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THE WORLD CONSTITUTIVE PROCESS OF AUTHORITATIVE DECISION †

† The first part of this article appeared in Volume 19, Issue Number 3. The Editors wish to acknowledge with thanks the kind permission granted us to publish this article which will appear as a chapter in the first volume of a series of volumes on the subject *The Future of the International Legal Order*. The series is being edited by Professors Cyril E. Black and Richard A. Falk and the project is supported by a grant from The Ford Foundation and carried out under the auspices of the Center of International Studies of Princeton University. This article is presented here because of the Editors' belief that it outlines a conception of constitutional process relevant not only to the international community but to the national and lesser communities as well. Because of its length the article is printed in two installments.

MYRES S. McDOUGAL*

HAROLD D. LASSWELL**

W. MICHAEL REISMAN***

V. STRATEGIES

Strategies are the modalities by which base values are manipulated in decision. For some purposes it is convenient to consider the strategies available for employment in constitutive process value by value. A certain simplification can be achieved, however, by classifying all strategies according to their characteristic reliance on the symbol or the resource component of values. We speak of *diplomacy* when communications are addressed by one elite to another, and of *ideological* strategy when communications are addressed to general audiences. When resources specialized as weapons are employed, we refer to *military* strategy; when the resources are specialized to production, the appropriate reference is to *economic* strategy.

The modalities of a particular strategy are affected by their relationship to the various pre-outcome phases. They vary according to the category of participant who initiates their use and the objectives toward which they are directed.

The more general perspectives of participants are an important factor. Thus preference for coercive strategies may be the result of a cultural pattern or a personal psychological deviation.¹⁰⁰ There is some evidence that positive identifications with targets tend to elicit strategies of a low degree of coercion, while negative identifications elicit

* Sterling Professor of Law, Yale Law School.

** Phelps Professor of Law and Political Science, Yale Law School.

*** Research Associate, Yale Law School.

¹⁰⁰ MEISEL, *THE MYTH OF THE RULING CLASS: GAETANO MOSCA AND THE "ELITE"* (1958); STRACHEY, *THE UNCONSCIOUS MOTIVES OF WAR* (1957). But cf. Klineberg, *op. cit. supra* n. 47.

higher degrees of coercion. Arenas of interaction affect the choice of strategy; for example, choice is narrowed as the differentiation of an arena increases. In highly elaborated arenas, stabilized expectations impede the range of eligible strategies, including perhaps the most coercive instrumentalities. Similarly, the base values at the disposal of a participant limit strategic policy.

All four categories of strategy are involved though in varying degree, and with different levels of planning, in all attempts to affect a constitutive outcome. The traditional conception of grand strategy emphasizes the importance of planning the total campaign in a way that allows for the optimum interplay among the subordinate instrumentalities of the strategic program. A serviceable distinction separates *primary* and *auxiliary* strategies, the former referring to the dominant value on which reliance is put, the latter to the supporting values employed.

Although military strategy implies a high degree of at least potential coercion, all strategies can vary in degree of intensity and in the extent to which they coerce or persuade their targets. Techniques of economic warfare, such as the boycott, asset freezing, termination of aid or price-fixing, may in certain contexts, acquire a high degree of coerciveness. Diplomatic strategy—inter-elite communication—and ideological strategy—may employ terror and threats. In all these strategies the point on the coercion continuum is plotted not by reference to a particular strategy but rather by reference to its effect upon those subjected to it. Concern with the modality rather than with the effect engendered has been a pitfall of traditional inquiry. More strictly, emphasis has often been put on the first part of an act—the employment of the instrument—rather than upon the character of the perspectives elicited by the relevant interaction. In discussions of aggression, for example, attention has usually been restricted to military strategy.¹⁰¹ As transnational interaction became more intense and technology spread, the potentialities of other strategies broadened, and the rather incongruous term “indirect aggression” was coined. It referred to acts of aggression not employing the military instrumentality and not, therefore, authorizing the unilateral or community response that would be permissibly triggered by direct aggression. But both direct and indirect aggression can have the same outcomes and effects; concern with these is the perspective that underlies authoritative prohibition. The meretricious distinction introduced by overly rigid doctrine merely invited aggression by non-military modalities, an invitation which was gratefully accepted and exploited by certain regimes.

¹⁰¹ See, for example, Convention for the Definition of Aggression, 147 L.N.T.S. 67, especially Article 3. (This continues to be the Soviet definition of aggression.)

The fragmented approach to strategies has precluded, to date, any empirical examination of the inter-relation between various modalities and, particularly, of the effect of crises on strategic programs. Speaking speculatively, it would appear that strategies are agglutinative. The level of intensity of the primary strategy frequently determines the intensity of the auxiliary strategies. All phases of a process of interaction are affected by the level of crisis. Crisis probably dissolves numerous subjective restraints on intensely coercive strategies and thus acts to raise the level of coercion of all strategic forms.

Strategies are employed in order to create subjectivities in particular targets. Specifically, they communicate an image of how A intends to act and how B, if he wishes to maximize his gains and/or minimize his losses, should react. The appropriate subjectivities are sought through two modalities: (i) communication without an accompanying application of resources and (ii) a manipulation of resources, with or without explicit communication. Both of these modalities, of course, may affect perspectives, which are the effects most economically achieved by successful communication. Resource alterations may go far beyond simple communicative impacts, devastating the human and physical resources of the target. Both modalities are copresent, one being primary, the other (or others) auxiliary.

The diplomatic strategy as we have said refers to inter-elite communication. Elites are a function of context; hence different participants may constitute elites in different situations. The ideological strategy refers to communication to the rank-and-file as the target audience. Diplomatic and ideological strategies are purely communicational when their modality is language or a language-equivalent, even though their content—*e.g.* threats—may draw upon military and economic strategies as auxiliary instruments. If a selective economic embargo is aimed at imposing deprivations upon the wealth elite of a particular polity, but imposes no serious deprivations upon the rest of the population, it is diplomatic in terms of target and economic in terms of applicative modality. It is trivial whether one characterizes this as primarily diplomatic or economic. What is significant is that a direct communication as well as an indirect communication by means of a resource application is aimed at an elite audience. A strategic program may incorporate the ideological modality. Broadcasts and leaflets dropped from planes may exhort the people to rise up against their established elites or to pursue a course of passive resistance. Even without a direct communication to the rank-and-file, the auxiliary ideological effects of the primary strategy may depend, among other things, upon

the extent to which the rank-and-file identifies with or disassociates itself from the elite target.¹⁰²

The military and economic strategies refer to modalities of resource application, without explicit reference to target. The terms will mean relatively little unless they are perceived in relation to the diplomatic and ideological modalities. Military and economic strategies are, essentially, reinforced communications, whose vehicle is the manipulation of resources. In general, they can be said to belong to an expanded category of "propaganda of the deed" rather than language or language-equivalencies.

In the most democratic constitutive process, strategies are employed inclusively rather than exclusively. Since inclusivity is a matter of expectations of authority, the actual agent of strategy application may be a nation-state acting in a *dédoublement fonctionnel*.¹⁰³ The dual-function role of effective participants, like the concept of self-help, is an expedient rather than a long-term goal,¹⁰⁴ which must be tolerated until there is colorable congruity between authority and effective power. The urgent challenge to scholars and students is to clarify the policies and the contingent events that will render strategy applications lawful.¹⁰⁵ The longer range goal of the international community is the application of constitutive strategies by joint authoritative action, preferably through international organizations. The realization of this goal is contingent upon the acquisition by these organizations of an adequate control base.

Joint application of strategies is a corollary of the principle recommended for all phases of the constitutive process: a sharing in decision and especially in responsibility. The opportunity for sharing in strategic decision is greatest in organized arenas, where the authoritative myth prescribes equality among all participants. The practice of engaging jointly in decision-making fosters responsibility among all who participate in the process. The authority of decision is increased and the symbolic enhancement of the result favors effective application with resource economy against any possible challenger.¹⁰⁶ Whether constitutive strategies can be symbolic manipulations accompanied by par-

¹⁰² Some examination of this factor may be found in Taubenfeld & Taubenfeld, *The Economic Weapon: The League of Nations and the United Nations*, 58 Proc. A.S.I.L. 183 (1964) and SEGAL (ed.), *SANCTIONS AGAINST SOUTH AFRICA* (1965).

¹⁰³ Scelle, *Le Phenomene juridique du dedoublement fonctionnel* in SCHATZEL & SCHLOCHAUER, *RECHTSFRAGEN DER INTERNATIONALEN ORGANISATION* 324 (1956).

¹⁰⁴ See Reisman, *The Role of the Economic Agencies in the Enforcement of International Judgments and Awards*, 19 INT'L ORGANIZATION 929, 933 (1965).

¹⁰⁵ McDUGAL & FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* (1961).

¹⁰⁶ Arens & Lasswell, *op. cit.* at 216.

simonious use of resources depends primarily, though not exclusively, upon the subjectivities of the targets. In a cohesive community, in which the doctrines, formulas and miranda of the established myth are internalized in the character structure of the personalities distributed throughout most strata of the population, nonconforming behavior or impulses toward such behavior set off auto-punitive mechanisms that may be triggered or intensified by sanction equivalents¹⁰⁷ rather than by measures requiring large resource involvement. In a noncohesive community, particularly one in which authority systems are in competition and conflict, community-wide symbolizations have failed to reach the requisite level of effectiveness or have fallen therefrom. Hence the conditioned subjectivities upon which strategy symbols depend for their operation do not obtain. On many matters of enormous pertinence to world security, no constitutive process has been consolidated, hence decision must rely on more than symbolic means of making itself effective. In sub-arenas, in which conditioned subjectivities do obtain, symbolic strategies are sufficient for many purposes.

