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WORLD HABEAS CORPUS, HUMAN RIGHTS AND WORLD COMMUNITY

LUIS KUTNER*

World Habeas Corpus ... the difference between civilization and tyranny.

Sir Winston Spencer Churchill**

We in this country, in this generation are—by destiny rather than choice—
the watchmen on the walls of world freedom.

John F. Kennedy***

World Habeas Corpus is a concrete program whereby the now only morally
binding Universal Declaration of Human Rights would be made, by the voluntary
consent of the nations of the World, a legally binding commitment enforceable
in an International Court of Habeas Corpus which would function through ap-
propriately accessible regional courts.

United States Supreme Court
Justice William J. Brennan, Jr.****

The legal profession of the Republic of China supports the movement of World
Habeas Corpus, which leads toward the acceptance of an international jurisdiction
for individuals in a world society.

Associate Justice Andrew Lee†
Chairman
World Conference of Lawyers
Committee for Republic of China

World Habeas Corpus is a most elementary and primary necessity or 'conditio
sine qua non' of the world community that there shall exist no vacuum in the

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visiting Associate Professor, Yale Law School; Chairman, World Habeas Corpus Com-
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HABEAS CORPUS and I, THE LAWYER. The research assistance of ERNEST KATIN, PH.D.,
is acknowledged.

** Meeting at Claridge's, London, 1950.
*** From President John F. Kennedy's last undelivered address, Dallas, Texas, No-
vember 22, 1963.
**** Meeting of American Bar Association on August 7, 1962, in 48 VA. L. REV. 1258
(1962).
world in regard to the Habeas Corpus and that therefore the natural law principle of the Habeas Corpus shall be vested with positive effect as soon as possible.

Justice Kotaro Tanaka††
International Court of Justice

No man is an island entire of itself,
Every man is a piece of the continent, a part of the main;
If a clod be washed away by the sea, Europe is the less,
As well as if a promontory were,
As well as if a manor of thy friends or of thine own were.
Any man’s death diminishes me
Because I am involved with mankind.
And, therefore, never send to know for whom the bell tolls,
It tolls for thee.

John Donne

Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth tiny ripples of hope crossing each other from a mission of different centers of energy and daring, and those ripples build a current that can sweep down the mightiest walls of oppression and resistance.

Senator Robert Kennedy†††

THE CONCRETE UTILITY OF WORLD HABEAS CORPUS

Ever since the beginning of time, the family of man has sought a way to live together respecting the sovereignty of each individual. Institutions of various kinds have come into being and disappeared, all failing to eliminate repetitive deprivations and degradations of the human being.

The geometric increases in population and re-definitions of national borders and influences have historically proven that the world cannot sow thorns of hate and brutality and expect to reap the harvest of peace wheat. Revolutions in economic, political, and military institutions have brought into ever clearer focus that the only definite and fundamental objective essential to human dignity and freedom from arbitrary arrest or exile is a competent international rule of law. Collective security can only be buttressed with individual security. Anything short of that goal will again result, as historically demonstrated, in collective guilt and collective punishment by tribunals of the victorious.

World Habeas Corpus, a collective, summary remedy to protect and guarantee individual liberty, follows the line of natural law and the fundamental tenet that "the state is for man, not man for the state." A proposed summary remedy processed through world regional International Courts of Habeas Corpus suggests that the inalienable rights with which men are endowed are the fundamental obligations of a society formed mainly to secure the definite objectives of preserving life, liberty, or property; and the power of government merely operates within an area circumscribed by those objectives or boundaries. World Habeas Corpus suggests that it is the primary right reserved in each individual to resist all authority that oversteps those boundary lines.

National states are born out of a life-and-death struggle against tyranny and oppression, out of the aroused conscience of mankind, hopefully looking toward the recognition by organized international communities that there are natural rights of all members of a common family, as individuals and national groups, to enjoy freedom and equality.

