WORLD ORDER AND THE "ENCLAVES OF JUSTICE"

Ilmar Tammelo *

The occurrence of the word "justice" in operative provisions of important international legal instruments makes it necessary to seek a proper meaning of this word in international legal and political contexts. Despite the fact that the notion of justice has been an object of scholarly concern since the dawn of civilisation there is continuing uncertainty and controversy about its denotation and connotation.

It would indeed be a hopeless enterprise to frame a universally acceptable concept of justice. However, it seems feasible to establish an intellectual framework within which the discussion of problems of justice can usefully be conducted. The present article tries to build such a framework from material collected from the history of political and ethical ideas. This history provides material not only for organising thought about the formal aspect of justice captured in a definition of justice but also about its material aspect consisting in various criteria by reference to which what is one's due is to be determined.

The criteria of what is just have found expression in a number of abstract precepts which, as such, have been accepted by civilised men all over the world. These precepts, to be useful, require careful reformulation and appropriate systematisation. It appears that none of them is applicable without qualifications whose only common denominator is the concept of reason. This relegation raises a further set of problems arising from the indeterminacy of the idea of reason. Here, too, some common grounds can be found but at the same time there exists a wide penumbra of uncertainty and doubt. It is therefore necessary to identify what in our civilisation reason has come to mean and to consider what it ought to mean in the contemporary state of human affairs.

The recourse to the concept of justice in international relations raises special problems as to applicable criteria of justice and reason in this area. The present article formulates some principles on which this application must depend. The author believes that the word "justice" is neither meaningless nor redundant in international legal contexts, though it is arguable as to what its precise meaning is. To seek and secure insightful assent to matters relevant to international justice, it is of primary importance to establish proper contacts between minds solicitous for a workable and worthwhile world order.

* M.A., 1951, University of Melbourne; LL.M., 1964, University of Sydney; Mag. Iur., 1943, University of Tartu; Dr. Iur., 1944, University of Marburg; Dr. habil., 1947, University of Heidelberg. Reader in International Law and Jurisprudence, and Acting Director of The Institute for Advanced Studies in Jurisprudence, University of Sydney; Founding President and Incumbent Councillor, Australian Society of Legal Philosophy.

I. INTRODUCTION

The threat of nuclear holocaust, considered as a definite risk in any future war between major world powers, has ceased to make us panic. We have learnt to live with this risk, have become almost deadened to it, and today one may even feel it to be in poor taste to mention it. But the risk is still there. That no major world catastrophe has yet visited us appears to be a matter of good fortune rather than a result of man-made arrangements. There is no reason to be confident that the fortunate but fortuitous constellation of facts and factors which in recent years has given us time of grace to live in relative peace and security will continue indefinitely. On the contrary, it may be assumed that without resolute, conscious, and intelligent efforts to establish a workable and worthwhile world order in which a durable and tranquil peace could be assured as the offspring of justice, the world will remain in a state of unstable equilibrium on the verge of destruction.

Among the many matters to which we must attend if we wish to achieve such a world order, the legal organisation of the world is of eminent importance. This organisation has complexities of its own, and additional complexities resulting from its unseverable connection with extralegal facts and values. The establishment and operation of an adequate world legal order require, of course, legal knowledge and know-how which can be acquired only in legal practice through immediate contact with actual problems of law. But they also require theorising in which, precisely by disengaging our minds for a time from immediate efforts to solve the immediate problems confronting us, we can lay the foundations for their intelligent solutions by probing, sounding, scanning, and gleaning in the realm of abstractions.

The present article proposes to embark on such a detour of thought by undertaking an inquiry into the meaning of "justice," with a view to arriving at conclusions which would locate some common grounds on the basis of which problems of justice can intelligently and intelligibly be discussed. This, it is hoped, may make it possible to avoid *some* talk at cross purposes where "justice" is concerned, and may promote a meeting of the minds concerned with problems of justice, even if the protagonists continue to hold radically different views about justice.

One prod to this endeavour is the occurrence of the word "justice" in the Charter of the United Nations. We find it in the Preamble of the Charter, which expresses the determination of the signatory nations "to establish conditions under which ... justice can be maintained"; again in article 1, section 1, which proclaims that one purpose of the United Nations is "to bring about ... in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations

which might lead to breach of peace"; and again in article 2, section 3, which says that all members of the United Nations "shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." The occurrence of the word "justice" in the preamble of the Charter may be regarded (and possibly dismissed) as a merely ritualistic utterance characteristic of the preambles of constitutive legal instruments. But the occurrence of the same word in the operative provisions of the Charter requires us to seek an appropriate meaning for it, if for no other reason than because of respect for the canon of legal interpretation by which *ut res magis valeat quam pereat.*

An additional reason for the present endeavour is the gathering momentum of efforts "to establish international peace through the rule of law" and to assure "due process of law" in international relations. For the phrases "the rule of law" and "due process of law" have not meant, nor can they reasonably mean, mere legality or strict conformity to enacted law; they have imported, and ought to import, just law administered in a just manner. [1]

In legal as well as in extralegal contexts, justice has been a much-brandished and much-discussed idea. The continual frustrations of efforts to remove its indeterminacy and uncertainty, and the failure to reach any general agreement as to what the word ought reasonably to mean, have cast shadows on the whole rational endeavour about justice, and thrown it into the witches' cauldron of political passions along with ideas such as democracy, freedom, and human dignity. However, the abuse of the idea of justice by demagogues or politicians of various degrees of intellectual or moral integrity has not provided a sufficient reason to denounce its proper use. Thus it continues to be a respectable theme of scholarly thought the world over, and to play a role in fundamental juristic and jurisprudential thought. The mere fact that the word "justice" occurs in legal instruments and judicial decisions, including those in the field of international law, forbids a summary dismissal of the problem of justice by either academic or practising lawyers. And since "justice" is an idea regularly invoked when attempts are made to challenge or enhance the ethical value of law, it would also be wrong for moralists and law-reformers to dismiss it.

The vicissitudes of the use and abuse of the word "justice," the intractability of its precise meaning, and the difficulties in reducing this to a satisfactory definition, have produced the following regrettable attitudes to the quest for the idea of justice : [2] (1) the defeatist attitude — that all search for a meaning of "justice" should be abandoned because of the extreme

[1] See I. Tammelo, *The Rule of Law and the Rule of Reason in International Legal Relations,* 6 LOGIQUE ET ANALYSE 335, especially 350-53 (1963).

[2] For various approaches to the idea of justice see STONE, HUMAN LAW AND HUMAN JUSTICE 3-4 (1965); Blackshield, *Empiricist and Rationalist Theories of Justice,* 48 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE 25-93 (1962).

diversity of opinions as to what the word means and because of the strong challenges to which any current conception of justice can be exposed. (2) The procrastinator's attitude — that any attempt to seek for a definite meaning of "justice" should be adjourned *sine die,* to be carried out by unspecified intellects in an indefinite future time. (3) The dogmatist attitude — despite the extreme diversity of opinion as to what "justice" means or ought to mean, there is nevertheless a "true" meaning of "justice" which can be discovered and stated (*error multiplex veritas una*).

The defeatist attitude, finding expression in such sayings as "there is no justice" [3] or "to invoke justice is the same thing as banging on the table," [4] is sometimes derived from an intellectual indolence refusing to examine thoroughly all relevant aspects of the problem; sometimes from an over-attachment to some over-zealously advocated philosophical credo. The procrastinator's attitude is usually derived from an intellectual somnolence leading to the uttering of *"mañana"* whenever rewarding fruits for one's labours are not seen hanging about; it is an attitude sometimes springing from a false scholarly modesty or self-distrust masquerading as wisdom. The dogmatist attitude is often derived from a *sacrificio dell'intelletto* to a total ideology which claims "objective" validity for every credo of this ideology; sometimes the same attitude is assumed by scholars who have no definite ideological affiliations or commitments but who have a very strong sense of their own mission and a great zeal for pronouncing words supposed to carry weight for the present generation and for posterity.

As against these deplorable attitudes to the inquiry into the meaning of "justice," there is the attitude of the open-minded and scrupulous jurisprudent who endeavours to take due notice of the great and profound diversity of opinions about this meaning, and of all the difficulties which have emerged in the attempts to disclose it, but who still considers it possible to discover some significant unity in the plurality and disparity of the current ideas of justice and to express this unity in a disciplined and intelligible manner. This is the attitude we shall try to assume in the present inquiry.

In international legal discourse this open-minded attitude is doubly necessary. A reference to "justice" in a major international convention, whose parties do not form a "family" or a "community" of nations sharing the same habits of thought and expression, cannot be considered as one to which a definite meaning can be given by recourse to the "plain terms" rule of legal interpretation. The occurrence of the word in such instruments is an instance *par excellence* for exertion to the utmost of interpretative acumen and skill under the "rule of reason." Neither *l'esprit de géométrie* nor

[3] See Lundstedt, *Law and Justice,* in INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES 450 (Sayre ed. 1947).

[4] See ROSS, ON LAW AND JUSTICE 174 (1958).

l'esprit de finesse [5] alone will afford sufficient support to the interpreter here. What is required above all is a clear understanding of the problems involved when we seek a proper meaning of this word for general as well as for specific purposes such as the interpretation of the relevant provisions of the United Nations Charter.

In the following analysis of the problem we shall proceed from the generally accepted assumption that it is essential to distinguish two aspects of justice : its *formal aspect* and its *material aspect*. Consideration of the formal aspect of justice imports finding defensible defining characteristics (*propria*) of the notion of justice. This is a *relatively* propitious enterprise, because it involves only delimitation of conceptual boundaries of justice, and however these boundaries may be marked, this does not *per se* affect substantive moral or political issues. For if these boundaries prove to be too narrow for someone, what remains outside of them and is found to be important may be attended to under some other conceptual label. If these boundaries prove to be too wide for someone, the peripheral areas they may include can be separated from the "core" of justice by appropriate distinctions within the formal framework of the concept of justice. Nevertheless even the enterprise of dealing with the formal aspect of justice involves hazards, because the word and the notion "justice" have acquired emotive overtones which interfere with the intellectual manipulation of justice and adversely influence our reasoning even about this formal aspect, introducing substantial issues even here.