Depending on their component elements, strategies relate to *assembling* or *processing*. At the processing stage, operations impinge directly on the targets, as when diplomatic messages, mass broadcasts, economic assistance or military support are employed. A prerequisite of such final operations is the assembly of personnel and facilities in a form capable of generating the product. The constitutive process calls for standby units organized in routes and zones that can be speedily mobilized to achieve and maintain the power allocations sought.

Considerations of economy and efficiency typically suggest that strategic programs give first priority to the processing of relatively symbol-rich strategies, and use resources as sparingly as possible, including their manipulation to enhance communicative impact. We note in this context that the physical instruments specialized as communicative media are "signs" (they mediate between the subjective events of senders and receivers of messages). Nonsign resources, as has been said, invariably have some communicative effect, though they are relatively unspecialized to this function.

As noted earlier, when a constitutive process is thoroughly established, its strategies tend to combine rational persuasion with ritualized acceptance. A transition toward ritual acceptance occurs when troop movements are used to permit an elite to "save face" by giving in to a show of force.

¹⁰⁷ Dession, *The Technique of Public Order: Evolving Concepts of Criminal Law*, 5 BUFFALO L. REV. 22, 32 (1955).

Diplomatic Strategy

Styles of diplomacy have changed in the course of some three thousand years,¹⁰⁸ but the term, in its official sense, continues to denote communication between power-elites. Nonofficial diplomacy refers to communication between elites of value processes other than power. There have been numerous changes in phases of the diplomatic process in the last thirty years. In participation, there has been a trend toward democratization of recruitment of diplomatic personnel.¹⁰⁹ Moreover, the cosmopolitan diplomat who would serve any master has been superseded by the national diplomat who serves only his own nation-state.¹¹⁰ Recent surveys of diplomatic personnel indicate a trend toward uniformity in educational background and a trend toward specialization.¹¹¹ Diplomatic objectives have been broadened; formerly, contact was restricted to the host elites and the diplomatic corps. Currently, contact extends to all politically relevant strata of the host state, insofar as this is permitted.

The current breadth of diplomatic objectives accounts, in some measure, for the great increase in diplomatic activity. Many of the operations centered in a contemporary mission would not traditionally have been characterized as diplomatic. Changes in participants and objectives are reflected in the changed arenas in which diplomacy operates. The contemporary minister has moved from the chancellery and elite social contacts to the variegated value-institution situations where a broader spectrum of the population is found. The bases of the traditional European diplomat—skills and respect-status attributes—were transnational assets, since elites identified in a horizontal transnational plane rather than in a vertical domestic plane. Contact with many non-European cultures has neutralized much of this; and some European states have undertaken to immunize their representatives against respect and affection ties.¹¹²

Communication between the elites of different polities takes place only when the level of interaction between the polities is such that each

¹⁰⁸ A brief historical survey of diplomatic techniques may be found in WELLESLEY, *DIPLOMACY IN FETTERS* 13-34 (1945).

¹⁰⁹ Ruge & Galtung, *Patterns of Diplomacy: A Study of Recruitment and Career Patterns in Norwegian Diplomacy*, 1965 *J. Peace Research* 101, 116 and see note 111 *infra*.

¹¹⁰ Wellesley, *op. cit.* at 16 ff.

¹¹¹ Ruge & Galtung, *op. cit.* at 123-124; HARR, *THE ANATOMY OF THE FOREIGN SERVICE—A STATISTICAL PROFILE* 14, 55, 60 (1965).

¹¹² Thus MURPHY, *DIPLOMAT AMONG WARRIORS* (1965) notes that he found it impossible to strike a personal relationship of the most minimal intimacy with any Soviet diplomat.

elite group gains from some contact and loses if there is none. At the least frequent level of value-laden interaction, diplomacy is conducted exclusively by *ad hoc* envoy. With more interaction, diplomacy becomes "residential." With further increase, it permutates into "conference diplomacy" and "organizational diplomacy." At the most intense level of sustained interaction, diplomacy metamorphosizes into a form of parliamentary representation. Contemporary diplomatic relations

. . . correspond to an intermediate stage in the general growth of mankind into a world state. The major implication of this is that diplomacy must have come into existence at a point where interdependence between nations or city-states got beyond a certain threshold so that some institution was needed to stabilize the relationship and make it more predictable. A second implication is that this very institution of diplomacy will disappear or will gradually merge into a world government in due time.¹¹³

Although the current intermediate stage could be moving towards a stable system of organizational diplomacy, the earlier channels of constitutive interaction may continue, once again exemplifying the durability of established links.

The development toward organizational diplomacy will undoubtedly modify diplomatic personnel. Extended association with another state does tend to engender some enlarged, if conflicting, identifications.¹¹⁴ However, these effects are relatively trivial when compared with the probable impact of authoritative international organizations which will probably increase *transnational* identifications, perhaps at the expense of nation-state loyalties, and culminate eventually in a neo-cosmopolitan diplomat. A possible counter-trend may be the attenuation of the domestic policy-making role of diplomats. Continuing high levels of interaction within diplomatic corps will presumably influence their perspectives; as their intensity of contact increases, the norms of group authority will be clarified and applied, even though with relatively mild sanctions on individuals. Such a civic system of order will parallel and strengthen the impact of the expanding code of diplomacy.

The relative ease of communication in the modern world has promoted opportunities for quasi- and nonofficial diplomatic contact. In addition to national foreign offices—the traditional agencies of diplomacy—a number of other governmental components engage in diplomacy. Members of legislatures commonly junket abroad and establish direct intercourse with foreign elites at many levels. Branches of the armed

¹¹³ Ruge & Galtung, *op. cit.* at 102.

¹¹⁴ *Id.* at 111–112.

services, establishing similar contacts, not infrequently work at cross-purposes with foreign offices.¹¹⁵ Such uncoordinated diplomatic activities, though they increase the difficulty of disciplined policy-formation, prepare the way for the cross-national strategies that consolidate a world constitutive process.

Ideological Strategy

Ideological strategy—communication to an audience broader than specific elite groups—has a history almost as long, if not as illustrious, as diplomacy. Ancient polities frequently resorted to the manipulation of symbols, often sacred rather than secular in content, as a means of shaping mass perspectives and behavior. Emperor worship, for example, is an ideological strategy employed as a means of focussing disparate identifications on one personage. The concept of the crown in a number of current secular states is a vestigial remainder of this phenomenon. In a more comprehensive sense, many recurring cultural institutions were and continue to be ideological strategies.

The use of ideological strategy in transnational interactions, it is generally agreed, was profoundly affected by the French revolution.¹¹⁶ This point in history marks the beginning of an accelerating proliferation of demands in the emerging constitutive process of the globe for the regulation of ideological strategies in a transnational context. In previous times, it was not uncommon for a belligerent to infiltrate agents, who were commissioned among other things to foment rumors in the hope of demoralizing the adversary's population. Similarly, the use of oracular predictions of victory served both to bolster domestic morale and to erode the enemy's will to fight. The impact of these venerable examples was relatively limited, since they were chiefly restricted to military arenas in which the role of the general population was generally negligible, or at best peripheral.¹¹⁷ Robespierre's program and doctrines designed to export the French revolution signaled an era of new importance for the deliberate encouragement of diffusion, especially by means of the ideological instrument. Monarchical Europe appreciated the danger posed to it and acted with unwonted unity and effectiveness.¹¹⁸ The full impact of the ideological instrument was felt, however, only after the consolidation of nation-states and the improvement of technological channels for the transmission of messages.

¹¹⁵ For one account of this, see SCHLESINGER, *A THOUSAND DAYS* 199-200 (1965).

¹¹⁶ MARTIN, *INTERNATIONAL PROPAGANDA* 3-4 (1958), but see FRASER, *PROPAGANDA* 30 (1957).

¹¹⁷ MORGENTHAU, *POLITICS AMONG NATIONS* 365-66 (3rd ed. 1960).

¹¹⁸ Martin, *op. cit.* at 6; WHITTON & LARSON, *PROPAGANDA* 17 ff. (1963).

For observations on the effect of these events on European transnational patterns, see ROSECRANCE, *ACTION AND REACTION IN WORLD POLITICS* 79 ff. (1963).

Almost the first efforts at the scientific employment of official propaganda took place during the first World War.¹¹⁹ The USSR continued, thereafter, to use it as a major strategy in Europe, the Middle East and the Far East.¹²⁰ In the inter-war period, attempts to regulate this instrumentality were the subject of bilateral treaties as well as numerous discussions in the League of Nations.¹²¹ Although the Charter makes no express mention of such a strategy, the United Nations has discussed it on numerous occasions and draft conventions have been framed.¹²² Nevertheless, it cannot be said that this strategy has as yet been subjected to organized, inclusive control. Claims continue to be brought in particular circumstances and decisions have been supported by unilateral measures, such as breach of diplomatic relations, radio jamming, and the like.

Ideological strategy has become a standard instrument of nation-states and of a large number of nonofficial participants in world politics. The specific modalities range from direct exhortation to apparently neutral "news." Propaganda awareness has reached such a pitch that it is not unusual for such assertions to be made as that by a Yugoslavian member who said, in the UN Sub-Commission on Freedom of Information and the Press; "I join the words 'information' and 'propaganda' . . . Today there is no neutral news and no neutral information."¹²³ Available statistics indicate an enormous investment in this strategy in both current application as well as in preparatory and development research.¹²⁴ Available procedures for measuring the effects of this form of communication cannot always be applied to transnational campaigns. There are, for example, often insurmountable difficulties in applying the refined advertising evaluation techniques of American industry to foreign arenas.¹²⁵

Every indication suggests that in the future the ideological strategy will be even more intensively relied on. Satellite relay stations promise

¹¹⁹ Barghoorn, *op. cit. supra* n. 77 at 3-6.

