exaggerated preoccupation with "sovereignty" has long been a sign of the quest for the discovery of acceptable principles capable of integrating fabulously diverse claims for various degrees of autonomy or subordination.

If we are to develop and consolidate a jurisprudence appropriate

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5. IBN KHALDUN THE MUQADDIMAH, AN INTRODUCTION TO HISTORY (F. Rosenthal transl. 1958).

to the epoch in which we live it is obvious that several fundamental conditions must be taken into full account. One fact of global significance is the universalization of the demand of peoples and individuals everywhere for a respected place in the world. More comprehensively phrased, the "former colonial peoples" of every continent and archipelago are demanding social orders more in harmony with the dignity of man than have been characteristic of many past societies. Individuality is growing as the individual human being becomes more aware of his own ego, and of the fact that by asserting himself he can often rise to positions in society which were entirely out of the question in traditional forms of civilization or in many kinds of folk cultures. In seeming paradox the stirrings of individuality characteristically find expression in the rise of collectively nationalistic, socialistic, communistic, or related movements. Yet the act of asserting the ego through identification with a reactivated symbol of a larger community, or with a radically new social identity, is a declaration of individual independence from previous fusion of the individual ego with the kin-group, or with an ethnic or cultural group seemingly condemned to permanent humiliation in a subordinate caste status.

Moreover, the demand for human dignity is finding expression through social movements that impose conspicuous denials upon the realization of the demand itself. This is especially obvious in the exchange of "freedom" for "bread." Or, to be more accurate and less entrapped by slogans, we can recognize the fact that in many communities certain benefits, such as freedom from unemployment, are believed to be so important that other freedoms — notably in matters of politics, enlightenment and religion — are not insisted upon at the moment.

Of all the apparent contradictions existing in the world today none is more glaring than the perpetuation of a world arena that is military rather than civil. The arena is military because the expectation of violence and other extreme forms of coercion is still dominant among the perspectives of those who effectively make or competently observe and analyze the key decisions.

The glaring contradiction rises from the general proclamation of peaceful intentions and hopes within a military arena where the arms race has reached hitherto unimagined heights of annihilative potentiality. Man's skill and enlightenment have evolved the sciences and technologies capable of being used to consummate his wildest dreams of peaceful and opulent felicity. Yet a formidable fraction of his brains and brawn goes into the preparation of instruments of mutual annihilation.

How can this madness be? How can it continue from year to year? Why cannot the men of effective decision pay the costs, whatever they are, of changing the rules of the world political game by peaceful agreement? Why cannot a public order of human dignity substitute a universal civic arena for a worldwide military garrison?

These questions are central to any jurisprudence that is worth serious attention. We believe that creative jurisprudence is feasible and that, in terms of fundamental orientation, is suggested today in the broad outlines of policy-oriented inquiry. The significance of this more recently emerging jurisprudence will become more evident, we believe, when it is placed in the perspective of its principal predecessors.

### 3.

In developing a policy-oriented jurisprudence, contemporary scholars have found it necessary to take full cognizance of the many schools and writers who have contributed to the search for satisfactory ways of conceiving the role of law in society.

However, our discussion has assumed that jurisprudence can and does have an impact upon legal process. This assumption calls for more careful examination partly because of the light that past experience with various kinds of jurisprudential theory casts upon our conception of what can and ought to be accomplished.

*a.* Some conceptions of jurisprudence are primarily historical and immediately predictive, the predictions being based upon simple extrapolation into the future. When historical conceptions of law are put to the test of execution they contribute to a body of scholarly work that has unmistakably influenced judges, advocates, legislators and scholars. An individual is enabled to perceive himself and the members of his generation as rather short links in the long chain of generations. If he shares the tradition of Western Europe, the individual discerns, perhaps with surprise, the vitality of modes of thought and speech that connect his life in the courts or the Chambers of Congress or Parliament with the Senate and the magistrates of Republican and Imperial Rome. He may come to acknowledge indebtedness to tribal customs and traditions originally fashioned in the struggle for survival against successive waves of population from Inner Asia or Northern Europe.

Perhaps with Savigny and the historians of the early nineteenth century he comes to believe that the aims of any particular individual or of any given time and place are so inconsequential when confronted by the weight of historical predispositions that it is foolish or even immoral to embark upon other than the tiniest modifications

in the legal heritage. If at first glance the vision of the ego as a grain of sand on the beach of time is chastening to the individual human being, the eventual impact may be somewhat different. The scholar or the practitioner may identify himself so completely with the entire history of legal development that he acquires a sense of significance as one who applies the accumulated wisdom of the ages to the tribulations of the movement. Many men of action and scholars achieve a calming sense of detachment from the hurly-burly of the day by perceiving the excitement and tension of the moment against the huge backdrop of past experience.

When past trends are conceived in less comprehensive terms, the result may be a degree of concentration upon the details of past authoritative decision, divorced from its context of community process, that squeezes the life out of history, and substitutes for the humane contemplation of the past a myopic concern for the largely irrelevant niceties of dubious distinction and analogy from precedent. The study of the past becomes an arsenal of veiled allusion to the present in the guise of the past. In consequence the processes of decision are responsive to the urgencies of the day only by inadvertence.

*b.* In seeming contrast to the pursuit of the past are the schools and writers whose approach to jurisprudence is to embark upon analytic critiques of decisions, or, more commonly, of the language of decision. Here at least the individual seems able to shake sufficiently free of the past to set himself up with detailed criteria enabling him to pick and choose among current authoritative traditions. He defines "law," "sovereignty," "justice," "rights" and "duties," "contract" and "property" and related key words; and he forces into the winepress of his system the justifications advanced for past and prospective decision. The result gives the scholar no less than the official a keenly developed sense of belonging to a professional group capable by the proper management of its intellectual tools to ransack the attic of history for possible use in coping with issues of the moment. The analyst is less a repository of social memory and recall than a direct participant in the acts of judgment that provide selective guidance for policy questions.