Consideration of the material aspect of justice imports finding of the criteria by recourse to which certain conduct can be justified as "just." The enterprise of establishing criteria which would be adequate for employing "justice" as a legally or morally operative word and concept seems to be ill-omened in view of the undecided and undecidable raging battle of opposing moral, political, and religious ideas which are pertinent here. All that one can reasonably expect to achieve in this problem area is to find some relatively stable grounds accepted by men capable of reasoned argument or acceptable to them when the conditions in which the argument takes place are likely to assure an insightful assent to the criteria of justness at issue. These common grounds may be called, to employ a metaphor of Julius Stone, the "enclaves of justice." [6]

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[5] *Cf.* DE VISSCHER, PROBLÈMES D'INTERPRÉTATION JUDICIAIRES EN DROIT INTERNATIONAL PUBLIC 13 (1963).

[6] See STONE, *op. cit. supra* note 2, at 345. It is not quite clear whether this metaphor is limited, in Stone's use of it, to the relativist significance of men's common agreement on an ideal of justice, or whether he would regard such agreement as importing some absolute significance. See *Id.* at 318-20, 324-25, 339-40. For the present purpose — which is simply to open up a way for communication about "justice" in the international arena — the more modest alternative of shared agreement will in fact suffice, so that we need not attempt to resolve the above ambiguity one way or the other. In another respect, however, the present use of the "enclaves" metaphor does depart from Stone's intentions. My colleague A. R. Blackshield, in an unpublished manuscript on "The Nature and Functions of General Principles in a Legal Order," has distinguished three possible meanings in

The critical task of the present essay is to identify some "enclaves of justice" and to establish their status as "places of argument" (*tópoi*) [7] for problems emerging in the context of efforts to assure peace, security, and reasonable living conditions to present and future generations of the world. However, to discuss "enclaves of justice" without a preceding attempt to establish a framework within which this discussion could take place would foredoom our enterprise to become an exercise in mere rhetoric. We must therefore first deal with problems connected with the formal aspect of justice and then proceed from the conclusions at which we shall arrive to the consideration of its material aspect. In the discussion of both problem areas, the notion of reason will emerge as one of cardinal importance. Before we can, finally, offer some reflections on the actual and potential role of the idea of justice in the aspirations to establish a worthwhile and workable world order (and, first of all, to secure time of grace within which proper work to this end can be done), we must address ourselves to the problem of the meaning of the word "reason."

In the present essay we can hope to provide only a survey of the problems involved and to state, in as brief and straightforward a manner as feasible, our views as to the search for their solutions. The enormity and complexity of the problems and the multiplicity of their solutions, actually offered or conceivable, forbid us to become entangled in the wealth of relevant learning accumulated over millennia. Therefore we shall not enter into scholarly or other disputes but shall state positions about the topic of justice, insofar as they appear to be essential for our line of argument, in a typified manner abstracting from their historical, ideological, or doctrinal background.

II. The Formal Aspect of Justice

In order to establish a conceptual framework within which it would at least be possible to make it intelligible what one has in mind when one employs the word and notion "justice," it is above all necessary to find a reasonably firm ground on which to erect this framework and the material

Stone's use of the "enclave" notion. He calls these (1) an "ideal" enclave, *i.e.* the circumstance that most men in a given community share, as part of that community's "popular" or "positive" morality, a belief in a certain intellectual ideal relating to justice; (2) a "de facto" enclave, *i.e.* the circumstance that social arrangements in a given community are generally such as to assure the realisation of such an ideal in actual social life (whether or not the ideal thus realised is articulately held by the members of that community); and (3) a "living" enclave, constituted by the conjunction of an "ideal" enclave with its corresponding "de facto" enclave. He suggests that in these terms Stone is concerned with "living" enclaves, and not with "ideal" enclaves *simpliciter*. An attempt to identify "de facto" enclaves for the international community would, however, be an ambitious task beyond the scope of this essay. Accordingly, reference to "enclaves" here should be taken at most to import "ideal" enclaves in the above sense. Indeed, if we may extend the analysis, the speculative *theories* of justice (whose relations with "living" enclaves of justice Stone is much concerned to trace) may here be dubbed "speculative" enclaves; and the present inquiry is in part concerned to reach beyond "ideal" enclaves (in the above sense) into these.

[7] For this concept and relevant literature, see I. Tammelo, *The Law of Nations and the Rhetorical Tradition of Legal Reasoning*, Indian Yb. Int'l Affairs 227, at 233-46 (1964).

for building it. Whatever "justice" may mean, it is certain that it does not refer to an entity pre-established or pre-formed by physical nature as, say, iron, rocks, plants, animals are, whose chemical, geological, biological, physiological and other properties have to be discovered and can then be captured in appropriate formulations. The ground and material for our present enterprise is to be sought in the history of ideas and in some of the current ideas in which the notion of justice has appeared.

In the requisite survey we ascertain that there is not a uniform "justice-field" corresponding to the "law-field" which is fairly well delimited so that standard examples of the use of the word "law" are readily available. [8] The "justice-field" is rather indefinite and diffuse, so that all we can say is that there are certain principal areas in which the word and notion "justice" has a place : common language, mythology, religion, philosophy, and law. A canvassing of these fields reveals that "justice" is an extremely ambiguous word and that its ambiguities arise not only from the specific features of each "justice-field" but also from specific purposes for which the notion of justice is employed in each field. These ambiguities are an obstacle, but not a major hurdle, when the delimitation of the meaning of justice is sought for given purposes : in the present essay, for the purposes of legal thought. Bearing the purpose of its use in mind, certain alternative meanings of the word can be staked off for our preliminary considerations; others can be rejected altogether or employed only to cast some sidelights on the meaning of the word "justice."

In trying to avail ourselves of the information which common language may give about the meaning of the word "justice," we have to pay attention not only to the noun "justice" but also to its corresponding adjective, adverb, and verb : "just," "justly," and to "justify." As regards the etymology of "justice," we find this word to be an abstract noun originating from Latin *"iustitia,"* which in its turn is a derivation from *"ius"* meaning "law" or "right." *"Ius"* can etymologically be traced back to the Sanskrit *"yu,"* meaning "to join" or "to bind," or alternatively to the Sanskrit *"vós"* or *"yós,"* which is an old sacral word for "weal." [9] In current usage, the word "justice" and its corresponding adjective, adverb, and verb have acquired certain meanings which are scarcely indispensable for or even relevant to legal thought, for example, occurring in locutions such as "the Chief Justice" (which can, though not idiomatically, be replaced with "the Chief Judge"), "just here" (which can be replaced with "precisely here") and "just observation" (which can be replaced with "apt observation"). In the same usage, the words in question also occur in locutions which have a legal significance and play

[8] *Cf.* Stone & Tarello, *Justice, Language and Communication*, 14 VAND. L. REV. 331, at 378 (1960).

[9] See I. Tammelo, *Justice and Doubt*, 9 ÖSTERREICHISCHE ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT 308, at 324 n.33, 325 n.36 (1959). See also DEL VECCHIO, JUSTICE 5 (Campbell ed. 1952).

a legally relevant role, for example, "to do justice," "a just conduct," "a just price," "a just man," "a just reward," and "a decision made justly." As to the verb "to justify," in some contexts it can conveniently be replaced with locutions such as "to substantiate" or "to offer good reasons," which have no specifically legal import; in other contexts it may have such an import, for example, in the locution "to justify a decision of a court."

Some information about the meaning of the word "justice" can be obtained from comparative philology. In Indo-European languages which employ words for "justice" not derived from Latin *"iustitia,"* we find that the corresponding words are associated with the notion of "right" in its adjectival sense (related to "straight," "correct," and "accurate"). For example, in German *"Gerechtigkeit"* is associated with the adjectives *"recht"* and *"richtig"* and in Russian *"spravedlinost"* is associated with the adjective *"pravilnoi."* We find the same occurring in Western languages of non-Indo-European origin; for example, in Estonian *"õiglus"* is related to *"õige."*

A wealth of information about the meaning of the word "justice" can be obtained from Greek mythology, in which the deity of justice, Dike, had certain attributes most significant for the notion of justice. Significant for the present purposes are also various family relations which Dike had to other Greek deities, her relations to her helpers and adversaries, and the functions which were peculiar to her. The allegorical ideas about Dike must have influenced Greek philosophical thought about justice, and thus indirectly Western ethical thought, including legal thought. We can only summarise here what can be gathered from Greek mythology about justice as follows :

> Justice means lawfulness under right or reasonable precepts, which are, however, not indisputable and inviolable. It imports a dynamic principle of social balance to be achieved through proper reward at some unspecified time, through struggle against what is false, deceitful, or misleading, through circumspect solicitude and concern, through reasonable reliance on the existing order, and through preservation of a reasonably continuous development of this order. [10]

Although in religious contexts "justice" and its corresponding parts of speech are important words, religious ideas of justice bring a certain embarrassment when we address ourselves to the meaning of *human* justice. This is largely due to "other-wordly" aspects of religions. For example, "justice" as an attribute of God in Christian religion sometimes looks like injustice by human standards and "justification" in the theological phrase "justification through faith" does not mean what men in their mundane relations mean by "justification." The factors of the unknown and unknowable in the area of religion, and the idea of transcendence of God, as well as the conception of *Deus Absconditus,* lead us to a realm of speculation from which little enlightenment for the quest of justice in this world can be derived. It is

[10] For a somewhat different summary *cf.* Tammelo, *op. cit. supra* note 9, at 326.

therefore safer for our present purposes to leave religion as a specific "justice-field" aside.

