COMMUNISM versus INTERNATIONAL LAW

Today's Clash of Ideals

BY ANN VAN WYNEN THOMAS

FOREWORD BY ROBERT G. STOREY

President, American Bar Association

DALLAS: 1953

Southern Methodist University Press

To Cornelius Van Wynen who will understand;

To Cora Jacoba Van Wynen who will be enchanted

To Nola Briscoe Thomas who will be intrigued;

To Aaron Joshua Thomas who will be surprised.

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Foreword

In the history of human social institutions there often comes a time when the basic principles upon which such institutions rest need to be subjected to an intensive and critical reappraisal in the light of modern and changed conditions. This reappraisal may determine whether the particular institution is to continue as before, whether it must be directed into new channels, or whether its usefulness is at an end and it must make way for a completely new institution. As a social institution, law and its various branches are also subjected to such probative inquiry when there arises a question in the minds of the public, lay and professional alike, as to whether a certain division of law continues to satisfy the need for which it was created, whether its direction of growth is progressive, retrogressive, or static Whenever the demand for such re-examination becomes intensive, it can be felt that there is an underlying dissatisfaction with the functioning of the specific field of law, which, if ignored, can lead to undesirable consequences.

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Upon critical examination into a division of law under attack, it has in many instances been demonstrated that jurists, losing sight of the fact that fundamental conditions have become completely altered, nevertheless persist in their attempt to utilize the specific doctrines of a branch of law in an area of relation-

ships which that law was not designed to cover and could not effectively cover. In such circumstances it becomes necessary to prune the law—to cut away the deadwood of overextension—in order to restore contours. A complete rejection is neither requisite nor desirable. International law finds itself in such a position today. Its principles and rules are called upon to regulate relationships for which they were not fashioned, hence their operation can at best be but faulty. This then is the thought underlying Ann Van Wynen Thomas' study on the clash of ideals between international law and communism.

Within the period which has elapsed since the close of World War II, it has become apparent that men have sought to adjust international law to new and more difficult world conditions. This process of adjustment has not only demonstrated but emphasized the close affinity between international law and the goals of democracy. The problem in the field of international law today does not relegate itself to a need for a more perfect international law but rather becomes a problem of method, that is the manner in which the free nations of the world can extend the society which nurtured international law and for which it was created.

The struggle between international law and communism, as viewed from their traditional fundamental backgrounds, highlights the fact that the idealistic and ethical concerns of international law are essential today in the strategic battle for the survival of democracy.

It is no idle postulate to state that totalitarian regimes are philosophically incompatible with the traditional law of nations. To make the glorification and extension of the state the paramount objective of public policy is to destroy the whole conception of a co-ordinated brotherhood of nations promoting ethical values of the individual.

The key to the understanding of the functions fulfilled by any legal system, national or international, lies in the structure of its social background. International law, based on democratic principles, has been a method of evolution, a developing conception of human worth springing from Christianity and the doctrine of the rights of man. It is not a finished product by any means, but it cannot be applied to a society which has no reverence for the dignity of the individual, a society which eyes mankind from a completely mechanical point of view and consigns history to an economic fate. In such woeful circumstances, the false premise that there is between the democracies and the totalitarian governments a uniting force working for a common good—such as the force of international law—is not only unrealistic but exceedingly detrimental to the usefulness of international law.

This does not signify that there should be no further growth in international law, but rather that there should be a redirection of growth. There must be a more courageous recourse to what we have and a bolder correctional course toward the deficiencies of

ships which that law was not designed to cover and could not effectively cover. In such circumstances it becomes necessary to prune the law—to cut away the deadwood of overextension—in order to restore contours. A complete rejection is neither requisite nor desirable. International law finds itself in such a position today. Its principles and rules are called upon to regulate relationships for which they were not fashioned, hence their operation can at best be but faulty. This then is the thought underlying Ann Van Wynen Thomas' study on the clash of ideals between international law and communism.

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Acknowledgments

I want to express my appreciation to Dean Robert G. Storey, of Southern Methodist University School of Law, who helped me with his criticisms and suggestions as I undertook this study in fulfilment of the requirements for the degree of Master of Laws. I am also deeply indebted to several writers on whose books and articles I have drawn freely for my materials. The references to specific quotations and citations follow under appropriate chapters. And to my husband, A. J. Thomas, Jr., who provided enormous encouragement and indispensable assistance at every stage, go my heartfelt thanks.

ANN VAN WYNEN THOMAS

Dallas, Texas
March 26, 1953

international law. In the final analysis international law can only maintain its existence through guidance by the non-tangible: by the moral absolutes of the spirit. By insisting on ethical means toward whatever ends, by reconciling tradition with reason, by building on the dignity of the individual, international law extends a guiding light and becomes basic to creative statesmanship.

The author by education, interest, and experience is thoroughly qualified to deal with this important subject. It has been my pleasure to review her research in the Southern Methodist University Graduate Law School, and I have been deeply impressed by her thoroughness and sincerity. I commend her thought-provoking analysis.

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School of Law
Southern Methodist University
April 15, 1953

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Introduction

THE TWENTIETH CENTURY HAS WITNESSED a profound transformation in international society, a transformation which international law can no longer afford to ignore. Admittedly, international law can never achieve even partial stability if it reacts to every constitutional, economic, or social change in the life of one or of several of the members of the family of nations.[1] But on the other hand, where the social basis of the national law of a number of states has undergone revolutionary and drastic philosophical changes, it would be the folly of destruction for students of international law to ignore these great political and social upheavals.

From the earliest times to the present, and in all countries, there has been a close relationship between legal and moral notions.[2] And while there are many legal rules of a mere regulatory nature,[3] having no particular moral significance, the general rules of legal conduct are supposed to reflect, and in fact necessarily tend to reflect the ethical standards of the community.[4] Thus, international law has always been predicated on certain fundamental moral and ethical values to which civilized nations subscribe, even if at times their practices have varied from their faith.[5] But today various states, controlling the lives and destinies of millions of people, have repudiated these basic moral

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Ethical and Moral Nature of International Law

THERE ARE VARIOUS DEFINITIONS of international law,[1] all of which are plausible, for it is the privilege of every writer to delimit and designate his discipline as he thinks fit, so long as there is historic continuity and no serious disruptive break with past learning and past experience in the field.[2] For the purpose of this study, international law is defined as a system of jurisprudence consisting of general principles of right, equity, and humanitarianism, founded upon established customs and acts of states and upon international agreements not inconsistent with standards of justice which Christian and civilized states recognize as obligatory in their relations and dealings with each other as well as with the citizens and subjects of each.

International law is composed, therefore, not only of rules, but also of principles, conceptions, and standards, and from the standpoint of civilized continuity, the latter are far more important than the former.

standards, and, *a fortiori*, they can therefore have little faith in the jural principles evolved therefrom.

The power which these new and finally destructive ideologies exert over the minds of men requires the world to face again the problem of the primary presuppositions of all international existence. It is now evident that no durable international settlement can possibly be arrived at unless the nations of the world accept certain common convictions and common standards as a mainstay of their own lives and of their relations with each other. Political and legal commitments require a certain amount of natural sympathy among the cojurors. The fact alone that nations share a number of interests does not necessarily guarantee an international community. There must be agreement upon certain principles of behavior, fortified by agreement upon some fundamental values and beliefs. In the final analysis, all theories for international order depend on a willingness of nations to live together in harmony, and this willingness itself depends, in turn, upon some underlying unity of an ethical nature. International law, or the legally binding part of the international social order, is perhaps the ethical minimum, that is, that portion of the social order whose enforcement the international community must secure for its bare survival. Hence, where there is no measure of agreement between nations on the minimum essentials underlying international law, there can be little hope for a peaceful and unified international order.

Despite the fact that moral experiences are difficult to explain, the very growth of civilization is, in one of its aspects, the growth of the consciousness of right and wrong, and of collective wisdom in applying it.[7] Our civilization is what it is and where it is because of our choice of a scale of values. What men actually espouse or reject depends upon what they expect of themselves and approve or disapprove in others, upon what they consider as of supreme worth and importance, what of only incidental concern, and what of no account at all: or briefly, depends on their moral outlook on life. Whenever men group together and approve of a given standard of morality, they must speak finally in terms of law.[8] Law permits morality to grow, and as it grows the standard of law is elevated, and morality is further advanced, for the two have reciprocal influence.[9]

Admittedly, from one age to another, the designation of particular actions as morally right and wrong changes, and societies in one stage of civilization are apt to differ widely from societies in another stage in the application of their ideas of good and evil.[10] Such differences are entirely tenable in a world subject to man's influence as a shaper of his material and mental environment. But no civilization can live or continue to grow unless it successfully accumulates from generation to generation its collective experiences of good and evil. The precise denotation of the word "good" will change as circumstances change, the connotations

These principles, conceptions, and standards are derived from considerations of an ethical nature; they concern that interrelated complex of ideas which centers around the notions of right and wrong, justice and humanity, and attempt to blend these ideas into a coherent basis for the system of international law.[3]

In the affairs of nations, as in the affairs of humans, there is often no absolutely demonstrable right course *to follow among the many combinations that are possible* in any given situation.[4] Yet there are some solutions which can be excluded as wrong, even if there is no one solution which can be plainly marked right. There is thus in international law an established idea of value which is basal to the conception of ethics, and the essential role of this value concept is that it supplies a scale to measure international conduct, beginning with the highest and most fundamental virtues, passing through the less meritorious actions, then on to incidental offenses, and finally terminating in despicable actions.[5]

Moral experiences are part of the daily life of humanity. All right-minded men experience a sense of duty, of decency, of fairness, of guilt, of remorse, of humiliation, of unselfishness, or of intermediate disinterested attitudes. Yet it is impossible to define morality exactly or delineate it scientifically. Perhaps the best approach is that of Lin Yutang:[6]

> Understanding the rainbow is physics,
> but delight at the rainbow is morality.

one, in international affairs. Its chief function would then seem to be to reinforce state policy—to bolster power politics by ideological appeals.[15]

Those who flatly deny the possibility of international morality naturally contest the existence of an international community.[16] Nevertheless, it can be pointed out that there is a widespread assumption of the existence of some sort of family of nations, for people talk, and within certain limits behave, as if there were a world community.[17] Most people would recognize a certain sense of obligation to humanity as a whole—not necessarily an altruistic obligation, since the instinct for self-preservation may play a considerable part in such reactions as, for example, support for a world fight against infectious diseases, or for safety and justice for travelers, or for an international control of dangerous drugs. But whatever the underlying motive, a great body of common interests makes for co-operation, and from this co-operation arises the international community; and any community requires, for a minimal stability, an agreement on at least a few fundamental moral precepts.[18]

Students of international law who feel that morality does have an important function in international society[19] point out that governments continually appeal to the principles of right and justice in their diplomatic notes, treaties, and other communications, and that states adhering to international tribunals often agree to the settlement of disputes on grounds of

of the words used to express different aspects of goodness will grow wider and deeper; but the ideas behind the words cannot become less in value if a civilization is to continue, for once a civilization wholly discards an idea of good or evil, or suffers it to decay or lose capacity for growth or change, disaster is inevitable.[11]

The question of whether or not morality has any function in international society has been answered both in the negative and in the positive. The negative approach declares that the relations between states are governed solely by power, and that morality plays no part in them.[12] This view, that no ethical standards are applicable to relations between nations, can be traced from Machiavelli through Spinoza and Hobbes to Hegel in whom it found its most finished and thoroughgoing expression. For Hegel, states are complete and morally self-sufficient entities, and the relations between them express only the concordance or conflict of independent wills not united by any mutual obligation.[13]

This theory would destroy in advance the possibility of an ethical understanding among men, and of a well-founded international law. Therefore, modern international legal scholars with the pragmatic bent of mind[14] tend to soften their negative by pointing out that as long as statesmen and others who influence the conduct of international affairs agree—whether honestly or dishonestly—in their declarations that states have moral duties, morality has a role, though a minor

of Chancellor Kent, who, in his *Commentaries on American Law*, wrote:

> States . . . are to be considered as moral persons, having a public will capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life.[24]

If it be conceded that there are ethical principles for states, the question then arises of the purpose and importance of such principles. This can be readily answered, for international morality provides the key to the understanding of the functions fulfilled by international law, and also serves as the main agency for the growth and development of existing international law.[25]

Every stage in legal evolution bears witness to the close relationship between law and morals.[26] In primitive legal systems law and religion were inseparably combined. As law and religion came to be distinguished, law remained organically associated with morals and ethics. The Greeks and Romans, for example, customarily identified jurisprudence with inquiries as to the right and the just, and had no disposition to separate law and morality.[27] During the Middle Ages, law was considered a branch of theology and was necessarily then associated with moral and ethical thinking.[28] With the advent of the Reformation came one of the first philosophic efforts to separate law and

"law and equity," that is, in accordance with general principles of justice as distinguished from any particular system of jurisprudence, thereby permitting tribunals to call upon the principles of international morality as well as international law.[20] Even conceding that states are not always circumspect in their relations with each other, there is still evidence of a widespread respect for ethical standards.

In the last analysis, the relations of states are the relations of individuals. Neither domestic law nor international law is self-creating or self-applying. "There are men who govern," declares an ancient Chinese proverb, "but there are no laws that govern."[21] It is impossible to evade the ultimate fact that the deeds of states are deeds of persons and affect persons.

> Injuries and benefits to states by other states are injuries and benefits to individuals by way of their political selves. Whoever therefore touches a person raises an ethical question; and that question comes directly under the personal code of the aggressor.[22]

Accordingly, if there are ethical principles for persons, there must be ethical principles for states. There may be no moral code for nations in the sense of formulated or codified rules,[23] but there certainly exist in the minds of civilized men an "ought" and an "ought not" with respect to group actions as with respect to the actions of individuals.

This thesis finds powerful support in the teachings

enforcement of the laws, and public administration.[54] Accordingly it became more and more nearly impossible to conserve domestic morality in states which denied morality a role in international affairs.[55] When Athens dealt as pure egoist with her allies, Athenians began to deal as pure egoists with each other, and democracy was ruined.[56] When Hitler trampled ruthlessly on unoffending neighbors, internally German turned upon German.[57] As a matter of course internal relations tend to assimilate themselves to the morals of external relations. It is impossible, therefore, if states deal with each other at all, to abandon value concepts of a moral and ethical nature, for whatever instrumentality is substituted, that is then set up in the place of respect and moral equality.[58]

Krabbe, the Dutch jurist, points out[59] that the rule of law springs from the feeling or sense of right in each individual as a member of a community; and it is this feeling or sense of right and not the positive commands of the state which is the real basis for the validity of law. The idea of the community is not limited to states or parts of states, but overlaps state boundaries, and produces thereby the sense of right of the international community. Each individual as a moral creature is presumed by Krabbe to have this sense of right, and certain minor differences in the sense of right between different national communities account largely for national and state differences. Law is then the witness and external deposit of a

morals, but even then law was considered as intimately connected with moral ideas.[29]

This connection was continued until about the middle of the nineteenth century, when exponents of the positivist theories of jurisprudence[30] sought to sever completely law from morals. Instead of the ethical and moral values of earlier times, there were advanced the customs or principles of action which emanated from the sentiments of the people of a given time and locality, or rules of action formulated by a political sovereign which became intrinsically just by the acceptance and promulgation of the state. It was maintained that law is not that which is in accordance with morality, it is not that which "ought to be," but rather that which "is."[31]

The consequence of this philosophy, which became widely diffused in the nineteenth century, was an ever increasing stress upon the practices of states, more recognition being given to what nations did than to abstract ideas of right and justice. Consequently, as less emphasis was placed on the role of ethics in international law, more emphasis was placed on power and force.[32] By the middle of the twentieth century, this predominance of the power concept unchecked by requirements of morality had erupted in vicious cancers on the face of civilization, and had effectively impeded the advancement of international law.[33]

The prevailing ethical conception of any country tends to express itself in the making of the laws, the

2

International Law and Natural Law, Christianity, Democracy

INTERNATIONAL LAW AND NATURAL LAW

THE GENERAL DISSATISFACTION with the positivistic jurisprudence of the nineteenth century has given rise to more than one effort to salvage the more valid elements in the doctrines of natural law for use in international relations.[1] But the difficulty with this type of approach to international law is that there have been various schools of natural law, each of which has interpreted the concept with different emphasis.

Theories of natural law can be traced back to Greece in the fifth century B.C., when Greek savants found in the conception of natural law a higher, unwritten law from which man-made law derived its validity, and by which it could be tested.[2] Certain Roman jurists interpreted natural law as that law which conformed to the natural order of the universe and which extended its sway even to the lower ani-

nation's moral life; its history is the history of the moral development of the race. Concepts of an ethical nature, of necessity, are as much a part of the fabric of international jurisprudence as the intricate and confused records of international conduct.[40]

If the full significance of international law is to be appreciated, the actual practices of states must be lined up side by side with the principles which should guide states in their intercourse, for it is impossible either to describe what is without reference to what ought to be, or to theorize about what ought to be without studying the actual practices of states.[41]

Any nation so reckless of moral control as to seek only its selfish aggrandizement, at whatever cost to the world community, becomes and must become the enemy of the world's peace and order. Only when nations accept the doctrine that they are bound to conform to a minimum of morality does a true society of nations begin to appear. One of the most fundamental tests of membership in such a society of states must be the willingness and capacity to follow the ideals which are considered fundamental.[42] Then the individual nation and the association of nations can be looked upon not as antagonistic, but as complementary, as parts of one complete, organic whole. The method of achieving such an end is the method of law.[43] The pathway to that law is provided by ethics, for the progress of civilized man is measured by his understanding and comprehension of moral values.[44]

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first principles at the back of and before practice; that is to say, international law cannot arise absolutely from mere practice of states alone; there must be some primary principles, some fundamental norms of right conduct appealing to the mentality of mankind to which to attach custom and practice.[10] In every community there appear these certain first principles upon which the structure of law is reared. They can be called "natural law," "original law," "true law," "fundamental law," or "principles of morals and justice," it makes no difference. The question of where they come from cannot, of course, be answered conclusively; but for the purposes of international law it is sufficient to note that they come into being and exist whenever human beings create a common society.[11]

It should be emphasized that natural law thinking has by no means been confined to the Western world, inasmuch as it is characteristic of all civilizations.[12] Thus, by transcending dogmatic national limitations it has in the past laid the groundwork for a wider accord on certain fundamental valuations and consequently on the essential attributes of positive law.

