ARTICLES

ETHICS, VALUES AND THE COMMON GOOD AS GUIDELINES FOR A WORLD COMMUNITY

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I. INTRODUCTION

A. *An Era of Rapid Change*

Our global community is currently in a process of rapid change. Two cataclysmic wars within recent memory; disparate standards of living throughout the world that become more obvious and more intolerable each day; scientific and technical knowledge that far outstrips knowledge of wise application and the prospect of nuclear destruction, overpopulation and pollution of the environment are among the reasons advanced for the changes today.[1] It is difficult to dismiss these changes as part of the process of gradual evolution; it is difficult to foresee whether they portend something far more glorious or far more sinister than those that history has already experienced; but it is not difficult to foretell that these changes will soon have spectacular consequences.

The changes are creating uncertainty and confusion. Old antipathies are flaring, new ones are arising. Social inequalities are being widely publicized, economic principles are being questioned, political practices are being investigated and moral precepts are being doubted. Established leaders of states, corporations, churches and universities are no longer leading, at least not with a heavy hand; in many cases they are under constant pressure to destroy or change the laws and institutions which have given them their place.

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[1] It is the rapidity of the changes today that mark the difference from changes in society in other times. *See, e.g.*, A. TOFFLER, FUTURE SHOCK (Bantam ed. 1971) where the author's main theme is that there is a "roaring current of change, a current so powerful today that it overturns institutions, shifts our values and shrivels our roots." *Id.* at 1. The author also states:

> The high velocity of change can be traced to many factors. Population growth, urbanization, the shifting proportions of young and old—all play their part. Yet technological advance is clearly a critical node in the network of causes; indeed, it may be the node that activates the entire net.

Id. at 428.

The young especially are crying for change. The violence and dissension in the streets, in the schools and on the campuses are, for the most part, attributable to the young. The hippies, yippies, activists, strikers, paraders, hijackers and other malcontents manifesting displeasure with the established order are, with very few exceptions, in the first half of their average life span. The young, we are told, want cleaner vistas. They want fewer parking meters and other prohibitory signs, and fewer organizations and other regulatory devices. They are saying that present society has too much plastic and not enough greenery.[2] The young are protesting the routine drudgery of their jobs and are doubting the work ethic itself.[3] "The work ethic", said President Richard Nixon in a nation-wide radio broadcast in 1973, "holds that labour is good in itself; that a man or woman at work not only makes a contribution to his fellowman but becomes a better person by virtue of the act of working." There appears little doubt that the work ethic, defined in this way, has little appeal. Still more, the young are questioning the goal of material gain. They ask: "Is this progress?" They further ask: "What is progress?" There are no satisfactory answers. The spectre of nuclear destruction, overpopulation and pollution of the environment is particularly poignant to the young. They also question a society motivated by profit, dominated by economic considerations and ruled by a spirit of competition and mutual aggressiveness. They feel powerless and insignificant in the organizations of today. Perhaps, the individual's feeling of helplessness is the basic reason for the present disquietude. In any event, many appear to seek new ethics and values in a non-violent world where the pursuit of spiritual wealth will displace the quest for material profit.

It is the young who will reconstruct society in the light of the vast scientific and technological advances that are now with us. It is the young who will develop the ethics and form the values upon which future society will rest and be controlled. It is the young who will find the true worth of the individual in social organizations.

B. *The Worth of the Individual*

The worth of the group, the worth of the nation-state, or the worth of the world community is nothing more than the worth of the individuals that compose it. If the group, the nation-state, or the world community moves in a capricious, greedy or envious way, it is because of the caprice, greed or envy of the individuals in them. Contrarily, if they advance, it is not be-

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[2] *See, e.g.*, C. A. REICH, THE GREENING OF AMERICA (Bantam ed. 1971). The author predicts a revolution in consciousness. He considers that it has already begun among the young, and that it will spread to all—because everyone, of whatever age, feels the same impotent desperation and desires the same green things.

[3] See U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, WORK IN AMERICA (1973) which is a catalogue of the woes of the American worker. However, it indicates that, although today's youth expects a great deal of intrinsic reward from work, the young worker is not in revolt against work but against the authoritarian system in which he is encased.

cause of armies, machines and other excrescences of power but because of the initiative, energies and goals of individuals spearheading the advances. Individuals can make this world what they will—whether for good or evil, comfort or pain, enjoyment or anguish.

The ancient religions were not concerned with the worth of the individual, [4] but there emerged the religion of the Jews which taught obedience to one, single, omnipotent God, made in the image of man, to which the individual was completely subservient. God, Judaism teaches, exists in the world and cares for all. He is omnipresent and transcends the universe. He is the perfection of moral goodness and man must unswervingly obey His dictates.

It remained to Christianity to glorify the individual. Christ extolled the worth of the individual and placed the temporal power of the state in a subordinate role. He taught the brotherhood of man and condemned all private wealth, all personal advantage and, generally, all graduations of the economic system. All people and their possessions belong to God, Christ declared; all Christians are equal.

For the next fifteen hundred years, the Christian Church grew in numbers, wealth and influence. It became the richest and most powerful institution in the western world. During this period it refined the ancient concept of natural law. Natural law, this Church taught, included certain inborn rights which were granted by the creator and enforced by the Church. Thus natural law reflected the example of God. An order was inherent in the human community and this law provided a design for social living. Natural law is not a code and cannot be codified. It must be applied through positive law. Such codes of positive law that men devise for themselves are of a transient, temporary nature. They are necessary because of the generality of natural law and because natural law needs adaptation to diverse and changing conditions. But natural law is the true law; its great interpreter and enforcer is the Church.

This interpretation and application by the Church has had a major effect. The worth of the individual may now be seen in the evolution of human rights and fundamental freedoms. It never occurred to the ancients that man might have certain inalienable rights to life, liberty and the pursuit of happiness which might take the form of rights against society. [5] A slave had no rights and citizens had only certain rights as citizens, not against

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[4] *See, e.g.*, A. C. BOUQUET, COMPARATIVE RELIGION (Penguin Books rev. ed. 1969). The author writes:

> It is commonplace with specialists in the history of religion that somewhere within the region of 800 B.C. there passed over the populations of this planet a stirring of the mind, which, while it left large tracts of humanity comparatively uninfluenced, produced in a number of different spots on the earth's surface prophetic individuals who created a series of new starting-points for human living and thinking. Three chief aims stand out: to know the world, to know ourselves and to know the meaning and purpose of the Whole—aims concerned with science, society and the spirit.

Id. at 100.

[5] *But see* text *infra* at note 15 *passim*.

society as a whole. It was the advent of the Christian religion that invoked this sense of worth in the individual. [6] The breakdown of the feudal system in the fourteenth century, the extirpation of a great mass of labourers by the Black Death, the rising dissatisfaction with the Church and the peasant uprisings in Western Europe during this period, were among the factors that brought forth declarations of the natural equality, and rights, of man.

By the later Middle Ages all established belief, dogma and criteria were under attack. Reason was to be applied in all matters of religious, social and political life. By the sixteenth century every vital spirit was uplifted, barriers were being destroyed and no limits existed on what the individual could do. It remained to such men as Voltaire, Rousseau and Paine to give rise to the claim for human rights to life, liberty and the pursuit of happiness which culminated in the American and French revolutions in the latter part of the eighteenth century.

However, the new-found spirit of freedom in the individual was short-lived. The early part of the nineteenth century, particularly aggravated by the advent of Napoleon, ushered in an era in which the individual was subjugated in a hazy midst of chauvinistic "states", "power groups", "nations", "nation-states" and other appellations that seemed to be a relapse into idolatry. [7] No doubt these phenomena are retrogressions from the grandiose concept of a universal whole in which every living person shall be a citizen. No doubt they are anomalies in the modern world inasmuch as they are the main impediments to a peaceful and prosperous world community and to the recognition of the true worth of the individual.

Twenty-five years ago, on the 10th of December, 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. This historic document enumerates thirty articles proclaiming "this universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration, shall strive by teaching and education to promote respect for these rights and freedoms . . . ." [8]

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[6] *See, e.g.*, H. G. WELLS, OUTLINE OF HISTORY (Garden City ed. 1931). The author comments that "there can be little doubt that this steady and, on the whole, growing pressure of the common man in the West against a life of toil and subservience is closely associated with Christian teaching." *Id.* at 749.

[7] The term "nation-state" seems the most accurate and descriptive word. *See generally* P. E. TRUDEAU, FEDERALISM AND THE FRENCH CANADIANS 151 *passim* (Macmillan ed. 1968). *See also infra* note 62.

[8] G.A. RES. 217, 3 U.N. G.A.O.R. 71, U.N. Doc. A/810 (1948). The Declaration is not a binding treaty. In its present form it depends on the good faith of the signatory states to respect, define and enforce its spirit and terms. The task of securing and protecting—and in some cases, the task of defining—human rights and fundamental freedoms is complex and a consensus on the precise meaning of the articles is still awaited. There is also an increasing awareness that the ability and timeliness of defining, securing and protecting these rights and freedoms depend in large measure on the social, economic and political development of the people involved.

See, e.g., J. CAREY, U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS (Syracuse University Press ed. 1970) where the author analyzes the difficulties of the enforcement of such rights, and pursues a search for effective and realistic international procedures for protecting human rights.

But the worth of the individual connotes more than bald declarations of rights and duties. It connotes the social, economic, political and legal environment in which the individual may realize his full potential and contribute to his community in the light of the common good.

C. *The Common Good*

The concept "common good" has no precise meaning. It can be expressed in theological, philosophical, political, economic or legal forms. Aristotle wrote that citizens should be taught to love the common good and to exert all endeavours in acting out their parts in the whole to which they belong.[9] This has been interpreted as indicating that "the notion of the Common Good . . . was not that of a well-ordered mass of citizens composing an order within themselves . . . but an end outside the group, so beloved that men will suffer deprivation and death rather than disown it."[10] This interpretation had theological or philosophical connotations. The Romans however "were concerned with the source of the law". To them origins were clearer than ends and they asked: "Who was the legislative sovereign?"[11] Regarded in this way, the common good was synonymous with the power to make laws. Economists have attempted many definitions of the common good within the past two centuries,[11a] and these are exemplified in the writings of Jeremy Bentham[12] (1748-1832)—with his concept of the greatest good to the greatest number; Jean Charles Leonard Simonde de Sismond[13] (1773-1842)—whose ideas foreran the welfare state; and Karl Marx[14] (1818-1883)—with his dictatorship of the proletariat. As for expression in legal form, because the primary function of law is to serve the common good, the study of the concept "common good" leads to attitudes and opinions on the operation, functions and ends of law. These studies in modern times have fallen into three main categories: first, the revival of the doctrine of natural

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[9] ARISTOTLE, THE POLITICS 115-16 (Penguin Books ed. T. A. Sinclair transl. 1969). *See also* T. GILBY, THE POLITICAL THOUGHT OF THOMAS AQUINAS 248 *passim* (University of Chicago Press ed. 1958).

[10] GILBY, *supra* note 9.

[11] *Id.* at 131.

[11a] *See, e.g.*, G. SOULE, IDEAS OF THE GREAT ECONOMISTS (Mentor Book ed. 1952).

[12] See Bentham, *A Fragment on Government* (1776) and *An Introduction to the Principles of Morals and Legislation* (1789) *in* THE WORKS OF JEREMY BENTHAM at 221 and 1 respectively (J. Bowring ed.) (Russell & Russell ed. 1962). His principle that "it is the greatest happiness of the greatest number that is the measure of right and wrong" was first expounded in the earlier work and then given a more detailed exposition in the subsequent work.

[13] See *supra* note 11a, at 71-3 for a short discussion of this economist's ideas.

[14] See Marx & Engels, *Manifesto of the Communist Party in* BIRTH OF THE COMMUNIST MANIFESTO 85 (D. J. Struik ed.) (International Publishers ed. 1971). In this work, first published in 1848, the authors urged that "Communists everywhere support every revolutionary movement against the existing social and political order of things" as "[t]he proletarians have nothing to lose but their chains." *Id.* at 125. The present standard English edition of this work is from a translation made by Samuel Moore, as revised and edited by Engels, in 1888 from the original German text of 1848.

law; second, the study of sociological processes on the premise that law is essentially relative to social interests, to expediency and to compromise; and, third, the historical school, which expounds that law is what history has made it, that it is the instinct of individuals, moulded by circumstances, surfacing in practical relationships. In seeking this ultimate by the means of these three main avenues of jurisprudential endeavour, one is seeking the common good.

Not only has the concept "common good" no precise meaning [15] but it is subject to multitudinous and varied expressions of its content. It is not the intention here to attempt another philosophical definition or to redefine old definitions, but rather to analyze goals which individuals consider to be in the common good and the methods which they employ to attain these goals. The goals that individuals use as beacons and the methods employed to accomplish them are, in effect, life itself, and life itself, we must assume, is the common good.

Although the worth of the individual connotes many human rights, they are not natural in the sense that they exist independently of the rights of others. Human rights, then, have correlative duties. Thus the right of an individual to speak freely (freedom of speech) places the correlative duty on the individual not to say anything that may injure his neighbour. Similarly, fundamental freedoms of association, contract and trade connote duties. Such freedoms are in reality privileges which individuals may enjoy subject to like privileges in others. In this respect human rights are controlled in the light of the common good. Similarly, all goals of the individual and methods that he uses to attain them are privileges and must be controlled in the light of the common good. An individual may not use his talents to make a horrendous bomb or a fire-spitting monster without restriction. The goal may or may not be in the common good. Although the individual may be inspired by the laudable goal of preventing war, he may not do so by producing a violent creation that he intends to use as a deterrent. The method to attain the goal may not be in the common good.

In a like way, all goals and methods of groups or organizations of individuals may or may not be in the common good. Organizations exist for many reasons. A prime reason for their existence is to protect the group from hostile influences and to maintain internal peace and security. More specifically, organizations exist to protect the weak from the strong. Individuals are not equal; our society does not rest on principles of mutual trust and aid, respect and tolerance which might, in utopia, render organization unnecessary. Our present goals and methods are weighted on the side

[15] *See, e.g.*, V. HELD, THE PUBLIC INTEREST AND INDIVIDUAL INTERESTS (Basic Books ed. 1970) where the authoress notes the current state of the concept of the public interest (a more modern synonym) "to be a vacuous, deceptive, and generally useless term." *Id.* at 1. However, she goes on to maintain that concepts are obviously indispensable for evaluative judgments of governmental decisions and that all societies have, in some way, been guided by the ideal expressed in the term or one of its synonyms.

of the strong in body, in mind and in spirit. So organization is necessary to provide for a fairer distribution of material goods, welfare benefits in various forms and, generally, to render the lot of the less fortunate more tolerable. Organizations also enable individuals to carry out their dreams, hopes and aspirations. For these reasons, individuals band into political parties, form companies, join church groups and other entities which they hope will advance their interests. Organizations then, are found generally whenever individuals desire to attain a goal that is beyond the capacity of one. They are many and varied. They have done much to accomplish the goals for which they were created but the demands of organization have been great in respect of the relinquishment of freedom of the individual.

Every organization has goals and methods to attain them. The family may have a goal to educate its offspring. It may seek to attain this goal by diligent saving, strict discipline and hard work. A company may have a goal to expand its services. It may seek to attain this goal by employing proficient managers, by maintaining a contented work force and by increasing its capital stock. A trade union may have as its goal higher wages for its membership. It may seek to attain this goal by organizing, by bargaining with employers, and by disciplining members for the purpose of uniting them in a common cause. The nation-state may have a goal of free trade with other nation-states. It may seek to attain this goal by negotiation, alliances, war, criminal and civil law enforcement measures, taxation and subventions.