In the early history of Western philosophic thought, justice appears as a cosmological balancing principle regulating the operations of the forces of nature on the elements of the world. [11] This conception, which appears in dicta of Anaximander and Parmenides, is of small bearing on ethical and legal thought, in contrast to the Pythagorean idea that justice means equality, which continues to play an important role in theories of justice. In the Platonic doctrine, justice is conceived as an *ethical* principle, a universal virtue regulative of the whole individual and social life. As such a principle, justice harmonises actions, assigning to each of them proper direction and proper functions. The essence of justice lies for Plato in one's doing one's appropriate tasks. In the Aristotelian doctrine, too, justice is conceived as a virtue, that is, as an ethical principle. In the general sense, justice means law-conformity; in the particular sense, justice means "right proportion," which is a mean between too little and too much. Aristotle distinguishes two kinds of particular justice : distributive and commutative (or synallagmatic). The former accords treatment to everyone according to one's deserts, the latter imports equality of what is given and what is received. [12] The Aristotelian conception of justice has remained influential up to our day. Later philosophic thought has brought mainly articulations and elaborations of this conception, adding new ideas mainly of controversial or peripheral import : for example, *"caritas sapientis"* by Leibniz, "the finding of happiness in a social order" by Hans Kelsen, [13] "parity" by Georgio Del Vecchio, [14] and "fairness" by John Rawls. [15]

In classical antiquity we find two notable statements about the meaning of the word "justice" coming from legal quarters : one by the Roman jurisconsult Ulpian saying that justice is "constant and perpetual will to accord everyone his *ius*" [16] and the other by the court orator Cicero saying that justice is "the mind's disposition according everyone his due." [17] The thoughts expressed in these sayings have been influential throughout Western legal civilisation, and it appears that lawyers as lawyers have made little contribution to further clarification of the meaning of "justice." [18] When

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[11] *Id.* at 327.

[12] *Id.* at 328.

[13] For Kelsen's conception of justice see his WHAT IS JUSTICE? 1-27 (1957) and GENERAL THEORY OF LAW AND STATE 3-14 (1946).

[14] For Del Vecchio's conception of justice see DEL VECCHIO, *op. cit. supra* note 9, at 77-90. For a discussion of it see Blackshield, *op. cit. supra* note 2, at 54-78.

[15] See Rawls, *Justice and Fairness*, in JUSTICE AND SOCIAL POLICY 80-107 (Olafson ed. 1961).

[16] DIGEST 1, 10 *pr.* : *"Iustitia est constans et perpetua voluntas ius suum cuique tribuendi."*

[17] CICERO, DE FINIBUS V, ¶ 23 : *"animo affectio suum cuique tribuens."*

[18] *Cf.* WOLF, RECHTSGEDANKE UND BIBLISCHE WEISUNG 12 (1948), observing that legal studies and actual experience gained in legal practice tend to create the impression of multiplicity, relativity and practical worthlessness of the idea of justice. Hence many lawyers are led to disregard the attainment of universally acceptable concepts and criteria of justice. They strive only for legally

the words "justice" and "just" occur in legal contexts, they seem to be equivalent to "law" and "legal" on frequent occasions. When they and their opposites are used by lawyers in a different sense (as, for example, in the phrases "natural justice," "unjust enrichment," and "unjust benefit") they are so employed without an adequate scrutiny of the meaning of the words "justice" and "just," but with a view only to their specific legal operation in a given legal context.

One important conclusion which can be drawn from certain uses of the words in question in legal contexts is that extralegal standards must be resorted to in order to put a proper legal construction on the locutions in which they appear. This seems to be the case with Lord Mansfield's saying that "the defendant . . . is obliged by the ties of natural justice . . . to refund the money" [19] and with the phrases "just compensation" in the Fifth Amendment of the United States Constitution and with the phrase "just terms" in the Constitution of the Commonwealth of Australia. As an attempt to define "justice" made by a distinguished contemporary lawyer, Lord Denning's extra-judicial statement that justice is "what right-minded members of the community — those who have the right spirit within them, believe to be fair" may be mentioned. There appears to be some wisdom in this saying, but it does not appear to be (neither does Lord Denning himself suppose it to be) a real contribution to conceptual delimitation of "justice." [20]

In the above survey we have tried to provide an empirical ground on which a conceptual framework of justice can be erected and to collect building materials for this framework. We shall now proceed to the construction envisaged. This we shall carry out step by step, in which each step integrates some of the material which we find usable into a statement about a *proprium* of our proposed concept of justice. [21] It is to be noted that each step involves a choice and thereby a definitional fiat. The definition of justice at which we thus arrive will hence be a stipulative definition. It would obviously be a hopeless enterprise to integrate all thoughts that have been expressed about justice — even in the above rather selective survey — into a definition of justice. What we shall try to avoid is a definition grossly at odds with what has been said about justice in the history of ideas and with what "justice" means in the current legal relevant usage of the word.

In the execution of the task we have undertaken to perform, we submit :

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correct decisions. The popular "definitions" of justice as well as the politicians' platitudes and high-sounding words about justice are despised by lawyers as incompatible with the moral integrity of the legal profession. On the English common lawyers' notions of justice see DOWRICK, JUSTICE ACCORDING TO THE ENGLISH COMMON LAWYERS *passim* (1961).

[19] See Moses v. Macferlan, 2 Burr. 1005, at 1012, 97 Eng. Rep. 676, at 681 (1760).

[20] See DENNING, THE ROAD TO JUSTICE at viii, 4-7 (1955).

[21] *Cf.* for a similar procedure in the clarification of the notion of law, STONE, LEGAL SYSTEM AND LAWYERS' REASONINGS 179-84 (1964); I. TAMMELO, UNTERSUCHUNGEN ZUM WESEN DER RECHTSNORM 69-74 (1947).

(1) *Justice is a value.*

The notion of value as a *proprium* of justice has its classical counterpart in the notion of virtue. It is in agreement with conceptions of justice advanced by distinguished contemporary writers. [22] Values can be conceived as "tertiary qualities," that is, qualities which in contradistinction to "primary qualities" (*e.g.* "extension" and "duration") and "secondary qualities" (*e.g.* "red," "cool," "soft") are not encountered in the entities of the real world but are *attributed* to them, *deemed* to belong to them, or *considered* as being attached to them. We may distinguish : (a) values in the subjective sense or *axiotic attributes,* for example, "beautiful," "just," "bad"; (b) values in the transsubjective sense or *axiotic characters,* for example, "beautifulness," "justness," "badness"; (c) values in the objective sense or *axiotic circumstances,* for example, "beauty," "justice," "evil." [23] Another distinction of values which is relevant to the present purposes is that into (a) *positive values,* for example, "just," "justness," "justice"; (b) *negative values,* for example, "unjust," "unjustness," "injustice"; (c) *neutral values,* for example, "neither-just-nor-unjust," "neither-justness-nor-unjustness," "neither-justice-nor-injustice." A value is positive if, generally, an approving attitude is assumed to it; a value is negative if, generally, a disapproving attitude is taken to it; a value is neutral if, generally, an indifferent attitude is taken to it. A further distinction here relevant is into (a) values specifically relating to conduct as it ought to be, or *ethical values;* and (b) values not specifically relating to conduct as it ought to be. The latter include values relating to intellectual or sensual enjoyment (æsthetic values), to consistency of thought (logical values), to disposition of commodities (economic values), to the supreme being (religious values), and so on. It may be mentioned that there are also values which are pertinent to any area of human concern. The principal of these is the value "good."

The above analysis of values can be utilised to arrive at the following statement about justice :

(2) *Justice is a positive ethical axiotic circumstance.*

To make a further step towards a definition of justice, we take into account the finding that "justice" has come to mean a value peculiar to interpersonal relations. This is to say that justice is a social value. Hence we propose to dismiss the views according to which there is also "intrapersonal" justice, for example, the conception according to which justice is also regulative of inner activities of a human being. We also propose to dismiss cosmological conceptions of justice, according to which justice is

[22] See for example, RADBRUCH, VORSCHULE DER RECHTSPHILOSOPHIE 23 (1947) and STONE, *op. cit. supra* note 2, at 31-74.

[23] It is scarcely necessary to say that convenient expressions in common language are not always available to render these distinctions.

a balancing principle of cosmic events. As a further *proprium* of justice we propose to include "normative bilaterality," that is, the notion that social relations for which justice is a regulative principle are not merely duty-relations or not merely right-relations, but right-duty relations, that is, relations in which to a duty of one person there corresponds a right of another person and vice-versa. [24] The results of these considerations lead to the following statement about justice :

(3) *Justice is a positive ethical normatively bilateral axiotic circumstance.*

This statement we take to represent the *genus proximum* for our definition of justice. As to the *differentia specifica,* it can be argued that it lies in the concept of equality. [25] Equality has been a notion intimately linked with the notion of justice since the dawn of our civilisation, and even distinguished contemporary thinkers treat equality as the "core" of justice. Nevertheless we do not follow this view here, though we concede that equality is an important *accidens* of justice. We take this stand because the denotation of "justice" appears only to intersect significantly with that of "equality." Equality fits well the notion of commutative justice, but only with strain the notion of distributive justice. Moreover, neither the idea of commutative justice nor the idea of distributive justice is applicable to justice in the area of crime and punishment today. [26] It would be rather out of place to speak of equality of crime and punishment in any proper sense. All we can say here is that a punishment ought to be adequate to the crime committed. It would be too artificial to assimilate the notion of adequacy to the notion of equality. [27]

The *proprium* of justice which would represent its *differentia specifica* we consider to reside in another idea both classical and current. This is that justice imports "according everyone what is one's due" (*"suum cuique tribuens"*). "One's due" is admittedly a vague notion; but so is "equality" in social context. By way of clarification, we can broadly indicate that "one's due" means that of which it can be said with good reasons that it ought to belong to someone. However, this leaves open what are the relevant reasons. The answer to this question can be found in criteria of justness which specify these reasons. Hence inclusion of the notion of "one's due" in a definition of justice makes the concept of justice an open-ended one, relegating the problem of justice to a further problem complex. This

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[24] See for example, DEL VECCHIO, *op. cit., supra* note 9, at 83.

[25] See RADBRUCH, *op. cit. supra* note 22, at 23 : *"Kern der Gerechtigkeit ist der Gedanke der Gleichheit* (The core of justice is the idea of equality)." See also for example, Perelman, *L'Idéal de Rationalité et la Règle de Justice,* 53 BULLETIN DE LA SOCIÉTÉ FRANÇAISE DE PHILOSOPHIE 1 (1961).

[26] See L. L. Tammelo, *Equality as the Core of Justice,* 52 ARCHIV FÜR RECHTS- UND SOZIAL-PHILOSOPHIE 135, especially 136, 141 (1966).

