Private Armies in a Global War System: Prologue to Decision*

W. MICHAEL REISMAN**

> *The law of the state often tries to obstruct the coercive means of other consociations. . . . But the state is not always successful. There are groups stronger than the state in this respect. . . . This conflict between the means of coercion of the various corporate groups is as old as the law itself. In the past it has not always ended with the triumph of the coercive means of the political body, and even today this has not always been the outcome.*[1]

> *Max Weber*

An army is a corps of people, sharing loyalty to a common symbol, skilled in the manual of arms and operating within a command structure one of whose manifest functions is to direct corps members or "soldiers" in the purposive exercise of violence.[2] Given the pivotal position of effective

---

** Professor of Law, Yale Law School. A.B., 1960, Johns Hopkins; LL.B., 1963, Hebrew University; LL.M., 1964, J.S.D., 1965, Yale Law School.

1. MAX WEBER ON LAW IN ECONOMY AND SOCIETY 18, 19 (M. Rheinstein ed. 1967).
2. The functional definition of the term "army" is intended to sever it from the popular contemporary connotation according to which an army must be associated with a territorial entity; the absence of such an association, it follows, renders the "army" unlawful, in degrees

power in almost all societies of which there is record, it is no surprise that elites who have asserted a monopoly of authority have sought as well the exclusive prerogative of maintaining armies.[3] Characteristic of the myth of the contemporary nation-state is its claim for monopoly over the exercise of violence. Were there a rough conformity between state theory and practice, one could expect to count about as many armies in the world as there are nation-states. In fact, the equation seems perpetually imbalanced.[4] In certain circumstances, the number of effective fighting units not affiliated with the governmental apparatus of recognized states can grow even larger. I will refer to such units as "private armies." The private army is a fact of international life. How does international law respond to it?

I. PRIVATE ARMIES AND TRADITIONAL PRESCRIPTIONS

The traditional corpus of international law comprised express and tacit communications between the effective elites of territorial communities about the practices which ought to be reciprocated among themselves. Precisely because of the reciprocal character of the arrangements, there was a high degree of deference to the fundamental postulate of their

---

varying with the context. Fortunately, this view is being obsolesced by students of social control who are increasingly sensitive to the eufunctional role of private armies in maintaining order in large, complex systems. *See, e.g.,* the RAND study by J. KAKALIK & S. WILDHORN, PRIVATE POLICE IN THE UNITED STATES (1971). Unfortunately, there has been no systematic effort to clarify norms in this area or to consider dysfunctions. *See* the APPENDIX ON DEFINITION AND BIBLIOGRAPHY at the end of this article.

3. Probably the earliest intellectual discussion of this claim is Socrates' monologue *Crito,* more satisfying rhetorically than substantively. Throughout the Middle Ages, certain strata symbolized their social preeminence by the wearing of weapons, which they deemed a matter of right; thus Neitzche argued that the elite was the group which demanded authoritative power for itself. F. NIETZCHE, ON THE GENEALOGY OF MORALS 57 (Kaufman tr. 1969). The counter-myth, as Pareto noted, was complementary: "Theories designed to justify the use of force by the governed are almost always combined with theories condemning the use of force by the public authority." 4 V. PARETO, THE MIND AND SOCIETY 1527 (Bongiorno and Livingstone trans. 1935).

The modern trend toward centralizing the apparatus of violence probably begins with Charles VII of France and, though a process which has never been perfected, its symbolic apogee seems to have been reached some two centuries later. Whenever social formations could effectively range themselves against the central authority, they usually sought and received an authorization for arms. Thus, the English Bill of Rights of 1689 was a response to the claims brought by the Protestants after they were forcibly disarmed by James II. Subsequently, this was ideologized as a buttress of freedom against centralized tyranny and was incorporated, in the United States, into the Second Amendment to the Bill of Rights; for an interesting construction, see Emery, *The Constitutional Right to Keep and Bear Arms,* 28 HARV. L. REV. 473 (1915). There seems to be little doubt that there is a trend away from an ideology of an individual right of arms, but counter-trends are present. In any case, these do not seem to affect the formation of private armies and brigades.

4. Precise data on the number and location of private armies is not presently available. *See* the APPENDIX ON DEFINITION AND BIBLIOGRAPHY at the end of this article.

system: respect for the territorial and political power base of each elite group. The vigor of this trend is indicated by the prominent position given this principle in the Charter of the United Nations.[5] The symmetry and formalism of traditional law is nowhere better reflected than in the rule derived from this general principle regarding a state's responsibility for "private" military incursions from its territory into another state. In brief, each state was responsible for all activity within its borders, and if military action emanated from its boundaries into the territory of another state, it remained liable to that other state for the actual and constructive violations of the other's sovereignty.[6] The other state enjoyed not only the right of claim on the diplomatic level, but, in exigent circumstances, the prerogative of unilaterally coercive actions in abatement.[7]

---

5. Thus, Article 2(4) presents as a fundamental principle that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." In context, of course, the perpetuation of a certain territorial allocation may actually maximize instability and increase the probability of wars. For some discussion of this point in regard to the Charter regime, see Chen and Reisman, *Who Owns Taiwan: A Search for International Title*, 81 YALE L.J. 599 (1972).

6. 2 J.B. MOORE, INTERNATIONAL LAW DIGEST 428-432 (1906); 1 L. OPPENHEIM, INTERNATIONAL LAW 338 ff (H. Lauterpacht ed. 1955). For judicial dicta see Trail Smelter, 3 UNRIAA 1905; Corfu Channel, [1949] *I.C.J. Reports* 18.

7. The clearest policy statements are afforded by the diplomatic correspondence surrounding the Amelia Island case of 1818. One McGregor and a private force, characterized by the United States as buccaneers but self-characterized as part of the forces of the insurgent colonies of Buenos Aires and Venezuela, preyed on the commerce of the U.S. and of Spain from a base on Amelia Island, situated at the mouth of St. Mary's river and at that time under Spanish sovereignty. President Monroe sent naval vessels to evict the private army and to destroy their vessels and fortifications. The diplomatic correspondence, available in 2 J.B. MOORE, DIGEST OF INTERNATIONAL LAW 406-408 (1906), indicates a rather general acceptance of the act, though protests were lodged by Spain and a representative of Venezuela, New Granada and Mexico. Secretary of State Adams communicated to the French minister that "When an island is occupied by a nest of pirates, harassing the commerce of the United States, they may be pursued and driven from it, by authority of the United States, even though such island were nominally under the jurisdiction of Spain, Spain not exercising over it any control." *Id.* at 408. The actual facts of the Amelia Island case do complicate its precedential value, although subsequent doctrinalists have not troubled to review them. For one thing, Spain had been exercising no control over the island, and her entire title may have been questionable. *See generally*, Chen and Reisman, *supra* note 5. Indeed by 1821, some three years after the incident, the United States was asserting a "possessory title" against Spain (J.B. MOORE, *supra*, at 408.) Furthermore, President Monroe, in 1818, in the course of explaining the United States' action, introduced other considerations he deemed relevant: the national composition of the private army was quite different from the territorial entities which it claimed to represent, the private army had asserted claims to Florida, it had commissioned privateers and its treatment of contraband and slaves had been of "the most odious and dangerous character." 2 RICHARDSON, MESSAGES 23, 2 J.B. MOORE, *supra*, at 408. *See also, Wright, Territorial Propinquity*, 12 AM. J. INT'L L. 519 (1918). Other instances which have been used to support this aspect of the private-army rule are the Caroline case of 1837 (2 J.B. MOORE, *supra*, at 409, and *see* 1 L. OPPENHEIM, *supra*, at 300 ff.), and the Mexican interven-

The basic policy here is not only, as has often been assumed, self-defense, but also international collaboration in the prohibition of the use of force by entities not associated with or operating under delegation from a nation-state. For convenience this interlocking obligation and right will be referred to here as the "private-army rule." If the rule's result conforms to its theory, a degree of national and international stability is supposedly secured by the mobilization of international authority against all agents of political change who wish ultimately to resort to force; the rule, in short, seeks to sustain those aspects of the status quo deemed essential by territorial elites.

The artificiality of the private-army rule and its underlying conception and the difficulties of applying it systematically and efficiently were apparent in the milieu in which it originated. It is even more glaringly inappropriate in a subsequent era in which there is a much richer diversity of authorized participants in the processes of international law, between many of whom there are deep ideological divisions. New international policies (many of them highly peremptory) which test the authority and legitimacy of national action, cut directly across the elite claims which formerly derived from the traditional rule. The precedent of United Nations action in Rhodesia simply codified diverse trends in the Charter, in United Nations' practice, and in customary international law. The Rhodesian case confirmed that international law's prerequisites for the status and privileges of statehood extend well beyond effective control by the local territorial elite; the prerequisites now include, to some extent, establishing an expectation of present and probable future conformity with minimum standards of human rights.[8] If we keep in mind that legitimate statehood is not acquired at some moment, thereafter existing in perpetuity, but is a varying function of the attitudes of all other participants in the world effective power process, it is clear that the Rhodesian precedent provides us with a continuing criterion for evaluating the legitimate exercise of state power.

Since the promulgation of *Pancha Shila*,[9] the traditional private-army rule seems to have been explicitly rejected by communist states in associa-

tions (2 J.B. MOORE, *supra*, at 420 ff.). In a number of instances, there have been bilateral agreements between governments regarding the elimination of private armies. *See* Wright, *supra*, at 533.

8. Res. 2022 (XX), Nov. 5, 1965; Res. 2024 (XX), Nov. 11. 1965; Res. 217 (1965), Nov. 20, 1965; Res. 221 (1966), April 9, 1966; Res. 232 (1966), Dec. 16, 1966. SCOR 253-29 May 1968; SCOR 277-18 March 1970; SCOR 288-17 Nov. 1970; GAOR 2138 (1966 or 1967); GAOR 2151 (1966 or 1967); GAOR 2379 (1968); GAOR 2262 (XXII), Nov. 3, 1967; GAOR 2383 (1968); GAOR 2508 (1969); GAOR 2652 (1970).

9. First enunciated in the Sino-Indian Agreement of April 29, 1954 and reiterated in the joint statement of Chou En-lai and Nehru of June 28, 1954. For a discussion of the Soviet development of the Principles of Coexistence, see E. McWHINNEY, PEACEFUL COEXISTENCE AND SOVIET-WESTERN INTERNATIONAL LAW (1964).

tion with a number of nations in the Third World. In fact, their counter-rule that wars of "national liberation" are lawful under international law[10] is only a replication of the private-army phenomenon, clothed in a new array of symbols. A war of "national liberation" is simply a war. One side (and perhaps all contending groups) chooses to cosmeticize its exercises of violence as acts aimed at culminating in national liberation. "National liberation" and "legitimate" or "constitutional government" often lose sharp factual reference and become complementary symbols invoked to justify the responses of official elites from contending world public order systems toward budding or blooming violence in third states. Whatever the traditional rule of international law may be, private armies become instruments of policy for larger states. This is not to imply that all participants in local wars are equally wicked, that their proffered programs are equally shams behind which power is sought, or that neutrality (were it possible) is the appropriate course for third states. The point is that words such as "national liberation" or "legitimate constitutional government" must be tested in present and projected contexts: considering all features of the context, what will the success of one side or another mean to members of the community involved, to their region, to the world? Will the success of either side lead to a greater approximation of human dignity?

The private-army rule encounters many other difficulties. The nation-state system which establishes international law lives, perforce, with the fact of revolution. Indeed, dicta in leading international judgments recognize a right of revolution.[11] Since, in an interdependent world, the complex of events involved in an insurrectionary process regularly transcends national borders,[12] the private-army rule, as stated, becomes an international confirmation of effective power; in other words, a private army is unlawful if it is not winning. In this respect, the rule provides no guidelines for decision.

When the logical rigor of the nation-state theory cracks under the stress of political reality, one of the first casualties is the private-army rule. A significant number of the nominal states of the world do not exercise anything approaching plenary power within their borders; they are treated as nation-states because of the tacit or express agreement or the coincidental disinterest of the effective global elites. At times private armies operate from within the borders of these states. If the private-army rule of international law were strictly applied and reprisals were undertaken, these nomi-

---

10. *See generally*, T. WOLFE, SOVIET STRATEGY AT THE CROSS-ROADS, esp. at 289 *et seq.* (1964); J. GILBERT, ARMS FOR THE THIRD WORLD: SOVIET MILITARY AID DIPLOMACY 111 et seq. (1969).

11. *See*, for example, Chief Justice Taft's statement in *Tinoco*, 18 AM. J. INT'L L. 147 (1924).

12. Interdependence and its relevance to localized acts of violence are discussed in detail *infra* at 32.

nal states might crumble. Hence, there are strong and effective claims for the suspension of the rule in certain circumstances.[13] When this occurs, the private army's activities cannot even be appraised, much less regulated. A regional license for disorder is issued.

In the future, the private-army rule will probably provide an even less useful focus, with ever slacker guidelines for decision. As the contemporary nation-state system cedes to an international system with a richer diversity of effective participants often bound by much tighter links of interdependence, the use of military force by non-state entities will probably multiply. Because of this greater interdependence, violence enacted within a single state will increasingly have impacts—psychological and material—on people in other territorial communities. More and more private armies will become international problems.[14]

These problems will confront both official and private actors. For the official, the appropriate response would seem patent: private armies are processors of violence which have not secured the overt approval of the political institutions of states or of those territorial elites who have arrogated control of the symbols of political legitimacy. But for individuals committed to a world order of human dignity, private armies present a particularly cruel dilemma. Private armies are disruptive, whereas order seems necessarily instrumental to the realization of many other values. And there is, particularly among lawyers, an almost instinctive deference to the authority of political institutions in other communities, which is stimulated by transference, professional ideology, and the hope of reciprocity. Moreover violence itself seems inimical to the very notion of human dignity.

Yet insistence on non-violence and deference to all established institutions in a global system with many injustices can be tantamount to confirmation and reinforcement of those injustices. In certain circumstances, violence may be the last appeal or the first expression of demand of a group or unorganized stratum for some measure of human dignity. In this century, for example, the process of decolonization would not have been likely without the threat or use of force. And, of course, the discovery of a new private army is often nothing more than the refinement of an attention focus: violence in the observed sector may have been an ongoing process,

---

13. *See, e.g.,* Falk, *The Beirut Raid and the International Law of Retaliation,* 63 AM. J. INT'L L. 415 (1969). Consider also Professor Farer's comment on UN reaction to the raid: ". . . The United Nations membership may have been influenced by the conviction that the fragility of the Arab governments precluded them from asserting fully effective controls over Palestinian guerrillas and hence they should not be held fully responsible for guerrilla activities." Farer, *Law and War,* 3 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 70 (C. Black & R. Falk eds. 1971).

14. For authoritative intimations of degree of interdependence as the criterion for international jurisdiction, see Tunis-Morocco Nationality Decrees, P.C.I.J. Ser. B, No. 4, at 7.

or the private army may be responding to violence rather than initiating it. Although we almost instinctively characterize a private army as "disruptive," it may, in fact, be a force for order in a community system of anarchy or stabilized disorder.[15] It is precisely because of the discrepancy and resultant tension between vital commitments to policies of human dignity and commitments with self-investments to institutions which are supposed to implement those policies that private armies require critical personal moral decisions.

II. PRIVATE ARMIES IN A GLOBAL WAR SYSTEM

Systems have their own logical coherence and internal consistency. Because so much of international law is a component of the nation-state system, the private-army rule in international law is not surprisingly a defense of the nation-state. The rule prescribes that only the nation-state may legitimately employ violence. Thus it seeks to reinforce the claimed monopoly of the use of violence by nation-state elites in order to sustain the formal legal structure of the international system as one of nation-states. Although the justification for the asserted monopoly is that it will maximize the security of the most inclusive community, the actual aggregate effect of the claim to, and partial monopoly of, coercion is the maintenance of a global war system. The system perpetuates itself through a complex of social and psychological factors which must now be explored.

For our present purposes, we may designate interactions as a system when the behavior and subjectivities of participants are self-sustained by expectations that the interactive pattern, despite costs and partial dysfunctions, is the best available; the politically relevant members of the system, through self-imposed demands and expectations, continue to operate in roles that support the system and to insist that others play coordinate roles.[16] A system need not be enthusiastically supported by its members. Indeed, many may have great reservations about its operations and may insist upon certain structural or personnel changes.[17] What renders it

---

15. Wolf & Hansen, *Caudillo Politics: A Structural Analysis*, 9 CONT. STUD. Soc. & HIST. 168-69 (1967).

16. There is, of course, no dearth of proferred definitions of social systems. For present purposes, Parsons' is useful and concise. "System is the concept that refers both to a complex of interdependencies between parts, components and processes that involve discernible regularities of relationship, and to a similar type of interdependency between such a complex and its surrounding environment." Parsons, *Social Systems*, 15 INT'L ENCY. Soc. SCI. 458 (1968).