¹²⁰ Martin, *op. cit.* at 8.

¹²¹ Whitton & Larson, *op. cit.* at 34-38; Martin, *op. cit.* 85-95. Under the auspices of the League of Nations, the Convention on the Use of Broadcasting in the Cause of Peace was adopted. It has not been formally terminated and the General Assembly has considered its reactivation.

¹²² Martin, *op. cit.* at 85-95. See, in this regard, the UN Draft Convention on the Freedom of Information and in particular, Article 26 of the Draft Convention on Civil and Political Rights, Doc. A/6342 Annex 1.

¹²³ Quoted in Martin, *op. cit.* at 12. See also DAVISON, *INTERNATIONAL POLITICAL COMMUNICATION* (1965).

¹²⁴ Whitton & Larson, *op. cit.* at 47-52; DAVISON, *INTERNATIONAL POLITICAL COMMUNICATION* (1965).

¹²⁵ MEYERHOFF, *THE STRATEGY OF PERSUASION* (1965).

the expanded use of television to this end. The same stations will further open the American continent to this instrument; both North and South America have been relatively immune to such interventions in the past, owing to a concatenation of geographical factors which impeded short-wave radio communication.¹²⁶ Rising costs are likely to weed all but the most powerful participants from among those who rely heavily on the ideological instrument.

Policy clarification in regard to the constitutive use of ideology poses rather difficult problems. Assuming that maximum participation is a preferred criterion in the global constitutive process, ideological strategy, addressed to the broadest audience in the widest arena, would appear to be highly suitable. But such a recommendation typically assumes that the content of ideological communication is matter of fact intelligence. However, it is commonplace to assert that mass communication is designed to shape perspectives by a selective presentation of facts which are therefore inaccurate or highly biased.¹²⁷ The Charter of Bogota of the Organization of American States indicates an awareness that the "intervention potential" of this strategy is a means of hostile intervention.¹²⁸ Thus, the problem is the specific content of communication or the objectives of the communicator and the degree of harmony with minimum and maximum community goals.

Military Strategy

Control over the implements employed in military strategy remains in the nation-state. Inclusive efforts to arrogate the sole privilege of lawful use of force have, generally, been unsuccessful. Plans for maintaining a permanent international military force, envisaged at UNCIO and expressed somewhat equivocally in the Charter as the applicative arm of the inclusive community are stillborn.¹²⁹ Minimum world public order requires that military strategy be available for the maintenance of public order and be controlled in its exclusive application to all other areas. While a discernible trend toward inclusive application of the military strategy is emerging, global constitutive policies have concentrated primarily upon the regulation of exclusive military strategies and the development of criteria for the appraisal of nonofficial uses of the military instrument.

¹²⁶ Martin, *op. cit.* at 22.

¹²⁷ EDWARDS, GROUP LEADERS GUIDE TO PROPAGANDA ANALYSIS 40 (1938); LUMLEY, THE PROPAGANDA MENACE 44 (1933) cited in Martin.

¹²⁸ See Articles 15, 16 of the Charter of the Organization of American States; *cf.* Article 3, 147 L.N.T.S. 69.

¹²⁹ See Articles 43 and 45 of the Charter. See BOWETT (et al.) UNITED NATIONS FORCES (1964).

Thus far, articles 43, 45 and 46 of the Charter have not been implemented. However, the inclusive community has demonstrated some capacity to react in concert to challenges to minimum order. The Korean action was an early success, but it is of interest to note that its initiation ultimately turned on the fortuitous absence of a vetoing power. Subsequent changes in the decision dynamics of the UN projected a security role for the General Assembly¹³⁰ as a result of which the United Nations successfully employed the military instrument, at differing levels of activity, in Suez and the Congo.¹³¹ In certain contexts, an application of the military instrument by regional or individual entities may be recognized as constituting an inclusive operation.¹³²

A promising development in the inclusive use of military strategy stems from the late Secretary-General Hammarskjöld's doctrine of "preventive diplomacy." The Charter, though not unambiguous, tends to limit inclusive application of force to a breach of the peace or a situation that threatens global security.¹³³ Early interpretations generally construed the provisions to accord with a responsive rather than anticipatory role for the organization. Hammarskjöld applied the articles of the Charter in a broader frame of reference, envisaging inclusive use of force in nominally internal disruptions, whenever a plausible construct implied the emergence of a future threat to the peace.¹³⁴ The frightening alacrity with which events can transpire narrows the gap between prevention and rehabilitation; hence minimum world order may require an even more radical interpretation of "preventive diplomacy."¹³⁵

In general, military strategy remains one of primarily exclusive rather than inclusive operation in the constitutive process. Military integration on the regional level suggests a possible trend toward inclusive control, though it has been argued, not without cogency, that by creating

¹³⁰ See "Uniting for Peace," General Assembly Resolution 377 V.

¹³¹ For an evaluation of the legal problems involved see The Hammarskjöld Forum, *The U.N. in the Congo* (1964) and Schachter, *The Relation of Law, Politics and Action in the United Nations* 200 ff., 1963 Hague Recueil, Vol. 1.

¹³² For evaluation of the legal aspects of regional security claims, see Halderman, *Regional Enforcement Measures and the United Nations*, 52 Georgetown L.Rev. 89 (1963). See generally McDUGAL & FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 217 ff. (1961).

¹³³ Thus, at the core of the dispute between the United Nations and the Republic of South Africa is the seeming paradox that a "threat to the peace" can materialize by an African rather than South African breach. This is, of course, a most rigid construction. It is clear that an effective world public order must be capable of employing force, when necessary, to correct or ameliorate conditions inconsistent with public order principles.

¹³⁴ See GAOR: 12th Session, 690th Plenary Meeting, paras. 72-73; SCOR, 13th Year, 837th Meeting, paras. 10-16.

¹³⁵ On the necessity for and implications of "preventive politics," see LASSWELL, *PSYCHOPATHOLOGY AND POLITICS* (1934).

"super-states" inclusive integration is indefinitely postponed. Where effective inclusive control over the military instrument has not been acquired, a body of inclusive prescriptions have been invoked to delimit the domain and circumstances in which military instruments of exclusive operation may be lawfully used.

Economic Strategy

Since transnational intergovernmental organizations have been given little direct control over economic resources the strategies available to many components of the constitutive process have been relatively circumscribed. Modern states vary widely in the degree of intercrisis responsibility that they take for the management of economic life, varying from socialist to relatively *laissez faire* policies.

The contemporary world has become particularly sensitive to the long range impact of economic factors owing to the importance attributed to modernization, which calls for the achievement of an economy capable of self-sustaining growth. It is generally acknowledged that political stability and the eventual sharing of power are heavily conditioned by the rate and magnitude of capital formation and consumption levels.

The most conspicuous strategies of economic manipulation are negative, taking the form of boycott of trade, loans or skill. In a world that acts largely by parallel nation-state policies, the administrative arrangements required for successful boycotts are not easy to conclude, particularly when immediate advantages often accrue to those who fail to cooperate. Presumably as economies become more interdependent the growth of geographical specialization and a money-credit system will increase the vulnerability of nation-states. However, these tendencies are not allowed to work themselves out fully in large states. Hence economic strategies may prove in the long run to be instruments of the constitutive process when they rely more on inducement than deprivation. Short term deprivations—such as loan deferment—may be efficacious as temporary expedients in a program designed to induce responsible transnational behavior.

Insofar as control over values relevant to effective operation in the wealth process have remained largely in the hands of nation-state elites, the inclusive use of this modality in the constitutive process has been primarily supervisory. The absence of an effective taxing power has restricted the programs of international organizations and, more specifically, has limited the use of the economic strategy. A possible harbinger of an extended employment of this strategy in the future may be found in the economic agencies. Their credit powers and the capacity

to withhold sorely needed loans could be an effective strategy.¹³⁶ Thus far, the agencies have employed this power only to support "international financial morality" and have eschewed any "political" role.¹³⁷ A broader perspective on the part of the personnel of these organizations could greatly enhance this potential instrument of international order.

VI. OUTCOMES

The outcomes of the constitutive process may be most conveniently understood as culminations of the seven component functions which comprise the various types of decision: intelligence, promotion, prescription, invocation, application, termination and appraisal. These are functional distinctions. Legal scholarship traditionally approached decision on the basis of the organic division of Montesquieu: the executive, the legislature and the judiciary. Contemporary practice has added a fourth category: administration. These organic classifications were not honed to facilitate performance of the intellectual tasks required of students of authoritative decision. In response to this methodological problem, the Vienna school of jurisprudence developed a functional, as opposed to an organic, approach to constitutive problems, treating Montesquieu's amended classification as community functions rather than community organs.¹³⁸ Then without reference to formal constitutional label, the school undertook to determine by empirical examination which authorized individuals or groups within governmental structures fulfilled which functions.

The Vienna innovation introduced a new perspective, but suffered from several defects. Though it reacted against an organic approach, its functionalism operated within a traditional organic framework. The innovators commenced with a concept of formal government and examined only the functions which this formal government performed. Constitutive decisions which were made by nongovernmental organs escaped their attention. But no formal government monopolizes decision; many formal governments play no more than a minor or supporting role in constitutive decision-making in a national arena. Moreover, decision processes of a low degree of organization may not exhibit those stabilized patterns which we call governmental institutions. The restricted functionalism of the Vienna school is helpful only with a theoretical assumption that formal government monopolizes decision, an as-

¹³⁶ Jenks, *Some Legal Aspects of the Financing of International Institutions* 28 TRANS. GROT. SOC. 115 (1943).