INTERNATIONAL LAW AND CHRISTIAN CIVILIZATION

Different forms of international law have appeared throughout the course of history. Even in antiquity there was a Greek, a Mediterranean, a Hindu, and a Chinese international law. The rudimentary form of

mals.[3] Hobbes and Spinoza conceived natural law as synonymous with the force of nature;[4] Plato and Kant deduced it from the moral ideal.[5] Locke identified it with the harmony prevailing in a remote primitive state of uncorrupted nature,[6] while Aristotle regarded it as intimately bound up with the essence of existing society.[7] The rise of Christianity and the development of Catholic doctrine divorced natural law from its intimate connection with the physical universe and grafted it to the *corpus mysticum* and to the spiritual unity founded upon grace which embraced the terrestrial as well as the celestial.[8]

The modern view of natural law differs in one important respect from the views which prevailed down to the end of the eighteenth century. Prior to that time, natural law had always been defined as something essentially static—a fixed and eternal standard of right which must, in the nature of things, be the same yesterday, today, and forever. But toward the end of the nineteenth century Stammler postulated a natural law "with a variable content."[9] Natural law under such a hypothesis no longer connotes something eternal, fixed, and invariable, but rather refers to men's innate feeling at a given time or place for what "just law" ought to be.

In its moral meaning, natural law has proved a prolific source of thought on international relations, and its chief importance for the field of international law lies in its implication that there existed or exist some

The causes which for a time restricted the application of international law to Christian nations were, in a sense, accidental rather than essential; and thus, when the political and economic necessity arose for making international law applicable to nations holding beliefs other than Christian, it was found that there was nothing in the character of its fundamental principles which needed to restrict its application to those belonging to the Christian faith, for its applicability was a question of *civilization* rather than of creed.[17] The position which Christianity had occupied as a formative element in international law was then largely replaced by eighteenth- and nineteenth-century ideological standards which began under a philosophy of enlightenment and were expressed politically in various forms of liberalism, humanitarianism, and democracy.[18] As the dignity and freedom of men, the power of human reason over social and political conditions, and the unity of civilized nations became the dominant tendencies of Western political thought, the original Christian source of international law and international ethics receded into the background, and modern international law was transformed into a system of legal and moral norms common to all civilized states.[19]

This, of course, raises the question of the criteria upon which it can be decided whether a state belongs to the civilized nations of the world. To the scholars, judges, and writers of the nineteenth century in the field of international law this issue presented but little

international law recognized by each of these groups was restricted in operation to those states claiming a *common ancestry, usually speaking the same language*, and holding similar religious, moral, and intellectual convictions.[13]

In a similar manner, modern international law sprang from the interstate relations of a certain group of nations, namely those which were formed upon dissolution of the Empire of the West, and which had shared for many generations in the consciousness of a common allegiance to the Holy Roman Empire.[14] By the time the medieval system disintegrated, a Christian philosophy of life had been the guiding force of the greater part of Europe for a number of centuries, and had fostered a code of ethics generally accepted not merely as to its broad outlines but also as to the way in which Christian values were to be applied.[15] The uniform allegiance of the medieval community to the jurisdiction of the pope and emperor was replaced by principles of Christian law. These principles grew with the mental growth of the nations of Europe and were part of the stock of ideas which colonists from the continent carried to other quarters of the globe.

Most ethical systems spring from a religious source and are the product of a gradual rationalization of religious values.[16] By a process of secularization, they eventually cut themselves free from the mothering religious foundation, thereby attaining wider validity.

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difficulty. If a nation subscribed to the principles of good faith in dealing with other nations, if it gave protection to the life, liberty, and property of foreigners more or less in accordance with the liberal traditions of the west, and, in some few cases, if it fulfilled minimum standards of civilization for its own nationals, then, whatever the predominant religious creed of its populace, it was accorded the label of "civilized" and became eligible for membership in the family of nations.[20]

But with the widespread and almost uncritical acceptance of the positivist philosophies, stressing a close attention to the acts of states based on power and challenging all moral vision, the dynamic tradition of international law suffered a sharp break. The world wars of the twentieth century are dramatic demonstrations of the extent to which Western civilization has become corrupted with the idea that common standards of good faith, justice, tolerance, and humanitarianism are no longer elements in the definition of the word "civilized"; or, conversely, that international law applies also to barbaric states.[21] According to this new interpretation, the only thing that mattered was whether a state was possessed of sufficient power to force other nations to accede to its desires. If so, conduct which would have placed a government outside the pale of civilized society in the nineteenth century was no bar, in the twentieth, to congenial relations and diplomatic intercourse.[22]

The classic writers of international law would have done but poor service had they limited their efforts to discovering and describing the actual practices of nations. It was precisely because the usages of the time were contrary to what might be expected of Christian nations that Grotius made his appeal to a higher law deduced from general principles of morality.[23] Confirmed it might be by the practice of states, but valid whether so confirmed or not. This higher law was an expression of that supreme rule of international conduct that the state is only a group of men governed by men; it can through its governors deny morality and law and be motivated only by its interests and its strength, but if the state does recognize juridical and moral rules, the bases of these rules cannot be different from the bases of those which apply to individuals in their relations in civil society.[24]

In the international community, as in any continuing civilization, changes in law must lie within the limits that are compatible with the elasticity of the morality of that civilization—not with the morality as it is, but with the morality as it can become without the destruction of its principle of life.[25] Men cannot change their moral views quickly without destroying them, thus, any change which goes beyond the standard of elasticity will demolish that civilization, unless the change is reversed by a return to enough of the broken tradition to restore the possibility of further social growth. The sudden (from a historical view-

point) abandonment of the minimum program of behavior between states supported by positive values common to all members admitted to the community of nations drastically undermined the value scale conceived as the foundation for modern international law, and has already reaped evil.[26]

INTERNATIONAL LAW AND DEMOCRACY

It is often said that modern international law assumes universal democracy.[27] This does not refer to parliamentary democracy, for democracy does not exhaust itself in political techniques.[28] It is, above all, a fundamental attitude, a scale of values, a definite conception of man and his place in society. There can really be no official definition of democracy, for it is neither a system, nor a set of institutions, nor a code of law, nor a combination of policies. It is rather a belief in human nature and a code of behavior which translates that belief into thought and action.[29] It is therefore a type of social philosophy in which the form of government is incidental, a means and not an end in itself. The only end of democratic government is to minister to the community life of society, to remove the disharmonies that trouble it; consequently it becomes a reality only through the sum total of the personal lives of individual citizens. Democracy is therefore incompatible with any form of authoritarianism, no matter what benefits can be derived from such

concentration of responsibility. Further, it is incompatible with the uncontrolled and arbitrary exercise of power, even though such power be exercised with majority backing.[30]

The first great experiment in democracy was that of ancient Athens. Although it lasted but a short time, it loosed in the world a lusty passion for liberty which was often ruthlessly trampled upon but which seemed to gain stamina from opposition. Two main elements caused the downfall of Grecian democracy: first, throughout the ancient world the widespread institution of slavery presented an almost insuperable bar to the full realization of democracy; and second, the classical civilization in the time of Plato and Aristotle failed to face the necessity of developing an effective international order.[31] In their attempts to preserve local traditional values, most of the leaders of that time saw fit to concentrate on the improvement of the city-state and paid little or no heed to the problem of creating wider political organizations; this attitude paved the way for the eventual triumph of the undemocratic, although "one-world" minded, Macedonian and Roman Empires.[32]

In the latter days of the glory of Rome a democratic spirit was given emphasis by leaders of thought, and although Roman jurists, like their Greek predecessors, were faced with the apparently unsolvable problem of universal slavery, still they attempted to distinguish between civil inequalities, produced by slavery, and

a general equality common to all men because of the universality of law.[33] The Stoics had taught Rome that there was in every man a spark of divine reason, and that by the help of the reason within him man could apprehend the fundamental principles of moral life.[34] If man had reason, the Roman jurists deduced, if there were certain fundamental principles of right and wrong which reason could apprehend, then the common principles of right acknowledged by all men must attain some similarity.[35] The Roman jurists thought of law as existing on three strata: the law of the community (*jus civile*), conforming to the particular usages and traditions of a specified community; the law that transcended the borders of any one community, expressive of the very being of law, and serving as the basis of ordered relations between men everywhere (*jus gentium*); and, over and above these, the law of nature itself (*jus naturale*), the final standard toward which all positive law (*lex* as opposed to *jus*) should strive.[36]

In the Middle Ages, spreading Christianity brought into the world a new and more inclusive ideal of democracy founded on a wider postulate of human equality and a dynamic conception of moral progress. The universalist ethics of Christianity denied any difference between high and low, between race and race, and between freeman and slave.[37] While Greek thought had taken for granted that the ideal of human conduct was static, that it was the business of the state

to maintain and uphold that ideal, and that therefore in the properly organized state legal and moral ideals would eventually coincide, the Christian ideal of humanly unattainable perfection implied that the morality recognized and enforced by law could not possibly be as high as the morality obligatory on the Christian.[38]

One of the essential elements in the Christian conception of equality was universality. Christianity worked for equality not of all members of this or that community, but of all men; every human being had a principle of value, a spirit, and this principle mattered more than rank or wealth or power.[39] So the democratic community, in the sense inspired by the Christian doctrine of equality, has always pointed beyond itself toward internationalism, the universal brotherhood of man. This conviction of universal equality was slowly superimposed upon the Roman concept of the universality of laws, and the two united to give life to modern international law.

The ethical goals of democracy are a continuation, in secular form, of the traditional doctrines of Christianity. Although the "other-world" preoccupation of Christianity in the Middle Ages prevented it from interfering drastically with the structure of secular society, the effect of the Christian tradition was to familiarize the Western world with the idea that all men are equal in the sight of God.[40] During the seventeenth and eighteenth centuries the Independents, the

Anabaptists, and the Quakers used the small Christian congregations as units of democratic government. Democracy as practiced by these congregations was closely connected with the universalistic doctrine of innate ideas, the belief in "natural freedom" and the "natural equality" of all men.[41]

Subsequently, the doctrine of "natural rights" supplied a philosophical rather than a theological foundation to the principles of modern democracy, and this doctrine appealed strongly to popular thinking. For people brought up in this tradition, the alleviation of human suffering and the establishment of universal peace are bound to appear as the proper ends of secular existence.[42] Hence democracy, with its hatred of war and its emphasis on social justice, with its conviction that human beings are inherently capable of thinking and acting for themselves provided they are given a chance to do so by having access to human experience in general and to the particular facts relevant to any decision, is fundamentally a product of Western culture. And to surrender the democratic ideal is to surrender the validity of Western civilization.

Democracy's growth has been gradual. People cannot bring democracy into immediate being by a sudden change of attitude; and certainly no borrowed scheme of democracy can be abruptly thrust upon a people who have not already met some of its condi-

tions and learned some of its ways. Democracy can best be described as political maturity:

> Like all maturity, it is various in its degrees and manifestations, and it is produced by the slow process of maturation. . . . It must be cultivated lovingly, tirelessly over the generations. It must be cultivated with the perseverance and the stamina that comes from an assured faith in the possibilities of human nature.[43]

Unfortunately it cannot be guaranteed by the tide of time, for on this imperfect globe not all individuals achieve maturity, nor do all states seeking to realize democracy achieve political adulthood.

As the wide historical backgrounds and credos of natural law, Christianity, and democracy converged, they culminated in modern international law, and consequently the political traditions of international law today lay their stress on the ethical concepts of tolerance, equality, good faith, and the indestructible rights of the individual.

3

Derivative Concepts

TOLERANCE

LOCKE AND VOLTAIRE gave to international political thinking the doctrine of tolerance.[1] Beneath the crust of formal ritual and superficial conformity, these great writers sought by critical tolerance saner ideals, more humane standards, principles and practices assuring the common good of the community as a whole, both national and international. These men emphasized the fact that certainty in the field of political knowledge is humanly impossible of attainment, and that mankind should therefore be swayed by an element of tolerance.

> Since it is unavoidable to the greatest part of men, if not all, to have several *opinions* without certain and indubitable proofs of their truth . . . it would, methinks, become all men to maintain peace, and the common offices of humanity, and friendship, in the diversity of opinions.[2]

To that end, international law has been molded in modern times by the realization that nations need not

a formal unity of belief, but a genuine effort of understanding, not a conversion to this or that doctrine of government, but an aversion to prejudice, intolerance, and passivity.

Critical tolerance involves the power of imaginative identification with others, the ability to enter in imagination into the situation of others, and to re-enact their feelings as though they were one's own. Consequently it is the root of the attitude which makes a nation ready to do unto others as it would be done by. In the last analysis, the principles of freedom of thought, of freedom to express and defend one's views, and general lenity regarding various convictions, all of which are important elements of critical tolerance, ultimately pay for themselves in the revitalization of truth.[3]

But critical tolerance does not go so far as to demand no limitations, no boundaries, for every conception carried to its extreme conclusion harbors within its bosom the seeds of its own destruction.[4] And for this reason tolerance must be tempered lest it end up in complete intolerance. Therefore, although an essential part of modern international law is tolerance toward differing ways of political life, leaving each state free to develop its own institutions in conformity with its traditions and the genius of its people,[5] nonetheless this tolerant right of free self-development is bounded and delimited by two major restrictions. The first restriction is that the right must be exercised with

due regard for the interests of the community of states. International law was brought into being for the benefit of the international community and not for the advantage of an individual state. An individual state existing as an isolated unit can have no rights, so it is only as a member of the community of nations that it is possible for it to acquire international legal rights. The extent of the exercise of a right must, therefore, be fixed not by reference to the benefit which is conferred on the individual state, but in its relation to the social complex as a whole. The existence and well-being of international society requires that each state conduct itself consistently with the fact that it is a part of a greater body of states. The second restriction is that each state has the duty to see that conditions prevailing within its own territory do not menace international peace and order.[6]

EQUALITY

The importance attached to the idea of equality in international law is shown by the number and the insistence of the charges based upon it. Underlying such terms as "most-favored-nation,"[7] "freedom of the seas,"[8] "freedom of the air,"[9] "equality of status,"[10] "sovereign equality of all nations,"[11] is the demand for the application of the principle of equality.

In modern times equality is inherent in the democratic system, but it is much older than democracy.

The nature of equality was discussed and debated by Greek and Roman classical jurists,[12] and the general principles of Christian theology supported the equal treatment of individuals on certain matters, particularly those involving faith and morals.[13] But the modern doctrine of equality springs from the evolution of the idea of natural law which, under the tutelage of Grotius and Hooker, was turned into a consideration of the natural rights of man.[14] This conception of equality evolved into a broad doctrine which became one of the main tenets of the seventeenth-century Puritan movement, and via this avenue entered into the canons of modern democratic thought.[15] Equality consequently was viewed as being compatible with, and actually going so far as to welcome and to demand, differences in mankind; for in Puritan doctrine the equality of all men in the sight of God dwarfed differences of intellect, wealth, or strength. The practical import of this doctrine was that all men ought to be treated not as if they had equal capacities but as if they all were equally to count.[16]

Accordingly, in the first phases of its modern development, democratic equality laid stress on the importance of each individual; during the period of the French Revolution the concept of equality broadened, and the issue of the rights of man became a demand for equality between individuals; as the impact of the industrial revolution impressed itself on the Western world, this demand was expanded in the next century

from a demand for equality between individuals to a demand for equality between social groups. With the birth of the twentieth century, the issue again became enlarged and extended beyond social groups and classes to that of equality between nations.[17]

By equality of states is not, of course, meant the absolute equality of size, resources, possessions, or even rights, but rather the stress is at present upon the formal equality of states before the law, i.e., that there shall be equal treatment of nations equally situated with respect to the issue at hand.[18] Equality before the law among nations implies a community of interest which is more than the mere mechanical interdependence of existence, for it involves a rational acceptance of common norms and purposes. If nations are to be treated on a footing of equality, they must seek equality in co-operating as an international democratic community, for until there exists but a single nation on the face of the earth, equality will always imply a willingness to give and take, to play the game according to specified rules.[19]

GOOD FAITH

One of the fundamental characteristics of the works of early writers in the field of modern international law was the treatment of independent states as moral beings, subject to ordinary standards and obligations of honesty and fair dealing.[20] This led to the keystone

principle that states must carry out their legal obligations in full good faith—*pacta sunt servanda.*[21] This ideal that treaties are sacred and must be kept has its roots in international morality and from thence developed into a strong international legal principle.[22] Rousseau pointed out[23] that every society needs a spiritual as well as a material basis, for it cannot exist without the *volonté générale*—a sentiment among the members of a community of loyalty, of shared responsibility for the conduct of a common life. And it is this *volonté générale*, the unwritten community of interests and ideas, that created the moral obligation for the members of the family of nations to fulfil treaties.[24]

If one concludes that states have no moral obligations toward each other then, naturally, treaties have no binding force.[25] But it would seem that even statesmen who exhibit the least taste for international cooperation conclude treaties with the expectation that they will be observed; and nations which violate treaties tend either to deny that they have done so, or else to deny that the violation lacked justification, usually claiming that breaking was legally or morally justified, thereby indirectly acknowledging that there is an obligation on a state to perform its treaty terms.[26]

Good faith, in the political tradition of the West, further implies that immoral obligations cannot be the object of an international treaty, for according to Hyde:

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duties and rights of states are only the duties and rights of men who compose them."[31]

Emphasis upon the theoretical relation of "states" to the complete exclusion of individuals is in fact of relatively recent origin, a product of nineteenth-century positivism.[32] The law of nations of previous centuries with its roots in natural law, both Christian and Greek, and in the *jus gentium* of the Romans, gave a primary place to the individual, for the very essence of natural law is a sense of moral justice, of right reason, which has no meaning except in terms of a heightened awareness of the worth of human personality.[33]

The most casual glance at the works of Grotius, Pufendorf, or Vattel demonstrates the tremendous impact of this idea. It is indeed only from the narrowest perspectives of international law as conceived in the period since Bentham[34] that an observer can claim even theoretically that only states, exclusive of individuals, are subjects of international law. Pirates, recognized revolutionists, minorities, shippers of contraband, mandated territories, administrative unions, the League of Nations, and the United Nations have all been declared subjects of rights and duties by international law. Accordingly, nation-states, important as they are, are not the sole participants in the realm of the law of nations.

There can be little disagreement over the fact that international law must be a developing science re-

If international law obtains among enlightened states it is not unreasonable to assert that that law may denounce, as internationally illegal, agreements which are concluded for the purpose of securing the performance of acts acknowledged to be lawless and contemptuous of the fundamental principles of justice.[27]

At present this is a goal rather than an actuality, for it is impossible for international law to prohibit effectively the achievement via treaties or conventions of an end which conflicts with international morality if it cannot effectively prohibit the use of force for the achievement of the same end—force being the most immoral action against international public policy in this present day and age.[28] Nonetheless, ideals are like stars: nations may never reach them, but like the mariners of old they can chart their course by them.