Yet here, too, the policy orientation may be consciously or unconsciously denied or overlooked, as it is among proponents of "historical" jurisprudence. The "analyst" may not allow himself to state clearly to himself, or to anyone, the criteria upon which he relies to choose among the results made available to textual confrontation and evaluation. It may be that the analyst proceeds blindly and fills the sail of application with the winds of caprice. Caprice, that



is, in the sense of pursuing every logical possibility regardless of the criteria to be used in selecting among equally arguable contentions. Analysts gain proficiency in the delicate art of fine distinction and comparison; indeed, this becomes an art form guided rather more by vague criteria of elegance than standards of social effect. The very idea that "art for art's sake" in jurisprudential thinking is a standard of limited pertinence to the task in hand becomes an offensive, if indeed a stateable, position.

c. Partly as a means of providing the guidance that is lacking from historical or analytic emphases, in reaction against the arbitrary decisions which such emphases sometimes cloak, resort may be had to transempirical systems of thought. The proper task of the jurist is conceived in straightforward fashion as theological or metaphysical. His job on Earth is to put God's plan into practice; or, if God is not regarded as the source of authority, the plan may be natural, without explicit linkage to divine figures. Christendom has enjoyed many centuries of exposure to determined attempts to ground fundamental principles of jurisprudence upon Divine Will, with or without the benefit of more impersonal modes of metaphysical discourse. The most impressive systems of canon law are analytic in the sense that the predominating skill is the exercise of logic within a selective frame of historical reference. However, it is worth taking account of the fact that theological systems are vulnerable to short circuiting by rivals which declare the primacy of more direct or recent revelations. The Protestant Reformation proclaimed the primacy of the connection between the individual soul, conscience and God; and although Protestant communities were capable of generating the elegant systematics of John Calvin, they were also plagued by challenges from the simplest rustic, impatient of the interpolation of ratiocinative steps between himself and the Divine afflatus.

The limitation of jurisprudential systems which speak in the name of theological or metaphysical "first principles" is not absence of goal; on the contrary, the characteristic feature of such codes is the attempt to throw protective screens around a discernible body of creed and rite. The tendency of specialists who identify themselves with complex theological or metaphysical doctrines is to respond with great sensitivity to intellectual challenge, notably when the secular power with which they are associated is unwilling or unable to suppress the challengers. Hence jurisprudential exercises become narrowly analytic, absorbed in the dialectic of defense and attack. We have many cases to support the statement that one-sided absorption in disputation tends to divert attention from the factual context of a controversial matter.<sup>6</sup>

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6. It is evident on reflection and confirmed by investigation that theological

d. In emphatic reaction against "theological" and other allegedly transempirical forms of jurisprudence, several systems have been asserted as self-declared enemies of this sort of thinking. In the name of providing a superior picture of the empirical world and a strategic guide to policy within it, these systems seize upon a single factor for the explanation of man and society. The most influential system of the kind owes its origin primarily to Marx and Engels who found what they regarded as a golden key in the primacy of "material" over "ideological" factors; and, in addition, asserted a law of historical development to which they ascribed overwhelming potency in the past and future of human association.<sup>7</sup>

However, explanations that stress a single factor of predominating importance find themselves in a vulnerable position as knowledge advances. During the past century in particular an enormous accumulation of empirical studies has occurred. In the early years of the nineteenth century the psychological and social sciences had few practitioners. By the middle of the twentieth century they could be numbered in the tens of thousands. It became increasingly clumsy to divide all factors in the psychological and social process into "material" and "nonmaterial."<sup>8</sup> Any attempt to do so meant that the writer was compelled to spend his time making definitions whose significance was of dubious importance for the furtherance of inquiry. It was much more productive to conceive of social and psychological processes as multi-factored, and to get ahead with the task of exploring the interdeterminacies involved. A two-category system could, of course, serve purposes connected with investigation; but these advantages are modest, and increase the hazard of rigidifying the entire approach into empty dialectic, unaided by the findings of competent inquiry.

e. The more capacious frame of a multi-factored empirical approach affords more ample opportunity to discover, consider, and

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and metaphysical approaches to jurisprudence may refer to some conception of "natural law." It is also true that "natural law" may figure as a term in historical or analytic notions of jurisprudence, when allusion is made to the early law of precivilized societies. The many versions of "natural law" will, of course, be examined in Professor Morison's volume, discussed note 1 *supra*.

7. Despite the exorbitant stress given to the "material," Marxian jurisprudence should be included among the metaphysical and not among the scientific approaches. The basic standpoint is not scientific since it is neither exploratory nor tentative about the future, which plays an important role in the system.

8. On these points consult Lasswell, *The Qualitative and the Quantitative in Political and Legal Analysis*, 88 DAEDALUS: J. OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES 633-45 (1959).

keep in touch with the causes and effects of authoritative decision. In this connection Americans think at once of the enormous gusto with which the legal empiricists seized upon anthropology, psychoanalysis, learning theory, sociology, social psychology, economics and related disciplines, and exploited the findings of these several fields in the expositions which they gave of the legal process. Evaluated in the entire context of jurisprudential history it is easy to dismiss the legal realists by saying that they grossly exaggerated points which had previously been made by sociological jurists, especially in Europe. At the same time it must be conceded that their vivid assault upon "slot machine" conceptions of legal decision succeeded in shaking loose many incrustations of misplaced confidence in the pursuit of legal analytics. By concentrating upon the decision maker they spelled out in detail the thesis that judges are human, hence responsive to the variables which typically shape the conduct of all men. The doors were flung wide to any reporter of new discoveries in the expanding science of man.