[27] For further recent reappraisals of the significance of the notion of equality for the concept of justice see for example, Bagolini, *Definitions of Law and Vistas of Justice,* 52 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE at § I (1966); Del Vecchio, *Eguallanza ed Ineguallanza di Fronte alla Giustizia,* 42 REVISTA INTERNAZIONALE DI FILOSOFIA DEL DIRITTO 630 (1965).

circumstance is not an objection to the definition of justice which we shall formulate, because at this stage we have undertaken to provide only a formal framework for discussion of problems of justice. Open-ended concepts are still legitimate in a certain phase of rational endeavour. Accordingly we propose to define justice stipulatively as follows:

(4) *Justice is a positive ethical social normatively bilateral axiotic circumstance in which a person is accorded his, her, or its due.*

It is to be noted that the persons to which their due is accorded in justice-relations need not be only individuals but may also be corporate entities such as states.

By the concept of justice which we have framed by the above definition, we have differentiated justice from charity and from love for one's fellow men. For in conduct actuated by these, a person may be given more than what counts as his due. Charity and love for one's fellow men prompt assistance also to those who have not deserved or are not really entitled to claim our help; we act simply out of the bounty of our soul, or through parental, filial, or fraternal affection, or moved by religious sentiments. The above framed concept of justice also differentiates justice from what is ultimately good or right morally or politically. The allegorical image of Dike depicted as being blindfolded applies to this point. There is a certain severity or aloofness about justice. It does not intend to "see" *all* the facts and factors relevant to moral or political appraisal of a social situation but only a part of them. Even though *blindfolded* for the purposes of weighing the value of commodities or persons, Dike is not depicted as being *blind*. On the contrary, in her constant struggle against Lethe (the deity of falseness and forgetfulness) and other chthonic deities, she must "see" what is relevant to truth, awareness, and decency. This suggests that justice does serve for establishment of social balance and good order, but it alone is insufficient as a regulative principle of what is morally or politically required. Thus considerations of justice can enter into conflict with considerations of *æquitas* which purport to take into account all relevant circumstances of an individual case. Justice, importing generality, may hence only approximate to *æquitas* but may not reach it. Considerations of justice can also enter into conflict with considerations of legality and security, because on some occasions neither of these can be satisfied by according certain persons their due (*summum ius summa iniuria; fiat iustitia pereat mundus*).

In all the conflict-situations inviting application of the various other values thus set aside from justice, considerations of justice are still also important. No stable social order can be built on charity or love for one's fellow men alone, nor on untempered rules of law or the dictates of

expediency or security alone. Hence justice is not an "absolute" value but an important social value of high axiotic rank side by side with other social values, all subordinated to the "rule of reason." The recognition of this state of affairs appears to be why in the Charter of the United Nations "justice" is mentioned side by side with "peace," "security," and "international law."

III. The Material Aspects of Justice

The material aspect of justice consists of the criteria by recourse to which what is a person's due in justice-relations is decided. We propose to call them "criteria of justness." The precepts of natural law found in various iusnaturalist doctrines represent one kind of attempt to specify criteria of justness, but such criteria can be found also in the ethical doctrines advanced, for example, by utilitarians or by pragmatists. The various kinds of doctrines propounding criteria of justness have been in a continuous state of controversy *inter se* and *intra se,* in the course of which their weaknesses and vulnerability have been exposed at many points. But the stress of controversy has also shown the continuing vitality of certain tenets, has led to enhancement of clarity of the principles at issue, and has revealed that there are certain common grounds relating to the material aspect of justice, certain "enclaves of justice" which civilised men have come tenaciously to hold and continue to hold against attacks coming from the hostile or untoward environment formed by opportunism, fanaticism, indifference, cynicism, or obtuseness, and by excessive emphasis on considerations of expediency, legality, or peace and security.

As there has never been a successful attempt to provide a system of ethical principles *more geometrico,* there has never been offered a system of criteria of justness even approximating the rigour of systems of logic. Most criteria of justness, if not all of them, have been found to be "defeasible," to have a "contextual application," to be uncertain in their meaning, or to have antinomic relations (patent or latent) to others advanced in the same system of thought. This circumstance does not decisively detract from their potential value, but it qualifies them as not being premises from which acceptable ethical conclusions can be drawn by mere logical operations. It determines their status as guidelines of legal and jurisprudential thinking, as "places" (or *tópoi*) for reasoning about issues of justice, or, in Stone's metaphor, as mere "enclaves" which are themselves in perpetual need of consolidation by rearrangement, readjustment, and reorganisation.

Among the principles relevant to deciding what is a person's due in justice-relations there are those which are specific to justice-judgments and those which are not specific to these but which are generally important for making ethical decisions. The latter include the principle of universalisability

(the "Categorial Imperative") and the principle of reversibility (the "Golden Rule"). Another important division of the principles in question is into principles specifying what is a person's due in a justice-situation (principles which may be called "substantive criteria of justness"), and principles specifying what a decision-maker ought to do in order to be able to handle issues of justice acceptably (principles which may be called "procedural criteria of justness").

What count as criteria of justness have emerged from philosophic, political, or religious doctrines, and cannot be fully understood without reference to their origins. Nevertheless, in the present attempt to catalogue some generally accepted criteria ("enclaves of justice"), we shall abstract from their doctrinal background in order to divest them from, or at any rate to reduce, the contamination which their historical associations and vicissitudes have created for all of us to some degree, and to an alarming degree for those strongly averse (for their own doctrinal reasons) to certain persons or streams of thought with which the ideas to be examined have happened to be affiliated. We regard these affiliations as incidental in the history of ideas. What matters for the purposes of the present inquiry is not what harm, mischief, or evil has been done in the name of material principles of justice but rather their potential function and potential limitations in the task of determining what is the due to be accorded to a person.

The principle of reversibility can be expressed by the following imperative: "Behave in regard to others as you would have them behave in regard to you" (or, splitting this formula into a positive and a negative one: "Do unto others as you would have them do unto you" and "Do not do unto others as you would not have them do unto you"). It is obvious that this imperative does not stipulate what is one's due in a justice-situation. Its role is a preliminary or propaedeutic one. First, it assumes (as we have here stipulated) that a justice-situation is a bilateral one, in which at least two persons are involved: the decision-maker and another — *ego* and *alter* they have been called. Second, it imports a call for self-transcendence (or *ego*-transcendence) in ethical decisions — a call for deliberation combined with an effort on the part of *ego* to see the situation from *alter*'s point of view, or to place himself imaginatively and empathically into *alter*'s place or position and to figure out what *ego* would do in *alter*'s situation. This means that the principle of reversibility counts not as a substantive but as a procedural criterion of justness. As such it has undeniable value, but also certain limitations which must not be overlooked. If the decision-maker happens to be a person of perverse frame of mind (for example, a masochist), he might wish that another person would do some harm to his body or mind and, in applying the "Golden Rule," he will conclude that he is morally entitled to do some harm to another (for example, to commit a sadistic act). Therefore it is important in formulating

the principle of reversibility to include a qualification and to state it, perhaps, as follows: "Behave in regard to others as you *reasonably* would have them behave in regard to you." But though this may be a satisfactory abstract formulation, it will still raise considerable difficulties in its concretisation; for the inserted word "reasonably" leaves unspecified *what is* reasonable behaviour, and relegates the decision-maker to principles of reason which cannot simply be taken as available or as granted.

The principle of universalisability can be expressed by the following imperative: "Behave so that you would have the norm governing your behaviour to be a norm applicable to everyone in the same situation." It is obvious that this imperative, too, does not stipulate what is one's due in a justice-situation. What it imports is again a call for self-transcendence and deliberation. It also imports a call for making an effort to see the situation from the viewpoint of a "detached spectator," namely a "legislator" issuing general norms. This means that the principle of universalisability, like that of reversibility, can count not as a substantive but as a procedural criterion of justness. There are a number of criticisms which can be advanced against this principle, [28] but the assertion that it is completely vacuous is not tenable. As a procedural principle it does say something, and even something most important. However, it must be admitted that it does not have an absolutely general application, for there are situations which are unique and as such cannot be universalised without any qualification — for example, the agonising decision to be made by a great artist to risk his life in order to save from a burning house either a great poet who has stolen the Mona Lisa, or this great work of art itself. Moreover, it seems that certain exceptions must be made in the application of the principle in question, namely, when there are conflicting duties involved, for example, the duty to keep one's solemn promises and the duty to preserve another person's life, if the latter is feasible only by breaking such solemn promises. Since the conceivable exceptions to the principle of universalisability are numerous and various, it is feasible to capture them only in a very general formula, perhaps in the following: "Behave so that you would have the norm governing your behaviour to be a norm applicable *within reason* to everyone in the same situation." This formulation, again, will raise considerable difficulties in its concretisation, since here too the inserted words "within reason" leave unspecified what is reasonable behaviour, and relegate the decision-maker to principles of reason.

Among the procedural criteria which are specific to justice-judgments, the principles of fairness relating particularly to judicial procedure are to be mentioned. They are (1) the principle of decisional impartiality: *"Nemo iudex in causa sua"* and *"Audiatur et altera pars,"* (2) the principle of deci-

[28] See for example, HOSPERS, HUMAN CONDUCT 276-92 (1963).

sional independence: "Provide such conditions that the decision-maker has full freedom of judgment," (3) the principle of decisional respectability: "Decisions ought not only be right but ought also to appear as right." These principles, too, are "defeasible," for there are occasions when we may want to say that a party to a dispute is the best qualified person to understand and appreciate the facts and factors of the case; or that giving an adequate hearing to all the parties to a dispute will only confuse the issues and hamper the decision-making; or that it is practically impossible to provide conditions under which the decision-maker has full freedom of judgment; or that it is often impracticable to make a decision which is not only right but also appears to be right. It therefore seems to be unavoidable to read into all principles of procedural fairness the qualification of reasonableness. Hence here, too, we are relegated to the principles of reason.