The concept of the inherent dignity of man, on which the United Nations Charter, Universal Declaration of Human Rights, the Nuremberg Principles, and the Genocide Convention are based, can be traced to the Bible which, in recording man's creation "in the image of God," invested the human being *ex origine* with a distinctive status bearing the divine imprint and, therefore, endowed with inherent dignity.

World Habeas Corpus has been acclaimed as the international Magna Carta to which hundreds of millions of men, women, and children will turn for help and guidance. The concrete proposal approaches the problems of human rights, both in depth and on a realistic level. It destroys the final barrier on the road toward the millennium, that millennium where human rights and fundamental freedoms are fully recognized and enforced in the relationship between the individual and society—under the rule of law.

What is sought to be stressed at this juncture of world history is that all nations, and those especially obligated under the United Nations Charter, strive for the effective interpretation of applied guarantees which safeguard national and individual aspirations. Governmental measures, essential for national growth, cannot thrive in a climate that seeks to curtail individual rights. The world conscience, and the cosm-individual, can no longer accept, as necessary, any invasion of human dignity; and governments are warned that invasions of individual
security or privacy will not be endured with patience. Nations indulging in excesses of individual deprivations are spelled to their doom.

*World Habeas Corpus* asserts that there is an absolute primacy of human rights. Harassment, or a personal affront to that primacy, leads to reprisals no matter how facile a national government is in its boldness to circumvent this primacy. *World Habeas Corpus* contends that the primacy of human rights is immutable, inflexible, yielding to no pressure of convenience, expediency, or the so-called judicial instrument. As an eloquent voice in a world that seems to waver on the stand for human liberty, it proclaims that no human society can justify any conduct of apprehending or placing in custody any human being without the benefit of those fundamental privileges which the experience of the ages has determined essential for the protection of all persons accused of crime before the tribunals of justice. The regional International Courts of Habeas Corpus give the world the assurance of a judiciary that is ever mindful of its sacred mission that will not, through faulty cogitation or misplaced devotion, uphold any doubtful claims of governmental power and diminution of individual rights. The regional international courts will abide by the principle uttered long ago by Chief Justice John Marshall, "that when in doubt of the construction of the constitution, the courts will favor personal liberty."1

Arriving at its time in world history, implementing the United Nations Charter and the Universal Declaration of Human Rights, *World Habeas Corpus* becomes the inevitable remedy to achieve international emphasis on human rights, concomitant with the erosion of the traditional doctrine about individual human persons being merely the objects of international law. The doctrine has emerged that individuals also may be subjects of the law of nations and that as such they may be endowed directly with rights and burdened with obligations under international law. This doctrinal position is merely formal recognition of the sociological and psychological fact that the individual is the ultimate unit of society, national or international, and that both national political communities and the international organizations, national law and international law, are but institutions established and maintained for the benefit of human persons and the satisfaction of human needs.

The United Nations has long had a double standard on human rights

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1 *Ex parte* Burford, 7 U.S. (3 Cranch) 448 (1806).
complaints. Persons under Trusteeship "had the right to petition the Trusteeship Council, whereas citizens of the administering countries did not possess that right." This paradox becomes pointed when non-self-governing territories and an independent state, South Africa, are permitted individual petition. Secretary General Trygve Lie suggested in 1949 that the Human Rights Commission concern itself with human rights complaints, whereas Professor Lauterpacht held to be "implied in the Charter as the very minimum" means of safeguarding human rights. Myres S. McDougal and Gerhard Bebr have urged that the Economics and Social Council revere its native rule.

With the recognition of the relation of human rights and world order, and the gradual acceptance of the individual as a subject of international law, the problem of human rights has not been, however, resolved. Two major and tightly related aspects of the problem—that of formulating the specific content of binding human rights commitments, and that of devising means for the implementation and enforcement of such commitments when formulated—remain as formidable as ever.

