

glad to say I am on the side of my colleague, Wilfred Jenks. I have no difficulty with a partial acceptance of the general thesis put forward by Professors McDougal and Lasswell that better criteria are needed to determine what rules truly will unify this diverse and diverted world, nor with their wish to encourage research in the ascertainment of these criteria and in the formulation, accordingly, of the rules that follow. But, while supporting aspects of these views, I cannot accept the position that the traditional materials provide as little opportunity for further creative development as Professor McDougal and his colleague seem to imply. It is better to suffer the doctrines and terminology we know than to fly to regions, if not entirely mysterious and unexplored, that may be professionally unmanageable. I am bound to say that I have the lawyer's prejudice in favor of tools and criteria already established, even though I realize how vital it is to view the law from that higher ground where all the social disciplines meet to pool their common wisdom.

In the end the legal theorist, the traditional doctrinalist, the seeker after values and the sociologist of the law must find a common road if they wish to make common cause for reformulation. I venture to suggest that their common road, in part, is the search for new areas of reciprocity in law where the two great camps of our passing day are united by a common functional need, where diverse systems of order are likely to yield to a common hope for the avoidance of disorder, when disorder is costly or threatens the national interest. For even the idea of the national interest itself is changing under the twin drives of fear of the atom and the hope of taming nature to relieve the ancient burdens of men, a hope now more widely shared than ever before.

President McDougal thanked Professor Cohen for his eloquent and profound remarks, and proceeded to deliver the following address.

## PERSPECTIVES FOR AN INTERNATIONAL LAW OF HUMAN DIGNITY

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By an international law of human dignity I mean the processes of authoritative decision of a world public order in which values are shaped and shared more by persuasion than coercion, and which seeks to promote the greatest production and widest possible sharing, without discriminations irrelevant to merit, of all values among all human beings. It is familiar knowledge, perhaps already made even more familiar by prior speakers, that the contemporary world arena exhibits no such international law or public order, effectively applied on a global scale. What we have instead is rather a variety of "international" laws and an anarchy of diverse, contending orders—orders proclaiming and embodying the values of human

dignity in very different degree, and aspiring to application and completion on many different scales of international, regional, and global compass. The overriding struggle for most comprehensive completion is, of course, between the totalitarian orders, which explicitly demand the employment of force as an instrument of expansion and postulate the monopolization rather than wide sharing of many important values, and the non-totalitarian orders, with a dominant democratic core, which authorize the use of force only for conservation of values and postulate the wide sharing of all values in freedom, safety, and abundance.<sup>1</sup> The unprecedented stakes in this struggle, given the destructiveness of modern weapons, are commonly considered to extend beyond the values of human dignity, even to the continued habitability of the earth and existence of man.

The alternatives currently being proposed as possible modes of escape from this unprecedented peril are as many and varied, as they are partial or illusory. One of the more hopeful proposals—despite its over-emphasis on past experience and its assumption, not always tenable, that the factors and policies which prevail in the internal arenas of states for regulating their internal social processes will, and should, also prevail in the external arenas in which such states engage each other, as composite bodies politic, for very different goals—is that of our distinguished guest, Dr. Jenks. In his address, as in his recent book, he most persuasively recommends the comparative study of the general principles of systems of national law for the purpose of achieving “a wider synthesis in which our own legal tradition fuses with legal traditions which have arisen from entirely different histories and circumstances to produce a generally acceptable law of mankind.”<sup>2</sup> Much less appealing to the champions of human dignity, though some of these appear to have been misled, is the most recent totalitarian tergiversation in espousal of a system of “peaceful co-existence,” in which the fundamental concepts of a more traditional international law, such as sovereignty, non-aggression, non-intervention, equality, self-determination, and so on, are defined and applied in ways to make them serve the purposes, not of peaceful co-operation, but rather of a temporizing tactic designed to obfuscate opponents while poisoning them for ultimate destruction.<sup>3</sup> Hardly more promising are the occasional appeals

<sup>1</sup> Some of the characteristics of this struggle, and attitudes of totalitarians toward the use of force, are reviewed in Strausz-Hupé and Others, *Protracted Conflict* (1959); Emerson and Claude, “The Soviet Union and the United Nations,” 6 *International Organization* 1 (1952); Hilsman, *On NATO Strategy*, in *Military Policy Papers* 1 (Washington Center of Foreign Policy Research, December, 1958).

<sup>2</sup> The theme is developed in Jenks, *The Common Law of Mankind* (1958).

<sup>3</sup> Relevant history and appraisal are offered in Garthoff, “The Concept of the Balance of Power in Soviet Policy-Making,” 4 *World Politics* 85 (1951); Aaron and Reynolds, “Peaceful Coexistence and Peaceful Cooperation,” 4 *Political Studies* 281 (1956); Pinto, “International Law and Coexistence,” 82 *Journal du Droit International* 307 (1955).

Indication of how advocates of freedom may be misled appears in Panchsheel, *The Publications Division, Ministry of Information and Broadcasting, Government of India* (July, 1957). See also Bozeman, “India’s Foreign Policy Today,” 10 *World Politics* 256 (1958).

for a "system neutral," purporting to mate cannibals and non-cannibals without changing their incompatible attitudes toward cannibalism, in apparent assumption that an effective international law can be built upon foundations other than the common interests constituted by shared goals and shared expectations about the conditions under which such goals can be secured.<sup>4</sup> The once popular proposal by Professor Northrop for a "world positive law," based upon "the living law fact of ideological and living law pluralism," which would in some unspecified way "guarantee to each ideology and nation of the world protection of its particular norms in its own living law geographical area," and yet confine international concern and competence for inclusive decision to alleged violation of the "basic principle of living law pluralism," has never been related to the effective predispositions of flesh-and-blood decision-makers nor given the hands and feet of detailed principles and procedures in relation to the controversies which actually arise across state lines.<sup>5</sup> Incomplete to the point of Utopianism, because they ignore the great variety of authority structures and functions indispensable to a law-governed world, though perhaps not dangerous, are the much-publicized proposals by professional societies of practicing attorneys in some countries to extend "the rule of law" between states by the judicial application of pre-existing rules. Still other quite recent proposals, largely pessimistic about the potential rôle of law, build upon elaborate theories of deterrence and seek security through naked power confrontations and the stabilization of mutual threat. Increasing recognition of peril and creative imagination can be expected to multiply the kind.

The stakes in this inquiry for possible bases of accommodation of the contending systems are as high as those in the struggle itself. Hence, I hope I may be forgiven, in a major address to this Society, the arrogance of attempting to break a lance or two of my own on this contemporary version of a perennial problem. The task which I have set myself is to consider as systematically as possible what those of us who are genuinely committed to the values of human dignity may do, in our specialized rôles as scholars, advocates, counselors, negotiators, and decision-makers, to establish and maintain the perspectives best designed to help move mankind from its present precarious balance of terror toward a more complete world public order—toward an integrative universalism—in which the values of human dignity may be fulfilled and made more secure. In attempted performance of this task, I shall offer no trans-empirical absolutes of infallible guidance or allegedly indispensable techniques in the detailed principles and procedures of authority: I will rather simply recommend the continuous employment, in all our specialized rôles, of a certain process of thought—a frame of reference, a method of inquiry, a disciplined and contextual mode of analysis—intended to promote the most effective use

<sup>4</sup> Schlesinger, *Soviet Legal Theory*, Ch. 10 (2d ed., 1951).

