THE POLICY FUNCTION OF THE LAW: VALUE CREATION, CLARIFICATION AND REALIZATION

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INTRODUCTION

A distinction should be drawn between the specific or particular and the generic or universal connotations of the term "law."

The term "law" is used as a specific term when it is preceded by the indefinite article *"a," e.g.*, a law. In this sense, it is used in two different ways. In the specific strict use, the term "law" usually means a statute, which is a written enactment of the legislature of a State composed of definite detailed provisions for definite detailed situations or states of fact to which certain definite incentives [1] andor sanctions [2] are attached. Thus in the specific strict sense the word "law" is used with reference to *ley, lex, loi, legge, gezetz,* or *batas.* In the specific loose use, the term "law" means any rule, regulation, or opinion duly created or adapted by some responsible and authorized official or agency of a State.[3] In the loose sense, the term "law" also means a contract, covenant, or agreement solemnly entered into by the contracting parties, provided the contract, covenant, or agreement is not against some social interest or public policy of the community.[4] Thus, a rule created by the Supreme Court, under its rule-making power, is *a* law, *e.g.*, a rule of civil or criminal procedure. A regulation of the Central Bank of the Philippines, duly published in the *Official Gazette,* while not a statute, is also a law. A pertinent opinion given by a jurist or legal commentator and adopted in a case is also *a* law, *e.g.*, the American *"clear and present danger"* rule,[5] which has survived two major

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[1] *E.g.*, tax exemptions, tax reductions, government loans, government subsidies, government benefits or rewards.

[2] *E.g.*, fines, imprisonment, *destierro* (banishment), loss or suspension of certain privileges, assessment of damages, costs, or interests.

[3] PASCUAL, THE NATURE AND ELEMENTS OF THE LAW: AN INTRODUCTORY STUDY, 20 (1953).

[4] Article 1306, Civil Code of the Philippines.

[5] "It was first given expression in the case of *Schenck v. United States,* 249 U.S. 46, 39 S. Ct. 247, 63 L. ed. 470 (1915) and repeated in his classic dissent in *Gitlow v. New York,* 268 U.S. 652, 45 S. Ct. 625, 69 L. ed. 1138 (1925). It has since been the subject of varied discussions. One view extends the Holmesian *clear-and-*

wars, or the Philippine *"dangerous tendency"* rule, which is losing favor.[6]

The same word "law" is used to indicate a broad generic sense when it is simply referred to as "law" without a definite article preceding it, or when it is preceded by the definite article *"the"*, *e.g.*,

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present-danger rule to the entire range of civil liberties as a test for the constitutionality of any governmental action adversely affecting civil liberties. The other view believes that the application of this 'felicitous phrase,' as this view puts it, is not applicable to civil liberties cases because it cannot be taken as a formal constitutional rule. (*Bridges v. California*, 314 U.S. 252 at 295; *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 at 663; *Pennekamp v. Florida*, 328 U.S. 331 at 352; *Craig v. Harney*, 331 U.S. 367 at 391). But Holmes himself emphasized that the *clear-and-present-danger* is "the correct test." *Gitlow v. New York*, 268 U.S. at 673. It seems that the Holmesian *clear-and-present-danger* rule is well on the road as a working principle in constitutional law as the test for gauging when public, open utterances or acts may be considered seditious and in estimating the reasonableness and necessity of governmental action which may affect or invade civil liberties in meeting or avoiding the danger. Thus, if the words used or the acts done are in such circumstances and are of such a nature as to create a clear and present, not a doubted and remote, danger to the community which it had the right to prevent then the utterances or the acts are seditious, and, hence, punishable. The latest case in which this rule was utilized to its fullest extent, *i.e.*, by adding clandestine, underground utterances or acts within its scope, is the case of *Dennis et als. v. United States*, 341 U.S. 494, 71 S. Ct. 857, 95 L. ed. 1137 (1951), also known as the American Puli:buro case.

"Contrast Justice Jackson's concern for the safety of the State which for him is completely jeopardized by this "judge-made verbal trap." Justice Jackson calls for a realistic approach to the subtle and efficacious modern revolutionary techniques used by totalitarian powers. He believes that reason is lacking in applying the test to this case. As applied by the majority, Justice Jackson sees that the 'recent expansion' of the test has extended unprecedented immunities to Communists because 'Communist plotting is protected during its period of incubation; its preliminary stages of organization and preparation are immune from the law; the Government can move only after imminent action is manifested, when it would, of course, be too late.' 341 U.S. at 567-570." PASCUAL, *op. cit.*, 21, fn. 25.

[6] "It was first enunciated in the Philippines in the case of *People v. Perez*, 45 Phil. 599 (1923) following the lead in the American case of *Masses Publishing Co. v. Patten*, 246 Fed. 241 (1917). It was later utilized by a divided Philippine Court (six to three vote) in the case of *Oscar Espuelas v. People of the Philippines*, G.R. No. L-2990 (1951). Like the Holmesian *clear-and-present-danger* rule, the *dangerous-tendency* rule is also a test to gauge when acts or utterances are seditious and when publications are scurrilous libels against the government or any of its duly constituted officers. Thus, if the words employed are used in such circumstances and are of such a nature as to *tend* to create a danger of disturbing the peace and public uprising, then the utterances or publications are seditious or scurrilous, hence punishable. But unlike the Holmesian *clear-and-present-danger* rule, the Malcolmian *dangerous-tendency* rule is a lesser and seemingly dangerous test to the cause of civil liberty, admitting, as it does, of a lesser requirement. The Philippines seems to have adhered to this lesser test. However, the Supreme Court of the Philippines seems to be slowly coming around to the Holmesian *clear-and-present-danger* rule. In *Primicias v. Fugoso*, G.R. No. L-1800, 45 O.G. 3280 (1947), the Supreme Court tacitly

the law. As a generic term, Dean Roscoe Pound has stated that it is used to mean the legal order or the regime of adjusting relations and ordering conduct through the systematic and orderly application of the force of a politically organized society. In this sense, the word "law" is used with reference to *derecho, jus, droit, diritto, recht,* or *kautusan.* The grand central idea of the law is thus not *ley* but *derecho,* not *lex* but *jus,* not *loi* but *droit,* not *legge* but *diritto,* not *gezetz* but *recht,* not *batas* but *kautusan.* As the legal order, or the entire system of ordered liberty, or the total process of lawness, it is made up of a body of legal precepts and a body of received or traditional ideals of the end of the law. If the law is to be truly workable and effective then it must always have ideals or "anticipatory constructs."

The body of precepts deals with prescribed rules of conduct, action, or instruction as well as directions or trends regarding a given course. The body of received or traditional ideals deals with the ends and purposes of the law or legal order and thus with what the legal precepts ought to be in view thereof and how the legal precepts ought to be applied.[7] In other words, it is the feature of legal precepts to have for their end the realization of that which is ideal. This is to say that legal precepts are continuously reshaped and given new content or new application. Both bodies of legal precepts and received ideals involve the dictates of fairness, equity, justice, and reasonableness.

Legal precepts have no less than three constituents, namely, legal principles, legal conceptions, and legal standards.[8] By precepts defining legal principles are meant authoritative starting points or premises for judicial and juristic reasoning when a state of facts arises for consideration requiring supply of new rules to interpret old ones, or to apply to new ones, or to harmonize or compromise

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adopted the Holmesian *clear-and-present danger* rule by dismissing as unwarranted and groundless the fear of Mayor Fugoso of Manila that the 'indignation rally' of the allied opposition parties to be held in order to express their grievances and denouce the alleged flagrant violations of the election code committed by the political party in power would endanger and undermine public peace and public order. In the dissenting view filed in the *Espuelas* case it was shown that the word 'tend' implicit in the Malcolmian *dangerous-tendency* rule, is a highly bias or colored word and should be used only in its ordinary signification. The dissenting view then dwelt at some length on the soundness of the Holmesian *clear-and-present-danger* rule. And tested by this constitutional rule, the conviction of Espuelas could not have been sustained, since the danger envisaged in the case is very doubtful and remote." PASCUAL, *op.cit.*, 22, fn. 26.

[7] POUND, *My Philosophy of Law,* 256. Boston Book Co.

[8] *Ibid.*

whenever they are conflicting.[9] In other words, legal principles do not carry any definite or detailed incentives andor sanctions for a definite state of facts.[10] The importance of this element is that it is a controlling factor in the development of law or rules of law. By precepts defining legal conceptions are meant generalized categories or classes into which specific cases or situations of fact may be subsumed or classified with the result that when a particular case or state of facts is so classified certain rules become applicable to the class or type.[11] This element is important because it sets the materials of the law in order and symmetry. An example of this is the legal concept of contract or the legal concept of negligence. By precepts defining legal standards are meant well-defined measures of conduct or expectation applicable according as the circumstance of each case would permit, which may possibly result in responsibility for any injury caused by departure from the norms of the legal standard.[12] There is no fixed state of facts involved here and no detailed sanction or punishment is prescribed. An example is the legal standard of fair competition, or the legal standard of good faith.

Ideals or constructs, which constitute the second aspect of the law, whether held consciously or subconsciously, whether in normal or abnormal periods, and whether they are innate or acquired and native or borrowed from other sources, are composed of: 1) jurisprudential ideals, 2) ethical ideals, 3) political ideals, and 4) economic ideals.