Consider the first of these aspects—that of realizing what has been described as "the treaty approach to human rights." The Universal Declaration of Human Rights, at the time it was adopted, was explicitly and repeatedly described as a "common standard of achievement"—as a "declaration of basic principles," "But not a treaty," "not an international agreement," "not a statement of legal obligations." The Universal Declaration is commonly acknowledged as possessed of great moral authority, but it has not been possible, since 1948, to achieve agreement on a Universal Covenant or Convention of Human Rights. To a great extent, of course, this difficulty is traceable to the existence in our world of, not one, but multiple and mutually antagonistic systems of international public order. Each system postulates its own conceptions about the nature of man and of law, and about the position of man in society. Understandably, each system defines differently those claims against itself which it is prepared to honor as rights of man.

The drafting history of the Universal Declaration indicates the tremendous difficulty in obtaining a verbal formulation acceptable to the representatives of different systems of public order. The deep and deadly conflict between these systems has certainly helped to insure failure of the efforts to secure approval of draft human rights covenants. The difficulties have been such that some observers have begun to question whether the securing of legal commitments on a global scale remains a valid objective. They point out that the only existing general human rights Covenant is the European Convention on Human Rights.

a convention that is for a region displaying a certain minimum cultural and ideological unity and consensus. Moreover, though agreed verbal formulas may be achieved, there would of course remain the further problem of assuring a reasonable uniformity in the practical interpretation of the same language by the various parties to a covenant. In the rhetoric of diplomacy, particularly of parliamentary diplomacy, one may be astonished at the frequency and ease with which the same words are made to refer simultaneously to things that are utterly and fundamentally different.3

The philosophy that pervades *World Habeas Corpus* is that there can be a world summary remedy, prosecuted by world attorney generals, that will stand against any winds of tyranny that blow, as a haven of refuge for those who might otherwise suffer because they are helplessly weak, outnumbered, or because they are nonconforming victims of prejudice or public excitement. No higher duty, no more solemn responsibility rests upon this international court than that of translating into living law and maintaining an impervious shield of "due process of law" deliberately planned and inscribed for the benefit of every human being on the face of the globe—whatever his race, creed, color, or persuasion.

*World Habeas Corpus*, by treaty-statute, places specific limitations on national governments (without impairing sovereignty), guaranteeing to people their inalienable rights—among them, freedom of speech, press, religion, and assembly; the right to trial by jury; the right to be secure against unreasonable searches and seizures; the right not to be compelled to be a witness against oneself; the right not to be deprived of life, liberty, or property without due process of law; the right to speedy and public trial; the right to confront witnesses against oneself; the right to counsel; and the right to be secured against excessive bail and cruel and unusual punishments.

The objectives and strategies of the *World Habeas Corpus* process will continue to be, for all time, relevant in the development of international law. There will be ever emerging principles of obligations, coupled with the capability of responding to what are the demands of emerging civic orders that can consolidate into the harmonizing goals of public order. To those who participate in the widening of the process of *World Habeas Corpus*, as a world social development, the ultimate goals and attainments will demonstrate that individual security can be implemented with a minimum of national coercion. In the bending of precedent, the regional world tribunals will have access to ever expand-

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3 Concepcion, *supra* note 2, at 35-37.
ing legal skills and political enlightenments, which will expand national interests. Heretofore, politically rivalled programs will be transmuted with all feasible expeditiousness into economically competitive or co-operative relations of trade and investment.4

Associate Supreme Court Justice William J. Brennan, Jr cogently refers to the law as a living process responsive to changing needs:

[T]his new jurisprudence constitutes . . . a recognition of human beings, as the most distinctive and most important feature of the universe which confronts our senses, and of the function of law as the historic means of guaranteeing that pre-eminence . . . . In a scientific age it asks, in effect, what is the nature of man, and what is the nature of the universe with which he is confronted . . . . Why is a human being important; what gives him dignity; what limits his freedom to do whatever he likes; what are his essential needs; whence comes his sense of injustice?

This echoes what Mr. Justice Holmes said for the Court 45 years ago:

The law has grown, and even if historical mistakes have contributed to its growth, it has tended in the direction of rules consistent with human nature. Brown v. United States, 256 U.S. 335, 343.