<sup>5</sup> Northrop, *The Taming of the Nations* 259 *et seq.* (1953). Other statements by Professor Northrop appear in "Contemporary Jurisprudence and International Law," 61 *Yale Law Journal* 623 (1952); *Ideological Differences and World Order* (1949).

of our minds in bringing to bear upon inquiry and specific choice the most relevant findings and techniques of contemporary science and knowledge. The major outlines of this process of thought, as my colleague Professor Lasswell and I have elsewhere indicated at some length,<sup>6</sup> include the location of particular problems in the most comprehensive context of conditioning variables that may affect the outcome desired, the explicit formulation of problems and alternatives in decision in terms of the fundamental goal values at stake, and the systematic employment, for guiding choice among alternatives, of certain interrelated intellectual skills. These skills include: the detailed clarification of basic goal values; the description of past trends in degrees of achievement of such values; the scientific study of the conditioning factors which have affected and may continue to affect degrees of achievement; the projection of probable future developments; and the invention and evaluation of alternatives for the more effective securing of the demanded values.

In the hope that the highest degree of communication and persuasion may be achieved by exemplification, I now turn to necessarily brief and impressionistic application of each of these various steps in our recommended process of thought to the task of establishing perspectives appropriate to an international law of human dignity in today's crisis of contending, incompatible systems. Though my principal emphasis will be upon the importance of maintaining a flexible, policy-oriented, contextual approach to all problems, in an effort to attain the most direct and immediate contact with contemporary reality, I will develop in some detail certain suggested alternatives of policy which express my appraisal of the relevant goals, conditions, trends, and probable future developments.

The first stage in appropriate inquiry is to locate the overriding problem of achieving accommodation of today's contending systems under an international law of human dignity in its broadest context of factors which may affect outcomes. This must require, for any degree of realism, at least brief reference to the ineluctable interdependences in contemporary world social and power processes. The most obvious fact in a world exhibiting artificial satellites, intercontinental ballistic missiles, and nuclear warheads, not to mention an ever-expanding technology of production and communication, is that all peoples everywhere, even those who never directly confront each other, continuously affect each other in a process of inter-determination with respect to all values, which has but little regard for state or other man-made lines. Scarcely less obvious are the facts of a world process of effective power in the sense that, as a part of the world process of interaction and inter-determination, decisions are in fact made and implemented, by threat or imposition of severe deprivations or by promise or bestowal of high indulgence, which inclusively affect the production and distribution of values among all peoples everywhere. Much more obscure, because of the clash of contending systems, are the facts about

<sup>6</sup> Most recently in "The Identification and Appraisal of Diverse Systems of Public Order," 53 A.J.I.L. 1 (1959).

the precise rôle that the specialized processes of authoritative decision, reflected in and represented by the contending systems, play in the over-all effective world power processes. It would seem clear, however, that these specialized processes of authoritative decision—processes in which decisions are taken by decision-makers who, and in accordance with criteria which, are established by community expectations as authoritative—do have a most substantial effect, and that inclusive policies are continuously being prescribed and applied, in arenas external to particular states, which significantly influence both the external strategies and internal policies of states in many different groupings, from regional to global. In a world with an ever-accelerating rate of technological change, and with burgeoning populations, it may confidently be expected further that the range, frequency, and intensity of interactions and decisions with inclusive effects will expand at a similarly accelerating rate. The totalitarians and the champions of human dignity are thus inescapably linked in a common destiny.

The more particular problems which this common destiny creates for the champions of human dignity relate to their every value. It would not seem necessary to emphasize anew the degree of threat to mere physical survival. In an apogee of paradox, contemporary writers seriously refer to “the destructiveness of nuclear weapons,” increasing “man’s ability to destroy his fellows many million-fold in barely a decade,” as a new “basic given” which serves “to make a large and vital area of international relations calculable.” This new potentiality of destruction obligingly establishes the premise that “full-fledged nuclear Powers possess the power to destroy each other” and, indeed, by “unrestricted use of their nuclear power” to “endanger civilization itself.”<sup>7</sup> It would appear almost equally superfluous to document in detail that the more comprehensive threat from the totalitarians extends to every phase of every value process in the whole way of life which many of us project and cherish as a society of freedom, security, and abundance. The insistent challenge to the champions of human dignity, barring the provincial assumption that any existing system of public order completely and perfectly embodies their demanded values, is unremittingly to search for more economic alternatives on the whole front of international law and world public order.

The values we recommend for postulation as the goal values of human dignity are, as our emphasis upon persuasion rather than coercion and upon the widest possible sharing of all values indicates, merely the traditional values of humanitarianism and enlightenment bequeathed to us by most of the great religions and secular philosophies prevailing in recent centuries.<sup>8</sup> By explicitly committing ourselves to these values, we only

<sup>7</sup> King, “The Rationale of Agreement between Nuclear Powers: A Method of Analysis,” in *East-West Negotiations* 38 (Washington Center of Foreign Policy Research, 1958).

<sup>8</sup> A more comprehensive statement of some of these points appears in McDougal, “The Policy-Science Approach to International Legal Studies,” in *International Law and the United Nations* (Eighth Summer Institute, University of Michigan Law School, June, 1955).

locate ourselves in the rising common demands and expectations of our time. For some centuries, despite occasional lingering residues of feudalism and the more recently emergent countercurrents of totalitarianism, the world arena has continued to exhibit a growing unity and ever increasing intensity in the demands of most peoples for the greater production and sharing of a great range of values, conveniently categorized in such terms as power, respect, enlightenment, wealth, well-being, skill, rectitude, and affection, or their equivalences. The strength and frequency of these shared demands are demonstrated in many different formulations of authority and expressions of effective control, both international and national, official and unofficial, such as the United Nations Charter, the Universal Declaration of Human Rights, the proposed Covenants on Human Rights, regional agreements and programs, a great variety of existing and proposed international agreements on specific functional problems, national constitutions (old and new), political party platforms, pressure group and private association programs, and so on. A most recent eloquent reaffirmation is the Declaration of Delhi put forth in January of this year by the Congress of the International Commission of Jurists meeting in New Delhi. The important question is how all these demanded values, expressed in many different cultural and institutional forms and at many different levels of abstraction, with little systematic ordering, can be articulated, appraised, and elaborated in the operational detail necessary to guide the specific choices of an international law of human dignity.

The first point we would make is a negative one that appropriate clarification is not to be achieved by infinitely regressive logical derivations from premises of trans-empirical reference. It is of the utmost importance that specific values, in the sense of demanded relations and behavior between human beings, be distinguished from the ideologies from which they may be logically derived. Historically, the values of human dignity have been justified by derivations from premises originating in many different sources, trans-empirical and empirical, such as religion, natural law, metaphysics, science, history, common sense, and so on, and there would appear little need for invidious choices between different types of justification. Peoples of many different faiths and creeds have long demonstrated that they can co-operate for the achievement of common values, irrespective of their different derivations of these values. Attempts to adjudicate between derivations commonly create only division. It is common values and not common ideologies which are the indispensable sanction of an international law of human dignity.

The point we would stress most is, accordingly, the positive one that it is possible, by moving down the ladder of abstraction, to ascribe operational indices to each and all of the stipulated values of human dignity in sufficient detail to permit relation of the specific choices that must be made in particular contexts to both short-term and long-term community interests. This may be called empirical specification, as contrasted with

trans-empirical derivation and justification.<sup>9</sup> The rational performance of this task need not require either the blind guessing at and adoption of all details of community demand and expectation or the arbitrary projection of one's own personal preferences. What such performance does require, in contrast, is a disciplined, configurative, and contextual use of all the recommended skills of thought, which is "time-oriented" and "knowledge-oriented" as well as "goal-oriented," and in which all tentative formulations of goal are tested against every significant feature of context. In any particular context, the detailed clarification of goals must thus proceed concurrently with the detailed application of each of the other skills, asking, with respect to alternatives being considered, such questions as: What—for goal orientation—are the values, "long-range, mid-range, and immediate," at stake in the particular events to which specified decision-makers must respond? What, for trend orientation, are the detailed policies which prior decision-makers similarly situated have sought and effected? What factors, for orientation in scientific knowledge, appear to have conditioned past response and degree of achievement? What is the probable future influence of these and other factors and what are probable future developments? What practicable, operational indices can in this context be given to preferences for shared power, shared respect, shared enlightenment, and so on? What alternatives in immediate decision offer the most effective and secure advance toward long-term goals?