Goals and methods depend on the acquisition and application of knowledge. The goals of the nation-state may depend on the development and building of nuclear programs, programs of space travel, the advancement of the social sciences for the eradication of poverty and so on. The goals of the corporation may depend on research for the development and application of new products and services, studies in personnel relations and problems involving public relations. The family will require knowledge in answering such questions as the best type of education and the best employment opportunities for the children.

In the physical and social sciences vast knowledge lays around us. Its acquisition and application demand the joint endeavours of the scientist and the philosopher. The scientist is primarily concerned with facts. He breaks down the whole into parts, analyzes them and, if able, puts the parts back together. However, he often does not know or care how they should be replaced. Often he will work in a vacuum, oblivious to the effect that his knowledge may have. It is the philosopher who deals with the effect. Although his quest for the truth precedes all accomplishment, his desire is knowledge, not for the discovery itself, but for its effects on all objects. The scientist, then, will analyze; the philosopher will synthesize. The philosopher will view the whole and attempt to put the parts back together. He will relate the facts to generalities and thereby will attempt to find the truth.

Consequently, science and philosophy are handmaidens. Whereas science gives us knowledge, philosophy attempts to add wisdom. They are

complementary. We have little wisdom if we do not have knowledge but we might have much knowledge with little wisdom.

Today as never before we need wisdom to apply our knowledge in the choice of goals and methods. Does the goal of peace outweigh that of war? How far is the goal of environmental protection compatible with that of high production of goods and services? What are the advantages and difficulties of planned growth to curb the planet's population increase? Is a no-growth industrial world desirable? Is it attainable? Can the economic ethic of self-interest be subordinated to some form of collective advantage? The goals we choose must be the product of our collective wisdom, and the wise choice and application of the methods used to attain the goals are as important as the goals themselves.

All conduct is motivated by ethics and by values. For the purposes of this essay ethics are those rules of conduct to which individuals look for guidance. They are standards of conduct which have been intensely examined, found useful and approved. They are right ways of human behaviour. They need not be written in prescribed forms as laws as general knowledge of social conduct attest to their rectitude. Ethical conduct demands that an individual does not intentionally injure his neighbour, and that he keeps all his compacts and obeys the lawful decrees of the duly constituted authority. Ethics then are guides for conducting our businesses, our professions and our everyday life. Ethics tell us to do certain deeds and refrain from doing others. They are the product of right reason in so far as they show right ways of human behaviour. They may be likened to natural law in so far as they are the product and expression of that reason. They are followed because individuals know they are right and if the goals are accepted by a considerable body of people, they are ethics. The Ten Commandments lay down conduct that is generally accepted by all socially conscious people. They provide basic rules of social conduct. They are ethics. But if such rules are only accepted by a few people, they are not ethics; they may be termed values. Values then, in essence, differ only in *degree* from ethics.

Values express the hopes, the desires, the fears, the wants, the likes, the dislikes and the interests of individuals.[16] Individuals want peace, an unpolluted and uncrowded environment, sufficient worldly goods and the right to pursue their own destiny. Not having general acceptance, they are values not ethics. They are imperfect ways of expressing the common good because of this lack of consensus. In a democratic group, values may be expressed by majority vote; in a dictatorship or an oligarchy the values of the group may be the expression of the will of one or a few individuals. Being subjective in nature, the choice of values is a process of social engineering—the weighing of one interest against another. The result is invariably expressed in the form of legislation or judicial decree because of

[16] See the definitions in an article by Smith, *Law and The Just Society*, 12 CAN. B.J. 222 (1969).

the lesser degree of acceptability than is the case with ethics. Hence, values lack the permanency of ethics and are much more easily changed.

Goals and the methods used to attain goals may be the common good. When they are objectively governed by an ethical rule, they are the common good. When goals are subjectively expressed as values, they are an imperfect way of expressing the common good. How, then, do ethics evolve and how are they changed?

II. ETHICS

A. *Ethics and Natural Law*

The ancients were conscious of nature. Nature to them was the order of the universe. It was also the mind or reason of the prudent man. They thought that all laws—the laws of science, economics, politics, ethics and jurisprudence—were intimately connected. Natural law and the natural order pre-existed all written laws and the nation-state itself. The universe was a system and conglomerate of law and order. Society was related to the nature of man and the order of the universe as a whole. Thus right reason was identical with natural law and ethics; to live according to nature and the natural order of things was the common good.

The Christian theology borrowed from this concept. The medieval theorists, mostly writing in the religious cloisters, gave greater emphasis to external law.[17] They had a more vivid personal sense of God and that God was the author of all divine law. The external law, adjured the medievalists, was God's purpose in creation—it was the scheme or plan in the mind of God when he created and by which he governs and judges his creation. Human action and social order are as much in the sphere of nature as the movement of the animals in the field. Reason, which is imperfect and potential in the individual, is fully realized in God; it is reason by which we find the true scheme of things. Man, then, must be ruled by right reason.

But natural law, continued the medievalists, was general in scope; it needed adoption to diverse and changing circumstances; it had to be expressed in the positive law, that is, the law contained in the statutes and

[17] *See, e.g.*, J. STONE, HUMAN LAW AND HUMAN JUSTICE 51-55 (Stevens & Sons ed. 1965). The author sums up the philosophy of St. Thomas Aquinas in these words:

> While eternal law, divine law, and natural law are all unalterable, being all based upon the divine reason, only the precepts of natural law are accessible to man's reason, and this in the sense of immediate, non-discursive, intuitive knowledge, not "darkened by passions and habits of sin". Its primary precept on which all others are based is: "Good is to be done and sought after, and evil is to be avoided", for to do this is equivalent to realising our "essential nature", or acting "according to reason". The secondary principles of natural law are the Ten Commandments and a limited number of other principles establishing duties to preserve life, to propagate, to educated children, to know the truth about God, to live in society, to avoid ignorance and giving offence unnecessarily.

Id. at 54.

decrees emanating from the duly constituted authority in the state. To do no injury to others, to live honourably and to give every man his due might be precepts of natural law, but the affairs of men needed practical definitions to define "injury", "honourably" and "due" so as to make them effective guides of conduct. Such definitions formed the positive law.

However, by the fifteenth century, knowledge was growing; man was thinking less of worshipping the unknown and more of overcoming it. Francis Bacon [18] (1561-1626) was an early exponent of the scientific method of inquiry. He reasoned that there were too many idols—questionable icons in the way of the individual's search for the truth. He held that men could find no new truth because they began their search from some unquestioned starting point. They did not think to put their subject matters to the test of observation or experiment. He saw that facts must be collected from all sources and then carefully analyzed by a system of inductive reasoning to arrive at the truth. Bacon maintained that reason was the true guide and that all thought was to be judged by its results proved by experiment.

His contemporary, René Descartes [19] (1596-1650), carried these ideas further. He thought that all the world except God could be explained by the application of mechanical and mathematical laws.

The Englishman John Locke [20] (1632-1704) supported and refined the inductive tests and methods. His attack on speculative metaphysics turned the tide toward constructive criticism on all beliefs whatsoever. At this time began the Age of Reason which applied reason to all matters, including religion, politics, economics, social and even moral life. Only mathematical formulae were held to be inherently and interchangeably true.

But with every action and direction, eventually there is a reaction and redirection. In many situations, it is true, reason is the better guide but in the great crises of life, in attempting to solve the problems of conduct and belief, man turns to his instincts for guidance. Consequently, in the eigh-

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[18] *See, e.g.*, W. DURANT, THE STORY OF PHILOSOPHY 75-112 (Garden City ed. 1943). The author comments:

> Philosophy has been barren so long, says Bacon, because she needed a new method to make her fertile. The great mistake of the Greek philosophers was that they spent so much time in theory, so little in observation.

Id. at 99.

[19] See DESCARTES, DISCOURSE ON METHOD AND MEDITATIONS (Bobbs-Merrill ed. L. J. Lafleur transl. 1960), where the translator comments on six categories where Descartes' influence was most felt. He says, in part:

> [S]econd on our list is Descartes' rationalism and scientific optimism. The world, he is sure, is essentially rational and comprehensible, so that the task of philosophy can be accomplished; and with the proper effort on the part of an individual philosopher, no doubt will be. We thus find philosophers over a period of two and a half centuries building systems which they are optimistically certain are close to the absolute truth.

Id. at ix.

[20] See J. LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING (2 Volume Everyman's Library ed. 1961).

teenth century, we find such men as Jean Jacques Rousseau[21] (1712-1778) fighting the materialism and aetheism of the Enlightenment, as the Age of Reason was also called. He questioned the view that the intellect was the ultimate human test of all truth and of the common good. Seeing around him laws that were supposedly based on reason, but which perpetuated inequality and which favoured the strong, he asserted the superiority of feeling to intellect. Although it is difficult to prove that God exists, instinct and feeling are overwhelmingly in support of His existence, he said. Why not trust instinct and feeling in such situations?

After the French Revolution, the price of the Enlightenment was felt. All Europe lay prostrate; unemployment was rampant and the established order was overthrown. Many of the poor could still turn to religion for comfort but most of the upper and middle class had lost and forgotten their faith. Although it was difficult to believe in those sorry times that a benevolent God existed, some returned to their faith; others did not. But a consequence of the times was that natural law was divorced from eternal or divine law; there can still exist a natural law even without belief.

In the early nineteenth century came an upsurge in the positivist movement. One of the leading spirits, Auguste Comte[22] (1798-1857), argued that all philosophy should be focused on the moral and political improvement of mankind and that mathematical formulae should be devised for the social sciences. This led to a denigration of natural law, since natural law divorced from theology rests on nebulous foundations because of lack of agreement. What might be natural law for a Chinaman might not be for an African. Positive law was definite, understandable and necessary to do particular jobs. Natural law was in eclipse.

Faith in the individual's inherent worth was also questioned. In the middle of the nineteenth century, Herbert Spencer[23] (1820-1903) expounded the idea of evolution in every field of study and endeavour. All nature, he declared, was progressing and retrogressing in a rhythmical way. He saw all matter as progressing and retrogressing from a homogeneous to a heterogeneous mass; the universe traversing from chaos to creation and then back to chaos. As everyone is born, lives and dies, so does society progress from chaos to an animal state, to nation-states and someday, it is hoped, to a supranational community—but, alas, it returns to chaos. In the end all

[21] See W. & A. DURANT, ROUSSEAU AND REVOLUTION (Part 10 of THE STORY OF CIVILIZATION) (Simon & Schuster ed. 1967) for a good summary of Rousseau's life, writings and influence.

[22] See J. S. MILL, AUGUSTE COMTE AND POSITIVISM (University of Michigan Press ed. 1961) for Mill's observations.

[23] *See, e.g., supra* note 18, at 265-300. The author comments:

> In the eighteen-fifties evolution was in the air. Spencer expressed the idea, long before Darwin, in an essay on "The Development Hypothesis" (1852), and in his *Principles of Psychology* (1855) . . . . What lifted Spencer to the crest of this wave of thought was the clarity of mind which suggested the application of the evolution idea to every field of study, and the range of mind which brought almost all knowledge to pay tribute to his theory.

Id. at 267-68.

will dissolve into nothingness and then will be born again. Thus life and death to Spencer (and other evolutionists) is nothing but a blind and dreary mechanism of struggle and destruction.

Is this all there is to life? Is there not some inventiveness, ingenuity, discovery in the individual? Is the individual caught in a web of circumstance from which he cannot extricate himself?

Francis Henri Bergson [24] (1859-1941), for one, did not think so and at the turn of the present century, he clearly gave hope that there was more to life than the fatalistic mechanism of pre-determined parts. Life is a power that can grow, can innovate and mould its own destiny. He propounded a philosophy of creative evolution in which the individual is in control of his own creation and in which he is his own master.

What, then, is the place of objective determinations in order to test the validity of our goals and methods? Positive law is obviously not the answer. Would the Nazi excesses of the last war be justified by the fiat of Hitler? Would the communist depravations be validated by the philosophy of Karl Marx? All laws and institutions must postulate some kind of common denominator of just instinct in the community. Every goal and method to attain it must be considered in the light of the just instincts of the community and, therefore, in the light of current ethical concepts and, therefore, in the light of the common good. Goals and methods must appeal to fundamental concepts of justice in the individuals concerned or, otherwise expressed, they must appeal to the nature of man or his right reason.

Every individual and every group consciously acts in accordance with certain defined or undefined rules. They may be rules enforced by the state, or they may be rules which people abide by because of long continued use or habit; or they may be rules which individuals abide by because they know, feel and unswervingly believe that they are right. Ethics may differ in time, place and scope because of differences in habits, religious beliefs or environment in the various parts of our planet. It may be "ethical" at different times and in different places to keep slaves, to sell property for an exorbitant price or to wage aggressive war in the sense that those who pursued these goals believed them to be true. But, in reality, when only accepted by a part of humanity, they are values. They do not have the general acceptance to be called ethics.

There is a natural order of things to which all individuals must aspire. It must be contained in a code of ethical conduct that is acceptable to all. It must arise in the breasts of individuals; it must arise from the consciousness of the people. It must reflect the way—the right way—that individuals wish to live and to have their organizations behave. This overriding code of ethical conduct of individuals and groups provides the objective standard against which the validity of goals, and the methods to attain them can be measured.

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[24] *See, e.g.*, H. BERGSON, CREATIVE EVOLUTION (Henry Holt ed. A. Mitchell transl. 1911) which is his major work.

B. *The Economic Ethic of Self-interest*

How does ethical conduct develop? How is it changed? A brief examination of the economic ethic of self-interest may shed some light on these crucial questions.

Everybody is interdependent economically. Very few are self-sufficient and most individuals have many wants. All these wants are produced or serviced most plentifully and cheaply when they are produced or serviced in the most favourable natural conditions. The nation-states of today make mockery of this elementary rule of economics. By various means, these organizations assert their self-interest.

Looking backwards, as the Roman Empire disintegrated, the medieval system gradually ushered in a system of stratified classes for individuals, each having a fixed status connoting certain rights and duties. Individuals were confined to fixed locales, fixed types of work and fixed wages.[25] They had no control over the sale or distribution of the proceeds of their labour. The system was largely agricultural and was self-contained in small units.

In the fourteenth and fifteenth centuries, with the break-up of the feudal system, towns were growing. Commerce between the towns was developing, and buying and selling made merchants prosper. The nation-state was soon recognizing a powerful new basis—an economic basis—of power. The nation-state found it profitable to build highways for greater areas of commerce, and to provide guards for the policing of trading routes. It also protected businessmen by subsidies, grants and monopolies. For the benefit of the royal coffers it found it advantageous to protect infant industries from foreign competition; but wage earners were kept in a subservient condition until the nineteenth century.

The nation-states prospered under the doctrine of mercantilism—which was nothing more than the nation-state acting as an individual merchant. It encouraged manufactories, imposed tariffs to keep out competitive foreign goods and exploited its colonial possessions. Labour, as a consequence of its constrained position, continued to suffer. It became more and more an instrument of production.

With the advent of the Age of Reason, a hope for better things was expressed than salvation in another world. The Age extolled ideas of individual liberty, freedom of conscience, social and political equality and such human rights as those to life, liberty and property which included, of course, the fruits of one's labour.

The physiocrats led the attack on mercantilism.[26] They affirmed that everything that departed from the established order was bad. Such a departure, they declared, caused confusion and dissatisfaction.. Their doctrine

[25] The period 1349-1359 saw the passing and development of the first Statute of Labourers. *See, e.g.*, W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 288 (7th ed. rev. 1956). These statutes subsisted in some form until the early nineteenth century.