Perhaps some of you may detect, as I think I do, the philosophy of St. Thomas Aquinas in the New Jurisprudence. Call it a resurgence if you will of concepts of natural law—but no matter. St. Thomas, you will remember, was in complete agreement with the Greek tradition, both in its Aristotelian and Platonic modes, that law must be concerned with seeing things whole, that it is but part of the whole human situation and draws its validity from its position in the entire scheme of things. It is folly to think that law, any more than religion or education, should serve only its own symmetry rather than ends defined by other disciplines.

Of course, this shift of law away from emphasis upon abstract rules to emphasis upon justice has profound significance for judicial decision making. It has not only brought on cases requiring reappraisal of particular specifics in the light of the “fundamental rights” standard; it has also resulted in the Court’s holding that a provision of the Bill of Rights, which is enforced against the states under the Fourteenth Amendment, is enforced according to the same standards as it is enforced against federal encroachment.5

Paul C. Szasz, the European oriented scientist-lawyer, makes a valiant contribution to World Peace Through Law:

Lawyers, in considering the possibility of preserving peace through law, naturally often focus their thinking on international judicial organs.

In a sense, the creation of effective judicial organs to settle international disputes is simpler than the establishment of legislative or executive ones. Even states that are most reluctant to restrict their nominally uncontrolled right to


determine their international obligations or to participate in the creation of any international force greater than their own, may be willing to yield to some extent to judicial organs whose impact is necessarily restricted to the particular cases under consideration.

The readiness to seek a court decision in a particular case unfortunately cannot always be extrapolated into a willingness to agree a priori to accept such decisions in all cases. Thus, at present the submission of a particular dispute almost always requires the ad hoc consent of all states concerned, including that of the putative aggressor—i.e., the potential defendant.

The continuing reluctance of states to submit even to international judicial control can in part be explained by ignorance of the general existence and the particular rules of international law. It is understandable that in the absence of such knowledge a state, in submitting to an international tribunal either in general or with respect to a particular case, would not feel confident that it can predict the resolution of disputes—and law requires precisely this sort of predictability.

Another difficulty is the well-known awkwardness and undue length of international judicial proceedings, which at least in part stem from a desire to emphasize the dignity and the diplomatic background of such international proceedings. In addition, the techniques used in these litigations do not reflect the reforms that have taken place in national court practices.

Finally, international judges are not generally trusted. It is felt, with some reason, that in spite of efforts to weaken their national and ideological ties and loyalties, these still predominate over their sense of obligation to the international system whose temporary servants they are. Correctives, as the balancing of one potentially biased judge by another, do not serve to instill the measure of confidence that would make submission to international courts easy.6

At this juncture, the comments of Arthur J. Goldberg are relevant:

Law in the United Nations, as in our own society, is often developed on a case-by-case basis. We should analyze each action of U. N. political organs with due regard for the facts of each case and be careful of hasty generalizations. In particular, we should not be dissuaded from taking an obviously prudent and lawful measure today for fear that it may lead us to take an obviously imprudent and unlawful measure tomorrow.

As we deal with these and other great questions in the United Nations, we might do well to recall the statement of our Supreme Court in Weems v. United States, 217 U.S. 349, 373 (1910):

Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be

vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it." The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality.

Those of us who work at the United Nations know only too well that we are dealing with an imperfect legal order. International law today is not yet fully effective across the whole spectrum of relations among the world's powers. We know of the shortcomings of international law, but we keep working to remedy them. We keep working in the same way that we worked to build a legal order in our own society. We move gradually from self-help and the private redressing of grievances to the settlement of disputes through negotiations, mediation, arbitration and adjudication.