INDESTRUCTIBLE RIGHTS OF THE INDIVIDUAL

How far international law protects certain rights of the individual has been debated by many learned writers,[29] yet most would agree that human dignity is one of the tacit assumptions of the law of nations, and that, although international law is principally concerned with relations between states, nevertheless each state is a thing of men, women, and children, and is actually merely a political corporation which acts as the agency of its citizens for the execution of their will.[30] Often quoted are the words of Westlake: "The

nition of inalienable human rights and the recognition of the individual as a subject of international law became synonymous.[37]

sponding to the needs of the times.[35] One of the major assumptions of the law of nations is that as the international society develops and becomes more advanced certain social interests of the whole community will have to intrude on what was previously the sole interest of a sovereign state, for the operation of any society depends on the integration and working together of all of its parts. It follows logically that new fields and new vistas are continually being opened up as current learning advances. Consequently even the humble individual human being, formerly thought to be subject only to the sovereignty of the state of which he is a member, can participate in the processes of developing international law. Treaties banning slavery, the slave trade, and forced labor; for safeguarding health and preventing abuses injurious to it; for the protection of stateless persons and refugees; treaties imposing duties of religious and political tolerance toward minorities; and agreements establishing most of the rules of modern warfare have all added to the moral foundation of international law which demands the measure of law consistent with the nature and dignity of humanity, and involves, above all, the obligation not to inflict unnecessary death or suffering on other members of the human race. To the extent that sovereign states recognized by such treaties an international duty to treat mankind with the same respect with which they treated other members of the international community,[36] to that vital extent the recog-

—either political or religious. Pufendorf felt that there was in human beings generally a core of common reaction, even though it might be limited in scope, which could successfully be used as nourishment for the tree of international law.[2]

Pufendorf's theory was vindicated by later writers who made vast studies of the many legal systems around the world and discovered that they do contain, to some extent, substantial areas of agreement, although these areas of agreement often differ to explain extrinsically different circumstances;[4] that is, one group of people react in a certain way to a certain problem, and another group, acting entirely independently and without knowledge of the first group, arrive at the same solution for the same problem.[4] Boas, the anthropologist, points out:

> The languages of people all over the world prove that the vices that we know such as *murder, theft, lying,* rape are recognized and in most cases discountenanced within the *social* group in which mutual duties are recognized.[5]

It has been argued that *modern* international law is based solely on Western prejudice because it developed through the history of Western ideas; that the fact that law changes proves there cannot be any one set of ethical principles valid for all times and all societies.[6] Yet, if a blind man started to walk directly in the path of an oncoming automobile, every normal person who could lay a restraining hand on him would certainly do so, no matter what his color, his politics,

4

Basal Relation of Concepts to International Law

CORE OF COMMON REACTION

WHY WERE THE PARTICULAR CONCEPTS chosen which contribute the ethical and moral bases to international law? This is a problem with which publicists from the days of Grotius onward have struggled. The answer is not made easier by the fact that the world never has been, and is not now, a homogeneous unit. The various peoples of the world have differing traditions, differing religions, differing political and economic convictions.

Pufendorf, one of the earliest publicists of the modern law of nations, cast the first true glimmer of light on the road to a solution.[1] He propounded his theories of international law by using the assumption that there were ethical and moral concepts accepted by all people without the necessity of there being throughout the world an ideological uniformity or common creed

zation present certain common patterns, so that the law of family life today closely resembles, in many respects, the law of the Romans, Egyptians, and Greeks, just as the fundamental relations between husband and wife and parent and child are still much the same. There are no doubt variations between ancient and modern conditions, but there are also variations of family life within any single modern homogeneous nation today, and it is open to question if these latter variations are less than the former.

We know then that valuation is commonplace in all societies, and that there are large areas of uniform valuations among diverse cultures. If law can be defined as the sum of duties and liberties—any duties and liberties—the human race has a law which is stated in the phrase "moral unity."[10] Therefore, this body of law, or at least its kernel, must be derived from a moral sense that somehow developed with or through the process of becoming civilized, and its enlargement is both the test and measure of civilization.

JUSTICE AND THE SENSE OF INJUSTICE

The element which groups or societies throughout history had in common was not religion, not tradition, not economic similarities, but only human beings. And human beings almost universally presume themselves to have rights and further presume these rights to be founded on some general principle of justice.[11]

or his religious creed. Or again, men tend to treat the brigands of the caravan trails of the Sahara and the modern gunmen of New York as if they meant the same, no matter what civilization spawned them. There are any number of situations in which a particular act would be regarded by practically all persons as either right or wrong—and the standards of value on which they base their judgments are neither Eastern nor Western, neither black nor yellow nor white, but human standards.

The only philosophy which can sustain any international understanding or international law is a philosophy which can recognize the common, universal, necessary element in our human standards of judgment.[7] The idea that in morals, in value concepts, everything is relative to time and place is demonstrably false. There is, for example, no tribal society nor modern nation which does not regard indiscriminate man-killing as a major moral offense, although almost every nation on the planet regards some form of man-killing as virtuous; but these virtuous "head-huntings," "fetish deaths," modern wars, or other killings are strictly limited and defined.[8] Murder everywhere is a crime. Granted that law, like every phase of human life, changes with time, it does not follow that such changes are completely devoid of historical continuity.[9] Looking at the matter quite empirically, we may observe that no matter how far back legal systems are traced, human existence and social organi-

made precise are to little purpose. Justice is a communal valuation, or rather a series or a complex of such valuations which are sometimes found in conflict when expressed in formulas.[16] These valuations were not agreed upon at a given moment; when the term justice was first used, the act characterized as just had been a matter of habit and tradition for many generations, as many other kinds of moral duties have been instinctively performed long before people were conscious either that they were doing them, or that they ought to be doing them.

Above all, the idea of justice arises from the experience of inequality, and at first appears in the negative form of equalizing injuries inflicted, e.g., an eye for an eye and a tooth for a tooth.[17] But the positive and modern idea of justice is at every point in opposition to this crude compensation of evil with evil. It is a rational conception based upon the idea of personality as a power of infinitely expansive tendency.[18] Every human being has an inherent right to become all that his nature and capacities permit his becoming as he develops toward the realization of his own ideal. The freedom of the individual is absolute except as it interferes with the equal freedom of other individuals; and to find, determine, and fix with authority the limits of this freedom as restricted by equal freedom of all is the problem of justice. This conception applies equally to men and nations. International justice is the problem presented by the moral and physical necessity of

Each man's concept of justice has necessarily fluctuated with the mores of his time and country; and even given a specific time and place, justice in the abstract, although considered an ideal value of the highest rank, has never been readily definable or easily captured by a formula of words, for the more thought is given to the meaning of justice, the more confusion arises.[12]

Justice is obviously not happiness for everyone, for a law which would make one man happy is likely to make another unhappy, although the latter's unhappiness does not necessarily make the law unjust, unfair, or inequitable.[13] The theory has been advanced that justice is the happiness of the majority, but this is not likely to appeal to people who believe that minorities should be protected.[14] Aristotle offered a mechanical theory of justice as the mean between two extremes: one extreme is an excess, the other is a deficiency. It is only the middle point, the mean, said Aristotle, which is just. The theory, though interesting, does not seem to be a very practical one, for a quasi-mathematical formula does not seem to offer any real clue as to the nature of justice—particularly not in the realm of international law.[15] But however justice is defined, it can be said that it is the end purpose of law or else law has no excuse for existing. Indeed it is historically authenticated that law could never have come into existence except as announcing justice as its goal.

But all attempts to make precise what cannot be

made precise are to little purpose. Justice is a communal valuation, or rather a series or a complex of such valuations which are sometimes found in conflict when expressed in formulas.[16] These valuations were not agreed upon at a given moment; when the term justice was first used, the act characterized as just had been a matter of habit and tradition for many generations, as many other kinds of moral duties have been instinctively performed long before people were conscious either that they were doing them, or that they ought to be doing them.

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finding, determining, and fixing with authority the limits of freedom of growth and expansion as restricted by the equal freedom of all other states.[19]

Stammler in his *Theory of Justice*[20] advances the proposition that ideal justice, justice in the abstract, *is and always has been the same, yesterday, today,* and forever. That although in its manifestations through formal law in different countries under different climates and conditions and at different times it has appeared to be dissimilar, this is only appearance. What has in each instance appeared is not justice itself, but merely the result of precarious human efforts to crystallize it into law. Stammler contends that justice is timeless and universal—at any time, in any place it is and always will be the same. He therefore maintains that justice is perhaps the purest and most binding concept men have ever entertained, and that none is free from its authority; that not even the *most autocratic governments have ever dared or ever* will dare deny its claims, for autocratic governments, even as those of liberal bent, refer their actions to rules justifying them.

The disagreement over the meaning of the term "justice" has produced a despairing feeling that there is no such thing as justice, that the word conveys only daedal emotional opinions. Nevertheless, though difficult to define, justice somehow retains its power of magic, and today the world is again groping toward a new horizon of justice. In a recently published trea-

tise[21] Cahn points out that all societies have in common not a sense of what is just, but rather a "sense of injustice," an intuitive reaction against something unjust. He declares that this sense can work even though mankind cannot put a finger on exactly what a just solution would be.

> ... the sense of injustice ... denotes that sympathetic reaction of outrage, horror, shock, resentment and anger ... that prepares the human animal to resist attack ... the sense of injustice presupposes all the richness and diversity of experience, and all the skills that develop with accruing wisdom. Part of this experience is emotional, a circumstance that lends intimacy and human warmth to the whole. Part is rational, permitting growth, progression and cumulation.[22]

In the international sphere the people of the world may desire a just international order as an ideal condition, but they have no concept of how to bring it into existence. On the other hand, the response to a real or an imagined instance of injustice *anywhere in* the world is something quite different. It adds fuel to fires kindled by political and economic rivalries and social inequalities, and may engender popular support for tyranny and conquest in the name of equality but subversive of liberty, or for revolution and insurrection in the name of freedom, but subversive of equality. It is alive with passion and movement, for mankind is predisposed to fight injustice, therefore its potentialities are vast and uncharted.[23]

It is possible to assume, at least as a partial explanation, that the core of common reaction among human

beings added to the "sense of injustice" is a basis for the justification of the concept of the global patterns and perspectives of an ethical and moral international law.

5

Soviet Ideological Impact on International Law

RISE OF TOTALITARIANISM

THERE ARE DEEP POLITICAL DIFFERENCES which distinguish states of free citizens from dictatorships which concentrate all power in the hands of a single person and raise that person above all the laws to which mankind has gradually fought its way through hundreds of years of civilization. But over and above political dissimilarities, there is a complete divergence between totalitarianism and the free nations on moral and ethical grounds based on human values.

Much of the collapse of freedom in the present century is a direct outcome of the positivistic teachings of Marx and Nietzche who carried to the ultimate extreme the philosophies of their common ancestors Fichte and Hegel.[1] These writers denied the ethical foundations of human activity and set up the state as the inheritor of all the devotion of mankind.[2]

The application of this belief, the antithesis of democracy, varied from country to country in response to local conditions, but all varieties of positivism repudiated individual freedom and established a new order in which the state dominated and directed all political, social, economic, and cultural life.[3] This new type of order became known as totalitarianism, and its two major forms were fascism and communism. The fascistic cult had as its underlying concept the dictatorship of racial or cultural elites,[4] while the communists stressed a dictatorship of class.[5] But both major forms of totalitarianism were dedicated to what Mussolini phrased as "everything for the state, nothing against the state, nothing outside the state."[6] To this end all human practices are coercively controlled, and everything that is not forbidden is obligatory. Totalitarianism, whether communist or fascist, is autocratic, for no other internal power is permitted to exist to oppose it.[7] It is therefore the uncompromising enemy of democracy.

To accomplish their objectives both Fascists and Communists place their trust in a revolutionary elite, backed by popular support, organized as a monolithic political party. Both believe in the efficacy of the propaganda machine, which is established officially by the government to break mental resistance to ideas and policies. Both maintain the façade of democratic forms of government through constitutions which provide for popular elections, parliaments, and civil lib-

erties, all of which are unhesitantly flouted in practice. Both insist every citizen go to the polls during elections to vote an assent to the one-party list of candidates or be stigmatized as an opponent of the regime with all dangers and horrors attached thereto.[8]

Although there is a difference between communism and fascism in the kind of life each seeks to establish, still both believe in world domination—a belief which inevitably leads to the subjection of other countries, the difference in objective being only in theory, not in practice.

With the defeat of Italy and Germany in World War II, the immediate menace of fascism to democracy was conquered, but only one head of the double-headed dragon of totalitarianism had been disabled, and the remaining head, communism, seemed to gain considerably in strength by ruthlessly sucking into the vortex of its power nations debilitated by the fascist scourge. The democratic nations of the West attempted to revitalize international rapport, attempted to rationalize the existence of the other head, and succeeded only in being continually outbluffed and outmaneuvered.[9]

Slowly and inevitably the realization is beginning to dawn that no state or people should be permitted to gain moral or legal status under international law, no state should be permitted to claim the right to international recognition of its own cultural and legal institutions based on the light of its own particular

values and traditions, unless it also grants and respects *in practice as well as in words* the right of other nations to do the same.[10]

MARXIAN VIEW OF INTERNATIONAL LAW

The communist opinion of the function of international law varies drastically from this objective. While to noncommunists the importance of international law lies not only in its external and technical forms but also in its spirit and the purpose for which it exists,[11] the Communists see international law as significant only because they consider it ultimately superfluous.

In Marxian ideology the state is conceived as a struggle of classes whose ultimate aim is world revolution involving the abolition of all states and the establishment of a communist universe.[12] Russian Communists are profoundly convinced that communism and democracy cannot live in the same world, and that sooner or later the two must grapple in a death struggle.[13] With this in mind, the Communists view all international relations as a co-operation of the toiling masses in their common opposition to capitalism, and communist international law becomes a provisional interclass law which aims to further the interests of the organized national laboring classes in their common struggle for proletarian world supremacy.[14] When this Soviet commonwealth of the world

has been achieved, its law will be public law, not international law; therefore even the provisional communist international law must then fall by the wayside as unnecessary.[15]

Further, as the Soviet Union represents a new social order which sets itself apart from other members of the international community and which denies the validity of existing international law, any co-operation between the democracies of the world and the communist nations is merely political opportunism on the part of the Communists, to be used only as a means to ease the path of their revolutionary advance toward the Soviet one world.[16]

MORALITY AND ETHICS OF COMMUNISM

The ethical behavior of communism has been marked by deception, ruthlessness, contempt of fair play, and willingness to use falsehoods and treachery to gain some desired end. Such actions raise the question: Does Marxism possess any ethical or moral foundation, and if so, of what does this foundation consist?

There is no doubt that the Communists do assert that their system is founded on ethical principles of a theoretical nature, for they declare that their system differs from other systems of the world in that it is based on *sound* principles of *morality* and ethics in distinction to the deceptive false principles of "capitalist democracy."[17]

The Marxists contend that from the point of view of communism, morality can be only that which forms a means to annihilate the old world—the world of exploitation—and that which strengthens the new communist world.[18] Lenin so defined communist morality.

> We repudiate all morality derived from non-human, non-class concepts. We say that it is a deception, a fraud in the interests of landlords and capitalists. We say that our morality is entirely subordinated to the interests of the class struggle of the proletariat. Morality is what serves to destroy the old exploiting society and to unite all the toilers around the proletariat which is creating a new communist society.... We do not believe in eternal morality.[19]

Using this definition of morality, the Marxists claim that the noncommunist world cannot criticize the theoretical basis of communism, for any such criticism would not be founded on universal moral principles, but would be merely an expression of bourgeois class interest.[20] In other words, communism, being the ultimate truth as far as social human relations are concerned, cannot be criticized, for there are no objective standards by which it can be measured. Yet if one accepts the Marxian thesis that all ethical systems simply reflect the interest of the dominant class, it would only follow that communist morality will do the same, not that communist morality is truth, *sic et simpliciter*, and therefore superior to other forms of morality. Apparently Communists fail to recognize the fact that ethics and morality must be judged by objective standards, for in the absence of

any objective standards, "bourgeois morality" and "proletarian morality" are only different sets of feelings about right and wrong, and there is then no proof that one set is better than the other.[21]

Those who believe in democracy and freedom contend that there are absolute and immutable ethical and moral principles which have commanded assent throughout the centuries. For underlying the ebb and flow of history there is a certain continuity to which all ethical judgments can be related, and which leads men to agree that Socrates was a man of good character, while Nero was evil, that truth and kindness are better than deceit and malice. At all times and in all societies men have agreed that it is better to assist their fellow-creatures than to do them harm, although the extent to which they have been prepared to render such assistance and the particular form which they have felt that it should take have depended on the moral insights of their generation.[22]

But the Communists, certain that their new upstart ideology overrules all past history and is the only road leading to the salvation of human society,[23] brush aside the arguments marshaled by democracy and hold that all people who order their lives along non-Marxian lines are behaving immorally and illegally.[24]

SEMANTIC FRAUD OF COMMUNISM

One of the most dangerous weapons that modern

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toilers from capitalistic domination.[27] Nor is aggression by the Soviet actually aggression, for the Communists proclaim the justice of wars of "liberation," i.e., "nonaggressive" wars, the aim of which is to defend other nations against attempted oppression and enslavement by the capitalistic world.[28]

Russia is forever seeking to prove the "legality" of its seizure of territory either by negotiations with a puppet regime or by the inevitable single-party plebiscite with a compellant to force the populace to vote—an art which the Communists appear to have developed to perfection.[29] Marxian propaganda describes the Soviet system as the most "liberal" in the world, yet the truth of the matter is that the greatest indictment the democratic nations have against communism is that it shares with Nazi Germany the distinction of being the most reactionary system ever known to mankind. It represents a regression to a society under the dictates of prison guards combined with an elite corps, and it has repulsed at every turn that libertarianism which is the familiar central tradition of the Western world.[30]

The West has always viewed democracy as embodying the method of discussion, of open-minded, critical inquiry, and of mutual regard and compromise.[31] The Soviet Union asserts that to permit opinions hostile to the government is not democratic, for if you have a democratic government in the Soviet sense of the word, one party alone makes sense since

totalitarian states have discovered is the fraudulent manipulation of words. Since mankind first formulated grunts into intelligible sounds, words have been the chief means of conveying ideas and thoughts. For example, such words as light, dark, heaven, hell, each conjure up in the hearer's mind a concrete mental picture.