¹³⁷ Reisman, *op. cit. supra* n. 104 at 941-42.

¹³⁸ The development has been noted and described in KLINGHOFFER, *MISHPAT MIN-HALI*, 1-4 (1957).

sumption which is difficult to sustain. In regard to transnational decision, the method is of extremely limited utility.

A second defect, stemming from the organic matrix of the Viennese approach was the derivation of only three functions, parallel to the three organs. Had the Viennese school been concerned with the aggregate of actual constitutive decisions in any segment of social process, it would have discovered that categories referring to only three dimensions of decision, and particularly those which they chose, could not provide a satisfactory instrument of analysis.

The authoritative process of constitutive decision may, obviously, be broken down into innumerable component functions. It is incumbent on the scholar to fashion an intellectual instrument, to serve his objectives, in the light of the data pertinent to his inquiry and a variety of such expedient considerations as economy and clarity. Our objective is the ascertainment and recommendation of policies and strategies for shaping the global constitutive process as a vehicle for a world public order of human dignity. Instrumental objectives are the assessment of past trends, the analysis of conditioning factors and the projection of future trends. In the light of these objectives, we find it convenient to dissect constitutive decision into seven functions. For present purposes, it will suffice to set out, in briefest form, a description of each function and an indication of the lines of relevant future research. This description follows the pattern of phase and value analysis which has been described and applied earlier.

For detailed description of the specialized process in which each particular function is performed, we find it convenient also to employ a sequence analysis of the components of the function which refers to events generally, though not always, following each other in a temporal order. It is clear, for example, that a reference to the process of prescription includes an initiation of the process, an exploration of facts, conditions and projections, a formulation of policy and finally a promulgation of prescription aimed at creating or sustaining expectations of policy choices, authority and control. Similarly, the function of application includes, sequentially, initiation, exploration of potentially relevant facts and prescriptions, an authoritative characterization of facts and prescriptions in which the decisional arts of interpretation, supplementation and integration are operative, enforcement and finally review.

It will be apparent that the seven decision functions themselves coincide with a frequently observed temporal order and are an inclusive form of sequence analysis. Strictly speaking, the categories employed to describe the often observed temporal order within each major deci-

sion function are "sub-sequence" analyses. It would be useful for many purposes to repeat the terminology of the seven major functions in the study of the flow of interactions within each one. This might, however, be somewhat confusing as to the level of analysis intended at any given moment. Hence a roughly equivalent set of terms is utilized to indicate that a sub-function of a major decision function is referred to, and, also, to obtain the advantage of some of the connotations conventionally associated with the operations to which reference is made.

Detailed analysis of decision functions is essential for the making of valid comparisons in various contexts. In small groups, there may be near identity in the temporal ordering of a function. Where a degree of specialization in decision-making is found, however, different participants, with different perspectives, possibly in different situations, manipulating different values in different strategies frequently operate at successive steps in performing an equivalent role. It is precisely because of a differentiation in sequential phases with potentially important value outcomes that it is necessary to clarify policy, on a lower level of generality, to delineate trends, analyze factors and propose strategies for the component sequences of a function. We proceed now to a delineation of the seven functions we find convenient to distinguish.

Intelligence

The intelligence function comprises the gathering, evaluation and dissemination of information relevant to decision-making, prediction based on the intelligence derived and, in some cases, the planning for future contingencies. In general, there is some overlap of all functions; in the case of intelligence, relations are especially close with promotion or recommendation. This is particularly true in the world constitutive process where intelligence, disseminated by the use of ideological strategies becomes promotion.

The important sequential phases of intelligence are (1) gathering, (2) processing and (3) dissemination. The processing phase itself is composed of a number of elements such as storage, retrieval, utilization, and so on. The community policies relevant to the constitutive intelligence function are dependability, comprehensiveness (contextuality), availability and economy. A long-range goal is openness of participation to all interested actors in the constitutive process. It seems clear, however, that the realization of this policy will be deferred as long as elites feel themselves in a crisis situation and evaluate intelligence as an important base of power.

There are official and unofficial participants in the intelligence function. Contemporary government, though continuing to draw upon

unofficial sources, has developed massive intelligence establishments of its own. In the West, this development has been particularly intense since the end of the Second World War. In the United States, interdepartmental rivalry and rapid changes in conditioning circumstances, coupled with lack of administrative foresight, has resulted in an often irrational web of intelligence agencies.¹³⁹ Studies based on defector reports suggest a parallel maze in the USSR.¹⁴⁰ Some of the output of these agencies is for public dissemination (without necessary acknowledgement of source) and is thus quasi-promotional. In the West, research and development projects are frequently contracted out to non-official entities, causing a delicate merger between institutions devoted to pure scholarship and the requirements of applied politics, the future social impacts of which are difficult to gauge.

Nonofficial participants who employ the ideological modality of dissemination include the press, radio and television. The distinction between these mass media is introduced because studies of certain states have indicated that where the different media draw on different wealth elites for financial support—for example, through advertising—they highlight, suppress and interpret events in significantly different ways.¹⁴¹ In totalitarian systems, the media are government controlled and are employed as instruments of the power elite.¹⁴² In pluralistic democracies, as the intensity of crisis rises, the freedom of nonofficial media is attenuated, both by direct government control and by indirect appeals for voluntary censorship allegedly in the interest of national security.¹⁴³

Political parties, pressure and interest groups, undertake explicit intelligence functions as part of their promotional activities, sending out private observers and maintaining private evaluating staffs. The intelligence which is gleaned may be beamed directly at decision-makers or reserved for the formulation of private policy. Intense interactions affecting the shaping and sharing of wealth generate a demand for specific, current intelligence, which is supplied by specialized agencies of banks, investment houses, business counselling firms, and the like; the information so gathered often has fundamental constitutive im-

¹³⁹ See, for description, DE GRAMONT, *THE SECRET WAR* 7, 124 (1962).

¹⁴⁰ *Id.* at 129.

¹⁴¹ Sakamoto, *The Japanese and Vietnam*, 153 *NEW REPUBLIC* 16 (September 4, 1965).

¹⁴² See BARGHOORN, *SOVIET FOREIGN PROPAGANDA* 3-30 (1964); in Shabecoff, *East German Paper Holds the News is Secondary*, *N.Y. Times*, April 16, 1966, p. 7, col. 4, Peter Lorsch, editor of *Neues Deutschland* is quoted as saying: "We do not regard ourselves as a source of information . . . It may not be the classic role of the newspaper, but perhaps we are the truly modern newspaper."

¹⁴³ See COHEN, *THE PRESS AND FOREIGN POLICY* 69 ff. (1963).

portance. Individuals acting in their ordinary professional capacities—as social scientists, international lawyers, free-lance journalists—often fill official intelligence roles; they also play the same role in a private capacity.

The growth of organized transnational decision processes has, quite predictably, led to the initiation of specialized intelligence facilities. The United Nations press and information services employ the ideological instrument. Fact finding missions, observers and “presences” of the UN, the ILO and regional organizations function primarily to service elite decision-makers.¹⁴⁴ International Courts and tribunals frequently develop intelligence techniques to assist their decision-making.¹⁴⁵ Certain private associations act as intelligence participants in international decisions.

General community perspectives toward the gathering of intelligence have undergone far-reaching changes. Contemporary elite decision-makers have evidently decided that maximum knowledge of activities is fundamental to common security. Thus the “open skies” policy appears to be an unequivocal, international prescription.¹⁴⁶ Similarly, attitudes toward professional espionage have radically changed. Although national insecurities do not, as yet, tolerate ideologically or economically motivated traitors,¹⁴⁷ captured foreign agents have only rarely been given maximum sentences. The brisk barter trade in apprehended foreign operatives appears to be viewed with equanimity. Popular and professional protests regarding the CIA have been almost entirely directed against other than its intelligence functions. The public outcry which followed the discovery that NSA was monitoring and decoding diplomatic radio-telegraph correspondence seems to have been caused by the fact that the U. S. was reading the mail of its allies as well as its adversaries. Conversely, periodic discovery of listening devices in American embassies in socialist countries now gives rise to no more than perfunctory formal protest. These trends suggest both elite and rank-and-file appreciation of the contribution of effective and dependable intelligence for minimum and maximum order goals. On the other hand, it is clear that important constitutive programs have been ineffective largely due to the absence of preliminary intelligence work. Foreign aid

¹⁴⁴ See WAINHOUSE (et al.), *INTERNATIONAL PEACE OBSERVATION* (1966).

¹⁴⁵ Judicial intelligence is traditionally adversarial. However, courts introduce their own findings via “notice” as well as *descentes sur les lieux*. But see JENKS, *THE PROSPECTS OF INTERNATIONAL ADJUDICATION* 604 (1964).

¹⁴⁶ But see Wright, *Espionage and the Doctrine of Non-Intervention in Internal Affairs* 3 in STANGER (ed.) *ESSAYS ON ESPIONAGE AND INTERNATIONAL LAW* (1962).

¹⁴⁷ WEST, *THE NEW MEANING OF TREASON* (1964).

programs, for example, become notorious for their failure to gather the necessary intelligence before prescription and application.

In regard to the requisite perspectives of the personnel actually engaged in the intelligence function, the policy of responsibility is of primary importance. Responsibility, in addition to its reference to the necessary intelligence skills, includes independence and integrity. Intelligence investigators must manifest enough self-awareness to distinguish the trends they purport to describe from their own preferences about events. Considerable attention has been directed to the problem of the intelligence agent who gathers information to support his preferred prescriptions and applications. Recommendations for structural differentiations between intelligence and subsequent decision functions obscure the fact that the problem is essentially one of perspectives rather than organs. While a desirable function of intelligence may include the invention and tentative evaluation of a satisfactory policy proposal, accompanied by deliberate abstinence from factual distortion or agitation on behalf of a specific solution, the workability of the distinction ultimately depends on the personnel charged with responsibility for what is to be done.