The importance, even necessity, of this type of configurative analysis for the rational clarification of goals may be demonstrated by quick reference to some of the values incorporated in the United Nations Charter. It has been suggested by our distinguished friend, Dr. Oscar Schachter, that the purposes set forth in the United Nations Charter seem to be essentially similar to the conceptions of human dignity we recommend, and that it is not entirely obvious why further verbiage is needed. The purposes of the Charter imply, he states, "a wide degree of sharing of values, particularly insofar as they specify economic and social well-being, universal respect for human rights, self-determination and political independence, sovereign equality and others." "They also include," he adds, "appropriate emphasis on the minimizing of violence and coercion as, obviously, by the primary emphasis on peace and renunciation of force, and also through such concepts and principles as the obligation of peaceful settlement, respect for law and treaties, the bar against intervention in domestic affairs and respect for human rights."<sup>10</sup> The important point, however, is that the critical words of the Charter, like the key terms in conceptions of human dignity, are neither self-defining nor capable of being defined by simple, once-and-for-all, verbal substitutions. The ascription of any detailed meanings, much less meanings calculated to promote a world public order of human dignity, to words such as "political independence,"

<sup>9</sup> Cf. Lasswell, "Clarifying Value Judgment: Principles of Content and Procedure," 1 Inquiry 87 (1958).

<sup>10</sup> In private communication, quoted by permission.

“sovereign equality,” “self determination,” “act of aggression,” “self-defense,” “human rights,” and “intervention,” must be a continuous process, employing every relevant intellectual skill, in relating specific alternatives in choice to all the significant features of multiple and continuously changing contexts. An adequate framework of theory for guiding inquiry and choice would appear to require key terms different from, or in addition to, the authoritative words of great charters or other technical sources. It is thus only by the systematic exposure of all tentative formulations of preferred policies and technical definitions to all the significant features of specific contexts of decision, to the experience of past decisions, to relevant conditioning factors in the contemporary arena, and to future probabilities in the course of events, that one can hope to achieve decisions or recommendations, which are neither blindly conventional nor arbitrary, but rather rationally conceived to promote the overriding values to which he is committed.<sup>11</sup>

For orientation in time, in exercise of our second recommended intellectual skill, the proponent of an international law of human dignity will examine past trends in degrees of achievement of his postulated values in whatever comprehensiveness and detail necessary to his immediate policy purposes, and the ideal would of course be a continuing, entirely comprehensive, and detailed audit with respect to all values for all purposes. In the absence of such an audit, we can only venture the suggestion, in anticipation of later recommendation of alternatives, that the overriding trend in recent centuries has been, despite the inroads of contemporary totalitarianism, toward the fuller achievement for more and more people of all the values commonly regarded as those of human dignity. This suggested trend could be easily documented for such values as well-being, enlightenment, skill and so on. It could even be documented in measure for that sharing in effective decision known as “international law.” In noting the positive achievements of inherited international law one might point to such items as the increasing number of participants in the world social process—new territorial communities, international governmental organizations and regional groupings, private associations of all kinds, and even the individual human being—who have been given access to, and made subject to, the processes of authority; the provision of immense new specialized structures of authority, in international governmental organizations, for the better securing of many demanded values; the development of appropriate doctrines and practices, only recently imperiled, for the inclusive enjoyment of great sharable resources, such as the oceans; the increased protection of private choice with respect to membership in territorial communities and in freedom of movement between communities; the prohibition, as aspiration at least, in great fundamental charters of the employment of violence as an instrument of international change; develop-

<sup>11</sup> For illustration in some detail, see McDougal and Feliciano, “Legal Regulation of Resort to International Coercion: Aggression and Self-Defense in Policy Perspective,” 68 *Yale Law Journal* 1057 (1959).



ment of reasonably rational doctrines and practices with respect to the making, application, and termination of international agreements; the elaboration of principles of jurisdiction which permit any state substantially affected by events, upon taking into account the degree of involvement of other states, to prescribe and apply policy with respect to such events, and so on.

The proponent of human dignity will not, however, by self-congratulation delude himself into the belief that our present world is the best of all possible worlds. Protection of the *status quo* against change by peaceful procedures is no part of the platform of an international law of human dignity. The genuine champion of human dignity must be completely sensitive to tremendous continuing discrepancies, when the world as a whole is considered, between his postulated goals and actual achievements. The productive facilities of the globe, and now of outer space, have just begun to be tapped, and the wide disparities in the distribution among peoples of existing values must shock the consciences of us all. Certainly, the international law, whose positive features were indicated above, remains in common conception seriously inadequate, if not primitive. One has only to note such items as the lack of appropriate legislative and executive organs for securing orderly change; the insistence by states upon a unilateral, exclusive competence to make their own interpretations of customary law and agreements; the reluctance of international officials to assume competence or jurisdiction without the consent of states; the continuing unwillingness of states to submit what they regard as important national interests to decision beyond their control; and so on.

For orientation in scientific knowledge, in exercise of our third recommended skill of thought, the proponent of an international law of human dignity will make the fullest possible use of existing information about the whole panoply of environmental and predispositional variables that may affect the outcomes he demands. Ideally, he would, of course, have established institutionalized procedures to assist both in processing and adding to the store of relevant knowledge. In the absence of such procedures, we can only make quick allusion to the major types of variables which require consideration. Among the more important environmental variables may be noted such items as the nature and features of the resource environment, which today is changing so rapidly; the great disparities in the existing distribution of values, noted above, and the accelerating rate of population increase; the number, location, and relative strength of the more important existing, and probable future, participants in the world value processes; the frequency and intensity of direct and indirect interactions between peoples; the potentialities of instruments of coercion and destruction, extending today even to the mutual annihilation of major opponents and promising change in ways now unpredictable; the fantastic potentialities of expanding technology, when applied to all the new environment opening up, for increasing the production and improving the distribution of values; the detailed interdependences between peoples

which ensue from the configuration and interaction of other factors; and so on.

It is, however, the relevance of the predispositional variables that I should like most to stress. The real import of the environmental variables is in their impact upon the demands, identifications, and expectations of individual human beings. This impact is channeled through many different patternings in culture, class, interest, personality, and exposure to crisis, but all these patternings admit of scientific study for our present purposes. The important point hinges upon what is today commonly called the "maximization postulate": men act to maximize their values, conscious and unconscious. One of the most important variables in the contemporary world arena, accordingly, pertains to the relative skill with which the contestants in the different systems manage both inquiry and their use of the ideological instrument of policy. The champions of an international law of human dignity cannot hope to prevail if they cannot clarify for most of mankind, and especially for their effective leaders, the common interest of shared demands for the values of human dignity and of shared understanding of the conditions under which such demands can be secured.

For locating himself in the stream of future events, in exercise of our fourth recommended skill of thought, the proponent of an international law of human dignity will systematically examine and discipline his assumptions about the future and seek to increase, by both trend and scientific knowledge, his realism in appraisal of alternatives. He will abjure simple, dogmatic extrapolation of past experience and seek to test all trends, in the light of scientific knowledge, for their potentialities of future realization. In quick reference we can only note two major possibilities among the most general trends. The two major possibilities, apart from destruction of the earth in nuclear conflict, would appear to be either the triumph on a global scale of totalitarian despotism or continued movement toward freedom. Some astute observers regard the first of these, the triumph of the totalitarians, as the most probable, and foresee a world of militarized, garrisoned communities, controlled from the center and modeled on the prison, with a nearby graveyard. Movement in this direction, if it continues, is expected to be rapid and relatively complete. The champions of human dignity will, however, continue to project the possibility that the movement toward freedom may be resumed and completed on a more global scale. Movement in this direction, if it occurs, can be expected to be slow and to require much assistance.

