

HUMAN RIGHTS AND WORLD PUBLIC ORDER

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Human Rights and World Public Order

The Basic Policies of an International
Law of Human Dignity

by Myres S. McDougal, Harold D. Lasswell,
and Lung-chu Chen

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PREFACE

This book is designed to outline a comprehensive framework for inquiry about human rights and to suggest certain preliminary clarifications of such rights by criteria appropriate to a world public order of human dignity. It recommends a conception of human rights in terms of the shaping and sharing of values in community process and seeks to locate such rights in their most comprehensive community context and in relation to all relevant processes of authoritative decision. It explores the conditions affecting human rights in the contemporary world community and recommends intellectual procedures for relating the more fundamental, but necessarily complementary, policies about human rights to particular instances of choice. The general framework of inquiry proposed is illustrated by its detailed application to certain important problems concerning the value of respect, regarded as the core value of all human rights.

The observational standpoint to which we aspire is that of citizens of the larger community of humankind who identify with the whole community, rather than with the primacy of particular groups, and who are committed to clarifying and securing the common interests of all individuals in realizing human dignity on the widest possible scale.

The conception of human rights which we recommend, in terms of the interactions of individuals in the shaping and sharing of values, can be made to transcend all differences in the subjectivities and practices of peoples, not merely across nation-state lines, but as between the different cultures of the larger community. By a combination of value references, taken from ethical philosophers—such as respect, power, enlightenment, well-being, wealth, skill, affection, and rectitude—and of institutional or practice references, taken from cultural anthropologists—such as participation, perspectives (demands, identifications, expectations), situations, bases of power, strategies, and outcomes—the description of individual interactions in the shaping and sharing of values can be made as comprehensive and as precisely detailed, through time and across boundaries, as inquiry and decision may require. Detailed operational indices may be assigned to both value and institutional terms

as context may make necessary. For exploration of the outcomes of any particular value process, thus, we recommend such subcategorizations as:

1. A basic share of participation and enjoyment;
2. Positive opportunity for further participation and enjoyment, free from discrimination for reasons irrelevant to capabilities;
3. Further recognition or reward for actual contributions to the common interest; and
4. The largest possible aggregate shaping and sharing.

It is the aggregate of these outcomes in all value processes that determines in any community the kind and quantum of human rights that its members enjoy. From the standpoint we recommend, all differentiations between values, sanctifying some as components of “human rights” and ascribing to others a lesser status, become not merely irrelevant, but invidious; because of the interdependences of peoples everywhere, both within any particular value process and as between different value processes, there is a human rights dimension to every interaction in the shaping and sharing of values, and this dimension includes in varying constellations effects upon the outcomes of all values.

The value that we here emphasize as the core value of all human rights is, however, that of *respect*, in its most extensive sense of an interrelation among human beings in which they reciprocally recognize and honor each other's freedom of choice about participation in other value processes. In this sense respect includes not only the perspectives and symbols of recognition and worth by which individuals reciprocally characterize each other, but also the translation of these perspectives and symbols into the operative facts of freedom of choice in social process. One important outcome of the respect process in any community is in determining the access of its members to all other value processes.

It is common observation that both the more comprehensive transnational social processes and the internal social processes of different particular communities are today, as historically, characterized by a continuous flow of deprivations and nonfulfillments for individuals in the shaping and sharing of values. The contemporary processes as a whole exhibit grave and immense disparities between the growing common demands of the peoples of the world for a greater production and wider sharing of human dignity values and the actual production and distribution of such values. In consequence, both individuals and groups are making increasingly intense claims upon established authoritative decision makers, both transcending particular communities and

within particular communities, for the minimization of such deprivations and nonfulfillments and for the better securing and protection of their asserted human rights. The various particular claims that different individuals and groups make to authoritative decision relate both to every phase of every value process comprised within the global and particular community processes and to every feature and aspect of the processes of authoritative decision to which claim is made.

The framework of inquiry we recommend seeks, accordingly, to suggest the broad outlines of a comprehensive map of the global community and social processes in which deprivations and nonfulfillments of human rights are effected, to specify the different kinds of claims that are made to authoritative decision in empirical terms that will facilitate performance of all the intellectual tasks necessary to rational decision, and to delineate, comprehensively, the various features of the constitutive processes of authoritative decision that the global community maintains for response to such claims. Any framework of inquiry which makes sharp distinctions between the national and transnational dimensions of human rights creates illusion by ignoring the transnational interdependences of all social processes, including the interpenetration across geographic boundaries of the expectations and facts of authority and control.