[26] *See generally supra* note 11a, at 24 *passim*.

was summed up in the expression "laissez-faire" and foreran the doctrine of the classical economists who followed.

The founder of the classical school of economists was a Scotsman, Adam Smith (1727-1790), whose book, *An Inquiry into the Nature and Causes of the Wealth of Nations*, which appeared in 1776, is the classic expression of economic liberalism. [27] In this book Smith extolled the virtues of competition, free trade and specialization. He considered that the self-interest of groups and individuals frequently promoted the common good and, along with his views on personal liberty, he, more than anyone else, instituted the free enterprise system.

The corporation is the main instrument of economic activity of the western world; it is the prime institution of the free enterprise system. The main criteria for its operation, it is said, is the common good. [28] But what is the common good? It is argued that it is the common good for the corporation to bring into its coffers the greatest return in money, that is, to show the greatest profit possible. If not, the argument continues, expansion programs will be frustrated, lenders will lose confidence, technological changes will be denied, and economic growth for the benefit of all will be inhibited. Further they reason that customers demand the best product for the cheapest price. This requires research for better products and for more efficient methods of production. Profits, therefore, determine growth and prosperity. In this way the corporation's self-interest is in the public interest and is the common good.

But *is* this the common good? How far, for example, should efficient production take precedence over the job security of the workers, high rates of pollution, and safety matters? What are the responsibilities of the corporation to the community, to the nation-state, to the world? How far is the profit motive to be subordinated to philanthropic social issues? How far is it in the common good to concentrate so much material wealth in the hands of so few?

The multi-national corporation is now proliferating across national borders at a great rate. Many predict that it will not be long before all world resources will be controlled by these organizations. On the one hand it is argued that these multi-national corporations promote international transfers of technological skills, capital, management capabilities and information, thereby assisting the underdeveloped countries. On the other hand it may be heard that they represent a proliferation of the very type of growth that must be brought into equilibrium with our resources. It is estimated that the usage rate of natural resources must be reduced by 75 per cent, the birth rate by 30 per cent, capital investment by 40 per cent, and population growth

[27] See A. SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (4 Volume C. Knight ed. 1843).

[28] Or in more common parlance, the public interest; see *supra* note 15.

by 50 per cent before the globe on which we live may be said to be in a state of equilibrium. [29] What is the common good?

Corporations have performed great services. They have opened continents, created new vistas, given the masses a standard of living never before known and permitted mankind to achieve results that undoubtedly have made life more pleasurable for all. But they have their excesses too. By concentrating wealth in the hands of a few, they have created and perpetuated a class system that is the basic struggle of the era, that of worker and employer, socialism and capitalism. The theories of Thomas Malthus and David Ricardo set the stage for this struggle. In his *Essay on the Principle of Population*, [30] first published in 1798, Malthus claimed that an unchecked population growth soon outstrips the food supply. As increasing numbers of workers are available, the level of wages is low. He advocated that no one should have more children than he could support. Ricardo systematized Malthus' iron law of wages. [31] Wages could never exceed the level necessary to maintain human existence because of the action of supply and demand in the labour market. Aided by Jeremy Bentham's utilitarianism and Robert Owen's influence on the English socialist movement, it remained to Karl Marx in his landmark work *Das Kapital*, first published in 1867, to expound the doctrine that is basically antithetical to the capitalist system. [32]

This struggle transcends the borders of nation-states. It is reflected in the political struggle between the eastern and western portions of the globe. It illustrates in bold relief the ethic of self-interest. As in all endeavours of the nation-state, this ethic is fundamental in the dealings of individuals and organizations alike.

Can the economic ethic of self-interest, which accentuates the competitive, acquisitive and ruthless nature of man, be subordinated to the common good? There are two distinct reasons why this ethic must be and will be changed. These are necessity and urgency. Illustrations come readily to mind, but two will suffice. First, there is the "balance of payments" problems which the nation-states appear unable to solve. What has defeated numerous expedients attempted in the past is the simple fact that something done in one nation-state affects the income of trading partners and makes further reverberations as the mutual effects work themselves out. For example, if one nation-state brings about an initial improvement in its balance of payments by tariffs, quotas, exchange, depreciation or whatever, other

[29] See D. H. MEADOWS, D. L. MEADOWS, J. RANDERS & W. W. BEHRENS, THE LIMITS TO GROWTH (A REPORT FOR THE CLUB OF ROME'S PROJECT ON THE PREDICAMENT OF MANKIND) (Universe Books ed. 1972).

[30] See T. MALTHUS, AN ESSAY ON THE PRINCIPLE OF POPULATION (R. D. Irwin ed. 1963).

[31] See R. RICARDO, THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION (R. D. Irwin ed. 1963) which first appeared in 1817.

[32] See K. MARX, CAPITAL (3 Volume Progress ed. 1965). Essentially, Karl Marx attributed the economic value of commodities to the labour expended on them. Simply expressed, he reasoned that if the employer pays only subsistence wages (Malthus-Ricardo's "iron-law of wages") and collects from the customer the full value of the commodity, the capitalist thereby exploits the worker.

nation-states must suffer a net loss in export earnings. This will mean an immediate loss of income to these latter nation-states and unless they take compensatory action to maintain their incomes, they will suffer an unwelcome deflationary spiral. As their incomes fall, so will their exports. Similarly, necessity demands world-wide cooperation to solve such independent problems as inflation and unemployment.

The second illustration may be found in the present energy crisis. Real and threatened interruptions of supply in the western world are bringing about great changes in life-style. Modern Society is developing a new set of transportation, conservation, trade, exploration and financial policies to ensure a sufficient supply of energy. This "crash" program will indubitably invade and upset many established areas of human conduct.

John Stuart Mill [33] (1806-1873), writing in the middle of the last century, showed clearly that the distribution of wealth could be influenced by the will of man. There are no immutable ethics of economics. Now we observe nation-states, still influenced by the advocacy of John Maynard Keynes [34] (1883-1946), tampering with fiscal policies and monetary arrangements in order to achieve economic goals. Like Mill, Keynes espoused the power of government to promote changes which are considered desirable. But Mill went further. Mill denied the desirability of material progress as the ultimate goal. He recognized that shorter working hours would permit individuals to devote their talents and energies to other pursuits and would bring a better life-style to most people. He foresaw an ultimate "stationary" state of society in which population growth would be voluntarily limited and where there would be ample means to maintain all in reasonable comfort.

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[33] See J. S. MILL, PRINCIPLES OF POLITICAL ECONOMY (Collected Works of John Stuart Mill Volumes II and III, University of Toronto Press ed. 1965). See especially his comments on the "stationary state":

> I cannot, therefore, regard the stationary state of capital and wealth with the unaffected aversion so generally manifested towards it by political economists of the old school. I am inclined to believe that it would be, on the whole, a very considerable improvement on our present condition. I confess I am not charmed with the ideal of life held out by those who think that the normal state of human beings is that of struggling to get on; that the trampling, crushing, elbowing, and treading on each other's heels, which form the existing type of social life, are the most desirable lot of human kind . . . . But the best state for human nature is that in which, while no one is poor, no one desires to be richer, nor has any reason to fear being thrust back, by the efforts of others to push themselves forward.

Id. at 753-54.

[34] *See, e.g., supra* note 11a where the author states:

> [John Maynard] Keynes gave the members of the professional economic fraternity a new lease on life. They now had a pattern of thinking which they could use in the positions of advice and responsibility to which many were called in government, banking, and even business . . . . Adherence to laissez faire in the classical vein can rarely now be found except in the writings of members of the economic "underworld", or among politicians or public-relations experts defending some special interest against some special tax or regulation.

Id. at 130.

Attention would be diverted to a better distribution of the product rather than to merely increasing the product without limit.

Man can make society what he wills. The ethic of self-interest has developed because of the greed, the competitiveness and acquisitiveness of man. The ethic has performed beneficial services to mankind in its economic development but necessity and urgency now demand that the ethic be modified in the common good.

C. *Ethics and Religion*

Religion has a considerable impact on conduct. A belief in rewards and punishments after death obviously has a profound effect on the individual's earthly conduct.

Religion also interprets and integrates life; it must bridge a gap between the human self and some non-human entity or activity. At present there is a prevailing feeling that belief in a personal God and the supernatural is in conflict with human knowledge. But human knowledge has not given any explanation of the mysteries of the creation and of the universe in which we live, such as its boundless expanse, forever in ferment; a universe that is awesome in its very unfathomability. Religion attempts to rationalize and explain the most fundamental question of all: why are we on this planet? Human knowledge is unlikely ever to supply answers to such a question.

Because there is a complete ignorance of the place of the individual in the order or scheme of the universe, religious beliefs must necessarily be considered in the control of the individual's conduct in the social order. In a decision of the House of Lords in England in 1917, it was held that although the Christian religion was not part of the law of England, yet "the fact that Christianity is recognized by the law as the basis to a great extent of our civil polity is quite sufficient reason for holding that the law will not help endeavours to undermine it." [35] For example, a cardinal rule of the common law declares that conduct is judged for the purpose of legal liability by that of the reasonable man. As the conduct of the reasonable man is governed in the western world in many ways by the tenets of the Christian religion, Christian moral conduct must be taken into account so as to determine how a reasonable man conducts himself. In this way Christian and other religious precepts or morals support or derogate from the law of the land. Morals are not ethics. A Mohammedan residing in England might have different morals than the English but he may employ the ethical conduct of the English in his business dealings. So an individual's ethical conduct or code of ethics may be strengthened, weakened or, perhaps, nullified by his morals. However, as long as there is mystery to life, morals will be an important guide for individual conduct and, because of this, an important basis for ethics and values.

Religion to be a true religion must be universal, world-wide and applicable to all. Otherwise it will hardly deserve the term religion.

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[35] Bowman v. Secular Society Ltd., [1917] A.C. 406, at 428.

Hinduism completely denigrates the significance of human affairs. The Hindu attempts to find the ideal life through an exalted state of absorption in which he negates every movement of life and becomes one with a changeless absolute. To him wealth, power and fame are subordinate to the attainment of complete subjugation of the flesh to the spirit. The effect of such a doctrine on conduct would mean a complete detachment of the Hindu from the everyday affairs of life.

Buddhism teaches, somewhat similarly, that the ultimate goal of life is union with Nirvana. This is the enrichment of the personality to the point that it has been cleansed of all ignoble selfishness. The individual's self is absorbed in his greater self where pain, envy and greed do not exist. Buddhism is an inactive religion. It discourages war, but it would also appear to discourage social services. With its lack of interest in the structure of the world, Buddhism would hardly support anything more than a rudimentary social organization.

Taoism, Confucianism and Shintoism are mainly concerned with the conduct of the individual believer. Communism may be considered a religion in the sense that the political authority of the state has all power to prescribe rules of conduct. There is no attempt by Communism to give a philosophical explanation of existence, but Communism attempts to be universal by prescribing that all people must give blind obedience to the teachings and dictates of the political power.

Judaism and Islam prescribe certain rules of conduct for eternal salvation. Christianity, based on Judaism, also provides guides for right living but it has been the Christian movement and its preaching of universality and the brotherhood of man that has done more through the ages than any other movement to promote the fact of the common world family. [36] A recognition of this "fact" is desperately necessary now.

Religions are human doctrines. A sympathetic and intensive study of the world religions would go a long way towards an understanding of generally acceptable ethical conduct. This is education.

III. VALUES

A. *Introduction*

The common good has been defined as a system of conduct based on ethical rules. If there are no ethical rules, that is, objective rules to de-

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[36] *See, e.g., supra* note 4. The author comments:

> A scientific observer must, of course, record the possibility that this specific instance of religion is no more destined to be the final world-faith than the League of Nations inaugurated in 1919 was destined to be the final form of the World-State. That is only fair. But he must certainly add that the ecumenical movement in Christianity has done more than anything which has preceded it in history (more even than Stoicism) to render familiar the idea of a common world-family of human beings, possessing in common a single spiritual creed.

Id. at 257-58.

termine whether our conduct is good or bad, then such determinations must be dependent on the subjective choice of the individual or, in group action, on the subjective choices of one or more of the individuals who compose the group.

As individuals, or groups of individuals, have different values, inevitably choices will be necessary. How are choices between these competing values to be made? Two individuals might toss a coin or go to a favourable sign in the zodiac for a solution. But if they are to make an accurate and intelligent choice, they must have before them for analysis all of the consequences that flow from competing alternatives. Values, then, can only be precisely evaluated when considered in the light of consequences to which they contribute. For example, two individuals agree to go to a movie. One prefers one picture, the other prefers another. They arrive at an impasse. They then consider the alternative movies, the alternative modes of transportation, the alternative admission prices and so on. Finally, after considering all of the consequences, they agree on a particular movie. If, after all the consequences of the competing values have been examined, an impasse still results, the parties may either withdraw, resort to the toss of the coin, choose unreasoning force or submit to third party arbitration to break the stalemate.

The choice of values is complicated in the complex and large organizations of today. In a small group, with few members, individual members have many ways to express and make known their values. They may secure a position of power and influence, they may ingratiate themselves with officials or they may verbally express their views to fellow members. Such methods may not be effective but at least they generally satisfy the concerned member that his values have been considered. However, in large organizations, such as the corporation, the trade union or the nation-state, the great numbers constituting the membership preclude such comraderie, and necessitate a more sophisticated mechanism to obtain and resolve the multitudinous views and values of the individual members.

The best organization is one in which all its members have a voice in its control, and where the values of its members are accepted or rejected by the vote of all.[37] Such an organization recognizes the worth of the individual.

[37] *See, e.g.*, A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA (Mentor Book ed. abr. 1956) which, written in the first part of the nineteenth century, is still one of the most incisive examinations of democratic institutions extant; and the author's concern for the survival of freedom and democracy at that time has just as much meaning today. In his introduction he states:

> I can conceive of a society in which all men would feel an equal love and respect for the laws of which they consider themselves as the authors; in which the authority of the government would be respected as necessary, though not as divine; and in which the loyalty of the subject to the chief magistrate would not be a passion, but a quiet and rational persuasion. Every individual being in the possession of rights which he is sure to retain, a kind of manly confidence and reciprocal courtesy would arise between all classes, alike removed from pride and servility. The people, well acquainted with their own true interests, would understand that, in order

A particular problem of modern society is the loss of individual significance. [28] The individual's unrest, dissatisfaction and even violence may be explained in great part by this fact. In the nation-state, the corporation, the trade union and other large organizations the individual is, perhaps unconsciously, asserting a cry for recognition. If an individual participates in the ultimate decision, this participation will do much to engender loyalty, tolerance and respect. It will provide a forum for the individual to endeavour to persuade others to recognize his values. He is more likely to accept an adverse majority opinion with greater equanimity than otherwise. Such organization will give the widest amplitude to the understanding and consideration of consequences that must be studied before the best decision is reached. The individual, conscious of all this, will more likely take pride in his membership, exert stronger efforts on the organization's behalf and, generally, will be a more responsible and enthusiastic member. By discussion and other participatory methods, the individual will learn more about the values of others, their needs, wants, hopes, desires, dreams, passions, interests, delusions and illusions. He will have more respect for the rules of the organization as he becomes aware of their need, and finally more tolerance and understanding of its goals.