Soviet propagandists were quick to utilize the political potentialities of this phenomenon and turn it to their own advantage. By retaining the classic words and formulas which evoke impressions of pleasant relationships throughout the world, but changing the meaning of the words to fit Soviet ideology, communism has forged a weapon that has struck such a dangerous blow to Western thinking that certain words can no longer be used on an international level to describe an idea clearly, because the new meaning has gone far to eradicate the validity of the concept evoked.[25]

For example, such words as "democracy," "liberation," "aggression," "legality," and "liberalism" have for generations expressed definite ideas, but the Communists have now so hideously twisted and distorted them that they can be used in international life with only the utmost of caution. The Soviet Union sedulously proclaims itself a "democracy," a "people's republic."[26] Communism, being theoretically expansionist in that its goal is a one-class, one-nation world, does not view any extension of Russia's borders as imperialism but rather as the "liberation" of lands and

dicts everything that democratic man has striven and fought for through the ages from the first dawn when people began to resist the tyranny of unmitigated power. It is a further danger in that many discouraged idealists, studying the failure of democratic practice to fulfil democratic ideals, feel that the Soviet Union may be right, and that perhaps on the communist ideological foundation in a shorter time a greater democracy can be built.[36]

According to Lenin, the communist government in Russia rests on a combination of coercion and persuasion.[37] Although most societies rely to some extent on these two factors, the idea conveyed by the words in democratic communities stands at opposite poles from that given by Lenin.[38]

Coercion in the Western sense ordinarily means the exercise of force by constituted authorities against individuals who violate the law. In the accepted communist definition of the term it means the application of force against whole segments or classes of the nation, not even excluding the proletariat for whose purposes the regime supposedly exists.

Democratic governments define persuasion as the effort to convince individuals through personal contact to act in accordance with social values. Under Lenin's definition it means organized, systematic, concerted campaigns to change the attitudes and influence the actions of large social groups.

Traditional Western liberalism has claimed as its

there is nothing for a second party to represent. If it agrees with democracy, it is superfluous; if it does not, it is seditious.[32] Nor, in the Soviet view, can there be any limit to the powers of a regime which is deemed to represent the will of the single, undivided people, and it is thus idle to talk of political or any other kind of freedom. Accordingly, under communism the law becomes only an instrument for repressing subversive opinions.[33]

When the Western world accuses the Russians of undemocratic behavior in the Balkans, the Russians reply that all they have done by mass exterminations is to eliminate the collaborators, and they have thus carried out the Yalta Agreement to "help the liberated people to destroy the last vestiges of Nazism and Fascism." While Western authorities invoke Christianity and democracy to justify a tolerant attitude toward their former enemies, the Soviet Union regards such tolerance as the complete antithesis of democracy.[34]

Only the most full-blooded Nazi could have been receptive to the Hitlerian nonsense about German "democracy" and its "gift of true liberty."[35] But not a few people in the world have been deluded into believing that the Soviet system has set up a new and better brand of "democracy."

The insidious effect of this type of attack by words breeds confusion in the minds of the masses who fail to see that the Soviet system repudiates and contra-

people finally succumb to the belief that the government may be right, and that all their ills are due to the evil machinations of the major enemy of communism, democracy.[42]

Lenin taught Czarist Russia that from the sparks of discontent can arise the conflagration of revolution.[43] The Soviet leaders keep that thought always before them. They take no chances. The stamping out of sparks—the destruction of any potential opposition—is one branch of government in which the Russians surpass even the efficient Germans. In the indoctrination of the masses as little as possible is left to chance and uncontrolled individual choices or activities, but should perchance a person or a group stray slightly from the party line, the result is banishment or extermination.[44]

Over and above the art of mass persuasion, and even more odious and appalling, is the fact that Soviet scientists have apparently had some very consequential success in experiments to coerce the minds of individuals, to annihilate the individuality of a person and substitute for it another identity. Koestler gives a hint of this in his book, *The Age of Longing*,[45] when he speaks of "playing about with the synapses"; that is, experimenting with the millions of junctions between the brain cells across which nerve impulses pass, attempting a complete reconditioning of or altering the layout of the brain. From Mao's communist China rumors have come that the process of

goal the establishment of a society in which coercion is at a minimum, where the individual is personally motivated to act in accord with socially defined expectations. It has built up over the ages a stable group of widely accepted social norms—more or less ethical in nature—which give to most men an inkling of what action is right and proper. Any wholesale attack by the government of any of the democratic nations to change rapidly these accepted norms has met with widespread resistance, for there is underlying democratic philosophy a deep-seated aversion to any centralized direction of individual energies and responsibilities.[39]

The Russians, on the other hand, have perfected the art of mass persuasion. By constant repetition through every medium of communication and expression, the communists have learned to mold the minds and wills of their people so that the mass of the population will do what their government wants them to do, and think and feel what their government wants them to think and feel.[40] Even when it cannot effectively inculcate communistic ideas, because of its complete governmental monopoly it can effectively keep out information and ideas that might weaken the communist effort.[41] In free nations statements of a false or degrading nature may sometimes be heard, but there they can be contradicted or parried by the power of laughter. But where no discussion is possible, where no contradiction or satire is permitted,

of life itself, and have brought civilization to the verge of a laboratory society such as Huxley envisioned in *Brave New World*.[48]

COMMUNISM AND THE INDIVIDUAL

The most direct and explicit challenge to the fundamental moral principles of modern international law is, perhaps, in its profoundest aspect the totalitarian attitude toward the individual. If individualism be defined as the belief that the individual mind or conscience is the final human repository of truth and that every individual must therefore in the last resort make his own judgments, totalitarianism is the belief that some organized group or institution, whether party or government, has special access to truth and therefore the special right and duty of inculcating it on the members of society by whatever means are likely to prove most effective.[49]

Belief in the individual has been a dominant factor in the religion, the morality, the politics, and the economics of the Western world. This belief, carrying as it does freedom of thought and criticism, has been mainly responsible for the advance of Western society created by restless individual enterprise and the sense of individual responsibility.[50]

Marxism teaches that every individual, by the mere fact of being nothing more than a component of a class, loses his individuality in the legal sense of the

thought control is so well developed that the Chinese fearfully label it *"hsi nao,"*[46] which can be roughly translated as "brain washing." Morgan tentatively labels the process "possessive control":

> It is at least certain, even from the little knowledge we have of the Soviet trials, that an effect is being produced upon the minds of prisoners different in kind from anything previously known. We have been told again and again by reliable observers that the prisoners have not the appearance of men who have been lately subjected to torture....
> ....But many of the prisoners, conspicuously the Cardinal [Mindszenty of Hungary]... have known if they have retained the faculty of knowing, that nothing could save their bodies and that on earth they had no more to win or lose. Yet he, like others, was compliant, and compliant in the same way with them.... Something happens to these prisoners ... It appears to be psychological, not physiological, in principle – a process, that is to say, which does not aim at the mind through the body [e.g., physical torture], but directly at a seizure, an occupation, a possession of the mind
> ....Each man speaks in his own voice, out of his own mouth; there is no suggestion of a trancelike state, and yet he does not speak in character.... When these prisoners are brought into court, their captors have absolute assurance of the result. ...The prisoners are gramaphones into which a record has been inserted... [T]he evidence of the Soviet trials makes it hard not to believe that a method of Possessive Control is passing beyond its laboratory stages[47]

Without a doubt this is the most dangerous of all threats to democratic existence, for if the Communists *have discovered a method to prevent the human mind* from making any rational choice, from distinguishing between good and evil, they have then discovered a process which would completely destroy the validity

sity suspended as in war. Strict discipline without critical reasoning or questioning, undisputed and practically unlimited and infallible authority, the ready acceptance and application of force and brutality are the fundamentals upon which a war is based.[51]

Under Marxism, on the other hand, conflict and war are looked upon as vehicles of progress.[52] Communism, accepting the theory of the state as a class war, and being moved by profound faith in the unquestionable righteousness of its cause—world revolution—is consistent in regarding war as a continuation of current policies by new and forcible means. Actually, the Soviet Union views war as but an inevitable clash between the economic factors of production and the political appetites and ambitions of states. This signifies that the real objective of war for Russia is the destruction of all nonproletarian classes brought about either by the breakdown of the capitalistic economic centers and the substitution of a universal communist world economy in its stead, or by the forcible submission of nonproletarian elements to the will of the proletariat as represented by the Soviet Union.[53]

Attributing *ex principio* no special worth to the human individual as such, the Soviet conceives of violence as sanctified by the use to which it is put. Despite a formal adherence to humanitarian principles evidenced by accession to certain international humanitarian conventions, the Soviet Union appraises

term. Having surrendered his personal rights to the class as a whole, he retains only a provisional lease on certain privileges granted by the class which may be used only for the ultimate benefit of the grantor.[81]

In other words, the communist concept of the role of the individual in society avers that: (1) the individual exists for the sake of the state, and not the reverse; (2) thus, the individual in a communist state is only a means, not an end; (3) the individual has no legal protection in independent courts in face of the governing power; and (4) citizens altogether have no freedom, either physical or spiritual, for divergent social, political, or religious opinions cannot be tolerated by communism since they threaten to create a dual loyalty, a loyalty which may be placed over and above the communist state, and communism requires a world in which all things are rendered unto Caesar.[82]

COMMUNISM AND WAR

There is one further major challenge to the ethical foundations of international law as conceived by free men, and that is the Soviet attitude toward war.

War in itself is opposed to the spirit of Western liberalism not only because in it men are killed and mutilated, but also because there does not exist any other situation in which the freedom and dignity of man, the autonomous display of his moral judgment, and the equality of mankind in general, are by neces-

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6

Revitalization of Ethical and Moral Bases of International Law

DANGER OF PRESENT-DAY STRESS ON POWER

TWO THOUSAND YEARS AGO, one of the profoundest of historians, Tacitus, was heard to remark that of all passions, the desire to rule was the most vehement. For this reason greed of power, he pointed out, always justifies suspicion.[1]

The greatest problem in the field of international law today is the control of force and power. Not too much thought was given this problem during the last ten years of the nineteenth century or during the first decade of the twentieth War, beyond minor skirmishes fought rather as gentlemen's duels according to specified rules, seemed unthinkable to civilized man, and World War I flared upon the international scene as a complete surprise and a sudden, profound shock to most.[2]

But in the years since then, the situation has com-

the value of rules regulating the conduct of warfare in the light of entirely new motives—namely, how far formal adherence will advance the interests of Russia. The moment that any rule may work to the disadvantage of the Soviet Union, even though it be humanitarian in nature, e.g., the return of prisoners of war, at that point the temporary adjustment will be thrown over. It must continually be kept before the people of the Western world that practical considerations of political necessity and opportunity outweigh any claims of all theories involving a moral obligation on the part of the Russians to stand by their word.[56]

World War I that the nations could find some mechanical solution for the control of power in an institution such as the League of Nations or the World Court.[5] This confidence quickly dissipated when it became apparent that even when a majority of nations joined international organizations, the overwhelming influence of the quest for power jeopardized the success of such institutions. For whenever conflict developed between power and the rule of law—or, more generally, morality—the latter was thrown overboard.[6] Thus the second quarter of the twentieth century saw a resurgence of things which belonged to the dark past of history—fanatical faith, infallible leadership, slavery, massacres, the uprooting of whole populations, ruthlessness, and barbarism.

For a time it was thought that nations could set up some sort of superior force to control force, and this then became one of the notions underlying the organization of the United Nations. But the people of the world are beginning to question whether this really solves the problem of force and power, for by creating a greater force or a greater power it appears that we merely create a greater problem, as the policies appropriate to a power-concept order are very different from those appropriate to an effective international legal order.

Actually there appears to be no mechanical solution to the problem, for no institution can of itself guarantee universal peace and security. An institutional

pletely changed. Most people no longer think war is impossible, and some think it is imminent or almost inevitable. In the nineteenth century men of Western civilization thought themselves secure within a reasonable order. In the middle period of the twentieth century most people are afraid, and this is logical because force and sheer power enjoy an ominous respect bordering on idolatry.[3]

When subject to fear, man feels secure only if he becomes a member of a large group; thus the rejection of individualism and the exaltation of collective forces are becoming characteristic of the present atomic age. And even in the democratic nations, governments are gravitating toward obtaining more and more power. As state worship increases, the value of human life correspondingly decreases; and the international standards for the protection of human life, the most fundamental of human values, are tending to dissolve. But without a concrete faith in the liberty of the individual, all the achievements of Western civilization become meaningless tools for destruction. Accordingly, fear of power with its inevitable concomitant worship of power menaces the seams of democratic societies and mangles the historic postulates of all free men.[4]

MECHANICAL SOLUTIONS FOR CONTROL OF POWER

There was a great deal of hope and confidence after

ethical and moral concepts and values which were the foundation stones of modern international law.[9]

ROLE OF IDEAS IN THE INTERNATIONAL SPHERE

In the present era, nations to survive need not only the armor of weapons but also the inspiration of their ideas. Man has been aware of the role of ideas in shaping human behavior ever since the first member of the race attempted to influence the behavior of another by persuasion instead of pummeling.[10] The only ultimate power in the international political arena is an idea, a theory, a principle, not a rule. Nothing is an end in itself, and where that is overlooked there is no lasting power. The impact of an idea as such can best be countered by the presentation of a better idea. The central intellectual principles that should govern the interpretation of a particular situation form, then, the final field of struggle between those who see value in the continuity of Western philosophy and institutions and those who support the positivistic concepts of society.

Ideas are a philosophical force that can produce social results capable of building up a civilization or of destroying a civilization. For example, the Roman Empire organized pagan Europe on a philosophy of law, then a few obscure Christian theorists took over the Roman Empire; the Reformation began as a whispered protest movement and in the end shattered

solution of the problem of power and force is not therefore the answer. By this I do not mean to condemn international organization and the law that enshrines it, but rather seek to emphasize that international law and organization cannot create harmony out of international lawlessness. Neither the *Pax Romana*, nor the peace treaty,[7] nor the treaty outlawing war, nor the suprastate organization opens up the possibility of a solution of the power issue. In a word, there is nothing in international law at present that will control force or power.

If we eliminate mechanical solutions as possible controls of power in the international field, what then must be the alternatives? Must humanity go through recurrent world wars, steadily increasing in scope and intensity until it at last perishes of exhaustion? Or must the world surrender *immediately and at once* to the materialistic, totalitarian concepts of communism? The feelings and conscience of the nations of the democratic world rebel against such conclusions. There must be something more.[8]

We then come to the only other apparent alternative, namely that sooner or later the answer to the problem of power in international law, the counterbalance to the egoism of power found in totalitarian regimes, will have to be found in theories that appeal to reason, in something spiritual—that is, in the revitalization, or refoundation, or re-establishment of the

ethical and moral concepts and values which were the foundation stones of modern international law.[9]

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the nearly achieved dream of universal empire. Philosophical concepts brought about the rise of the American and French Revolutions, and in recent years the free nations of the world have come to the realization that ideas fostered by Shinto, Fascistic, or Marxian materialism can also mean shells and atom bombs. Attractive ideas, therefore, can be a moving, changing power in the international world, and repulsive ideas a great liability.[11]

Democracies have, by their very nature of being democratic, tended toward the thought that the collective reason and conscience of mankind will see to it that honest moral and political ideas propagate and defend themselves by merely existing. This view implies that valid ideas can only be temporarily stifled by force, for if they are ethical and moral they will remain unrefuted and always ready to rise again.

Unfortunately, although they may remain unrefuted, they may never rise again. The feeling that ideas cannot be destroyed or spread by force is not only nonsense, it is dangerous thinking. The number of ideas which have been spread or destroyed by force is infinite; a good example is the way in which the Arabs moved in to the once Christian Middle East and by force turned it to Mohammedanism.[12]

But the potency of thought cannot be gainsaid. During the Nuremberg trials, Goering explained that the first move in the strategy of Nazism was to take over all communication media.[13] Only then, with full

control over the instrumentalities which influenced the minds of the German people, could Hitler begin to drive them where he wanted. Without such control of ideas, he had no hope of continued dictatorship.

Marxism has taken utmost advantage of the fact that it is possible to control the movement and articulation of ideas by propaganda. Thus, by weeding out unorthodox ideas, by employing eloquence, by educating children from the cradle up, by tireless public invective, exalting, impressing, overawing both young and old, communism maintains itself as a growing idea in many parts of the world. And democracies must be aware of a tendency on their part to dismiss this type of attack as simply perverse and wicked.[14]

Ideas are not the guarantors of freedom; but only by the open clash of ideas can truth win out. This is the essence of the democratic faith and the social religion of free men. Ultimately the fate of democracy will be determined by its strength as a moral and spiritual factor dominating the public mind of the world's teeming masses. Great democratic statesmen have always understood how to instil some of their own democratic fervor and moral conviction in the people and thereby maintain democracy as a live issue.[15] Today more than ever, it is necessary to "sell" the democratic ethical and moral concepts vigorously, even militantly. We must sell the rest of the world our faith in man's need for critical freedom, as opposed

to those philosophies which deny the present capacities of individual man and preach reliance solely on the wisdom of authority.

OBJECTIVES TO BE STRESSED

Maintenance of Freedom

If international law is to attempt to control power with ethical and moral ideas, the democratic nations of the world must stress the unity of such concepts by describing and clarifying the objective and subjective standards toward which they are striving.

What has been called the contagious force of ideas is, in the last analysis, the force of the people who embrace the idea. Therefore the objectives for which the free democratic international society is today struggling must be objectives in which the people of the world can believe strongly. They must be objectives that are not only credible but capable of arousing enthusiasm; for if Western civilization as personified in international law is to use the latent power which is inherent in the people of the world to resist physical force and totalitarian power, it must create a moral agency backed by such enthusiasm that populations are willing to undergo a certain amount of hardship and inconvenience in working toward the realization of their ideals.[16]

Whatever moral and ethical standards international law ultimately devises for its counterattack against

communism, there are two immediate requisites. The maintenance of freedom and liberty must come first and foremost; and second, international law must proclaim its absolute recognition of the moral values of the individual as an individual. For unless freedom and individual values are held to be the moral imperative of the democratic way of life, the quest for power in the international sphere remains the sole basis for relations between states.[17]

From ancient times men have argued that liberty is the goal of the democratic way of life. "Freedom," said Plato, "is at once the peril and the chief glory of the democratic State."[18] The impossibility of erasing or replacing in the minds of men the concept of liberty as an ideal and as a directing principle is ironically confirmed by the fact that even Napoleon said at St. Helena that he intended in the end to give liberty to France and to all of Europe. If the tongues that preached liberty were often false, nevertheless it appears that it was the only ideal that could be defended and resorted to with certainty of a good result.

The meaning of freedom has often been difficult to delimit, for while its large outlines may be of a fairly permanent character, its particular content is always changing with the conditions of time and place. To one age the demand for liberty may express itself in an insistence upon religious tolerance; to another political enfranchisement may be its essential expres-

to those philosophies which deny the present capacities of individual man and preach reliance solely on the wisdom of authority.