The utility of power as a base value in this process needs no illumination. Wealth may be employed for maintaining a large open intelligence network as well as for the more sordid practice of buying information. Enlightenment and skill are used in devising techniques for finding and evaluating information as well as for predicting and planning. Personal enlightenment, in the sense of insight and understanding, improves the ultimate dependability of the tool devoted to the performance of this function.¹⁴⁸ Individuals may reveal or conceal information as a consequence of personal, family or national loyalties (affection). Respect and rectitude motives may cause divulgement (*e. g.* apologies, memoirs explaining to posterity, and so on). These same values may be employed deprivationally for purposes of blackmail. Psychic and physical well-being will affect the efficiency of participants; inner conflict may, for instance, undermine loyalties and lead to the disclosure of information to a rival participant in world politics.

The process of intelligence employs both coercive and noncoercive strategies. Coercive strategies range from the "third degree," torture, brain-washing and threats of deprivations to such technologically sophisticated violations of the person as "truth serums." Noncoercive strategies include diplomatic methods, such as the personal interviewing techniques of the social scientist; ideological procedures, such as

¹⁴⁸ See Verba, *Assumptions of Rationality and Non-Rationality in Models of International Systems* in KNORR & VERBA, *THE INTERNATIONAL SYSTEM* 93 (1961).

mass interviewing, polling, content analysis and economic tactics, such as acquiring information in exchange for coin of the realm.

The outcomes of the process of intelligence are a flow of data to (or the withholding of information from) participants who are performing the other functions of constitutive decision. The questions pertinent here relate to the extent of disclosure or nondisclosure of gleaned intelligence. What intelligence is brought to the attention of effective decision-makers? If realistic information was not made available, is this due to faulty channels of communication or to deliberate blocking? To what extent do decision-makers take cognizance of the intelligence from various sources or are likely to do so in the future? How much influence has the flow of intelligence had on decisions actually taken?

Promotion (Recommendation)

This function goes beyond passive recommending to active advocacy of policy alternatives to authoritative decision-makers. A personality system can be said to perform an inner promotional activity when intensity of demand is added to expectations. The participants in a decision process promote when they project their intensified demands to authoritative prescribers. Hence promotion is a pressure operation aimed at getting authoritative and controlling results. Its objective is to transform promoters' demands into group prescriptions. As noted before, this function often blends with intelligence. The extent of the merger, when not deliberate, probably varies conversely with the extent to which a given participant realistically perceives himself and his personal psychic demands. At times the merger is imposed deliberately. Thus a recent study of the press notes that journalists are often explicitly directed by their papers to mix reporting and evaluation; mere reporting of facts is rejected.¹⁴⁹ The fusion of functions is accelerated when purely promotional participants gather intelligence to aid in the propagation of their programs.

If the promotional function is to contribute fully to the world constitutive process, it is clear that it must be brought to conform to a number of fundamental policies. Of primary importance is the encouragement of integrated policy: the promotion of common rather than special interests. This implies that the channels of promotion are open to all participants, and that strategies of persuasion rather than coercion are used. In practice, a frequent barrier to adequate performance of the function is domination of available channels by promoters of special interests. Policies in favor of representativeness and of the cultivation of integrated policy can be brought into dynamic balance with

¹⁴⁹ Cohen, *op. cit. supra* n. 145, 22-25.

policies in support of openness by means of structural regulation. Motivations of concern for the common interest and of responsibility can be encouraged, for example, by arranging for highly enlightened and disengaged individuals to operate at key phases of the promotional process.

Experience shows that within the departments of a single government, diverse policy alternatives may be promoted; obviously such a state of affairs gives expression to contrasting value sets and identifications. Hence it is incomplete and unrealistic to speak only of promotion as an official function. As with most functional analyses of the decision process the unity that is conventionally implied by the term "government" promptly shatters. Nongovernmental organs are intricately involved in the championing of public policy. The mass communications media typically engage in active promotion through editorial statements (direct promotion) and news culling, highlighting and interpreting (indirect promotion).¹⁵⁰ The media may direct their promotional messages to elite decision-makers or to a wider audience. Political parties and pressure groups often promote explicit programs whose constitutive impact is demonstrable. A phenomenon of rising frequency in pluralistic democracies is active participation in promotion by interest groups concerned with different aspects of the global constitutive process.

In transnational interaction, the nation-state plays a leading promotional role. Information agencies and consulates are among official outlets. Government radio, television, books and periodicals move relatively freely across borders seeking both elite and rank-and-file audiences. The activities of a number of intergovernmental agencies are primarily promotional. Transnational interest groups of a private character also engage in constitutive promotional activities. Increasingly, they assume pressure group roles in organized transnational arenas.

As in the process of intelligence, all values may be employed in recommending. However, certain arenas introduce limitations on the employment of some values. Frequently used symbols commonly draw on affection (national or group loyalties), respect (national honor, prestige, etc.) and rectitude (ideology, racial purity, etc.). Much of the communicational aspect of promotion is, in fact, a process of finding or fabricating a symbol of enough inclusivity to attract, concentrate, and manipulate the value bases of a disparate number of participants. As transnational interactions intensify and arenas enlarge, there will presumably be more attempts to formulate symbols of more inclusive common interest. On the verbal level, at least, this trend is clearly indicated in inclusive demands for minimum order. However, as we have

¹⁵⁰ *Id.* at 105.

frequently commented, the scholar and decision-maker must constantly distinguish verbalizations from more overt indications of common willingness to move effectively toward minimum world order. Special interests rarely present themselves as such; the articulation of inclusive demands may be no more than a hypocritical abuse of the opportunity to promote.

Promotional strategies are essentially communicational. They may be either diplomatic—directed at elite groups—or ideological—directed at broader audiences. Since promotion is an agitational process, directed at achieving authoritative prescriptions, strategies of a high degree of coercion may be brought into play. Beyond a certain threshold, coercion becomes a component of the prescribing function. Before that threshold is reached, however, the effect of coercive strategies is to limit the ambit of free choice of prescribers by sharply increasing the costs of certain decisions which diverge from the outcomes sought by the promoters. Clearly there is no place for highly coercive strategies in the promotional process of a public order of human dignity

Prescription

Prescription refers to the projection of policy for value shaping and sharing accompanied by coordinate expectations of authority and control. As a process of communication, prescription proceeds on three levels: (1) the designation of policy (fact contingencies, a norm and a sanction), (2) the communication of the authority of the policy and (3) the communication of control intentions of the community to sustain it. Defined in this manner, prescription includes the outcomes both of formally authoritative prescriptive processes and of unorganized interaction.

Prescription is at once broader and more specific than the commonly used term "legislation." In conventional usage legislation is an "organic" concept, deriving from the assumption that law is made by a centralized legislature. Such an approach is inadequate for the study of government anywhere, and especially of international law, since there is little formal international legislation. Even within a relatively organized community, the term legislation is often no more than a procedural label, with little or no relevance to the question of creating expectations of authority and control. A significant amount of what is conventionally identified as legislation is not prescription; in fact, certain national legislatures are notorious for producing a voluminous statutory output, little of which can meet the functional requirements of a prescription. On the other hand, a considerable amount of communication which cannot be traced to a legislature is often treated as unqualified prescription. For example, the mongrel term "judicial leg-

isolation" is so common that it no longer astonishes lexical sensibilities.

In general, inherited terminology has become an obstacle to, rather than an instrumentality of, scholarship. Working within the frame of Article 38 of the Statute of the International Court¹⁵¹ and seeking to extend it to cover the myriad patterns of world constitutive prescription, scholars have been forced to invent such fabulous terms as "binding recommendations,"¹⁵² "instantaneous custom,"¹⁵³ and "pressure-cooked custom."¹⁵⁴ The emphasis on policy projection and the creation of expectations of authority and control immediately uncovers the vast and intricate web of international prescription. There is universal, general, regional, plurilateral and bilateral prescription. Moreover, prescription is related to all the possible objectives of the value spectrum.

Processes of prescription occur in a wide variety of situations and the degree of institutionalization of the various component processes of prescription varies greatly. The sequence of a completed process of prescription is: (i) initiation; (ii) exploration of potentially relevant facts and policies; (iii) formulation, that is the characterization of the facts and policies accepted as relevant; and (iv) promulgative communication of the prescriptive content to the target audience.

The more important policies for constitutive prescription are promptness in initiation, comprehensiveness and contextuality in exploration, the conformity of prescriptive formulations to the basic goal values of the community, and effectiveness in promulgative communications to the target audience. The appropriate quantum of prescriptions will vary according to the context, particularly the absorptive capacity of the audience. Generally, however, the appropriate criterion is an adequate flow of prescriptions to support the public order without invasion of civic order.

The participants in the process of prescription may be broadly characterized as communicators and communicatees or audience. Any participant in constitutive activities may fill both roles. In the most comprehensive sense, all participants in social process are constantly communicating, explicitly as well as by implicit behavior, and the communications that

¹⁵¹ Article 38, generally treated as an authoritative statement of the "formal sources" of international law, gives agreements, customs and general principles of law as the primary sources; judicial decisions and doctrinal writings as subsidiary sources.

¹⁵² Sloan, *The Binding Force of a "Recommendation" of the General Assembly of the United Nations* 25 BRIT. YB. INT'L L. 1 (1946).

¹⁵³ Bin Cheng, "Instant" International Customary Law? 5 INDIAN J. INT'L L. 23 (1965).