17. Many complaints are aimed at the personnel rather than at the system itself. Perhaps Mosca was being overly droll when he observed that "In all barbarous countries populations may be dissatisfied with their leaders but ordinarily they neither conceive of better political systems nor desire any." G. MOSCA, THE RULING CLASS 97 (Kohr trans. 1939). The integrative role of participant dissenters cannot be overemphasized. Many political scientists have observed the disparity between the invocation of a decision process and the final results of the process. It seems clear that promotion, agitation and invocation perform, among other things,

a system is the minimal support regularly if not habitually given it. By war
system we refer to a social system conditioned by high expectations of
violence, experiencing enough violence, directly or vicariously, to sustain
that expectation, and incorporating within its myth and folklore a cosmol-
ogy of war.[18]

Cultural and religious factors and geopolitical situation may interstimu-
late to establish and maintain a war system. West Pakistan, for example,
has been described as a culture saturated with a war system mentality:

> An unspoken martial creed dominates the lives of Pakistanis.
> Conscription has rarely been needed for it is a holy duty to fight

---

the function of catharsis within social systems. Hence dissent and especially institutionalized
dissent can be socially integrative despite a characteristic anti-social or anti-elite rhetoric.
In contrast, participant dissenters who work "from within" may perform different integrative
and homeostatic functions. The mid-elite or elite participant, who is capable of expressing
some dissatisfaction with systemic dysfunctions but still believes that the overall social
arrangement is beneficial, has achieved a high degree of sophisticated perception of the
dynamics and interrelating details of the system of which he is a member. Hence, in addition
to personal and sub-group catharsis, his dissent is systemically "constructive" and he is more
effective in stabilizing the system over time. *But cf.* Marcuse, *Repressive Tolerance* in R.
WOLFF, B. MOORE & H. MARCUSE, A CRITIQUE OF PURE TOLERANCE 81 (1965).

18. The theory of a war system has been developed in different ways by a number of writers.
The most comprehensive and influential exposition is found in Lasswell, *The Garrison State*
and Specialists on Violence, in H. LASSWELL, THE ANALYSIS OF POLITICAL BEHAVIOR 149 (1948).
See also H. LASSWELL, WORLD POLITICS AND PERSONAL INSECURITY (1935). A related theory,
most persuasively propounded but without Lasswell's emphasis on psychopersonal dimen-
sions, is found in R. FALK, THIS ENDANGERED PLANET (1971). The term has also been used in
regard to power politics alone. *See, e.g.,* G. COCHRAN, THE WAR SYSTEM (1965). *See also* J.
LASLEY, THE WAR SYSTEM AND YOU (1965). An eerie and brilliant fictional anticipation is found
in "Emmanuel Goldstein's Theory and Practice of Oligarchical Collectivism" in G. ORWELL,
1984 at 185, 187 (1949).

Anthropological studies provide numerous examples of war systems. Consider the Jibaro
Indians of Eastern Ecuador:
> The wars, the blood feuds within the tribes, and the wars of extermination be-
> tween the different tribes are continuous, being nourished by their superstitious
> belief in witchcraft. These wars are the greatest curse of the Jibaros and are felt
> to be so even by themselves, at least so far as the feuds within the tribes are
> concerned. On the other hand, the wars are to such a degree one with their whole
> life and essence that only powerful pressure from outside or radical change of their
> whole character and moral views could make them abstain from them.

Karsten, *Blood Revenge and War Among the Jibaro Indians of Eastern Ecuador*, in WAR AND
WARFARE: STUDIES IN THE ANTHROPOLOGY OF CONFLICT 304 (P. Bohannan ed. 1967). Evans-
Pritchard reports that the "social relationship" of the Nilotic tribes of the Southern Sudan
"is one of hostility and its expression is in warfare."
> The Dinka people are the immemorial enemies of the Nuer . . . Almost always
> the Nuer have been the aggressors, and raiding of the Dinka is conceived by them
> to be a normal state of affairs and a duty, for they have a myth, like that of Esau
> and Jacob, which explains it and justifies it.

E. EVANS-PRITCHARD, THE NUER 125 (1940).

for the Islamic Republic of Pakistan. The army dominates life everywhere. The leading daily newspaper is named Jang, which means "war" in Urdu.[19]

War systems may also be conditioned by economic[20] and perhaps even by environmental factors,[21] or they may be supported by the value demands of one group within a society, even though a large part of the cost of particular wars will be borne by some other group within that same society. Where, for example, intergroup conflict is an avenue through which poor but enterprising youths may acquire property, wives, or prestige and power within the tribe, they may insist on the continuation of group conflict, even though older, enfranchised tribal members who will become the targets of inevitable retaliations from attacked tribes stand to lose in continuing conflict. This fascinating infragroup dialectic has been observed among the Blackfeet Indians,[22] but it is not difficult to marshal many examples closer in time and space. Specialists in violence have a similar interest in the continuation of those conditions which make their skills indispensable to the group which they serve or wish to serve. Thus the military caste and proto-military groups and movements may promote the virtues of the spartan life, of struggle, and of the mystique of the purifying effect of battle.[23] Individual personalities appropriate to a war system may be recruited as well as shaped by culturally designated civic inculcators.[24]

---

19. Browne, "For the West Pakistanis, War is Closer to Home," N.Y. Times, December 10, 1971, at 16, col. 7-8.

20. *See generally* H. ENGELBRECHT & F. HANIGHEN, MERCHANTS OF DEATH: A STUDY OF THE INTERNATIONAL ARMAMENT INDUSTRY (1934); C. THAYER, THE WAR BUSINESS (1969); E. SUTHERLAND, WHITE COLLAR CRIME (1949); E. JANEWAY, THE ECONOMICS OF CRISIS: WAR, POLITICS AND THE DOLLAR (1968).

21. Thus, Rappaport suggests that within one cultural setting the ritual sacrifice of animals was aimed at regaining an ecological balance and that notional contents of ritual messages were actually concerned with this rather than with transempirical matters. R. RAPPAPORT, PIGS FOR THE ANCESTORS: RITUAL IN THE ECOLOGY OF A NEW GUINEA PEOPLE (1967).

22. J. EWERS, THE BLACKFEET, Ch. 7 (1953).

23. For one aspect, consider General Moltke: "Eternal peace is a dream, and not even a good dream, for war is a part of God's world ordinance. In war, the noblest virtues flourish that otherwise would slumber and decay—courage and renunciation, the sense of duty and of sacrifice, even to the giving of one's life. The experience of war stays with a man, and steels him all his life." Cited in H. FOERTSCH, THE ART OF MODERN WARFARE 3 (Knauth, trans. 1940), and see other mystical statements on this order collected at 3-5. *See also* E. KING, THE DEATH OF THE MILITARY: A PRE-MORTEM 53 ff. (1972).

24. *See, e.g., The Military Public Relations Network,* in THE MILITARY ESTABLISHMENT 194 (A. Yarmolinsky ed. 1971), and particularly, *Ideological Education of the Military and the Public, id.* at 222. A number of interesting facts and attitudes were revealed in "Military Cold War Education and Speech Review Politics," *Hearings before the Special Preparedness Subcommittee, Committee on Armed Services, U.S. Senate, 87th Cong., 2d Sess.,* 1962, Part 4, 1815 ff. On the other hand, some studies have concluded that formal acculturation in the military was a minor variable in the formation of what Janowitz has called the "absolute

The notion of a war system is, of course, an ideal type.[25] Actual systems have a number of dimensions, some simultaneous, some sequential and some contingent. For our purposes, a system is a war system when the war myth is a fundamental—though not always manifest—feature and is retained and supported through time by effective participants.

The myth complex of a war system is sustained by a pervasive anxiety for personal and group security. The apprehension of severe injury to the self-system is a primary human experience.[26] I am not concerned here with whether it is myogenic, an aspect of foetal experience, a result of birth trauma or the sudden stimulus overload caused by the initial impact of the post-parturitive environment on an as-yet neurologically unorganized system, a result of the deprivation of focal needs of the infant, such as the breast, a later experience caused perhaps by the baffling and frightening disparity between the child's expectations and those systematized as the adult world, or an acculturated experience.

Anxiety is not, in itself, a psychopathological phenomenon. The primary experience of anxiety or fear is crucial for individual survival insofar as it alerts the self-system to aspects of the environment which do threaten it with injury or destruction. Indeed, from a strict Freudian perspective, anxiety may be hypothesized as the instinctual counterpart or complement of aggression. Anxiety acquires interest as a political pathology when fear for the survival of that cluster of nuclear and extended selves which comprise the individual personality either exceeds the environmental threat or itself generates or contributes to such threat, becoming a crucial aspect of group experience used for political organization.[27]

---

viewpoint." M. JANOWITZ, THE PROFESSIONAL SOLDIER—A SOCIAL AND POLITICAL PORTRAIT 267 (1960), and *see infra* at notes 25 and 26. Thus Dr. Abrahamsson found that among the three factors leading to homogeneity in the military—selection and self-selection, upward cooptation and indoctrination—the third factor seemed to be the least decisive. Abrahamsson, *Military Professionalization and Estimates on the Probability of War,* in MILITARY PROFESSION AND MILITARY REGIMES: COMMITMENT AND CONFLICT (van Doorn ed. 1969).

25. *See* Weber, *The Pure Types of Legitimate Authority,* in MAX WEBER ON CHARISMA AND INSTITUTION BUILDING 46 (S. Eisenstadt ed. 1968).

26. Anxiety is used here in the psychological rather than philosophical sense; no reference is intended to existential anxiety as Kierkegaard developed it, for example, in his CONCEPT OF DREAD. *See generally* S. FRUED, THE PROBLEM OF ANXIETY (1936) and K. HORNEY, OUR INNER CONFLICTS (1945). A study of particular relevance to the possibilities of manipulation of anxiety for political purposes is S. SCHACTER, THE PSYCHOLOGY OF AFFILIATION: EXPERIMENTAL STUDIES OF THE SOURCES OF GREGARIOUSNESS (1959).

27. A detailed theory of the politics of affiliative anxiety goes beyond the bounds of this essay. In particular, certain instinctual issues, e.g. Thanatos, cannot be explored. It should, nonetheless, be obvious that many contextual features as well as residual group experiences influence the level of anxiety in any setting and its amenability to political organization. Some anxiety aspects of group experience which influence current political trends have been briefly explored in Reisman, *Diplomatic Alternatives in the Middle East: From Obsolescent Goals to a New Program,* "Approaches to Peace in the Middle East," *Hearings Before the*

The political symbolization of anxiety is the threat of war and aggression by others upon the nuclear and extended self. In the syntax of this symbol system, the conclusion that one must fight wars to maintain security is a simple geometric proof. The political solution involves the maintenance of violence specialists prepared, at any time, to fight for the group. The specialists increase security by deterring wars; is it not obvious that if a group is to minimize the possibility of wars without sacrificing security, it must be *prepared* to fight wars? Will not preparation deter aggressors?[28] But the presence of violence specialists increases insecurity as well as security, for by their constant and constructive presence, the specialists continue to signal the causes for anxiety and to stimulate other groups to mobilize in defense against them. The result of the interaction of all of these factors is a constant process of mobilization of the population under the supervision of security experts, anxiety managers, and specialists in violence. Their promise is security, but the inevitable result is the reinforcement of personal and group insecurity,[29] for the preparations by one

Subcommittee on the Near East, House Comm. on Foreign Affairs, 92d Cong., 2d Sess. (1972). The later Freud's theory of the aggressive instinct provides an important hypothesis. The relation of individual ego development and intergroup conflict is explored in some detail in Reisman, *Responses to Discrimination and Genocide: The Convention on the Elimination of Racial Discrimination*, 1 DENVER J. INT'L L. AND POL. 29 (1971). It is there hypothesized that this relationship demarks group identities as a fundamental experience of the self and, in appropriate contexts, facilitates the operation of affiliative anxiety.

28. Janowitz has stated the point felicitously in his distinction between "absolute" and "pragmatic" types in the military:

> officers with an 'absolute' viewpoint are more prone than are the 'pragmatic' ones to believe in the likelihood of major atomic warfare. Thus, belief in the inevitability of war becomes transformed into a political matter, with strong ideological overtones. As an issue of doctrine, it is posed: Must the United States be limited in its strategy to the principle that the enemy will be permitted to strike the first blow?

M. JANOWITZ, THE PROFESSIONAL SOLDIER—A SOCIAL AND POLITICAL PROTRAIT 267 (1960). *See also* A. VAGT, A HISTORY OF MILITARISM, CIVILIAN AND MILITARY (1937) *passim*. Professor Huntington suggests that professionalism leads to an occupational distortion of overestimating threats initially as a means of maximizing security, but ultimately as an autonomous distortion of reality: "Consequently, at times he will see threats to the security of the state where actually no threats exist." S. HUNTINGTON, THE SOLDIER AND THE STATE—THE THEORY AND POLITICS OF CIVIL-MILITARY RELATIONS 66 (1964). Working with Swedish data, Abrahamsson concluded that military professionalization resulted in a "trained incapacity" for realistic appraisal of the effect that peace and international tension reduction would have on national defense. Abrahamsson, *The Ideology of an Elite—Conservatism and National Insecurity*, in ARMED FORCES AND SOCIETY—SOCIOLOGICAL ESSAYS 71 (van Doorn ed. 1968). In a subsequent study, the same investigator concluded that recruitment and cooptation were the primary causes for this occupational distortion. Abrahamsson, *Military Professionalization and Estimates on the Probability of War*, in MILITARY PROFESSION AND MILITARY REGIMES 35 (van Doorn ed. 1969). *But see, Nuclear Equilibrium* and *Worst Case Planning*, in A. YARMOLINSKY, *supra* note 24, at 99.

29. Stekel, in his massive study of obsession neurotics, noted the relation and ultimately

group will always be the signal for other groups to begin to prepare themselves.[30]

The manipulation of anxiety is, of course, a standard technique of social control, used politically, theologically, and educationally to secure from a target certain preferred patterns of behavior. The term "anxiety manager" refers to a functional role specialized to making the lay members of a community sufficiently aware of the challenges to group security from

---

the continuing dynamic between a war system and psycho-personal organization. With certain statistical generalizations, he observed after the First World War an enormous increase in compulsive neurosis and concluded that the condition "belongs to those destructive social phenomena which we have come to know in the most varying and frightening forms as 'post-war diseases'."

> The state of war has exerted a pressure on peoples such as has never before been observed in history. Free will and personal freedom were entirely suppressed in favor of the community; there were restrictions everywhere; the fact of militarism transformed the life instinct into the 'duty to die for the Fatherland.' Whoever was forced to put on a uniform, was faced with the conflict between life instinct and the fear of social contempt (and social punishment).

The conflict was temporarily stabilized, for many, by the development of a compulsion, in this case a hate compulsion; indeed, "the analysis of compulsives always reveals the importance of hatred in the structure of the compulsive system." Note the incompatibility of this compulsion with the group's ethical code.

> The war turned hate into a virtue, although the universal religion of charity had branded it as evil. The church found a way out and we were again permitted to hate without scruples, as long as the object of our hate was presented as the enemy of the fatherland. But this hatred, which had risen from the depth of cultural suppression could not easily be reconverted into love, when the war was over. He who has learned to hate, has also come to know the pleasure of hating.

W. STEKEL, COMPULSION AND DOUBT 609-10 (Gutheil trans., 1949). And *cf.*, on initiation into an army, Hollingshead, *Adjustment to Military Life*, 51 AM. J. Soc. 439 (1946). For inquiry into different emotional dislocations apparently generated by induction, *see* Abrams, *Armed Forces and Society: Problems of Alienation*, in THE ARMED SERVICES AND SOCIETY: ALIENATION, MANAGEMENT AND INTEGRATION 24 (J. Wolffe & J. Erickson eds. 1969).

30. Once a war system is functioning, many other value specialists acquire a vested interest in it. For general discussion and early citations, see Sutherland's classic WHITE COLLAR CRIME, *supra* note 20, at 164 ff. Among the contemporary studies, *see* H. MAGDOFF, THE AGE OF IMPERIALISM (1969); C. THAYER, *supra* note 20; S. PERLE, MILITARISM AND INDUSTRY (1963); F. COOK, THE WARFARE STATE (1962); S. MELMAN, DISARMAMENT: ITS POLITICS AND ECONOMICS (1962). The Marxist view that capitalism produces a surplus of value which cannot be absorbed and hence must be destroyed in a war system which is a necessary concomitant to capitalism has not been established empirically; in the light of the anthropological data collected above, it would appear to be a simplistic formula which cannot explain war systems in pre-capitalist and non-capitalist cultures. Some doubt on the validity of the Marxist view in regard to capitalist systems is raised in Lieberson, *An Empirical Study of Military-Industrial Linkages*, 76 AM. J. Soc. 562 (1971); *but cf.* Stevenson, *American Capitalism and Militarism: A Critique of Lieberson*, 77 AM. J. Soc. 134 (1972).