It is observed in our study, as others have observed before us, that the contemporary world arena exhibits an increasingly viable constitutive process of authoritative decision which, though it has not yet achieved that high stability in expectations about authority and in degree of control over constituent members that characterizes the internal processes of certain national communities, still offers in more than rudimentary form all the basic features essential to the effective making and application of law on a global scale. In recent decades, this emerging constitutive process has been expanding and improving itself at an accelerating rate and, judged in the light of long historical perspective, rapidly making itself much more adequate to cope with human rights, as well as other, problems. One most significant feature of this developing process is the emergence, in response to the ever intensifying demands from peoples everywhere for the greater production and wider sharing of human dignity values, of a growing body of prescriptions—beginning with the United Nations Charter and extending through the Universal Declaration of Human Rights to the two international covenants and a whole host of more specialized conventions and ancillary expressions—which are taking on both the substance and form of the basic bills of rights long established and maintained in some national communities. It needs to be emphasized, however,

that human rights are at stake not only in the modalities by which the different constitutive processes of the global community regulate and protect access to the various value processes, but also in the functioning of every feature of the constitutive processes themselves.

This intellectual procedures we recommend for relating the more fundamental, but complementary, policies about human rights to particular instances of choice require the explicit postulation, as distinguished from syntactic derivation, of a comprehensive set of policy preferences, formulated at necessarily high levels of abstraction, and the systematic employment of certain distinctive, yet interrelated, intellectual tasks in the accommodation of preferred policies. These more specific intellectual tasks include the detailed clarification of goals, the description of past decisions in terms of approximation to preferred policies, the analysis of conditions affecting decision, the projection of probable future developments, and the invention and evaluation of policy alternatives in decision. For the better performance of these different tasks we recommend the deliberate and systematic employment of certain principles of content, which indicate the features of the processes of deprivation, claim, and decision relevant to choice, and of procedure, which outline an order and modalities for effective inquiry.

The public order goals we recommend for postulation are, as indicated, those which are today commonly characterized as the basic values of human dignity, or of a free society, and which have been authoritatively incorporated, as *ius cogens* of high level abstraction, in the newly emerged global bill of human rights. The contemporary image of man as capable of respecting himself and others, and of constructively participating in the shaping and sharing of all human dignity values, is, we suggest, the culmination of many different trends in thought, secular as well as religious, with origins extending far back into antiquity and coming down through the centuries with vast cultural and geographic reach. The intensifying demands of peoples for these values are fortified by an increasing recognition that the most fundamental policies underlying all law, in any community that seeks a genuine clarification and implementation of the common interests of its members, are those which today are described as of human rights. In a very realistic sense the recently achieved global bill of rights is an immense, authoritative postulation of demanded values by the whole of humankind.

We write in full recognition that the fundamental policies of the new global bill of rights are being but slowly put into controlling practice. Among the most important factors in contemporary global processes of effective power are, however, the rising common demands

of individual human beings, irrespective of community and transcending all communities, for the greater production and wider sharing of all values and the increasing participation by individuals through many different groups, functional as well as governmental, in value processes transcending nation-state lines. The nation-state and other territorial associations, like the functional groupings, are but patterns of perspectives and operations of individual human beings and instruments by which they seek to clarify and secure their common interests. In a world in which peoples enjoy ever increasing enlightenment about the conditions affecting their common interests, a concern for human rights may not be utopianism but rather hard-bitten realism. Unhappily, much of the contemporary concern for human rights is confined to what is described as "implementation," characterized by a scattering of recommendations for change in institution or practice. The difficulty with most of these recommendations is that they are proffered in fragmented and anecdotal form, without clear and systematic relation either to the comprehensive constitutive decision process which they are designed to affect or to the effective power processes which condition change in authoritative decision. The urgent challenge to contemporary scholarship is to supply a framework for inquiry, or a model, which will facilitate both the detailed clarification of the most fundamental public order policies and the design of appropriate constitutive processes, at all necessary geographic levels, for putting such policies into effect. It is in beginning response to such challenge that our book has been constructed.