The problem presents itself: How can a large organization with hundreds, even thousands of members, be so organized as to permit effective management on the one hand and yet, on the other hand, accord its decisions with the expressions of wishes of its members? Will not its operations be ineffective or, at least, stultified by delay? Will notable officials be denied positions of trust because of their lack of general approval by the membership? How will the membership be informed to such a degree as to make intelligent decisions? These are difficult questions, of course, but man's ingenuity will not be too greatly taxed to devise structures for the various organizations of our society which provide a method or methods of arriving at decisions or choices that are based on discussion—educated discussion—that are accepted by the majority of the membership by force of reason alone.

Since time began our globe has known many systems of organization. In its most complex form, the nation-state, monarchies and aristocracies have tended to be the most natural. High birth provided the means whereby a monarchy or a group of aristocrats could perpetuate themselves as rulers. By engendering loyalty, usually by providing a form of protection through their control of the armed forces and other powerful institutions, they could

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to profit by the advantages of society, it is necessary to satisfy its requisitions.

Id. at 32.

[28] *See, e.g.*, R. MAY, POWER AND INNOCENCE (W. W. Norton ed. 1972) where this is the author's theme. He maintains:

> Ideally, we must find ways of sharing and distributing power so that every person, in whatever realm of our bureaucratic society, can feel that he too counts, that he too makes a difference to his fellows and is not cast out on the dunghill of indifference as a nonperson.

Id. at 243.

effectively stifle opposition. In time most became irresponsible and extravagant. They were then succeeded by oligarchies, dictators or democracies.

Oligarchies, such as a military clique, a group of merchants or even a corporation, need no further examination. Dictators require little explanation. Democracies have existed in their present form only since the American Revolution. Although historians tell us that oligarchies and democracies were often fighting in ancient Greece, the democracy of that time offers no fair test of popular government.

Democracy developed its widest base of popular support in America in the nineteenth century. There is little doubt that it is the most difficult form of government. It requires the widest spread of intelligence. The average intelligence of its citizens is crucial to an effective democratic rule. For, if the individual is to have his values taken into account by the decision makers, then it is necessary that he not only acquire more of the skills of political activity but also that his values be worth consideration. In a truly democratic state, the voice of the individual must be, not only in theory, but also in practice, supreme. The ballot of the citizen may agree or disagree with the prevailing course of action but it must be an educated ballot.[39] If it is ineffective, it is not a truly democratic system, it is an oligarchy or even a dictatorship.

Many nation-states have effective democratic governments but many rest on precarious foundations. War in its various forms, failure of the economy to distribute the wealth properly and ineffective social measures will open the way to oligarchic or dictatorial rule. Similarly, if there is undue prominence of pressure groups, poor quality representation or dilatory government procedures for effective action, the social group will not have a true democratic process.

There is another concern for the democratic system of the complex governmental organization of today. It is stated[40] that the problems of today defy collective wisdom; that modern problems of transportation, of financial arrangements for such gigantic projects as education and unemployment, of great enterprises to eradicate air and water pollution and of urbanization cannot be solved by a majority vote. They require expertise and professional administration. This raises the question whether solution

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[39] *See, e.g., supra* note 9, at 240 *passim*. It was Aristotle who said that the best system is some arrangement between democracy and aristocracy; because people are so fickle in their views and so easily misled that the ballot should be limited to the intelligent.

[40] *See, e.g.*, H. WHEELER, DEMOCRACY IN A REVOLUTIONARY ERA (F. A. Praeger ed. 1968). The author comments:

> The more complex a society becomes the more intricate are its functions and the more difficult is their coordination . . . . Everyone must learn to do his job correctly and at the right time. The work of the group or organization to which the individual belongs must fit just right with that of all others and the whole system must function in harmony . . . . The huge industrial enterprise, capitalist and socialist alike, must today obey roughly democratic principles in order to maintain its harmonious operation.

Id. at 73-74.

by the expert and administration by the professional is real democracy? Or is it a form of guided oligarchic control? The answer would appear to be that, as society becomes more complex, so the responsibility of the individual increases. Every individual will never attain the expertise or professionalism necessary to have a detailed knowledge of the crucial mechanisms involved. On the other hand, the individual must acquire a sufficient knowledge to be in a position to make knowledgeable assessments of the substance and direction of the nation-state. An individual, then, might not know how to make an atomic bomb, but he knows that it should not be made.

De Tocqueville, writing about American democracy in the nineteenth century, observed that the "passion for equality is every day gaining ground in the human heart." [41] Perfect equality will be some time in coming but equality in the sense of having a vote in the direction of an organization in which the individual is a member is hardly beyond his horizons. Indeed the very complexity of society today, where all must participate, perform tasks and make decisions, will require some form of democratic organization as each must cooperate in and consent to the operation of the whole. It is the only system in which the individual can fulfil himself and contribute to the community in the complex society that mankind is encased in today.

A truly democratic organization will provide a method of mediation between the individual and the organization. It will give an arena to the values—the choices and the consequences—and thereby provide a forum for the struggle of ideas. It will utilize and crystallize the valuable knowledge and experience inherent in the masses. It will also provide a market place for the testing of good and bad. It will thereby, in some measure, take us further along the path in determining the common good.

B. *Three Essential Conditions for the Democratic System*

It has been postulated that the common good may be found in a system of ethics or generally prevailing values determined in a democratic polity. We now turn to an examination of three essential conditions to support this view of the common good. [42]

First, material well-being of all is a critical prerequisite. An individual must have the essential attributes of existence, health, wealth and spiritual well-being before he can properly behold himself as a participating member in the community. He must have the minimum of life's necessities before he can fully develop and express himself. If an individual is born and raised in a poor environment—with poor medical attention, poor food, poor lighting—his chances to fulfil himself are poor, and his contribution to the community is likely to be poor also. Indeed he may become an object of welfare handouts, discrimination and eventually will probably become an enemy of the community in which he has festered.

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[41] *Supra* note 37, at 189.

[42] There may be situations to guard against, such as superior intelligence of one group or, possibly, the tyranny of the majority (a concern of de Tocqueville) but they are too remote to be of concern at this stage.

Many nation-states have multitudinous and varied programs to deal with problems of poverty within their borders. Welfare programs, hospitalization plans and unemployment schemes abound but they represent a hodge-podge of piece-meal palliatives to a chronic situation. Until every individual is assured (or guaranteed) a share of the world's material resources in some form, these programs will remain make-shift in nature, temporary and transitory.

Internationally, aid programs by the developed countries in favour of the developing countries have been in operation for more than the past twenty years. At present they are faltering. The developed states are not realizing goals that have been set, and concepts of aid, heretofore untried, are being challenged. Examples abound. It is now realized that the concept "maximum growth" in industrial capacity does not necessarily operate in the best interests of all developing countries or their inhabitants. The developed countries show signs of competitiveness in the type of aid they give; they refuse to pay adequate prices for raw materials and they continue to tie their aid with various conditions that result in more capital leaving the developing state in the form of profits than enters in the form of aid.

The second prerequisite for a democratic organization is found in its structure. The organization must be so arranged to provide the wisest minds, personalities and procedures to attain the desired goals. If the individual is to express himself fully and completely, then the structure of the organization must be in accordance with the fundamental concepts of freedom, justice and equality. These concepts must be defined in such ways as to have meaning for all in order to provide guidance for conduct, and they must be flexible enough so as to permit the attainment of the goals of the organization in a manner consistent with the maximum expression of each of the individuals who compose it.

The arrangement or structure of the organization will depend on its goals. The local S.P.C.A. obviously will not require the same organization as the nation-state. Similarly, the organization of a developed industrial nation-state will be more complex than that of a developing nation-state with basically an agricultural economy. Indeed many developing states do not have the background or the knowledge, or consequently the desires that inspire men towards such goals as freedom, justice and equality.[43] Individuals must be exposed to experiences, fanned by information, inflamed by denial and nurtured by education to love and cherish the implications that emanate from these words.

The third prerequisite for a truly democratic organization is education. The work of the individual connotes many fundamental rights but it also connotes many fundamental duties. The individual has a fundamental right to education in order to express himself fully. He has a fundamental duty to learn to think and act as a statesman, to feel personally responsible for all, and to share, in some measure, in the decision-making of the community.

[43] *See also* text *infra* at note 58 *passim*.

He has a fundamental right to fulfil himself in accordance with his own dictates and inclinations and the correlative duty to respect the right of others to do so too. He has a fundamental right to believe in and pursue endeavours of his choice so long as he does not interfere with the rights of others and endanger the community as a whole. He has the right, in essence, to become a full person and the correlative duty to contribute to the community. How does the individual realize these rights and respect these duties? The answer is education.

Aid, organization and education are propounded as necessary goals for a real democratic society. These prerequisites will be examined from the point of view of how close they are to the status of ethics or values, and some comments will be ventured on how they may be so formulated.

C. *Means for Achieving these "Essentials"*

1. *Aid*

(a) *The ethic of aid*

The small planet on which we live is divided economically into developed and developing countries.[44] The developing countries differ radically in social, economic and political standards and structures. Their populations do not receive adequate bodily sustenance and are inadequately housed and clothed. In many of these countries, systems of land holdings, distribution and agricultural methods have not changed for centuries. In most of these countries, the individual is deprived of the most rudimentary amenities of life, trade with other countries is negligible and public administrations are often inadequate and ill-adapted to the present needs.

All is not well in the developed countries either. Great spreads of wealth are apparent in them. Poverty, disease and illiteracy exist in many locations. It is noteworthy that they are often adjacent to areas of great affluence, thus illustrating the proposition that economic growth does little for the poor; it only assists the rich in getting richer.[45] The problems are

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[44] See REPORT OF THE COMMISSION ON INTERNATIONAL DEVELOPMENT, PARTNERS IN DEVELOPMENT (L. B. Pearson chairman) (Praeger ed. 1969) [hereinafter referred to as the Pearson Report] from which the phrases "developing countries" and "developed countries" have been borrowed. The Pearson Report notes:

> The developing countries number more than one hundred with a total population of about two-thirds of mankind . . . . There is no firm line, however, between developed and developing countries . . . . Few would disagree that countries with per capita incomes of less than $500 per year fall unambiguously in the category of less developed.

Id. at 23.

[45] This is mainly so because the things that the poor man needs are only obtainable at prices he cannot afford. *See generally* J. HOLT, FREEDOM AND BEYOND (Dutton ed. 1972). The author comments on this point that:

> The reason is simple. Nobody wants to compete for the poor man's buck. There is always more and easier money in selling luxuries to the rich than necessities to the poor . . . . To put it another way, in a market economy money goes where money is.

Id. at 142-43.

immense and bring into question the validity of the ethics and values of the present industrial age.

The prerequisite for the fulfilment of the individual's potential in today's complex society requires a concerted effort to raise his material standard of living. Why should there be an ethic of aid to less fortunate individuals? Why is the well-being of the weak the concern of the strong? Why should the ones that have give to the ones that have not? Is not man by nature a competitive animal in a world where the strongest, the wisest and the wealthiest survive? Is not this the natural order of things? Why, then, should the poor be aided? Such questions are highly philosophical and impossible to answer to the satisfaction of all. But right reason demands an ethic of aid.

An ethic of aid should exist for the purpose of peaceful relations on our limited globe. Every individual, sooner or later, yearns for freedom, justice and equality. The eternal quest for these ideals has driven man since time began, and history is replete with illustrations of violence, bloodshed and tears perpetrated under their name. Until some degree of freedom, justice and equality is attained by all of the globe's inhabitants, and solidified into rules of ethical conduct or generally recognized values, there is no reason to expect any cessation of the eternal struggle. Anything else will only exacerbate them.

Most nation-states subscribe to international aid; it is at least a generally accepted value. Nationally, all developed countries are dedicated to raising the material standards of living of their citizens, if for no other reason than practical politics—it is easier to control a prosperous, happy populace than a surly, unruly one. However, reasons to aid the less fortunate in our society go deeper than this. Aid is distributed because the consequences are grave not to do so, and because it is not *natural* for one, or a group, to have more.

There are practical reasons for giving aid. A prosperous community is a productive one. The planned and discreet use of the world's resources reciprocally assists the developed country as well as the developing one. Any increase in international trade is advantageous to all participants. This is true not only of trade. The enhancement of educational achievement among the peoples of developing countries will not only increase their capacity to help themselves but will also supply wisdom to the world community.

The Pearson Report points out that the concept of a world community supports the giving of aid. It is an assertion of faith in the future, as well as of the conviction of the need to act now. [45] Our globe is rapidly growing smaller, particularly in the transportation and communication fields, as technology advances. Human survival means some form of world organization is necessary in the not distant future—a world community that will ensure peace, control the population, regulate the use of the environment and administer the utilization of natural resources.

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[45] *Supra* note 44, at 7 *passim*.

Finally, the fulfilment of the individual's destiny on this earth and the enrichment of the collective whole by his ultimate contribution requires that one's fellowman at times receives material assistance from others.

(b) *Some considerations*

In many of the so-called developed countries, it is estimated that a high proportion of the denizens live below the poverty line.[47] Unemployment is a problem and is aggravated by inflation. Regional economic disparities cause difficulties, and adequate methods of adjustment are still illusory. Urbanization is a postwar phenomenon, precipitated in great part by the passing of the uneconomical small farm and the accelerated movement of industrial operations to urban areas. Transportation, consequently, in the form of automobiles and buses in the urban centres has become a focal point of pollution and congestion, contributing to the dry-rot of the central core and to unsavory city living. Until now basic assumptions of the industrial society—such as the goal of material wealth, the rewards of corporate growth, the exaltation of economic prosperity as manifested in the Gross National Product—have been unchallenged. Such sore points as unemployment, regional disparities and other blights were considered flaws that could be corrected by appropriate action. Now we wonder. These and the host of other problems that the industrial world faces are probably interconnected with the "system", with its ethics and values of full production, the accumulation of money and even hard work itself.

The Pearson Report states that aid to developing countries should take the form of public loans, grants, private investment, technical and educational assistance in research, improved international coordination in trading policies, regional and international banks for regulating the debt problem and foreign exchange controls. No one is likely to quarrel with the magnanimous concept but what are the *implementing* policies? Should trading policies take precedence over other types of foreign aid? Should there be an emphasis on the free enterprise system? Is this system which has done so much for the predominancy of the western nation-states best able to provide the productivity and technical progress necessary to satisfy at least the basic needs of all? Should particular difficulties in giving aid be hurdled first? For example, unemployment is considered a world-wide problem at the present time. Should aid, then, be in the form that will offer the best employment opportunities for all with the glamour of rapid industrialization subordinated to this end? Industrialization, it is argued, often perpetuates the established order of the developing countries and thus tends to maintain the concentration of power in the hands of a few.

What, then, are the priorities? Perhaps the first concern should be to

[47] *See, e.g.*, REPORT OF THE SPECIAL SENATE COMMITTEE ON POVERTY, POVERTY IN CANADA (1971) which indicates that the overall poverty rate in Canada is approximately twenty-five per cent; one Canadian in four is a member of a family unit whose income is below the poverty line. The Special Senate Committee placed the poverty line at $5000 for a family of four persons.

concentrate on the character and personality of the individual; to engender in him a sense of responsibility and duty to himself, to his community and to his fellowman; to make him aware of his heritage and to point a path to the future; to make him as proficient as possible in participating in the social, economic, political and cultural activities of his group and, above all, to instil in him the ability to discern good from evil. This is education.