Gratifications and indulgences other than wealth may also flow to certain participants within a war system. Once the system is internalized, for example, tremendous returns in rectitude may accrue to all who participate directly or vicariously in self-sacrifice for the group.

within and without so that these members can be mobilized for self-protection. Such purposive generation of anxiety in the public interest follows a fairly conventional sequence: security managers are "uniquely" and "professionally" aware of dangers to group integrity, the maintenance of which is their primary concern, but group members are not sufficiently aware of such dangers to contribute the time and resources deemed necessary for minimum group security. Hence anxiety managers, by a variety of communicative techniques, make the danger phenomenally real to the general public—in the short run by the graphic presentation of the danger, in the longer run by acculturation to the general state of anxiety characteristic of a war system.

The security manager's original assessment of danger to the group may be self-serving, but it can also be concluded in good faith within his own frame of reference and yet be deemed utterly unrealistic by a disengaged observer. The discrepancy here is a product of occupational ideology. The security manager commences with an assumption of threat to group survival or group integrity which may derive from professional ideology, psycho-personal factors which initially moved him to self-recruit to security management, or both. This assumption is thereafter bloated by the "rational" projective device of "worst-case planning." Hence the social ideology of his occupation as well as certain personal factors will always move the security manager to have and present a most ominous picture of threats to group security. It is the function of the anxiety manager to transform this occupational ideology into a general cultural ideology.

A number of conditions seem to account for the increase of anxiety management. The transition from comparatively small professional and mercenary armies to the *levée en masse* in the 18th century required new techniques for mobilizing vast numbers of individuals; the development of new patterns of identification with a national symbol, followed by indications of threatened attack and destruction of that symbol, was one economic way of attaining this objective. Indeed, mass society itself may require high degrees of civic mobilization for rapid and startling changes in collective behavior.[31] The extraordinary advance of warfare technology is another factor: the spiral of obsolesence and renewal of technological warfare requires greater investments and increased lead time. The security specialist working within this time-frame realizes that a possible danger twenty years hence can only be averted if vast resources are invested *now*.

---

31. *See, e.g.,* Haas, *Social Change and National Aggressiveness, 1900-1960,* in QUANTITATIVE INTERNATIONAL POLITICS (J. Singer ed. 1968). For an extraordinarily suggestive, speculative essay on the relationship between mass society, the biological and psychological bases of anxiety, and violence level, see Wiegele, *Toward a Psychophysiological Variable in Conflict Theory,* 1 EXPERIMENTAL STUDY OF POLITICS 51 (1971). For a rather general historical treatment of civic mobilization in national crisis, see J. WILLIAMS, THE OTHER BATTLEGROUND: THE HOME FRONT, BRITAIN, FRANCE, GERMANY 1914-1918 (1972).

Popular support can only be mobilized *now*, however, by exaggerating the immediacy and magnitude of the danger *now*. Hence the anxiety manager must develop intensified, almost neurotic public conceptions of a non-existent danger.[32]

The degree of unreality and misperception may be initially exaggerated because the security specialist operates on the basis of "worst-case" planning which requires contingency preparations for the worst conceivable cases. The mobilization of popular support for such contingencies involves skewering the popular conceptions of insecurity far from reality. When, as we shall see, this takes place in a system of states in which counterparts constantly look at one another for hints of intentions, the mobilization becomes a self-fulfilling prophecy, and the war system grinds on.

Note that the anxiety manager need not perceive himself as exploiting the public; he may believe the danger exists and that his role is educational. Indeed, danger may exist and the communication may, in fact, be educational. On the other hand, the alleged crisis may be falsified and a sense of panic generated in a group in order to move group members to displace onto the anxiety manager or another symbolic figure. Thus the medicine man or healer may gain the obedience of a group by persuading members that magical powers under his exclusive control which are capable of warding off or curing disease will operate only if group members behave in ways prescribed by him. An aggravating technique may involve exaggerating the likelihood of incidence of the disease, or even predicting the inevitability of the disease if his prescriptions are not followed. A promised health program or political campaign against a dreaded disease may provide the same bounties for a political leader.

Much of international relations can only be understood in terms of a war system. The rhetoric of peace is more than neutralized by the symmetrical prominence of the military in competing governments. The manifest drive is for security, in a system which is structured for insecurity. Note the crucial infrastructural aspect of nation-states themselves in such a system. The allocation of power is, of course, an inescapable concern, but one of the functions of a system of nation-states, indeed one of its inescapable features, is to perpetuate insecurity through such artifacts as the "balance" or imbalance of power.[33] The expectation of violence, manufactured

---

32. Senator Vandenburg is reported to have told President Truman that if Truman wanted public support for "containment," he would have to "scare hell out of the American people." S. AMBROSE, RISE TO GLOBALISM 151 (1971).

33. This is not the place to investigate the curious infiltrations into social theory of metaphors drawn from the physical sciences. Whatever meaning "balance" may have had in contemporary physics, it is obviously a highly ambiguous semantic instrument for social process. Because the components of power remain undefined, the balance is perpetually insecure. Of course, for states which practiced "balance of power" politics, the term served as a scientistic figleaf for covering naked power interventions into the relations of other

and maintained, is communicated to citizens who, in turn, displace their magnified anxiety onto national symbols.[34] This, in turn, maximizes the power of incumbent national elites. The core of international law, as we have seen, has comprised express and tacit communications between various territorial elites about the minimum reciprocal deferences demanded for the bases of power of each. Precisely because the private army challenges this base, the traditional private-army rule prescribes that there may be no private armies. The principle of national liberation is no exception to this general rule, for the significant word is "national." Wars of national liberation, at least to the present time, have not sought to supplant the nation-state but only to seize control of it. The most vigorous proponents of national liberation have been among the most vocal supporters of sovereignty.

The authoritative prohibition of private armies in traditional international law must not be misunderstood. Private armies are unlawful, but precisely because they perform such a crucial function for the global war system, they receive selective support from different national elites. While a war system requires a culture of parochialism, self-sacrifice, and the paraphernalia of wars, it does not require wars. Rather it requires a pervasive *expectation* of impending violence in order to sustain and magnify personal insecurity. Small wars can be nourished as a neat means of keeping this expectation alive.[35] Because many private armies are limited in

nations to secure value allocations in favor of the intervening state. *See* I. CLAUDE, POWER AND INTERNATIONAL RELATIONS, chs. 2,3 (1962).

34. The vast public relations and media network which is regularly deployed to shape and maintain certain public attitudes has been discussed and cited *supra*. In addition, a large number of para- and postgraduate military organizations play secondary roles as opinion leaders and policers. For a discussion of eight major personnel complexes which perform these functions, see *The Military Public Relations Network, supra* note 26, at 194, 206. Intensive transference phenomena are generated in all mundane civic situations in which the symbols and totems of the inclusive group are approvingly displayed. Thus the flag in the church and in the sports arena provides signals for general tacit support for the elites who are the official guardians of these symbols. And not surprisingly, teachers, clergymen and sportsmen may integrate into their messages the crisis of the inclusive group and the comfort which can be taken in its brave protectors. Much of this mass mobilization is, of course, endemic to industrial and technological societies, which require highly organized and standardized mass production and consumption behavior and hence use techniques which regularly shape and sustain the self-systems of individual group members so that they can be instantly deployed in patterns of behavior deemed socially desirable.

35. Media provide fantastic opportunities for political elites to generate maximum anxiety from small wars which may have no connection with their own constituency. The naive view that repeated graphic presentations of violence in Vietnam, Biafra or Bengal will make an audience "realize" the full horror of war and hence never engage in or wage wars operates on the curious assumption that the heroic efforts of political and military leaders restrain awful popular drives for wars. Actually, the presentation of such violence may well exacerbate latent anxieties in many community members. Vicarious participation in violence may provide some gratifications, but it is a complex communication which also stimulates the conclu-

ambition and scope to a single national arena, they are an extremely useful and comparatively safe way of achieving this effect. At the same time, by providing a focus for "confrontations" of the greater powers and regional hegemons, a deep sense of personal and group insecurity is sustained.[36] Thus the war system continues, promising through the instrumentality of nation-states minimum individual and group security, but based upon and fostering personal and group insecurity.

The viciousness of a war system is circular as well, for even those who concede its horror and absurdity perceive that what may have begun as or become a neurotic anxiety for security has in part generated, and in part reinforced, a situation in which the sense of insecurity can be quite accurate and rational. Many of the environments which man inhabits are inimical. In international politics there is, indeed, a very real enemy with very real operations-plans. One is driven to support counter-measures of defense even as one realizes that these measures may themselves increase aggregate anxiety, reinforce the enemy's hostility, and maximize insecurity. Strict pacifism is viewed within the war system as a denial of reality, as irrational and socially irresponsible. It "plays into the hands of the enemy." "Rational" pacifism, in contrast, expresses itself in demands for arms control, efforts at reciprocal disarmament which maintain appropriate arms "levels" or "balances," prescription of principles of the inviolability of states and establishment of security organizations whose avowed aims are the maintenance of "the territorial integrity and political independence of member states." Given the pervasive expectation of violence, however, it becomes imprudent to trust these organizations overly; states hedge by retaining their own forces—with "balances" and authoritative restraints—and the juggernaut continues.[37] Paradoxically, rational pacificism reinforces the war system.

---

sion that "this is real" and could happen to the viewer should his defenses ever lapse. The net result may be a gain for the violence specialist and the anxiety manager. Graphic presentations of domestic violence may be put to the same use.

36. While it would be easy to impute responsibility for these events to "wicked" individuals, to do so would be to miss the real point. The sustained determinant of behavior here is the aggregate system and its systemic roles. Individual anxiety managers may, of course, maximize anxiety in order to aggrandize personal power and, where possible, should be made responsible for this. Yet given a war system, someone will always hazard such a gambit.

37. A stunning example of this phenomenon is found in the U.S.—U.S.S.R Strategic Arms Limitations or "SALT" negotiations. In 1971, a Brookings study forecast that if a pact could be concluded, "the U.S. would probably increase spending on intelligence collection and research and development as a hedge against Soviet cheating or a possible breakdown of the agreement." Quoted in Levine, "A Grain of Salt: U.S.—Soviet Arms Pact May be More a Symbol than Effective Rein," Wall Street J., May 26, 1972, at 1, col. 8. The prediction proved entirely too modest. After a set of agreements were reached in May, 1972 (30 CONG. Q. WEEKLY REP. June 3, 1972, 1256, 1258, 1259, 1261), anticipated pressure from more anxious domestic political forces was to be deflected by a Department of Defense initiative of its own. Thus, the inevitably anonymous Pentagon official was quoted as saying "To quiet the thunder from

Private armies acquire a unique systemic dimension in a war system, but they are not an exclusive function of a war system, produced by it for its own purposes. As we shall see, many types of social and personality conditions generate private brigades. Official and private observers have no difficulty in indicating those areas about the globe where conditions are ripe or overripe for local violence. If a rapid transformation of the world arena from a war to a peace system were possible, these same areas would continue to be flammable until the social disorders had been cured. Then the significance of a denotation of violence would not be its threat of escalation, but rather its indication of some social pathology and its invocation for social reconstruction.[38]

If transnational decision-making were restricted to official elites, suggestions for a different approach to the problem of private armies would not be practicable. Most official elites—incumbent and aspiring—are committed to the continuation of a system which they see as palpably maximizing their own interests; like many others, they have internalized a system which they manage. Bureaucracy, of course, generates its own infra-institutional political dynamic, and aspiring elites can be expected to formulate a new symbol program as a counter-ideology to mobilize support and aid in taking over. Where fundamental challenges to the global system promise political dividends, they will be symbolically adopted—at least until bureaucratic power has been secured. More effective and perhaps lasting changes in decision-making must come from unofficial sectors of society: from media, private opinion leaders, universities, intellectuals, parts of the clergy, and so on. That these non-officials can play a role in the formulation, application and revision of policy has been demonstrated in the past few years.[39] Since they are increasingly being confronted with claims to international authority, they urgently require a new set of goals and a framework for locating events.

III. CLAIMS TO INTERNATIONAL AUTHORITY

The event complexes of the private army acquire transnational significance when a claim is made on other participants in the world process to respond, in some way, to the extant or probable consequences of acts in a

---

the right, it becomes your patriotic duty to do everything that isn't prohibited by the treaty. That's what happened in 1964 after the limited test-ban agreement: We had more tests than before." *Id.*

38. For discussion, *see infra* at 32.

39. For brief discussion of the role of civic initiatives in international law, see Reisman, *Polaroid Power: Taxing Business for Human Rights,* 4 FOR. POL. 101, 107-110 (1971); Reisman, *Sanctions and Enforcement,* in 3 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER, *supra* note 13, at 273, 310 ff. (1971). On the potentials of the intellectual, see K. MANNHEIM, IDEOLOGY AND UTOPIA 136 ff. (Wirth, Shells trans. 1936); but for discussion of institutional influences, see H. WILENSKY, INTELLECTUALS IN LABOR UNIONS (1950).

particular case. A claim need not be formulated as a "legal" petition nor need it be consciously lodged by a self-perceived claimant. We may speak of a claim when events "demand" the attention of decision-makers.[40] Consider, for example, an unaffiliated army operating in state A which habitually crosses the border of state B to escape capture, to replenish arms, to rest, and so on. The border area of state B may be an uninhabited desert; the officials of state A may have pressing diplomatic reasons for not crossing into B in "hot pursuit," for not protesting the de facto sanctuary afforded by B, and even for ignoring the regular crossing. We consider these crossings a claim because they demand attention and hence activate *some* response; however disposed, the response implements and perhaps creates international policy.[41]

The procedures for lodging claims in institutionalized processes exercise a compelling fascination for the technically-oriented lawyer. Without minimizing the circumstantial importance of these procedures, our concern is with substantive claims. Our conception of outcomes of the process of claim is an independent inference of the fairly stable perspectives and operations created or sustained by the interaction of claimants and decision-makers. In a case, for example, where representatives of a private army in state X seek discussion in the General Assembly, but the effective elites of the Assembly bar such matters from the agenda, we are not concerned with the procedural refinements adduced by lawyers. Rather we

---

40. The emphasis on unformulated claims is critical to the analysis which follows, for, as Dean Pound observed, it permits the observer to apply policies and perspectives of authority to any flow of behavior. The degree of formulation of claims varies with the type of arena. "In organized arenas, claims are clearly formulated. In arenas of a low degree of organization, in contrast, subjectivities are often modulated by indirect communication. It is the investigator who must infer claims from behavior and formulate them verbally. This exercise necessarily requires an examination of events in the most comprehensive context and the use of inference devices not conventionally employed by the law." M. REISMAN, NULLITY AND REVISION 145 (1971).

41. The massive international legal literature on the precipitating events which sanction outside participation in fairly localized violence is not directly relevant to the thesis developed here. In a state of global simultaneity, a process of interinfluence inevitably links outsiders with the more direct participants in violence; modulations of outsiders' behavior cannot but influence the outcomes of the localized violence. Hence there is only futility in identifying situations which outsiders ought not to influence; the critical question is *how* they ought to influence. As to the precipitating events themselves, my thesis, developed in detail below, is that they are only one element in a decision regarding how to respond to some local violence; of much greater importance is the question of the probable consequences in terms of all community goals of not intervening and/or of intervening in any of a number of ways. Law's responsibility is the amelioration of the future, not the integrity of the past. Hence in each case, the challenge to a creative international law is the invention of a program of response which maximizes all community values. *See generally* Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 VA. J. INT'L L. 206 (1969); *but cf.* Farer, *Intervention in Civil Wars: A Modest Proposal*, in 1 THE VIETNAM WAR AND INTERNATIONAL LAW 507 (R. Falk ed. 1968).

seek to identify the actual outcome, in context, of dismissing the request for inscription on the agenda. The decision may be tantamount to a refusal to view the private army or selected aspects of it as a matter of world public order, leaving it instead to civic order regulation. Or it may be tantamount to shunting the case off to a more restrictive arena: for example, a cabal of the powers or a regional organization. Or it may, by accelerating certain tendencies, be an intended decision in the guise of a nondecision.[42] If, for example, the private army in state X is certain to be decimated unless it secures help from or through General Assembly discussion, the Assembly's refusal to undertake the issue is an unequivocal verdict and sentence.

The briefest scheme of the process of claim includes claimants, their perspectives, the varied situations in which claims are lodged, and the strategic modalities by which claims are lodged. The aggregate outcomes of claims would set out the contours of the constitutive process and public order features of private armies. While we cannot, within the limits of this essay, consider these features in detail, a number of observations are crucial. Consider them in regard to the phases of the process of claim.