It remains briefly to indicate the organization of the book:

Chapter 1 establishes our conception of human rights and sets forth a broad framework of inquiry—deliberately policy oriented, contextual, problem solving, and multimethod—for the location of human rights in their most comprehensive context.

Chapter 2 outlines, and illustrates, a way of describing the comprehensive global social process in which the continuous flow of deprivations and nonfulfillment of human rights occurs.

Chapter 3 formulates the recurrent types of claims made to authoritative decision, in relation both to deprivations and nonfulfillments in the different value processes and to features of the constitutive process, in categorizations designed to facilitate performance of all relevant intellectual tasks.

Chapter 4 offers a comprehensive outline of the contemporary global constitutive process of authoritative decision and spotlights the emergence of the global bill of human rights.

Chapter 5 postulates some of the basic policies of a comprehensive

public order of human dignity and specifies the intellectual procedures we recommend for the clarification and application of fundamental policies in particular instances.

Chapters 6 to 16 offer illustration of the application of the framework of inquiry to some of the more important outcomes of the respect value.

Chapter 16, the concluding chapter, while focusing upon the aggregate dimensions of shared respect and the necessities of accommodation, suggests a direction for future development toward a world civic order in which the individual enjoys the utmost possible freedom of choice in the shaping and sharing of values compatible with common interest.

It may be noted that different segments of the book had to be prepared at different times. We have not sought to bring the documentation of the book uniformly up to date. Our interest has been more in outlining a comprehensive frame of reference and in specifying intellectual procedures for the clarification of policy in particular instances than in the detail of documentation.

When we first began our study, we had hoped to explore in detail the human rights dimensions of all the eight major values with which we customarily work. It has already been observed that this volume contains only a general introduction to such a comprehensive inquiry and a detailed study of the outcome features of the respect value. It proved impossible, unhappily, to secure the resources necessary to a more comprehensive study.

The appendix was designed to be a part of a comprehensive study of human rights in relation to the value of power. We include it in this volume partly because of the importance of the problems of nationality and partly to suggest a model for the study of other claims in relation to power.

Our debts for generous assistance in the preparation of this book are many. Our deepest gratitude is to H. Peter Stern, who offered intellectual stimulus, moral encouragement, and financial assistance from the inception of the book until its completion. W. Michael Reisman was characteristically helpful, participating in most of our group discussions and critically reading most of the chapters; in chapter 4 we draw heavily upon collaborative work with him. Charles Runyon supplied information, ideas, and encouragement. John E. Claydon read chapters 6-9, 11, and 13. Thomas I. Emerson read chapters 12 and 16. Robert H. Miller and Winston P. Nagan read chapters 6 to 9. Barbara D. Underwood and Kreszentia M. Duer read chapter 10. Irving I. Zaretsky read chapters 11 and 13. Robert M. Cover assisted in guiding us through the literature relating to slavery. Lung-Fong Chen afforded significant assistance in securing research materials. K. N. Nayak very

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Lung-chu Chen would like to thank his parents, to whom the book is dedicated, his wife and children, and extended family, for all their encouragement, patience, and support.

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The death on December 18, 1978, of Harold Dwight Lasswell deprived us of a friend, colleague, and mentor and the world of an extraordinarily gifted scholar whose contribution to human rights and international law has been immense. The principal thrust of the "policy sciences," the conception of which was the summation of Lasswell's achievements, is in explicit and deliberate emphasis upon policy, and the basic content of the policy postulated and recommended by Lasswell is the autonomy of the individual human being and his freedom of choice about participation in the shaping and sharing of all cherished values. The purpose Lasswell had in the conception and writing of this book was that of indicating how people who cherish the values of human dignity can clarify in detail an international law, and other relevant law, which reflect and secure such values. It is our deep sorrow that he is not able to join us in the dedication of this book. He not only believed in and wrote about the values of human dignity, he practiced such values. His dedication was to humanity and all living forms.*

M.S.M.
L.C.

June 1, 1979

*A more detailed commemorative statement appears in *Harold Dwight Lasswell, 1902-1978*, 88 YALE L.J. 675 (1979). See also *POLITICS, PERSONALITY, AND SOCIAL SCIENCE IN THE TWENTIETH CENTURY* (A. Rogow ed. 1969); *H. LASSWELL ON POLITICAL SOCIOLOGY* (D. Marvick ed. 1977).

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