¹⁵⁴ Engel, *Procedures for the De Facto Revision of the Charter* 59 PROC. A.S.I.L. 108 (1965).

are coordinated with authority and control intention become prescriptive. The problem of who is receiving these communications at any given time and place, and with what effects, is in continual need of comprehensive empirical examination.¹⁵⁵

Prescriptive arenas, official and unofficial, are the five situations presented earlier.¹⁵⁶ These arenas are particularly relevant to the question of the degree of prescriptive authority of prescribers and the extent of prescriptive intention which accompanies their words and deeds. Authority, it will be recalled, is a set of common expectations; in regard to prescription, it is a set of expectations about who is authorized to prescribe community policy. A convenient set of indices for investigating these expectations of authority may be found in the concept of situational or contextual roles. Most participants, as all individuals, play different roles in different interactive patterns. These roles may provide indications of both expectations about the prescriptive authority of the communicator as well as of prescriptive intentions. Thus, nation-state officials in the parliamentary arena may be deemed authoritative prescribers by the world community, but their prescriptive authority may be deemed less if they communicate unilaterally in the executive arena. Similarly, communications made in a parliamentary-diplomatic arena may be assumed to contain a high prescriptive intention in contrast with statements made in a diplomatic arena.

All values are employed as bases in the process of prescription. Prescriptive strategies vary with the component of the prescription. The elements of the policy message are modulated by language rather than language equivalents.¹⁵⁷ Authority is an attendant communication and is generally transmitted by implicit modalities such as situation, role or auxiliary symbol.¹⁵⁸ Control intention—a communication of the capacity and willingness to apply effective power to support putative prescriptions—may be modulated by anticipatory action, reinforced statement, direct action or reference to context.

Sequence analysis indicates that different sets of strategies are employed in the different phases of prescription. The difference is most marked in intra-arenal phases (initiation, exploration and formulation) and promulgative strategies. The latter refer to the modalities by which a prescription, once formulated and decided, is communicated to an

¹⁵⁵ For a critical examination of the reception problem with particular attention to the inadequacy of available investigative techniques, see KLAPPER, *THE EFFECTS OF MASS MEDIA* (1949).

¹⁵⁶ See *Situations supra*.

¹⁵⁷ Sapir, *Communication*, 4 *ENCYCLOPEDIA OF SOCIAL SCIENCES* 81 (1931).

¹⁵⁸ RUESCH & KEES, *NON-VERBAL COMMUNICATION* 7 (1958) develop the concept of a metacommunication to describe implicit communications which explain how the primary communications are to be understood.

¹⁹ *Journal of Legal Ed.* No.4—4

audience which does not participate directly in policy formulation. A constitutive prescription, it should be added, need not be publicized beyond the immediate prescribers. Thus a private "deal" between several nation-state elites can be effective constitutive prescription despite the fact that it is kept in confidence by the immediate prescribers. Promulgative strategies may comprise the ritual of a judicial decision, the signature and ratification of an international agreement, a parliamentary vote, and so on. Many of these acts, in addition to publicizing the communication, impart a degree of authority to it. Inter-arenal strategies, in contrast, include the modalities by which elite prescribers agree on a formulated prescription. Thus, in a diplomatic arena, the strategies are comprised of the elements of bargaining theory, in a judicial arena the elements of small group dynamics, in a parliamentary arena the usual "political" strategies.

The outcome of a prescriptive process is the generation of the designated expectations in the target audience. The question of audience response—the degree and intensity of shared subjectivities resulting from prescriptive communications—is a fundamental problem in the study of this function. On a theoretical level, there is utility in assuming a "closed circuit." In fact, we know that many putative communications fail to engender the intended subjectivities in the target.¹⁵⁹ In certain cases, the circuit is not closed. In other cases, though closed the effects are dysfunctional; expectations other than those intended by the communicator may be engendered or an overexposed audience may manifest "privatization" or "narcotization."¹⁶⁰ The improvement of prescriptive techniques, a root problem in international law, turns upon the effects of the process.

The initial challenge is the development of indices for determining when communications have prescriptive outcomes. The subjective elements—long appreciated by doctrines of customary law¹⁶¹ can be tapped by the employment of current social scientific techniques: manifest and latent content analysis, mass interview, intensive interviews and participant observation. Work in this area can be accelerated and improved by development of a specialized field of prescriptive communication.

Invocation

Application is the authoritative characterization of facts in terms of their conformity or deviation from prescriptions and the possible applica-

¹⁵⁹ See Klapper, *op. cit. supra*.

¹⁶⁰ WRIGHT, *MASS COMMUNICATION: A SOCIOLOGICAL PERSPECTIVE* (1959).

¹⁶¹ See WOLFE, *CUSTOM IN PRESENT INTERNATIONAL LAW* (1964) for survey of the literature.

tion of control to reconstitute value outcomes discordant with prescribed policies and public order interests. In social process, however, it is generally impossible to move directly from prescription to application. The function of invocation refers to the *provisional* characterization of facts as deviating from prescribed policy and the *provisional* assertion of control to prevent or abate the deviation or to seize control of individuals or values necessary for subsequent application. Thus invocation refers to considerably more than the initiation of a process of application. In certain arenas, provisional characterizations of deviations may have enormous value consequences. The public statement by a Senator that an individual is engaged in subversive activities may result in enormous value deprivations, as may an article in a newspaper that a Senator is engaged in fraudulent activities. In neither of these cases is there a provisional application of control; mere provisional characterization sets civic sanctions in motion. If an individual is held without bail, summarily deported or refused entrance to a state or killed by a police agent, the value deprivations attendant upon provisional characterizations may be even greater. It is precisely because of the potential value effects of invocation that it must be treated as a decision function; policy analysis must be directed to much more than the procedures for initiation of application.

The sequential phases of invocation are (1) initiation, (2) exploration of facts and policies, (3) provisional characterization and application of control and (4) stimulation of applicative arenas.

Policy clarification in regard to invocation requires a balance between promptness and efficiency on the one hand, and adequate safeguards against irremediable value deprivations on the other. Clearly, the public order demands promptness in initiating application in cases of divergences from prescribed policy. Invokers must be sufficiently authorized and motivated as well as accorded the necessary resource capability. The extent to which authority and control should be dispersed among all participants or concentrated in a specialized group of invokers must be determined by reference to context. The exploration and characterization phases of invocation should be executed by contextual analysis and rationality in the provisional characterization. The use of coercion in provisional control applications should be carefully restricted. Official invokers having in high degree the qualities noted above may, nevertheless, impose severe value deprivations on innocent parties. If access to processes of invocation is broadened to include all participants, abuses as well as misinvocations may be expected. Rather than impose restrictive regulations on the invocative process, it is preferable to insist that all invocations be followed by authoritative applications: no invocation without application.

In institutionalized situations of interaction, invocation processes may be highly formalized and often restrictive in all their phases. In arenas of light organization, invocation is open to all effective participants and is frequently indistinguishable from the process of recommendation. Thus, a mild diplomatic note indicating dissatisfaction with the recipient's behavior and stating an intention to follow a counter-course may constitute the invocation of a process of constitutive decision, whose degree of organization is limited to the relay of communications through the diplomatic channel. In an even more unorganized sense, the behavior of one participant may evoke counter-behavior by another; the ultimate synthesized pattern of interaction will constitute a constitutive decision, which was invoked by the most indirect of communications.¹⁶²

In arenas of a higher degree of organization, access qualifications may act to prevent wide participation in the function of invocation. The classic arena demonstrating this phenomenon is the International Court of Justice. Under the terms of its Statute, only "states" may appear before the Court.¹⁶³ In the Security Council and the General Assembly of the United Nations, invocation—placing a matter on the provisional agenda—is again restricted to states.¹⁶⁴ Although these practices limit the breadth of participation in this function, they rarely prevent effective participants from initiating application in an issue in which they perceive an interest. By a process of "mutable privity," excluded participants don the raiment appropriate to the arena to which access is sought. Thus, *Mavrommatis*¹⁶⁵ and *Nottebohm*¹⁶⁶ in effect "leased" state-cover in order to invoke decision and pursue claims in the Permanent Court and the International Court respectively. In the United Nations, while only a state can invoke through the agenda, a nonstate entity may effectively place a matter on the agenda by finding an acquiescent delegation member. This practice is not uncommon. In a more general sense, wherever a composite participant alone can invoke authoritative decision, all *infra-arenal* participants of the composite entity, with some measure of internal effective power, can move the appropriate organ of the composite participant to invoke transnational decision. Thus, the ultimate initiation of the process of invoking diplomatic protection of nationals is the intra-arenal claims of the actual deprived parties within the invoking nation-state.

¹⁶² See SCHELLING, *THE STRATEGY OF CONFLICT* 54 ff. (1963).

¹⁶³ Article 36, Statute of the International Court.

¹⁶⁴ But see participants *supra*.

¹⁶⁵ Series A/No. 2 at 6.

¹⁶⁶ 1953 I.C.J. Reports III; 1955 I.C.J. Reports 4; in this case, the Court applied a doctrine of "genuine link" and found jurisdiction defective. The case has been criticized.