By jurisprudential ideals are meant rational theories which may later acquire certain fixity and influence to be able to reshape or change the contents of legal precepts and legal materials. By ethical ideals are meant universal conceptions or view of life in which the aim is perfection through high and spiritual means. In particular, they refer to the moral order, *i.e.*, what human conduct and expectations should be so that, while they may not exist in perfection, attempts may, at least, be made to conform to them. The importance of ethical ideals lies in the fact that they are potential legal rules. By political ideals are meant generalized speculations for possible direction of the political order in the maintenance of the general security. In particular, they refer to theories of good political ordering to secure better public order. By economic ideals are meant generalized plans for a definite and reasonable development and pro-

[9] *Ibid.*, 257.
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

gress of the economic institution. In particular, they refer to ideas concerning economic desires or the betterment of supply of man's physical needs and wants.

These elements, singly or in combination, may serve as grounds of, and guides to, policy planning and consideration and ultimately to public opinion focused towards an ideal human society. There is no question that nowadays an unplanned society is a chaotic society.

THE YALE APPROACH

Based on somewhat different views and viewpoints as to the nature of the law, the jurists who have treated the problem may be classified into the following juristic schools: 1) the historical, 2) the philosophical or teleological, 3) the analytical or imperative, 4) the sociological or functional, 5) the modern realist.

A few years ago, there sprang from the campus of Yale University the Policy Science school under the inspired leadership of Professor Myres S. McDougal of the Yale Law School. This juristic school has posited another theory of the nature of the law in order to meet the grave socio-legal questions of the thermonuclear age and to help solve the age-old problem of universal peace and security. The leader of this juristic school has pointed out the present trend away from modern legal realism and positivism to policy science, not only in the national or domestic level but also in the international or world level.

From Yale University came also the suggestion or warning that there is a great need for a fresh approach to the intellection or understanding of the nature of the law, especially as to its role and function in the legal order. This suggestion or warning is premised on the urgency of meeting the needs of a world in tensions brought about by distrust among nations and the release of thermonuclear energy. The problem, however, confronting humanity is not of this era alone but is age-old. Heraclitus of Ephesus neatly phrased it about 2500 years ago when he said, "The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license." The release of thermonuclear power has aggravated the problem.

The suggestion or warning points to the thesis that the traditional concept of the nature of the law is neither adequate enough in, nor capable of, sustaining an effective, operative socio-legal order, whether local or global. The thesis or predicament "can be simply expressed by the affirmation that we simply cannot afford

to have war." [13] Thus, the call for a fresh approach to the intellection or understanding of the nature of the law envisages the view that the law has a definite role and function in the realization and validation of universal peace and security.[14]

Three factors have been advanced by Professor F.S.C. Northrop of Yale University to emphasize the reality of the great need for such a new approach. First, the release of thermonuclear energy. Second, the shift of the political focus of the world from Europe towards Asia and the Far East. Third, the inescapable connection between national and international problems and the equally inescapable fact that these problems have taken on the character of an ideological conflict or struggle between Communism and Democracy.[15] The paradox of this combat lies in the fact which the historian Arnold Toynbee has emphasized in his monumental work He said that

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[13] REUSCHLEIN, *Jurisprudence—Its American Prophets*, 394.

[14] In an article published in 17 *The Lawyers Journal*, No. 6, 1 (1952), entitled *"On the Need for the Study of the Nature and Elements of the Law and its Essential Role and Function in the Community,"* the present writer stated in the connection given above: "There seems to be two vital forces that can clear up the tensions existing in the world today * * * the forces of religion and the law * * *. It is a rather sad commentary to make that man has forsaken the law as an instrument of socio-legal control in his attempt to seek peace, security and happiness. Public men have oftentimes declared that the solution of the problem of war and peace is a spiritual or theological one. That is what General Douglas MacArthur said on the occasion that marked the end of fighting in World War II in the Pacific. Other men in practically all walks of life have declared the same view. Of course, there is nothing the matter with this. We should all be for it. But the fact remains that even in countries where religion is still a force, not all policy planners and makers and responsible government functionaries are familiar with the spiritual precepts and examples. The situation is obvious in countries where religion has been disregarded or wiped out entirely. Thus, the goal of universal peace and security seems to be attainable only through a cognition of *the* law as * * * a means of solving the world-wide problem of the need for generosity of spirit, the need for raising the level of world ideas, and the desire for lasting peace and security * * *. The point is that the institution of education, particularly the legal one, has not been equal * * * to the opportunity of training the future leaders in the knowledge that *the* law has a definite share in the solution of the problem of war and peace * * *. All these do not mean that the force of religion is not enough. The point is religion is not practiced seriously by enough people and leaders. * * *. There has been a neglect of the potentialities of *the* law as a means to an end. The desire and the drive of legal education to emphasize the bread and butter courses have had a great deal to do with the almost fatal tendency of neglect. This is precisely the reason for the jurisprudential position taken by the policy science school of jurisprudence * * *. The future leaders should be trained early in their careers in the reality that the law is a great deal more than rules, symbols, or common sense only, that it has a definite role and function in the local or global legal order."

[15] NORTHROP, *Jurisprudence in the Law School Curriculum*, I JOURNAL OF LEGAL EDUCATION, 482, 483, (1949).

after the means of improving the conditions of human existence have been discovered and perfected by the technology of the Western civilization and the gospel that it was no longer right for a small group of men alone to enjoy this bounty of civilization preached, the West itself failed to do anything substantial to share equitably with the poor of mankind this gospel of "social justice." According to Toynbee's interpretation, it was this great failure of democracy that provided Marxian communism with the opportunity to use the same democratic concept of "social justice" to appeal to all types of men everywhere. A fourth factor may be given and it is the abuse or disregard of human rights and freedoms despite their formal statements in state constitutions.

These are the factors that lend stark reality to the suggestion or warning given by Professor Northrop that men must learn to order their relationships well. He lays down the point that these factors are relevant to the construction of a fresh concept of law in order to help meet and contain the problem of war and peace. Humanity is entitled to look forward to something better than self-destruction.

Thus was launched the Yale Approach. The better name, however, to identify this juristic school is "Policy Science."

TERM "POLICY SCIENCE" EXPLAINED

This juristic school has gravitated to the name "Policy Science" because scientific or systematic thinking, investigation and knowledge are considered necessary in the creation and full realization of the really important socio-legal values. They are to be the goal-values or policy-values of the community to be implemented and pursued with all the resources at its command. It is, in other words, the science of socio-legal values.

By value is meant worthfulness or desirability. Every individual in the community assesses and treasures something and values some things more than others. A socio-legal value is then a decent and desirable object of human desire in relation to social or community life cherished and recognized by the legal order. In the long run, it is the decent and desirable objects and things of life that are preferable to those which are ugly and false, and, hence, undesirable.

Socio-legal values are not just abstract concepts or norms. They are realities of some kind, that is to say, they are not incapable of existence. While it may be said that socio-legal values are purposive or planned objects of human desires, yet they are not left

entirely in that realm but are accomplished and perfected in the legal order. Individuals are then actually moved and bound by them.

The suggested, *i.e.*, truly important, socio-legal values are:

(1) Power
(2) Knowledge or Enlightenment
(3) Respect
(4) Income or Wealth
(5) Safety or Health
(6) Liberty
(7) Equality

These socio-legal values have been technically denominated by the term "policy," hence the name "Policy Science."

THE POLICY SCIENCE APPROACH

The policy science view may be said to be a vigorous advocacy for a return to the natural law thinking, highlighting the apparent failure of the modern theories of law, for all their strength, in the process of legal ordering, especially in the maintenance of the social interest in the infinite worth and value of human life, personality and dignity.

The policy science approach may be characterized by at least four salient features.

1. *A reaction against several obsolete conditions.*

The policy science approach is essentially a reaction against the confusion resulting from the idea that the law is merely a set of legal rules, principles, and symbols, or that it is common sense simply. Anton-Hermann Chroust [16] has a serious objection to this view of the law: "Law, merely considered as a 'body of technical doctrines more or less detached from those social forces which it regulates,' turns into verbal manipulations of disembodied rules which do not reveal either the original setting that called forth this law, nor the profound alterations in the societal structure upon which it may now be operating.[17] Pound also objects to such a view of the nature of the law. He speaks of the sterility of a system of law merely based on cases and precedent since it is in such a system that one finds "abundant examples of its failure to respond to the vital needs of present day life." [18]

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[16] Professor of Law, College of Law, University of Notre Dame.

[17] *The Managerial Function of Law*, 34 Boston University Law Review, 261-290 (1954).

[18] *Mechanical Jurisprudence*, 8 Columbia Law Review, 605 at 614 (1908).

Some of the confusions identifiable are: 1) the inability to set up or clarify truly important socio-legal values due to lack of insight into social institutions, human conduct, and social processes, social trends, challenges and conflicts, as well as the causes underlying them, 2) the willful failure to formulate or set up clear policy- or goal-values for the purpose of regimenting the people, 3) the narrow outlook on the essential role and function of the law in the legal ordering of a community, and 4) the inability of universities and law schools, which are, by their nature, the traditional training ground of the future policy planners and policy makers of a community, to consider and teach the nature of the law and the basic democratic socio-legal values, which go beyond the realm of legal training, both necessary for the development of public men and leaders with love for, and capable of preserving, free forms of government and society.