It cannot be said, however, that the triumphs of the realists were more than preliminary to the affirmative problems of jurisprudence. There is a limit beyond which the laborious demonstration of verbal equivalency in the language of the courts cannot go. The limit is indicated by the celebrated phrase, frequently interposed in response to demonstrations of such equivalency, "And so what?" Obviously the judges must use language; and it is conceded as desirable that they should think about what they are saying and doing. But what shall they think about? When this question reared its impertinent head the replies were singularly uninformative.

The legal realists did little service to "science" and scarcely more to "law" by merely proclaiming the virtues of scientific modes of thought and investigation.<sup>9</sup> It is a disservice to science to exaggerate the contribution which science alone can make to the policy questions that are the distinctive problems by which lawyers are confronted. Science was said to be "value free"; and yet the most obvious fact about policy is that it is value oriented, since policy is only intelligible when it is seen as a deliberate search for the maximization of valued goals. To exaggerate the role of science is to prepare the ground for disillusionment with the relevancy of scientific modes of thinking and to discount the usefulness of the available results of scientific inquiry. "Built-in" potentiality for disillusionment is hardly to be commended among the specifications for a jurisprudential theory. So intimate is the tie between the issues that rise in the clarification of value goals and the findings of science that it is the province of

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9. This is one version of the "positivist" bias.

theories of legal process to emphasize and assess these relationships rather than to overlook and evade rational assessment of their significance.

4.

The major inferences that we draw from an examination of past explorations are, thus, both that the focus of jurisprudential inquiry has been perceived too narrowly or too vaguely and that, where the frame of reference has been relatively well-chosen, the intellectual tasks appropriate to the execution of jurisprudential inquiry have been inadequately identified and applied. Since the appropriate focus of inquiry, we affirm, is the process of authoritative and controlling decision, both the jurisprudential systematizer and the maker of finally decisive commitments in the name of the community are part of the same total process. In principle they are faced by equivalent intellectual tasks despite the diversity of roles that they play in community decision.

The key point in connection with jurisprudence is that it must provide a theory of problem solving; and further, that the distinctive problems are related to the community decision process. As a theory of problem solving several intellectual tasks require elucidation, tasks which we identify as five: goal clarification, trend description, examination of conditions, projection of future developments (assuming no policy change), and the invention and evaluation of policy alternatives designed to maximize goal values. As a theory of problems that arise in the decision process the requirement is that the decision process be located in the pertinent social contexts of which it is part and with which it incessantly interacts.

The history of jurisprudence provides the basis for other inferences regarding the proper scope and method of jurisprudential theory. We can learn caution from studying the schools of thought that have given disproportionate stress to one or another function or recurring structure comprised within the total process of community decision. First, we refer to the distortions that come from a court-centered jurisprudence. No one doubts the importance of judicial organs in the legal process of any body politic. But when courts are singled out for almost exclusive attention the result is to cast into shadow the part that is played by other organs of decision. Individuals who have preoccupied themselves almost entirely with adjudication are likely to have had little opportunity to confront issues that arise, notably during times of rapid social change, when peoples face an opportunity to launch or drastically to revise a formal constitutional document. Under pressure of crisis, solutions are likely to be proposed that show little more than unreflective bias

in favor of the decision making institutions best known to the advisor-draftsman. Without presuming to express any final scholarly consensus upon the issue we must at least concede that many American advisors called upon at the end of World War II to assist in the building of new constitutional edifices appear to have exhibited the myopic limitations referred to.

Closely connected with great stress upon court-centered jurisprudence is client-centered jurisprudence. The approach is simple: win cases. It is assumed that the clients are less inclusive than the representatives of the whole community, and that the job of the lawyer is to convince community decision makers that his client should win the current controversy. That clients should be well served is no novel thought in the history of legal process, nor is it a neglected area in societies where businesses and other institutions can function effectively outside the formal structure of government. In Anglo-American tradition client service is an especially strong demand upon the bar.

There are, however, limitations upon any conception of law that gives almost exclusive attention to the tactics of winning in adversarial arenas. The literature of professional and lay criticism fully states these limitations. When the accent is upon winning all other outcomes of litigation are deemphasized; hence adversarial counsel are tempted to cut corners and to adopt whatever tactic seems likely to get the result sought. Ruthlessness is encouraged, even to the point of seeking to undermine the integrity of the decision makers. Sheer command over instruments of coercion is capable of destroying the persuasive character of litigation. A further corollary of client-centered jurisprudence is failure to focus upon the problems which confront the community as a whole. The effect is to propagate the parochial distortions referred to in connection with court-centered jurisprudence.

In nondemocratic polities or in democracies having a strong tradition of executive control, jurisprudence has often been of the kind we can most aptly describe as executive-centered. Legal questions are not only approached from the point of view of the decision maker, but the decision maker is aware of the importance of decisive action in crisis situations, and gives special emphasis to the protection of authority in case of war or rebellion.

##### 5.

The perspective adopted and disseminated by any given school of jurisprudence influences the skills which are held to be important for the jurist. In the perspective of the analytic school the chief

skill is facility in drawing distinctions and discovering equivalencies among statements. Facility of this kind is so closely connected with constituting and applying any system of authoritative prescription that it seems "natural" for lawyers and commentators to cultivate and excel. In settling any controversy community decision makers operate with authority when they purport to apply prescriptions of the legal system to concrete facts. Hence the decision maker is continually confronted by the problem of selecting and arranging statements which are factual in form and statements whose manifest content is prescriptive; or, to employ a category which we have found especially illuminating, the decision maker deals with many statements which are "normatively ambiguous,"<sup>10</sup> since if one relies upon the manifest content it is uncertain whether the statement maker is referring to a norm or expressing a preference for a norm, or both.