We persevere in this effort because we must. We persevere because there is no other way to assure the survival of mankind in this nuclear age. We persevere—and we have confidence that eventually human beings will find a rational alternative to violence as a means of settling their differences and ordering their affairs. That this alternative will be found in the law is something I deeply believe. It is, for me, an article of faith, as it is for lawyers. One might even call it the lawyer's creed.7

World Habeas Corpus is an idea about which it may be said that its time has come.8 Injustices, such as slavery, tyranny, and other forms of inhumanity, may prevail for many generations, and proposals may be advanced to deal with these problems. But the ears of mankind historically are slow to respond to new ideas. The ideas seem to be like seeds which are disseminated on rocky soil. A few seeds manage to germinate deep in some crevices. Gradually, the roots are spread and suddenly the time becomes ripe as public opinion demands the elimination of injustice. Thus, for a century after the Emancipation Proclamation, the American Negro was subject to the indignities of segregation

and the exploitation of discrimination until, in the late 1950's and 1960's, a movement emerged which evoked overwhelming support for the adoption of legislation and the means for eliminating these injustices.

Similarly, World Habeas Corpus was advanced for the first time in 1931 as a means for asserting the rights of individuals who have been subjected to arbitrary action by any authority anywhere in the world. However, it is only since World War II, with mankind's growing concern for the international protection of human rights, that the idea has received full attention. World Habeas Corpus has received the support of many of the Chief Justices or Presidents of the Supreme Courts of signatory states to the United Nations Charter. Jurists from the Afro-Asian and Latin American states, as well as from the Anglo-American and Western European legal systems, have heartily responded to the idea. Statesmen throughout the world have endorsed the proposal. This support reflects the demands of people everywhere to secure the dignity of the individual.

This paper will seek to present an analysis of the development of the concept of World Habeas Corpus and international due process of law as related to contemporary trends toward national interdependence.

THE FERTILE SOIL OF WORLD HABEAS CORPUS

The principle of a rule of law that guides the actions of men and governmental authorities was recognized in the ancient world. The basis of Judaism lay in adherence to the law, and some commentators have interpreted the dialogues of Plato as encompassing a plea for the rule of law. Aristotle's theory of justice, as expressed in the Nicomachian Ethics, is premised on notions of equal treatment which can only be achieved through law. Roman law, which ultimately came to regulate human behavior over an area encompassing most of the ancient world, provided universal protection to the individual from arbitrary governmental action and contributed to the development of contemporary civil law codes.

The Judaeo-Christian tradition contributed to the idea of individual

dignity with the principle that all men stem from a common source in Adam, so that no race nor social class could claim superior rights. Related to this was the notion that every person must be respected because he was created in the image of God and endowed with a personal soul. Though throughout the middle ages the individual was degraded by barbaric cruelties and the notion of churchmen that man’s soul was depraved by original sin, the aspects of Christianity stressing personal dignity managed to penetrate among the people. These principles later formed the natural basis for the “Rights of Man.” Another principle which promoted the rights of the person was the notion of the separation of church and state and the belief that man was subjected to a higher law than that of the state. Thus, Caesar was distinguished from God.

Christian ideas were combined with the classical tradition as the Stoic notions of a higher or natural law came to be asserted by Medieval and Renaissance philosophers. The notion prevailed that “unjust laws” were not to be obeyed. Both the ruler and the ruled were bound by an immutable higher law.

The feudal system also contributed to the development of individual rights. The feudal relationship was based on contract with obligations imposed upon both the lord and the servant. The feudal system also lead to the formation of parliaments as the king established the practice of calling on the knights for advice and money. Out of this, the principle evolved that the king could not rule without the consent of the nobles. The Magna Carta was promulgated at one such assembly in England in 1215. The barons sought this Great Charter for wholly selfish purposes in seeking to retain feudal privileges made unnecessary by the changing economic situation. The thirty-ninth clause, from which the Writ of Habeas Corpus stems, asserted that “no free man shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go against him or send against him, except by lawful judgment of his peers or by the laws of the land.” But “free men” meant only the barons and their sort and was not intended for ordinary men.