An effective global constitutive process of authoritative decision requires broad access to and participation in processes of invocation. Respect for and confidence in processes of authoritative decision are based, in no small part, on the ability of the individual to invoke decision when he feels that prescriptive misfeasance or nonfeasance has occasioned an unlawful value deprivation. Similarly, an effective minimum public order requires that centralized organs of the community be authorized and capable of invoking decision when they perceive or anticipate a disruption of order. Although current access to invocation is not optimum, a trend toward the broadening of participation in this function is evident. The proliferation of new nation-states has accorded a large number of new elite groups access to organized arenas for invocation as well as for other decision functions. In certain regional groupings, individuals have been accorded a *locus standi* in invocation of transnational decision.¹⁶⁷ Reference has been made earlier to the access enjoyed by individuals to a number of constitutive arenas of a high degree of organization.¹⁶⁸ Of particular relevance here is the Trusteeship Council.¹⁶⁹ There has been a parallel broadening of the invocation function of centralized community organs. Thus, the Security Council and the Secretary-General play an invocatory role far greater than that accorded to their counterparts in the League of Nations.¹⁷⁰

Application

Application represents the transformation of authoritatively prescribed policy into controlling event. Claimants, initiating decision, petition decision-makers whose manifest objectives are the application of prescriptions of constitutive and public order, to apply particular prescriptions to asserted events by management of the bases and strategies at their disposal. The temporal sequence of application is (i) initiation; (ii) exploration of potential facts and policies; (iii) characterization of facts and policies; (iv) enforcement; (v) review. The parallels with the prescriptive function should be noted. Whereas prescription is primarily prospective, application is immediate; hence a component function is enforcement or concrete implementation. Moreover, application includes

¹⁶⁷ This was an innovation in the now defunct Central American Court of Justice. Under the European Convention on Human Rights, individuals may initiate an action before the Commission, though only that body and the contracting states have a right to bring the case before the Court. See ROBERTSON, *HUMAN RIGHTS IN EUROPE* (1963).

¹⁶⁸ See page 34 and footnote 48 *supra*.

¹⁶⁹ For a survey of Trusteeship petitioning activity in the past year see *Issues Before the 20th General Assembly*, 554 INT'L CONC. 79-101 (1965).

¹⁷⁰ See SCHWEBEL, *THE SECRETARY-GENERAL OF THE UNITED NATIONS* 3-13, 84 ff. (1952).

as a component a review function; claimants may assert that an aspect of the prior phases of application was unlawful, thereby abrogating the characterization and terminating the enforcement. Prescription generally does not import review, although its equivalent may be achieved, in certain cases, through the functions of appraisal and termination. There is a striking similarity between many of the procedures of invocation and application, particularly when the former involves an application of control. The functions are distinguished by reference to expectations of applicative authority. In appraising control applications, the decision-maker and the scholar should characterize them as provisional or definitive according to the public order impacts which will predicably follow.

Applicative policies, as they relate to the various sequential phases of the process, include promptness in initiation, comprehensive contextuality in exploration, choice in decision which is both realistic as to fact and in conformity to inclusive community policies, effectiveness and cost-consciousness in enforcement, and comprehensiveness in policy analysis and projected effect in review. Some of the most difficult policy problems of the law, though not confined to application, have traditionally been treated under this function. The problem of discovery, for example, requires a balance between the demands of realistic contextuality in exploration and the reserved domains of the civic order which should be protected from official interventions. The entire problem of circumstances in which appliers should refrain from positive decision, of which the "political question" doctrine is only an aspect, relates to the division of competence between coarchival appliers and the delicate problem of feasible enforcement. Parallel problems are encountered in the ambiguous policy of *forum non conveniens* by which appliers sometimes decline decision.

The arenas of application of the constitutive process include almost all situations of interaction. While much application takes place in official arenas, specialized in practice and in myth to that function, application, like prescription, is a component of all social interaction. All behavior is, in differing positive and negative degrees, application. The ubiquitous nature of application raises difficult quantitative problems for the observer.

Scholarly treatment of transnational application has broken from municipal conceptions, but has been seriously impeded by the assumption of requisite consensuality in inter-state application. The six basic processes recognized by doctrine are "good offices," "mediation," "commissions of enquiry," "conciliation," "arbitration," and "adjudication."¹⁷¹ Theo-

¹⁷¹ For discussion see Sohn, *The Function of International Arbitration Today* 1962 Hague Recueil 1-23.

retically, only the outcomes of the last two processes are "binding"; the outcomes of the other processes are essentially hortatory. In practice, different contexts have divested a "binding" arbitral or judicial decision of all effectiveness and invested it in the "nonbinding" pronouncements of a conciliation commission.¹⁷² Theoretical difficulties with the control factor have led some scholars to extend the term "international adjudication," apparently, to cover all effective application. Wright, for example, states that "[B]roadly defined, adjudication includes dispute settlement by a political body such as the United Nations Security Council or a national legislature" ¹⁷³ On this line of analysis, it would not be surprising to find functionalists employing the term adjudication to cover unilateral decisions taken by an interested participant, if they accorded with general expectations! But to use the term "adjudication" in this manner obscures relevant differences in the various stable applicational arenas.

Application occurs in five contexts: adjudicative, parliamentary, parliamentary-diplomatic, diplomatic and executive. In western cultures, myth holds the courts to be the most appropriate arena of application. In nonwestern cultures, this may not be the case;¹⁷⁴ moreover, many institutions which the western anthropologist would characterize as adjudicative may partake more of the diplomatic or parliamentary. There is little need to illuminate the observation that national decision-makers have manifested no marked preference for this arena of application. The dominant applicative arena in transnational interaction has been the diplomatic. Formal constitutive documents, though paying obeisance to the appropriateness of court for application, have implied a preference for parliamentary-diplomatic and parliamentary arenas. In a "unicentric" context, one which is currently found only on regional levels, one participant applies for others, on the basis of its inordinate power.

The base values employed in application vary according to arena and sequential phase. In pre-enforcement phases, there appears to be an inverse ratio between the degree of organization of the arena and participant freedom in base value investment. In terms of authority, there is a clear demand for the employment of nonresource or symbolic values rather than tangible resources in more organized arenas. Of particular importance to the contemporary constitutive process is a clarification of rational base value exploitation in the enforcement phase. While strate-

¹⁷² Reisman, *The Review and Enforcement of International Judgments and Awards* (Unpublished thesis, Yale Law School, 1965), Chapters 3, 11.

¹⁷³ Wright, *Adjudication*, *DICTIONARY OF THE SOCIAL SCIENCES* 9 (UNESCO, 1964).

¹⁷⁴ See SYATAUW, *SOME NEWLY ESTABLISHED ASIAN STATES AND THE DEVELOPMENT OF INTERNATIONAL LAW* (1960).

gies directed at the rectitude and respect demands of individuals may be an effective enforcement base in an homogenous community, the current context appears to require an effective power base for processes of enforcement. It is clear, of course, that an appliers' "preoccupation with enforceability"¹⁷⁵ will be a significant factor in formulation and characterization.

Strategies of application vary according to arena and to sequential phase. Thus, initiatory strategies vary markedly in an adjudicative and a diplomatic arena. Similarly, exploration in the adjudicative arena is, doctrinally, adversarial, while, in an executive arena, it may be collaborative. The effectiveness of constitutive application can be improved by a detailed analysis and evaluation of the different strategies employed in different arenas and their effects upon outcomes and goals.

The outcome of a successful application is a change in current value allocation and future behavior toward a greater conformity with constitutive and public order policies. It should be emphasized that we do not refer to a mechanistic application of sanctions—"evils" as John Austin revealingly called them¹⁷⁶—to every deviation from prescribed norms. The minimum goal of application is the maintenance of public order; the maximum goal, the distribution of values and the conformity of behavior to the overriding policies of the world public order system. In different contexts, different applicative procedures and enforcement strategies will be required in order to realize these goals. Thus, depending upon the context, rehabilitative, deterrent, restorative, corrective or preventive measures may be taken.¹⁷⁷ The imposition of deprivations and/or the according of indulgences are only lower level implementations of the broader policy alternatives.

Termination

The termination function deals with the abrogation of extant prescriptions and provision for claims arising from disruption of an expected and demanded arrangement. Semantic or verbal termination—frequently implicit in codification—generally involves striking from the books statutes which are no longer expected and demanded: obsolescing the obsolete. Maintaining a congruence between expectations of authority and control and formally prescribed law is, of course, essential to an efficacious process of authoritative decision; hence provision should be made for semantic termination. However, such termination rarely stirs

¹⁷⁵ JENKS, *THE PROSPECTS OF INTERNATIONAL ADJUDICATION* 667 (1964).

¹⁷⁶ AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED AND THE USES OF THE STUDY OF JURISPRUDENCE* 15 (Hart Introduction, 1954).

¹⁷⁷ See generally ARENS & LASSWELL, *IN DEFENSE OF PUBLIC ORDER* (1961) and ARENS & LASSWELL, *Toward a General Theory of Sanctions* 49 *IOWA L.REV.* 233 (1963).

claims for compensation following major value reallocations; formal authority has been brought into line with expectations rather than vice-versa. We are concerned here with community termination of extant authoritative expectations and demands. Termination may impose a deprivation upon those who have made good faith value investments on the positive public order supposition that the prescriptions would continue; the deprivations may relate to both tangible assets as well as to the severe psychic dysphoria attendant on the collapse of an expected and demanded order. On the other hand, it may accord great indulgences to others, windfall indulgences to some, but not infrequently planned value gains to those who initiated the function. While both prescription and application may terminate expectations of authority, it is, in fact, the problem of claims arising on the abrogation of constitutive or public order features which distinguishes termination from the other functions.

The sequential phases of the process of termination are (1) initiation, (2) exploration, (3) cancellation and (4) amelioration. The parallels of the first three phases with prescriptive sequences need no illumination. The fourth phase, amelioration, refers to the process of satisfying claims arising on termination and developing procedures which will both distribute losses equitably as well as consolidate support for the authoritative termination.