2. *A juristic movement away from legal positivism and realism.*

The policy science approach is also a juristic movement away from the legal positivism of the analytical or positivist school and from the legal realism of the modern realist school. The almost fanatical belief in the supremacy of laws whether good, bad, or indifferent and the emphasis on official adjudicative action do not find acceptance in the theory of law of the policy science school of jurisprudence. The policy science jurist does not believe that legal positivism and legal realism are adequate to meet the needs and requirements of present-day legal ordering where the social and legal functions of institutions of control are developing both in predictable and, more often than not, unforeseeable fields or directions. To realize the quest for universal peace and security, which humanity ever seeks for its own sake, something more than the positivist and realist theories of law is necessary.

3. *A juristic movement back to the fundamental rights of man.*

The policy science approach is likewise a juristic movement back to the inviolable and inalienable rights of man, *viz.*: life, liberty, equality, property, security, and the pursuit of happiness.

The policy science approach to the solution of the problem of peace and security utilizes the old Stoic formula of the supreme worth and value of the individual in relation to other individuals. This Stoic idea was enhanced by Christian philosophical theology by giving it a new and deeper basis and meaning. Christianity substituted the purely impersonal relation thought to exist between man and God with the purely personal and direct spiritual relation be-

tween the individual and his Creator, teaching at the same time the infinite worth and value of human life, personality and dignity, without regard of person. This Christian doctrine has been reformulated and articulated in the legal philosophy of John Locke (1632-1704) who placed the individual in the center of importance and invested him with certain inalienable rights, among which are "life, liberty, and estate." Locke considered these rights as natural inborn rights of man. It is this Lockian philosophy from where the men who composed and shaped the political and constitutional justification for the American revolution, which brought forth the famous Declaration of Independence, drew heavily. This great manifesto follows closely the natural law philosophy: that men are endowed with certain inalienable rights, among them "life, liberty and the pursuit of happiness" and that the function of government is to guarantee these natural rights. The Christian doctrine of the infinite worth and value of human life has also been expressed in the French Declaration of the Rights of Man and of the Citizen. This is a fundamental constitutional document issued by the French Constitutional Assembly in August, 1789. It is both a general and particular statement of the "inalienable rights" of men, among which are the right to "liberty, property and security." Like the American Declaration, the French Declaration is a clear and practical statement of the natural law philosophy of individual liberty. The Christian doctrine of the infinite worth and value of human personality has likewise been expressed in the Philippine constitution. Lately, it has found its way in the new Civil Code of the Philippines.

Thus, the policy science approach throws into sharper focus the significance and importance of the Christian doctrine of individual rights and human freedoms. For the policy science school, the individual should be the center of things in the legal order.

4. *A juristic movement for the universal identification and recognition of socio-legal values.*

The policy science approach is, of course, one which is oriented to the socio-legal values. In this respect and because this juristic school treats law in the broader concept of values, it may be regarded as an extension of the sociological jurisprudence of Pound. They differ, however, in the extensity of their respective approach.

The trend or direction of this juristic school is away from isolationism towards globalism. The experiences of the past have shown that a country's interests cannot be promoted or realized in complete disregard of what happens in the rest of the world. Thus, "how a State controls its people and its resources, how it

organizes and manages its institutions of social and legal controls, how it formulates and operates its foreign policy for peace or war, and how it regulates and controls political parties, pressure groups and private associations, may affect vitally the practice of other States on these matters and their willingness or unwillingness to provide adequate measures of cooperation." [19] The trend in this respect is then a clear return to Stoicism for the Stoic philosophers taught that there is no basis nor reason for a selfish or narrow nationalism in which a big State (much less a small one) could be superior to the human community. To put the same idea in another way, the topmost concern at present is the eventual identification of the socio-legal values in all countries in order to create and realize a true world understanding. The real State is one whose legal ordering expresses the socio-legal values and is in harmony with the good and happiness of all mankind.

Thus, the policy science approach is a jurisprudence of survival through the universal identification and recognition of the socio-legal values or desirable objects of human desires. This may not be realized sooner than expected since it is rather a long and hard road to follow for it envisages, in the final analysis, the eradication of war itself, which is still—the waging of war, that is—admittedly one of the primary functions of the State.[20] When the universal identification and recognition of the socio-legal values have been accomplished, or nearly accomplished, the interest of the State in war will have then disappeared, just as the social evil of slavery has disappeared from the social and legal orders when the thinking of man on the wickedness and impiety of slavery had become universal, or nearly universal.

BASIS OF THE POLICY SCIENCE APPROACH

The policy science school sees a given community in terms of certain socio-legal values set up as the goal-values or policy-values of the community to be implemented and respected. Every community must, therefore, set up certain socio-legal values which are to be aimed at in order to attain universal peace and security. The members of the community should then be alert and not indifferent

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[19] McDOUGAL, *The Comparative Study of Law for Policy Purposes*, 61 Yale Law Journal, 917.

[20] "The other primary function of the State is the ordering of conduct to secure peace and order within the community. This forms the State interest in Law and Order. The waging of war, defensive or otherwise, forms the State interest in War." PASCUAL, *op. cit.*, 143, fn. 7.

to these socio-legal values so that they are always recognized and esteemed. In the policy science corpus, vigilance is truly the price of liberty and equality. If the socio-legal values have been vaguely determined, then proper steps should be undertaken so they can be reexamined and fixed anew, or their affinity clarified because these socio-legal values are closely connected with one another despite their distinctive characteristics. It is upon these goal-values or policy-values, which may either be intermediary or final, that the entire community activity should be based. Only then may the legal ordering move smoothly.

THE TRULY IMPORTANT SOCIO-LEGAL VALUES

A. The Socio-Legal Value "Power"

As a socio-legal value, "power" has a three-fold connotation: 1) it means the prerogative and competence of the people to secure and maintain their fundamental human rights and freedoms, among which are life, liberty, equality, security, property, and the pursuit of happiness, 2) it also means the authority and capacity of the people to freely participate in the conduct of public affairs, in the making and enforcing of governmental policies and in changing the composition or functionaries of the government whenever there is need for such a change, and 3) it likewise means the competence and ability to participate in the "making of important decisions" by private pressure groups.[21]

The first connotation points out the hard and painful struggle to secure this kind of power and, having secured it, the perpetual or never ceasing effort to keep it and its benefits. The second connotation suggests the great and inalienable right of the people to control their government. It is considered inalienable because no one can sacrifice to the government an arbitrary authority over himself for as much as it would not only be undesirable but quite unnatural. The third connotation recognizes the reality that at the present time private pressure groups, such as, political, business, church, fraternal, and trade or labor groups, on the basis of their particular types of patriotism or rightness, have a great deal to do in formulating or influencing "important decisions" affecting a community. Each of these aspects is necessary and indispensable to the others for without one the rest would be utterly useless.

The mere existence of the fundamental human rights referred to in the first aspect is not a sufficient characterization of a democratic

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[21] LASSWELL and McDOUGAL, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 Yale Law Journal, 203-295 (1943).

legal order. For it cannot be gainsaid that they may also exist under the reign of a benevolent despot or ruler. It is really the second and third aspects of this socio-legal value that completes the characterization. For their disappearance signals the advent of or ushers in a totalitarian or communistic regime.

Thus, the socio-legal value "power" includes the capacity and prerogative of the people to determine directly or through freely elected representatives the fundamental law of the land and its amendments; to have a determining voice in the making of laws either directly or indirectly; to express its will in genuine elections not by means of block voting or the secret ballot; to aspire and have access to any constitutional and political office in the community; to criticize public men, public officials and public acts in a manner consistent with truth and decency; to hold all officials responsible for inefficiency and misconduct in office; to form, join, or assist freely religious, political, professional, business, trade, and social aggrupations, groups and fraternities; to express, formulate, publish, and read both orthodox or popular and unorthodox or unpopular, but no conspiratorial, ideas and opinions.

B. The Socio-Legal Value "Knowledge"

Man is rational by nature. Therefore, by his very existence, he possesses an innate right to "knowledge." Thus, if this natural right to "knowledge" and its free use is not set up or preserved and equitably shared, ignorance or lack of enlightenment prevails.

In a world of rapid technological development, a community cannot simply survive half-educated and half-ignorant. Political democracy or, more truly, the legal order would have little chance of survival in a condition of excessive illiteracy or lack of enlightenment. Organized society owes a duty and is at the same time under a responsibility to provide the right kind of education or enlightenment beyond the level of education which only insures that its members shall be able to discharge the *elementary* functions of citizenship and to earn a living. The individual can be in a much better position to contribute to progress only with opportunity for *full* education. There is no question—and this simple truth should be plainly evident—that a society is no better than the individuals who make it up.

"Knowledge" or enlightenment is one of the keys to human freedom or democracy, or, to move away from the figure, "knowledge" or enlightenment is the condition to progress. Hence, the social phase of knowledge has two broad policy-functions: 1) to dispel misunderstanding, and 2) to eradicate ignorance. They should go

hand in hand, or they do not go at all. These broad policy-functions are respectively the general and the particular aspects of this socio-legal value.