In this context we emphasize the point that in particular controversies the final utterance by the judge, for instance, may include statements purporting to make factual references to past or future events; however, these fact-form statements are not to be taken as "facts" of the case; they are part of the decision maker's response. Special investigation is essential to arrive at an estimate of how "factual" the ostensible propositions may be.

Since community policy always includes normative components, logical skill is always of some pertinence to legal decision. But this is not all. In legal process statements which purport to make logical points have different results depending upon the method of presentation, and the predispositions of decision makers toward presenters. Presentational skills always "contaminate" logic when logic is part of life, and especially the life of law. Sometimes the most effective skill in presentation is clarity; or, by contrast, modes of obscuration which are likely to be construed as profundity. Sometimes the crucial variable in presentation is the manner of counsel, who thunder like Jove or woo with maidenly diffidence.

Client-centered or court-centered jurisprudence places a premium upon forensic facility, whether acquired in schools or in the early years of professional initiation. If the jurisprudential orientation is relatively empirical, as among legal realists, the door is open for the

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10. A statement is "normatively ambiguous" when its terms refer, simultaneously and without discrimination, to the events to which decision makers respond, to the policies which are assumed to guide and justify decision, and to the decisions ("legal consequences") themselves. Such statements commonly attempt in a single reference to describe past decisions, to predict decisions, and to state what future decisions ought to be. See Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L. J. 203-95 (1943).

use of factual evidence as means of influencing judicial response. Ever since the concept of a "Brandeis brief" entered the American professional tradition it has appeared practicable to try to affect a judge, not by argument alone, but by presentations of fact which are capable of enlarging the judge's perspectives concerning the causes and consequences of employing legal syntax in various ways. Hence it has become relevant for counsel to widen their competence to include close cooperation with experts in economics and many other scientific disciplines. Legal scholars are perceived as requiring skills which complement traditional nimbleness in maneuvering among "legalistic" arguments. The result is the growth of multiple-skilled personnel, and the practice of working as a member of interdisciplinary teams.

Slowly there has begun to emerge a conception of the task of jurisprudence that is as formidable as any intellectual task can possibly be. The challenge is not merely to seek to resolve issues connected with law "by definition," but rather to relate decision to preferred public order. Though definitions are part of life, by themselves they tell us nothing about life. Properly managed definitions are tools of discovery, since they guide attention to the social process itself where human beings are perpetually engaged in the never-ending interactions by which values are shaped and shared. Legal institutions, which are part of the process of value shaping and sharing, must however be appraised according to the contributions which they make to value levels and institutions. In any society the legal system is part of a more inclusive system, the system of public order, which includes a preferred pattern for the distribution of values and a preferred pattern of basic institutions.

In the perspective of the foregoing discussion it is perhaps becoming evident how fundamental are the tasks appropriate to jurisprudential thought. The appropriate scope of inquiry into any legal system is to appraise its significance for the system of public order which it is expected to protect and fulfill. Jurisprudential thinking defines the full breadth and depth of this undertaking, and identifies the methods by which the pertinent tasks can be performed. Plainly the legal system is to be appraised in terms of the values to be maximized in the total context of public order. Hence the task of inquiry is to assess the degree of success or failure of the system, to account for the factors that condition these results, and to clarify the goals and the policy alternatives available in the emerging future.

The jurisprudential thinking that we recommend as appropriate to the public order of a free society has certain distinctive challenges to face. Considered as a formulation of methods appropriate to *any* jurisprudence the statements made in the preceding paragraphs are

satisfactory. But we are also concerned with choosing among possible systems of jurisprudence. Hence we commit ourselves, and commend to all who will cooperate, the clarification and implementation of a jurisprudence oriented toward the dignity of man. We postulate human dignity as a goal; and we respect the freedom of those who accept this goal to choose whatever theological or metaphysical grounds enable them to associate themselves with this overriding objective. The skills appropriate to the jurisprudence of human dignity include whatever operations contribute to the goal.

## 6.

Perhaps the most comprehensive summary of the effect of jurisprudential theory is that it stabilizes the way in which the world is experienced. If the tasks appropriate to lawyer and jurist are limited to disputation, this conception modifies legal education and influences the way in which counselors and jurists go about their business. To the extent that a jurisprudence of dialectic gains acceptance the focus of attention regarded as appropriate to anyone professionally concerned with law is deeply affected. The individual concentrates upon the language uttered by "authorities." The intellectual problem is resolved when formal distinctions or equivalencies are succinctly put; the question of what difference it makes whether one or another formulation is accepted does not seem to be a pertinent topic.

By contrast a contextually oriented jurisprudence is deliberately designed to bring the whole tangled web of causes and consequences into view. Logical facility is not ignored; on the contrary it is encouraged and provided with a policy-relevant criterion for choosing among equally elegant formulations. A contextually oriented jurisprudence is a built-in device for maintaining the ever-precarious balance between rigidifying tendencies and the openness of mind required to keep in contact with the stream of new emergents in the life of society.