The Pearson Report sets an arbitrary figure for the amount of aid which should proceed from the developed to the developing states. It states that the "best known target based on the ability to pay is certainly the proposition that the flow of resources to developing countries should be at least 1 per cent of the gross national product of the rich countries. As we have just explained, this does not imply that these countries are being asked to 'give away' 1 per cent of their product, but only that the flow of private investment, public loans and grants should reach that level." [48] Some target is probably desirable but to put a figure on human aid will probably do more harm than good. Aid should be considered a mutual "giving and receiving" rather than a "hand-out", a means of knowing better one's less fortunate neighbour and a method of disseminating good-will with the realization that the donors have much to receive. Aid must take into account the ethics and values of the people of the developing states, their hesitancy to substitute them for others and the cultural, environmental and ethnic reasons for the differences in their ethics and values. Perhaps the infusion of capital and technological know-how will only antagonize groups in certain developing countries. It is at least questionable whether economic and technological development is a universal goal to which all people must aspire. This is becoming clearer as many of the economic ethics and values of the western world become more and more suspect. [49]

Research, studies and education in the social sciences have not kept pace with those in the more exotic physical sciences. [50] We lurch from crisis to crisis attempting to solve the problems in an ineffective pragmatic way. We have not answered such basic social questions as whether public housing assists the well-being of an individual or serves to make him more dependent; whether education assists the economic status of individuals; whether education results in a decrease in crime or whether manpower training has any effect on the general employment level.

In the developing countries, probably the major difficulty is political. The Pearson Report refers to the restrictions on social mobility and general opportunity because of caste, class and other barriers in which individuals have been encased for ages. Land holdings must be reformed in order to provide incentives for future investment and for increased production. Administrative reform is required to apply development plans and to enable the

[48] *Supra* note 44, at 143-44.

[49] *See, e.g.*, note 29. The study shows that present exponentially rising growth trends will result in economic growth being halted within one hundred years.

[50] *See, e.g.*, MacRae, *The Crisis of Sociology, in* CRISIS IN THE HUMANITIES (J. H. Plumb ed.) (Penguin Books ed. 1964).

government to be more responsive to individual needs. Tax structures must be reorganized in order to more equitably distribute the burden and to promote the collection of taxes without regard to political or personal status or economic power. Corporate laws must be amended to curb excessive concentration of power.

Then there is the population dilemma—and the Pearson Report says in this connection: "No other phenomenon casts a darker shadow over the prospects for international development than the staggering growth of population." [51] There is little doubt that this dilemma is a major cause for the vast discrepancy between the rates of development in the rich and poor countries. There would appear to be no easy solution. But if we are to build a better world, the growth of population must be geared to the capacity to provide a decent standard of living for all. It is unfortunate perhaps, but it is the poor that multiply.

Unemployment and urbanization are common problems in both the developed and developing countries. Unemployment results from the failure of industry and government to provide jobs to handle the increase in population growth. Many feel that aid is disregarding the human factors. Some say that the only solution is economic growth but now others feel that we must consider the problems of a *no-growth* economy. An unhappy dilemma, perhaps, but individuals are being driven to realize that the common good is not necessarily served by new and more goods and services. As John Stuart Mill noted, [52] we must concern ourselves with a better distribution of product. We must also consider other values of the good life—such as cultural accomplishment in all its forms—as sources of new and better ethics and values. The inevitability of a no-growth economy will supply the impetus in the right direction. However, until the inevitability is apparent, positive policies on local, regional and national scales will continue to be employed to combat unemployment with questionable success.

The Pearson Report indicates that increasing research, massive investments, better marketing and distributing methods are needed. To have healthy populations, advances in nutrition require research, development and distribution. Agriculture must not be subordinated unduly to industrialization which makes for unemployment, waste and, most important, futility. There are also problems in areas which the Pearson Report describes as "external constraints". [53]

The Pearson Report emphasizes the importance of education and research. It states that developing countries must:

> [D]evote considerably greater shares of their resources to research and de-

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[51] *Supra* note 44, at 55.

[52] See *supra* note 33, at 38-40.

[53] See *supra* note 44, at 69 *passim*. It is said:

> The developing countries face problems both in increasing their earnings of foreign exchange and in the increasing claims on available foreign exchange of rising debt payments and other essential commitments.

Id. at 69.

> velopment, if only as a means of economizing on their scarce resources and making more intensive use of their potential. To this end, they must develop their ability to identify their human and natural resources and the uses to which these might be put, to select those areas where science can make its greatest developmental contribution, to choose the most suitable technology and to concentrate their resources in a coherent science policy that is reflected in education and training as well as in research.[54]

But it is to be hoped that education will soon go far beyond this. Education is a fundamental human right; it must be developed to its highest potential as measured by the capability of the individual. However, in many developing countries, education may at first be confined to learning basic hygiene, basic life skills and basic skills of child-conceiving, bearing and raising.

As the problems associated with aid to individuals unfold, it is apparent that aid to those in developing countries differs only in degree with those in the so-called developed states. Giving aid presents the challenge of locating the problems, assigning to them their priorities and then solving them.

(c) *Some Suggestions*

It must be emphasized that *social* scientific research has fallen behind that in the physical sciences. We do not know the effect of the eradication of slums on the general welfare of the slum's inmates. We do not know how far crime is associated with the ghettos. We do not know how far welfare programs assist in the common good. Do they perpetuate idleness? Do the "hand-outs" go to the ones in need? We do not know the effect of a guaranteed annual wage. Will it make for stagnant, shiftless and irresponsible individuals and social groups? These, and other basic questions, need answers and until a general philosophy is forthcoming, a pragmatic and piece-meal approach will be, for the most part, both inevitable and ineffectual.

On the international scene, the Pearson Report makes a number of suggestions in answering the problems posed in the giving of aid. It states: "Trade is not a substitute for foreign aid . . . . In the long run, only the evolution of their [the underdeveloped] trade with other nations, together with a growing capacity to substitute domestic production for imports, will enable the developing countries to grow without the help of concessional finance."[55] If this is true, the Report continues, then, to stimulate trade, the developed countries should abolish import duties and excessive excise taxes on primary commodities produced exclusively by the underdeveloped countries and there should be financial support to create buffer stocks in support of commodity agreements. Trade must be greatly expanded between the developing countries themselves, regional banks should be more strongly supported and they should help in financing export credits to developing countries. But trade does not always benefit the individual.

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[54] *Supra* note 44, at 66.
[55] *Id.* at 80.

The Pearson Report maintains that when the developing countries reach the goal of five or six per cent economic growth per year, they should be self-sustaining. Aid performance should be linked to the performance of the aid receivers. Debt arrangements for relief should be built within a framework of orderly development, and debt relief should be recognized as a legitimate form of aid. Aid in its various forms must be more effectively administered and steps must be taken to "untie" aid. Donors should be given more leeway in permitting the use of their funds for purchases in the developing countries.

Technical assistance should be increased, the Report urges. It should have more institutional support and career opportunities should be made available in these fields. Family planning should be made available to all, and birth rate control must be stressed by both donors and recipients when planning aid programs. Finally, the Pearson Report concludes that some form of international machinery must provide greater leadership and control to efficiently coordinate the international aid system.

The Pearson Report gives prominence to education and research in this wise stating that the "pivotal role of education in development policy has been widely recognized by aid-givers . . . ." [56] Although "the personnel sent to teach and to administer schools and institutions of higher learning have been reasonably well trained to fit into existing structures and . . . . have helped to preserve linguistic and cultural ties . . . [o]n the whole, however, it must be said that aid from abroad has served mainly to buttress classical methods, applied by unquestioning teachers, both local and foreign, trained in a mold cast over a hundred years ago." [57] The Report then reasons: "Aid to education should concentrate on the adaptation of the organization and content of educational systems in low-income countries to their economic needs and social conditions." [58]

Generally the Pearson Report recommends greater resources for (a) research and experimentation with new techniques, including television and programmed learning, and (b) a systematic analysis of the entire learning process as it applies to developing countries. This is the fundamental problem of education itself.

A basic prerequisite to the fulfilment of the individual's potential, and thus his worth, is for the individual to have a share of life's material offerings. The ethic of aid to obtain this ideal is in an embryo state of development but would appear to be well entrenched.

The ethics and values of the methods to attain the goal are not defined. This poses the question whether the developed countries are interested in creating a social, economic and political climate where all individuals will share a milieu and have an equal opportunity to develop their potential and to participate fully in the life of the community. Otherwise expressed, the question is whether the ethic of aid is to be nullified by a lack of ethics and

[56] *Id.* at 199.
[57] *Id.* at 200.
[58] *Id.*

values to render it real and not illusory. Are the favoured few prepared to pay more in such forms as higher taxes, fewer luxury goods, slowed industrial activity and more welfare programs which, in time and in some form, will amount to a guaranteed annual allowance to every human being on this planet? The fact is that the ethic of self-interest is still in control. The rich will not give up their wordly goods lightly. This fact was sadly but amply illustrated at the third United Nations Conference for Trade and Development held in Santiago, Chile, early in 1972. There it was disclosed that trade between the developed and developing countries is actually decreasing. It was also clearly shown that aid in many cases is nothing more than support for the government with which the developed country is in sympathy, or, for some reason, wishes to assist. Because of this, the developed countries sustain top-heavy administrations and age-old social and educational systems that only exacerbate the problems associated with balance of payments, unemployment, subservience and the like.

The ethics and values that are required to render effective aid will come only when the ethic of self-interest is modified to the extent necessary to attain the goal. If human nature remains as it is, one is driven to the conclusion that aid in the necessary amount and form will be forthcoming only when nation-states and individuals consider it in their self-interest to provide such aid. It has been mentioned that this may be brought about by necessity and urgency. There are real signs that such necessity and urgency now exist. The World Conference on the Environment, for example, held in Stockholm in 1972, manifested a real awareness on the part of the delegates of the possibility of this planet becoming unfit for human habitation. There were indications of an awareness that the crisis is global, that the crisis is upon the world now and that its resolution will mean sacrifices of great magnitude. Inevitably will come the realization that all peoples are brothers on one planet. Although there were no express indications that a common ideology or a supra-government is now in sight, yet the very magnitude of the crisis and the urgent haste for immediate effective action would appear to augur a consciousness of an international community that is just beginning to grow. [59]

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[59] *See, e.g.*, B. WARD & R. DUBOS, ONLY ONE EARTH (An unofficial report commissioned by the Secretary-General of the United Nations Conference on the Human Environment, and prepared with the assistance of a 152-member Committee of Corresponding Consultants in 58 countries) (Norton ed. 1972). The authors comment:

> Yet, in fact, for at least a century, some habits of cooperation have been accepted by states simply through recognition of their own self-interests . . . when governments are faced with such realities (as chaos in world communications), they have exercised their inherent sovereign right to share voluntarily their sovereignty with others in limited and agreed areas of activity. In the twentieth century, as a consequence of an even greater overlap between supposedly sovereign national interests, the number of international treaties, conventions, organizations, consultative forums, and cooperative programs has multiplied rapidly.

Id. at 214-15.

2. *Organization*

(a) *Organization and the ethic of final settlement of disputes*

Every social group has an internal procedure through which it formulates its goals and the methods to attain them. The family, the university, the corporation, the trade union and the nation-state have particular forms of government that involve activities roughly corresponding to legislation, administration and adjudication. Although the family, for example, may have no formal arrangement to decide on goals and methods, it will follow a pattern either consciously or unconsciously. Perhaps the father or the father and mother will decide arbitrarily on the purchase of a new car. Or perhaps the decision will be made at a full meeting at the dinner table. To attain this goal, it might be necessary to curtail a holiday trip. All the members may agree, a majority may agree or, perhaps, the father and mother may jointly make the final decision.

The extent of participation of the students of a university, the shareholders of a corporation or the members of a trade union in the decision-making process of the organization may characterize it as democratic, oligarchic or dictatorial. Democracy is the best form of government. But true democracy depends on many factors. It requires the largest possible base of participation by the membership. With respect to the nation-state, this means a low voting age requirement, few or no property or other qualifications, careful arrangement of voting constituencies, election expense limitations and so on. True democracy requires that unfettered flow of information so necessary to permit an appreciation of any point in issue. It also demands a high intelligence level among the voters.

Inevitably the goals and methods of one group will conflict with those of another. Thus a group of merchants may attempt to fix prices at a certain level which conflicts with the group's policy of free competition, or a group of workmen may attempt to force higher wages from a recalcitrant employer. Even in the most rudimentary social group, there is some method for final settlement of disputes between competing groups. Some authority must finally determine the issue or some means must be provided by which the parties may arrive at a final settlement. Otherwise the social group is immature and its structure incomplete if the parties have no alternative but to resort to unreasoning force to finally settle the issue.

Herein lies the major obstacle to effective international organization. Only nation-states are members of the international community and the nation-states refuse to permit third party intervention in their major disputes. Traditional international law lays down that to become a member, the nation-state must have a defined territory, a permanent population, a government and the capacity to enter into relations with other nation-states.[60] This

[60] However, no general definition of states can be given for all purposes of international law and relations. The LEAGUE OF NATIONS COVENANT art. 1, para. 2 provided that "[a]ny fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-

classic definition is hopelessly out-dated but only exceptionally are the laws and institutions of the international community concerned with individuals or entities [61] other than the nation-state.

The organization known as the nation-state is relatively recent in origin. The break-up of the feudal system, the fraction of the medieval Roman Church into national churches, the rise of the merchant class as a powerful force crying for protection of commerce, the nationalistic responses arising from the Napoleonic wars, tariffs, quotas and various other economic expedients for the protection of industrial activities within certain areas, and tales of the exploits of two World Wars and the consequent glorification of one people over another are among the factors which have subordinated loyalty to one's fellowman to loyalty to one's fellow national. [62]

There is little dispute that the nation-state has in many ways advanced the interests of its denizens but there is definite evidence of disenchantment with it as an organization to meet the present urgent needs of mankind. As already noted, [63] there are more and more outspoken references today to the international cooperation required for the giving of aid, the eradication of pollution and the regulation of the use of our natural resources. In particular, the resources of the sea are being mooted as belonging to the masses of mankind and not as the exclusive possession of the powerful or contiguous nation-state. Also the fossil supply sources of energy are demanding a global approach to their exploitation, transportation, use and conservation. Similarly we are told that "a newly-recognized, inherent

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thirds of the Assembly . . ." provided that other conditions were met. The U.N. CHARTER art. 3 provides for membership only for "states" and adds in art. 4, para. 1 that prospective members must be "peace-loving states" willing to "accept the obligations contained in the present Charter and, [who] in the judgment of the Organization, are able and willing to carry out these obligations."

[61] *See, e.g.*, W. BISHOP, INTERNATIONAL LAW CASES AND MATERIAL (3rd ed. 1971) where the author comments:

> There is nothing inherent in the individual to make him an "unsuitable" person for international law, though the orthodox theory has been that normally individuals are not persons of international law—that the rights and duties involved under international law are those of the state, with only national law applying to individuals . . . .
>
> Nevertheless, there is considerable evidence in both practice and theory that the international legal personality of the individual is becoming recognized . . . . In many . . . aspects, modern practice sees an increasing recognition of such personality of individuals.

Id. at 460-61.

[62] *See, e.g., supra* note 7 where the author comments:

> So the concept of the nation-state, which has managed to cripple the advance of civilization, has managed to solve none of the political problems it has raised, unless by virtue of its sheer absurdity. And, where civilization has pushed ahead in spite of all, it is where the intellectuals have found the strength within themselves to put their faith in mankind before any national prejudice . . . .
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> "Man", said Renan, "is bound neither to his language nor to his race; he is bound only to himself because he is a free agent, or in other words a moral being."

Id. at 159.