In general, "knowledge" is the means of building up of widespread enlightenment or understanding among peoples of different *oblutiacs,* cultures and interests. It is concerned with the maintenance of human intercourse among different peoples in order to produce understanding among them. It is, in other words, indispensable to the shaping of public opinion towards widespread understanding. In this aspect, "knowledge" comprises the freedom of the mind to pursue wisdom and goodness and to search for truth wherever it may end or tend and share them with others. Wisdom, goodness and truth are envisaged in the end of human life, for they are not only promotive of widespread understanding or enlightenment but they are also indispensable to the preservation of the right to life and existence, which includes self-preservation, self-expresssion and self-realization. Falsehood, especially with regard to the national life, if taken as the normal means of persuasion and dissuasion, would be injurious and fatal to both individual and national development. History is filled with illustrations of societies or regimes that have died because of acts, deliberate or otherwise, to perpetuate misunderstanding and to control the inherent freedom of the mind to pursue knowledge, wisdom, goodness, and truth. The onset of the Dark Ages in Europe, about fifteen centuries ago, was certainly the result of this situation. This meaning of the socio-legal value "knowledge" leads to one very important point, at once social and legal in implication, and that is the maintenance of the right of private judgment. It is only when the mind of man is allowed to think for itself that it becomes free from misunderstanding, ignorance and fear.

In particular, "knowledge" as a socio-legal value is the means of increasing literacy and developing intellectual capacity. In this aspect, "knowledge" means the intellectual emancipation of the masses through general education and the ever increasing training and instruction at all levels according to their talents and ambitions with due emphasis on character education or upon the moral needs of the human personality. This emphasis is quite necessary because hand in hand with the problem of removal or, at least, substantial reduction of illiteracy is the problem of training and educating the literates themselves to react intelligently in behalf of good human relations. Today, there seems to be so much illiteracy in human relations notwithstanding the fact that ordinary illiteracy has been reduced greatly. Sociologists are agreed that "social imbecility" ap-

parently ranks high in most literate countries today. The most telling evidence of this is the use of armed force, wanton killing and destruction in the settlement of national or international disputes and differences. Another evidence of social immaturity is the practice of putting up signboards and billboards that clutter up streets, buildings and landscape or scenery in urban and rural areas. The situation has become chaotic and obnoxious. Aside from the fact that this jumble is mostly inartistic or of bad design and put up without intelligent planning and order, a great deal of it is also in very poor and low taste. Not every type of knowledge and training, therefore, comes within the purview of this socio-legal value. Controlled education, regimented training, and deliberate restriction of certain bodies of knowledge which are not false or erroneous have no place in this socio-legal value.

In the particular sense, "knowledge" has also to deal with the understanding of how democratic ways and processes work, and, having found how they work, how they can be justified and made to work better. It cannot be gainsaid that knowledge and liberty are related to each other, the one is the condition of the other. It cannot also be denied that the members of a community cannot simply remain loyal to ideals and processes without the cognition that they are capable of making them free in such a way as to make those ideals and processes available for the development of the general welfare or the good of the collective body. Thus, the socio-legal value "knowledge" when translated into the context of the social interest involved refers to the maintenance of the general progress, *i.e.*, cultural progress, moral progress, economic progress, and political progress. Three policy-values for each of these areas will suffice to illustrate the kind of implementation necessary for this socio-legal value. For the first area: 1) promotion of education and learning, encouragement of inventions and new ideas to provide the means of satisfying human wants and needs, 2) freedom to pursue pure or basic and applied or immediate researches and studies, and to advance, inquire into, read or discuss both orthodox and unorthodox, but not conspiratorial, subjects or ideas and to make scholarly expression or observations related to the subject-matter, and 3) prevention of acts and practices destructive or deliberately restrictive of certain bodies of knowledge which are not false or erroneous and the promotion and maintenance of archives and libraries containing the widest diversity of views and expressions possible. For the second area: 1) development from lower to higher and higher morality, *i.e.*, not simply conformity to laws but the achievement of larger and higher moral values or goodness, 2) provision of opportunity and means to read,

analyze, test, and reassess beliefs, ideas and institutions as well as freedom to criticize and restate custom in the light of rational and moral principles, and 3) implementation of the principles of social (ethical) justice including the recognition of the social and ethical value of the individual in society. For the third area: 1) establishment, encouragement and successful operation of banks, both urban and rural, for agricultural, trade, production, or commercial loans or transactions, 2) provision of regular employment or work yielding sufficient income to meet human wants, afford some leisure and provide for reasonable security against unemployment, sickness, old age and death, and 3) prevention of acts and practices promotive of or tending to promote excessive tax upon normal profits, business or industrial growth, efficiency, ingenuity, good management, or public service as well as acts and practices promotive of or tending to promote monopoly in the free sale, traffic, distribution, and transaction of the goods of existence or essential and staple commodities. For the fourth area: 1) privilege to form, join, or assist political groups as well as freedom of discussion, 2) prevention of acts and practices promotive or tending to promote falsehood and deceit as normal means of persuasion and dissuasion, and 3) maintenance of integrity and ethical standards in public affairs as well as devotion to the public trust and the recognition of the overriding effectivity of treaties and international compacts made in pursuance of the constitution regarding proper subjects of international negotiation over contrary national or domestic laws and customs.

C. The Socio-Legal Value "Respect"

As a socio-legal value, "respect" means the regard and the esteem for life and limb, the dignity and worth of human personality as well as the social interests.

Concerning the regard and esteem for life and limb, this socio-legal value embraces the free and unharmed possession of the body. As such it carries with it the exemption from attack, whether homicidal or otherwise, as well as the privilege of unhindered locomotion. It carries with it also the emancipation of the human will from the arbitrary subjection to the will or command of another.

Insofar as dignity and worth of human personality is concerned, this socio-legal value may either take a negative or positive form. It is in its negative form when there is no interference or hindrance placed on individual initiative, choice and determination.[22] In the negative aspect, however, it is possible that the degree of respect for the individual may vary depending upon the particular situation or condition in which a community may find itself. During the best

[22] *Ibid.*

of times, "prohibitions, restrictions, and compulsions" on the individual may be brought to a minimum degree without danger or conflict with other individual or group interests. In other words, the field of human endeavor and human rights may be broadened to such an extent compatible with other individual or group interests. But in times of peril, distress and emergency, good social engineering recognizes the fact that restrictions, prohibitions and compulsions may be imposed on the individual not only in its optimum degree but even in its maximum intensity. In other words, in times of crisis the social interest in the stability and solidity of the body politic and the social interest in the maintenance of the general security may result in the drastic narrowing down of the field of human rights. Some very obvious instances may be given: a subversive organization or party may be outlawed or dissolved, elections may be deferred, general censorship may be imposed, or widespread police control may be instituted. However, the restrictions, prohibitions and compulsions should be reasonable and not oppresive.[23] They should not be based on racial considerations alone but on strict consideration and judgment of the social interests involved.[24] And they should not be allowed to outlive their usefulness. As much as possible and as soon as possible, the normal area of human rights should be restored, commensurate to the stabilization of domestic or international affairs. For instance, grant of emergency powers to the Chief Executive should be repealed after the end of actual fighting and not after the state of war is legally terminated upon the ratification of a peace treaty, which may occur five or ten years after the last bullet has been fired. This would at least put an end to the detrimental

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[23] An illustration of the manner in which this socio-legal value was restricted is the evacuation program carried out by the United States soon after the Japanese attack on Pearl Harbor in which all persons of Japanese ancestry, regardless of citizenship or loyalty, were excluded from the Pacific Coast area. The *Report of the President's Committee on Civil Rights* noted that about 110,000 men, women and children, two-thirds of whom are citizens of the United States, were ordered away from the Pacific Coast and detained in relocation centers without any sort of hearing, at a time when the courts were functioning. (See *Report*, 30. U.S. Govt. Printing Office (1947). Several cases reached the Supreme Court of the United States in connection with this wartime relocation program, *viz.*: *Hirabayashi v. United States*, 320 U.S. 81; *Yasui v. United States*, 320 U.S. 115; *Korematsu v. United States*, 323 U.S. 224; *Ex Parte Endo*, 323 U.S. 283.

[24] The imposition should never go down to what Justice Frank Murphy said about the U.S. wartime relocation program. He characterized it as unreasonable and in reality a resort to racism in all its unsavory setting, utterly inconsistent with American traditions and ideals, and depriving all those coming within the scope of the military order of the Commanding General of the Pacific Coast Command of the equal protection of the law. *Korematsu v. United States*, 323 U.S. at 233 and 242.

practice of government by executive orders touching on matters as sensitive as polity functions and services.[24a]

It is in its positive phase when there is freedom from any kind of discrimination on grounds of race, sex, language, religion, political opinion, or property status, that is to say, when there is equal opportunity for every individual to secure expression for his personality, talent and ability,[25] regardless of grounds irrelevant to capacity. In this aspect, the socio-legal value "respect" works in the area of human relations or inter-group relations in the community. Such indicia as sex, birth, ethnic group, economic class, age, rank, position, religion, political affiliation, fraternal connection, business, profession, income, residence, trade, educational attainment, and honor have a great deal to do with the amount and the degree of respect which a person may bestow on or expect from another. To a certain extent this is inevitable because of the very nature of the social make-up, but a line must be drawn somewhere in order to secure peace and order and happiness in the community. Such rules, therefore, which allow actions for damages, prevention and other relief, whenever human personality, dignity, privacy, and peace of mind are disturbed, are embraced in the line of demarcation designed to promote and maintain peace, tranquility and security within the community.[26] This phase of the socio-legal value "respect" includes also the provision for equal opportunity for all so that each and every individual in the community, regardless of the status or situation in which he may find himself, may work his way to fruitful

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[24a] Two recent Philippine decisions have sounded the warning. In *Rodriguez and Tañada v. Gella and Lorenzo*, G.R. No. L-6266 (1953), Chief Justice Paras, speaking for the Supreme Court, said that "much as it is imperative in some cases to have prompt official action, deadlocks in and slowness of democratic processes must be preferred to concentration of powers in any one man or group of men for obvious reasons."