Such a jurisprudence is open since it is future oriented and therefore cognizant of the appearance of new patterns of perspective and operation in the world social process. To be oriented toward the future is to renew the intensive inspection of current and past events in the hope of preparing the participant observer to perceive a repetition, and to meet the challenge of novelties when they come to pass.<sup>11</sup>

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11. A systematic literature is rapidly emerging on how to think about the future: HELMER, *SOCIAL TECHNOLOGY* (1966); POLAK, *THE IMAGE OF THE FUTURE* 20 (1961); *FUTURIBLES* (deJuvencel ed.); *Studies in Conjecture*, 2 vol. (1963, 1965);



Contextual jurisprudence emphasizes creativity in a way that diminishes the likelihood that professional tools of legal thinking will sink into ritual incantations. As one faces the probable map of future developments the task is to originate rearrangements that promise to maximize desired outcomes. ♦

Openness of mind is no virtue if no selective principles are applied in picking and choosing among new experiences and interpretations. Hence at any cross section in time a policy-oriented individual has the problem of articulating value goals. In common with all intellectual tasks this calls for the introduction of postulates — in our case, the postulate of human dignity, not human indignity. Every human being is “infected with value preferences,” since from infancy he has been surrounded by an environment full of deprivations and indulgences for one or another pattern of behavior. By the time individuals begin to engage in ratiocination regarding law they have been formed by years of exposure to relatively parochial interpretations of value outcome. The main challenge of problem oriented jurisprudence is to clarify goals; and this clarification is sought by subjecting postulated goals to the discipline of trend, factor, projection and alternative modes of thought. It is conceivable that individuals who postulate human indignity as a goal will so profoundly modify themselves that they eventually accept the postulate of human dignity. The reverse, though thinkable, is improbable. So far as our commitments are concerned, we have no expectation of being exposed to experiences that lead to such drastic changes of direction. Our position might be characterized as absolute in goal though relative in method.

## 7.

The major outlines of a contextual and policy-oriented jurisprudence are best indicated by a series of questions about any jurisprudence. By asking a comprehensive set of relevant questions concerning every school of thought and every author the peculiar emphases of each may be brought into the open in a design that explicitly relates them to the map of the field of jurisprudence which we commend to our colleagues.

The following outline of questions has been developed to facilitate this inquiry.

### I. IS THERE CLARITY ABOUT OBSERVATIONAL STANDPOINTS?

1. *Is distinction made between theory of law and theory about law?*
2. *Are the roles of the observer and the decision maker distinguished?*

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Eulau, H. D. *Lasswell's Developmental Analysis*, 11 WESTERN POLITICAL Q. 229-42 (1958).

The observer is primarily interested in enlightenment with regard to the whole of community process, including the reciprocal impacts of authoritative decision and other value processes.

The decision maker is primarily interested in power, in making effective choices in conformity with demanded public order. It is important for the observer to create and maintain a *functional* theory which enables him to perform certain indispensable intellectual tasks in reference to the analysis of decision and of accompanying *conventional* theories of decision.

## II. WHAT IS THE CONCEPTION OF SCOPE (FOCUS OR SUBJECT MATTER OF INQUIRY) OF JURISPRUDENCE?

1. *What is the balance of emphasis upon perspectives and operations? What is regarded as an appropriate focus of inquiry? What explicit or implicit definitions are offered of "law" and equivalent terms?*

Our recommended definition of law characterizes it as a pattern of perspectives and operations; in more detail, as decisions which are commitments attended by threats of severe deprivations or of extremely high indulgences, taken in accord with community perspectives.

Is inquiry directed toward perspectives or operations or both?  
Is emphasis exclusively or predominantly upon perspectives alone?  
Is there an appropriate balance of emphasis upon both perspectives and operations, and a clear focus upon decision?

By perspectives we mean the subjectivities (subjective events) of the choosing process, sometimes sought to be communicated in "rules" or "principles."

By operations we refer to nonsubjective events (such as neuromuscular movements) which constitute the behavior in the process of choice. Note that choosing operations include signs (e.g., vocal movements and sounds) and nonsigns (movements not specialized to communication). Perspectives and operations can be described at every step of decision from preoutcome through outcome and postoutcome events.

2. *What is the balance of emphasis upon patterns of authority and patterns of control?*

Are patterns of authority and control clearly distinguished from one another?

What conceptions are employed?

What relations between authority and control are stated or assumed to be necessary to law?

By authority we mean participation in decision, in accordance

with community expectations, about who is to make decisions and by what criteria, in what situations and by what procedures.

By control we mean effective participation in decision making and execution—that is, in the process in which the outcome sought is in fact realized to a significant degree.

We use the word “law” to refer to authoritative and controlling decision. (Decisions are pretended when they are authoritative and not controlling; naked power when controlling and not authoritative.)

a. What procedures are authorized for establishing authority?

Is a distinction made between transempirical derivations of authority and the grounding of authority in reference to experience? Which is employed?

Are transempirical derivations conceived as metaphysical or theological? Which is used?

If authority is regarded as empirical is it conceived as part of the social process or as transcendent of it? Which alternative is chosen?

If authority is grounded upon experience within the social process is it conceived as arising in a demand by the jurist or a nondemand perspective?

By a demand we mean a preference or volition of the jurist.

By a nondemand we refer to an expectation by the jurist (which is a subjective reference of a designative character).

Whenever authority is asserted as a demand, is the reference:

To allegedly self-acting “oughts” found in legal prescriptions? (Decisions justified by syntactical relations among conventional legal terms and rules, e.g., the “law”).

To history? (E.g., lessons of experience, stare decisis, precedent.)

To logic? (E.g., legal norms justified as conforming to fundamental syntactic relationships.)

To ethics? (E.g., legal norms legitimized as conforming to basic propositions formulating standards of right and wrong.)

To undefined rectitude norms? (E.g., legal norms are justified as conforming to other norms of responsibility than are expressly defined in ethical terms.)

To social process values? (E.g., to specified categories of consequences in the social process.)

As we shall elaborate in more detail the social value orientation is the one that we recommend for grounding value goals.