The common feature of all procedural criteria of justness is that they do not purport to determine what a person's due is, but to point out what it is requisite to do in order to reach this determination. Incidentally, however, these criteria may also operate as substantive criteria of justness. Thus it may be assumed that reasonable compliance by decision-makers with these principles is the due of the persons whom their decisions will affect. Accordingly, it may be said that it is doing justice to a person if in appropriate situations, for example, the imperatives of the principle of reversibility or the principle of universalisability are complied with by the addressees of these imperatives. And it is doing justice to a decision-maker to enable him to have the benefits which flow from the compliance with the directive of the principle of decisional independence.

There are several abstract substantive criteria of justness generally regarded as being important for determining what is ethically right. One of them is the eucratic imperative : "Behave so that good will be done and evil will be avoided." The indeterminacy of what is enjoined by this imperative, or by its alternative formulations, is obvious. But the objection that it is wholly vacuous can be averted by pointing out that it does have a relegative content, consisting in the relegation to criteria of goodness and wickedness, whatever these may be. The challenge in the form of "Satan's Paradox" — "Evil is my good" — can also be averted, by pointing out that the "good" to which the imperative in question refers is not what someone may consider *his* good, but the good determined by certain standards by which evil is excluded as a possible kind of good. Here again the formulation of the principle in question can be improved by inserting the notion of reason into it. The reformulation might run like this : "Behave so that what it is *reasonable* to regard as good will be done and what it is *reasonable* to regard as evil will be avoided," or perhaps simply like this : "Behave according to reason." The latter formulation, representing what may be called the *"rule of reason,"* suggests that what we regard as substantive

criteria of justness have ultimately a procedural aspect, because the range of the meaning of the word "reason" includes not only what is a right thing to do but also a right way of doing it.

Another substantive criterion of justness lying on a high level of abstraction can be formulated by the eudaimonistic imperative: "Behave so as to achieve the greatest happiness of the greatest number of people." In contrast to different ethical principles which are liable to challenge on the ground of vacuity, this one seems to refer to something which has an identifiable content, namely happiness. Happiness is an experience shared by virtually every man, if not always as a constant or recurrent state of mind then at least as a rare feeling sometimes emerging from a prevailing mood of misery, despondence, or indifference. Among a number of grounds on which this principle can be challenged, we shall consider the following two: Happiness-simply, happiness-as-such is not necessarily a positive ethical value. For some people experiences of happiness of great intensity may be achieved as a consequence of having inflicted pain on another, or of having been subjected to such an act; there is also happiness derived from gluttony, lazing, self-indulgence, and the like. It may also be said that "the greatest happiness of the greatest number," even when it is not inherently tainted ethically, lacks ethical worth if it can be achieved only by inflicting great misery on a small number of people, perhaps even on a single human being. The eudaimonistic imperative must therefore be somehow amended, perhaps as follows: "Behave so as to achieve *without unreasonable means* the greatest happiness of the greatest number of people." We may achieve a still more satisfactory formulation of a substantive criterion of justness proceeding from the idea of the eudaimonistic imperative if we stipulate: "Behave so that you could *reasonably* consider the norm governing your behaviour to be conducive to the greatest avoidance of misery of the greatest number of people."

The substantive criteria of justness so far considered, being generally pertinent to all ethical endeavour, belong to the "constitution" of the order of justice, as parts of its foundation. As to the principles which have been specifically associated with justice-judgments, the following maxims may be mentioned as samples: [29] (1) "To everyone according to his deserts"; (2) "To everyone according to his contributions"; (3) "To everyone according to his worth"; (4) "To everyone according to his social role"; (5) "To everyone according to his needs"; (6) "To everyone according to the law of the land"; (7) "To everyone according to his fate." The maxims (6) and (7) can be dismissed in a summary manner. Maxim (6), importing the legalistic conception of justice, merges the notion of justice into that of conformity to positive law, and thus deprives it from its specific

[29] See Vlastos, *Justice and Equality*, in SOCIAL JUSTICE 35 (Brandt ed. 1962).

character as a norm transcending legal standards. Maxim (7), importing the fatalistic conception of justice, merges the notion of justice into that of conformity to or passive acceptance of what has happened or what prevailing conditions will produce. This puts the maxim beyond the pale of ethics altogether.

The first five maxims are significant at least as being candidates for representing substantive criteria of justness. However, each of them is subject to challenge, above all on the grounds that their pivotal notions are indefinite in content and their mutual relations unsettled. Thus it can be argued that one's due is at least partially determined by one's deserts. But what are the criteria of this determination? It can also be argued that one's due is at least partially determined by one's needs. But surely "needs" in any popular sense cannot determine one's due, especially not what a person himself experiences as his needs. Moreover it is doubtful whether the maxim "To everyone according to his needs" is one relevant to justice-judgments; it appears to be pertinent to judgments relating to love for one's fellow men. At any rate, in civilised communities it may be accepted as a common ground that the minimum social and economic conditions of a person's existence, irrespective of his deserts, contributions, worth, and social role, constitute an ethical value. For our humanitarian feelings make us inclined to admit that the need of invalids, lunatics, even dangerous criminals for proper shelter, food, and clothing is their legitimate claim. In our civilisation there seems also to be a general agreement that something more than this catering for the bare minimum of needs is due to every man; but it is open to argument what this something more precisely is. It is also admissible as a common ground that one's due is determined by one's worth as distinguished from one's deserts, because the worth of a person imports his "promise," his *potential* contribution to the attainment of what is regarded as common good. However, to what extent and in what way a person's worth determines his due is uncertain. Finally, it is generally admitted that one's social role determines one's due; generally there is little doubt that the more important this role is the more a person deserves of the available assets. But how much more is disputable. These considerations make it requisite that into each of the five maxims the notion of reason must be inserted delimiting their operation either in isolation or in relation to each other or to further "enclaves" of justice. Thus we may postulate, for example, "To everyone according to his *reasonable* needs" and "To everyone *reasonably* according to his worth."

To conclude the present partial inventory of the criteria of justness, we shall mention four further maxims which, if opportunities for proper argumentation are available, can count on general consensus among civilised men today, provided that the notions which they contain can be precisified in a satisfactory manner: (1) "Human dignity ought to be respected under

all circumstances," (2) "Punishment ought not to be for revenge but for correction of the offender and for protection of the society," (3) "Any legally relevant decision ought to be based on adequate ascertainment and appraisal of relevant facts," (4) "Any act ought to be not only for the benefit of the members of the present generation but also such that the members of future generations will not be deprived of essential conditions of their life." These maxims too, are governed by the notion of reason. Thus "human dignity" would be a sentimental and even an abject notion if it is invoked in oblivion of the undeniable fact of human indignity, manifest in man's proneness to cruelty, to recklessness, and to licence.

In examining the material aspect of justice we have attempted to formulate a number of criteria which can be upheld as common grounds irrespective of what ideological predilections or commitments we have. As grounds of argument, they are all defeasible in the sense that they require further specification and precisification. The insertion of the notion of reason which each of these formulations requires is to be regarded only as a call for further thought; this simple step cannot itself convert our defeasible criteria into premises from which satisfactory conclusions can be drawn as to what is a person's due. The invocation of the notion of reason in the present context thus means a relegation. We have therefore to address ourselves to the problem of reason.

IV. Justice and Reason

What is called "reason" affects the material aspect of justice in two principal ways : it enters into formulations of the criteria of justness as a factor qualifying their operation in relation to each other and it balances the considerations of justice against other ethical considerations, for example, against those of expediency and security.

In popular as well as in learned conceptions, reason is usually regarded as a "faculty" peculiar to man, an asset of the mind enabling us to find proper solutions for our problems, pass proper judgments, and properly direct our actions. Reason as a specific faculty of the mind is essential for men to choose right means to the ends they wish to achieve [30] but also to choose right ends to pursue. [31]

As an asset of the mind which enables man to exist and to lead a worthwhile life, reason can be viewed as a value. The meaning of the noun "reason" as well as that of the corresponding adjective "reasonable" have a strongly evaluative connotation as do the meanings of their opposites : "unreason" and "unreasonable." Reason as a "sovereign" value pertinent

[30] See Russell, Human Society in Ethics and Politics at vi (1954).

[31] See Hook, Book Review, N.Y. Times, Jan. 30, 1955, p. 3 (reviewing Russell, *op. cit. supra* note 30).

to the appraisal of both means and ends in human affairs has a range of application which is as wide as the range of men's concerns. Thus it appears that the criteria by recourse to which we seek to establish the validity of judgments about reasonableness of our means and ends are diverse and depend on the context of the application of these judgments, The totality of the situations in which the value "reason" is applicable is unsurveyable and so are the specific criteria applicable to the indefinite number and variety of unforeseeable situations. From this it follows that a complete list of the criteria in question cannot be provided because of the nature and estate of man as a finite being. Moreover, it is a common experience that the criteria by reference to which social states of affairs are judged as reasonable vary in space and in time. The laws governing this variation cannot be taken as being sufficiently known. Finally, the criteria of reasonableness are themselves matters of human concern and as such subject to valuation as reasonable. The unfeasibility of laying down a complete set of the criteria of reasonableness implies only the openness of the universe of discourse of reason. It does not imply that nothing definite whatever can be said about the meaning of "reason." There appears to be a core meaning of "reason," and this can be located and its constituent parts identified.

The etymological origin of the word "reason" is the Latin noun *"ratio,"* which in turn is associated with the Latin verb *"reri,"* whose primary meaning is "to hold something to be something" and whose secondary meanings are "to think" and "to calculate." A noun associated with the latter is *"calculus,"* which means a counter used for computing or for playing the game of draughts. The idea of computing alludes to a set of elements for finding something which is not obvious nor directly given but which can be found by means of computation. The idea of a game associated with the meaning of *"reri"* alludes to freedom and yet restraint, that is, to a limited, regulated freedom : freedom operating within bounds established by efforts of the intellect. With computing as well as with playing draughts there is associated the idea of deliberation.

In view of the analogy between the rules of games and the rules of computing on the one hand, and law on the other, it is understandable that the word "reason" has a wide application in the language of the lawyer. *"Ratio"* was used by the Romans to translate the Greek word *"logos"* into Latin. Apart from "reason," *"logos"* also means "word" and "mathematical relation between magnitudes." The original meaning of *"logos"* is "collecting," "uniting," or "assembling." [32] Through the translation of this word into Latin, and into English either directly or indirectly (through *"ratio"*), its principal and collateral or associated meanings were brought to bear on the meaning of the word "reason."