A. *Claimants*

Some claims are raised directly by the private army or its representatives or by local groups, elite and rank-and-file, directly affected by the activities of the private army and/or its counter-force. In other circumstances, officials of external states or of international agencies may lodge claims on their own behalf or on that of direct participants. Despite the rigid prohibition in traditional international law, it is becoming increasingly more common for third states to champion the private army, or its target as the case may be, and to designate themselves claimants for their particular protégés. Private organizations and individuals may also be claimants. Corporations with operations or aspirations in the arena of belligerency may turn to their own governments for some action which the corporations deem favorable to their own objectives. Such lobbying is a claim, often of critical magnitude. Civic-action groups may press national or international officials for some decision affecting the private army in question. All of these demands can be considered claims to authority in that they invoke decision-makers to respond on the basis of asserted community policies.

B. *Perspectives*

The perspectives of claimants—their identifications, demands and expectations—vary in many ways, accounting, in part, for the conflicts which precipitate claims. But these perspectives converge in the process of claim

---

42. *Id.* at 625 ff.

in that, at some level of consciousness, they are appealing to a more inclusive authority system. Hence the mere process of claim is a reinforcement of authority for both claimants and decision-makers. The act of claim is a crucial social event for law.

C. *Situations*

Claims may be lodged in highly formal decision situations (for example, organs of the United Nations or international or national tribunals) or they may be inferred from diffuse behavior in extremely unorganized situations (for example, the border-crossing problem considered earlier). In most sectors of international law, the vast majority of claims take place in the diplomatic setting, through bilateral inter-elite communications. Situations have great influence on the form and content of a claim, and the investigator may require entirely different sets of tools for identifying claims in different situations.

D. *Strategies*

Claims may be communicated to elite groups (diplomatic communication) or they may be directed to broad audiences, via radio, TV, leaflets, and so on (ideologic communication). The communications may be attended by actual or threatened force (military strategy) or with promises of economic indulgence or deprivation (economic strategy). Most claims will integrate, in varying ways, all of these components. Many claims seek, of course, by the excessive use of coercion, to render themselves a *fait accompli* or unilateral decision.

E. *Specific Claims (Outcomes)*

The claims made by private armies and/or others affected by them are most economically grouped in terms of claims regarding participation, perspectives, the establishment of institutions and the access to established arenas, value support or deprivation and the use of certain instruments of policy. Let us consider each of these claim groups briefly.

1. *Claims for Participation.*

Because the interpersonal attribution of status imports value consequences, a large number of claims are lodged regarding eligibility for and the preferred attributes of participation. A private army may claim the status of an "entity," a belligerent, a state, guerrillas, and so on; others may insist on characterizations of "bandits," brigands, terrorists, pirates, etc. The legal incidents which attach to such characterizations can be critical features of the subsequent context. Claims for the participation of outsiders generally invoke such complementary norms as "international

concern" or "domestic jurisdiction" and may also seek to establish prefer-
ential patterns in regional and global participation. Many participatory
claims may be lodged after the fact. In a subsequent claim for compensa-
tion, for example, the association of the deprivor with a state may impart
a degree of immunity from claim.[43]

2. *Claims regarding Perspectives.*

An entire category of claims relate to the perspective patterns of con-
tending parties. Major demands may be made regarding the identification
or disidentification of participants with certain public order systems.
Claims may also insist upon explicit presentation of the sought public
order system for which violence is being used.

3. *Claims regarding Situations.*

Private armies and their supporters may insist upon the establishment
of an entirely new power arena within their area of operations or, alterna-
tively, may assert that they exercise violence in order to bring about selec-
tive changes; opponents claim support for the continuation of established
situations. Where outsiders condition support for one side or another on
certain situational innovations or retentions, a pattern of authoritative
demand may be discernible.[44] Claimants will also seek access to a variety
of institutionalized processes, as a means of maximizing their interests.
The right of access to general international organizations and functional
agencies will be contested; on a different plane, claimants may seek access
to nation-states, the use and recognition of passports, and so on.

4. *Claims regarding Bases of Power.*

In any interactive system, participants regularly claim protection for
certain base values which they believe crucial to their security and, at the
same time, turn to others for additional values which may be used as power
bases. Hence the claims considered here relate to every single value which
may be of some use in securing or regaining power. For many of the value
claims, there have been complex prescriptions of the world community;
arms, for example, are purportedly limited in diffusion by both interna-
tional policy as well as national licensing procedures.[45]

---

43. *See, e.g.,* Johnstone v. Pedlar [1921] 2 A.C. 262.
44. One can assume, for example, that the institution of conditional recognition is used
quite widely: recognition is bartered for certain assurances about future behavior, a practice
considered in a forthcoming study by Reisman & Suzuki on "Recognition and Social
Change."
45. *See* Bader, *The Proliferation of Conventional Weapons,* in 3 THE FUTURE OF THE INTER-

5. *Claims regarding Modalities.*

Participants in private-army situations make and are subjected to claims (by outsiders as well as by their own counterparts) as to the appropriate modalities and targets of violence. Thus claims to use or refrain from using terror, ideological compulsion techniques, economic deprivatory techniques, ecologically degenerative strategies, etc., will be lodged. Closely connected with these claims will be the identification of legitimate targets of coercive modalities.[46]

IV.   INTERNATIONAL RESPONSE: THE WORLD CONSTITUTIVE PROCESS

In an earlier study, my colleagues and I explored the complex processes of authoritative decision in the world community.[47] Many different individuals and groups participate in international decisions in direct and indirect forms, and many different decision arenas may have contributed to the culminating value allocations and comparatively stable expectations which an observer would characterize as a decision. In major security cases, international organizations seem to be playing an increasingly rhetorical role. The nation-state agencies and individual official roles active in international decisions are many and complex. The traditional focus of the international scholar has been on those agencies or roles formally specialized to international decisions: legal advisers' offices in Foreign Ministries or the Department of State. What these agencies do becomes, by definition, international law. But because these institutions are the very guardians of the myth system which I have described, their formal response to private army claims is almost always negative. A realistic scholarly focus would include all these agencies and roles, overt *and* covert, actually making private army decisions; their responses are not always uniform. Thus, the Foreign Office of State X may support the government of State Y in its internal difficulties, while a covert security agency of X may be supporting a private army in Y, challenging the government. Indeed, in the intricacies of international politics, the covert agency may, in varying degree, be supporting both government Y and private army Y!

Although nation-state officials often appear to be the nominal decision-makers in cases of private armies, they themselves may be responding to the influence of business units, pressure groups, religious groups, media elites, or a vast inchoate constituency which has been partially mobilized

---

NATIONAL LEGAL ORDER, *supra* note 13, at 210; L. FRANK, THE ARMS TRADE IN INTERNATIONAL RELATIONS (1969).

46. Reisman, *supra* note 40, at 309-310.

47. McDougal, Lasswell & Reisman, *The World Constitutive Process of Authoritative Decision,* in 1 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER, *supra* note 13, at 73.

for specific purposes.[48] Since these secondary groups may, themselves, be formed, operated or influenced by external actors, a process which seems to be telescoping into a number of large nation-states may be extending itself again across national boundaries. With such a complex and extraordinarily flexible decision process, the appropriate question is not who has been a functional decision-maker in the past, but rather how can those individuals disposed to playing a role in the international authority process maximize their own effectiveness.[49]

The perspectives of decision-makers introduce other complexities. There are, of course, enormous diversities in the extant and contingent identifications of individual decision-makers with the territorial and non-territorial communities about the globe. Two particularly relevant dimensions of identifications are (1) the extent to which decision-makers develop *inclusive* identifications and (2) the extent to which they disidentify with the contemporary state system. The conjunction of these two patterns of identification is an index of how decision-makers may try to exploit private-army instances in order to transform the dynamics of a global war system into a peace system. Demand and expectation patterns will follow these general contours.

The range of decision situations for private-army cases is extremely broad. A tourist excursion, a border police station, a national court or the lower level of a national agency, an international tribunal or an international organization may provide the setting, or a setting in a sequence of arenas, of private-army decision. In any circumstance in which a claim, as the term has been defined here, is lodged, a functional decision situation is generated. Hence a vast array of citizens may find themselves transformed into decision-makers.

In different circumstances, those who perform decision functions may draw on any value as a power base. Official elites may base themselves primarily on effective power, but this, in itself, frequently serves to attract many other values. Thus Tönnies spoke of institutional charisma:[50] where

---

48. For useful documentation, bibliography and hypotheses, see Sumida, *Transnational Movement and Economic Strctures*, in 4 *Id.* at 524.

49. There is an enormous literature on the question of who, if anyone, ought to participate in localized violence. *See generally*, Moore, *The Role of Regional Arrangements in the Maintenance of World Order*, in 3 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER, *supra* note 13, at 122; Firmage, *The Role of International Law in Regulating Foreign Participation in Internal Conflicts*, in THE INTERNATIONAL LAW OF CIVIL WAR 405 et seq. (R. Falk ed. 1971); and *see also* the useful introductory essay by Falk, *id.* at 1-28. A most useful survey of sources is offered in the copious notes in Higgins, *Internal War and International Law* in 3 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER, *supra* note 13, at 81.

50. F. TÖNNIES, COMMUNITY AND ASSOCIATION (Loomis trans. 1955). The Tönnies' hypothesis is supported by subsequent research. *See* F. GREENSTEIN, CHILDREN AND POLITICS 29 (rev'd ed. 1969). For the general phenomenon, see Paul, *Impressions of Personality, Authoritarianism, and the Fait Accompli Effect*, J. AB. & SOC. PSYCH. 53 (1956).

community members have been conditioned to respect and "look up" to their leaders, official power *per se* comes to import enlightenment, skill, respect, and rectitude; these potential bases can make non-official participants more effective in transnational decision processes. The most critical value available to non-official participants is enlightenment. Without it one is unable to break the conditioned interpersonal cycle of deference to official elites in the Tönnies or *fait accompli* phenomenon; nor can one identify the neurotic dimensions of security anxieties and the part they play in a war system. In many strata, enlightenment, respect and rectitude attributes represent great bases for influence. In some circumstances, skill in agitation and mass mobilization may promise a high degree of effectiveness.

By strategies we refer to the timed sequence of events in which values are deployed to secure certain outcomes. In a complex, unorganized arena, not all strategy programs involve the use of language and the formalities of institutionalized and ritualized decision; military and economic strategies may be used without a commentary. The media and specialists, located in counterpart political institutions, will later attribute significance to these strategies, thereby reinforcing the prescriptive complementarities we have noted previously. On the other hand, the deployment of values accompanied by communications to either elites (diplomatic) or large audiences (ideologic) may attempt to couple events with an authentic interpretation of them.

Inferences by observers and participants about fairly stable expectations of authority and value allocation comprise the outcomes of these complex decision processes. We may distinguish constitutive and public order outcomes as well as outcomes which are decision functions of the process. Private-army decisions can be usefully considered "constitutive" when, in addition to their nominal impact on a particular private army, they significantly reinforce or change the fundamental international process of authoritative decision as it pertains to private-army cases. A decision by the General Assembly, for example, permitting representatives of a private army to address the Assembly or one of its subsidiary bodies once that particular private-army question had been inscribed on the agenda would involve an enormous constitutive change. Similarly, a hard fought decision to continue to bar private-army representatives could also be considered constitutive in that it would reinforce a particularly important aspect of the world constitutive process. Though every decision has a constitutive dimension in that it has some effect on the global process, we reserve the characterization "constitutive" to those decisions with significant impact on the process which establishes and maintains the fundamental institutions of decision.[51]

---

51. McDougal, Lasswell & Reisman, *supra* note 47.

Every decision, constitutive or otherwise, has public order impacts, for it affects expectations and practices involving allocation of all values. Indeed, concern with the immediate public order effects of an impending decision is what motivates the participants to act. A decision aiding or impeding a particular private army can thus be gauged in terms of its effects on power allocations, wealth production and distribution, skill, enlightenment, respect, and so on.

A decision is a complex of activities, beginning with the provision of intelligence data on through to the appraisal of the social effects of a flow of decisions. In systematic breakdown, we distinguish intelligence gathering, the promotion of policy, the prescription of policy as authoritative, the invocation of decision-makers upon alleged deviations of behavior from prescriptions, application of prescriptions to such behavior, the termination of prescriptions, and finally the appraisal of the aggregate performance of the decision process for certain or for all sectors.[52] Policy preferences may be projected for each of these decision functions and performance indices can be developed by comparison of policy and trends. Such an investigation is beyond the scope of the present essay, but its implications for the private-army problem must be noted. For example, a flow of accurate intelligence is required for rational decision; yet there is comparatively little data on private armies, and it is delivered sporadically and usually only after the situation has become critical.

V. THE CONDITIONS FOR PRIVATE ARMIES

The conditions which account for the appearance of private armies are many and complex. Certain individuals recruit themselves to the speciality of violence for personal reasons; many may fulfill deep personal needs by serving in anti-establishment rather than establishment brigades. Millenarist or antinomian drives may play a role.[53] Others may be attracted to the intimacy and security of life in a corps. Within limitations, the military life offers a range of legitimated forms of self-expression, from monastic self-repression to suicidal vainglory.[54] And there are, perhaps, biological "bonding" drives or instincts which act to bring certain individuals together.[55] In some cultures, the warrior mode is an accepted, if not honorable calling;[56] at certain periods in history, it has been considered the

---

52. *Id.* at 131 ff.

53. N. COHN, THE PURSUIT OF THE MILLENIUM 149 ff. (1957).

54. On the military as a multivalue social system, see COATES & PELLEGRIN, MILITARY SOCIOLOGY: A STUDY OF AMERICAN MILITARY INSTITUTIONS AND MILITARY LIFE 153 ff. (1965); S. STOUFFER *et al.*, THE AMERICAN SOLDIER (1949); M. JANOWITZ, THE PROFESSIONAL SOLDIER 44 (1960); and *see generally* L. FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

55. D. MORRIS, THE NAKED APE (1967); L. TIGER, MEN IN GROUPS (1969).

56. "Banditry of expropriated peasants, in countries such as China, Spain, and many others, is not regarded as a dishonest but rather as a praiseworthy and heroic occupation."

most honorable.[57] Even where it is generally denigrated, it may, as a distinct subculture, generate its own respect and rectitude system.[58]

Many structural features which may account for the rise of private armies remain to be explored. It is, as yet, unclear whether large scale or small scale societies are more likely to produce private armies, or what effect centralized as opposed to decentralized systems have on the emergence or duration of private armies.[59] Certainly Hobsbawm's theory of the social bandit as primarily an agrarian phenomenon[60] has been challenged by the emergence of the "urban guerrilla."[61] The corollary hypothesis of the likelihood of private armies in sparse as opposed to dense population areas and rural as opposed to urban settings must now be reexamined. Nor are there more than unverified hypotheses regarding the effect of different patterns of formal social organizations or types of stratification on the emergence of private armies.[62] The general assumption that private armies are a product of deteriorating government seems oversimplified. Pareto had assumed that

> Whenever the influence of public authority declines, little states
> grow up within the state, little societies within society. So, when-
> ever judicial process fails, private or group justice replaces it, and
> *vice versa.*[63]

F. BORKENAU, WORLD COMMUNISM: A HISTORY OF THE COMMUNIST INTERNATIONAL 325 (1962). For a general discussion of social banditry, see E. HOBSBAWM, BANDITS (1969). *But see* G. ALROY, THE INVOLVEMENT OF PEASANTS IN INTERNAL WARS (1966).

57. Thus the right to bear arms was long restricted to the nobility. *Cf.* N. TIMASHEFF, THE SOCIOLOGY OF LAW 11 (1939).

58. *See, e.g.,* D. MAURER, THE WHIZ MOB (1964), for an instructive picture of the generation of a fairly autonomous respect dynamic in a sub-culture characterized by the dominant culture as criminal. On internal military responses to negative characterizations by the more general culture, see Rosser, *American Civil-Military Relations in the 1980's,* 24 NAVAL WAR COLL. REV. 6 (1972).

59. *See generally* Stinchcombe, *Social Structure and Organization,* in HANDBOOK OF ORGANIZATIONS (J. March ed. 1965) and esp. at 153 ff. Chinese experience suggests that a weak center and poor communications encourage military regionalism. J. SHERIDAN, CHINESE WARLORD: THE CAREER OF FENG YU-HSIAN (1966). For other relevant hypotheses, see E. LUTTWAK, COUP D'ETAT 25-52 (1968).