Whenever authority is designated as a nondemand reference in the social process, to whose pattern of perspectives is reference made?

Since we recommend that authority be described as at

least a certain minimum frequency of perspectives about who ought to make what decisions by what criteria, it is necessary to take into account all the people who constitute a given community.

When authority is described as a pattern of community perspectives, what characteristics are considered in referring to decision makers?

We recommend that the important perspectives to be taken into account regarding the characteristics of decision makers are those which establish who is authorized to make what decisions, with regard to whom, and by what procedures.

When authority is designated from the point of view of community perspectives, what criteria are accepted from which decisions are made?

We recommend that the criteria refer to the scope, range and domain of values authorized to be affected and to the detailed shaping and sharing of values perceived as appropriate to particular contexts. (The precise tools by which these distinctions can be concretely applied are developed in connection with appropriate outlines of power and other value processes.)<sup>12</sup>

Since subjectivities may conflict it is worth noting that the descriptive observer has the task of recording which perspectives typically prevail during given time periods and are expressed in decision outcomes.

A further point of importance is that conceptions may be phrased in terms whose manifest content is empirical, yet which on contextual examination are disclosed as making disguised transempirical references (e.g., "the inevitable future is thus and so").

b. What required degrees of control are stipulated?

To what extent is inquiry made into the degrees of control accompanying any pattern of authority? And into the degrees of authority accompanying any pattern of control? Are ratios stipulated concerning the coincidence necessary to designate a "law"?

Our recommended theory does not stipulate any single ratio as necessary for "law." When different ratios are discovered they will be compared with one another for scholarly and policy purposes. The critical task is not to fix upon a preferred ratio but to ascertain the patterns in

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12. *E.g.*, examine MCDUGAL, LASSWELL & VLASIC, *LAW AND PUBLIC ORDER IN SPACE* (1963).

the relation between authority and control that have occurred, probably will occur, can be made to occur, and are recommended to occur in particular contexts.

3. *Is law conceived as a process of authoritative and controlling decision?*

Is law understood to be a sequence of relatively stable interactions within the social process?

By social process we refer to interactions among participants in a context which maintain a relatively stable pattern of value shaping and sharing.

Is an account given of the functions of authoritative and controlling decision?

By a function we mean a phase in the sequence of value shaping and sharing that the observer perceives as important in the process as a whole.

Are the structures of authoritative and controlling decision identified?

By a structure we refer to subordinate patterns in a social process which are relatively specialized to function.

Our recommendation is that a process of authoritative and controlling decision, as an integral part of a more comprehensive process of effective power, be economically described in terms of participants, situations (structures), bases of power, strategies (functions), outcomes and effects.

How comprehensive is the account given of the several phases of the decision process?

Are the following functions (or their equivalents) distinguished?

Intelligence: Obtaining information about the past, making estimates of the future, planning.

Promoting: Urging proposals.

Prescribing: Laying down general norms.

Invoking: Confronting concrete situations with provisional characterization in terms of a prescription to concrete circumstances.

Applying: Final characterization and execution of a prescription in a concrete situation.

Terminating: Ending a prescription or arrangement within the scope of a prescription.

Appraising: Comparison between goals and performance.

4. *How explicitly is the relationship formulated between decisions and the social process of which they are part?*

Is the pre-arena process of interaction clearly distinguished and made an object of inquiry?

We distinguish "Precipitating Events" as events which lead to

the involvement of community decision makers. "Parallel Events" are of the same kind, save that they do not lead to a community arena. We also identify "Preparation" for involvement in arenas.

Is the claims process — the presentation of demands to decision makers — distinctly recognized and made subject to inquiry?

We distinguish "parties" who demand that decision makers act in such a way that the net value position of a party is affected; "justifications," which are the prescriptions employed; and "strategies" of managing all base values for the purpose of affecting outcomes.

Is the decision process — the response of decision makers — singled out for recognition and study?

We examine the immediate outcome of indulgences and deprivations by decision makers; also longer range effects.

Is a systematic and comprehensive analysis of the social process proposed?

In brief we characterize the social process as human beings interacting with one another and with resources. The flow of interaction is described in two sets of categories: values and institutions. Values are categories of preferred events which are shaped (preoutcome) and shared (outcome, postoutcome). Institutions are patterns of practice which are specialized to particular values. A practice is a pattern of perspective and operation. The perspectives are patterned in myth, the operations in technique. Myth is divided into doctrine, formula, and miranda (roughly philosophy, legal formulations, folklore). Eight value-institution categories (examples):

- Power: government, law, politics.
- Wealth: production, distribution, consumption.
- Respect: social class and caste.
- Well-being: health, safety, comfort arrangements.
- Affection: family, friendship circles, loyalty.
- Skill: artistic, vocational, professional training and activity.
- Rectitude: churches and related articulators and appliers of standards of responsible conduct.

Enlightenment: mass media, research.

6. *How clearly are the interconnections formulated among the many communities of which the world community is composed?*

Is it emphasized that interactions are on a global scale?

We speak of a world community because interactions and interdeterminations among human beings are on a global scale.

What account is offered of the interrelations of the different

community processes (from local, through regional, to global) exhibited by the world arena?

Is the nature of a military arena defined?

The arena of world politics is a military, not a civil, arena because of the expectation of violence and other extreme forms of coercion in the settlement of some disputes.

What account is offered of the interpenetration of processes of authoritative decision in the different communities? How are the interrelations of national and international law described?

Is it made clear that rival systems of public order dominate the world arena and that universal public order is therefore incomplete?

By public order we mean the pattern of values and basic institutions that are protected and fulfilled in the legal order (the authoritative and controlling decision process).