[32] See GRANGER, LA RAISON 9 (1955).

The above outline of the etymology of the word "reason" provides a foothold in the search for its core-meaning, from which we may venture to make some steps towards ascertainment of what in the tradition of philosophic thought has represented reason *par excellence.* A survey of this tradition suggests that the central meaning of "reason" lies in the following areas :

I. Accepted principles of deductive inference.
II. Accepted principles of inductive inference.
III. Accepted principles of conceptual analysis.
IV. Accepted principles of prudential reasoning. [33]
V. Accepted principles of rhetorical reasoning. [34]

As to IV and V, it may be remarked that the principles of prudential reasoning are directed to the attainment of composed and informed judgments, whereas the principles of rhetorical reasoning are directed to the attainment of insightful assent.

Reason operates in two main fields of human pursuits : theoretical and practical. Accordingly, there is theoretical reason and practical reason. Practical reason relates to man as a doer, namely what he ought to do, in order to be successful in achieving his chosen ends. Hence practical reason is regulative of conditions conducive to the evaluation and performance of acts which man proposes to perform. Theoretical reason relates to man as a knower; hence it is regulative of procedures which lead to the securing of reliable knowledge. Since the latter is also indispensable for man as a doer, practical reason is supported by theoretical reason, but it does not wholly depend on it. Man frequently acts successfully and virtuously when guided only by vague notions of facts relevant to his actions, relying mainly on experience and skills acquired in his previous doing of similar actions, in his "communion with things." What is here in operation is a "know-how" rather than knowledge. This know-how can be governed, and to some extent communicated, by rules of art peculiar to various areas of human activity. These rules of art cannot be understood, still less applied, by anyone who does not already possess some mastery of the respective art. [35]

Practical reason governs man, the doer, in two directions : in the direction of the acts he must perform to affect the world confronting him and in the direction of himself as the agent confronted with the task of performing those acts. In the first direction, practical reason guides man in his deciding what to do about problems facing him. In the second direction, it guides man in his deciding how to make himself fit for the activity of solving his

[33] For the above four principles *cf.* Nielsen, *"Appealing to Reason,"* 1 INQUIRY 65, at 68-69 (1962). See GRANGER, *op. cit. supra* note 32 for relevant literature.

[34] On these principles see VIEHWEG, TOPIK UND JURISPRUDENZ *passim* (1953); PERELMAN & OLBRECHTS-TYTECA, TRAITÉ DE L'ARGUMENTATION *passim* (1958).

[35] See POLANY, PERSONAL KNOWLEDGE 31, 49-50, 307 (1958); WHITEHEAD, ESSAYS IN SCIENCE AND PHILOSOPHY 73 (1948).

problems. The dictates of reason belonging to the latter area may relate to the formation of man's mind generally, to the creation of an appropriate frame of mind in a particular situation or to the establishment of conditions which would permit him to act with insight, foresight, and circumspection.

What has been said above concerning the meaning of the word "reason" has an objectivised foundation in its actual usage and in the history of ideas in which this word has been reputably employed. In a further effort to capture the meaning of the word, this foundation is lost. There seem to be no ways of drawing conceptual lines which would circumscribe with exactitude the residual area of the notion of reason. To deal with this still relevant area of uncertainty and doubt, all we can do is to express certain thoughts which, like sidelights or like lights of different colours, may make "visible" and bring to awareness what may have been implicitly apprehended about reason all along, or what may come to be recognised as reason in a broader or looser sense. A reasonable way of speaking of "reason" in this sense is by "dropping some hints" about its meaning, by intimating or adumbrating what belongs to its penumbral area, and by making some broad statements about the actual or contemplated role of reason.

With this in view we can say that reason is an eminently human value, not because man may be deemed (as is frequently insisted) a reasonable being but because, generally, man is a reason-*able* being, that is, a creature having the *ability* to behave in accordance with precepts whose observance promotes his individual and social life. As a reason-*able* being, he is capable of becoming a "detached spectator" : he can view, as it were, from outside those situations in which he is most intimately involved. In thus transcending his situations, man also possesses an ability to find his way out of them in the contingencies of the world. Reason can hence be intimated to be a value guiding man as a "non-established" and "world-open" being who must move on a ground which is at places unsteady, not mapped out, trackless, or treacherous. It can also be hinted at as a value which guides man in his moving towards ends lying outside his proper field of vision and which cannot be taken for granted. In contrast to the mystical, reason does not import consummation but only being on the way. To be on the way, *homo viator* must be also *homo faber* because he must often build roads into wilderness, establish bridgeheads into the unknown, and construct appropriate vehicles. In this activity, reason guides man so that he has the best chance to avoid unanticipated perils and to realise unforeseen promises.

Since man is a being exposed not only to dangers of the world surrounding him but also to dangers in himself, men are singly reliant on other men — not only in order to be stronger in facing common environmental dangers but also in order to deal with the menaces which each individual constitutes for himself. Thus a function of reason is to bind men with each

other for common efforts in order to achieve objectives which they are incapable of achieving in isolation, including the objective of clarification of the objectives to be achieved. Thus reason solicits men to be their brothers' keepers.

Since, in contrast to animals, man is a non-established being, reason calls him to make constant efforts to settle himself in the contingent situations in which he becomes placed, and also to create conditions for himself in which he can survive, and not only survive, but also surpass himself. These efforts, to be successful, require at least the preserving of what he has already achieved, so as to have something to build on for further advance on his way. Reason commands man to act not only as a perceiving but also as a proceiving being, [36] a Promethean being who does not only live but must conduct his life according to his own designs. He must avail himself of the forces and resources of nature, but as a being abandoned to the destiny which is largely his own making he cannot afford to leave himself to their care.

Reason involves man's awareness and recognition of his limitations but also of his potentialities. It requires that man be mindful of his mortality, and hence not only of the need to plan his life, but of the temporality of his undertakings, [37] the impermanence of all things, the time-boundness of his achievements, and the likelihood of non-achievement of anything having "absolute" value, including the certainty that he will not fulfil his projected plans. The limitations which exist for man as a mortal being impose on him the necessity constantly to dispose of, to select, and restrict the objects of his concern. To be reasonable, he has to dispose of what he has acquired but no longer needs, to select out of his available resources what is appropriate to the achievement of his particular ends, and to keep his physical and mental ambitions within the limits of his disposable assets. Hence reason requires not only doing but also undoing, not only construction but also destruction. It requires continual pondering on and reconstruction of what we are, what we can be and can do, what we need, and what we ought to do. It requires a constant effort to know what we possess and of what we are possessed, in what we excel and in what we are falling short.

As a positive value, reason keeps company with other positive values and is thus associated with justice, legality, peace, utility, stability, and progress — especially with prudence, temperance, moderation, wisdom, and courage. However, as an all-regulating balancing principle of conduct it can part company with any other human values, and does so when in valuational conflicts one of the conflicting values must be restricted in its scope or must

[36] See BUCHLER, NATURE AND JUDGMENT 114 (1955); ALLPORT, PATTERN AND GROWTH OF PERSONALITY 206, 265 (1961).

[37] *Cf.* Stone, *"Reason" and Time-Dimension of Knowledge*, 48 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE 95, 97 (1962).

be sacrificed to another. The role of reason as a moderator even for values of the highest axiotic rank is eminent in cases where justice is overzealously championed or in which legality is callously pursued. Reason must step in where wisdom drawing from mere past experience, and not from the perspectives which imagination opens up, becomes oppressive and stale.

The negative value corresponding to reason is unreason.[35] Broadly speaking, the following can be remarked about unreason. It operates when man's conduct falls so short of accepted standards of reasonableness that its consequences or likely consequences appear to be, or can be exposed as, repugnant. That is to say, unreason is something more than mere axiotic neutrality in matters to which reason is pertinent. Unreason is embodied also in the perversity of the desired ends, in thoughtless acceptance of what we want to have as right, and in poor choices among the means available for the attaining of chosen ends — choices which make this attainment unnecessarily arduous, tortuous, or hazardous. Unreason manifests itself, of course, in puerile susceptibility and youthful flamboyance but also, and more insiduously, in senile and pre-senile rigidity, shallowness, and dilatation, in entrenchment in time-honoured patterns of thought and action, and in spurious dignity based on unwarranted claims to be in possession of relevant experience and insights. Unreason, present both in the terrestrial crawl and in the celestial soar of thought, is exhibited conspicuously also in the field of law. It is traceable to a variety of factors such as brain-lesions, environmental circumstances unconducive to attaining good quality in mental efforts, and bad habits of thinking. Unreason rears its head in political utopias but also in refusal to view political situations in any other way but "realistically." Man behaves unreasonably if he forgets that many things which "balanced" thinkers have considered unfeasible have been done and have proved to be essential for human survival and progress.

What has been said above about reason and unreason, in plain words or in tropes, has a bearing on both the formal and material aspect of justice. Both are governed by reason as a "regulative idea," a balancing principle entering into and ruling over all ethical endeavour. Principles of reason represented by precepts of logic and of conceptual analysis are important for arriving at a satisfactory delimitation of the meaning of "justice." Apart from this, they are also important for feasible formulation of criteria of justness, for the determination of the relations between them, and for the argumentation in which they are employed in intellectual and moral integrity. Thus principles and methods of logic have an ethical import : the flouting of them or disregard for them is detrimental to the endeavour to give persons their due.

[35] What is here termed "unreason" is also called "antireason" sometimes. The latter term seems to be more appropriate for designating extreme forms of unreason.

In the effort to balance considerations of justice against considerations of, for example, expediency and legality, various specific "commands" of reason play a decisive role. Such specific commands are *principium reddendæ rationis* and *principium rationis sufficientis.* To understand their operation in justice-situations, it is to be pointed out that there is a presumption that considerations of justice ought to be followed but also presumptions according to which considerations of legality and of expediency ought to be followed. Which considerations ought to prevail or be suppressed in a given case must be argued out, and this argumentation ought to be carried out in intellectual detachment and integrity, which is a basic requirement of all ethical endeavour. Intellectual integrity requires that "grounds" be provided for one's contentions (*principium reddendæ rationis*) and that these grounds be "good" or "solid" grounds (*principium rationis sufficientis*).