We come now to the final and most creative task confronting the proponent of an international law of human dignity, and the one to which I wish to give greatest attention: the task of participating, in exercise of our fifth recommended skill of thought, in the invention and evaluation of the alternatives in policy most economically designed to move us through these troubled times of contending systems toward the more complete and perfect world order we seek. One relevant lesson we have learned, in application of the first four skills of thought, is that there can be no easy or permanent

panacea in any principle, institution, or procedure. There can be no escape from unremitting effort continuously to invent and evaluate new and more appropriate structures and functions of authority and to create the predispositions in the effective leaders of the world to put such structures and functions into controlling practice. The highest-level aspiration must, of course, be to suggest principles, institutions and procedures appropriate, beginning where we now are, both to secure and maintain minimal order, in the sense that force is made the servant of order and prohibited as an instrument of unilateral change, and to facilitate the greatest production and widest possible sharing of all values by peaceful, persuasive procedures. The fight that I should like to essay, however, moving somewhat beneath this highest aspiration, is, rather, first to outline certain principles of intermediate level abstraction and relevance—which might be called the minimum principles of an integrative universalism—and then to make a somewhat more detailed, though necessarily impressionistic, application of these principles in recommending certain conceptions of law and certain principles and procedures relating to some of the more important features of the world power and other value processes which might serve in the contemporary context to move us more in the direction of our demanded world public order.

In recommending certain mutually reinforcing principles of intermediate-level generality, we address ourselves, of course, not so much to the totalitarians, as to others who already share in degree the values of human dignity. It is not our expectation that the totalitarian leaders will immediately embrace the principles we propose. These principles do, however, express our own considered appraisal of relevant goals, trends, conditions, and probabilities: that it is by accepting and acting upon some such principles, irrespective of the degree of immediate acceptance by the totalitarian leaders, that the proponents of human dignity have the best chance of creating the consensus among different peoples necessary to sustain genuine co-operation for common values, as contrasted with a tentative “co-existence” which merely prepares an antagonist for ultimate destruction. The principles we propose are six: the principle of minimal order, the principle of recognizing interdependence, the principle of the efficacy of communication, the principle of the potentiality of developmental operations, the principle of the primacy of goal values, and the principle of the potential equivalence of institutions. The first of these principles might be regarded as addressed to the question of why not fight to expand freedom, the next three to the question of why *any* law, and the last two to the question of what *kind* of law. In brief examination of these principles *seriatim*, we may be able to observe incidentally what is valid and what is spurious in certain inherited notions of the “natural harmony of interests,” “reasonableness,” and “progress.”<sup>12</sup>

The principle of *minimal order*, established by Dr. Jenks’ general prin-

<sup>12</sup> Excellent statement of the fallacies we would expose appears in Schiffer, *The Legal Community of Mankind* (1954).

ciples as the lowest common denominator of order in any community, is the principle that force, or intense coercion, is to be exercised only under community monopoly for the preservation of order and not as an instrument for unilateral expansion of values at the expense of other community members. It is this principle which puts a stop to the infinitely regressive search into past history for some assumed ultimate responsibility for right and wrong, establishes responsible relations between community members in the here and now, and permits the mutually secure projection into the future of peaceful, co-operative activities for the greater production and wider sharing of all values. It is not merely "peace," in the sense of the absence of fighting, which this principle demands, but rather the projection of a credible policy against unauthorized, unilateral violence. Deference to this principle is required by the most elementary considerations of human dignity: that private choice shall be respected in the highest degree and that coercion shall not be applied to human beings beyond common need. Practical observance of the principle is equally dictated by considerations of expediency. The proponents of human dignity could have no assurance of winning a war for the expansion of freedom and, even if they won, they might still lose by poisoning the earth and shattering their own basic morality. It need not, however, be stipulated, as some do stipulate, that the principle of minimal order requires the suicidal acceptance of peace at any price. The general principles of civilized law, not without reason, exhibit, as our distinguished guest again has so persuasively documented, a principle of self-defense which authorizes the private employment in community interest of such force as is necessary and proportionate to the immediate defense of values.<sup>13</sup> It is no part of the necessary ordering of responsibility in the present, or of the projection of future co-operation, that some community members must make themselves supine targets for the cannibalism of others, and it is but one high expression of human dignity that men on occasion prefer the future values of their community to their own personal survival. The most urgent task for the proponents of human dignity, therefore, is to make credible to themselves and to the totalitarians that they do accept and intend to act upon this minimal principle, and the most critical, immediate task for legal scholars is that of specifying the detailed principles about permissible and non-permissible coercion best calculated to promote ultimate achievement of a world public order of human dignity.

The principle of *recognizing interdependence* is intended to express the practical maxim that proponents of human dignity should understand, and act upon realistic understanding of, the most important facts of life in the contemporary world. These most important facts are, it has become almost platitudinous to urge, the facts of interdependence: The peoples of the world do in fact interact, with accelerating intensity, and affect each other's access to, and enjoyment of, the aggregate of values that can be produced and consumed. The negative aspects of interaction, from

<sup>13</sup> Note 2 above, at 139.

threats of mutual annihilation to minor day-to-day interferences, need no stress. The potential positive gains from interaction will be indicated in our discussion of the principle of the potentiality of developmental operations.

This principle of recognizing interdependences must be distinguished from the often discredited notion of a "natural harmony of interests" in all mankind. The notion of a natural harmony of interests deserves discredit because it is normative-ambiguous: It purports, at one and the same time, to serve as scientific explanation of the conditions under which peoples act, to recommend a future course of action, and to predict inevitable movement toward Utopian public order. One may recognize that interdependences constitute inescapable conditions, and recommend that these be taken into account, without predicting that peoples will in fact make such conditions and recommendations a part of their working expectations that effectively guide action.

The principle of the *efficacy of communication* is based upon two assumptions. The first assumption is the maximization postulate, that men act to maximize their values, and the second, that values can be clarified and communicated to others by both words and behavior. All of us who can recall the impact from earliest infancy of the precepts of parents, the teachings of religion, the appraisals of friends, and so on, have no doubt, despite all the valid lessons of syntactics and semantics, that both words and behavior, even gestures, do affect all our demands, identifications, and expectations, whatever the crystallizations in culture, class, interest, personality, and experience, and that communications can be made efficacious to shape and mould co-operative, as well as antagonistic, response. The burden of this principle is that all who share the values of human dignity—whether scholars, advocates, counselors, clergymen, scientists, engineers, or officials—should employ every available mode and channel of communication in continuous effort to clarify, with any who will listen, a common interest in a world public order in which such values may be secure.

This principle of the efficacy of communication is to be distinguished from the alleged principle of the reasonableness or rationality of man, so easily vanquished by the advocates of naked-power confrontation. Like the notion of inevitable harmony of interests, the traditional notion of reasonableness is normative-ambiguous in that it seeks to combine in a single reference explanations of how men act, recommendations about how they should act, and predictions of how they will act. The prediction that men will act rationally is no necessary premise of the principle of efficacy of communication. The only necessary premise is that rational action is possible. For men who can act rationally, it may be added, the easiest motivations of others to affect are those that are unconscious, or poorly organized in explicit awareness.