Is it sought to obtain an empirical account, by methods appropriate to the task, of the interpenetrating processes of national and international authority and control? Of the varying balance between inclusive and exclusive decision?

Although the public order of the world community is not complete, it includes legal patterns that provide for inclusive participation in certain processes, and patterns that recognize the control of individual participants over certain other processes. Exclusive and inclusive decisions are not regarded as dichotomous opposites, but as expressing a continuum in degrees of shared participation in the making of decisions, with reference not only to the number of participants but to degrees of sharing in all detailed phases, including access to arenas, control over base values, management of strategies, and determination of outcomes. Important arenas internal as well as external to particular communities must be taken into account.

Are rival systems of public order systematically compared in terms of their consequences for the values of human dignity?

### III. WHAT ARE CONCEIVED TO BE THE RELEVANT INTELLECTUAL TASKS OF JURISPRUDENCE?

1. *Is a distinction made and applied between principles of content and principles of procedure?*

A principle of content classifies the subjects to be dealt with; the principles of procedure are a set of guides regarding the order in which subjects are considered.

2. *Are the five intellectual tasks of jurisprudence clearly discriminated?*

Our policy-oriented approach identifies five tasks: the clarification of goal values, the description of trends, the analysis of conditions, the projection of future developments, and the invention and evaluation of alternatives. Although it is convenient to separate the tasks for content purposes, it is not to be supposed that they are performed once and for all. The expectation is that all methods of thinking will be frequently used in seeking the solution of any problem. Further, it is to be noted that separation is by relative emphasis, not "either-or."

3. *Is there deliberate clarification of goal, and how is this done?*

Is a sequence followed that moves from general characterization of goal to specification?

Is an overriding goal formulated that relates to the place of law in the entire social context?

Our goal — and the goal we recommend to others — is the realization of a public order of human dignity on the widest possible scale. In general, we regard the goal as realized to the degree that participation in value shaping and sharing is widespread rather than narrowly restricted.

Is the overriding goal, if any, postulated or is it derived from transempirical sources (theology, metaphysics); or is it grounded empirically?

We adopt our goal as a postulate because we want to make it easy for persons to cooperate whose acceptance of the ideal is derived or grounded in many different faiths, philosophies and experiences.

How do trend considerations affect goal?

Since the general objective is postulated it is not open to modification through time. We emphasize, however, that specifications of goal are open to the discipline of data regarding trend. Some institutional practices of prehistory and history can be readily classified "by definition" as in obvious harmony (or disharmony) with our basic conceptions. Some require more knowledge.

How does the consideration of conditioning factors affect goal?

As knowledge of factors that have conditioned past events is made available past practices and institutions can be more precisely evaluated. For example, previously unclassifiable patterns can be described according to the degree to which they have facilitated or retarded the practices that have been readily classified "by definition."

The study of conditioning factors may show that in various circumstances fuller immediate realization of the goal was held back by its partial realization. Thus partial realization, though



a gain, was also a cost. But it may be found that an attempt that failed at one time was a factor affecting favorable changes at a later time, in this way yielding advantages not at first apparent.

It is not to be overlooked that a practice which is "by definition" out of harmony with a long-range goal may have a positive effect in particular circumstances. The net cost of incompatible practices is thereby reduced.

How does consideration of projections affect goal?

To some extent projected future developments can be classified "by definition" as in harmony or disharmony with the basic objective. If a future event cannot be so classified it must be appraised according to its expected impact upon recognizable categories of projected events.

How does the consideration of alternatives affect goal?

Since all fully evaluated policy alternatives must be appraised according to fundamental goals in the light of all available knowledge of the past and inferences about the future, we need not comment further upon them at this point. This permits taking into account degrees of risk and possibility.

4. *Are trends explicitly described and by what methods?*

In describing past events, are procedures followed that move between a specific category of events and the total context, and that examine the whole as moving toward or away from the realization of postulated goals?

In regard to any given category of trend sequences:

(a) are maximum and minimum estimates noted, together with the degree to which trend generalizations are confirmed by data obtained by appropriate methods; (b) are the places of origin, lines of total and partial diffusion, and of restriction, traced for all relevant patterns of practice?

How are trend descriptions affected by considerations of goal?

It is pertinent to give priority to tracing the trend of each variable that, as a result of goal clarification, is specified as in harmony or disharmony with the goal. It is also relevant to trace the trend of each variable that as a result of conditioning analysis is viewed as significantly affecting the realization of goal variables (favorably or unfavorably).

Viewing the trends of any period or locality as a whole (from the global context down) what is their overall significance for the overriding goal?

How are trend descriptions affected by the consideration of conditioning factors?

For instance, is inquiry intensified in the light of such findings

as that certain factor combinations have been correlated with a given trend as it increases, decreases, or remains constant, and may therefore have conditioned trend or have been conditioned by factors which also affect the trend?

How are trend descriptions modified by considering projections?

For example, as an aid to projection are trends examined to identify those undergoing cyclical or structural changes in the recent past?

How are descriptions of trend influenced by consideration of alternatives?

For instance, in view of the policies presently proposed to affect trends in the future, is priority given to describing policies invoked at various times in the past to obtain similar trend effects?

5. *Are conditioning factors analyzed and by what methods?*

Is there a sequence in the examination of conditioning factors that moves between a given factor and the formulation and assessment of multi-factor equilibrium models?

In any given analysis is a conditioning factor considered as a "response," or as an "environmental" or "predispositional" variable?

Note that as response a factor is a "dependent" variable; it is "independent" as a predispositional or environmental variable.

Is any given factor explicitly related to comprehensive theories inspired by the "maximization postulate"; or to less comprehensive theories?