60. E. HOBSBAWM, *supra* note 56.

61. M. OPPENHEIMER, THE URBAN GUERRILLA 41 ff. (1969).

62. Of some contemporary significance is the possible division of urban and rural environments as a cause of conflict in which private armies proliferate. *See* C. TILLY, THE VENDÉE, 16-37, 340 (1964). For a different structural hypothesis, see B. MOORE, SOCIAL ORIGINS OF DICTATORSHIP AND DEMOCRACY (1966).

63. 4 V. PARETO, THE MIND AND SOCIETY 1519 (Bongiorno and Livingstone, trans. 1935). Nor need the absence of indigenous community institutions for legitimate violence lead necessarily to the growth of private armies. A high degree of homogeneity among the population may lead, instead, to the growth of an institution of "popular justice": *see, e.g.,* R. LINTOTT, VIOLENCE IN REPUBLICAN ROME 6-21 (1968).

A more plausible hypothesis would be that private armies will form in circumstances in which identity groups believe that their interests can be maximized by the use of purposive violence. The effectiveness of group processes will be only one consideration in such an assessment.

Many of these points are considered in Wolff's and Hansen's structural analysis of *caudillo* politics, a dynamic and nonetheless strangely stable system of multiple private armies characterized by

> the repeated emergence of armed patron-client sets, cemented by personal ties of dominance and submission, and by a common desire to obtain wealth by force of arms; . . . the lack of institutionalized means for succession to offices; . . . the use of violence in political competition; and . . . the repeated failures of incumbent leaders to guarantee their tenure as chieftains.[64]

Caudillaje, as Wolff and Hansen show, is a response to a unique set of economic and social variables which in turn conditions alliance patterns, personal values, sexual relationships, and so on.[65] It arises, they believe, from "the inability of any socio-economic class to monopolize sufficiently both wealth and power in order to organize a centralized political apparatus."[66]

If the private armies of the *caudillaje* are a product of an anarchic system whose continuation elites believe to be in their interest, other private-army situations may in fact be centrally organized and planned. In the Spanish colonial empire, for example, as in earlier feudal arrangements, public order was to be maintained by the garrisons of individual nobles or *padrones*. Thus, in Mexico, "the viceroy and the military authorities found it convenient that a militia leader be at one and the same time the landlord of the men who served under his command."[67] In certain circumstances in the United States, private police and even gangs have performed comparable public functions in collaboration with the official police.[68] In all such situations, a degree of order is purchased at the price of an ever present

---

64. Wolf & Hansen, *supra* note 15.

65. Another study of different institutionalized techniques of power seizure and change in Hispanic America, including caudillaje, machetismo, cuartelazo, golpe de estado, revolucion, imposicion, and continuismo concluded that all of these power changes were conditioned by Hispanic culture. "Hispanic culture tends everywhere in Latin America to dominate in the power sense; . . . the institutions of Hispanic culture such as the family, church, army educational institutions, and economic systems, are essentially authoritarian in nature, hence, conditioning the individual to more frequent acceptance of processes of dictatorship, including violence, than processes of political democracy." Stokes, *Violence as a Power Factor in Latin-American Politics,* 5 WEST. POL. Q. 445, 467 (1952).

66. *Id.* at 177.

67. E. WOLF, THE MEXICAN BAJIO IN THE 18TH CENTURY (Middle American Research Institute Publication, No. 17) 177, 192, quoted in Wolf & Hansen, *supra* note 15.

68. *See* 2 J. KAKLIK & S. WILDHORN, PRIVATE POLICE IN THE UNITED STATES (1971).

possibility of challenges to the nominal center by tolerated power clusters on the peripheries. Probabilities of *putsch* or revolution at the center, as opposed to secession, would seem to be governed by variables such as degree of centralization and decentralization, degree of integration of the population, geographical scope, status and power of competing peripheral power clusters, and the potential for autarkic existence of putative seceding components. Presumably, the system would continue to be one of private armies when the variables "balanced out" so that respective private army elites felt they optimized their interests in a continuation of that political system rather than in a resolution through a central *putsch* or a secession.

Many private armies are generated in situations of rebellion, and serious studies of the phenomenon must perforce incorporate the vast scientific literature on the sociology and psychology of rebellion.[69] Actual case studies emphasize the interstimulation of many complex factors. Consider the cross-cultural historical studies of the intense peasant revolts in many countries in Europe and Asia in the 17th century.[70] A century of inter-state wars required larger standing armies, which raised the tax load and necessity for popular material contributions appreciably: this aroused resistance from the peasantry which in turn called forth increased coercion in tax-collecting measures. In the same period, atmospheric calamities caused bad harvests, shortages and epidemics. Bad weather, cold winters, and cold and wet summers seem to have been extraordinarily frequent in the 17th century.[71] The general result was widespread impoverishment. Against this background, some of the revolts were stimulated by aristocrats as instruments for securing power among themselves. Some may have been influenced by new patterns of stratification. Others may have been begun by unpaid soldiers, or as in Russia, by a nobility which felt oppressed by the innovative police methods of the Czar. Subtle geographical factors may also have played a role.

Revolts, of course, need not lead to the continuation of durable private armies. Conversely, situations short of revolt may produce an abundance of private brigades. In periods of rapid social change abounding in social discontinuities and the disintegration of traditional social units, private brigades may provide tight frameworks for identification, livelihood, the exchange of affection, the exercise of skills, and the achievement of self-

---

69. For hypotheses and comprehensive bibliography, see T. GURR, WHY MEN REBEL (1970); *see also* VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES (T. Graham & T. Gurr eds. 1969).

70. *See*, in this regard, R. MOUSNIER, PEASANT UPRISINGS IN SEVENTEENTH-CENTURY FRANCE, RUSSIA AND CHINA (Pearce, trans. 1967). Comparisons are drawn at 305 ff.

71. *Id.* at 314-15. Compare E. THOMPSON, THE MAKING OF THE ENGLISH WORKING CLASS, especially at 472 ff. 1963); E. HOBSBAWM & G. RUDÉ, CAPTAIN SWING 195 ff. (1969).

respect.[72] They also offer plentiful opportunities for discharging rage and frustration. Where these private armies project rather comprehensive symbol systems, it is probable that they provide a great personal experience for formerly prepolitical individuals; for the first time in lives or in generations, there is an opportunity to identify with an inclusive group beyond the nuclear family, or a kin-group of real or fictitious consanguinity, a factor which may be particularly important if kin-groups are disintegrating.[73] Unfortunately, we have no descriptions or accounts of the exhilaration of being a member of a peasant army in a great revolution.[74] Yet it is not difficult to imagine why this focus for new loyalty proves more successful than do the conventional symbols of the nation-state. Thus, for many societies, the private army may prove to be a successful transitional form for the politicization of critical cadres drawn from pre- and subpolitical groups and their gradual integration into a community akin to the nation-state. Insofar as large numbers of people languish in forms of prepolitical thralldom, a condition for the emergence of private armies continues. Indeed, the demands and protests which seem to be part of the struc-

72. For a detailed exploration of the psychological and social conditions which may have facilitated the growth of private armies in Weimar, Germany, see R. WAITE, VANGUARD OF NAZISM: THE FREE CORPS MOVEMENT IN POSTWAR GERMANY 1918-1922 18-32 (1952), and especially the psychoanalytic suggestions concerning the formulation of youth movements in these circumstances. It was part of Hitler's genius to manipulate such violence-oriented groups in order to acquire official power. Once he had control, these same groups became impediments to the systematic exercise of power; hence they were eliminated in the "Blood Purge". Hitler himself provided an extraordinary explanation of why the Free Corps elite had to be purged:

> [They are] permanent revolutionaries who in 1918 had been shaken in their former relation to the state and uprooted, and had thereby lost all inner contact with the human social order. Men who have no respect for any authority . . . men who found their profession of faith in nihilism . . . moral degenerates . . . constant conspirators incapable of any real cooperation, ready to oppose any order, filled with hatred against all authority, their restless and excited minds find satisfaction only in incessant intellectual and conspiratorial activity aimed at the destruction of all existing institutions . . . These pathological enemies of the state are the enemies of all authority. . . .

Quoted in *id.* at 280-281.

The conditions of growth of popular violence in contemporary modernizing states are graphically presented in S. AIYAR, THE POLITICS OF MASS VIOLENCE IN INDIA (1967).

73. Lewis observes, in regard to the Assassins that "In the atomized and insecure society of the later Caliphates, men sought comfort and assurance in new and stronger forms of associations." B. LEWIS, THE ASSASSINS: A RADICAL SECT IN ISLAM 128 (1968). Since modernization is usually accompanied by the disintegration of traditional units of social organization, one can hypoethsize an increase in the number of private armies as part of a more general phenomenon of an increase in crime.

74. *But see* J. DENIEFE, A PERSONAL NARRATIVE OF THE IRISH REVOLUTIONARY BROTHERHOOD (1906, 1969).

tural transformations from traditional to modern society may themselves generate private armies.[75]

The private armies which are most challenging to international policy and decision are those with a significant degree of popular support whose manifest objective is the creation of a new or separate territorial community. This problem, misnamed for historical reasons "self-determination," refers to a much broader phenomenon: the continuous demands of individuals to express themselves in group identities and to seek lawful modes for group expression and protection.[76] The process of "consociation," as Weber called it,[77] need not be violent; in a preferred social order, it would be a persuasive, rational process. It may become violent for a number of reasons. Self-selected "revolutionary" elites may exploit violence as a means for forging new, intense and comparatively inclusive identifications among a people.[78] Incumbent elites who feel challenged by a pressing counter-elite may resort to violence for personal or cultural reasons. Not a few elite groups in the 20th century have evidenced the manner, intelligence and/or goals of thugs.

But a more pervasive condition for the emergence of private armies in self-determination situations may be found in the fundamental international legal system itself. The basis of this system is a reciprocal respect among territorial elites for the territorial integrity of each community, the most critical base of power of these elites. A private army, no matter what its popular base, is viewed as alien and hostile to the system and is resisted. And precisely because the private army is a signal for political and personal anxiety, elites can always count on a large degree of popular support for their own program against it. Because the international system does not provide for the orderly emergence of new communities, the process of consociation is perforce violent; aspiring elites of would-be communities know full well that they must win all or lose all. International agreement against

---

75. S. EISENSTADT, MODERNIZATION: PROTEST AND CHANGE (1966) and cf. C. TILLY, supra note 62.

76. Note that the principle of self-determination is complementary to principles of inviolability and continuity of state organization. The reason why such a potentially destructive doctrine or a functional equivalent is retained by established national institutions is that virtually all extant states were created by extra-constitutional, if not violent, means. Because a claim to rule on the basis of naked power alone is a concurrent invitation for others with power to aspire to rule, enfranchised elites require an authority myth. Hence self-determination or something similar provides doctrinal legitimization for the existence of a state. Any myth, if accepted, can perform such a function: e.g. divine right, social contract, dux bellorum, volksgeist and ritualized group trauma; the current doctrine of self-determination springs from a natural law source and has been expanded by revolutions since the 18th century. Of course, once the doctrine has served its purpose, it must be deactivated. Hence it is distinguished and deemed to refer only to certain circumstances, for example, colonial situations.

77. M. WEBER, supra note 1.

78. See note 2 supra.

private armies does not, as we have seen, avoid or obviate the problem, for decision-makers located at different points in interlocking national and international systems are presented with and must respond to private army claims. The result is muddled policy, disorder, and value waste.

VI. PROJECTIONS ON THE FUTURE OF PRIVATE ARMIES

The conditions for the emergence of private armies are sufficiently rich and varied to assure the presence of private armies in any number of constructive futures. A construct of a world of garrison states[79] might retard the tendency of human beings to develop identification systems on the basis of interaction patterns. The complete control of communications, the increasingly adroit management of anxiety, wide use of truth serums and psychopharmaceuticals, the use of neuro-surgery on "deviants" and a variety of other techniques in the increasingly sophisticated arsenal of technological social control might reduce rank-and-file and mid-elite strata to automatons; it would not, however, prevent the emergence, within the elite, of a counter-elite which would itself use the techniques of mind control to turn the populace against the incumbents.[80] In another construct, nuclear or nonnuclear war might destroy the state system and the greater part of the social infra-structure of large segments of the globe. Thereafter, private armies without territorial identifications, ambitions or inhibitions would roam desolate stretches. In such a construct, the policy problems which we have addressed in this essay will have scant operation.

If the state system, as currently organized, is projected into the indefinite future, the phenomenon of private armies may be expected to multiply, for individuals in a process of consociation will have recourse for formation and maintenance of group processes only to skill in arms and violence. If the current social and economic structures continue throughout most of the world, private-army claims may be a continuing demand on decision attention. They need not lead to major confrontations, but may be manipulated by elites in such manner that they maintain a high expectation of violence and thus reinforce a global war system. Private armies and local wars, with the constant threat of intervention, will then become a primary elite strategy for the maintenance of the war system. The globe, as it has in the past, will be divisible into civic zones, in which the level of intercommunal violence is comparatively low, and war zones, in which the practice and expectation of violence is high.[81] Private armies of different and shifting affiliations may roam more or less at will.

79. H. LASSWELL, *supra* note 18.

80. On mass conversion, see W. SARGENT, BATTLE FOR THE MIND: A PHYSIOLOGY OF CONVERSION AND BRAINWASHING (1957) and the bibliography there.

81. For the distinction between civic zones and zones of terror, see E. WALTER, TERROR AND RESISTANCE: A STUDY OF POLITICAL VIOLENCE (1969).

It is not improbable that current social and economic structures throughout the world will change radically in the imaginable future. A decisive lowering of the cost per unit of energy coupled with the further development of technology may weaken the social fibers of geographical interdependence which have been woven to assure ready access to raw materials and markets; many "resources" will then be artifically rendered from available environmental resources.[82] Coupled with this development is the probable change in social value systems and the obsolescence of the need for external markets. The net result may, thus, be sets of communities about the globe which are less outward-looking, less interdependent and, hence, less concerned about private armies and violence in other communities. In this construct, the phenomenon of private armies might continue in diverse settings, but it would not be the occasion for claims on and decision responses by other national and international decision-makers. On the other hand, the drama of private armies might be retained by elites as a means of maintaining the anxieties of a war system and thereby maximizing their own power.

The most preferred of future constructs, that of a world order of human dignity, envisages a rational regional organization of the world, based on the maximum shaping and widest sharing of all values. Within these regions, there will be networks of differential value structures, ranging in scope and institutionalization according to the goal values of the community. Thus a wealth community, based on economic criteria, will be crisscrossed by a variety of power arenas, structured on different principles. In this system, the process of consociation will proceed persuasively rather than coercively, as decision-makers arrange and adjust the various territorial groupings to take account of the changing identities and demands of individuals. With the general expectation of reasonable responses to claims, the claims themselves will cease to be strident demands for "independence" but rather for various degrees of prescriptive competence for specific value sectors. Private armies, where they occur, will no longer be connected to the process of consociation and will be subjected to the appropriate criminal rather than political sanction.

VII. ALTERNATIVES FOR THE FUTURE

The reasons for the appearance of private armies are, as we have seen, multiple. Within the projectible future, it is realistic to expect many more private armies to come into or to continue in operation in any particular sector because of conjunctions of external and internal stimuli. These armies and those affected by them may lodge claims on the international level. The inclusive authority system of the world, fragmentary as it is,

---

82. *See generally* Basiok, *The Import of Technology in the Next Decades,* 14 ORBIS 17 (1970); Basiok, *Technology and World Power,* 200 FOR. POL. HEADLINE SER. No. 200 (1970).

does project a rule for private armies. But because of the complexity of the events presented to decision-makers in private army problems, there can never be a single, simple answer. The event complexes from which the specific question springs are always unique, as is the world context in which they occur. In many cases, the traditional private army rule cannot be applied; in the minority of cases in which it might be applicable, the results may well be dysfunctional. Lawyers too often overlook the painfully obvious fact that though the events which precipitate decisions come from the past, decisions themselves are future-oriented; the test of their quality is not whether they conform to the past, but rather whether they structure processes and value allocations in the near and distant future in preferred ways.

A contemporary focus on the traditional private armies problem in international law would address itself to the problem of official and unofficial decision-makers at many different junctures of transnational interaction who are obliged to respond, in a direct or ancillary fashion, to events involving the activities of armies not affiliated with an established nation-state. Formulated in these terms, it is readily seen that the private-army question is simply a part of the much broader phenomenon of the establishment and maintenance of authorized participants in international law. The problem of private armies, like the problems of recognition and self-determination, touches on aspects of the more inclusive conception. Indeed, the attenuation of focus of each of these subconceptions, by inhibiting rational decision, may accelerate the formation of private armies.