[63] See *supra* note 59.

human right: the right to roughly equal living space *per capita* . . . will require voluntary large-scale movement of individuals across national boundaries . . . ." [64]

Scientific and technological discoveries are often global in effect. In many cases their fruition, application and exploitation demand international collaboration. Developments in armaments, in space exploration, in the medical and communication fields attest to the fact that scientific and technological discoveries require the widest amplitude possible in order to develop and regulate their potential. Such discoveries, and particularly their application and exploitation, are not national. The atomic bomb is an example.

There appears little doubt that the financial structure of the world community is on the brink of chaos as balance of payments, foreign exchange rates, tariffs, quotas and other financial and monetary gimmicks make a horrendous mess from which mankind can only extricate itself through a system of international cooperation that goes far beyond anything attempted to date. It is also worth noting that multi-national corporations not only require regulation on the international level but they are fostering the development of a world-wide system of collective bargaining that is heralding an era of trade union organization and action on a world-wide scale.

Politically, the examples of the intervention of the United States in Viet-Nam and of Russia in the Middle East amply illustrate how ineffective the nation-state—indeed the super-nation-state—is in its bid to maintain international order. It is arguable that these nation-states have compounded violence by their unfortunate bungling; at least, the evidence appears to indicate that their interference has solved no problems and created more. The fundamental reason for the existence of the nation-state, that is, the protection and security of its nationals, does not now hold true.

It is becoming more and more apparent that the horrors of war, as well as our environmental and economic interdependence, are supplying the impetus towards instilling in us a sense of a community arrangement transcending the nation-state. These matters could in themselves furnish the necessary degree of common interest upon which a worldwide society could be based; a society in which all individuals are part of a single system; a society in which all are animated and directed by ethical rules formulated in the light of a single, total and common good.

How can the common good, either in ethics or values, be expressed on an international scale? To some, revolution is the way. They reason that the world was spawned in this condition and that it is a natural way for changes to be introduced. Passive dissent is the way for others, that is, non-violent, non-observance of the laws of the establishment. This type of civil disobedience has had some success but it is likely to spawn violence

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[64] MacDonald, Morris & Johnston, *International Law and Society in the Year 2000*, 51 CAN. B. REV. 316, at 325 (1973).

or apathy.[65] To a number, the democratic way is preferred but letters to one's representative, the ballot box and debate are the tools of a mature society, and unfortunately not all societies are mature.

There is another way. This way may be found in awakening, stimulating and nurturing the consciousness of the peoples of the world. This way is exemplified and strengthened by the great strides that have been taken in the past quarter century in assisting the underprivileged in medical, educational, economic and political affairs and in the rapid and widespread growth of respect for human rights and fundamental freedoms. This consciousness in all individuals must be awakened, stimulated and nurtured to the point where all have a knowledge of the true facts of international cooperation and the reasons for laws and sanctions; where all have a confident image of the world in which they live; where all recognize their duties to their fellowmen, including a respect for the rights and privileges of others and where all have an integral and basic function in our global community. This consciousness arises from education.

(b) *Three cardinal principles of organization—freedom, justice and equality*

The Universal Declaration of Human Rights[65a] was adopted by the United Nations in response to the ever-increasing demands of all peoples for respect for basic ethics and values, for greater participation in the processes of their government for equal and adequate access to global natural resources and material goods, for the skills and processes necessary for the raising of living standards and for the opportunity to achieve health and well-being.

The experience of the United Nations in securing the application of these principles to individuals has not been promising. The United Nations has no powers, doctrines or procedures for protecting and enforcing these human rights and fundamental freedoms. Their protection and enforcement lies solely within the control of the signatory states and often depends on the effectiveness of national constitutional procedures. Many modern nation-states, such as the United States of America, have incorporated basic human rights into their constitutions. Others, such as Great Britain, prefer not to have these rights inscribed in a formal document and instead rely on legislative respect for, and judicial determinations of, such rights for their effective application. These states have a storied background of historical struggle for, and pragmatic application of, human rights that appears to ensure their continued observance. Developing countries and older nation-states with a history of despotic government, conflicts between classes and ethnic groups and other types of social unrest prefer, and probably require, a written definition of human rights.[66] They would then represent statements of policy

[65] *See, e.g.*, MacGuigan, *Democracy and Civil Disobedience*, 49 CAN. B. REV. 222 (1971).

[65a] *Supra* note 8.

[66] *See, e.g.*, S.A. DE SMITH, THE NEW COMMONWEALTH AND ITS CONSTITUTION (1964), and particularly Chapter 5.

and goals that probably will not be lightly disregarded. Generally, however, written statements defining human rights remain at best vague standards and are subject to continual judicial interpretation. [67]

After the substantive right is clearly defined, constitutional and legal procedures must exist to protect and enforce the rights. In those states that are based on the common law tradition, human rights have been declared, protected and enforced by the judicial arm of government for a long period of time. If historical circumstances support their declaration, preservation and enforcement, it makes little difference whether they are expressed in a written document or not. But in developing countries and other nation-states with different histories, the desire for firm, written expression of these rights is understandable. [68]

The concepts "freedom", "justice" and "equality" cannot be defined with precision. They mean different things to different people. But the words shine like beacons to stir the aspirations, hopes and longings of most individuals. In this regard they are synonymous with the common good, glorifying the worth of the individual and providing, in general form, a code of ethical conduct.

Freedom is commonly defined as the absence of restraint, but this definition has little content as all goals impose some restraint on the individual's freedom. For example, if a planned population growth or a non-growth economic ethic is the common good, the freedom of the individual will have to be restricted to the extent necessary to ensure attainment of these goals. Freedom, then, is more aptly studied as a *method* to attain the goal than as a goal in itself.

Similarly the word "justice" is considered more appropriately as a method than as a goal. The futility of defining the word "justice" as a goal is illustrated in the following examples. Is it justice that one man should acquire great social, economic or political power at the expense of many? Is justice the happiness of the majority? In what circumstances is it justice for a minority to be treated differently than the majority? Is justice a species of social engineering of conflicting interests that results in particular actions, benefits most people in the community and causes the least friction? Or is justice derived from an abstract ideal that appeals to the inborn sense of all rational beings, instructs us to live honourably, to injure no man and to

[67] And the more general are the written standards the more uncertain are the meanings, and the more uncertain are the meanings the more power is placed in the interpreter.

[68] *Supra* note 66 where the author states:

> But it is clear from recent experience in the United States that a constitutional bill of rights can serve indirectly as a valuable instrument for sustaining the interests of minority groups. Moreover, it can lend potent support to the principles of constitutional government . . . . It can arrest a piecemeal erosion of basic freedoms. It can be used as a means of educating public opinion—and not only sophisticated opinion, but the body of opinion that is shaped in the schools and the villages—to respect the constitution and the values that it enshrines.

Id. at 211.

give every man his due? The difficulties of interpreting the word as a goal are apparent. What is just to one man is not just to another. Individuals are not in sufficient agreement as to fundamentals to render an interpretation of the common good in this way, or to come to general agreement on a code of ethical conduct that flows from the connotations of the word.

Likewise the word "equality" has many meanings. It may mean that everyone is born equal. This is patently absurd. A more practical meaning is that everyone has equal opportunity. But the attainment of this goal is basically a social problem. Equality in this sense can only be accomplished by massive economic aid, changes in social attitudes and by education. A more modest goal, one that is legal in nature, is that the word supplies guides of conduct in protecting the individual in respect of those properties which the individual acquires at birth. [69] The Canadian Bill of Rights [70] provides for the right to equality before the law without discrimination by reason of race, national origin, colour, religion or sex. This principle would appear to protect from discriminatory actions those individuals who, say, were born into a Jewish family, or who were baptized into the Catholic faith at birth, or who were born in a certain region. But we cannot be sure. For example, the principle would appear to be offended if a law is passed forbidding individuals born into a certain religious faith or ethnic group from marrying. However, it may not be offended if such individuals have the option of changing their faith; it only would be offended with respect to the ethnic group whose members do not have this option.

The words will now be defined in general terms in such a way as to support basic ethics and values of the methods to attain the goals connoted in the three magic words.

(i) *Freedom—that is, that the powers of government should only be exercised in the common good*

This definition of freedom sanctions the use of the individual's talents, incentives and energies to the fullest degree. They are only to be restrained in the common good. The Frenchman, Montesquieu, writing in the middle of the eighteenth century, maintained that the goal of government was liberty and that the legislative, judicial and executive functions of government must be kept separate and distinct in order to attain this goal. [71] Freedom, as

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[69] See Smith, *Regina v. Drybones and Equality Before the Law*, 49 CAN. B. REV. 163 (1971) for a penetrating article on this complex subject.

[70] CAN. REV. STAT. APPENDIX III (1970).

[71] See A. V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION (1915) in which the author states:

> It were curious to follow out the historical growth of the whole theory as to the "separation of powers". It rests apparently upon Montesquieu's *Esprit des Lois*, Book XI. c. 6, and is in some sort the offspring of a double misconception; Montesquieu misunderstood on this point the principles and practice of the English constitution, and his doctrine was in turn, if not misunderstood, exaggerated, and misapplied by the French statesmen of the Revolution . . . . All that we need note is the extraordinary influence ex-

well as justice and equality, will be briefly analyzed from the vantage points of each of these functions.

Freedom, in relation to the legislative function, demands that the legislature, composed of representatives of the people, must project an image of confidence, competence and wisdom. The legislators must be presented with all available information before they render their decision. They must hear all relevant representations. They must have adequate time and procedures to debate and to deliberate. They must be intelligent, educated in the ways of governing and above moral reproach. They must fairly represent the community which they serve.

In considering the concept of freedom from the vantage point of the judiciary, the prime question is whether there is any role for the judiciary in the process of legislation other than its interpretative role after legislation becomes law. In other words, which function of government ultimately determines the validity of the legislation—the legislature, the executive, the judiciary or, perhaps, in some cases, the people? A code of ethical conduct would provide objective criteria for determining the validity of legislation, and the judiciary would be the natural choice if interpretation was required; but so long as values control human conduct the question would appear to require an answer in the peculiar circumstances of the situation. Probably decisions should be categorized, some remaining for final pronouncement in the legislature, others in the judiciary and others in the people.

The legislature makes the law, the judiciary interprets and applies the law and the executive (or administration) executes (administers) the law. In discussing freedom from the point of view of the executive, the first observation is the phenomenal growth of executive power, particularly in the developed countries, since the end of World War II. We now have, in essence, a fourth branch of government that affects the individual in most facets of his existence. The conduct of the individual is being regulated more and more as the complexity of government increases. The legislature cannot be expected to do all the legislating, the executive to do all the administering and the judicial branch to do all the adjudicating. Consequently, in all modern organizations, there is often delegation of the work of the different branches of government. The western nation-states have not satisfactorily solved all the problems associated with the rise of this new "branch". Clearer definition of delegated powers to subordinate functionaries, stricter accountability for following procedures when rights of individuals are affected, greater publicity of the work of subordinate agencies and broader rights of appeal by individuals against alleged abuses of power by these functionaries are among the solutions offered. The crucial consideration is that executive action must only interfere with the freedom of the individual to the extent necessary to achieve the common good.

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erted in France, and in all countries which have followed French examples, by this part of Montesquieu's teaching . . . .

Id. at 333-34. *See also* I. JENNINGS, THE LAW AND THE CONSTITUTION (5th ed. 1959).

(ii) *Justice—that is, that right, not might is the paramount ethic of attaining all goals*

If legislation conforms with the common good, it is just. Thus the justice of legislation is essentially a matter of determining where the ultimate control should reside and of ensuring procedural safeguards. [72]

Justice, from the vantage point of the executive functions of government, is becoming of increasing concern as government pervades individual activities. Numerous administrative agencies and functionaries now make subordinate laws pursuant to the delegated power contained in the enabling statutes of the people's representatives. They have wide judicial functions in the interpretation and application of the laws which they administer. In addition, they are given wide administrative functions to effectuate the purpose for which they were created. Many may perform advisory functions to the government which created them. In the performance of any one or more of these functions, the discretion of the subordinate agencies is often great. Safeguards are obviously required in order to effectuate justice. [73]

Defining executive functions in the light of the term "justice" is a matter of analyzing the functions of the agency and the purpose for which it was created and then applying rules of conduct in accordance with established principles that regulate the individual's conduct. If the function of the agency is to act as a subordinate legislative arm of government, its employment of judicial criteria in the formulation of its decisions should be relaxed. [74] If its function is primarily to act as a judicial body in defining rights and duties of subjects, substantive and procedural requirements should more strictly conform with those of the duly constituted arm of government. If the agency is to operate as an advisory body to the government, it should be regulated by the same rules as apply to ministers and high officials giving advice to the government. Likewise if an appeal of the decision to another tribunal is considered to be justice in the particular circumstances, it should be viewed in the light of the true function of the agency. If the legislative act is disputed, it would appear that the appeal should be taken to the highest form of government itself; if a judicial act is disputed, it would seem to fulfil the requirement of justice if the final pronouncement is made in the duly constituted tribunals and, if the dispute concerns an advisory act, final appeal should be made to a higher executive body. The problems of executive control bristle with difficulties and much hard effort is necessary to accord the action of the executive with the justice requirement.

In considering the concept of justice from the vantage point of the judiciary, it is necessary to study and improve all the substantive and pro-

[72] As substantively the legislation would be in accordance with the ethics or values of the group.

[73] See 1 ROYAL COMMISSION INQUIRY INTO CIVIL RIGHTS 4 (Commissioner Hon. J. C. McRuer 1968) where a list of possible safeguards is set forth.

[74] See Hendry, *Some Problems on Canadian Administrative Law*, 2 OTTAWA L. REV. 71 (1967-68) where the author has reviewed the functions of, and legal controls on, administrative agencies.

cedural laws in respect of their application to individuals. The following questions deserve continuing study and appraisal: Is the law sufficiently certain? Does the principle of the common law, that of following previously decided cases in analogous cases, provide the necessary degree of certainty? [75] Is the law sufficiently promulgated? [76] Are rules of procedure—adjectival only in the sense of providing a means to justice—adequate to effectuate the substantive right? [77] Is justice too expensive or too dilatory? [78] Are there sufficient vehicles of analysis (and leeway to use them) by which the courts may accord the law with changing social, economic, politico-legal, and ethical conditions? [79]

(iii) *Equality—that is, that everyone, high and low, is subservient to the law*

The goal of equality, it has been noted, has many meanings. [80] Similarly, methods to attain these goals are many and varied. From the point of view of the legislature, equality may mean equal voting rights, equal treatment at nominating conventions, equal advertising time and space on television and other communication media and so on. These meanings overlap on those ascribed to the term "freedom". The term cannot be defined with precision, nor is it desirable to do so as it is the spirit of the connotations that is most important.

The major utility in the employment of the term in respect of methods to attain goals is, first, the desirability of making and demonstrating the fact that everyone is equal before the law and is responsible for his actions in the duly constituted courts of the land. Thus no person, political leader, company president, trade union member or any other type of individual or organization is above the law. All are responsible in the same forum and

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[75] But would codification of the law make the law clearer? This brings up the age-old discussion of the relative merits of the common law and civil law systems.

[76] *See, e.g.*, REPORT OF THE SPECIAL COMMITTEE ON STATUTORY INSTRUMENTS, 115 H.C. JOUR. 1141 (1969) where the preface states:

> This Report is based on the assumption that public knowledge of governmental activities is the basis of all control of delegated legislation. For parliamentary democracy is a system of government which requires that the executive be responsible to the legislature and that both be accountable to the people, and there can be neither responsibility nor accountability where there is no knowledge of what has been done. In political matters knowledge is the beginning of power, and its lack, impotence.