OBJECTIVES TO BE STRESSED

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tant role be played by persuasion, for the development of the concept of freedom reflects the struggle of the individual for the privilege of making his own choice of a system of values. Freedom presupposes education rather than indoctrination, and is incompatible both with ignorance and with bigotry. If in consenting a man is forced to transfer completely all responsibility, there can be no freedom, inasmuch as liberty exists only when each individual has sufficient self-respect left to respect others.[23]

In the mid-twentieth century, it is relatively easy to say what things go to make up freedom as democratic thought conceives it, but it is extraordinarily difficult to say how an atmosphere of freedom can be guaranteed. It may be said that freedom can be resolved into a system of liberties: of speech, of association, of the right to share fully in political power, of religious belief, of full and undifferentiated protection by the law.[24] But the question of giving these separate liberties factual realization turns upon the objects to which they are devoted in any particular society at a given time. Democracy is the fairest and most peaceful method that has been found to resolve the conflict of interests underlying the conflict of freedoms. It provides the conditions wherein sound decisions can be reached regarding competing values. Its legal order represents a relatively refined instrument stipulating and determining what values shall be advanced, how far, and at what cost to other values.

sion; to a third it may mean freedom from want or fear.[19] Therefore, although the demand for freedom is very ancient, there can be little doubt that the content of the notion of freedom has been greatly enriched in the course of time as each generation through its experiments contributed a little more knowledge of its possibilities and its limitations.

Today there is awareness that liberty cannot be defined in terms of the absence of responsibility. On the contrary, it must presuppose responsibility. The absence of responsibility can only be termed license, not liberty.[20] While freedom is in a sense a protest against tyranny, it is not its opposite. Liberty is a virtue between two different vices; the road starts from tyranny and runs through liberty on the way to license.[21] Liberty is the counterpart of self-responsibility, for in its broadest sense liberty connotes the possibility, the right, and eventually the obligation to choose from among available alternatives. The definition of liberty in terms of responsibility automatically discredits totalitarian rule, for in this day and age it will not do to say that liberty prevails where power is "exercised by the consent of the governed."[22] Liberty involves more than this; the question is how the consent was obtained, and what was consented to. If a man is offered but one choice, a one-party ticket to which he must assent under fear of serious reprisal, there is no freedom. In terms of the way in which the consent is arrived at, liberty requires that an impor-

liberty of one person means a decrease in the liberty of another. Liberty must consequently always be conceived, if its philosophy is to be an adequate one, as related to law.[29] It can never be absolute, for some restraints are inevitable. Some opportunities must be denied simply because men and nations must live with one another and move differently to the attainment of adverse desires.[30] Liberty, therefore, has to be reconciled with the necessities of social progress; it has to find terms upon which to live with authority.

International life—like all life—is essentially dynamic, and change is inevitable; transformations are bound to occur violently unless there are provided ways of peaceful change. If an orderly procedure of peaceful change is ever to be established in international relations, some way must be found of supporting it on that uneasy compromise between power and liberty which is the foundation of all political life. It follows that the over-all freedom of each state must be limited by recognition of the equal need for freedom of other states and of general standards of human liberty.

The West at present seems to be competing with communism for the world's favor mainly by holding out promises of double the material blessings that communism has to offer.[31] This is not what the world is seeking nor what it needs most. The West should rather view its task as that of creating an international pattern of freedom based on the inheritance of the

The net result is a series of considered judgments representing differential specific applications of the principles of freedom and equality. The struggle for freedom is morally indivisible; no man can pursue his kind of freedom unless he is aware of the interconnection of all strategic freedoms.[25]

A free society has been defined as "one that accepts risk of diversity, partly because of a kind of mystical respect for the unpredictable character of human action and the unpredictable problems posed by this very imperfectly mastered world."[26] Generally, it may be said that the existence of freedom depends upon the willingness to build the foundations of society, whether national or international, upon the basis of rational and moral justice, and to adjust them to changing conditions in terms of reasoned discussion and not of violence.

It can be shown that in human society there is no such thing as an absolute right, since social justice requires a continuous process of adjustment, compromise, and resolution of conflicts between liberty and the demands of social living.[27] It is recognized, therefore, that different aspects of freedom and social participation may be of such a nature that one cannot be advanced without some impairment of the other, for every system involves restraints as well as liberties.[28] At all times men must choose between liberties, since humanity is bound together in such a network of relations that in many respects an increase in the

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great tradition of intellectual as well as physical liberty, of self-government under law, of theoretical knowledge, of religious experience, of originality and enterprise. It is this that the world is seeking; such ends will command the allegiance not only of minorities but of the masses, not only of nations of the Western world but of all the states of this universe.

Economics of Freedom

In the twentieth century, with its emphasis on material things, the struggle for freedom has been largely transferred from the plane of the political and spiritual to that of economic rights. And freedom is increasingly defined in terms of economic opportunity and security.[32]

There is a deep danger in this, for at this date it should be scarcely needful to say that freedom cannot be secured exclusively on an economic basis. The Soviet concept of freedom is solely an ideological concept of economic conditions which have to be met before men may be possessed of free choices. But men do not act like mere economic automata, and this fact communist theory overlooks.[33]

Of course, hungry men are not free men. Anyone who has ever seen hunger knows that it breeds indifference to the cares of others. It does no good to talk to hungry men of freedom, or of any other phase of philosophy including religion. The best—and only—way to deal with hungry men is to feed them. On the

other hand, equation of freedom with the full belly is a snare and a delusion.[34] Cattle are fattened before slaughter. The Strasbourg goose is more assiduously fed than any other creature, only to wind up as a pâté. Except where we are confronted with a situation of actual starvation, the relation between the standard of living and freedom is not simple. The problem of the universe today is not one of hunger so much as of poverty, and poverty is a psychologically relative thing. A man with one car will consider himself poor if all other citizens of his nation have a minimum of three cars, while he will consider himself rich if he be the state's sole car owner. Hence, ownership of material goods with substantial inequality brings into any society, national or international, a psychological element which may be seething or dormant, but which it is dangerous to ignore.[35]

Poverty is furthermore relative to the degree of freedom and power that people enjoy to change their economic status. A Negro working in the gold mines of South Africa may be better housed, clothed, and fed than a Negro living in the slums of Harlem. But the former lives within a society which so narrowly circumscribes his life that he has no opportunity to change his economic status; while the latter by hard work, a smattering of luck, and intelligence can considerably better his lot in life.

Communism, identifying freedom with the acceptance of economic determinism, overlooks the fact that

in economics, as in every other aspect of human behavior, fundamental decisions are moral decisions, informed or uninformed, wise or foolish, and the probability that they will be informed and wise is largely dependent on the extent to which the essential freedoms pervade the social structure.[36] Undoubtedly a minimal economic standard is a condition of freedom, but it does not follow that everything else is uninfluential.

There is a widespread fallacy abroad that poverty leads to communism.[37] There is but little evidence of this. It is rather the fact that the Communists are constantly hard at work among people who are in poverty, endlessly reiterating that the only answer is communism. And the reason Communists succeed in this type of attack is that the democracies have been delinquent about campaigning for essential freedoms. It should be eternally kept in mind that it is not poverty that leads to communism, it is propaganda that converts people to communist ideology.

Possibly it has been the greatest triumph of Marx that in his grave he has been able to bewitch much of the free world into accepting unconsciously the premise that every change in the economic basis of democracy is a step toward communism. The fear of this phantom makes of the most extreme conservative the most unregenerate Marxist, for he feels that any change in the status quo, even when the status quo is in dire need of a thorough overhauling, must be

change in the direction of communism. What this extreme conservative fails to realize is that it is not a matter of mechanics turning on economic structure, but rather a matter of philosophical faith which guides the free people of the free nations. Democracy will continue to be democracy under any form of economic organization if the people believe in democracy, and tyranny will constitute itself no matter how fair the economic situation may be if the people of a nation worship only power.[38]

Over and above this, we must be aware of the fact that social reforms by themselves are not sufficient to prevent freedom from being destroyed by the aggressive expansion of totalitarianism.[39] Social conditions in Holland, Belgium, Denmark, and Norway were definitely superior to those of Germany, nevertheless, that did not prevent Hitler from conquering these nations. Social conditions in Finland, Poland, and even the Baltic countries were superior to those of the Soviet Union, yet they fell before the armed might of communism. In the present stage of international affairs social reforms are doubtless necessary in many areas of the world, but it is illusory to say that once the standard of living is raised, freedom will take care of itself. The desire for freedom is not reducible merely to a desire for material goods and services, important as these may be. There is an irreducible quality in the experience of uncoerced choice which leads men to risk their very lives in its behalf.

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individual is not subordinated to or manipulated by any power outside himself, be it the economic machine, the political machine, or the state, and in which the individual, with his growth and happiness, is the aim and purpose of culture; in which life does not need any justification in success or anything else; a society in which the spirit and conscience of mankind are at least as important as material things.[42]

Importance of the Individual

Freedom has no frontiers; it is coextensive with the human race. Consequently the denial or suppression of the rights and liberties of any people diminishes the freedom of all mankind. This is just another way of saying that beneath its manifold diversities of race, culture, and nationality, such is the essential solidarity and organic unity of the human family that no member may be injured without causing injury to the whole.[43]

Nonetheless, it is continually reiterated that international law is principally concerned with the relations between states,[44] and the entrenchment of this doctrine has led to results which cannot be condoned as ethical or moral. The mechanical application of a doctrine in both national and international law, no matter how rationally it is applied, is not enough;[45] for however important the value the doctrine enshrines, it should not be permitted to victimize the moral sense of the people of the world.[46] The world, notwithstand-

This does not mean to imply that democracy can sit back and rest on the laurels of past achievement. No human institution or order of society ever stands still. The fate of the Western world will turn in part on its ability to meet the Soviet challenge by a successful search for new forms of social and economic action in which what is valid and individualistic in democratic tradition can be applied to world problems. But in the ultimate search, the people of the world who believe in freedom must become increasingly aware of moral and ethical concepts giving impetus to international ideals; and these concepts cannot be found in the quest for bread, the quest for wealth, or the quest for power. These material things sustain no common good, no common good will. These things, unless they are overruled by the deeper perceptions of the common good, divide and dissipate the world democratic community.[40]

The beginning of liberty is to believe in people, in individuals with all their capacities for growth and intelligence despite their mistakes, yet always to challenge any man's claim to complete knowledge or complete power. What the West calls democracy is the evidence in government of these principles, the expression of a people's respect and responsibility for themselves. This is the groundwork of the world that modern international law must be seeking.[41]

Therefore, the victory of freedom is possible only if the world can develop into a society in which the

state has a duty to conform and any departure from which is to be judged by the whole community of nations on lines dictated by humanity and justice.[50]

Thus the right of local self-determination should not, and ethically does not, carry with it the right of any government to commit acts shocking to the conscience of mankind, such as wholesale murder, or the right to make slaves of its own people.[51] Although international law has long prescribed standards for a state's protection of aliens within its territory, nationals, too, should have the benefit of a fixed minimum standard of rights and protection based on morality and justice.[52]

The standard to be required of each state can, perhaps, be defined only in general terms. Still, there does exist a standard to which this principle of international law must measure up: it must be moral, it must be spiritual in essence—whatever its material content—if it is to be consistent with the nature and dignity of humanity; it must assure that right and not might prevails, and that the soul of mankind is permitted to triumph in the search for freedom and truth.

ing the artificial personality called the state, is made up of human beings, and the laws of humankind are not, and cannot be, the dictates of the artificial entities which we call states. Human dignity and the independent status of the individual constitute both the moral limit and the justification of the international legal order.[47]

In recent years there has been a decided trend on the part of democratic nations toward the recognition that the fundamental object of international law, as of most law, is the protection of the rights of human beings. International lawyers are becoming more and more cognizant of the fact that the rights of man are beset by mortal dangers and must largely remain in the realm of theory unless they are made secure in the firm anchorage of an international legal regimen. The enunciation of this principle seems particularly important at the present time, when shocking efforts are being made in more than one part of the globe to exterminate whole groups of human beings.[48]

International law will never really play an effective part in world affairs until it can annex to its own sphere some of the matters which at present lie within the doctrine of "domestic jurisdiction" of the several states.[49] Although there are important local considerations which each state must be permitted to adjust without external interference, yet this precept of state freedom cannot be absolute. There must be an indication of a general standard of conduct to which each

inasmuch as what have till now been considered fundamental rights of nations or of human beings become mere privileges to be enjoyed upon sufferance according to the view of expediency held by those in power.[1]

For the democracies to discuss rules of international law with totalitarian nations cannot actually be labeled a real appeal to any law, but is merely a balancing of possible injuries and benefits.[2] So long as there is a complete disagreement on the fundamental bases of international law, all discussions thereof must be hypothetical. Moral and ethical propositions are the first postulates of all reasoning of modern international law, hence all discussions of international rights or duties, whether for nations or individuals, must be based upon them and assume assent to them. Therefore to speak of international law with nations denying these postulates can be nothing more than an unreal and futile appearance of discussing law. The major premise must be established before any argument as to minor premises can be carried on.

Consequently, there is apparently only one real issue in the international law field today, namely, whether its underlying values are valid or not. As between nations which agree that they are, inquiries may be held as to the international rules derived from the basal propositions; but as between nations which assert and nations which repudiate the fundamentals of the law, there can be no real discussion, no meeting of the minds.

7

The Efficacy of Mid-Twentieth-Century International Law

LIMITED APPLICATION OF WESTERN CONCEPTS

THE EFFECT OF TOTALITARIANISM in the modern world has led to a severe disintegration of the international community, and has thereby seriously impeded the further growth of international law and order. A careful review of the two main ideologies in the present world conflict leaves no room for doubt that the entire foundation of the community of nations based upon international law is put at issue in the struggle, since the principles advocated by the totalitarian nations involve a repudiation of every fundamental element upon which the law of nations rests.

The view that it is the right of any nation to destroy all rights of other nations, in pursuit of what it deems to be the ultimate end of mankind, cannot be tolerated. If such a view prevails, the whole structure of modern international law will be without validity,

Union along lines that are Christian and humanitarian, expecting in return the same treatment, and is only now beginning to awaken to the realization that nothing has ever been farther from the Russian purpose, Russian history, or Russian temperament than Western concepts of Christianity, humanitarianism, liberalism, or the golden rule.[5] There can be no trustful and friendly relationship between totalitarianism and democracy, for the communists will co-operate only when they perceive it is to their immediate interests to do so. Lenin laid down the first rule of communist international relations, which declares that the Soviet Union may use the democracies as a tool, but should never support them as an ally; and this is the guiding principle applied by the Kremlin in its present-day relations with the Western nations.

It is therefore necessary that democracy remain on guard, alert, vigilant, for although communism has often changed its methods, it does not alter its objectives. And the free world is recklessly sleeping on a volcano if it permits itself to be lulled into a false sense of security by any totalitarian program of sweetness and light.[6]

DEMOCRATIC CO-OPERATION

What then remains? It must be recalled that the history of the development of international law is not the history of a concerted effort among equals through-

If it be agreed that nations fall under the obligations of morality, no aggregation of human beings in any state, under any form of government, can be superior to the duties of good faith, of justice, and of humanity. No democracy, no republic, no form of government established upon the rights of men can continue to live in a world which rejects this view.

A study of the moves and countermoves in the present-day conflict of power cannot but deepen the realization of the heavy price mankind has to pay for its failure to establish a universal pattern of law based on ethical considerations.[3] The power conflict affects and overshadows every political, economic, and ideological problem of our time, keeping the larger portion of mankind in a state of fear and insecurity, and reducing all efforts at international conciliation to the role of misanthropic jests.

If the absence of the United States was the weakness of the League of Nations, the presence of Russia is the weakness of the United Nations, for it is plain that there is no middle ground between the aspirations of democracy and the aspirations of communism. Either man lives for the state and is subordinated to it, or else the state exists for man. It is a fundamental principle of Marxism that no world peace is possible as long as capitalism and Western democracy exist. Who will conquer whom remains for the communists the great question of the day.[4]

The Western world has tended to treat the Soviet

not at first seem to belong to those things ethical and moral. But they do if they represent new knowledge, new freedom, new social responsibility, new means of harmonizing on the international level the relations of individuals and states. For these are essential to better democratic association and affinity, which involve more voluntary and just co-operation between nations and groups of nations.

Democracies, if they wish to survive in a world threatened by totalitarianism, are driven to an ever closer form of co-operation, toward taking the first steps on the pathway leading to complete democratic internationalism, which has been aptly termed the "fellowship of a common destiny."[10] One of the most promising lines of progression toward the enforcement and greater realization of international law in this mid-twentieth century has been through regional controls within those geographic areas where intercommunity ideals—social, cultural, economic, and political—have permeated the basic necessities of life and rendered inseparable the conditions of coexistence. This new emphasis upon democratic co-operation in all connections is the rainbow of hope beckoning toward a system of universal legal order in an age beclouded by the formidable potentialities of air and atom.[11]

But co-operation is not in itself a measure of values for a system of international law. Co-operation is in the final analysis a process, it must therefore be co-

out the globe. It is, on the contrary, a history of conceptions which clarified the values for the most part of the people who in modern times have shared the ethics and morals of Western European civilization.[7] It is necessary, therefore, to exert all possible effort to maintain intact those values bequeathed by the past that continue the chain of being of Western civilization. To do this may require an open recognition that international law today can continue to be of universal validity only in some of its aspects, given the social and political situation of the moment which international law is at present powerless to alter. The continued fiction of the universal validity of all rules can only do harm to the progress of international law by giving away every advantage still retained by those who believe in democratic world order.[8]

The problem at this time is to reconsider the adequacy of traditional doctrines and practices for the task of bringing into effective working relationship all the people of the world who are willing to struggle and collaborate for the democratic ideals. This means that any growth in international law in these times will be of but partial and not universal law; but through the intensification of legal relations between such nations as are united by common moral and ethical values, there will develop an international law of far greater puissance which may at some future date become the foundation of a universal law.[9]

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operation toward something, toward some goal. It devolves upon the members of the Western world to continue to take the initiative in clarifying for themselves and for others the kind of world community in which democratic nations would like to live, and the kind of world community organization based on law which can guarantee security and ethical values for all people.

The might of free men lies not alone in military force but in a combination of moral and material strength derived from basic principles, free democratic institutions, and a free exercise of the right to differ.[12] To realize that might it is essential to stress and develop unity of purpose and action, for totalitarianism presents to the world a united front. Democracies united would be grouped upon common institutions, common interests, and a sense of community which has developed over the centuries. No mechanical panaceas can turn the tide of communism, it will take courage, hard work, ingenuity, moral and physical fortitude, and above all the will to preserve the things that free men prize most.

The Western nations must face the fact that they cannot undo the present, and therefore have to build within the given human reality and historical situation with creative patience. It may be possible to lessen the gap between the real and the ideal by setting small modest goals all along the line: not a world government that will forever guarantee peace, but a

co-operative effort that will help stave off war; not two cars in every garage, but at least a loaf of bread or a bowl of rice for every person. The free nations cannot start with the whole world. They must begin with those that think as they do about life and government, with those that have the same ideals, hopes, and ideas.