Decision-makers faced with any of these questions require a way of locating the particular events to which they are obliged to respond in a broader social and constitutive process, to understand what dynamic conditions have given rise to a particular private army, to clarify the policies and goals of the global, regional and national communities concerned, to relate the probable consequences of different decision options open to them to preferences for social and constitutive processes and, finally, to develop a rich and flexible range of strategies for dealing with these problems with an eye to the immediate and to longer-range effects. The challenge is not merely to suppress violence, for violence is a ubiquitous feature of social processes and a characteristic of law. The challenge instead is to respond creatively to violence in ways which use it to lever toward an improved world order.

A complete acquittal of these requirements goes beyond the scope of the present essay. For the moment, I intend to deal only with the problem of goals and decisional principles which might better orient the contemporary decision specialist with regard to the private-army problem and to the improvement of those aspects of the constitutive process most pertinent to it. Here, as elsewhere, goal clarification is critical. The free individual recognizes and accepts the inevitable element of choice in every decision which he observes or in which he participates. Hence he projects (and invites others to project) explicitly those social goals he recommends and

for which he assumes responsibility. The goals that follow, from the most general to the most specific, are such recommendations.

A. *The Goal of Human Dignity*

Because all of social reality is a vast interlocking manifold, single events have varying systemic implications. Hence the necessity arises for clarifying an extensive general goal for which all more specific goals can be considered instrumental and against which all available choices may be evaluated. The most fundamental recommended goal is that of a public order of human dignity in which all values are abundantly produced and widely shared.[83] The innate worth of each individual human being is postulated; the test of public power is the extent to which it provides the conditions for optimal self-realization. There are no formal preferred institutional structures for human dignity, since contexts change and varying structures are required to mediate between community goals and environmental conditions. Yet enough peremptory demands continue through time to provide some profile of preferred public order systems. First, social and political structures must provide a high expectation of minimum order within the prevailing context of effective power; anxiety for personal and group integrity can be minimized only when the comprehensive world decision structures take account of the potential for anxiety stimulation of component parts. Second, structures must enable the maximum sharing of power and other values among participants. Third, structures must facilitate the high production and dispersion of all other value components of human dignity, not only within the putative territorial community but in the more inclusive communities of which it is a part.

B. *Preliminary Procedures*

1. *The Principle of Preliminary Self-Observation*

The projection of explicit goals imports the formulation of a program of goal-oriented or "rational" behavior. Weber's definition of rational action continues to recommend itself as a concise description:

> a man's action is purposively rational if he considers the goals, the means, and the side effects, and weighs rationally means against goals, goals against side effects and also various possible goals against each other.[84]

---

83. For a brilliant integration of the many international prescriptions for human dignity, see McDougal, Lasswell & Chen, *Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry*, 63 AM. J. INT'L L. 237 (1969).

84. M. WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION (T. Parson trans., 1947).

The crucial agency of goal choice as well as formulation of instrumental programs for goal realization, is the individual's self-system; hence the need for a set of procedural principles for ongoing observation of the self by the self in order to increase the probability of making instrumental choices likely to realize the major goals and in order to minimize choices which *seem* to be rationally related to manifest goals but which are, in fact, responses dictated by cultural conditioning, group identification, and the residue of psychopersonal experience.[85] This is not the place to consider factors such as phylogeny, neurotic rigidity, parochial and sub-group conditioning or institutional stereotyping, or the available techniques for neutralizing their distortions. But a number of specific factors should be noted. For individuals with certain types of crisis exposure, the mere fact that "violence" is being used by groups unaffiliated with the state may push them to extremes of response. For psychopersonal reasons, challenges in another arena to authority may be summarily rejected or supported without regard to the merits of the activities or the consequences of the response. A leader of one of the contending groups may be identified at a level of consciousness with an imago. Subtle identifications such as "we soldiers" against "those non-professonals" may operate.[86] Religious or cultural conditioning may push the decision-maker to extreme perceptions of good and evil or right and wrong. Seemingly inconsequential geographical features may become subtle signals of past associations. Thus, "North" verses "South" may recall the American civil war to some decision-makers. Deep ambivalences about racial prejudice may paralyze some potential decision-makers from responding to events between racial groups. Which factors prove critical will depend on the psychopersonal and psychocultural history of each individual.

Conditioned responses (as opposed to rational responses) do not appear as such; they are invariably decked out in the paraphernalia of crypto-

---

85. All ego autonomy from instinctual drives as well as environmental stimuli is, of course, relative and in many circumstances tenuous. The discussion here is not intended to imply that I have, or that there is, a way of achieving perfect "rationality," but rather to emphasize the prevalence of the problem for decision-makers and appraisers, to propose the potential for its minimization if not neutralization and to suggest a range of procedures which may be available in many situations of choice. To transpose Freud's famous apothegm, "Where id was, there shall ego be," I suggest that we demand of ourselves and of others that the ego component displace the id component in those situations of decision or choice-making in which other human beings are affected in proportion to the number of others affected and the magnitude of the effects. *See generally* Hartmann, *On Rational and Irrational Action,* in HARTMANN, ESSAYS ON EGO PSYCHOLOGY 37 (1964) and Rapaport, *The Autonomy of the Ego,* in THE COLLECTED PAPERS OF DAVID RAPAPORT 357 (Gill ed. 1967) and Rapaport, *The Theory of Ego Autonomy, id.* at 722.

86. G. DRAPER, THE LEGAL CLASSIFICATION OF BELLIGERENT INDIVIDUALS 5-9 (1970), cited in Farer, *The Laws of War Twenty-Five Years After Nuremberg,* 583 INT'L CONCIL. 36-7 (1971). On the intellectual susceptibility to self-imposed blinders, see O'Brien, *Politics and the Morality of Scholarship,* in POWER AND CONSCIOUSNESS 33 (C. O'Brien & R. Vanech eds. 1969).

rationality accompanied by invocation of selective legalisms culled from the rich body of complementary norm-sets within all law systems. They often take the form of dissociation: "This matter doesn't concern me (us);" "domestic jurisdiction;" the obligations of neutrality; an "inability to be effective." Through use of any number of techniques of self-exploration, the individual decision-maker may recognize that a certain choice toward which he is tending is conditioned by different residues of past experience. The important point is to recognize the relevance of this self-scrutiny as a recurring decisional task. Once it is grasped, every situation may be used simultaneously as a means of auto-exploration as well as extra-exploration.[87]

2. *The Principle of Contextuality*

Systematic contextual approaches to sectors of the social process are necessary to the law, not because they are intellectually elegant, but because they are the only way of rendering the law an effective instrument in a complex and manifold social process. The traditional and, unfortunately, contemporary approach of international law to violence involves severing it from its context and characterizing it as delictual *per se* without regard to its genesis or to the probable consequences of the jurist's characterization.[88] If such an approach were recommended in domestic criminal law, it would be dismissed as utterly primeval, for many criminal lawyers are moving to the realization that social control requires focusing on the causes of deviations from norms and the projected effects of what decision-makers may do, as well as on the symptomatic deviation itself.[89]

Rational decision will require examining, within the limits of time and economy, every feature of the present and projected contexts. Anecdotalism will be avoided only if a systematic map of the social process is employed. Contextuality may disabuse the decision-maker of certain notions which he entertains and, from the outset, force him to a wider range of considerations and alternatives. Consider, for example, the ubiquity of violence. A legalistic approach will tend to identify as violence only those coercive activities of groups not affiliated with the nation-state, or more generally, not used to maintain or further the interest of the particular group with which the observer identifies.[90] A contextual approach, in contrast, will permit the observer to inventory *all* the violence in a society or a sector thereof without regard to the putative "legality" of its agency.

---

87. A praxis of self-scrutiny is developed in a forthcoming study by Reisman & Shapiro on "Goal Clarification."

88. H. KELSEN, GENERAL THEORY OF LAW AND STATE 21, 50 et seq. (1961).

89. R. ARENS & H. LASSWELL, IN DEFENSE OF PUBLIC ORDER: THE EMERGING FIELD OF SANCTION LAW (1961).

90. 4 V. PARETO, THE MIND AND SOCIETY (1935).

The principle of contextuality has a number of ramifications for private armies: the assessment of pre-arena events; the principle of conditional recognition; the principle of contextual location; and the principle of post-arena events. Each of these will be considered as a separate principle.

a. *Assessment of Pre-Arena Events:* Contextuality implies not only a lateral extension of focus (as well as a focus on the self-system examining the process), but also an extension in time. The focus of law is traditionally initiated by a conflict. But a plenary contextual focus involves a comprehensive consideration of the complex of events which preceded the eruption of conflict and which, in different ways, may continue to condition the conflict. On the rhetorical level, of course, advocates and decision-makers always assert that they have systematically assessed the pre-arena events. Closer examination shows that this is usually a pleonastic device. The phase analysis—a technique which will be developed in some detail in the following pages—is a useful way of organizing data from social process, for it permits detailed examination of particular factors without ever losing the sense of their integrality and variability within the broader context.

b. *The Principle of Conditional Recognition:* The animating commitment to value preferences rather than to specific institutions means that a policy test must be applied, not only to the private army in question, but equally to those incumbent elites or entire institutional arrangements which it is seeking to supplant. Although this principle challenges the entrenched position of the nation-state in international law, it conforms to an older tradition oriented toward the individual; even in the heyday of state sovereignty, international law allowed for such exceptional remedies as humanitarian intervention.

The recommended principle of conditional recognition in private-army cases is less a matter of derivation from monistic doctrine than a dispassionate acceptance of the actual dynamics of recognition. In any interactive process, participants' attitudes, and the behavior thereby shaped, are critical components in the multivalue bases of power of any other participant vis-à-vis whom they are directed. Thus an elite group is a "government" not only because of the effective control it disposes (or fails to dispose) in some sector, but also because other internal and external participants choose to view it as a government and to act accordingly: to give it all the crucial perquisites which make the status of government worth seeking. Although conceptions of linear causality should generally be avoided in the complexities of social interaction, there are certainly circumstances in which observers can note that a particular elite group has authoritative power because other participants have chosen to recognize it as so seised.

Conditional recognition thus requires that the contending private army as well as the incumbent government (which it either seeks to displace or from which it seeks territorial separation) be equalized for purposes of analysis. The observer, in short, assesses two "private" armies. Indeed, to

assume that one must support an extant government simply because it is the extant government begs the juridical questions of the private army and imposes an answer by definition.

c. *The Principle of Contextual Location:* Suspending recognition is preliminary to a contextual examination of the conflict. Past trends as well as probable future sequences are considered by use of a general phase analysis which seeks to comprehend a dynamic social process in terms of those involved in it (participants); the psychological components which animate the participants (perspectives); the circumstances in which the participants interact (situations); the values which different participants draw on in order to influence each other (bases of power); the way they manipulate these values (strategies); and the outcomes. Each phase stimulates a number of critical questions.

PARTICIPANTS

Are the nominal antagonists the real parties, or are they proxies for outside groups, such as states, transnational political orders, classes or castes, international wealth groups, and so on? Would support for one or another of these groups (or failure to support—a decision in the guise of a nondecision) contribute to a secure termination of hostilities, continuation of hostilities, or the stimulation of new forms of hostilities? In many places in the world class, caste, racial, ethnic, linguistic, dialect, or tribal groups are the fundamental social units; while the replacement of one of these groups with another may resolve a particular conflict in conformity with broader community goals, it may also kindle ancient hostilities between that group and other social stratifications. The result may be the stimulation of a sequence of private army problems, the deterioration of local public order, and a world-wide increase in the expectation of violence.

Are the nominal antagonists representative of the population at large, or are they simply feuding "first families" or oligarchic groups enacting closet dramas against the backdrop of an inert, prepolitical population? Would supporting one or the other of the contenders increase the politicization of the population or increase effective power sharing? Questions such as these require *independent* investigations. Whatever the case may be, contenders may be expected to incorporate contemporary legitimization symbols. In war, all sides recruit Peace, God, the Muses, the Masses, Liberty, and other modish symbols.

PERSPECTIVES

What are the perspectives which animate the different participants or the significant non-participants? Specifically, what are their demands, identifications or expectations? Each of these components stimulates a number of questions.

Identifications

Identifications tend to condition the entire attention focus of an individual and to stimulate demands on the self. As such they are critical components of social interaction. Some of the more critical questions regarding identification patterns of elites and rank-and-file in private armies are:

Intensity of Identification with a Territorial Community: To what extent do the elite and rank-and-file of a private army identify with an existing or projected territorial community, the establishment, control or maintenance of which is the ostensible justification for their exercises of violence? Although doctrine and formula insist that an army as such is the exclusive apparatus of the state, a corps of violence specialists need not identify themselves with any significant intensity with the symbols of a nation-state. In this respect the "private" army may be the garrison of a state as well as a guerrilla band which ranges itself against the state.

Before the ascendancy of mercantile classes vouchsafed the imprint of their interests on developing international law, private armies were the primary intergroup actors for extended periods; the code of honor of knights and soldiers provided a normative framework for much of their interaction;[91] it is not improbable that modern mercenary groups manifest some of the same shared code of arms and honor. In these historical cases, a territorial link was not significant. But significant changes in community structure, resource use, and interdependance have made territory more important. In contemporary conflict, it is critical to distinguish bandits and outlaws from private groups exercising violence with some degree of territorial ambition or defense of group integrity. The presence of minimal identifications does not, of course, automatically render the activities of a private army lawful; many other factors in extant and projected contexts must be considered. While territorial intentions do not automatically legitimate, their absence in a private army program may signal concern, for some degree of stable social organization would seem to be the *sine qua non* of value production and minimum human dignity in the contemporary interdependent world.[92]

Inclusivity of Identification with a Territorial Community: To what extent do these private armies associated with a present or a projected territorial community identify with all members of that community? To what extent do they identify with a single class, stratum, ethnic, or linguistic group? Inclusivity of identifications generates the presumption that the success of the private army will minimize subsequent internal conflict.

---

91. A. BOZEMAN, POLITICS AND CULTURE IN INTERNATIONAL HISTORY 399-401 (1960); Draper, in Farer, *supra* note 86.

92. Chen & Reisman, *supra* note 5, at 5-6. Nonetheless, groups organized for violence might contribute to certain types of preferred social change. Here, as elsewhere, evaluations must be contextual and goal-oriented.

Exclusivity of identification promises to generate counter-private armies, civil, race or ethnic war, and possibly genocide or classocide. The identification symbols of private armies oriented to territorial control regularly characterize themselves as the most inclusive; this is often a strategy of mobilizing the widest possible support for such groups. Hence, actual identifications must be examined with scrupulous care by means of an investigation of the full flow of perspectives *and* operations of the armies concerned. The converse of these questions must also be posed: are the activities of the private army supported by individuals who share an identification pattern? Is the identification territorially inclusive or exclusive, i.e., does it allow for the addition of all other members of the community over which the private army would exercise control or does it exclude individuals and groups?

Intensity of Identification with Regional and Global Communities: In an intensely interdependent world, the effects of many critical events diffuse through regional and global communities, affecting larger numbers of people and, as a result, bringing into play more inclusive policies. The exercise of violence in order to consolidate a nation-state, for example, may not be an exclusive or "domestic" consideration. Consider the implications for transnational security. Since the change of personnel or of myth of state may influence that polity's future membership in latent war or peace communities, the elites of other states will become involved. They will inquire into the identifications of the private army with a system of regional order and with an actual or preferred system of world order. A number of questions become relevant. To what extent are the identifications of the private army regionally endogamous or exogamous? To what extent do they conform to the principles of the Charter and the Universal Declaration of Human Rights?[93]

Demands

The phase analysis of the pre-arena or precipitating events of the private-army phenomenon provides data on the intensity and distribution of demand in the relevant, affected population. The appropriate questions concern not only the demands of those associated with the private army or armies, but also the demands of those associated with incumbent groups as well as the demands of those sectors of the population who identify with none of the contenders. Investigations of demands should go beyond the rather simple questions of separation from or displacement of an established elite and should consider systematically actual as well as contingent value demands. What are the demands of groups A, B, and C regarding

---

93. McDougal & Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1 (1968).

power, wealth, enlightenment, respect, rectitude, and so on? The difficult job of unraveling demand structures may pay off handsomely in pointing to hitherto unseen possibilities for integrative programs and stable political alliances between groups which had been quite hostile to each other. Contingent demands refer to latent potentialities for new and different value demands which can be stimulated by some external agency. Contingency explorations extend the range of strategies available to decision-makers faced with private army problems.

Human beings who associate to apply violence may be pursuing all values. Manifest objectives may range from the more obvious such as *power* and *wealth*, to *well-being*, the delight in physical prowess, being "in shape"; the pleasure of exercising the unique *skills* of violence; the desire to win *respect* from peers; *rectitude*, the waging of holy wars as well as wars of vengeance, or the sheer ecstacy of killing. Latent functions, to borrow Merton's phrase, may extend to almost every organizing procedure of a particular community. Thus in some societies, young men go to war in order to prove their manhood, achieve a mystical adult identity, win wives, horses and other property, or to find outlets from repressive institutions in their home societies. Insofar as the brigade environment becomes the primary, even nuclear society for soldiers, all other values may become manifest and latent objectives in varying degree. Whether the army we are considering is private or is associated with a recognized nation-state, any aggregate of soldiers will probably be pursuing all values, though the predominant objectives may vary from soldier to soldier.