The principle of the *potentiality of developmental operations* reflects the double observation that co-operative acts both communicate the genuineness of commitment to common interests and get forward with the produc-

tion of demanded values. Men communicate in projecting common policies and establishing identifications as much by collaborative acts as by words or other signs, and joint action may fix common interest more securely than mutual exhortation. It is incumbent upon the proponents of human dignity who would bury the totalitarians peaceably as a memory, ignoring the dogmatic die-hards who can foresee no possible settlement except by the sword, to take the lead, in all the accessible world, in developmental programs with respect to all values to the utmost limits that resources may permit.

Were it not for the continued disregard of the insight, it might seem obvious that under conditions of interdependence, the greatest net gain is to be achieved by co-operative action and inclusive decision which takes such interdependence into account. Both the disregard of insight and the potentiality of co-operative action may be illustrated by quick reference to the great sharable resources of the oceans. The disregard appears in the recent extravagant claims to divide up the oceans for exclusive enjoyment and control. The potentiality of co-operative action in preventing losses a colleague, Dr. Burke, and I have sought to demonstrate by the ancient fable of a group of monkeys on one end of a see-saw. A single monkey may be able to race to the other end and pluck grapes from vines on an overhanging tree, but if all the monkeys suddenly race, no monkey gets any grapes. From the perspective of maximizing the gains of the whole community of states, we noted that "the encouragement of appropriately conserving inclusive uses," bringing to bear the efforts, specialized skills, and resources of many different states, would be more productive of values than "the encouragement of exclusive uses not reasonably necessary to the protection of a particular state." "For states tightly locked in a global arena in an irrevocable interdependence with respect to all values, and highly dependent upon specialization among themselves for the production of many values," we concluded, "the common interest is in an accommodation of exclusive and inclusive claim which will produce the largest total output of community values at the least cost."<sup>14</sup>

This principle of the potentiality of developmental operations is to be distinguished from the traditional over-optimistic principle of the inevitability of progress. As with respect to the harmony of interests and rationality, we affirm only the possibility, and not the inevitability of progress. One may have movement toward goals without inevitability, manageable common interests without universal dogmas, and rationality without perfectionism.

The principle of the *primacy of goal values* is based upon the common wisdom that conceptions of the whole shape conceptions of the part, and that immediate alternatives in decision are best appraised in terms of more comprehensive and enduring purposes. The more general principle of

<sup>14</sup> McDougal and Burke, "Crisis in the Law of the Sea: Community Perspectives versus National Egoism," 67 Yale Law Journal 539, 568 (1958).

contextuality requires that even basic goal values be constantly appraised in relation to each other and in terms of their relative importance in the distinctive features of the over-all public order demanded; and every lawyer knows that different decision-makers responding to different general perspectives may, in cases which a disinterested decision-maker would regard as comparable, use the same technical principles or means to reach different results, or different technical principles to reach the same results. The greatest folly is to forget what one is trying to do.

So much confusion has been raised about the possibilities of a system "neutral," it may require some emphasis that there can be no system neutral in the sense of a system in which values—short-range, mid-range, or long-range—are not at stake in specific decision. Decisions always have immediate consequence for values, and in aggregate flow they always have mid-range and long-term effects. The essence of a reasoned decision by the authority of the secular values of a public order of human dignity is a disciplined appraisal of alternative choices of immediate consequences in terms of preferred long-term effects, and not in either the timid fore-swearing of concern for immediate consequences or in the quixotic search for criteria of decision that transcend the world of men and values in meta-physical fantasy. The reference of legal principles must be either to their internal—logical—arrangement or to the external consequences of their application. It remains mysterious what criteria for decision a "neutral" system could offer.

The principle of the *potential equivalence of institutions*, as further amplification of the more general principle of contextuality, cautions against obdurate fixation upon familiar modalities by which values are sought. It affirms that many different types of structures and functions of authority—many different interrelations, for example, of inclusive and exclusive decision—might in the foreseeable future effectively serve the causes of human dignity. When its basic goals are accepted, an international law of human dignity can tolerate, even encourage, many different cultural modalities for its implementation in the internal arenas of states. It is, further, no necessary requirement of nature that the functions of prescribing and applying policy in the external arenas of the general community of states must be performed in institutions—centralized or decentralized—modeled precisely upon those of any particular member state. What is true with respect to particular structures and functions, is equally true with respect to whole systems of structures and functions. Elsewhere we have put the point in sum:

Scholars who make neat dichotomous distinctions between "world law" and "anarchy," or "world government" and "international organization," or "international organization" and "international law," or "universalism" and "regionalism," and so on, and project these imaginary polar entities upon a troubled world, with insistent demands that mankind must choose between them, make but little contribution to rational action toward their proclaimed goals.<sup>15</sup>

<sup>15</sup> "The Impact of International Law Upon National Law: A Policy-Oriented Perspective," 4 South Dakota Law Rev. 25, 92 (1959).

One limit to the principle of the potential equivalency of institutions does, however, appear. It is the limit implicit in its very formulation: that alternative institutions be directed toward achievement of the same overriding goal values. It may be that, as suggested in a recent Indian *colloquium*, one may without "disastrous consequences" take coffee from the Arabs and tea from the Chinese, but it does not necessarily follow that one may take cannibalism from the cannibals and remain, as assumed by those who look upon totalitarian and non-totalitarian values indifferently as equal ideologies, wholly dedicated to the minimal-order principle of no cannibalism.<sup>16</sup>

From this all too cryptic exposition of certain intermediate-level principles of integrative universalism, we turn now to their possible application in evaluating and recommending more specific techniques (technical principles, structures of authority, and procedures) for an international law of human dignity. It is, as we have seen, the combined emphasis of several of these principles—the principles of recognizing interdependence, primacy of goal values, and potential equivalency of institutions—that the significance for values of any particular legal technique is a function of context, with the same techniques having potentially different effects in different contexts and different techniques having potentially the same effects in comparable contexts. It may be added that the factors in a context which affect the impact upon values of any particular legal technique are in process of continuous change, and that the more detailed are legal techniques, the greater is their potential equivalence in impact upon values. For these reasons, it is much more important, as already suggested, that we recommend the comprehensive perspectives and particular skills necessary to the continuous adaptation of legal techniques to changing contexts of conditions and detailed objectives—that is, the insights and understandings of a contextual, policy-oriented approach—than that we recommend any particular techniques, in the illusory hope or promise that these are uniquely or permanently characteristic of an international law of human dignity. An indication that there are many different models in technical principles, structures of authority, and procedures which might promote the values of human dignity may, however, aid in creating the effective predispositions to accept and put into practice some such techniques. In the remarks to follow, I propose to make a highly selective indication, without any attempt to be comprehensive, of certain recommended interpretations of basic organizing concepts and of certain alternatives in technical principles, structures of authority and procedures, for the management of power and other value processes, designed to be illustrative of the type of legal technique appropriate to our contemporary need.

The most basic organizing concept is, of course, that of "law" itself. For an international law of human dignity, an appropriate conception of law will include not merely certain allegedly autonomous, technical rules,

<sup>16</sup> "Encounters between Civilizations," Report of a Seminar Conducted by Arnold Toynbee, Reporter Karunakaran, 14 *India Quarterly* 166 (No. 2, April-June, 1958).



inherited from the past, but also a whole contemporaneous process of decision—a process in which decisions are taken through orderly procedures by authorized decision-makers, not by naked force or calculation of momentary expediences, but by the reasoned relation of alternatives in choice to fundamental community expectations about how values should be shaped and shared.<sup>17</sup> Such a conception will, in quick summary, encompass both perspectives and operations—both conceptions of authority and techniques of effective control—and, though it will recommend that decision-makers draw upon the inherited wisdom of the past, it will be primarily oriented toward the future and the achievement of policies projected into the future, under future conditions. Whatever the derivational systems in religion or metaphysics or empirical preference it may tolerate or honor—and they would be many—an international law so conceived will demand that all specific decisions be related to, or grounded in the authority of, the empirical, social-process, secular values of human dignity. The appropriate functions of legal rules in such an international law will be regarded, not as of automatically determining or autonomously affecting decision or of serving a squid function in concealing the bases of decision, but rather as of projecting community policies with varying degrees of precision and of assisting authorized decision-makers to relate such policies to concrete emerging events, by pointing to relevant factors in context and by giving appropriate differential weightings to policies as factors vary.