The basic avowed values for which democratic nations stand are those connected with human personality. They are the freedoms set out in historical bills of rights of many nations, joined now with positive claims to the conditions necessary for the development of the individual's socially desirable capabilities.[13] The only world society into which the democratic people can enter without reservation will be one in which they believe that progress toward full realization of these rights would be secure. This then is the society which a coalition of democracies should offer to the world as the alternative to Soviet world empire. The welfare of the human individual is the primary object of democracy, and all international organizations for the prevention of violence and the raising of the standards of life would be a means to this end. Democracies must realize that the maximization of the social well-being of the human individual is the object of national law, and that it therefore must be explicitly recognized as the object of international law.[14] Thoughtful people do not expect absolute perfection from human effort; still, the ideal must be kept faithfully and persistently in the foreground not

only to incite greater effort but to prevent a falling into the deadening idolatry of the actual.

There are two immediate dangers which present democratic co-operation and coalition have failed to overcome in trying to meet the challenge of communism. The first is that of permitting nations other than democracies from joining fronts of states against communism; for example, although with a great deal of protest, there has been a limited acceptance of Tito's Yugoslavia and Franco's Spain into the charmed circle.[15] The effect of such action is to reduce seriously the ideological elements and to emphasize increasingly the struggle for power.

The second danger is that of the regimentation of intellectual and spiritual life in the Western democracies. Under the labels of anticommunist activities or of secrecy for warfare purposes, independent progressive thought, freedom of political discussion, and freedom of research are hampered to an ever greater degree.[16] Reliance on such regimentation, to serve the expediency of the moment, may cause irreparable damage.

The attainment of an international law based on morality and ethics is the greatest need of our time, but there is no easy or certain solution. True democratic co-operation can lead to the expansion of ethical insight in international affairs, to a shift in emphasis from power politics to international justice and the welfare of the peoples. But if the Western world can see only the stress on power, the victory

will ultimately fall to the Goliath of totalitarianism, for in this field of power totalitarianism has at its disposal all the cruelly refined techniques, and is therefore invincible.[17] The price of combatting power with more power is the destruction of democracy and of Western civilization. But even as Goliath presented a naked forehead, an excellent target for a fatal, unsuspected slingstone, totalitarianism's greatest weakness lies in its inability to cope with the moral ideals of liberty, justice, and humanitarianism.

8

Conclusion

THE DEVELOPMENT OF MANKIND is marked by the expanding scope of social sanctions to which the individual conforms, and social sanctions with which he becomes identified. Instead of settling their own scores in private retaliation, men seek protection and satisfaction under authority of law.[1] They surrender the lust of vengeance for the sake of the higher values of justice and co-operation. But law per se never creates order out of disorder. To suppose that is to put the cart before the horse, for order is a condition on which the very possibility of law depends.[2] To be effective, therefore, a system of law needs to be a part of a wider system of social organization. And any system of social organization presupposes the express recognition of characteristic beliefs which are held in common by the community.

The ideological aspects of the conflict between communistic totalitarianism and democracy have become primary, for the ideological conflict will con-

tinue as long as the ideologies remain fundamentally opposed to each other. In such a situation, international law in a universal sense becomes practically meaningless, inasmuch as all law finally depends for its validity upon the existence of a common ethos, and it is precisely that international ethos which is in issue today.[3] Because of this opposition of ideologies, it is out of the question to build any abiding international order which would include countries working openly for a system according to one exclusively national or class pattern and under the sway of doctrines denying the very essence of a co-operative international world.

Although the cry for an effective and just order among all nations is urgent, there is a vast gulf dividing Soviet communism and Western democracy concerning what is ethical, moral, and just. Democracy, if it is to survive, cannot afford to compromise on these issues, for as Madame Chiang Kai-shek once succinctly pointed out, "That which is morally wrong cannot be politically right!"[4] And it may be added, nor legally right.

Democracy has an unfaltering belief that any social institution or international system is not an end in itself, but rather is a means for realizing the primary values of freedom, justice, knowledge, and humanitarianism, since the world is as much a consequence of the means we use as the ends we profess, the end that actually comes to be depends upon the moral

qualities of the means used.[5] Communism, with its dual stress on the right of one nation to impose its will on all others regardless of their wishes, and the right of any nation to make its people the minions of the state rather than the state the servant of the people, is a strong advocate of the doctrine that the end justifies the means.[6] And although communists proclaim that their end is a better life for mankind, they never stop to examine the evidence in order to see whether the means used are actually bringing the end-in-view closer or pushing it farther away.

The victory of Western concepts of international morality and hence international law will eventually lie in democracy's demonstration of its values and its effectiveness, and in its ability by its own ethical example to persuade and help other peoples to choose its way of life. The democratic nations must become increasingly aware that something has to be done to close the gap between the promises of the democratic way of life and the performances in fulfilling these promises. They cannot go along with the self-deluded idealists who think that all that is necessary to convert other nations to democracy is to reaffirm its promises more steadfastly than ever before.[7] Democracy must advocate the betterment of the system, both inside each nation and internationally. It must be on the offensive, not on the defensive. It is impossible to combat or restrain a political movement such as communism by glorifying the present system or the past

system, for it is inescapable that in any democratic way of life, as in all human systems, there are serious examples of injustice which can neither be overlooked nor explained away. Consequently the Western nations must be affirmative, not negative, in their moral crusade against all totalitarian regimes.

Despite defects, the democratic nations are now in the position of conserving more than their individual national interests. They are entrusted with the preservation of a moral tradition, an international ethos. But mere preservation will not suffice, for the democratic tradition, being dynamic in nature, demands the constant renovation of all social life in the light of ethical standards which transcend the state.[8] There are no static values in international life. Everything grows or it must decay, and this is particularly pertinent in the realm of values. Within any developing civilization, ethical concepts must accumulate fuller and deeper meanings, discarding nothing of their essence as their denotations change, but growing with civilization. Montesquieu warned[9] that the corruption of any civilization generally begins with the corruption of its underlying principles. Thus if the principles of democracy are lost, democracy is lost. If the spirit of international law fails, then fails international law.

It cannot be overemphasized that the disintegration of the Western world cannot be stopped by suppressing certain ideologies only; more is demanded, namely

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It cannot be overemphasized that the disintegration of the Western world cannot be stopped by suppressing certain ideologies only; more is demanded, namely

the releasing of ethical and moral convictions to arrive at a new integration of international society.

The twentieth-century attacks on democracy are a challenge which should give the Western world the courage to reappraise and reassert the fundamental attitudes and values inherent in the democratic position as related to international law. Democracy must find in the challenge a new confidence in its way of life which should lead to an unprecedented readiness of democratic nations of the world to unite and to co-operate in an effort to retain human liberty and to work toward a peaceful universe.

Creative work in the sphere of international law necessarily requires faith in the democratic ability to do things, and a plan of how to do them. If the international community is to continue again on an upward climb, the free world must redetermine the ethical and moral principles underlying its philosophy of international law and international co-operation. It must stand ready to prove to the other peoples of the universe that Western ideals are in verity human ideals, and that they have far more to offer than the materialistic drives of communism. With this momentous task confronting the free world, it must never falter in its conviction that it is possible to carry the moral imperatives of the democratic way of life, nationally and internationally, just as far as courage, efforts, and powers of persuasion reach.[10]

Notes

Introduction

1. Friedmann, "The Growth of State Control over the Individual and Its Effect upon the Rules of International State Responsibility," 19 Brit. Y. B. Int'l L. 118 (1938).

2. Vinogradoff, Common-Sense in Law 23 (1914).

3. The following is stated by Winfield, "Ethics in English Case Law," 45 Harv. L. Rev. 112 at 119 (1931):

> The allowance of three days' grace on a money bill or the barring of title to real property after the lapse of twelve years has not a whit of moral signification in the particular periods of time selected, which depend upon theories about "lucky" numbers as much as upon anything else

4. 7 The Collected Papers of John Bassett Moore 310 (1944).

5 Beard, The Idea of National Interest 340 (1934).

Chapter 1. Ethical and Moral Nature of International Law

1. See 1 Hackworth, Digest of International Law 1-3 (1940), for a series of definitions of international law. See also von Verdross, "On the Concept of International Law," 43 Am. J. Int'l L. 435 (1949).

2. Plankuchen, A Documentary Textbook in International Law 5 (1940).

3. Pollock, "Sources of International Law," 2 Col. L. Rev. 511 (1902).

4 See Jitta, The Renovation of International Law on the Basis of a Juridical Community of Mankind 32 (1919).

5. Von Mises, Positivism 321 (1951).

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Yearbook of World Affairs 159 at 164, 170.

16. Hill, International Relations 481 (1950).

17. Snow, "The Law of Nations," 6 Am. J. Int'l L. 890 (1912).

18. See Jenkins, "The Role of Ethical Values in Legal Decisions," 12 Ohio St. L. J. 36 (1951).

19 Hull, "Spirit of International Law," Int'l Conciliation No. 342, Sept. 1938 p. 297 at 300, see also Ker, "Moral Standards in International Relations," 1948 Yearbook of World Affairs 225 at 227.

20. "The words 'law and equity' used in the Special Agreement of 1921 cannot be understood here in the traditional sense in which these words are used in Anglo-Saxon jurisprudence. The majority of international lawyers seem to agree that these words are to be understood to mean general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any state." Permanent Court of Arbitration in the Case of the Norwegian Claims against the United States of America, 1922.

21. Fuller, Thesaurus of Epigrams 179 (1948 ed.).

22. Hocking, The Spirit of World Politics 476 (1932); see also Laski, State in Theory and Practice 13 (1935), wherein the following statement is made: "The state itself, in sober reality, never acts, it is acted for by those who have become competent to determine its policies." But see Gierke and Maitland who claim, according to Lasswell and Kaplan, that states are not collections of individuals but aggregations of groups Lasswell and Kaplan, Power and Society 33 (1950).

23. Alexander, Moral Order and Progress 17 (4th ed. 1906).

24. 1 Kent, Commentaries on American Law 3 (1891).

25 Adler, "War and the Rule of Law," as set forth by Puttkammer, War and the Law 178 at 192 (1944). Burns in The Morality of Nations (1916) states at 250.

> even if International Law becomes more and more exact and extensive, international morality will never be quite completely expressed in it. The expressions of the law will perhaps be somewhat in advance of the morality of some States, but they will

6. As quoted in Thesaurus of Epigrams, edited by Fuller, 215 (1948 ed.).

7. The Federalist, no. XXXI states:

> Though it cannot be pretended that the principles of moral and political knowledge have, in general, the same degree of certainty with those of mathematics, yet they have much better claims in this respect than, to judge from the conduct of men in particular situations, we should be disposed to allow them.

8. In an article, "Fundamental Conceptions of International Law in the Jurisprudence of the Permanent Court of International Justice," 30 Am. J. Int'l L. 414 (1936), Steiner says:

> Even in the most highly formalized systems of jurisprudence the rules and practices of the law cannot be entirely separated from the fundamental conceptions of law underlying them ... What is true of well developed systems of jurisprudence is no less true of international law.

9. Kunz, "On the Theoretical Basis of the Law of Nations," 10 Transactions of the Grotius Society 115 (1924).

10. Story J. in U. S. v. The Schooner la Jeune Eugenie, Raiband and Labatut, Claimants, 2 Mason's Reports 409 (U. S. Circ. Ct. 1882), makes the following statement:

> That it [slavery] has existed in all ages of the world, and has been tolerated by some, encouraged by others and sanctioned by most of the enlightened and civilized nations of the earth in former ages, admits of no reasonable question. . . It would be unbecoming in me here to assert, that the state of slavery cannot have a legitimate existence ... [but] it stands reprehended by the present sense of nations ... it necessarily carries with it a breach of all the moral duties, of all the maxims of justice, mercy, and humanity, and of the admitted rights which independent Christian nations now hold sacred in their intercourse with each other.

11. Cole, Essays in Social Theory 74 (1950).

12. See Bosanquet, The Philosophical Theory of the State 320 (1927).

13. "A State is not a private person, but in itself a completely independent totality.... States in their relation to one another are independent, and look upon the stipulations which they make one with another as provisional." Hegel, The Philosophy of Right, Par. 258 (1896).

14. Schwarzenberger, Power Politics 228 (1951).

15. Schwarzenberger, "International Law and Society," 1947

The idea of value is, therefore, the basal conception of ethics. No other term, such as duty, law, or right, is final for thought; each logically demands the idea of value as the foundation upon which it finally rests. One may ask, when facing some apparent claim of morality, "why is this my duty, why must I obey this law, or why regard this course of action as right?" The answer to any of these questions consists in showing that the requirements of duty, law and right tend in each case to promote human welfare, to yield what men do actually find to be of value.

Chapter 2. International Law and Natural Law, Christianity, Democracy

1. Bennett, Christian Ethics and Social Policy 116 (1946); see also Haines, The Revival of Natural Law Concepts 15 (1930).

2. Seagle, The History of Law 199 (1946).

3. Salmond, "The Law of Nature," 11 L. Q. Rev. 121 (1895).

4 Dickinson, The Law of Nations 5 (1929); Wilson, Elements of Modern Politics 393 (1936).

5 Phillipson, Great Jurists of the World 390, 344 (1922).

6 Haines, *op cit supra* note 1, at 22-23.

7. Nussbaum, A Concise History of the Law of Nations 105 (1947)

8. Schwarzenberger, "The Rule of Law and the Disintegration of the International Society," 33 Am. J. Int'l L. 56 at 62 (1939)

9 Carr, The Twenty Years' Crisis 1919-1939 p. 224 (1939).

10 Robson, Civilization and Growth of Law 25 (1935).

11 Pollock states.

> The neglect of mediaeval learning which followed the Renaissance and Reformation has also caused us to forget that the Law of Nature has a perfectly continuous history down to the date of its greatest and most beneficent achievement—one might almost say its apotheosis—in the foundations of the modern law of nations by Grotius.

Pollock, "History of the Law of Nature," 1 Col. L. Rev. 11 (1901)

12. Green, Lectures on the Principles of Political Obligation 112 (1921).

always be inadequate to render the full meaning of the moral sentiments of others. And within every State there will always be many who take their morality from the law, and a few who make the law by their morality. For morality of nations, no less than that of individuals is a continually developing art of Life.

26. See Pound, Law and Morals 4 (2nd ed. 1926).

27. Watkins, The Political Tradition of the West 9, 10, 21 (1948).

28. *Id.* at 59.

29. *Id.* at 72-75.

30. 18 Encyclopaedia Britannica 302 (1951 ed.) sets forth the following definition of positivism:

Positivism, a philosophical term, applied somewhat loosely to any system which confines itself to the data of experience and declines to recognize a priori or metaphysical speculations In this sense the term may be applied to empirical philosophies in general

31. See Ebenstein, The Pure Theory of Law, Ch. 3 (1945).

32. Katz, "World War II and Legal Trends," as set forth in Puttkammer, War and the Law 2 (1944).

33. McDougal, "The Role of Law in World Politics," 20 Miss. L. J. 253 at 273 (1949).

34. 2 Bryce, Studies in History and Jurisprudence, Ch. 10 (1901).

35. Von Mises, *op cit. supra* note 5, at 338.

36. 1 Phillipson, The International Law and Custom of Ancient Greece and Rome 240 (1911).

37. Fraenkel, The Dual State 101 (1941).

38. Hadley, The Moral Basis of Democracy 201, 202 (1919).

39. Krabbe, The Modern Idea of the State 9 (Tr by Sabine and Shepard, 1922).

40. 1 Phillimore, Commentaries upon International Law 28 (1879).

41. Lawrence, Principles of International Law 24 (3rd ed. 1909); see also Cole, Essays in Social Theory 5-7 (1950).

42 Butler, "The Development of the International Mind," as set forth in Int'l Conciliation No. 192, Nov. 1923.

43. Hutcheson, Law as Liberator 118, 119 (1937).

44. The following is stated in Everett, Moral Values (1918) at p. 7:

The idea of value is, therefore, the basal conception of ethics No other term, such as duty, law, or right, is final for thought; each logically demands the idea of value as the foundation upon which it finally rests One may ask, when facing some apparent claim of morality, "why is this my duty, why must I obey this law, or why regard this course of action as right?" The answer to any of these questions consists in showing that the requirements of duty, law and right tend in each case to promote human welfare, to yield what men do actually find to be of value.

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43. Hutcheson, Law as Liberator 118, 119 (1937).

44. The following is stated in Everett, Moral Values (1918) at p. 7:

28. Kohn, The Twentieth Century 191 (1949).

29. Carmen, "An Inventory of American Democracy," 13 Vital Speeches of the Day 653 (1947).

30. Heinberg, "Theories of Majority Rule," 26 Am. Pol. Sci. Rev. 452 (1932).

31. "Law to the ancient Greeks was a strictly civic affair, a privilege and an obligation limited to the citizens of a particular community." Watkins, The Political Tradition of the West 16 (1948). Athenian democracy was such only in name, for a mere 3 per cent of the population were citizens with the right to vote.

32. *Id* at 19, 20.

33. Lindsay, The Modern Democratic State 56 (1947).

34 Hall, Living Law of Democratic Society 56 (1949).

35 Creasy, First Platform of International Law 83 (1876).

36 Lindsay, The Modern Democratic State 57 (1947); but see Corbett, Law and Society in the Relations of States 19, 20 (1951).

37. "There is neither Jew nor Gentile, there is neither bond nor free, there is neither male nor female; for ye are all one in Christ Jesus." Galatians 3:28.

38 Lindsay, The Essentials of Democracy 20, 48 (1929).

39 Heimann, Freedom and Order 215 (1947).

40. Pribram, Conflicting Patterns of Thought 13 (1949).

41. Lindsay, *op cit supra* note 38, at 20.

42. Morrow, "The Philosophical Presuppositions of Democracy," Ethics, Apr 1942, p 303.

43 "Y." "On a Certain Impatience with Latin America," 28 Foreign Affairs 565 at 568 (1950).

Chapter 3. Derivative Concepts

1 Tsanoff, The Moral Ideals of Our Civilization 290 (1942); and see Locke, Letters Concerning Toleration, first letter (1687)

2. Locke, Essay IV, xvi, 4 as quoted by Simon, "John Locke:

13. Montesquieu in his *Espirit des Lois, Bk. I, ch. iii* stated: "All countries have a law of nations, not excepting the Iroquois themselves. though they devour their prisoners; for they send and receive ambassadors, and understand the rights of war and peace."

14. Lawrence, Principles of International Law 4 (1909).

15. Thus Pound contends that international law of the seventeenth and eighteenth centuries was more effective than that of the nineteenth century because it was made for Christian princes whose plighted word was sacred. "Philosophical Theory and International Law," vol. I Biblioteca Visseriana 71-90 (1923).