While community goals may survive a changing context, prescriptions embodying those goals will require reformulation or change as the facts upon which they were formulated are supplanted. Accordingly, an effective public order system requires a process of termination which is responsive to changes in the social process; without such a function, a legal system will be restricted to a minor or even negative role in social change. The primary policy of termination is, thus, reducing the cost of social change and encouraging changes in the appropriate directions. This policy will be served by the cultivation of a climate which is sympathetic to change. This in turn, is contingent on the availability of procedures for minimizing the destructive impacts of explicit cancellation of prescriptions. Hence, constitutive termination should provide ease, promptness and availability in initiation, comprehensiveness and dependability in exploration, cancellation in conformity with community goal values and, finally, effectiveness in amelioration. Since orderly change will frequently turn on anticipatory satisfaction of termination claims, a balance must be struck between a reverence for the past yet a nonencumbrance of the future. Although value reallocations generally import fundamental changes, ill-effects can be mitigated by restricting windfall indulgences and irrational deprivations.

Participants in the termination function may be conveniently classified as terminators and affected parties. The latter class will include both

deprivees as well as beneficiaries of a termination. These classifications are participatory roles; hence "terminators" may also be affected parties. Identification with an affected group turns on self-perceptions of participants: perceiving themselves as losers or gainers. Thus, although all participants of the global constitutive process may, at one time or another, participate in constitutive termination, participation in specific terminations may be highly restricted. A palace *coup*, for example, which involves a change of elite personnel but no change in perspectives or scope values is a termination of extremely restricted participation. Different constructs of future trends in the global constitutive process can eventually demonstrate, in differing degrees, democratic or oligarchic participation in termination.

Past trends in participation indicate a rising democratization of the function. Although the League's termination role was relatively still-born, the General Assembly as well as a number of specialized committees are directly concerned with termination.¹⁷⁸ The economic agencies, in their developmental role, have insisted upon or aided termination of obsolete orders as a pre-condition for loans. Nation-states, of course, have played a major role in constitutive termination. General perspectives seem to indicate a willingness to disregard the old order and to accept terminations if there are appropriate ameliorative devices. The increasing perception of the utility of authority in maximizing values predisposes more participants to engage in authoritative termination.

Situations of termination have traditionally been unorganized. In the recent past, however, there has been a trend toward seeking termination in organized authoritative arenas, such as the United Nations, as well as *ad hoc* international conferences.¹⁷⁹ Since elites perceiving themselves as deprived by an extant value allocation will seek the arena in which they can operate most effectively, use of organized international arenas for termination can be increased by a monopolization of authority by these arenas (tantamount to compulsory participation) and, at the same time, an adequate openness and flexibility in procedure assuring the prospect of some effective role for the dispossessed.

All values contributing to power in a given context can serve as bases for cancellation. Great ingenuity must be employed in supplying bases for amelioration. Past trends in amelioration indicate a general pref-

¹⁷⁸ Articles 13 and 14 of the Charter, among other things, aimed at a terminating function. In regard to specific constitutive terminations, reference may be had to the Assembly's role in creating special committees and itself dealing with the problems of colonialism.

¹⁷⁹ See note 178 *supra*. Consider the perhaps unsought terminating effects of the 1958 and 1960 Geneva Conventions on the Law of the Sea. Consider also the efforts of regional members to promulgate termination of general norms in restricted regional arenas.

erence for wealth or monetary compensations. Some attempt to find value equivalents for deprivations attendant on terminations may both compensate as well as reduce initial resistance and consolidate support for the termination. Thus, for example, a land nationalization, which deprives a former elite of power, wealth and respect, could be ameliorated by equity bonds which assure some power in national corporations (power and wealth). Noble titles, which have been stripped of benefits, might be retained (respect). Dispossessed workers could be retooled (skill). A frequent phenomenon in revolution-prone states is to make supplanted elites into ambassadors. This device permits them to retain some power, wealth and respect, reducing, thereby, their antagonism to the change; it does not, however, allow them to control internal decision processes. A long range goal is the development of a public order in which individuals identify intensely with the common interest. The mere call on their loyalty to undergo short range value deprivations is, then, an effective base for termination.

Strategies of termination have been given narrow treatment in the literature. Emphasis has been placed on the diplomatic techniques of treaty denunciation.¹⁸⁰ A more comprehensive treatment would distinguish consensual and nonconsensual strategies of termination and the clarity of consciousness and the explicitness of the prescriptions to be terminated. Thus one might distinguish explicit terminations by mutual consent or unilateral denunciation and implicit termination (*desuetude*) by indirect communications.

The termination function has been, on the whole, neglected by doctrine. The effective global elites who sustain "international law" have, naturally, been concerned with retaining a context which maximizes their position. Hence, the oft-heard criticism that the law is status-quo-oriented. Although a number of devices for termination are recognized as lawful¹⁸¹ and the General Assembly has been accorded an ambiguous terminating function,¹⁸² the abrogation of constitutive and public order features has not been on all fours with the optimistic euphemism of peaceful change. On the basis of two decades of experience of great constitutive termination, it is clear that preferred policy is the maximization of a community interest in terminating whatever arrangements are undermining commonly expected minimum and optimum order goals. Thus, termination is *ameliorative* rather than exclusively negative. The

¹⁸⁰ See, e. g. Articles 28 to 34 of the Harvard Research, Draft Convention on the Law of Treaties, Part III, pp. 1096-1182.

¹⁸¹ *Rebus sic stantibus*, *force majeure*, "*desuetude*," mutual agreement etc. See Harvard Research, *op. cit. supra* n. 180. See also Articles 51 ff. of the 1966 Draft Articles on the Law of Treaties prepared by the International Law Commission.

¹⁸² See note 178 *supra*.

current challenge to the constitutive process is the development of terminating procedures facilitating adaptation to the demands of changing effective elites. These procedures should accomplish termination with minimum order, through peaceful procedures and with a system of compensation, which anticipates and deflects the resistance of participants perceiving a net deprivation in the impending termination.

Appraising

Appraisal refers to the function of assessing the degree of success of authoritative policies in realizing perceived constitutive goals and imposing responsibility and sanctions for discrepancies between them. Hence appraisal is concerned with the comprehensive performance of the constitutive process and the global public order. It is particularly important in a period in which conditioning factors are changing rapidly. Appraisal works within a framework of posited goals, but its outcome recommendations may clearly indicate the need for a reformulation of policy. The sequential phases of appraisal are (1) obtaining information about the process, (2) assessing the quality of performance, (3) reporting findings and recommendations to the appropriate audiences.

The efficiency of appraisal requires that scientific information about the decision process being examined be collected in the most rigorous manner. The skills necessary for appraisal can be maintained only if appraisal is continuous. Appraisal tends to be spasmodic, becoming active only when elite or rank-and-file members perceive a gap between goal and trend. The absence of the requisite fund of expertise frequently permits the process to degenerate into allegations of blame. If the function is to receive support, appraisers must manifest a high degree of impartiality. In its institutional aspects, this may require an assured strong resource base. In its execution, appraisers must be contextual in method; each detail requires appraisal in the light of the whole set of community goals and the entire range of conditioning factors. Finally, the catharsis function of appraisal has positive public order consequences which should not be overlooked. The psychic tensions which can be generated in individuals by perception of a discrepancy between goal and practice can, if not dissipated, seriously undermine authoritative processes. While it may be impractical to incorporate all participants in authoritative appraisal, the outcome recommendations of the process should be communicated to all politically relevant strata of the population.

Participation in appraisal is probably the most democratic of functions. All participants—both official and nonofficial—are constantly evaluating authoritative decision in terms of the indulgences and deprivations which it occasions them or others with whom they identify or disidentify.

In its most primitive private form, appraisal may be no more than the muttered "there ought to be a law" of the man in the street.¹⁸³ The spectrum extends through private citizen groups concerned with the evaluation of performance and goal and editorializing mass media. Scholars, meeting in a forum such as that convened here, introduce a high degree of specialization into private appraisal. Official decision-makers, both national and transnational, generally maintain specific organs, whose purpose is the appraisal of constitutive decision. Such decision-makers are also responsive, in varying degree, to the appraising communications of the rank-and-file.

Most of the base values which are employed in the process of intelligence are directly relevant to appraisal. In addition, certain bases are peculiarly important to the latter process. A minimum level of physical and psychic *well-being*, for example, is probably necessary for the initial inclination to undertake appraisal. Thus, value deprivations which are severe, and expectations that such deprivations will continue, may undermine the belief in the utility of appraisal and hence contribute to the further degeneration of the situation.¹⁸⁴ Many of the strategies which are employed in intelligence are put to comparable use in appraisal. In the third sequence of appraisal, however, the strategy of responsibility projection—asccribed or direct—is a unique element of appraisal.

While appraisal may concentrate upon patterns of value outcomes, a discrepancy between outcome and goal ultimately turns on the efficacy of all the prior decision functions. Hence appraisal, when performed correctly, is an ongoing evaluation of all aspects of constitutive decision. Creative and responsible appraisal, a necessity for a free society in a rapidly changing world, must emphasize this point. The mere observation that things are not as they should be is as limited in utility as it is in complexity. The constitutive process is not functioning as demanded because of the ineffectiveness of one or perhaps all decision functions. The interacting defects will be discerned only if an appropriate map of decision is available, with the widest contextual scope. Without a systematic framework of inquiry, appraisal degenerates into jeremiad.

¹⁸³ The spontaneous overt appraisal in which the rank-and-file indulges may be organized and to some extent checked by a regime so desiring. Thus, for example, in the People's Republic of China, all individuals participate in an institutionalized form of multi-value appraisal. The extent to which the individuals participating in such a process engage in genuine appraisal of all the gaps they perceive between goal and achievement, restricted appraisal of their own behavior's conformity to goals imposed from above or "rubber stamp" approval of what is presented to them undoubtedly turns on what they deem to be the probable gains and losses of each alternative.

¹⁸⁴ For pertinent discussion, see RIVERS, *ESSAYS ON THE DEPOPULATION OF MELANESIA* (1922).