For constantly increasing the democracy, effectiveness, economy, and fairness with which community policies are projected and applied in processes of authoritative decision, an international law of human dignity will seek accelerating improvement of structures of authority and procedures for the performance of all necessary, policy functions—such as intelligence, recommendation, prescribing, invoking, applying, appraising, and terminating. The vast new potentialities of modern techniques of communication could be brought to bear upon the intelligence and recommending functions and the rôle of international organizations in these functions greatly enhanced. Though explicit consensus and the generalization of past uniformities in decision, called “customary law,” may for some time remain the most important methods of prescribing community policies, these need not be regarded as exclusive: international organizations and conferences, and even unorganized, unilateral declarations, if parallel in content and made by many, might, with modern techniques of communication, be employed much more effectively to create community expectations of “rightness” in decision, impossible for would-be dissenters to veto and difficult for them to ignore. Certainly, there will be no rejection, after the fashion of the totalitarians, of that “customary law” which now affords the most effective and least embarrassing mode for community prescription of policy without the specific consent of each and every states. An international law of human dignity must, further, welcome all proposals, such

<sup>17</sup> For recent, penetrating discussion of alternatives, see Dillard, “Some Aspects of Law and Diplomacy,” 92 Hague Academy Recueil des Cours 449 (1957).

as the many now being made with respect to the International Court of Justice, to extend the rôle in the application of community policies of disinterested, third-party decision-makers, not subject to the control of parties to a dispute. For such an international law, an appropriate conception of relevant sanctions would, again, extend beyond mere isolated acts of deprivation, such as an economic blockade or military action, to the whole panoply of instruments of policy—diplomatic, ideological, economic, and military—as supported by the whole range of values at the disposal of the community—power, wealth, enlightenment, respect, and so on. Appropriate sanctioning processes would adapt specialized strategies for more specific goals, such as prevention, deterrence, restoration, rehabilitation, and reconstruction; would employ strategies both positively and negatively, both to offer indulgences and to impose deprivations; would be directed to the control and modification of both predispositional and environmental variables; and would employ strategies in whatever combinations and sequences are expected to yield the most effectiveness at the least cost. In deference to the fundamental policies of minimal coercion and economy of force, serious attention would be given to restricting sanctioning authority to the employment of those weapons which disable without destroying, such as psycho-chemicals and paralysis bombs.

In “constitutional” allocation of competence between the general community (or larger groupings) of states and particular states, an international law of human dignity will demand, not monolithic concentration of overwhelming power in a single territorial center, but an appropriate balance between the inclusive competence of general institutions and the exclusive competence of member communities. It will recognize a common interest of all the peoples of the world in both an inclusive competence and an exclusive competence: in an inclusive competence adequate to secure their common values by the prescription and application of policies which in fact incorporate the values of human dignity, to protect their equality of access to participation in decisions which inescapably affect them, and to achieve the assumption of responsibility necessary to insure actual application of inclusive policies in arenas both external and internal to particular states; and in an exclusive competence adequate to protect particular peoples from arbitrary external interference or oppression and to promote the greatest possible freedom in initiative, experiment, and diversity for the effective adaptation of local policies to the most local contexts. In its specific interpretations of the basic technical concepts—“sovereignty,” “independence,” “equality,” “non-intervention,” *et cetera*, on the one hand, and “international concern,” “international obligation,” “police action,” *et cetera*, on the other—by which the constitutional balance is established and maintained, such a law will genuinely seek to honor both sets of common interests, inclusive and exclusive, without over-emphasis upon, or perverse construction of, either the one or the other. Thus, the concept of “sovereignty,” celebrated anew in the “co-existence” of the

*Panch Shila*,<sup>18</sup> will be interpreted as embracing only that competence which remains to states after due account is taken of their obligations under international law, and not as a license for freedom from all restraint by shared authority. For increasing the effectiveness with which inclusive, general community prescriptions are applied in the internal arenas of states, an international law of human dignity might, further, consider various expedients, such as encouraging more general acceptance of the increasingly accepted principle that states may not successfully invoke their own constitutional inadequacies, whether relating to the making or the performance of agreements, as defense against honoring expectations reasonably created in others; promoting the amendment of national constitutions to eliminate obstructionist and undemocratic minority vetoes, whether by special minorities in central legislatures or by provincial groups in federal states, which handicap states in performing a full and responsible rôle in more comprehensive processes of authority; and promoting international agreements, incorporating the substance of Article VI(2) of the United States Constitution, for the purpose of precluding states from changing constitutional provisions which require the internal application of international law. The efficacy of appeals to the external arenas of the general community, for redress of defalcations in the internal arenas of states, might be improved by the creation of new tribunals or hierarchies of tribunals, with access authorized for individuals and private associations.<sup>19</sup>

In the features of the more comprehensive power processes which it protects, an international law of human dignity will aspire to establish the widest possible sharing of power among responsible participants in an open society of freedom, security, and abundance. Illustrative detail may be offered by quick reference to each of the important phases of a power process: participants, arenas, bases of power, strategies, outcomes, and effects.

First, *participants*: Overriding principles here demand the utmost pluralism—that all effective participants in the world power process be regarded as potentially permissible participants in international processes of authority, both for protecting their interests and for subordinating them to authority in securing of general community policy. Not merely states, but also international governmental organizations, parties, pressure groups, private associations, and individual human beings, are all appropriate “subjects” of an international law of human dignity. In its attitudes toward territorial communities such an international law will, of course, respect the “equality of states,” as demanded by the *Panch Shila*, but the equality it respects will be a genuine equality of shared power and responsibility, and not the equality of the concentration camp or graveyard in which the executioner or grave-digger is “more equal” than the victim. While according great deference to the principle of self-determination,

<sup>18</sup> This mode of describing the principles of “co-existence” appears to derive from Indian usage. See references in footnote 3 above.

<sup>19</sup> These proposals are developed in the article cited in footnote 15.

such an international law might, further, balance self-determination with capacity for, and acceptance of, responsibility and seek an organization of government in territorial units large enough to discharge responsibility. Contemporary techniques in community planning might be employed to encourage the establishment of appropriately balanced, economic regional communities. The goal of a law of freedom is not the extreme of anarchy, but an ordered, productive, shared liberty and responsibility.

Second, *arenas*: The most general objective will be the establishment of structures of authority, for the performance of all policy functions, adequate to secure value change and resolution of controversies by persuasive, rather than coercive, means, and with the most inclusive access possible for all responsible participants. Many new structures, especially in supranational arrangement, for many functions (not application merely), will be sought for many new participants, with criteria for admission fixed only by common interest. The qualification that applicants for admission to arenas be responsible may, however, be taken seriously. No "declaratory" theory of recognition need be construed to require the general community of states to admit newly emerged territorial communities to the benefits of authority in the absence of their willingness to assume the burdens of authority, including observance of minimal order. Though the long-term community goal must be the democratic representation of all peoples, the short-term community interest may be in the rational administration of an effective sanction.