16. Watkins, The Political Tradition of the West xii (1948).

17. 12 Encyclopaedia Britannica 527 (1951 ed.).

18. Wilson, *op. cit. supra* note 4, at 398.

19. Bennett, *op. cit. supra* note 1, at 120.

20. Dickinson, *op. cit. supra* note 4, at 9, n. 6, Moller, International Law in Peace and War 10 (1931).

21. Van Vollenhoven, The Law of Peace 6 (1936).

22. Bonn, The Crumbling of Empire 20 (1938).

23. Schwarzenberger, Power Politics 32 (1951).

24. "Preliminary Recommendations on Postwar Problems" formulated by the Inter-American Juridical Committee, appearing in International Conciliation, No. 387, Feb. 1943, p. 119.

25. Cole, Essays in Social Theory (1950), states at 81:

> . . . the Nazi Revolution involved not only a sharp break with the true moral tradition of West European civilization, but also an attempt swiftly to replace the broken morality with a new quasi-morality which offended at many points the consciences of a large section of the population . . [this quasi-morality] was bound to be stiff and brittle, lacking all plastic quality. It could not be bent, but it could be broken by military defeat

26. See Schapiro, The World in Crisis 12 (1950).

27. Friedmann, "The Disintegration of European Civilization and the Future of International Law," 2 Mod L. Rev. 194 at 200 (1938).

19 Ginsberg, Reason and Unreason in Society 270, 271 (1948).

20. 7 The Collected Papers of John Bassett Moore 312 (1944).

21. Thomas & Thomas, International Treaties 28 (Monograph) (1950).

22. Schwarzenberger, *op. cit. supra* note 7, at 61.

23. Rousseau, Contrat Social, I, Ch. 6.

24. Pollock, "The History of the Law of Nature," J. Comp. Leg. & Int'l L. N. S. (2) 418 (1900).

25. Simons, The Evolution of International Public Law in Europe Since Grotius 73 (1931).

26. Starke, An Introduction to International Law 207 (1947).

27. 2 Hyde, International Law, sec. 490 (1922).

28. Thomas & Thomas, *op. cit. supra* note 21, at 74.

29. McDougal & Leighton, "The Rights of Man in the World Community," 59 Yale L. J. 60 (1949).

30. ". . . The duties and rights of states are only the duties and rights of the men who compose them." Westlake, Collected Papers on Public International Law 78 (1914).

31. *Ibid.*

32. Idelson, "The Law of Nations and the Individual," 30 Transactions of Grotius Society 50 (1944).

33 See Vinogradoff, "Legal Standards and Ideals," 33 Mich. L. Rev 1 at 12 (1924); see also McDougal & Leighton, *supra* note 29, at 60. Walter Lippman in his book, Preface *to Politics* (1913), declares at p. 32: "The deepest error *in our political* thinking [has been] to talk of politics without reference to human beings."

34. See Russell, A Survey of Western Philosophy 420 (1945).

35. Justice Robert H. Jackson has stated:

> Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has its right to institute customs and *to conclude* agreements that will themselves become sources of a newer and strengthened International Law.

Report to the President of the United States by Robert H.

Philosophy and Political Theory," 45 Am. Pol. Sci. Rev. 395 (1951).

3. Martin, *Liberty* 221 (1930); *see also* Polanyi, *The Logic* of Liberty 193 (1951), who points out that there is no justification for demanding freedom of thought unless one believes that thought has a power of its own.

4. Le Fevre, *Liberty and Restraint* 27 (1931).

5. Friedmann, "The Disintegration of European Civilization and the Future of International Law," 2 Mod. L. Rev. 194 (1938).

6. International Law of the Future, Am. Bar Assoc. (Monograph) 35 (1944).

7. Schwarzenberger, A Manual of International Law 45 (2nd ed. 1951).

8. *Id.* at 52.

9. Thomas, Economic Regulation of Scheduled Air Transport, National and International 175 (1950).

10. Dickinson, The Equality of States in International Law 178 (1920).

11. U.N. Charter, Art. 2, Par. 1.

12. Butler and Maccoby, The Development of International Law 247 (1928).

13. Lindsay, The Modern Democratic State 117 (1947).

14. Thomas & Thomas, "Equality of States in International Law—Fact or Fiction?" 37 Va. L. Rev. 791 at 794 (1951).

15. Bowle, Western Political Thought 333 (1949).

16. Thomas & Thomas, *supra* note 14, at 798.

17. Statement of Cordell Hull on plans for the creation of a United Nations Organization, Vol. XI, Dep't State Bull. 509 (1944).

18. But see Vattel, Le Droit des Gens (1758, Fenwick's Translation) Introduction sec. 21, who claims:

> Since Nations are free, independent, and equal, and since each has the right to decide in its conscience what it must do to fulfill its duties the effect of this is to produce . . . a perfect equality of rights among nations in the conduct of their affairs and in the pursuit of their policies

world we can never hope to reach more than an approximation to it, and if our presumption carries us farther, we are likely to achieve a greater injustice." Hunt, The Theory and Practice of Communism 83 (1951).

13. Santayana, Dominations and Powers 428 (1951).

14 Wormser, The Law 483 (1949).

15. *Id* at 484.

16. Jenkins, "The Role of Ethical Values in Legal Decisions," 12 Ohio St. L. J. 36 (1951).

17. Kantian ethics was a revival of this *Jus Talionis* concept. Yet logically, the *Jus Talionis* was always meaningless except in a few cases, for no punishment can truly equal a crime. See Cohen, Reason and Law 112 (1950).

18. Radin, "The Goal of Law," 2 Labor L. J. 519 (1951).

19 Hill, "International Justice," 6 Yale L. J. 1 (1896).

20. Translated by I. Husik, 1925.

21 Cahn, The Sense of Injustice, An Anthropocentric View of Law (1949)

22. *Id* at 27.

23. *Id.* at 19

Chapter 5. Soviet Ideological Impact On International Law

1 Florinsky, Toward an Understanding of the U.S.S.R. 8 (1951).

2 Patterson, "Historical and Evolutionary Theories of Law," 51 Col L Rev. 681 at 701 (1951).

3 See Holborn, The Political Collapse of Europe 111 (1951); Pasvolsky, Economic Nationalism in the Danubian States 30 (1928)

4. Pribram, Conflicting Patterns of Thought 54 (1949) points out that beginning with Fichte, German philosophers ascribed to the German race a special faculty of understanding reality with the aid of "insight," and the Nazis based their official doctrine on this theory that non-Teutonic individuals

Jackson, Chief of Counsel for the United States, *The Nurnberg Case* 14 (1947).

36. "Treaty-law reveals also the beginning of a trend toward an increased role for the individual in the procedural aspects of international law." McDougal & Leighton, *supra* note 29.

37. Lauterpacht, International Law and Human Rights 70 (1950).

Chapter 4. Basal Relation of Concepts to International Law

1. 11 Encyclopaedia of Social Sciences 702 (1937).

2. *Id.* at 703.

3. See Vinogradoff, The Teaching of Sir Henry Maine (1904).

4. Warden, The Emergence of Human Culture 20 (1936).

5. Boas, General Anthropology 677 (1938); see also Bryce, Modern Democracies, vol. 1 (1924), where he states at p. 14: "All fairly normal men have like passions and desires. They are stirred by like motives, they think upon similar lines..."

6. Hocking, The Spirit of World Politics 18 (1932).

7. Scott, The Spanish Conception of International Law and Sanctions 90 (1934). Hocking, *id.* at 21 states. "The gods of beauty are the same for all mankind: localisms are intriguing variants on a central common spirit. The same is true of the gods of right and reason."

8. Radin, "Natural Law and Natural Rights," 59 Yale L. J. 214 at 228 (1950).

9. "Every uniformity in human behavior can be reduced to the basic proposition. similar conditions acting on men of essentially similar nature produce similar effects." Timasheff, Introduction to Sociology of Law 6 (1939).

10. Ginsberg, Reason and Unreason in Society 280 (1948).

11. Pound, "The Ideal Element in American Judicial Decision," 45 Harv. L. Rev. 136 (1931).

12. "We do well to strive after justice, yet in an imperfect

world we can never hope to reach more than an approximation to it, and if our presumption carries us farther, we are likely to achieve a greater injustice." Hunt, The Theory and Practice of Communism 83 (1951).

13. Santayana, Dominations and Powers 428 (1951).

14 Wormser, The Law 483 (1949).

15. *Id.* at 484

16. Jenkins, "The Role of Ethical Values in Legal Decisions," 12 Ohio St. L. J. 36 (1951).

17. Kantian ethics was a revival of this *Jus Talionis* concept. Yet logically, the *Jus Talionis* was always meaningless except in a few cases, for no punishment can truly equal a crime. See Cohen, Reason and Law 112 (1950).

18. Radin, "The Goal of Law," 2 Labor L. J. 519 (1951).

19. Hull, "International Justice," 6 Yale L. J. 1 (1896).

20 Translated by I. Husik, 1925.

21 Cahn, The Sense of Injustice, An Anthropocentric View of Law (1949).

22. Id at 27.

23. Id at 19

Chapter 5. Soviet Ideological Impact On International Law

1 Florinsky, Toward an Understanding of the U.S.S.R. 8 (1951).

2. Patterson, "Historical and Evolutionary Theories of Law," 51 Col. L. Rev. 681 at 701 (1951).

3 See Holborn, The Political Collapse of Europe 111 (1951), Pasvolsky, Economic Nationalism in the Danubian States 30 (1928)

4 Pribram, Conflicting Patterns of Thought 54 (1949) points out that beginning with Fichte, German philosophers ascribed to the German race a special faculty of understanding reality with the aid of "insight," and the Nazis based their official doctrine on this theory that non-Teutonic individuals

Jackson, Chief of Counsel for the United States, *The Nurnberg Case* 14 (1947).

36. "Treaty-law reveals also the beginning of a trend toward an increased role for the individual in the procedural aspects of international law." McDougal & Leighton, *supra* note 29.

37. Lauterpacht, International Law and Human Rights 70 (1950).

Chapter 4. Basal Relation of Concepts to International Law

1. 11 Encyclopaedia of Social Sciences 702 (1937).

2. *Id.* at 703.

3. See Vinogradoff, The Teaching of Sir Henry Maine (1904).

4. Warden, The Emergence of Human Culture 20 (1936).

5. Boas, General Anthropology 677 (1938); see also Bryce, Modern Democracies, vol. 1 (1924), where he states at p. 14: "All fairly normal men have like passions and desires. They are stirred by like motives, they think upon similar lines..."

6. Hocking, The Spirit of World Politics 18 (1932).

7. Scott, The Spanish Conception of International Law and Sanctions 90 (1934). Hocking, *id.* at 21 states: "The gods of beauty are the same for all mankind: localisms are intriguing variants on a central common spirit. The same is true of the gods of right and reason."

8. Radin, "Natural Law and Natural Rights," 59 Yale L. J. 214 at 228 (1950).

9. "Every uniformity in human behavior can be reduced to the basic proposition: similar conditions acting on men of essentially similar nature produce similar effects." Timasheff, Introduction to Sociology of Law 6 (1939).

10. Ginsberg, Reason and Unreason in Society 280 (1948).

11. Pound, "The Ideal Element in American Judicial Decision," 45 Harv. L. Rev. 136 (1931).

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13 Santayana, Dominations and Powers 428 (1951).

14. Wormser, The Law 483 (1949).

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21. Cahn, The Sense of Injustice, An Anthropocentric View of Law (1949).

22. *Id* at 27.

23. *Id* at 19.

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were unable to understand the concepts gained by this insight.

5. Moore, Soviet Politics—The Dilemma of Power 51 (1950).

6. As quoted by Lasswell & Kaplan, Power and Society 222 (1950).

7. Barker, Reflections on Government (1942) states at p. 289:

> Any single authority is by its nature total. Having no other authority at its side, with which it must divide the exercise of power, it will equally leave no possible object (or subject) of power untouched, having no partners in power, it will leave no loop-holes and no exemptions from power.

8. See Moore *op. cit. supra* note 5, at 250-53 for a description of election procedure in the U.S.S.R. See also Oakeshott, Social and Political Doctrines of Contemporary Europe 20, 32 (2nd ed. 1939).

9. See Hunt, The Theory and Practice of Communism 197-208 (1951) for a description of Russian postwar strategies.

10. Baldwin, Power and Politics 6 (1950).

11. Brierly, The Outlook for International Law 22 (1944).

12. Chakste, "Soviet Concept of the State, International Law and Sovereignty," 43 Am. J. Int'l L. 21-23 (1949).

13. Steinberg, Verdict of Three Decades 77 (1950).

14. Tarnecouzio, The Soviet Union and International Law 12 (1935).

15. Chakste, *supra* note 12, at 29.

16. See Cooke, A Generation on Trial 36 (1950) for an excellent analysis of the "co-operation" between democratic Czechoslovakia and the U.S.S.R.

17. Hunt, *op. cit. supra* note 9, at 76.

18. Selsam, Socialism and Ethics 12 (1943). See also Pashukanis, "The General Theory of Law and Marxism," appearing in Soviet Legal Philosophy 201 (Translated by Babb 1951):

> It must, therefore, be borne in mind that morality, law, and state are forms of bourgeois society. The fact that the proletariat may be compelled to use them by no means signifies that they can be developed further in the direction of being filled with a socialist content. They have no capacity . . . to hold a socialist content and are bound to die out to the extent that it is brought into being.

19. Printed in Lenin and Stalin on Youth 20 (1920) as

cited by Hunt, *op. cit. supra* note 9, at 79.

20. Cameron, Scrutiny of Marxism 46 (1948).

21. See Cohen, "The Ethical Basis of Legal Criticism," 41 Yale L. J. 201 (1931).

22. Cameron, op. cit. supra note 20, at 48.

23. Kohn, The Twentieth Century 57 (1949), declares at p. 57:

> The fanaticism of the totalitarians springs from the absoluteness of their faith. The consciousness of the saving truth gives them their assurance, the opponent is always wrong, there can therefore be no compromise. In this secularized orthodoxy, the hardness that shrinks from nothing is a true service to the attainment of the goal. The totalitarian certainty of victory is based on an eschatological confidence free from all moral content.

24. Kruse, The Community of the Future 15, 18 (1950).

25 Statements from Carrol's Alice in Wonderland are apropos. "When *I* use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean —neither more nor less." ... "The question is," said Alice, "whether you can make words mean so many different things." ... "The question is," said Humpty Dumpty, "which is to be master—that's all."

26. Hunt, *op. cit supra* note 9, at 206, points out:

> The Russian leaders themselves cannot have forgotten the unfortunate impression that the term "dictatorship" created among the western Marxists at the time of the revolution, and there are thus obvious advantages in calling the new regimes [in satellite countries] "people's democracies"

27. Carmen, Soviet Imperialism 155 (1950).

28 *Ibid.*

29 Cooke, *op. cit supra* note 16, at 36-37.

30. *Id* at 37.

31. Kohn, *op. cit. supra* note 23, at 185-96.

32. Hunt, *op. cit. supra* note 9, states at p. 145:

> For marxists argue that opposing political parties derive from the conflict between different economic classes, and that once their cause is removed they will cease to exist. It is no more necessary that there should be two political parties than that a man should have two heads.

33. Carr, The Soviet Impact on the Western World 15 (1948).

34. *Ibid.*

35. MacIver, The Ramparts We Guard 95 (1950).

36. *Id.* at 96.

37. Lenin, Sochineniya (Works, 2nd ed. XXVI, 32, 1927) as cited by Inkeles, Public Opinion in Soviet Russia 3 (1950).

38. Inkeles, *id.* at 4.

39. Smith, Lasswell & Casey, Propaganda, Communication, and Public Opinion 42 (1946).

40. The Communists have followed carefully Machiavelli's directions as set out in the Prince, VI, 5:

> The nature of the people is mutable, it is easy to persuade them of anything, but difficult to keep them in persuasion. Hence the prophet should be so well prepared that when they no longer believe he can make them believe by force.

41. Root in an article entitled "The Sanction of International Law," 2 Am. J. Int'l L. 451 (1908) states at 456:

> International opinion is the consensus of individual opinion in the nations The most certain way to promote obedience to the law of nations and to substitute the power of opinion for the power of armies and navies is, on the one hand, to foster ... "decent respect to the opinions of mankind" ... and, on the other hand, to spread among the people of every country a just appreciation of international rights and duties and a knowledge of the principles and rules of international law to which national conduct ought to conform, so that the general opinion, whose approval or condemnation supplies the sanction for the law, may be sound and just and worthy of respect.

42. The main duty of the Soviet propaganda machine internally is "to divert the attention of the popular masses from the really serious, deep, and fundamental problems of their daily life." Inkeles, *op. cit. supra note* 37, at 321.

43. Florinsky, *op. cit. supra* note 1, at 208.

44. Mead, Soviet Attitudes toward Authority 89-93 (1951).

45. Koestler, The Age of Longing 145 (1951).

46. *Time* vol. LVIII, Oct. 8, 1951, p. 39. Another excellent description of this "warfare for the brain" is given in Arthur Krock's column "In the Nation," appearing in the *New York*

Times April 16, 1953, p. 28.

47. Morgan, Liberties of the Mind 10 (1951).

48 Published in 1932.

49. Baldwin, Power and Politics 2 (1950). It should be pointed out that the Western democracies have been placed in a somewhat embarrassing position by the development of propaganda as an instrument of foreign policy. Freedom of opinion is a tenet of the democratic creed, and democratic governments are inhibited for both practical and ideological reasons from seeking to prevent the dissemination of opinion even when promoted by a foreign agency.

50. This belief is well stated in the following short quotation:

> Now in a democratic society it is believed that each member of the society has a part to play in the complex process by which *ought*—that is, men's wants and the communicable forms they give those wants—slowly, imperfectly, unpredictably perhaps, alters *is*

Brinton, Ideas and Men 5 (1950).

51. Moore, *op. cit. supra* note 5, at 224.

52 "And he said unto them, Then render unto Caesar the things that are Caesar's, and unto God the things that are God's." Luke 20.25

53. Kohn, *op. cit supra* note 23, at 41

54 "Soviet intervention . . . [is] a surgical measure to ease the birth pangs of a new world." Chakste, *supra* note 12, at 25.

55 Taracouzio, *op. cit supra* note 14, at 341.

56 *Id.* at 237.