It is obviously of critical importance to identify the full range of value demands of private armies, manifest and latent. Only with a sense of these demands can one proceed to gauge the ramifications of the continued operation and success of these groups. Consider a number of value demands. While all private armies are primary participants in the power process, not all such groups demand access to or a major share in authoritative power. For example, brigands, a functional term which can include generals of official armies as well as the bandits they sometimes pursue, may perceive their interests in the continuation of a dominant culture from which they periodically pilfer. In this respect, their demands condemn them to the position of a parasitic sub-culture. On the other hand, politically motivated bank robbers, who steal in order to finance political operations, may demand not access to the wealth process, but radical change in the entire social process. Where the primary value demand of members of a private army is virocratic respect, the group demand is not for the termination of a war system, but rather for its continual operation.

Because of these complex interrelations, the demand structures of personalities can be most efficiently examined through systematic inquiry into each value category. The aggregate of all value demands provides a profile of a preferred public order system. This, in itself, becomes a major factor in decision response. The following questions are relevant.

1.   What are the preferred public order demands of the private army for the territorial community over which they seek control? Do these demands amount to a radical change of the extant public order? Change in certain public orders sectors only? Retention of the existing public order system?

2.   What are the regional public order demands of the private army?

3.   What are the global public order demands of the private army?

As in any heterogenous group, there may be a number of competing public order demands put forward by different internal participants. What will prove to be the dominant, operational demand pattern may depend in significant part on the purposive or unintentional deeds and words of external participants. Demand studies may, then, open the way for demand shaping.

Expectations

What are the world views, the complex of matter-of-fact expectations about the past and the future, which are entertained by the different participants in a private-army situation? To what extent will alternative courses of decision change those expectations in desirable or undesirable ways? Obviously, presuppositions and cultural postulates, which are held so deeply that participants themselves are unaware of them or deem them to be phenomenal rather than cultural, affect the entire frame of reference of participants; they determine the options which participants will perceive, the perspectives which they will attribute to adversaries and allies, the events which will dominate their focus and those which will escape perception. Expectations about authority—how it is formed and how it is changed and terminated—will be critical considerations for decision. A subgroup which operates on the basis of the charismatic authority of a leader, for example, will require an entirely different set of responses if it is to be transformed into something compatible with other goals, while members of a subgroup in a *caudillo* system may shift allegiance to a larger group if the newer leader manifests in higher degree the preferred qualities of *caudillaje*. In each case, different conceptions about authority import different dynamics of establishment and change of group decision structures. Strata which operate with a world view holding gloomy prospects for effective human change in power and environmental processes may be almost unmobilizable until these expectations have been changed. Because the private army situation is almost always cross-cultural, involving groups shaped by decisively different experiences, careful examination of expectation patterns will be critical, both for understanding conflict and for formulating alternatives.

SITUATIONS

Private armies become matters of pressing "international concern" not

simply because claims are lodged about them, but also because the elites of a global system internationalize them. Certain wars will remain matters of local, sporadic violence because of the comparative geographic isolation of the arena and the low technological capacity of the participants. Where conflict occurs in a strategically located sector or where participants have a technological capacity which, if exercised, will upset tacit international restraints, an otherwise local conflict internationalizes itself by mobilizing the attention of larger states. Hence the first situational question: Without regard to other values at stake, will a recommendation of comparative inaction increase the localization of a private-army conflict or, alternatively, will a recommendation of some action decrease the internationalization of the conflict? Any number of strategies may be employed to achieve these results. Whether a conflict should be domesticated or internationalized is, of course, determined by the assessment of impact on broader goals of world order and human dignity.

Private armies operate in military arenas. Is it possible to shift the focus of conflict, in part if not in entirety, to a comparatively civic arena? Is it possible to change a private army conflict to a nonviolent political conflict? The formation of a coalition between contenders, for example, can change the structure of a conflict situation; though the private armies may remain intact, a new group of functionaries acquires a strong vested interest in the maintenance of a civic rather than military arena. A consideration of perhaps greater importance is the extent to which outsiders are, by their intervention, transforming an arena of comparatively low violence into one of higher violence.

Situational features may provide important insights into the perspectives of participants. Choices of arenas of belligerency in which there are many civilians, for example, might indicate low propensities for according minimal human dignity in other political situations.

BASES OF POWER

The focus is on values—power, wealth, enlightenment, skill, well-being, affection, respect and rectitude—which are or can be deployed (a) in a continuing or escalating conflict; (b) in projected constructs of different futures, military and civic.

What values are contending parties capable of drawing on? What values are available in the arena of conflict but are not being mobilized by either side. Most important, what values might become available if a military arena could be converted to a non-military arena? Assessments of bases of power are, of course, critical tasks; a crucial consideration of all outsiders is the probable winner or loser or the probabilities for stalemate. Without regard to the merits, probable losers just do not receive ready support from internal as well as external participants.

The point of emphasis in value assessments is comprehensiveness and

contextuality; all values must be considered and they must be evaluated in both extant as well as projected contexts. Mere arithmetical computations are to be eschewed. In particular, the intangible values which military inventories do not include must be studied; patterns of affection, loyalty, respect and rectitude are the sweat and sinew without which no value combination can work effectively.

STRATEGIES

How do immediate participants choose to deploy their values? Is there evidence of a cultural bias or a personal predilection for the use of coercive or of persuasive strategies? Are there indications of a desire or willingness to limit violence, when used, within the normative bounds of the so-called laws of humane warfare? Strategy choices by participants are indications not only of how they will proceed in a military arena, but also how they will behave should they succeed and acquire power in civic arenas. The choice of the technique of terrorism, for example, may import cavalier disregard for human value or a comparative ease in derogating from verbal commitments to human dignity in crisis situations.[94] A preference for mechanized weapons, for instance, may indicate a facility for dehumanizing targets. Conclusions such as these must, of course, be derived contextually. A demonstrated preference for non-coercive strategies will not necessarily win the support of others. On the contrary, realistic interappraisals of effective elites about the globe may construe a willingness to use violence as an indicator of sufficient "toughness", "guts," and determination to run a state.

d. *Contextual Projections:* To what extent can observers discern the probable outcomes of a private-army case, assuming that they and those with whom they identify do nothing? What do these outcomes mean, in terms of *all* values, for (1) the individuals in the community in which the private army operates; (2) surrounding communities; (3) the encompassing region; (4) the world constitutive process? Observers associated with large powers are prone to a hubris which arrogates the entire world as the property of the symbol to which they give allegiance; hence the instinctive formulation of projection is: What happens if *we* win? What happens if *we* lose? Without considering for the moment the moral defectiveness of such egocentricity, it is plain that it is an exceedingly inefficient way of essaying projections of probable futures. Whatever composite entity "we" may refer to, it will always be only one participant in the future, and it will always be dependent on others whose interests must be accommodated.

---

94. On the other hand, what one belligerent characterizes as terror may be characterized as lawful by the observer. One must be wary of characterizations of criminality in inter-group behavior. The lawfulness of any violence, it would seem, must always be tested contextually.

C. *Procedures for Decision*

We have now considered a number of procedures preparatory to choice which permit the observer or decision-maker to focus on the self as the instrument of perception and choice and on the manifold social process which precipitates and provides targets for decision. While these procedures are, of course, continuous, they are conjoined at some point with the overt formulation of possible responses aimed at the selective influence of events. Many of the substantive goals of these responses have been adverted to in the previous pages; most generally, we have urged responses which secure a degree of self-policing minimum order and, at the same time, approximate or move toward an improved world order of human dignity. We have noted as well the unique nexus between private armies and the effective international law of a war system; hence there is a coordinate goal of responses which minimize the political stimuli of personal and group anxiety and contribute toward changing a war system to a peace system. In the following pages we consider procedural principles relevant to the formulation of responses to the private-army problem.

1. *Contextuality in the Formulation and Appraisal of Responses*

From the contextual viewpoint, the test of effectiveness of the military strategy is not the degree to which a military objective has been secured, nor is the test of the effectiveness of an economic strategy the extent to which an economic objective has been attained. Whatever specific program of techniques is settled on, the only realistic evaluation of its success is in terms of all the value consequences which it precipitated as compared to all the value consequences which alternative, rejected strategy programs might have precipitated, each assessed in terms of the full range of goals projected. Thus, contextual evaluation may shift the outcome of a military engagement from the center of attention to a comparatively trivial position; even where a specific outcome retains significance, it must always share consideration with the other consequences of action. Specifically, what are the effects of a planned response on the existing political structures of the country or countries to be affected, and what are the effects on the civic orders in these communities? Will the response reinforce these structures or initiate or accelerate their dissolution? Will changes or reinforcements increase or decrease approximation to human dignity? Will they change a military arena to a civic arena? What are the effects of the planned response on the physical environment? For example, if an optimum ecological balance is one which homeostatically discriminates in favor of the human species, does the planned response move toward or away from such a balance? What are the effects of a planned response on regional systems? On the global system? On the inclusive constitutive process?

The components of every program must be considered in context. Yet some strategies may, in the broader configuration of events, predictably accelerate certain trends; this consequence should be considered and, where possible, neutralized. In a war system, for example, the use of the military strategy raises the expectation of violence and increases anxiety; thus violence reinforces rather than weakens the total system. Insofar as one's goals include minimization of a war system, strategies which reinforce it should be eschewed or should be accompanied by symbols which reduce these undesirable consequences.

2. *Authority: Conformity and Conformation*

In pluralistic communities, norms are expressed in complementarities. The function of authoritative decision in specific cases is to seek accommodation of complementary interests in a manner most consonant with the common interests of the entire community. Hence, the sonorous assertion that decisions should take account of or conform to the law are of scant help to decision-makers, for the "law," in any specific case, is always expressed in complementary norms which prohibit and permit. Virtually every private-army case is subjected to the dualism of traditional international law of "domestic jurisdiction" and "international concern." But no situation can self-characterize as one or the other of these alternatives. A choice must be made. The delineation of claims precipitated by the private-army phenomenon shows that even a preponderantly "domestic" army case may initiate a transnational process of claim for some values. The problem is further complicated by the fact that a private-army case may involve a *per se* challenge to the system of formal international authority; it may, for example, be the vanguard of a competing world order system which seeks radically different socio-political arrangements about the globe. In short, the invocation of one of these complementaries conceals a complex decision about the location of competence for that particular case.

But do not minimize the role of authority in transnational behavior; expectations of what is substantively and procedurally right, shared by politically relevant strata about the world, are critical components and inescapable products of behavior. Response options and priorities which an official inventories in a specific case have been influenced, in part, by what was done and aggregately evaluated in the past. The choices which that official makes in the instant case will contribute to perspectives of what is appropriately lawful behavior in the future and will provide the authority environment within which that same official and those with whom he identifies must later operate. Thus the role of international law or, more broadly, authority in decisions, involves both conformity with expectations derived from the past as well as a conformation of authority perspectives for the future. "What is this day supported by precedent," counseled Taci-

tus, "will hereafter become a precedent."[95] Processes of conformity and conformation provide enormous possibilities for disjunction, as decision-makers, under the press of events, select what they deem most worthwhile from the past and project it into radically new contexts in the future.

It would seem obvious that alternate responses to private armies should seek to adhere to those peremptory norms of internatonal law which avatar basic principles of human dignity.[96] Norms concerned with fundamental good faith in agreements, minimization of deprivation, humane constraints on the use of violence, and so on, derive from periods earlier than the contemporary war system and should be consciously chosen to condition all present behavior; norms such as these are unquestionable components of a world order of human dignity. But not every putative authority prescription should receive automatic deference. Every legacy of the past must be reevaluated in present and projected contexts to determine the extent to which it contributes, if at all, to the common interests of the world community. This does not mean that a norm which is no longer fully expressive of the common interest may be simply and automatically abrogated in word and deed; the termination of prescriptions is itself a complex process and every termination must weigh the extent to which it erodes or strengthens overall expectations of authority.[97]

In addition to selections from the past, current responses to private-army questions must also consider the prescriptive effects which they themselves will engender: the authority environment which they will create for the future. To what extent will a particular response to a private-army problem, for all its short-range advantages, create authority expectations which are inimical to common interests? There is no need for elaborating the dire expectations which are regularly generated by many short-term "effective" strategies.

3. *Preferences for Persuasive Responses*

It was not chance that decreed that strategy and bargaining theory would provide a bureaucratic *lingua franca*. Among the presuppositions of this theory are an environment of conflict and a segmented, linear conception of time, each component of which is discretely resolved by a win or a loss. Both of these presuppositions are social misperceptions. There are sectors of conflict as well as sectors of cooperation in world social process, and participants themselves play the major role in deciding whether to

---

95. TACITUS, ANNALS XI, 24.

96. Article 53, Vienna Convention on Treaties, U.N. Doc. A/Conf. 39/27 (May 23, 1969). *See also* Schwelb, *Some Aspects of International Jus Cogens*, 61 AM. J. INT'L L. 946 (1967). *But cf.* G. SCHWARZENBERGER, INTERNATIONAL LAW AND ORDER 27 ff. (1971).

97. McDougal, Lasswell and Reisman, *supra* note 47, at 149.

conflict or to cooperate. The flow of social process is continuous and characterizations of "segments" in which one has won or lost are usually pathetically short-sighted human projections, quickly washed away by ceaseless change. Yet each of these perceptions is critical to the operation of a war system. They provide for continuous conflict, rather than attempts to transform it, and for a regular scoring whose only meaning is justification for and continuation of the system. The use of an idiom derived from strategy and bargaining theory tends to predispose decision-makers and appraisers to coercive strategies by the automatic definition of the other as an "adversary" whom one, in a unilateral rather than reciprocating system, "deters" or "influences." The emphasis is on ingenuity in the formulation of coercive rather than persuasive responses, and the other party is an object whose behavior, but not whose perspectives, remains of chief concern.

The point is not that coercion can be dismissed from social order, but rather that it unnecessarily becomes the characteristic pattern, the paradigm, of thinking and creating, raising the aggregate expectation of violence and stunting creativity in the development of alternative strategic methods. The contrast can be sharpened by reference to a theory of persuasion which seeks to secure changes in the behavior of others by appeals to their interests, rather than by the threat of deprivations upon deviation. Persuasion is directed at perspectives. It seeks to establish an ascendant identity among the latent competing identities or selves in the "persuadee," to demonstrate that the proposed program is in accord with the real demands of the persuadee and to refine his range of expectations so that he himself can test the aggregate consequences of the alternative courses of action available to him. Persuasion involves different interactions which can influence the persuader as well as the persuadee.

If responses to the private-army problem seek to minimize violence and to transform a war system into a peace system, it is obvious that emphasis must be shifted to persuasive rather than coercive responses; the expectation of coercion generates that anxiety which is fundamental to a war system. Hence decision responses must aim at changing perspectives through selective communications rather than by simply securing a degree of conformity in behavior. The shift to persuasion is more than strategic: it involves, as well, the creation of new types of solutions.

4. Preferences for Integrative Solutions

Integrative solutions are ones in which conflicting interests are accommodated in innovated processes of value shaping and sharing in such a manner that contenders must merge the realization of their separate interests; hence they acquire a shared interest in the continuation of the new process and police themselves accordingly. Integrative solutions are preceded by an independent focus more comprehensive than that forwarded

(as an instrument of conflict) by the adversaries themselves; these solutions activate and incorporate contingent elements of the broader situation which the participants themselves had not introduced. Thus, they involve not only a reconsideration of strategic devices, but new considerations of goals. As such, they are highly reciprocal in all sequences of their formulation and implementation. A preference for persuasion tends to orient decision-makers toward a search for integrative solutions.[98]

5. *The Principle of Temporal Extension*

Decision-makers, we have noted, characterize events in terms of decisive moments in which they either "win" or "lose." The anticipation of such a moment permits them to mobilize their own self systems, as well as vast numbers of people, maximizing control by keeping all in an intense state of anxiety. Of course, the decisive moment is regularly moved into the future until it is ultimately mythologized as an Armageddon. At this point, anxiety and mobilization are perpetuated in two intertwining trends: toward achieving great wins and toward avoiding "The Great Loss." One of the many problems of this frame of reference is that it tends to bloat the importance of every single response to an event such as a private army, thereby increasing focus, anxiety response, and the entire arena of conflict.