In *Surigao Consolidated Mining Co. Inc. v. Collector of Internal Revenue*, G.R. No. L-5692 (1954) the Supreme Court, speaking through Justice Pablo, said that "It is dangerous to permit the Chief Executive to [act] by executive orders, to vest him with a power which he does not have."

[25] See n. 21, *supra*.

[26] This is the line drawn in Chapter 2 of the Preliminary Title of the Civil Code of the Philippines which was approved on June 18, 1949. The interferences and vexations mentioned in this chapter of the Code are brought within the pale of actions for damages because of the acceptance of the respect due to the dignity and worth of the the human personality, notwithstanding and regardless of the lowly station in life of an individual. Some of these acts and practices which are in derogation of the socio-legal value "respect" are prying into the privacy of another's residence, meddling with or disturbing the private life or family relations of another, intriguing to cause another to be alienated from his friends, and vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition. (Article 26).

endeavor, and, having reached it, may continue to expand to greater opportunity and responsibility. Such policy-values, therefore, which have to do with the protection and training of orphans, dependents and defectives; the maintenance of a free school system, at least, on the elementary level; the outlawing of war and those designed to prevent acts and practices committed with intent to destroy, in whole or in part, a national, or religious group or minority, as such, should be recognized, encouraged and supported.

This socio-legal value is not confined to the two foregoing aspects. If that were so then the approach insofar as it is concerned cannot do its full share in the realization of the end in view, which is peace and security. As a socio-legal value, "respect" also involves the recognition and regard for the social interests as well as the several public policies expressive or indicative of those social interests. In other words, the social interests and public policies should also command the respect and loyalty of the people. It would indeed be an odd society if this third aspect were not embraced in this socio-legal value.

D. The Socio-Legal Value "Income"

The importance of this socio-legal value, which includes wealth, *i.e.*, savings, as well as the means for the acquisition of property, cannot be overemphasized. In the first place, man is a human being with many needs, *i.e.*, wants and demands. Therefore, he has an inherent interest or right to "income." And, in the second place, it is always involved in the interest in the dignity and worth of the individual. Like other socio-legal values, this one also appears in a general form and in a particular form.

In general, the socio-legal value "income" denotes the freedom from want. When translated in the context of the social interest involved it means: 1) economic betterment of the people, *i.e.*, adequate provisions for high employment levels, for more efficient methods of production and raising of standards of living according to a country's concept of what is worth having, and 2) the conservation of the natural resources of the country. Under the first aspect, the legal order should recognize the freedom to sell one's own labor in the best market or to refuse to sell it should the market not require or warrant it, except to be idle, of course. In a mainly agricultural economy, like the Philippines, for instance, the legal order should also consider the maintenance of certain specific percentage of shares in agricultural work between landlord and te-

nant,[27] and the maintenance of certain levels of income for certain kinds of work for certain classes of individuals. In this connection, adequate provision for social security should be taken into account. Under the second aspect of the general form of this socio-legal value, the legal order should provide adequate measures to counteract and remove such forms of acts and practices promotive of waste and squander of the property of the community and those which adversely affect the diligent husbanding and use of the possessions and assets of the community. Such policy-values concerning the reclamation of waste land as the drainage of swamps and the irrigation of arid regions and those concerning the correct and intelligent methods of conservation of the natural resources must receive full support. There is a cogent reason for the extension of the socio-legal value "income" to cover the protection of the means for the conservation of the natural resources. These resources are the very wealth or reserve that provide the community with ways and means of keeping up and sustaining the social life and economy of the community. Besides, they are not inexhaustible. There is another point involved in this aspect of the socio-legal value "income" that has a great deal to do with the economic betterment. It is tied up with capital and its use. In ordinary times, the area where capital can operate in order to better the economic life of the country and those of the individuals composing it should be greatly expanded. In times of emergency and disorder the privilege of capital to pursue stringent measures to ration it should be recognized.

In particular, the socio-legal value "income" embraces the minimal substance or means of meeting the immediate necessities of life, namely, food, clothing, shelter, and savings.[28] It is not enough that

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[27] The Rice Tenancy Law, Act No. 4054, as amended by Commonwealth Act No. 178 and Republic Act No. 34 and the Sugar Tenancy Law, Act No. 4113 intended to protect the interests of both the landlord and the tenant, without infringing upon or curtailing the proprietary rights of the landlord or owner, were undoubtedly conceived mainly to redeem the tenant from his life of misery, want, and, oftentimes, oppression, arising from onerous terms of his tenancy. Side by side with this objective, and in obedience to the declared principle of promoting social (ethical) justice to insure the well-being and economic status and security of all the people (Constitution, Article II, section 5), and to the mandate to afford protection to labor and to regulate the relations between landowner and tenant (Constitution, Article XIV, section 6), the Rice Tenancy Law and the Sugar Tenancy Law were also aimed at the upliftment of the social and financial status of the tenant. *Pineda et al. v. Pingul et al.*, G.R. L-5565, 17 L.J. No. 11, 583 (1952).

[28] The minimum amount actually needed by a laborer and his family can by no means imply only the actual manimum, as some margin or leeway must be provided, over and above the minimum, to take care of contingencies, such as increase of prices of commodities and increase in wants, and to provide means for a desirable improvement in his mode of living. *Atok-Big Wedge Mining Co., Inc. v. Atok-Big Wedge*

human beings live just above the bare level of subsistence, that is to say, where human needs for food, clothing and shelter alone are met. Man's personal and social needs must likewise be suitably met. For they are just as important in that they are the physical conditions contributing to a peaceful and happy life. Present day habits of living have demonstrated and established the necessity of savings. The minimum of economic income should thus be geared to provide the means to meet the immediate necessities, namely, food, clothing, shelter, and savings, without which a good life cannot be enjoyed and normal relations met.

E. The Socio-Legal Value "Safety"

The great social interest in the maintenance of peace and security would only be a chimera unless the socio-legal value "safety" is recognized and widely shared. For the reality that man has many physical needs, he is thus possessed with a natural right to security and health. It is only when the members of a community feel safe and secure, hale and strong that they begin to feel and act peaceful and happy, even in the midst of social, political, economic, or religious tensions. So closely is this socio-legal value related to the happiness of the people that the latter cannot be without it. The one is the condition of the other.

In its general aspect, "safety," as a socio-legal value, means the freedom from fear of violence, disorder and turmoil, freedom from fear of ravages of disease, pestilence, hunger, and war, and freedom from fear of acts and courses of conduct in derogation and in restraint of liberty and of the recognized and accepted means of outlawing war. Thus, the socio-legal value "safety" envisages the complete abandonment of war and the threat of war as instruments of foreign policy by all nations.

In its specific aspect, the socio-legal value "safety" refers to means and processes operating in the fields of: 1) protection, 2) public health, 3) social and financial security, and 4) peace and order.

The measures pursued in the implementation of the protection aspect of this socio-legal value are as many as they are varied. They range from simple measures, such as street lighting or the widening of urban and rural roads, to the more complex and involved measures, like containing or resisting internal disorder or external armed aggression. One of the more important measures pursued in this regard is the maintenance of national or municipal forces. Another example is the maintenance of forces for the protection of life and property from fire. This would include the modernizing of fire

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Mutual Benefit Association, G.R. No. L-5276, 18 C.J. No. 4, 182, 49 O.G. No. 3, 942 (1953).

equipments, signal system and methods of extinguishing fire. Still another example is the prevention of crime and criminality.

In the matter of the public health aspect, education in health, and not physical education entirely, should take the foremost position in the implementation of this socio-legal value since education in health really involves knowledge, attitude and habits of healthful living. The measures pursued are generally in the direction of reduction of infant mortality; control of such pestilences as cholera, smallpox, influenza and dysentery; control of debilitating diseases like tuberculosis, rheumatism, poliomyelitis, and leprosy; maintenance of and support of hospitals, psychopatic asylums, sanatoria, clinics, and puericulture centers; maintenance and efficient functioning of quarantine service to prevent the outbreak of pestilential and debilitating diseases; delineation of endemic zones and areas as well as those receptive to disease or disease bearing insects carried in air traffic; maintenance and purification of water supply; the development of general physical fitness; regulation of tenement and factory housing.

In regard of the social or financial security aspect, the measures taken are generally toward aid for the unemployed and financial solvency for the aged. These may be in the nature of old-age pensions or annuities, provisions for unemployment and fringe benefits.