Since problems of justice emerge in context of ethical quandaries under the rule of reason, the following overall challenge also confronts the efforts to accord everyone one's due : Why be reasonable ? This challenge need not come from cynics or merrymakers but also from persons of commendable intellectual curiosity. There is quite a simple answer to such a challenge : Certain formal and material principles of ethics and the endeavour to observe them must simply be accepted in the ethical universe of discourse as its foundations. Further, it can be argued that they are indispensable for assuring worthwhile and workable social orders, and ultimately for assuring a chance of man's survival. But the assumption here, that the existence of man and his well-ordered social life is a value, must itself be justified: and while attempts to justify it may be made, they can eventuate only in a universe of discourse transcending the ethical — for example, in cosmological or theological justifications. However, these are *not* procedures of ethical thinking. It may very well be that man is only an ephemeral phenomenon in cosmic or divine events, and as such without any ultimate worth; and that what is just or reasonable by ethical standards may be the utmost folly by cosmic or divine standards. But even the condemnation of man and his ethical preoccupations by allegedly higher standards would not affect ethical validity; just as the condemnation of law by standards of justice does not deprive it of legal validity.

What has been said above about reason suggests that there is no definitely established or consolidated order of reason, just as there is no definitely established or consolidated order of justice. The material aspect of reason is constituted by a number of relatively settled criteria of reasonableness, which like criteria of justness, are "enclaves." Hence there are "enclaves" of reason from which the defence and consolidation of "enclaves" of justice derives support.

V. JUSTICE AND WORLD ORDER

The inclusion of the word "justice" in the text of the United Nations Charter and of other instruments whose aim has been to establish a worthwhile and workable world order [39] has resulted from the consideration that in international relations, too, the idea of justice has an important role to play. Thus in the deliberations on the drafting of the Charter, it was declared that the primary object of the Charter was "to maintain peace by our common effort and at all costs ... with one exception — not at the cost of justice" [40] and that "we will not maintain peace and security at the cost of justice." [41] In these deliberations it was also recognised that though everyone was "naturally anxious to see justice carried out, and to see the alliance between justice and order on which the future of our work must depend," "the actual business of maintaining peace and preventing the guns beginning to go off, should not, in any circumstances be delayed." The delegate making these remarks concluded by referring to an illustration of "the policeman ... who is concerned with dealing with a wrong he sees arising. He does not stop at the outset of what he does to inquire where exactly lies the precise balance of justice and their quarrel. He stops it, and then, in order to make adjustment and settlement, justice comes into its own." [42] These considerations led to the placement of the phrase "in conformity with the principles of justice and international law" in article 1(1) after the phrases "the prevention and removal of threats to the peace" and "the suppression of acts of aggression and other breaches of peace."

The wording of this phrase may cause a feeling of uneasiness if it is presumed that neither the term "justice" nor the term "international law" is superfluous. For each must then refer to a distinct body of norms; and in that event situations may arise in which the two are thought to conflict. Given this possibility of conflict between precepts of justice and rules of international law, the question arises, which one should prevail. If we say that justice should prevail — or that an antinomic relation between a precept of justice and a rule of international law should prevent the application of both — this would weaken the obligations under international law. [43] Similarly articles 2(3) — providing for the settlement of international disputes of members of the United Nations "by peaceful means in such a manner that international peace and security, and justice, are not endangered" — seems to raise awkward problems. Amid the complexities of international disputes there is always the possibility that a crisis may arise

[39] Notably LEAGUE OF NATIONS COVENANT at Preamble.
[40] Doc. No. 1,006, I/6, U.N. CONF. INT'L ORG. DOCS. 2 (1945).
[41] *Id.* at 16.
[42] *Id.* at 14.
[43] See KELSEN, THE LAW OF THE UNITED NATIONS 18 (4th impr. 1964).

in which peace and security are attainable only by unjust measures. Hence the view that the notion of justice in these contexts may affect adversely the authority of international law and the measures necessary for achieving international peace and security.

As against these cavils it may be argued that the worth of legality without justice, as well as of peace and security without justice, would be doubtful. One may insist that only just law can properly assert its authority and only peace and security which is just can be durable and real. Therefore it has also been submitted that "reference to justice would reinforce rather than undermine the authority of [international] law" [44] and would enhance rather than frustrate the chances to achieve peace and security. In the Charter context precepts of justice play a moderating role and "provide a residual store of principles of decision." The notion of justice in the Charter offers a "channel of relief from the rigidity of legal rules," which is particularly important "in a system like international law which lacks efficient and adequate means of legal change" and provides "no means (save with the consent of the States affected) for developing, modifying or repealing existing rules." [45]

A more serious objection to the inclusion of the notion of justice in the Charter can be made on the ground of vagueness. The Charter gives no definition of the word "justice," and if it had attempted to do so, this would surely have been unsatisfactory in view of the prevailing uncertainty and controversy about the meaning of the term. An attempted definition of justice in the Charter would thus have led to further definitional problems and given rise to numerous occasions of dissension. [46] All this may be admitted. But the argument that therefore the Charter references to justice should be discarded altogether can be countered by the remark that vague notions in law are, of course, a defect of law, but a ubiquitous and unavoidable one in enacted law. In the legal process the application of the provisions in which such terms occur can be determined for any instant case. They may perform a useful function in that they give the decision-makers an opportunity to avail themselves of certain leeways to arrive at reasonable decisions which are still consistent with the law they have to apply. Through the channel of the notion of justice in the Charter, such leeways are opened. A problem remains as to how those applying the relevant Charter provisions could avail themselves of the leeways thus opened in ways which could not only be justified as reasonable but which would also generally *appear* as such. We shall now direct our attention to this complex and intricate

[44] See STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 53 (1959).

[45] *Ibid.*

[46] The notion of aggression in the Charter, also left undefined, has raised similar problems whose solution has proved to be unfeasible despite strenuous and repeated efforts to offer it. See STONE, AGGRESSION AND WORLD ORDER *passim* (1958); I. Tammelo, *Theoretische Aspekte der Definition der Aggression*, 6 MODERNE WELT 316-31 (1965).

problem, relying on the results of our foregoing discussions on the formal and material aspects of justice and on the relevance of reason to justice.

The use of the word "justice" in the Charter is compatible with the *propria* of justice as specified in the above section on the formal aspect of justice. In the context in which this word appears in the relevant articles, it can be considered to mean a situation positively valued and relating to ethical social normatively bilateral relations between the entities which are subject to norms of international law. It can also be assumed that "justice" in the Charter means that to each of these entities their due ought to be accorded. However this due is to be determined, the concept of justice which we attempted to frame by our definition of justice seems to be an adequate formal framework for discussing problems of justice in relation to world order. As it appears from the Preamble, the entities which are to receive their due according to the norms of the Charter belong not only to the present time but to future generations. Thus "justice" is to be conceived as relating to states of affairs obtaining not only for the time being but for all times. This is also obvious from the general purport of the Charter which is to establish a workable and worthwhile world order as a permanent world condition.

So much may be assumed as a common ground for everyone willing to reason about justice in relation to world order; or at least it may be assumed that the above has a chance to be accepted as a working hypothesis for this reasoning. Where real difficulties emerge is in the area of the material aspect of justice, namely where attempts are made to establish criteria by recourse to which what is the due of the persons concerned can be determined. Here political ideologies, state interests, national ambitions, philosophical and religious doctrines, and so forth, produce an unsalutary intellectual climate even for composed argumentation about relevant guidelines for requisite attitudes and actions. This manifests itself in a conspicuous manner in the efforts to establish an intellectual (and emotional) *rapport* between the statesmen and scholars of the West and those of the Soviet sphere, in order to reason gracefully and propitiously about world affairs. Coexistence may now be regarded as a genuine common aim to be pursued for the time being; but the degree of communication requisite for a coexistence which would be something more than a temporary thaw in the inter-ideological freeze has so far proved to be a failure, or at best only a very modest or disappointing success. [47]

Similar difficulties also manifest themselves in other international encounters where political commitments or other handicaps of reasoning weigh heavily amongst the participants of communication. Above all, efforts to reason about the criteria of justness relevant to the establishment of a

[47] See I. Tammelo, *Coexistence and Communication*, 5 SYDNEY L. REV. 29, 29-36 (1965).

worthwhile and workable world order have made it apparent that there is not as yet any general understanding as to the entities which are supposed to receive international justice. Is international justice for states alone, or does it extend to nations which have not yet achieved statehood, or to ethnic groups, or to individuals? To give all of these their due may be quite impracticable. If some of them are to be given their due, it is (today at least) impossible to accord to others their due, and this will mean doing justice to some and injustice to others. Material and moral resources and forces at the present time have not reached the level or the degree requisite for achieving even a minimum justice for everyone. Today, therefore, some injustice in the world is an "exitless" situation, in the sense that doing justice to someone would entail unjust treatment of someone else under some standards following from "enclaves of justice" of civilised men. Hence, it appears that it is not the achievement of justice which can be a proximate end of international actions, but rather a reduction of injustice, and an endeavour to enlarge and increase justice wherever and whenever practicable without enlarging and increasing injustice by the same action elsewhere and in the future. The disposable assets of the world are at present not yet such that everyone can receive even what is his due by way of his indispensable needs. Should this be attempted immediately, as our humanitarian feelings prompt us to do, dislocation of the economy of the states which dispose of considerable wealth would ensue and would have a demoralising and paralysing effect upon the producers and upon production, bringing thereby no real benefit but, on the contrary, only courting disaster in the world.