The maximization postulate holds that all responses are a function of net value expectation (within the limits of capability). Capability may be limited by "resource" factors or coercion.

In obtaining and processing data do the observational standpoints vary in degree of intensiveness, depending upon: (a) the degree of specialized training required of the scientific observer and the complexity of the facilities employed; (b) the length of the observational contact with the field observed and the inclusiveness of the observations recorded; (c) the degree of consciousness on the part of the observed of being under observation (the degree being least when the observer is a "collector" or "spectator"; most when the observer is a "participant" or an "interviewer"); (d) the degree of control over the observed which is exercised by the observer?

Are data and generalizations reported as: (a) case studies; (b) statistical correlations; (c) experimental findings?

In planning and executing scientific programs of research what is the degree of reliance upon: (a) the individual investigator; (b) a team of investigators?

In the analysis of conditioning factors do considerations of overriding goal lead to the giving of priority to the examination of variables that condition, or are conditioned by, goal variables?

Where possible, an equilibrium model should be chosen that includes all goal variables; hence particular attention should be directed to cross sections when the goal pattern is most closely approximated.

In the analysis of conditioning factors do considerations of trend lead to giving priority to situations in which a given factor is known to have changed rapidly or slowly, or remained notably constant?

In the study of conditioning factors is priority given to factors which projections have indicated will probably conflict with one another at a given time in the future?

In the analysis of conditions does the consideration of policy alternatives lead to giving priority to the factors which have conditioned past success or failure of each alternative now proposed?

6. *Are projections developed and by what methods?*

Are methods used that move between a particular category of extrapolated events and the formulation and assessment of developmental constructs?

At this phase the assumption is made that the act of thinking about the future will not have any significant impact upon it. Also, by a developmental construct we mean a hypothesis that characterizes the most salient features of a selected cross section of past and possible future events.

In assessing any particular category of events are maximum and minimum estimates taken note of, and explicit modes of extrapolation used in projecting them?

Is priority given to the projecting of particular categories of events that are either most or least in harmony with the overriding goal?

In projecting the future of trends is priority given to trends: (a) that have been increasing rapidly, diminishing rapidly, or remaining notably constant; (b) or that have involved practices which have been totally diffused or restricted or partially incorporated?

In the projection of conditioning factors is priority given to particular factors or factor combinations that have had the greatest impact upon the magnitude of the factor that was conditioned?

In considering policy alternatives to be projected is priority given to the policies that appear to have had the greatest degree of

success under past conditions most similar to those assumed in the future? At what time will future conditions be most favorable to the realization of a given policy?

Are systematic methods used to proceed from the extrapolation of single factors to developmental constructs?

Note that all categories of events that harmonize (or contravene) basic goals or that condition goal variables can be extrapolated together in order to locate the times at which these factors will probably conflict with (or facilitate) one another.

At these future cross sections the probable sequence of events can be estimated in the light of available knowledge of conditioning factors.

Comprehensive developmental constructs may be provisionally devised on the assumption that goal values will be rather fully realized at specified cross sections in the future. Note the factor combinations that must be assumed to occur, and estimate their probability.

Devise a construct on the assumption that goal values will be poorly realized at specified cross sections in the future. Note the factor combinations that must be assumed and estimate the probability of occurrence.

Revise constructs from time to time to bring the estimated image into closest approximation of the future.

7. *Is attention given to the invention and evaluation of policy alternatives and by what methods?*

Do the methods used move between the consideration of particular strategies and of unified strategies for the maximization of goal values?

Is it perceived that since a policy is a projected course of conduct the alternative must be specified throughout its entire sequence in terms of patterns of practice and of value indulgences and deprivations?

Note that participants are to be specified who are assumed to initiate policy; also that the intensity must be specified of all demands on behalf of any relevant component of the self system. Further, it must be clear what expectations of success or failure are assumed to be present.

Note that base values at the disposal of all important participants are to be made explicit. In particular, the value position needs to be clear among those who are in favor of a policy or who are opposed or uncommitted.

Observe that in the planning of strategies the following relevant specifications are called for:

The decision outcomes to be affected (intelligence,

recommending, prescription, invocation, application, appraisal, termination).

The social effects (beyond the decision outcomes) to be influenced (the accumulation, assembling and processing of values; the distribution and enjoyment of values).

The prospects of success acting independently or in coalition.

The chances of a strategy aimed at deterrence against value deprivation, restoration and rehabilitation of destruction, prevention of provocation, reconstruction of basic value-institution context.

Probable cost (realized losses; blocked gains) in terms of all values of various gains (realized gains; blocked losses) for particular participants and the aggregate.

Prospects of success by the use of persuasion or coercion. Is attention given to encouraging the invention of policy alternatives, and by what methods?

Note that the probability of policy invention is increased if the principal outlines of a context—including conflicting and uncertain interpretations—are brought to the focus of attention.

Also, if within the limits which are broadly specified, random combinations are considered.

If periods of intensive concentration upon a problem are interrupted by periods in which attention is diverted to other matters.

If techniques of free association are employed to supplement guided assessments of a context.

If policy thinkers confront themselves with the challenge of arriving at integrative solutions.

Is attention given to problem formulation?

For example, a policy problem can be clarified by noting that it is a discrepancy between goals and past or future events.

Further, to the extent that it is possible to express goals quantitatively and to make estimates of probability, it is possible to evaluate alternative policies by the use of mathematical, statistical and automatic procedures of computation. To the extent that these operations are not applicable the most promising procedure for evaluating policy alternatives is to bring prose or pictorial versions of the future to the focus of attention of the chooser.

Is it emphasized that as new policy alternatives are invented, new sets of questions are raised concerning the total context as revealed by trend, condition and the consideration of projections?