In the matter of the peace and order aspect, the measures taken are generally channelled in two directions: 1) the eradication of open friction and conflict, and 2) the promulgation of specific legal rules and principles with definite incentives andor sanctions attached to them, which are easily known and recognized, for the purpose of determining the extent and limits of acts of every person within the community. In this way every person can at once expect, with assurance, that everyone will act or proceed within the province and limits of the rules and principles laid down by the legal order. The two directions mentioned above are complementary to each other. Otherwise, peace and order, would be a mere phrase devoid of significance.

F. The Socio-Legal Value "Liberty"

As a socio-legal value, "liberty" has undergone some kind of transformation. At a time when the "due process of law" concept was considered to mean only a legal process, *i.e.*, a matter of procedure in the courts,[29] "liberty" was understood to mean freedom from

[29] D. Webster spoke of "due process of law" in *Dartmouth College v. Woodward*, 4 Wheaton (U.S.) 518, as "the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is

physical restraints. In other words, "liberty" was understood to mean "personal freedom or freedom of the body." [30] Thereafter, when the "due process of law" concept was invested with a substantive significance or implication—as a restraint on the powers of the three historic branches of government which may adversely affect the rights of individuals—"liberty" became understood to mean the privilege to do the things which are not prohibited by society and to include the human rights, those that an individual must have in order to realize the true, rational freedom of the will or those which are essential to his very existence. Not being arbitrary or peremptory they have an innate tendency to be fulfilled. And because man possesses the ability to choose freely the means to realize his interests, he has the inherent right to "liberty." This socio-legal value, the socio-legal value "respect" and the socio-legal value "equality" are the main tension or problem areas in the legal ordering of a community. The encroachment or revocation, without due process of law, of any of the privileges and exemptions, under any of these socio-legal values, which have been reserved for and enjoyed by the people, is a negation or violation of these socio-legal values. Indeed, unrestricted state power and power of pressure groups can destroy these socio-legal values. However, while the State can destroy them the State is also essential to their maintenance and preservation. Abraham Lincoln phrased the problem very well when he said: "Must government of necessity be too strong for the liberties of its own people, or too weak to maintain its own existence?" [31]

As a socio-legal value, "liberty" comprises five parts, namely: 1) individual liberty, 2) civil liberty, 3) political liberty, 4) economic liberty, and 5) national liberty. They are distinct though co-ordinate parts.

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that every citizen shall hold his life, liberty, property, and immunities under the protection of the several rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land." See *Den v. Hoboken Land and Improvement Company*, 18 Howard (U.S.) 272, 276 (1855) where the Supreme Court of the United States stated: "The words 'due process of law' were undoubtedly intended to convey the same meaning as the words, 'by the law of the land' in Magna Carta. Lord Coke in his commentary on these words says they mean due process of law. The constitutions which had been adopted by the several states before the federal constitution, following the languages of the great charter more closely, generally contained the words, 'but by the judgment of his peers, or the law of the land.'"

[30] TAÑADA and FERNANDO, *Constitution of the Philippines*, 4th Ed., Vol. 1, 86.

[31] Message to Congress, July 4, 1861, in 5 Messages and Papers of the Presidents, 3224 (Richardson ed. 1910).

1. *Individual liberty.*

Individual liberty is neither license [32] nor the absence of all restraints or bonds.[33] It is never a permission to a wholesale, indefinite activity because there is really no absolute personal liberty, if by absolute is meant that which is not relative to any social or legal rule, and, hence, fully exempt from any restriction.

License is the complete absence of all restraints or bonds and the capability to do even those that are prohibited by society. License would then be the negation or breakdown of the law. And in a situation where license prevails, only a very select few, those with ways and means to help themselves, will remain free. The rest would be reduced to indivdual or mass subjection to the will of the few, resulting in anarchy or tyranny, which is indeed an undesirable situation. It has been found that whatever in the history of mankind is admirable and precious is the result of individual "liberty" and not unbridled license. The former is protected, the latter is repressed.

Individual liberty, therefore, means the privilege to do the things and acts which are permitted and approved by society andor the exemption of the members of the community from arbitrary interference or restraints in the performance of those that are not prohibited by society. When and if the exemption from arbitrary interference, restraints or bonds is disregarded or the capability to do that which is permitted or allowed is curtailed, either by unreasonable state power or by power of selfish pressure groups, then there is either an encroachment upon or denial of individual or personal liberty. When this happens all other rights would become meaningless.

This particular part of the socio-legal value "liberty" may take an active or passive form. In its active form, individual liberty includes authorities, which may be claims or powers. In its passive form, individual liberty includes exemptions, which may be immunities or privileges. But whether this particular part of the socio-legal value "liberty" is in the active or passive aspect, it ought always to remain an area of human endeavor upon which the government can neither arbitrarily encroach itself nor permit intrusion from any direction or group. It is only the people themselves, acting directly or through their freely constituted representatives, that can state the province or define the limits of this or any other type of "liberty." Neither the government alone nor any other lesser group

[32] *Rubi v. Provincial Board*, 39 Phil. 660.

[33] *Chicago, B. & Q. R. Co. v. McGuire*, 219 U.S. 549, 565, 55 L. ed. 328, 337, 31 S. Ct. 259 (1911); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 81 L. ed. 703, 57 S. Ct. 578 (1936).

can properly do this function because either one is likely to regard this particular kind or any other kind of "liberty" as an interference and, hence, obnoxious to it.

2. *Civil liberty.*

Civil liberty, as the second co-ordinate of the socio-legal value "liberty," embraces the fundamental human rights which the law or legal order safeguards in its courts for the people. They partake the nature of "written guaranties to protect the individual.[34] The safeguarding of these fundamental human rights involves their protection from and preservation against undue interference on the part of other individuals and from the challenge of the political will of the government itself. Thus, civil liberty is the right of every member of the community to equal freedom and from undue interference on the part of other persons or of the government itself in the exercise of his fundamental human rights.

One of the normal or essential elements of the State is multitude of people. This means that in the community there will be persons of diverse ranks, positions, properties, occupations, professions, religions, political and fraternal affiliations, *etc.* From these naturally arise conflicting interests and purposes. Due to the pressures and conflicts which these varied interests and purposes engender, some are recognized and protected by law while others are not. Those that have been recognized and those that enjoy the protection of law or the legal order may be subsumed into three groups: First, those that fall under the civil liberty of freedom. In this group may be included freedom of religion, freedom of speech, freedom of press, freedom of inquiry and communication, freedom to peaceably assemble and petition for redress of grievances. Second, those that fall under the civil liberty of due process. In this group may be included the prohibition of forfeiture of life, liberty, person, property and security without due process of law, the proscription of taking property without just compensation, the prohibition of holding a person to answer for a crime without due process of law. Third, those that fall under the civil liberty of justice and humanity. In this group may be included the presumption of innocence until the contrary is proved, the inhibition against enactment of *ex post facto* laws, the forbiddance against passage of bills of attainder, the prohibition of putting a person twice in jeopardy or punishment for the same offense.

There is a paradoxical characteristic common to all these rights. Notwithstanding the express recognition and protection given them

[34] FRAENKEL, *Our Civil Liberties*, 61.

by the law or the legal order, it is still actually necessary to prevent them from being encroached or intruded upon by other persons or by the government itself. It is a fact that despite their inclusion in a catalogue of rights in constitutions, their violations have been notoriously frequent and serious, whether in normal and (especially in) abnormal times. As a matter of fact, the guaranties provided in bills of rights, which are intended for the protection of the individual's rights in his life, liberty, person, property, security, and pursuit of happiness, are the result of and relate to the hard and painful struggle on the part of different peoples against unjust, oppressive and tyrannical exercise of governmental powers.

8. *Political liberty.*

Political liberty, as the third co-ordinate of the socio-legal value "liberty," is something that has different meanings in different climes, cycles and circumstances. What is more, its meaning at a particular time depends a great deal upon social peace and order itself. Essentially, however, it means the authority possessed by the polity in freely participating, directly or indirectly, in the establishment, management and operation of the public affairs of the community. This is the minimal content of political liberty. In a narrow sense, political liberty is similar to the second aspect of the socio-legal value "power."

There are certain rights which are quite essential to political liberty. They are the right to citizenship, the right of protection from arbitrary arrest, the right of suffrage, the right of peaceful assembly and association, the right of petition for redress of grievances, the right of equal access to public office and public service. But, here, again, there are conditions which should first be met and recognized in order to enjoy this particular kind of liberty, *viz.*: public questions should not be removed from the people nor considered unavailable to them and the general right to accurate and free information should not be constricted or diminished. The members of the community should take active part in public affairs and inform themselves as much as possible upon public questions if they are to enjoy political liberty. Thus, the right to utter, the right to publish as well as the right to read both orthodox and unorthodox or popular and unpopular, but no conspiratorial, ideas, opinions and matters should be related to or connected with political liberty.