Chapter 6 Revitalization of Ethical and Moral Bases of International Law

1. 7 The Collected Papers of John Bassett Moore 143 (1944).
2. Kohn, The Twentieth Century 42 (1949).
3. Brunner, Justice and the Social Order 225, 230 (1945).
4. McDougal, "The Role of Law in World Politics," 20 Miss. L. J 253 (1949), states at 254:

> It is not because of the demands of the peoples of the world that we have come to this impasse. As never before the peoples of the

33. Carr, The Soviet Impact on the Western World 15 (1948).

34. *Ibid.*

35. MacIver, The Ramparts We Guard 95 (1950).

36. *Id.* at 96.

37. Lenin, Sochineniya (Works, 2nd ed. XXVI, 32, 1927) as cited by Inkeles, Public Opinion in Soviet Russia 3 (1950).

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46. *Time* vol. LVIII, Oct. 8, 1951, p. 39. Another excellent description of this "warfare for the brain" is given in Arthur Krock's column "In the Nation," appearing in the *New York*

he expounds the Epicurean scientific thought on the theory of atoms—a theory which came into active scientific acceptance only after the seventeenth-century Renaissance had rediscovered the works of Lucretius.

13. Ernst, So Far So Good 249 (1948).

14. Royal Institute of International Affairs, Defense in the Cold War 111 (1950).

15. For example, Stalin in 1941 admitted to Harry Hopkins that Franklin D Roosevelt had more influence with the common people of the world than any other man or force. See Sherwood, Roosevelt and Hopkins 342, 343 (1948).

16. Schlesinger, The Vital Center 30 (1949).

17. 2 Simpson and Stone, Law and Society 730 (1949).

18. Jowett's translation of Plato's Republic viii, 563, as cited in Brown, Underlying Principles of Modern Legislation 57 (1912).

19. Fosdick, What is Liberty? 23 (1939).

20 Lasswell & Kaplan, *op. cit. supra* note 11, at 228.

21. Russell & Briggs, Meaning of Democracy 364 (1941).

22. Best, The Soviet State and Its Inception 330 (1950). See also Bagehot, Physics and Politics 158 (1873), wherein is stressed the fact that a state with liberty is one in which the sovereign power is divided among many people and in which there is discussion among those people.

23. The following is stated in Polanyi, The Logic of Liberty (1951) at 158.

> A free society is characterized by the range of public liberties through which individualism performs a social function, and not by the scope of socially ineffective personal liberties. Conversely, totalitarianism is not intent on destroying private freedom, but denies all justification to public liberties. In the totalitarian conception, independent personal actions can never perform a social function, but can only satisfy a private desire, while all public responsibility falls to the state.

24. Perry, Shall Not Perish from the Earth 18 (1940).

25. Hook, "Bread, Freedom and Businessmen," *Fortune*, vol XLIV, p. 117, Sept. 1951.

26 Brogan, The Free State 98 (1945).

> world are demanding security, in the sense of freedom from expectations of violence, and that wide sharing of power, respect and enlightenment which we call democracy, and the freedom and opportunity to pursue higher standards of living, health, well being, comfort and congenial personal relations . . . all values that cannot be achieved without a peaceful world order.

5. Wormser, The Law 536-39 (1949).

6. Levi, Fundamentals of World Organization 12 (1950).

7. In this aspect and with respect to treaties Storey has stated:

> But no treaty, however well it is drawn up, can rise above the obstacles imposed by political emotions and ambitions If the nations of the world are today still menaced by war, the cause lies less in the inherent limitation of the treaty-making process than in the circumstances that law itself, as a technique of control, is but a means to an end and can never lead mankind closer to utopia than politics and ethics will permit

Storey, Legal Problems Involved in Present Treaties (Monograph 1950).

8. Watkins, The Political Traditions of the West 338 (1948); Brunner, *op. cit. supra* note 3, at 237.

9. Ashley in Our Contemporary Civilization (1935) states at p. 547:

> The challenge of a new day cannot be satisfied by material reconstruction alone. Ethical revaluations must be based on spiritual standards as well. Sacrifice and service must find a place with self-interest, lest the new, like the old, fail because of our short vision.

10. "Plato has said that the creation of the world is the victory of persuasion over force." Cahn, The Sense of Injustice, An Anthropocentric View of Law 27 (1949)

11. Berle, Natural Selection of Political Forces 11 (1950). "Ideas are not literally weapons, but a theory of power must take account of the power of ideas as well as weapons." Lasswell & Kaplan, Power and Society 20 (1950).

12. Russell as quoted by The Chicago Tribune, p 7, Aug. 10, 1951. An excellent example of the length of time for which a valid idea can be stifled is the long suppression by the church of the scientific and philosophical achievements of Lucretius, who circa 55 B.C. wrote *De Rerum Natura*, in which

stomach is not a good political adviser." Quoted in Fuller, Thesaurus of Epigrams 159 (1948 ed.). But more than poverty is needed to precipitate a revolution. As Hobbes saw it, at least three things were required:

> To dispose men to sedition three things occur. The first is discontent, for as long as a man thinketh himself well, and that the present government standeth not in his way to hinder his proceeding from well to better, it is impossible for him to desire change thereof. The second is pretence of right, for though a man be discontent, yet if in his own opinion there be no just cause of stirring against, or resisting the government established, nor any pretense to justify this resistance, and to procure aid, he will never show it. The third is hope of success, for it were madness to attempt without hope when to fail is to die the death of a traitor. Without these three: discontent, pretence, and hope, there can be no rebellion.

Hobbes, Elements of Law II, 8.

38 Berle, "Corporations and the Modern State," as set forth in The Future of Democratic Capitalism 55 (1950).

39 Therefore if our Point 4 Program is aimed at bettering the life of various peoples of the world it is commendable; if it is thought that this alone will be a bulwark against Communist advance it is an illusion.

40 MacIver, The Ramparts We Guard 112 (1950).

41. Or as Browning poetically phrased it.

> No abstract intellectual plan of life
> Quite irrespective of life's plainest laws,
> But one, a man, who is a man and nothing more,
> May lead within a world which (by your leave)
> Is Rome, or London, not Fool's-Paradise

Bishop Blougram's Apology

42. Berle, *op cit supra* note 11, states at 12:

> The historical truth is that society (national or international), communities (regional or local), individual relationships or families, and indeed the structure of the individual life, are possible only on a basis of philosophical values which attain individual expression. If it is bad to be a man without a country, it is worse to be a *man without* a premise. Indeed, if men have no premises, there can be no country, or, for that matter, any other lasting social manifestation.

43 * . So long as the basic rights of man are denied in any substantial portion of the earth, men everywhere must live in

27. Ginsberg, Reason and Unreason in Society 274 (1948).

28. Lloyd George phrased it thus: "Liberty has restraints but no frontiers." Quoted in Fuller, Thesaurus of Epigrams 185 (1948 ed.).

29. Parker, "Liberty and Law: The Role of Law in a Free Society," 36 A. B. A. J. 523 at 594 (1950).

30. Burgess, The Reconciliation of Government with Liberty 30 (1915).

31. Croce points out:

> *If liberty or morality is the ruling principle of life and our essential attribute, it can and must regulate the satisfaction of those physical needs which are called economic or material . . . But in the continual stooping to control our economic needs, and by contact with them, it runs the risk of confounding ruled and ruler, of degrading liberty and identifying it with the materials which it controls, or of making it conditional and dependent on these materials. As an antidote to this we must remind ourselves that liberty is a way of life, an eternal via docendi et agendi, not a particular possession nor a way of solving economic problems, still less the actual or proposed solution of any particular problem*

Croce, My Philosophy 112 (1949).

32

> *By stressing that opinions are not passive elements in the social process, we have, of course not meant to make them altogether independent of material forces The very fact that opinions to an extent are opportunistic implies that they will change as a result of every other change in social environment*

2 Myrdal, An American Dilemma 1033 (1944)

33. Wormser, The Law 484 (1949).

34 Cahn, The Sense of Injustice, An Anthropocentric View of Law 92 (1949) See also Becker, Modern Democracy 62 (1941): "What the average man now needs is the opportunity to acquire by his own effort, in an occupation for which he is fitted, the economic security which is essential to decent and independent living"

35. Hook, *supra* note 25, at 117

36. ". . .if the economic tail could wag the entire dog, then ethics and law are out " Hocking, The Spirit of World Politics 495 (1932).

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37. Naturally, as Einstein has succinctly stated, "An empty

48 Brown, "World Law," 40 Am J. Int'l L. 159, 160 (1946). Merriam offers the following words of encouragement:

> Power is not strongest when it uses violence, but weakest. It is strongest when it employs the instruments of substitution and counter attraction, of allurement, of participation rather than of exclusion, of education rather than of annihilation Rape is not evidence of irresistible power in politics or in sex.

Merriam, Political Power 179-80 (1934).

49. Brierly, The Law of Nations 75, 76 (4th ed. 1949).

50. International Law of the Future, American Bar Assoc. Monograph 35 (1944)

51. "...no government ruling its people by force can be considered as having secured domestic peace, and no government at war with its own people can be relied upon to keep peace with the rest of the world" Salvador de Madariaga as quoted in the N. Y. Times, p. 21, Aug. 10, 1951.

52. 1 Hyde, International Law 211 (2nd ed 1945).

Chapter 7. The Efficacy of Mid-Twentieth Century International Law

1. Root, "The Declaration of Rights and Duties of Nations," 10 Am J Int'l L. 211 (1916).

2. "It is useless for sheep to pass resolutions in favor of vegetarianism while the wolf remains of a different opinion." Dean Inge, Fuller, Thesaurus of Epigrams 86 (1948 ed.).

3. See for example, "Major Problems of United States Foreign Policy 1950-1951," prepared by the staff of the International Studies Group of the Brookings Institute (1950). See also Wilk, "International Law and Global Ideological Conflict," 45 Am J. Int'l L. 648 (1951).

4. Kravchenko, I Chose Freedom 424 (1946).

5 Cooke, A Generation on Trial 39 (1950). Rousseau declared. "It is useless to distinguish the character of a nation from the objects they esteem, for all these things depend on the same principle, and are necessarily intermixed." Social Contract IV, 7.

fear of their own rights and their own security." 17 Dep't State Bull. 81 (1947).

44. Jessup has shown the decisive inroads which practice has made upon this doctrine that only states are subjects of international law, and further has proven that persons, and bodies other than states, have in many respects acquired a status in international law. See Jessup, "The Subjects of the Modern Law of Nations," 45 Mich. L. Rev. 383 (1947); Jessup, *A Modern Law of Nations (1948)*.

45. "... the world cannot be ruled by logic alone, and no ideal end gives to any man (or group) absolute power over the lives of others." Hunt, The Theory and Practice of Communism 211 (1951).

46. The world-wide discussions of the Nuremberg trials exemplify the dangers of a purely doctrinal approach. It was claimed by strict doctrinarians that the charter for the trials created law after the commission of the offense—*ex post facto* law. This was not only a limited but also a dangerous point of view, for where there is a deliberate and flagrant violation of widely accepted standards, and where such a violation necessarily involves death and misery for millions, it is more important to condemn and punish such conduct than to follow the principle of retroactivity. The ultimate question underlying the trials at Nuremberg was whether or not the judicial trial of Nazi conspirators would do more to promote security in the future, would do more to enhance the international moral values at stake, than would their summary execution or their being allowed to go free under the lee of some mechanical manipulation of a doctrine that was invented to protect private individuals in a national government from the arbitrary power of that government. See Shawcross, "The Place of Law in International Affairs," 15 Geo. Wash. L. Rev. 121 (1947).

47. Scott, "A Single Standard of Morality for the Individual and the State," *Proceedings of Am. Soc. Int'l L. 10 at* 19 (1932).

sacrificing our common ideas of justice and human worth." Paul-Henri Spaak of Belgium added: "The North Atlantic Pact is an act of faith in the destiny of Western civilization." Bevin of the United Kingdom declared: "We are in the process of enthroning and making paramount the use of reason against force ... At last democracy is no longer a series of isolated units. It has become a cohesive organism, determined to fulfill its great purpose."

12. Hsin-hai, "The Moral Basis of World Peace," 258 The Annals of the American Academy of Pol. & Soc. Sci. 79 (1948).

13. Kohn has said: "Democracy, which has grown up in the last 300 years, represents with its emphasis upon individual responsibility and individual decisions, the most difficult societal system, requiring a definite human maturity." Kohn, "Fascism," 9 Encyclopaedia Britannica 103 (1951 ed.).

14 Katz, "World War II and Legal Trends" as set forth in Puttkammer, War and the Law 7 (1944).

There has been a dangerous inclination at certain periods in the history of democratic nations to commit the moral fallacy of treating persons as things, e.g., in the early minimum wage case (Adkins v. Children's Hospital, 261 U. S. 525 [1923]) in the United States, the Supreme Court implied that in principle there can be no difference between the case of selling one's labor and the case of selling goods. This is a false assumption from an axiological viewpoint, for there is a vast difference between people and things The essence of things is their functions, whereas the essence of persons is not their functions but their unique personalities. The strength of any community, therefore, lies in the degree in which its members freely and strongly adhere to the principle that the intrinsic value of the individual is supreme. For an excellent discussion of an axiological approach (axiology is the science of values, it discovers, defines, and orders the values that it is proper for man and society to realize, and the content of law is then controlled and judged by its faithfulness to these value norms) to law, see Hartman, "Value Analysis of Legal

6. Schmid, "'Co-existence'—A Lesson from History," N. Y. Times Magazine p. 11, August 12, 1951. It is there pointed out:

> There were many good idealists among the Czechs... inclined to take at face value the assertions from the Soviet Union... of good will and peaceful intentions.... [They] ignored the fact that the ethics of world communism do not require communists to keep faith with non-communists.... It had been hard for the Czechs to learn this lesson for they had been brought up in the school of Western Democracy. Their tragedy will have served some purpose only if the rest of the world can learn what the lesson was in the Czech's defeat.

7. Schwarzenberger, A Manual of International Law 5 (1947).

8. The Royal Institute for International Affairs points out in its monograph, Defense in the Cold War (1950), that in the Communist camp there is no reluctance to use force and the threat of force for what are regarded as proper ends. And since the Communists think that the weakness of the Western world lies in its tendency to sit back or to follow the established rules which heretofore have governed dealings with other civilized nations, the Communists will play these two trump cards to the hilt.

9. Schapiro, The World in Crisis (1950) declares at p. 40:

> As the Charter recognized the inherent right of self-defense, it authorized the formation of mutual defense pacts within the framework of the United Nations, by nations in the same region If peace could not be realized on a world basis, the next best thing was to endeavor to protect certain areas from aggression.... The first regional pact appeared in the Western Hemisphere. A conference representing the Latin-American states and the United States was held in Rio de Janeiro in 1947, and adopted a treaty of mutual defense.

10. Kohn, History of Nationalism in the East 2 (1930). See also Holborn, The Political Collapse of Europe 192-93 (1951), who points out that democratic co-operation does not involve the sacrifice of customs and manners, which constitute the historical heritage of each nation, but involves only common arrangements for defense and internal prosperity.

11. At the signing of the Atlantic Pact in Washington on April 5, 1949, President Truman stated: "We are determined to work together to provide better lives for our people without

sacrificing our common ideas of justice and human worth." Paul-Henri Spaak of Belgium added: "The North Atlantic Pact is an act of faith in the destiny of Western civilization." Bevin of the United Kingdom declared: "We are in the process of enthroning and making paramount the use of reason against force.... At last democracy is no longer a series of isolated units. It has become a cohesive organism, determined to fulfill its great purpose."

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Decisions," 12 *Ohio St. L. J.* 23 (1951).

15. For a discussion of present-day Yugoslavia see Birdwood, "Dilemma in Yugoslavia," 5 *World Affairs* 48 (1951); for a review of the present Spanish Government see Moyal, "Whither Spain?" 5 *World Affairs* 296 (1951).

16. In *The Loyalty of Free Men* (1951) Barth states at p. 7:

> "Loyalty" has become a cult, an obsession in the United States. But even loyalty itself is now defined negatively. It is thought of not so much in terms of an affirmative faith in the great purposes for which the American nation was created as in terms of stereotypes the mere questioning of which is deemed "disloyal." The whole postwar accent is on something called "un-Americanism"—a hyphenated synonym for unorthodoxy.... The very diversity which was the wellspring of loyalty in the past is now distrusted

See also Biddle, *The Fear of Freedom* (1952).

17. Toynbee aptly demonstrates: "... we may infer from the foregoing survey that an improvement in military technique is usually, if not invariably, the symptom of a decline in civilization." *War and Civilization* 140 (1950).

Chapter 8. Conclusion

L. Jenkins, "The Role of Ethical Values in Legal Decisions," 12 Ohio St. L. J. (1941) declares at p. 45:

> Man persists in the assertion of his individuality, and so establishes societies that exhibit great heterogeneity of status and function. And then a second step occurs Man transfers his self-assertion from the level of the actual to the level of the ideal. He not only does in fact enunciate his individual status and pursue his private interests; he declares that he is right in doing so, and that society must confirm and promote his claim. This act constitutes the proclamation of human dignity. What is here asserted is the doctrine that the locus of social value lies in individual men. Man now becomes an end in himself, and society becomes a Means to this End Society is still the ultimate repository of organized human power, but this power is now dedicated to purposes that are supra-social This condition completes the genesis of law. Law is now envisaged as a device for defining and assuring the sanctity of the individual, and for administering a value system that is based on personal self-realization Then law is called upon to establish certain limits within which self-assertion is guaranteed but beyond which it is restrained

2. "Law and government did not create civilization; but civilization created law and government." Burns, The Morality of Nations 239 (1916).

3. Croce, Politics and Morals 113 (1945), states:

> The Authoritarian theory ... sees the liberal theory as its direct enemy ... upon this enemy it always tries to inflict all possible harm.... This is as it should be, because the conflict between the two is without solution, inasmuch as it does not hinge upon particular matters, which admit practical compromises, but on final matters, which do not admit compromises.

4. N. Y. Times, p. 4, Jan. 9, 1950.

5. Steinberg, Verdict of Three Decades 620 (1950).

6. *Id.* at 621.

7. It has been said: "It should need no emphasis that one condition of the survival of a free society is a vision, fortified with reasonable hopes of fulfillment, by the peoples of the world of what a free society can offer." McDougal, "The Role of Law in World Politics," 20 Miss. L. J. 253 at 254 (1949).

8. Wilson, Elements of Modern Politics (1936), declares at p. 414.

> Purposive internationalism is on a moral plane, involving highly organized cultural and political co-operation. The theoretical basis of international action must be its appeal to men, not only in terms of preventive medicine, but also through a moral positiveness that equals the moral positiveness of the state.

9. As stated by Hutcheson, Law as Liberator 12 (1937).

10. Carrol, Persuade or Perish 389 (1948). James Truslow Adams has demonstrated that eternal vigilance is the price of liberty, but that eternal anxiety is also the fate of free men. Freedom, edited by Anshen, p. 112 (1940).

Decisions," 12 Ohio St. L. J. 23 (1951).

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