Third, *bases of power*: In conformity with the principle of minimal order, an international law of human dignity will endeavor to protect states in their comprehensive and continuing claims to the peaceful use and enjoyment of their territorial bases (land masses, internal waters, and airspace), honoring transfers by consent and rejecting changes by coercion. In regulating exclusive claims to new control over hitherto unappropriated resources, policies sought will be designed to prevent or minimize violence, to promote full use, and to promote conservation. When the unappropriated resources claimed by states admit, by appropriate physical accommodation among users, of a shared, inclusive use by many states and promise the greatest production of inclusive values by such use—as do the oceans, international rivers, and Polar areas—a strong presumption will be indulged in favor of such shared, inclusive use and of appropriately shared, inclusive authority. When such resources are of great strategic concern to the general community, as is outer space, this presumption will become conclusive. Outer space will be regarded as equally open to access and use by all and subject to the same requirements of minimal order as the earth arena; accommodation between inclusive claims to outer space and exclusive claims to airspace will be sought, not in illusory quest for irrelevant physical boundaries, but in a continuous, practical reconciliation of specific claims to specific uses and authority, after the fashion of "contiguous zones" in the law of the sea, in promotion of common interest in the fullest

inclusive use compatible with security.<sup>20</sup> Certainly an international law of human dignity will not honor any asserted exclusive competence in particular states to arrogate to themselves by their unilateral decision exclusive controls or proprietorship over the great common resources of the oceans and outer space. Assuming a more enterprising function, such a law might, further, seek to bring the techniques of modern science and technology to bear, in international as well as national laboratories, upon the creation of vast new resources for common control and enjoyment.<sup>21</sup>

In regulating the cumulative controls which states impose upon people as bases of power, an international law purporting to serve human dignity must, of course, effectively prescribe the utmost individual voluntarism in access to communities, affiliation with communities, and activities within communities, which is compatible with the security of a comprehensive public order of freedom. The ringing challenges in the Universal Declaration of Human Rights will be regarded in such a law as authoritative prescription, not as mere moral aspiration. New prescriptions and sanctions are needed to secure freedom of access to, movement within, and departure from, states. Presumptions against individual change in community membership and against multiple memberships must yield to presumptions in favor of change and of possible multiple membership in different communities. The competence of states to impose nationality without consent and to deprive of nationality for reasons incompatible with human dignity admit of much more careful confinement. The prevailing acceptance of international standards of justice for the protection of aliens requires strengthening. Irrational limitations will not be imposed upon the competence of states to confer their nationality upon, or to offer asylum to, individuals in order to protect them from deprivations by other states. The proposed Covenants on Human Rights offer, finally, but a beginning of necessary protection for citizens.

Fourth, *strategies*: The cornerstone of an international law of human dignity must, as the principle of minimal order demands, be fixed in general community monopolization of force to preclude the unauthorized use of force, or too intense coercion, as a strategy in value change. The establishment of this cornerstone requires—in specific interpretations of such concepts as “aggression,” “breaches of the peace,” and “threats to the peace,” on the one hand, and “self-defense,” “collective self-defense” and “police action,” on the other—that a distinction be made between impermissible and permissible coercion which rationally implements the basic policy that force, or too intense coercion, may only be used in defense of, and not in attack upon, public order. The major outlines of this difficult distinction will be presented tomorrow by my colleague, Dr. Feliciano, and by his and your leave, I should like here to incorporate all

<sup>20</sup> Expansion and documentation appear in McDougal and Lipson, “Perspectives for a Law of Outer Space,” 52 A.J.I.L. 407 (1958).

<sup>21</sup> Some of the possibilities are outlined in Lasswell, “The Political Science of Science: An Inquiry into the Possible Reconciliation of Mastery and Freedom,” 50 Am. Pol. Sci. Rev. 961 (1956).

that he will say. The most general formulation we recommend is that any coercion, by whatever instrument, which is so intense that it reasonably creates in the target state, as third-party observers might determine, realistic expectations that it must resort to the military instrument to defend its independence and territorial integrity, may be characterized as impermissible. Permissible coercion, in complementary conception, is the response to such impermissible coercion by the general community in police action or by the target state or collectivity of states in necessary and proportionate measures of self-defense. Operational indices may be given to every particular concept in these formulations by criteria designed to promote the overriding policy.<sup>22</sup> In this recommendation there is thus, as in the *Panch Shila*, "a principle of non-aggression," but it is a principle designed to catch all aggression—even what is euphemistically called "indirect aggression" by the diplomatic, ideological, and economic instruments—and not merely overt attack by the military instrument.

Because of the emphasis in all conceptions of human dignity upon persuasion and voluntary commitment as the preferred modality of value change, an international law honoring such conceptions will necessarily seek to make effective, within the limits of the overriding policies of the demanded public order, all genuine agreements and unilateral expressions of intent creating shared expectations of commitment. Building upon the principle of efficacy of communication, such a law will afford every facility, including all necessary immunities, for encouraging and expediting both diplomatic and other communications. It will subordinate all requirements of form and procedure to the goal of achieving and protecting genuinely shared expectations of commitment. It will establish as the major goal of its process of authoritative interpretation the ascertainment in requisite detail of these shared expectations of commitment. It will regard this goal of ascertaining and effectuating the genuine expectations of the particular parties as necessary to honest respect for human dignity, and to promoting experiment and diversity, rather than dead-weight conformity, in social processes. In its procedures for interpretation, it may begin by relating the words and behavior of parties to "plain and natural" or community-wide meanings, but it will not exalt such preliminary inferences into arbitrary, irrebuttable presumptions about the actual expectations moving the particular parties. From preliminary orientation in common meanings, a process of interpretation which respects human dignity will move, through a logical or syntactic phase of testing words and other signs (such as behavior) for varying alternatives in possible meanings, to, finally, a disciplined and systematic canvass of all relevant features of the process of commitment and its context of conditions for the purpose of clarifying both the major and minor expectations of the parties and making the closest possible approximation of their actual expectations. In examination of the features of the process of commitment, especial emphasis will be accorded, for the light they shed upon the actual shape of expecta-

<sup>22</sup> Details are offered in the article cited in footnote 11 above.

tion, to the cultural, class, interest, personality, and crisis factors affecting the expectations of the parties to the commitment. Similarly, for terminating the authority of agreements or commitments, an international law of human dignity will tolerate a reasonable doctrine of *rebus sic stantibus*, decreeing release from obligation when important changes occur in the context of conditions attending performance, frustrating the major purposes of the parties and making impossible their maintenance of a consensus toward equivalent substituted objectives. Relevant perspectives will encourage the establishment of institutional machinery for the continuous, concerted revision of commitments to make them serve contemporary purposes, but will not honor doctrines making the initial or continuing validity of an agreement dependent upon "objective conditions," of unspecified content or of content specified only by Marxian metaphysics or totalitarian tactics.

Fifth, and finally, *outcomes and effects*: In its principles of jurisdiction, allocating competence to particular states to prescribe and apply their policy to particular events or value changes, an international law of human dignity will emphasize the integrative principle of recognizing interdependences. The territorial communities which administer the public order of the world arena—affecting the lives, the births, the deaths, the marriages, the agreements, the "torts," the "crimes," the business activities, the property, and so on, of all human beings—are, as we have seen, tightly locked in a world social process having scant respect for state boundaries, with events anywhere having potential effects everywhere. In such a context, national egoism must yield to mutual tolerance, and claims to competence can be made effective beyond a state's boundaries only when they carry the promise of reciprocity. The relevant fundamental policies include the creation of a stability of expectation in all decision-makers that events will be controlled in certain agreed ways, with minimum disruption by assertions of arbitrary power; the promotion of efficiency in all value interactions across state lines and in the exploitation of world resources in the common interest; permitting states substantially affected by value changes to share in the prescription and application of policy for controlling such changes; and the resolution of disputes between states about the sharing of control by criteria of long-term common interest.<sup>23</sup> For pursuit of these policies, contemporary decision-makers have at their disposal an elaborate maze of complementary doctrines. One set of these doctrines, those stating the "bases" of jurisdiction—the principles of territoriality, nationality, passive personality, protection of interests, and universality—purport to authorize states, which have achieved a certain degree of effective control over persons or resources, to prescribe or apply their authority under stipulated conditions to specified events. The other