[77] See *supra* note 73 where the Commission comments:

> Professor Davis and three distinguished Judges of the Supreme Court of the United States quoted by him testify with great clarity to a fact that is often obscure to legislators and more often neglected by administrators—that the fundamental protection to the rights of the individual is not so much in the substantive law as in the procedure by which it is administered.

Id. at 206.

[78] The advent of legal aid to Canadians in many forms attests to the general consciousness of these defects. Much work needs still to be done.

[79] See Read, *The Judicial Process In Common Law Canada*, 37 CAN. B. REV. 265 (1959) for a particularly lucid insight into this situation in Canada.

[80] *See also* text *supra* at note 69 *passim*.

in accordance with the same laws. The application of this principle is the great bulwark against arbitrary action by one person or by one group.

This aspect of the concept of equality ultimately must include consideration of the ultimate power in the state. In Great Britain, Parliament is the supreme sovereign power although it has practical limitations.[81] In France, the constitution empowers the President to dismiss the legislature and legislate without restriction in certain circumstances. In the United States, all organs of government are theoretically subservient to the contents of a basic document which, together with certain laws and judicial interpretations, has incorporated into it a system of "checks and balances" designed to attain and to ensure the strict separation of the functions of government. These are attempts to make the ultimate authority in the state, the sovereign power, responsible to the law as administered by the regular courts. Assuming that the ultimate authority resides in the people where, in a true democracy, it should reside, there is still the danger that selfish values will control. The only test of the rectitude of these values is the basic appetites of individuals. They may be created, enflamed and propogated because of some emotional response that will further their selfish interests. Obviously, a code of ethics or objective determinations that is generally accepted by all rational individuals must supply the ultimate test. Based on conscience and right reason, such rules will express the common good.

The second reason for the importance of defining the term "equality" is to provide a guide for the determination of the legality of acts of the government. There is no satisfactory reason for the immunity of the Government in respect of wrongs which it inflicts on individuals. Historically the government has been in an ascendant position and beyond the law in so far as the government permitted an individual to seek and obtain redress from it. Happily this situation is now being remedied. With the classical Roman law as a background, the nation-states of the civil law system have sharply distinguished public law (*juris imperii*) and private law (*jure gestionis*). Generally, in these nation-states the same liability exists for the wrongful acts of governmental agencies as for those of ordinary citizens. Although the major common law nation-states have restricted governmental immunities from actions of individuals in the past few decades, these governments and their agencies still occupy a favoured position in many aspects.

In summary, a mature social group must have a system of final settlement for disputes that arise within the group. This ethic has not been generally accepted by nation-states as a basic premise upon which an international community will rest. Consequently the protection and enforcement of basic human rights and fundamental freedoms of individuals are dependent on the good faith and constitutional processes of nation-states. The general acceptance of these basic rights and freedoms will depend on the acceptance of a system of organization generally in accord with the connotations of the

[81] Such as political expediency and constitutional conventions. *See, e.g.*, I. Jennings, *supra* note 71, at 129 *passim*.

concepts "freedom", "justice" and "equality". The concepts emanating from these words must be understood, nurtured and appreciated. This can be done only by education.

3. *Education*

(a) *What is education?*

Education is more than the acquisition of knowledge. Education is the acquisition of wisdom, and wisdom is the way in which knowledge is held and is used to determine immediate issues. In other words, wisdom is the mastery of knowledge and skill in its application. The importance of knowledge lies in its use; that is, it lies in wisdom. Knowledge by itself is barren; the goal of education is wisdom. [82]

Education, then, must concern itself with life in all its manifestations. It must enable the student to distinguish right from wrong, the essential from the trivial, the ugly from the good. It must provide the student with the tools with which to develop a frame of mind and a system of thought that will make him a reasonable and social being. More particularly, education should be concerned with the environment in which we live, the social and natural forces that have developed our civilization, the place of social, economic, politico-legal, cultural institutions in our social structure, the place and worth of the individual, his habits, skills and learning, the teachings of the great religions of the world and the place of cultural pursuits, not only in the restricted sense of the products of the easel, the chisel or the theatre but in the sense of the aesthetic expression of man. Only by such understanding can a person be considered educated. Only by such understanding can the consciousness of the individual be developed to the point that he may realize his full potential. Only by such understanding can the individual learn to live, to understand the viewpoints of others, to remove prejudices and to realize that all people are members of one human race living on one planet. Only by such understanding can the conduct of individuals be guided by ethics and values that are based on the right way of nature, on true reason and on man's inherent consciousness.

The difference between a liberal education and a technical, scientific, professional or business training is a matter of emphasis. There is an intimate union between theory and practice and every form of education should not only give the student a technique for a useful occupation but an

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[82] *See, e.g.*, A. N. WHITEHEAD, THE AIMS OF EDUCATION AND OTHER ESSAYS (Macmillan Company ed. 1967). Although there are many good books on education this one, first published in 1929, is one of the best. In his preface the learned professor states:

> One main idea runs through the various chapters, and is illustrated in them from many points of view. It can be stated briefly thus: The students are alive, and the purpose of education is to stimulate and guide their self-development. It follows as a corollary from this premise, that the teachers also should be alive with living thoughts. The whole book is a protest against dead knowledge, that is to say, against inert ideas.

Id. at v.

assortment of ideas that will support an appreciation of his place and work in the world. Above all, education should emphasize learning as a preparation for a good life and not be primarily concerned with the cash value attached. At all times, education should be universal in character and preach the fact of one humanity.

Ethics and values are part of a liberal education. Individuals can learn much about right and proper conduct from the experiences of others. We must be taught the difference between right and wrong. We must be taught how to discipline ourselves. Much can be done by professional, business, scientific and technical groups in laying down rules of right conduct for their members. Organizations representing the doctor, the lawyer, the scientist, the politician or the businessman, to name a few, can do much to prescribe codes of conduct for their members. All such organizations are part of everyday life. If skills and training are taught and acquired in a vacuum, devoid of association with the disciplines of a liberal education, it may be knowledge but it is not wisdom.

The concept of a broad and liberal education has been recognized throughout the ages.[83] Plato emphasized the importance of educating the whole man.[84] He saw that this goal involves shaping attitudes as well as acquiring information and skills; ethics as well as scholarship, beliefs as well as book-learning. Aristotle[85] also saw education as a process of development from within, an unfolding and a realization of one's self, which must include exposure to all aspects of life. To the Greek nation, the ideal of education was the noble man, fully developed in all his powers, participating in the great games of society.

With the rebirth of the human spirit following the dark period in human history, the educationists turned to the ancient world for inspiration and guidance. The concept and value of liberal education was again set up as the principal aim of education. Petrus Vergerius of Padua, in the early Renaissance period, wrote that education is the way by which we attain and practise virtue and wisdom; that the natural bent of the individual should be

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[83] *See, e.g.*, E. S. LAWRENCE, THE ORIGINS AND GROWTH OF MODERN EDUCATION (Penguin Books ed. 1970). The authoress comments in her introduction:

> Looking back over the succession of writers on education who have contributed to what are considered modern theory and practice, it is clear that one common theme runs through all their work, a theme from which all else develops; that is, the belief in an inner power of growth, that it is in the nature of man to turn towards the light. Development is the unfolding of the latent powers within man, and the educator can trust this power.

Id. at 14.

[84] See PLATO, THE REPUBLIC (Penguin ed. H. D. P. Lee transl. 1955) where in Parts III and VIII the author sets out the various stages of learning and requirements of an educated person.

[85] *Supra* note 9 where the translator comments:

> The chief aim of a gentleman's, that is, a citizen's, education is to enable him to employ his intellectual and artistic faculties to the full, to live a life of "virtue" and of "leisure".

Id. at 301.

recognized and followed in the course of his education and that education is not to be found entirely in books.[86] The Spaniard, Juan Luis Vives,[87] in the fifteenth century, suggested the use of the vernacular as a teaching tool; spoke of the dangers of forcing children in certain directions; saw the importance of the senses in the individual and advocated the importance of periodic conferences among teachers to determine the kind of education suitable for each child.

To the Englishman, John Locke, education again was not primarily a matter of book-learning.[88] It included the development of character, of judgment, of an intimate knowledge of one's fellowman, of the acquisition of good manners and, perhaps above all, of a responsibility to one's self. The Enlightenment, with its denigration of authority and the enthronement of reason, foreran a new era in education; for it followed that every man had the right to receive the kind of education which would develop in him those powers which were his by natural endowment. This idea inevitably brought into focus the influence of motive on the individual, his learning to think, to discriminate and to inquire. An individual who is motivated is more perceptive than his unmotivated fellow.

The concept of a liberal education is particularly important in the confused world of today. Our ethics and values have not kept pace with scientific and technological developments. Established social, economic and political ethics and values are being questioned. Imperialism and colonialism are being successfully challenged in the name of justice and the worth of the individual; anti-war demonstrations are common-place; pollution and the overpopulation of our globe are the concern of all. The young are questioning the work ethic and the value of material gain as a major goal of human existence. The place of the corporation in the economy, the effects of the multi-national corporation and the ever present problems of the distribution of wealth are of general concern. The answers to these and many other problems now facing human society must come from a general concensus of individual opinions. This requires education.

Education can change ethics and values. This is well illustrated by an example on the political scene. Loyalty to the survival of the group has always been an ethic of high order. Originally this loyalty was based on physical survival alone although now many other interests are involved. At first the survival group was the family, then the tribe, then the kingdom, then the nation and then the empire. They all evolved their peculiar ethical rules. Under the guise of national interest, different sets of ethics and values have been followed by people and nation-states. Most of us have been taught that security, economic welfare, growth and power are economic ethics and values which outweigh all other expressions of the common good. This indoctrination has been effected by teaching biased history, by glorifying noted

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[86] *See, e.g., supra* note 83, at 56-57.

[87] See *supra* note 83 at, 76-84 for a discussion of Vives' ideas and influence.

[88] *See, e.g.*, J. LOCKE, SOME THOUGHTS CONCERNING EDUCATION (Heinemann abr. ed. 1964). *See also supra* note 83, at 120-27.

killers as heroes for children's admiration and emulation, by glamorizing war in all its horrors and by numerous nationalistic rituals, fetes, myths and songs. Why?

The climate of public opinion and, in particular, the feelings engendered over the ages for the glorification of "dead-gods" can be changed. All individuals must be exposed to a basic education that will provide a foundation for determining their conduct in all phases of social, economic, political and cultural contact. It is the only answer to the vast problems that now present themselves and that lie ahead. The individual must be taught in order to find his true relation with his environment, with his neighbour and with the social group. The world exists for the individual; not the individual for the organization.

(b) *Scope of education*

All children must be guaranteed the practical possibility of receiving basic education, full-time if possible, in other forms, if necessary; and every individual must be in a position to keep learning throughout his life. The idea of a life long education is the keystone of the learning society. These two major principles emerge from the recently published report of the International Commission on the Development of Education entitled, *Learning to be; the World of Education Today and Tomorrow.* [89]

"It is striking to note that the entire world is now moving towards one

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[89] E. FAURE, F. HERRERA, A. KADDOURA, H. LOPES, A. V. PETROVSKY, M. RAHNEMA, & F. C. WARD, LEARNING TO BE (Harrap ed. 1971) [hereinafter referred to as LEARNING TO BE]. In his forward to this important contribution to modern thought on education, the Chairman of the Commission, Edgar Faure, in a letter to the Director-General of the United Nations Educational, Scientific and Cultural Organization disclosed that the report was based on four basic assumptions:

> The first, which was indeed the justification for the test we undertook, is that of the existence of an international community which, amidst the variety of nations and cultures, of political options and degrees of development, is reflected in common aspirations, problems and trends, and in its movement towards one and the same destiny. The corollary to this is the fundamental solidarity of governments and of peoples, despite transitory differences and conflicts.
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> The second is belief in democracy, conceived of as implying each man's right to realize his own potential and to share in the building of his own future. The keystone of democracy, so conceived, is education—not only education that is accessible to all, but education whose aims and methods have been thought out afresh.
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> The third assumption is that the aim of development is the complete fulfilment of man, in all the richness of his personality, the complexity of his forms of expression and his various commitments—as individual, member of a family and of a community, citizen and producer, inventor of techniques and creative dreamer.
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> Our last assumption is that only an over-all, lifelong education can produce the kind of complete man the need for whom is increasing with the continually more stringent constraints tearing the individual asunder. We should no longer assiduously acquire knowledge once and for all, but learn how to build up a continually evolving body of knowledge all through life—"learn to be".

Id. at v-vi.

and the same objective: universal school attendance." [90] Universal basic education may be considered as a world value of today and as an ethic in the western world. Lifelong education is not so generally recognized as a value. It is still widely held that a sojourn at grammar school, high school and perhaps the university supplies all the mental and technical equipment for a chosen career. In a rapidly changing society this value is outmoded. Changing technological and scientific skills, increased specialization in the professions, increased leisure time and rising unemployment are among the factors that make it necessary for the individual to prepare for more than one vocation in his lifetime. Time, age and location also require lifelong education to develop the individual's flexibility, his versatility and his full potential.

By the application of these two principles, universal basic education and lifelong education, many of the social problems will be alleviated, if not solved. By such education, the individual's place in the economic structure of the community will be better understood. Through education the individual will become a world citizen in the true sense. Education can control and, where necessary, reconstruct the character of man.

An educated individual is able to understand his fellowman and is thereby more likely to live in harmony with him. He is able to see his neighbour's strength and advantages; to discern more clearly his own weaknesses and consequently to make better value-judgments. Although a healthy competition may be tolerable and perhaps even desirable in some circumstances, competition as a general social goal is barbaric, wasteful and anachronistic. [91] In a few words, the educated individual recognizes the importance of human relations as the supreme vehicle of compatible living and that cooperation, not competition, is the basic ethic for man's existence. Through education an individual is trained to use and enjoy his leisure time. He is exposed to avenues of profitable endeavours and pleasurable experiences. He realizes the importance of healthful living and the bounty of a sound physical condition. Through education individuals will have an increased understanding of social problems and will thereby be in a better position to provide the means to alleviate them.

Economically, an educated individual may discern the type of work to which he is best suited, the goals to which he aspires and the various methods by which he may attain them. An educated man understands what "rate of growth" means, how the concept affects him and the conflicting ethics and values in the concept "Gross National Product". An educated individual is more flexible and versatile than his uneducated fellowman. He

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[90] *Id.* at 36.

[91] *See, e.g.*, G. B. LEONARD, THE TRANSFORMATION (Delacorte Press ed. 1972) where the author has many terse comments about the "What's in it for me?" modern type of individualism. The author notes:

> Competition and individualism, aggression and acquisition: It would be rare indeed to spend four straight hours observing a classroom, a playground, a sports event or a television screen without seeing these values glorified to the full.

Id. at 180.

is more likely to ask himself, when choosing a vocation, where he can do the most good rather than where he can obtain the most material gain. He will be able to see what work requires to be done and to handle "spot" crises.

Taxpayers in the nation-states of the western world are restive at the high cost of education. [92] The idea that education is an investment in the future is being discounted. Education, statistics show, does not necessarily mean a higher income. Schools, it may be heard, are not dispelling inequalities and injustices. Doubt is being expressed in the value of a highly educated work force as jobs become fewer. The answer is that education is no panacea. There is much work to be done in eradicating slums, finding jobs, changing attitudes and adopting different ethics and values. The truth is that it is impossible to measure the investment in education. Quantitative measurements of investment in education appear to show that more education results in more production and in more wealth. But the qualitative measurements of such investment are immeasurable. Education must be measured by the fullness of being, by the character of the individual's hopes, desires, attitudes, thoughts, skills, interests and, above all, by his ability to live in peace and contentment with his fellowman and himself. It takes an educated individual perhaps to see that the value of education must not be measured in terms of growth of the national product or by the ability of a person to acquire material goods.