When the share in governing authority is extensive and widespread in the community, then it is a sign that both the legal order and the prevailing reign or government is republican or democratic in form. Experience has shown that the interests and purposes of

all are safe-guarded better in a climate of political liberty, just as experience has shown that if a comparatively small class or group in society actually controls the management and operation of the government, the general societal interests and purposes are neglected, especially when they are in conflict with the private interests and purposes of the small group of individuals who actually have in their hands the rein or power of government. Thus, it is of the utmost importance that political liberty be liberally and equitably shared in the community. In specific terms, it is quite imperative that the electorate or body of voters include both male and female and also the largest possible percentage of the entire citizenry. Thus, it is suggested that a move to lower the age requirement in the exercise of suffrage from the high point set at present be made. If a male 16 years of age and a female 14 years of age can legally contract marriage, there seems to be no reason why the age requirement for voting purposes should not be scaled down from 21 years to, say, 18 years for both sexes.[35]

4. Economic liberty.

Economic liberty as the fourth co-ordinate of the socio-legal value "liberty" essentially means two things. First, it means the privilege of choosing and engaging in any profession, employment, trade, or vocation. Second, it means the privilege of acquiring, holding, using, consuming, controlling, or transferring property or goods of existence. In other words, economic liberty is freedom as a producer and freedom as a user.

Under the first aspect, certain policy-values are quite essential. They are the policy-value against acts and practices promotive of monopoly and destructive or preventive of free and natural competition; the policy-value concerning the proper freedom to market one's products or labor and the provision of adequate marketing facilities; the policy-value concerning the freedom to form, join, or assist professional or labor associations or unions; and the policy-value concerning provisions for the production of the goods of existence or staple commodities and a program consistent with the need to use the produce as well as a program for the construction and maintenance of highways, railways and feeder roads from producing areas.

Under the second aspect, certain policy-values are also quite essential. They are the policy-value concerning the stability, cer-

[35] In the Philippines, the latest figures show that out of a citizen group of about 20,000,000 only about four and a half million are qualified registered voters. And considering the fact that not all these go to the polls it is not surprising that only a very small portion of the people actually participate in the public affairs of the country.

tainty and security in transactions and acquisitions in consonance with established standards of fair dealing; the policy-value concerning provisions for adequate and proper safeguards to avoid inflationary trend or jolting deflationary tendency; and the policy-value concerning the keeping of the value of money steady or approximately steady and against constant adjustment in its value.

The twofold aspect and policy values of economic liberty suggest that the greatest practicable advantage or benefit can be enjoyed by everyone.

5. *National liberty.*

National liberty is the fifth co-ordinate of the socio-legal value "liberty." It is not unimaginable that there can be "liberty" even if and when a nation is not independent of foreign control and dominion. This, however, is a very rare situation. Very often a dependent country is considered a monopoly of the dominant State in all matters practically. But this aspect of the socio-legal value "liberty" does not mean that a nation or people must be completely or absolutely independent, politically or otherwise. It is a fact that no nation or people today is absolutely independent, however great and strong it might be because the very fact of co-existence presupposes some kind or degree of dependence.

The traditional concept of absolutistic sovereignty, formulated within the context or under the influence of the political and social conditions of the times in which it was posited, which gained ascendancy during the rise of nationalism during the 17th, 18th and 19th centuries on the strength of the authorities of Bodin, Hobbes, Rousseau, Kant, Hegel, and Austin, has been considered anachronistic in the thermonuclear age. Another pattern of sovereignty is insisting for cognition. The new pluralistic concept views the exercise of sovereignty as related to the reality that States, urged by the necessity of working for lasting peace and security, and not merely for a "precarious interlude between catastrophes," [36] by the creation or preservation, promotion, and equitable distribution of the essential socio-legal values, should abandon their national egotism and surrender a portion of their power of control either to an international or supranational legal order for the common good. Thus, on the international or supranational level of legal ordering each State should offer what is needful and give up willingly what is essential for the peace and security of all. This recognizes and validates the proposition that the entire human community takes precedence over the national community in those matters relative to a common world peace and se-

[36] DURANT, *Story of Philosophy*, 286.

curity. On the national or municipal level of legal ordering the pluralistic concept views the exercise of sovereignty as relatively unimpaired in the arbitration of domestic conflicts or matters. In other words, individual nations have a right of control over their own institutions. But even on this level of ordering the exercise of sovereignty should be limited by justice and by the natural rights of men serving as its juridical limits.[37]

Thus, in the context of the socio-legal value "liberty," national liberty means only national autonomy or the right of determining and establishing the form of government which the people considers best in safeguarding its social interests, socio-legal values and fundamental human rights, in discharging both its internal and external ligations properly, and in contributing to the maintenance or world peace and security.

G. The Socio-Legal Value "Equality"

The concept of "equality" as a socio-legal value stems from the natural law idea—traceable to the Stoics—of equality of individuals, races and nationalities. But as a socio-legal value, "equality" should not be considered absolute similarity or parity for it is clearly qualified by certain natural differences, such as the inequalities in the legal status of minors and persons of age, or the differences in the legal status of insane persons and those with complete command of their faculties.[38]

As a socio-legal value, "equality" is, first of all, not an assurance that everyone shall as a matter of fact be the same. In other words, it does not mean parity of physical faculties, or of mental talents, or of educational attainments, or of material possessions. In the second place, "equality" does not mean a system of strict division of property, nor rigid equalization of income, nor exact parity of social standing. The doctrine that "all men are created created equal" means that each person's well-being and happiness is as secure and inviolable as that of every other person and can be sacrificed or surrendered only to avoid a worse injury to the community in general. The demand for absolute equality stems from a false and invalid conception of "equality" which is fraught with danger for both the individual and the community. For if "equality" means the obliteration of all physical, intellectual, property, aesthetic, or volitional dictinctions and differences by levelling all to the same standard then the result would be a level of inferiority and ultimate decadence. The process, if any there be, should really be one of remov-

[37] See JOHN FOSTER DULLES, *War, Peace and Change*, Harper & Bros., New York (1939).

[38] FRIEDMANN, *Legal Theory*, 433 (1947).

ing or substantially mitigating inequality by means of levelling upward and not downward.

Therefore, this socio-legal value means: 1) equality and balance before the law, 2) equality and balance of opportunity, 3) equality and balance of rights, and 4) equality and balance of political value.[39] These are the aspects of "equality" that make it valid as a principle of social life and a truly important democratic socio-legal value. Restrictions, no matter how slight, on any of these aspects of "equality" create zones of social tensions. And unless they are correctly and humanely removed or, at least, greatly reduced, the tensions will build up until they reach a critical point, cutting the community away from free democracy to social insecurity and violence.

1. *Equality and balance before the law.*

This aspect of the socio-legal value "equality" means the removal of legal, *i.e.*, artificial, differences based on grounds of race, sex, language, religion, station in life, or nationality. The recognition and enforcement of racial restrictive covenants running with lands, houses, schools, travel accomodations, or amusement areas, which are still practised in some countries, are some of the acts and practices in derogation of this particular aspect of the socio-legal value "equality."

2. *Equality and balance of opportunity.*

This aspect of the socio-legal value "equality" means uniformity of chance, occasion, or opening for all to effectively secure expression for, and participate in the development of, their personality, talent, ability, or heritage towards greater tasks and responsibilities in contributing to the maintenance of the general welfare. Thus, equality and balance of opportunity embrace the elimination of interference or hindrance on individual initiative, choice and determination. Equality and balance of opportunity also includes the freedom from any kind of discrimination on grounds of race, sex, nationality, language, or religion.[40]

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[39] In the leading case of *Guido v. Rural Progress Administration*, 47 O.G. 1948, a reference to this socio-legal value was made by the Supreme Court of the Philippines: "Social justice does not champion division of property or equality of economic status; what it and the Constitution do guaranty are equality of opportunity, equality of political rights, equality before the law, equality between *values* given and received and the *equitable sharing* of the social and material goods on the basis of efforts executed in their production." (Emphasis supplied).

[40] See section C, re socio-legal value "respect," *supra*.

3. *Equality and balance of rights.*

Equality and balance of rights mean the extension of the fundamental human rights and freedoms to all persons and not only to a select few. The occasion for the latter situation would be contrary to two recognized social interests, namely, the social interest in the maintenance of human personality and dignity and the social interest in the maintenance of the general security, as well as the several public policies expressive or indicative of such social interests. Some of the rights and freedoms within the meaning of this aspect of the socio-legal value "equality" are the right to life, the right to liberty, the right to property, the right to education and the free exercise of the mind, the right to equality, and the right to security and pursuit of happiness. A particular example of the equalization of human rights is the removal of obstacles to the free formation of and assistance to professional or labor unions as well as the recognition and protection of the right of collective bargaining.

4. *Equality and balance of political value.*

This aspect of the socio-legal value "equality" means that every individual in the community must count for one and only one, without regard to person. No hedonistic calculation should enter in the measurement of this particular desirable object of human desire. One individual's political value should be counted no more or no less than any other's. Otherwise, there can be no real freedom of the will from arbitrary subjection to the will of another. For if there be certain persons in the community that count for more or for less than others, there is no assurance that they would be able to enjoy their rights and privileges. It is very likely that such a situation would lead to anarchy or despotism. Thus, equality of franchise should not be hampered by property or religious qualifications nor by controlled and dishonest elections. They are indirect means of counting certain individuals for more than they are worth in political value. It cannot be gainsaid that, no matter how slight a qualification to the exercise of franchise may be, there will always be those who cannot meet it. No matter how slight a qualification may be, it would still be contrary to the equalization of political value and against the public policy concerning the inclusion of the largest possible percentage of the citizenry in the electorate or body of voters.