Without minimizing the importance of human choices and responses to events, there must be a sensible degree of temporal humility. Whatever is done, there will always be a moment afterwards; in composite decision processes, there are no final decisions, for every decision involves a response, a review and, through time and changing context, an emendation.[99] If a private army wins a battle, there may still be another. If a government falls, a new one will arise and exchanges may be initiated or continued with it, and so on ad infinitum. A lesson in exposure to crisis is that crises are succeeded in time; recognition of this feature can diminish the intensity of crisis and increase the rationality of decision response.

6. *The Principle of Realism*

In his examination of authority and control, Augustine observed with appropriately delicate implication that a bandit is a little king and a king can be a big bandit.[100] A private army may not seek to become a responsible community structure, but the actions of others can urge it in this direction. It is appropriately pious to defer to the established authoritative institutions of a community. But where those institutions cannot secure an effec-

---

98. *See* M. FOLLETT, CREATIVE EXPERIENCE (1924).

99. *See* REISMAN, *supra* note 40 at ch. 1.

100. AUGUSTINE, IV DE CIV. DEI, 4; and *see* AQUINAS, II SUMMA THEOLOGICA, Q. 66, Art. 8, Reply 3.

tive control base, the realistic alternative may not be to seek to increase that base. It may be more realistic, more economic, and in the long run, perhaps more humane, to stand aside until new institutional patterns have emerged and then to seek to influence them. An outsider, it should be remembered, is one who influences; an insider is one who participates directly.

D. *The Legal Scholar's Contribution*

Private armies involve violence and change—factors which both attract and repel. To many, the mere application of unauthorized violence is frightening; for many among these, the use of "authorized" violence is not. Others may be attracted by the exercise of violence without regard to its manifest objective, for it provides some form of ultimate testing, ultimate realization, risk, or self-destruction. The prospect of change arouses comparable variations in reaction: those who identify with an order may feel threatened by the claim for change, even though change itself might represent a net benefit for them. Those who have rejected an extant system of order will view the prospect of change with delight and anticipation. Most people who are informed of private armies receive their information through the mediation of elites who can be expected to put that construction on it which is most favorable to their interests.

Private armies cannot, as we have seen, simply be terminated. Because they involve purposive or incidental change, decision-makers who are presented with them as problems should use them, insofar as possible, for the purpose of changing a war system and maximizing the conditions of human dignity. There are a number of contributions which international legal scholars can make to the improvement of the policy process as it pertains to the private-army problem. These relate to standpoint, to focus on social process, to goals for constitutive process, and to the systematic performance of certain intellectual tasks requisite to rational decision.

1. *Standpoint*

As a member of a small, interactive, and thoroughly global profession which has been committed since Grotius to the refinement of the legal process as an instrument for clarifying and implementing the common interests of the world community, the international lawyer has both a unique opportunity and professional necessity to maintain a standpoint distinct from that of the participants in the world social process. From such a standpoint, private army cases can be seen in most comprehensive context, and optimum international responses, derived from the basic goals of the world community, can be fashioned and recommended. Equally important, the perceptions available from such a vantage point may be transmitted to active opinion leaders in different communities, and

through such diffusion provide a more realistic and contextual perspective on private armies.

2. *Focus*

From the vantage point of an observer committed to the common interests of the world community, a plenary focus on the world social process and on patterns of effective power as well as processes of authoritative decision can be developed and used for locating private army problems in the broader flow of world affairs. Realism of perception is increased as is the likelihood of fashioning responses which approximate more closely all relevant social goals. The transmission of such a focus to official and private decision-makers may thus contribute to the rationality of decision.

3. *Constitutive Goals*

Private-army decisions can reinforce or change the world constitutive process; hence it is important to impress upon official decision-makers as well as on their public appraisers the constitutive dimensions and opportunities available in private-army decisions. If such decisions are to improve, revisions are urgently required with regard to all the decision functions of the constitutive process: intelligence, promotion, prescription, invocation, application, termination and appraisal. International lawyers are well placed to clarify the appropriate policies which ought to guide each of these decision functions in order to use the constitutive process as an instrument for changing a war system to a peace system.

4. *Fundamental Intellectual Tasks of Decision*

It is difficult to imagine rational purposive action which does not perform five intellectual tasks: goal clarification, trend study, factor analysis, projection, and the invention of alternatives. The international lawyer is particularly sensitive to these tasks, since they are the crux of explicitly systematic and creative legal operations. Whether the lawyer is serving an institutional process from within or appraising its activities from without, the insistence on the performance of these tasks can only help to improve the effectiveness and explicit rationality of private-army, as indeed of all, decisions.

Each of these operations draws on the enlightenment and skill which are the peculiar prerogative of the international legal scholar. Through diffusion, each may contribute somewhat to an improved international response to private armies. That response can never be a single rule, for there is no simple pat answer to the idiosyncratic problems raised in each case; yet there must be a response. In light of the recent revelations of the pathological aspects of the use of official power in a number of private-army situa-

tions, there is a tendency to assume that any use of power destroys both applier and target. Hence the best counsel might appear to be persistent, self-inhibition and disengagement. Unfortunately, power is a ubiquitous aspect of social process and the prime characteristic of political processes; the decision not to apply what is at one's own disposal can never assure that the arena will remain civil and nonbelligerent. Realistic ingenuity involves the use of power economically in order to establish a world order of human dignity. Thus, the recurrence of private armies may provide a challenge and an opportunity.

APPENDIX ON DEFINITION AND BIBLIOGRAPHY

As understood here, an army is a group of people which may include men, women and children, with identifications focused on some common symbol, with skills in the exercise of violence, and operating within some command structure. The symbol need not be territorial, and it need not be exclusive in monopolizing the identifications of its members. Thus, where the group itself is the symbol, intensity of identification may be increased by conscious breaches of the morality system of a more inclusive group to which members feel some association but from which they feel they are irreparably barred because of their "blutkit." *See* Alexander, *War Crimes and their Motivation,*[3] J. CRIM. L. 298 (1948), and *cf.* B. LEWIS, THE ASSASSINS: A RADICAL SECT IN ISLAM (1968). On the other hand, a mob is excluded from this definition in that it lacks sufficient organization over time and its members lack a sufficient identification with a persisting symbol. A mob may become a private army—not because of a refinement in skills of violence—but because of the evolution or imposition of organization and clarification of a group symbol system. This may have been the case with the Boxer Bands, though different theories regarding their origin and transformation have been suggested: *see* C. TAN, THE BOXER CATASTROPHE, 33ff (1955). But for a different construction of the social organization of mobs, see E. CANNETTI, CROWDS AND POWER (1962); *but cf.* G. RUDÉ. THE CROWD IN THE FRENCH REVOLUTION (1959), especially at 234 et seq., who distinguishes the crowd as a composite actor from a mob or a mass. For detailed confirmation of Rudé's conception and a rejection of Le Bon's theory, see L. RICHARDS, "GENTLEMEN OF PROPERTY AND STANDING": ANTI-ABOLITION MOBS IN JACKSONIAN AMERICA 82-130 (1970).

A private army, as understood here, involves duration over time, but not necessarily temporal consequitur. Thus, a gang which assembles for specific "jobs," religious assassins as discussed in Lewis, *supra*, a religious sect which convenes at certain phases of the moon for ritual violence, ethnic armies which form in lulls of the agricultural cycle and cross borders to kill and pillage other groups, social bandits in Hobsbawm's sense of the term (E. HOBSBAWM, BANDITS [1969]), policemen who assemble sporadically to perform extralegal functions, and a political group which meets weekly or monthly to drill are all examples of private armies.

I deem the component of command structure important because it distinguishes a composite social actor with temporal duration and a capacity for purposive action from more random conglomerations of individuals exercising violence. Command structure need not imply hierarchical organization nor need it require institutionalized roles or "officers"; nonetheless, these are rather usual indicators.

While armies, as all social processes, perform multiple manifest and latent functions, the distinctive skill of any army is its expertise in the use of violence. Violence refers to levels of coercion deemed extraordinarily high in the social settings in which it is deployed. The term is strictly designative and does not purport to connote whether the violence in question is lawful or unlawful, or whether its agents are authorized by some inclusive community process. Purposive violence refers to high coercion used to attenuate the choices of targets and to influence their behavior in desired ways. Hence it can include terror or acts of random violence which are used, rationally or not, for manifest political purposes. For discussion of indices of violence, see Levy, *A One Hundred Fifty Year Study of Political Violence in the United States*, in THE HISTORY OF VIOLENCE IN AMERICA 84, 86-87 (H. Graham & T. Gurr eds. 1969).

I have found no comprehensive studies or surveys of the number and location of effective fighting units about the globe without regard to their association with some formal state apparatus. Security agencies may have compiled detailed trend and factor studies of private armies within the United States, but with the exception of the recent RAND Study (*supra*), systematic surveys are not available. The "Congressional Investigation of the Pinkertons" in 1892 is now of historical interest: 52nd Cong. 2d sess. H. Rep. No. 2447. Another rather detailed study is found in the Holmstead Hearings on "Violation of Free Speech and Rights

of Labor," *Report of the Committee on Education and Labor pursuant to S. Res. 266, 74th Congress, A Resolution to Investigate Violations of the Right of Free Speech and Assembly and Interference with the Right of Labor to Organize and Bargain Collectively* (1939). *See especially, id.* Part I, at 7-10; Part II, "Private Police Systems" and Part III, "Industrial Munitions".

The papers collected in VIOLENCE IN AMERICA, *supra*, are indispensable. An impression of contemporary trends may be gained from the most cursory survey of magazines serving the police industry. They contain advertisements which are slanted in whole or in part to private police forces: organized private armies within plants, housing projects, universities, and security specialists within corporations, as well as entrepreneurial police forces, operating nationally and/or regionally and available to customers at fixed rates. On the early development of a private police force, see G. HOWSON, THIEF TAKER GENERAL: THE RISE AND FALL OF JONATHAN WILD (1970); R.M. BROWN, THE SOUTH CAROLINA REGULATORS (1963). On private armies retained by railroads and extractive industries in the eastern United States, see J.P. SHALLOO, PRIVATE POLICE: WITH SPECIAL REFERENCE TO PENNSYLVANIA (1933) and see the excellent bibliography there. *See also* BIMBA, THE MOLLY MAGUIRES (1932) and W. BROEHL, THE MOLLY MAGUIRES (1964). For a general survey, see Brown, *Historical Patterns of Violence in America*, in VIOLENCE IN AMERICA, *supra* at 45. It seems that much of the elite personnel of many private armies in the United States is recruited from former members of public armies, such as the armed forces, local police, and the FBI. Detailed studies on the collaborative and competitive relationships between these private and public armies is urgent for the purposes of policy and scholarship. (After this writing, volumes 3 and 4 of the RAND study appeared, dealing in part with this problem.) For a recent survey of urban armies, see Marx and Archer, *The Urban Vigilante,* PSYCHOLOGY TODAY, Jan. 1973, at 45.

In addition to these private armies, there are quasi-secret groups, of ethnic, racial and political-interest orientation, whose activities may include the refinement and application of violence. On secret societies, see C. TAN, *supra*, and E. HOBSBAWM, PRIMITIVE REBELS (1959). Some journalistic surveys of current secret groups qualifying as private armies are found in JONES, THE MINUTEMEN (1968) and CHALMERS, HOODED AMERICANISM (1965). On vigilantes, see *The American Vigilante Movement*, in VIOLENCE IN AMERICA, *supra* at 218. For a general account of the rise and activities of the Klan, as well as its political interventions, see A. RANDEL, THE KU KLUX KLAN: A CENTURY OF INFAMY (1965). *See also* ALEXANDER, THE KU KLUX KLAN IN THE SOUTH WEST (1965); T. WHITEHEAD, ATTACK ON TERROR: THE FBI AGAINST THE KU KLUX KLAN IN MISSISSIPPI (1970). For a survey of American radical activist groups, see THE HATE READER (E. Newman ed. 1964). For a survey of urban groups, some of which may be characterized as private armies, see T. POSTON, THE GANG AND THE ESTABLISHMENT (1971).

Poston touches on the interesting and apparently not uncommon phenomenon of armies alternating between private and public functions and armies which are private but which are coopted for public uses. Some structural explanations of this phenomenon are essayed in Wolf & Hansen, *Caudillo Politics: A Structural Analysis*, 9 CONT. STUD. SOC. & HIST. 168 (1967). Some descriptions are found in R. QUIRK, THE MEXICAN REVOLUTION (1960). The converse also occurs; where strata become polarized and the police cease to be a mediating force, one group will coopt the public police or garrison for what are, in effect, private functions, a sequence which occurred in labor wars in the United States and which occurs, in a sense, in every case in which graft or petty payoffs are made to a policeman. *See, e.g.*, A. NIEDERHOFFER, BEHIND THE SHIELD: THE POLICE IN URBAN SOCIETY 69ff. (1969).

Private armies in other regions and countries are rarely studied as such, but a rich scientific literature does examine and theorize on aspects of the subject. Among the more specific studies, see on China, J. SPENCE, TO CHANGE CHINA: WESTERN ADVISERS IN CHINA, 1620-1960, 57-92 (1969), J. CH'EN, YAN SHI-K'AI (1961); and on warlordism, J. SHERIDAN, CHINESE WARLORD: THE CAREER OF FENG YU-HSIANG (1966), and *cf.* Wolf and Hansen, *supra*; on Spain, L. BRENNAN, THE SPANISH LABYRINTH (2d ed. 1967); R. PAYNE, FALANGE (1961); on Italy, 4 V. PARETO, *supra*; on Germany, R. WAITE, VANGUARD OF NAZISM: THE FREE CORPS MOVEMENT IN

POSTWAR GERMANY 1918-1923 (1952) and H. HOHNE, THE ORDER OF THE DEATH'S HEAD 51-75 (Barry trans. 1970); on Mexico, J. WOMACK, ZAPATA (1968) and R. QUIRK, *supra*; useful material on Japanese feudalism and the formation of fighting groups is found in G. CRAIG, CHOSHUE IN THE MEIJI RESTORATION (1961); and J. HALL, GOVERNMENT AND LOCAL POWER IN JAPAN, 500-1700 (1966); on Russia, J. BLUM, LORD AND PEASANT IN RUSSIA 551 ff. (1961), R. MOUSNIER, PEASANT UPRISINGS IN SEVENTEENTH-CENTURY FRANCE, RUSSIA AND CHINA (Pearce trans. 1967) and R. PIPES, THE FORMATION OF THE SOVIET UNION: COMMUNISM AND NATIONALISM 1917-1923 (1964); on France, C. TILLY, THE VENDÉE (1964); some pertinent material on Brazil can be found in L. DA CUNHA, REBELLION IN THE BACKLANDS (Putnam trans. 1944).

Many journalistic and contemporary history books do provide valuable glimpses into the distribution of violence specialization in different sectors. *See, e.g.,* R. GOTT, GUERRILLA MOVEMENTS IN LATIN AMERICA (1971); L. PYE, GUERRILLA COMMUNISM IN MALAYA (1956); B. CROZIER, SOUTH EAST ASIA IN TURMOIL 135 ff (1965). On private armies in Vietnam, see D. DUNCANSON, GOVERNMENT AND REVOLUTION IN VIETNAM 220 ff. (1968).

Diplomatic correspondence provides a rich store of data about and official responses to private armies. Not surprisingly, virtually every volume of FOREIGN RELATIONS OF THE UNITED STATES from 1905 to 1950 includes many references to private armies. In a number of instances, the discussions are fairly detailed. Thus communiqués from Mexico in 1913 included many evaluations of private armies: 1913 FOR. REL. U.S. 721 ff. (1920). Communiqués from China in 1919 and 1929 detailed the different private armies involved in conflict: 1919 FOR. REL. U.S. 271, 331 (1934); 1929 FOR. REL. U.S., Vol. II, 117 (1943). In many situations, private armies seem not to have been viewed as pathologies. Thus, the U.S. chargé in Vienna reported to the Department of State in 1934 that "Dollfuss' greatest weakness as a dictator is that he has no army of his own." 1934 FOR. REL. U.S., Vol. II, 18 (1951).

Some insights into the private armies of the Charter Companies can be gained from A. HICKMAN, MEN WHO MADE RHODESIA: A REGISTER OF THOSE WHO SERVED IN THE BRITISH SOUTH AFRICA COMPANY'S POLICE (1960).

In addition to these manifestly politically oriented private armies, it is not uncommon in certain regions to find villages, tribes and religious sects which are armed and have a secondary or residual command structure which can be mobilized at certain times. Is the proliferation and degree of organization of such armies, as Pareto suggested, inversely proportional to the general or sectoral effectiveness of the central government? *See* C. TAN, *supra* at 29.

For data on international mercenary forces, see MOCKLER, THE MERCENARIES (1969); J. LE BAILLY, UNE POIGNEE DE MERCENAIRES (1967); J. LARTEGUY, THE GUERRILLAS (1969).