Democracy, it is maintained, is the best form of human organization. To be a true democracy, individual members must clearly discern the issues by being informed. They must have adequate opportunity to discuss, hear representations on and to make decisions on the issues. The individual must be aware of the legal intricacies of his organizational structure, his rights, duties, privileges and liabilities. He must know how to participate in the decision-making process, to discriminate in his choice of candidates and issues and, perhaps most important, to pursue the political vocation. "The future of our societies lies in democracy, development and change. Our societies must accordingly train men for democracy, humanistic development and change." [93]

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[92] *See, e.g.*, J-F. REVEL, WITHOUT JESUS OR MARX (Doubleday ed. 1971) where the author states:

> The truth is, it is impossible to measure exactly the nature of investment in education to which the people, as a whole, have consented. All that can be said is that there exists an ideal: the full utilization of a society's human resources, of the abilities of every citizen. This ideal, to be sure, has a sort of negative impact in the economic domain, to the extent that the further a society is from it, the closer that society is to under-development; and the closer it is to the ideal, the greater is its growth in production. But there are also qualitative effects; the increased adaptation of individual talents to the professions because of better educational orientation, and a greater amount of leisure time or of freely chosen activities—that is, on the whole, a happier and more harmonious life for a larger number of human beings.

Id. at 29.

[93] *Supra* note 89, at 101.

(c) *System of Education*

Pressures are strong to change existing systems of education in western countries. Many educationalists are advocating that education should not be canned or confined. Ivan Illich,[94] for example, is convinced that the structured school system is authoritarian and repressive. He would like to see it abolished entirely. Open schools are suggested by others—schools which permit various degrees of freedom of scope in the intuitions, aptitudes and skills of the students. They argue that conventional schools are instrumental in relegating individuals to defined places in the social group, just as individuals acquired a certain status (usually by birth) in the medieval system. Students in conventional schools, they say, are made to follow prescribed curricula, to pass examinations and to fulfil all the requirements of the establishment before their place is assured. Thus the conventional schools support the elite, and the rich are often the only ones who can withstand the rigours of the ritual. The diplomas that are granted in the conventional schools are necessary for the better jobs in the present economy and therefore students who fail, that is, who do not achieve certain standards, are relegated to inferior positions. Open schools, the argument continues, will permit students to work independently or in groups towards goals set by their inclinations and aptitudes. They will be unfettered by archaic and systematized curricula. They will not be required to spend several years at endeavours that may be advantageous to the system but which will do little more than make them nameless faces on an assembly line. Formal school organization, then, should be abolished or, at least, greatly relaxed.

The answer, no doubt, lies somewhere in between. Ideally, perhaps, schools and organizations are not necessary as individuals learn everywhere. They learn at work, at play, at their places of business, by running machines and by working the land. But some organization is required to supply the methods by which the goals of universal and lifelong education will be attained. The organization, however, must be flexible. The changes must be adequate and of such nature as to refute the arguments that the present system, curricula and testing methods only preserve the status quo. A nondiscriminatory system of education must be evolved that gives all individuals an equal chance.

Equality of education means more than changes in the educational system. It includes developing methods by which education will be acquired at work, at play,in the home, at business and so forth. Educational qualifications will depend on a multiplicity of ways and means, and the basic test must be dependent on what the individual has learned and not on other criteria, such as the prominency of the institution he attended or the number of degrees he has been awarded. Likewise testing procedures must be formulated and conducted so as to minimize extraneous considerations other than knowledge and its application. Finally, equality of education means that every individual must receive a suitable education at a place and through

[94] *See, e.g.*, I. ILLICH, DESCHOOLING SOCIETY (Harper and Row ed. 1970).

methods adapted to his particular needs. A person living in poverty must have access to the type of education which will best ensure his acquisition of the skills and trades of his choice. His ability to learn will be affected by his environment, his social attitudes, his employment opportunities and the prejudices of people with whom he associates.

An ideal educational system that will satisfy all of the intricacies of human character is unlikely to be devised. Each individual is different but each needs more or less discipline and some degree of guidance and authority to realize his potential. The attainment of goals requires effort and effort is not always a human characteristic. But, generally, our schools should be organized so as to enable each student "to do his thing". They should provide sufficient freedom and stimuli in the manner, times and places of instruction so as to be equitable for all. They should encompass minimum procedures for completion of prescribed programs but at all times they should be arranged so as to deal with the indolent and to reward the diligent.

The university deserves special mention in our system of education. The modern university, characterized by a number of separate and distinct facilities, by great numbers of students, by difficulties in administration and unprecedented financial demands, is under attack. Students are particularly restive. They maintain that the modern university is only concerned with fulfilling established patterns; it is not interested in the students. It is a bastion of the elite and its real goal is to maintain the established order. They charge, further, that universities are irrelevant in this day and age inasmuch as they are not interested in mankind or its future, or the fulfilment of the individual and his place in the community. They are but incubators for future leaders, who conform by spending a prescribed time at the most expensive institution possible and by fulfilling certain machine-like rituals that result in awards of the almighty diploma. Universities, they continue, are not concerned with the struggle between social groups and the distribution of educational resources to all. Their general inefficiency and ineptitude in the selection of teachers, curricula and pedagogic materials make them hopelessly out of touch with present day values, particularly those of the young.

The truth would appear to be that the universities are slow in adapting to the transformations taking place in society. There are some advantages no doubt to the large university of the present but where are the common bonds that make such different disciplines as law, science, commerce, medicine and others compatible? Each faculty is usually a small self-contained unit and has little or no contact with the others. With the advent of universal basic and lifelong education, it will be naive to consider a successful combination of all disciplines in one place. Thus the problem of the university is tied in with these two emerging ethics. Education must not necessarily conform with a prescribed number of years at grammar school and at high school, topped off with a diploma from a university. Ideally, a student may attend an institution of his choice; or obtain his education by working alone at a library, or by communal discussion, or at his place of work or

by many other possible means. The criterion of his success or failure is his knowledge and ability to apply it, not in the time spent in "hallowed" halls, not in the reputation of the school he attended, and not even in the number of degrees and diplomas that he holds. The terms "universal" and "lifelong" connote no particular forms of institutions, methods of instructions, or curricula. They imply that the students have as wide a choice as possible in locations, subjects and methods available to attain the type of education that they desire.

The word "university" is confusing and the word "college" has no generally accepted meaning. "Higher education" is perhaps a little more meaningful as it indicates that amount of education which the social group considers necessary or desirable for the attainment of a degree or the fulfilment of the ultimate academic requirements for a particular job or vocation. So at the outset there is difficulty with the meaning of terms in an effort to define the role of university.

The basic goal of education is the search for the truth. Early universities were groups of scholars committed to a love of learning. Throughout history this basic purpose has not changed but has passed from one group to another. In the twelfth century the monasteries gave way to cathedral schools.[95] These schools, in time, found themselves so closely allied with national governments and with staffs so large that freedom of discussion was subordinated to efficient university business. Then came a period of disassociation. Groups of students broke away from traditional forms, research institutes grew up, universities became more involved with regional affairs. As industries realized their prosperity would become dependent upon scientific and technological training, technical schools, teacher's schools and other specialized forms of instruction sprang up to suit particular needs.

We can learn much from history about the place, the future and goals of the university today. Wherever men congregate there will inevitably evolve a centre of intellectual leadership, an ultimate meeting place in the search for the truth. It is questionable whether the modern university is adaptable to fulfilling this role or even whether one institution or group of individuals can perform it. It must be so organized as to provide teaching and research facilities. It must provide a market place for the dissemination of information, not only to students but to the community at large; it must provide the ultimate voice of collective judgment and leadership in the academic affairs of the community—a similar role to which the body of elected representatives play in practical affairs and, by traditional means or otherwise, it is the ultimate resort of the search for the truth.

The educational system must be extended widely to accord itself with the developing ethics of universal and life-long education.[96] Teachers will become more numerous and the art of teaching will undergo radical changes.

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[95] *See, e.g.*, B. FLETCHER, UNIVERSITIES IN THE MODERN WORLD (Pergamon Press ed. 1968).

[96] *See, e.g., supra* note 89, at 101.

Authoritarian forms of teaching will give way to mutual responsibility and dialogue between teacher and student. Guidance will become the keynote for all teachers. As the feeling of mutual dependence grows, teachers and students will share in the management and policy-making of organization, curricula and aids. Teachers, no doubt, will specialize some in the study of materials, others in management and still others in equipment and techniques. In time the art of teaching will be linked inseparably with all disciplines, such as psychology, anthropology, cybernetics and linguistics. Teachers will acquire a new status.

Universal basic and life-long education will necessitate basic changes in curricula. Life-long education will mean, in effect, teaching the student the art of learning. The learning process will be more closely assimilated with practical experience. Curricula will not be wholly concerned with abstract theoretical concepts and divorced from real life. Useless expenditures of mental energy, such as the glorification of nation-states at another's expense, will be avoided. More emphasis will be placed on the social sciences; rigid distinctions between social sciences and scientific and technical subjects will be removed; the meaning of all things and their rightful place in the scheme of living will be sought.

The curricula will minimize a life of selfish ambition and attempt to give more meaning to life in the art of living, loving and fulfilling a potential. This will require much emphasis on the instruction of ethical conduct and values that will bring about the good life for all. The student will be trained in the advantages of giving to his less fortunate fellowman. He will learn that the economic ethic of self-interest can most often lead to conflict, guilt, despair and boredom. The student will also learn that the organization is created to assist individuals and that it is not man's master. Politics of all organizations must be conducted in accordance with ethical rules of conduct. The student must know these rules and be taught to realize that their formulation, observance and preservation are his assurance of freedom, justice and equality. These principles must be evident to all and be prized and cherished by all. Basically, the curriculum will teach one universal and world-wide brotherhood.

In the age of universal and life-long education, teaching aids will be revolutionized. Radio, television and other mass media will be utilized more and more to supply information to great numbers. The computer will be developed as an efficient tool in rapid learning. Libraries, art and craft equipment will be increased and expanded to provide easy and general access for all. Group techniques will be modernized and improved to provide for exchanges between teacher and student. Aids will be adapted to different levels of learning, for different skills and disciplines. They will also be adapted to those individuals who require a different pace and different methods in accordance with their needs.

IV. Conclusion—The Common Good

What appears to be happening today is that public opinion is turning away from the ethics and values on which many of the successes of the world, particularly of the western world, have rested. The young are particularly restive because of the uncertainties of nuclear war, over-population, resource exhaustion, pollution and other horrendous prospects that appear to lay in the future. The outcry against growth and expansion, the disenchantment arising from congestion and pollution by the automobile, the awareness of the urban difficulties inherent in tall buildings, land development and transportation, the demand for green space and clean air and the general detachment from the corporation, the trade union and even the church demonstrates a deep and prevailing dissatisfaction with many aspects of present day life.

Utopia is unlikely to be attained. Perhaps it is a delusion that a better society can be created by assuring all individuals a fair share of material goods, by structuring a social organization in which all will play a participatory part and by providing the means whereby each individual can pursue a life of his own desire while, at the same time, contributing to the well-being of the community. Perhaps the value of competition will never be removed from the spirit of the individual to such a degree as to remove the stress and strain inherent in each. Perhaps, at least without some help from geneticists, individuals cannot live in harmony with goals and methods set in the light of the common good. But the individual is a flexible, rational and versatile being. Utopia is quite attainable in the sense that the individual may be given sufficient material and spiritual wealth to pursue personal goals and still live in harmony with modern organization and his fellowman.

The worth of the individual is now generally recognized by the nation-states. His worth connotes many fundamental freedoms and human rights that may be classified as ethics. All individuals are part of a community of human beings on one planet which, in turn is part of an infinite universe. To conduct the ordinary affairs of life, individuals must organize and to the extent of the common good—as defined by the goals and methods of the organization—the freedom of the individual is curtailed. His conduct should be guided by ethics generally accepted by all or by values as expressed by the majority in the group. The goals and methods of the organization should be set in accordance with generally accepted ethics or established values. This is the common good. Ideally, the individual's freedom should not be controlled by one man, by a group of men, or by an oligarchy of powerful interests unless it is prescribed by an ethic or by a value chosen by majority vote.

Are there immutable rules that govern behaviour? Is there a natural law by which man's conduct is controlled? This question of the ages remains unanswered but it is possible that rules may be so generally accepted that they become ethics and provide objective tests for validity of human

actions. Examples abound. Much criminal law is founded on ethical conduct. The test of the "reasonable man" and the concept of equity in the common law system of the western world is founded on ethical conduct. They may be ethics on a regional or local scale but they have the general acceptance of individuals in the community in which they operate.

If the common good cannot as yet be enshrined in ethical conduct, the alternative is for the people in the community to express it by majority vote after ample publicity, educated thought and rational discussion. There are obviously three conditions for finding and expressing the common good. First, every individual in the community must be assured a minimum of available material goods. Second, the polity of the organization must be so arranged as to assure that all individuals have an effective voice in the final decision. Third, means must be found to provide ample opportunity for all individuals to fulfil their destiny and to participate in and contribute to community life. Unless these three conditions exist, the development of ethics will be stultified and the choice of values deficient.

Aid to the under-privileged may be considered as a national and international ethic. But the methods of attaining the goal of aid are deficient. Prejudice, uncertainty and self-interest stand in the way of an effective system of values upon which aid will be supplied. The major difficulty is the pervading ethic of self-interest. But the subsidiary difficulties, such as those pertaining to international trade, foreign exchange rates, supervisory control, methods of education and human rapport, are very real and demand international collaboration before they can be overcome.

The inevitability of an international community can be observed and felt in the events of the past two decades of rapid change. Although there is still room for manipulation and intrigue, the nation-state is becoming an anachronism. "Rivalries, competition, tricks, perfidy, shows of force, armed clashes, vain-glorious ritual, the wholly useless ceremony of official visits, the sanctioning of humiliations inflicted or received, of insult and homage, and of the losing or the saving of 'face' " [97] will, in time, be outmoded. In effect, the problems facing the world community are of such stature that they transcend all boundaries and can only be solved on a world-wide scale. Problems of nuclear disarmament, over-population, the need for living space, pollution, the exploitation and distribution of natural resources, particularly those with energy potential, and international monetary and financial arrangements can no longer be solved or even delayed at the level of the nation-state.

But, it will be asked, how is this to be accomplished, particularly in view of the present bleak outlook for effective international government? It is submitted that it must arise from, and be founded on, the consciousness and the enlightenment of individuals in every corner of the globe. It may be

[97] *Supra* note 92, at 83. The author continues to say that "[a]ll this rigmarole is irrelevant to the basic decisions which man must make." *Id.* at 83.

further asked: how is this consciousness and enlightenment to be brought about?

It is submitted that the answer is to be found in education. Education must be liberal in nature, universal in scope, organized for continuous instruction to all who desire it and with methods adaptable to the circumstances. The realization of the brotherhood of man, the revealing of the common interests of all and the finding of the true place of the individual in the community, are as inevitable as the world community itself. The individual is a flexible, rational and versatile being, living with a great number of other individuals on one planet in an infinite universe during an era of unprecedented change. The consciousness of these truths will be unveiled by knowledge and wisdom. This is education.