THE SUPREME SOCIO-LEGAL VALUE

It is not easy to calibrate or gauge which of the socio-legal values is the most important of all. They are all important in a de-

mocratic legal order. However, different individuals, because they are ruled by different desires and divergent interests, may not cherish or want with the same intenseness the same socio-legal value or values all the time. Besides, it seems that everyone desires one particular object of human desire more than the others all of the time. Moreover, it is a fact that this particular socio-legal value which everyone desires and cherishes at all times, is also the first one to be singled out for derogation or destruction whenever certain persons become siezed with a mania for unreasonable and uncontrolled power and an unholy desire to advance and promote their own selfish interests. Dictators and would-be dictators have seen to it that this particular socio-legal value is the first that they deny to the people. As a matter of fact, the stock argument of people like this in their campaign against democracy is that the security of the State cannot be realized in a jural climate where respect for human personality prevails. Ergo, to maintain the security of the State this particular socio-legal value must have to be surrendered or sacrificed. Of course, people learn too late that as it goes so go the rest. Were it not for these pressing considerations there would plainly be no need for identifying the supreme socio-legal value.

In any community, the most important socio-legal value is easily that of "respect" which, as already stated above, means the esteem and the regard for life and limb as well as the dignity and worth of the human personality and the esteem and regard for the social interests and public policies of the community. In the last analysis, all other socio-legal values, while in themselves not unimportant, are, nevertheless, relative to the socio-legal value "respect." In the first place, the socio-legal value "respect" is always the first one singled out to go by the board once the response of the people to the political challenge of the will or wish of the State or of those in whose hands the reins of government are placed has become subdued or regimented. Present-day totalitarian governments or governments seeking for unrestricted powers consider "respect" as its prime enemy. Once the socio-legal value "respect" is gone all the other socio-legal values are easily set aside, destroyed and lost. In the second place, it is not true that the socio-legal value "respect" is irreconcilable with the security of the State. On the contrary, the existence of the socio-legal value "respect" is the more important condition to the security of the State and that it is not destructive of the integrity of society. The absence of the socio-legal value "respect" is not condusive to the general security for it is plain that the condition precedent of group security is the widespread existence of regard and esteem for human dignity and personality as well as the general social interests.

Consequently, the democratic movement of modern times should recognize and validate the importance of this socio-legal value.

Thus, where human dignity and worth are concerned and where the regard and esteem for the social interests and public policies are taken into account, all the other socio-legal values are easily attained and are then widely and equitably shared among the members of the community. Conversely, where the socio-legal value "respect" is not regarded and esteemed at all, the other socio-legal values are difficult, if not entirely impossible, to attain or effectuate. In other words, it is only when the socio-legal values, especially that of "respect," are widely and equitably shared among the members of the community that there can be real, true democracy.

LAW AS AN INSTRUMENT FOR THE CREATION AND REALIZATION OF SOCIO-LEGAL VALUES

The policy science school posits the view that in the legal ordering the emphasis should be placed on the creation, promotion, preservation, and equitable distribution of socio-legal values. The ordering of human volition, conduct and expectation must, therefore, proceed in such a manner as to create, promote, preserve, and distribute socio-legal values.[41] The maintenance of benefits derived from workmen's compensation act, the resettlement and aid programs for the needy, the assistance programs for foreign displaced persons, the maintenance of free elementary school education, the free access to institutions of higher learning, are a few instances by and through which good legal ordering is accomplished by the implementation of the different socio-legal values on the national or domestic level. On the international level, there are different world-wide projects for helping out certain areas in the world which are badly in need of technological, industrial, agricultural, economical, educational, and medical assistance. These are carried out either by national, international, private, or religious groups in pursuance of their avowed purpose of creating andor promoting, preserving and distributing the basic or fundamental socio-legal values.[42]

In keeping with its concern for socio-legal values and a sound preoccupation with the problems of legal ordering, complexed by the demands of the thermonuclear age, the policy science school considers the law as an instrument of social control which has as its goal the or-

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[41] See n. 37, *supra*.

[42] For an example of each, we may give the Economic Cooperation Administration's Far Eastern Aid Program or the FOA; the World Health Organization which is a specialized agency of the United Nations Organization; the assistance program carried on by the Rockefeller Foundation and the Ford Foundation; and the world-wide Crusade Assistance Program of The Methodist Church.

dering of human conduct, volition and expectation through the creation and full realization, *i.e.*, promotion, preservation and equitable distribution, of socio-legal values. Consequently, it is a theory which considers the law as an effective force in breaking up any selfish or vicious hold which some group or groups in a community may have on most, if not all, of the fundamental socio-legal values. To illustrate this point, the historical event that occured after the end of the Spanish-American war may be given. After the end of fighting in that war, there was launched in the Philippines a real movement to break up the vicious hold which a certain group that operated in the Philippines had had on the socio-legal value "knowledge" or enlightenment and to recreate and share it equitably among the people. When the United States took charge of the administration of the Philippines, those in command quickly realized the enormity of the task of creating, promoting, preserving, and equitably distributing the socio-legal value "knowledge." The challenge was admirably met. Whether or not the Philippines was the first country to come under the administration of the United States where the socio-legal values have been trampled upon or obliterated is now of no moment. The important thing is the United States succeeded. Another illustration may be given. At present landlordism, and all its concomitant evils, is slowly being contained in many parts of the world, including the Philippines, in order to have a much wider and equitable sharing of the socio-legal value "income." The action of the Philippines in passing the Rice Share Tenancy Law [43] and the Sugar Tenancy Law [44] shows the recognition of the importance of having this socio-legal value shared properly and equitably. The latest step taken towards this goal and its fulfillment, on the international level, is the formation of the World Land Tenure Institute, working on land problems in relation to the improvement of agriculture production and raising of living standards the world over. The Philippines is a party to this Institute.

CONCLUSION AND ELEMENT OF VALUE

Both individual and community actions and activities should be based upon the socio-legal values because it seems to be that only when they are so based that the legal ordering moves on smoothly. The clear call of the times is for a reorientation of approach to the complex problems of legal ordering on the basis of socio-legal values. Thus, policy planners and policy makers as well as government functionaries must align their thinking and actions to the creation andor

[43] Act No. 4054, as amended by Com. Act No. 178 and Rep. Act No. 34.
[44] Act No. 4113.

preservation, promotion and equitable distribution of the fundamental socio-legal values. The determining consideration should always take into account whether a given act or process is in fact consistent with or implementary of the socio-legal values. This may as well be the only consideration that really matters. While there are many variables that affect the actions and decisions of policy planners, policy makers and government officials, the governing rule or principle ought to be the consideration and implementation of the socio-legal values. This acquires cogency in the present struggle for survival of free democratic society. At no time has it been placed in a more severe test than now.

One of the realities in present-day society is the inevitable conflict of interests and purposes. While each interest seeks to secure expression for itself or to obtain a dominant position over others, no one interest may obtain full expression or dominance. This is another reality. These conflicting or overlapping interests and purposes have to be balanced or compromised because of another reality that only those that are the result of compromise are really lasting in the legal order. In utilizing social engineering to reconcile or compromise these conflicting or overlapping interests and purposes, the determining consideration should be whether a given course of conduct or decision is in fact consistent with or implementary of the socio-legal values. The question for a policy planner, policy maker or government official is not whether he is sincere. That approach to legal ordering evades the real issue of whether the act or decision is good or bad. An individual may also be sincere in making or pursuing a bad act or decision, and this is a deplorable and an undesirable situation.

The goal towards which mankind has been striving for in its efforts to realize itself has been the attainment of universal peace and security. The preamble of the Charter of the United Nations is very clear and specific about this. But it cannot be said that the goal has already been attained. Whatever progress in civilization may have been made may be regarded rather as so many steps or stages towards the realization of the goal, despite the unprecedented material and intellectual achievement. On the material side, wealth and physical possessions abound through modern production techniques. On the intellectual side, the arts and sciences have been developed to such a high point that the secret of the atom itself has been unlocked and even the grand nature of the universe or cosmos little by little pierced. Yet the goal seems to be as remote as can be. The policy science view of the nature of the law, as a vital instrument and force of social control

which has for its purpose the ordering of human volition, conduct and expectation by or through the creation and full realization of socio-legal values, has a distinct and essential role and function in the quest for universal peace and security. Justice Cardozo twice wrote in effect that the socio-legal values are rooted in the conscience of mankind [45] and implicit in the concept of ordered liberty.[46] If that is so, then there is no reason why humanity should fail in its great quest. The policy science school sees the fulfillment of the goal by the creation of world understanding conceived in mutual respect and rectitude, where the same or nearly similar socio-legal values are cherished by all countries and are widely and equitably shared among their respective peoples. This does not mean that there should be a merging of all national groups in one single corpus, for that would be quite difficult, if not wholly impossible. It means that, while preserving its separate individualities, mankind shall be so unified and harmonized on some level by or through the universal identification of the truly important socio-legal values.

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[45] *Snyder v. Massachusetts*, 291 U.S. 97.
[46] *Palko v. Connecticut*, 302 U.S. 319.