These observations are to the effect that the Charter invocation of the notion of justice cannot mean that an overall justice ought to be done in international relations. It can only mean that justice in the world at large ought to be done as much as possible, that considerations of justice should not be disregarded in the legal handling of international disputes and other international situations, or that a minimum, a tolerable "amount" of justice must be attained through international actions under the provisions of the Charter. That only attainment of a moderate degree, a modicum of justice can be a proper proximate end of these actions is also suggested by the fact that justice is not the only standard invoked by the relevant provisions of the Charter. The standard of legality (article 1(1)) and the standard of peace and security (article 2(3)) are also invoked. The standards of legality, peace and security, and justice may be in perfect harmony in a utopian state of social affairs. In reality, and especially in the harsh realities of contemporary political affairs, the norms which flow from one are often in an antinomic relation to those flowing from others. If the resolution of the antinomies which thus become manifest is not to take place so that all of them are to be discarded, only the achievement of moderate

respect for all of them, an optimum respect under the given circumstances, can be a reasonable aim to be pursued.

In the determination of what is one's due in international relations, all kinds of criteria of justness are relevant: procedural as well as substantive, and criteria specific to justice-judgments as well as those which are generally important for making ethical decisions. They are relevant under the "rule of reason." In interstate relations, as in intrastate relations, the criteria of justness cannot conceivably be anything more than relatively isolated and partially interconnected "enclaves" of justice, which do not form an orderly and well-consolidated whole. We need not refer here in detail to each criterion of justness we examined when we discussed the material aspect of justice. On the whole it may be said that even in the international scene they are well recognised all over the civilised world in their abstract form. Of course, there are occasions for wondering whether this is really the case, because on numerous occasions they are flouted all over the world, sometimes *en gros* and outrageously, sometimes moderately and excusably. However, except when parts of the civilised world have temporarily relapsed into barbarism, we find that these criteria have retained their established status as declared or professed principles of action in alternative formulations determined by doctrinal predilections and that genuine efforts have been made to realise them as far as possible under the prevailing conditions.

The main specific feature of the criteria of justness in the international scene lies in the relative emphasis which is placed on each of them. Sometimes this emphasis is determined by the political ideology dominant in a part of the world and producing an overemphasis, for example, of the precept "to everyone according to his needs" or of the precept "to everyone according to his deserts." Sometimes this emphasis is determined by considerations of expediency, so that principles of fairness of judicial procedure are sacrificed to the efficient attainment of criminal justice.

In the international scene the postulate "Mankind ought to survive" has emerged as a supreme principle of international action in view of technological developments which make the destruction of life on the earth practicable. *"Fiat iustitia pereat mundus"* ("Do justice though the world perish") could be proclaimed in foregone ages to express a passion for justice which in those times could be nothing more but an oratorical flourish. Today this maxim can be proclaimed responsibly only in its amended form *"Fiat iustitia ne pereat mundus"* ("Do justice lest the world perish"). We can no longer afford to be inspired by Kant's elevating words: "If justice perishes it is no longer of value for men to live on the earth." [48]

[48] See KANT, DIE METAPHYSIK DER SITTEN 139 (1797): *"Wenn die Gerechtigkeit untergeht, so hat es keinen Wert mehr, dass Menschen auf Erden leben."*

So long as we still have interstate relations and not yet relations *intra civitatem maximam,* various international adjustments are necessary in order to achieve satisfactory international conflict resolution and to assure adequate international cooperation so that not only peace and security but also a tolerable minimum of justice can be maintained in the world. One of the important principles of international adjustment can be epitomised as follows :

> *Create such conditions in your country that no one need have reason to fear if he must live under these conditions.*

This imperative enjoins that just internal conditions of states are prerequisite for the achievement of a satisfactory degree of international justice. Insofar as and so long as this principle remains unrealisable, respect for the principle according to which everyone is free to leave his country and to find abode in the country of his choice will provide some relief. Insofar as and so long as adequate realisation of even the latter principle remains impracticable, there seems to be no alternative but the assertion of the authority of the general world organisation or regional organisations over those states which are recalcitrant, so as to assure in those states a tolerable minimum of justice according to the standards of civilised men. And even this alternative must be inhibited, not only by "the limits of the possible," but by the enjoinder that the measures taken or contemplated should not produce greater misery of men than the misery suffered by them in the states against which the action is directed.

The above formulated basic principle of international adjustment is only a foundation to be sought for international justice. It has not gained the status of an "enclave" of justice for civilised men generally. Political systems which exist in different parts of the world are mutually despised by men of different political affiliations, not only because of the incidents of evil they have produced but also because of contingencies of their origin in the history of ideas and even because those who have happened to originate or advocate such systems have produced a tainting effect upon them in certain eyes. Men who are simply civilised are not yet capable of apprehending the internal conditions of alien countries in a spirit of detachment, whatever these internal conditions may be : they entertain fears which are not always reasonable about these conditions and shudder at the thought that they may have to live under these conditions. Therefore the general assent of civilised men could be expected perhaps only to the following two highly abstract principles of international adjustment :

> *In international relations, behave so that the norm determining your conduct would be reasonable for determining the conduct of anyone else in essentially similar situations.*
> *In international relations, behave in regard to others as you would reasonably wish that they behave in regard to you if you were in their position.* [40]

[40] See Bagolini, *op. cit. supra* note 27, at § V, for reflections significant for these two principles of international adjustment.

These two principles : the Categorial Imperative and the Golden Rule of International Adjustment, include international justice within their scope, but their scope is wider. It also includes charity, mercy, and good faith in international conduct. Much that is being done today to render assistance to those in desperate need for international aid may be done out of self-interest, but this does not necessarily detract from the value of this aid. Moreover, on many occasions the assistance is actuated by charitable impulses of civilised men. These impulses may have their spring of action in sentimental and irrational drives, but on sufficient reflection they prove to be quite rational for efforts towards attainment of justice in the world. *Caritas sapientis* as manifest in acts of international charity, mercy, and good faith contributes to the consolidation of the order of justice by giving this order at least an enhanced emotional appeal.

Caritas sapientis could become more effective in international relations than it has been so far if respect could be assured for the following principle :

> *Create such internal conditions in your country as to reduce the waste of material resources, manpower, talents, and products of work to the least feasible level, and to direct what is thereby saved for the benefit of the whole of humanity.*

For reasons which differ with different economic systems, such waste occurs to an alarming extent everywhere in the world. Universal assent to this principle can be expected among civilised men. But removal of the sources of waste would require sometimes radical changes in the economic and political structure of the various states, and the requisite changes will therefore be resisted by invocation of principles which have become sacrosanct under prevailing ideologies.

Until wars, just or unjust, are unavoidable in the world, the principles of *temperamenta belli* have a continued significance. The Geneva Conventions of 1949 on the alleviation of the lot of war victims have incorporated essential "enclaves" of justice in positive international law. In the spirit of these conventions, which in their turn represent the spirit of the Categorical Imperative and the Golden Rule of International Adjustment, it is reasonable behaviour for nations conducting wars to extend international charity to the wounded and sick of their enemies, however wrongful the acts of these may have been; for ultimately everyone deserves charitable treatment on a minimum level.

The central theme of our discussions has been what meaning to give to the phrases "principles of justice and international law" (article 1(1)) and "international peace and security, and justice" (article 2(3)) in the Charter of the United Nations. In each of these phrases, in terms of strict logic, the word "and" forms a conjunction whose conjuncts must be severally tenable if the conjunction is itself to be tenable. To dismiss "justice" as one of the elements of either of these conjunctions would destroy the

conjunction and make both the phrases in question antilogous. Such a result would be a patently unreasonable interpretation of the relevant Charter provisions. Within this framework of logic, it is possible to give different significance, different emphasis to each conjunct. Thus it may be argued that conformity with international law, that is, international legality, and international peace and security must prevail in the contemporary state of international affairs over international justice. It may be contended that this must be so, if for no other reason than it is possible to assign a rather definite meaning to the former words, whereas it is not possible to assign such a meaning to the word "justice."

We have tried to show that the word "justice" is not meaningless even in international context, though it is arguable what its precise meaning is. We have also tried to show that both the formal and the material aspects of justice are amenable to intellectual approach and treatment and that in both areas some relatively fixed ideas can be pointed out for which universal assent of civilised men can be found to exist or can be sought through appropriate procedures of reasoning. To secure and to seek insightful assent to matters relevant to international justice, especially to consolidate and enlarge the "enclaves" of international justice, it is of supreme importance to consider ways and means by which proper intellectual contacts between men who wield political power in the world, or who give intellectual assistance to the designs of such power-wielders, can be established. This search for enhanced communication requires a detour of thought in international encounters, which is often impracticable in the heat and haste of debates. But it must still be undertaken wherever there is a chance for it, because it will pay high dividends in the efforts to establish a workable and worthwhile world order. The precept which reflects the recognition of this need can be epitomised as follows :

> *In international relations, create such conditions as to enable everyone to discuss matters of international concern according to the established rules of disciplined reasoning.*

The standards of sound reasoning have become crystallised throughout the history of civilisation all over the world. They have to be learnt, respected, and practised rather than discovered. They, too, can be improved on and can be further developed; but only by applying the already established rules of disciplined reasoning. Under this latter imperative, principles of logic and other principles of disciplined thought gain an ethical import and support in particular the rational endeavour to discover and apply principles of justice pertinent to international relations. Only by this endeavour — with this kind of disciplined support — can respect be assured to all viable provisions of the Charter, including those which enjoin that international action take place in conformity with international law and that international peace be not endangered.

In the Charter of the United Nations the notion of justice is an integral part. But so are the notions of legality and of peace and security. Thus we are entitled neither to trivialise nor to overplay the role of justice in international relations under the Charter. The ultimate harmony of these notions can be found in an idea which is, of course, merely a guiding star : the idea of hesychian peace — peace which is not simply absence of war or other forms of violence but a durable and tranquil peace which is the offspring of justice. [50] In order to make this regulative idea as much as possible a constitutive idea in international relations, it is necessary to gain better understanding of the problems of justice, and of justice as a problem. The present article has sought only to make some hesitant steps in this direction, by an excursus leading to the realm of abstractions, in order to examine problems underlying matters of everyday international life rather than to address concrete problems of acute concern.

[50] Dike, the goddess of justice in Greek mythology, had a daughter to whom she gave virgin birth. The essence of this offspring, Hesychia, was serenity (peace) resting in itself. See 1 WOLF, GRIECHISCHES RECHTSDENKEN 36 (1950).