<sup>23</sup> See Katzenbach, "Conflicts on an Unruly Horse: Reciprocal Claims and Tolerances in Interstate and International Law," 65 *Yale Law Journal* 1087 (1956); Falk, "International Jurisdiction: Horizontal and Vertical Conceptions of Legal Order," 32 *Temple Law Quarterly* 295 (1959).

set of doctrines, those stipulating deference to the "acts of state" or "immunities" of other states, require states, even when the above conditions are met, to yield their competence to the superior interest of the other states. An international law of human dignity will insist upon the most flexible interpretation of these inherited doctrines for promoting the application of authority to particular events in ways that enhance the overriding values of a world public order of freedom, security, and abundance, as such values are at stake in differing types of particular events and contexts. The key criterion in such interpretation will be that of reasonableness—the reasonable adjustment of a shared competence over events which in varying measure affect all—and reasonableness will be determined, as in the interpretation of agreements, by a disciplined, systematic canvass of all relevant features of the particular value change and its conditioning context—including the participants, their nationality and other significant characteristics, their detailed objectives, the value at stake, the modality of change (agreement or deprivation), the *locus* of the event, the range of the effects of the event, the differential impact of alternatives in decision upon the community processes of the claimant states, and so on. In this delicate adjustment of different interacting, national legal systems, reflecting varying cultural, class, interest, personality, and crisis-conditioning factors, observance of the precepts of the principle of potential equivalence of institutions will be most important. Beyond application of inherited doctrines, relevant aspirations might extend, further, to more careful and rational prescription for many types of common problems by new and more comprehensive multilateral agreements.

Similar specifications or projections of recommended legal techniques could be offered for all the important value processes other than power. Thus, in the features of the *wealth* processes which it protects, an international law of human dignity might seek continuously improved technical principles, structures of authority, and procedures for the more economic, co-operative allocation of resources, capital, and labor; for the planning and development in all countries of more efficient physical environments; and for the establishment of more economic institutions for the production and distribution of goods and services. Appropriate, intermediate-level, wealth objectives might include the protection of as large a domain as possible for private choice in economic affairs, with establishment of that balance between governmentalization and private control which appears most conducive to effective and abundant freedom; the preclusion of private as well as public monopoly; the accommodation of co-operative enterprise between communities of differing degrees of socialization; and the protection of property claims across state lines in measure necessary to promote and preserve initiative and the flow of capital on a global scale, without permitting outside coercion of local community processes. Similarly, in the features of *respect* processes which it attempts to secure, such an international law might enthusiastically embrace proposals, such as are presently being made in the United Nations "human rights" discussions, to expand the scope of protected rights from civil and political to economic and social; to afford new and more effective modes of implementation, including indi-



vidual access and petition to international structures of authority; and to restrain excessive assertion of exclusive national competence, free of international concern and competence, by expansive interpretations of such technical concepts as "domestic jurisdiction" and "intervention." So also in the features of the *enlightenment* processes which it protects, such an international law might demand new agreements and sanctions both to facilitate the gathering, transmission, and dissemination of relevant knowledge and to preclude the disruption and perversion of processes of inquiry and communication to anti-democratic ends, providing, perhaps, both for increased international organization of inquiry and disinterested third-party correction of falsifications and the distortions of censorship. The implications of the principles of an integrative universalism for the establishment of detailed legal techniques in these and other relevant value processes obviously admit of elaboration in any necessary comprehensiveness and degree of specification.

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The most general perspectives which I have sought to establish are twofold: first, that, for peoples who genuinely share the values of human dignity, it is both intellectually possible, and practically indispensable in the contemporary world context, to clarify the comprehensive features of an international law expressing such values; and second, that lawyers may make their greatest contribution to such clarification, not by excessive emphasis upon the unique relevance of any particular, functionally equivalent, legal techniques, but by the consistent and systematic employment of a policy-oriented, contextual approach, making use of all relevant skills of thought, in inventing, evaluating, and adopting the techniques most appropriate to securing demanded outcomes.

It scarcely requires emphasis, in conclusion, that the facts that an international law of human dignity is possible and that lawyers may make contribution to such possibility, do not necessarily mean that such an international law is probable. The most insistent contemporary challenge to all of us, lawyers and non-lawyers alike, committed to human-dignity values, is to devise and execute a strategy of communication which will create in the effective decision-makers of the world the appropriate predispositions to put such an international law into controlling practice. Such appropriate predispositions must include appropriate expectations, demands, and identifications. Appropriate expectations must include the understanding, in utmost realism, by all effective decision-makers that their maximum net gain inheres in minimum violence. More particularly, the totalitarians must be made to understand that the proponents of human dignity do in fact accept the principle of minimum order and stand ready to engage in genuine peaceful co-operation for the greater production and wider sharing of all values, but that such proponents, if attacked in violation of public order, have equally the will and capacity adequately to defend their values by force. Appropriate demands must extend beyond mere preference to determination, and from basic goals, through intermediate-level and mid-range objectives, to the most detailed and immediate features of particular

value processes. Appropriate identifications must break the bounds of parochialism, and extend from primary associates, regional communities and functional groups to the positive inclusion of the whole of mankind. In a world racked by contending, incompatible systems of public order demanding completion on a global scale, and confronted with the prospect that even pygmy Powers may shortly have the technological competence to obliterate giant Powers, and perhaps the whole world, irrespective of who strikes first, it must require a very mature optimism to entertain great hope of immediate success in this enterprise. The probable costs of any other course of action are, however, too incompatible with our basic values and too uncertain of success for serious consideration, and certain facts of the contemporary world do hold out some hope that unremitting effort may enable us to escape catastrophe. These facts are the new knowledge that man has acquired, only in recent decades, of the rôles that culture, class, interest, personality, and crisis play in the shaping and controlling of his expectations, demands, and identifications and the new technological potentialities of communication on a global scale. For the first time, man has the opportunity, by use of this new knowledge, to acquire insight, at whatever depth and in whatever range may be necessary, into the parochial biases caused in him by culture, class, interest, personality, and crisis and, hence, to emancipate himself from such biases for more comprehensive identifications with all his fellow men.<sup>24</sup> The potentialities of contemporary processes of communication make it possible that all men may share in this emancipation and understand its importance to long-term common interest, including sheer survival. It is, further, only by processes of communication that the effective decision-makers of the world may be brought to share the necessary insights and understandings, and that mankind may be unified by consent in a world public order of freedom, security, and abundance. For men of good will, determined to undertake an indispensable grand strategy in communication to this end, the appropriate note of restrained hope is, perhaps, that announced by Toynbee before World War II in summation of his reflections upon the breakdown of civilizations:

The dead civilizations are not "dead by fate"; and therefore a living civilization is not doomed inexorably in advance *migrare ad plures*: to join the majority of its kind that have suffered shipwreck. Though sixteen civilizations may have perished already to our knowledge, and nine others may be now at the point of death, and though Nature, in her wanton prodigality, may be wont to slay the representatives of a species, not by tens or scores, but by thousands and tens of thousands, before she rouses herself to create a new specific mutation, we need fear no evil from the encompassing shadow of Death; for we are not compelled to submit our fate to the blind arbitrament of statistics. The divine spark of creative power is instinct in ourselves; and if we have the grace to kindle it into flame, then the stars in their courses cannot defeat our efforts to attain the goal of human endeavours.<sup>25</sup>

<sup>24</sup> The essays in Lerner (ed.), *The Human Meaning of the Social Sciences* (1959), offer a popular introduction to some of the possibilities.

<sup>25</sup> 4 Toynbee, *A Study of History* 39 (1939).