The Magna Carta was left unsigned because King John and most of

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10 Muller, Freedom in the Western World 55 (1964).
11 Id. at 67.
12 Id. at 70.
the barons were illiterate. Pope Innocent III, at John's request, decreed the document null and void. But Englishmen disregarded the Pope's decree and the Great Document in the next two hundred years. During this period (1415-1628), the kings of England were obliged to reissue such charters some thirty times. The Magna Carta at least affirmed the basic feudal principle of contract and limited power, since the king had to obey the law and could not make it to suit himself. In detaining an individual, the king had to follow certain legal procedures. The thirty-ninth clause had been adopted because the king had perverted judicial procedures through bribery. However, Englishmen failed to implement the charter of their liberties, until Sir Edward Coke (1552-1634) resurrected and misinterpreted it (Petition of Rights 1628) as a means of resisting King James I, who fancied himself as an absolute monarch. The privileges claimed by the barons had extended to more and more of the people, so that almost all Englishmen were "free men" and the thirty-ninth clause was made out to be a declaration of their basic rights. When King Charles I (1600-1649) put persons in jail without stating the nature of their alleged crimes or permitting bail or bringing them to trial, the members of the House of Commons objected with their Petition of Rights which stated that these rights were guaranteed to all free men by the Magna Carta and other "laws and statutes of this realm." The king reluctantly agreed to the Petition. Thus, the principle of Habeas Corpus became a cornerstone of fundamental human rights in the Anglo-American world. Hence, considered in historical perspective, the Magna Carta was the seminal impulse toward the supremacy of the rule of law that has guided the development of democracy in the English speaking world.

The urban bourgeoisie also contributed to the development of individual freedom. Their technology widened the span of communication and led to the development of notions of power. The free towns which retained freedoms in the midst of the feudal system contributed to a development of a spirit of liberty. As the feudal system broke down, the modern nation-state emerged. It resulted from the assertion by rulers, of their independence from Rome and, reflecting the need for the maintenance of law and order,

14 Supra note 10, at 78.
15 Supra note 10, at 199.
was based on linguistic differences. But the emergence of the nation-state, with power centered in kings, gave rise to concern for theories of sovereignty and such notions as the social contract as formulated by Thomas Hobbes (1588-1679), John Locke (1632-1704), Christian Thomasius (1655-1728), and Jean Jacques Rousseau (1712-1778). Concern developed regarding the rights of men and the relations between the ruler and ruled. With the Age of Enlightenment in the eighteenth century, a growing intellectual skepticism developed as old habits of thinking came to be challenged. Speculations emerged as to the rights of men. Within this context occurred the American and French Revolutions asserting the rights of the individual. The American Declaration of Independence and the French Declaration of the Rights of Man asserted principles with regard to human rights which had universal application.

This Enlightenment spirit was reflected in the writings of Immanuel Kant. In his *Perpetual Peace*, written in 1795, he contended that man's natural tendency is toward peace rather than war and proposed constitutional measures which states must adopt internally, as well as the establishment of a league of nations in order to assure peace. Envisioning the individual as a world citizen, Kant declared that "the law of universal citizenship shall be limited to conditions of universal hospitality" and asserted that:

Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown or exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of the public human rights and hence also of perpetual peace.

Kant's statement anticipates contemporary views regarding the international protection of human rights. But in the nineteenth century, the protection of individual rights was generally limited to the outlawing of slavery and later with regard to the protection of the rights of prisoners of war and persons in occupied territories. There were instances, however, of diplomatic intervention by states, where certain national or religious groups were arbitrarily denied what may be regarded as minimum standards of human rights.

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16 The Influence of the Enlightenment on the French Revolution (Church ed. 1964).

17 Kant, Perpetual Peace 20 (Beck ed. 1957).

18 Id. at 23.
While in classical thought the focus was upon the community and man’s participation therein, in modern times as the state became too large for direct participation, men became concerned with freedom from the claims of the state. Legitimation of government in the modern era lay in a solicitude for so-called fundamental prerogatives, the defense, or what may be regarded as “Prerogatives of Privacy,” which was identified with the rights of the individual. During the nineteenth century, as the ideals of the American and French Revolutions spread throughout the globe with the broadening of suffrage, political participation came to be linked with these fundamental prerogatives. Political rights—the right to vote and the right to seek and hold elective office—were conceived as means for the garnering of individual freedom. Though there are differing definitions of democracy, one such definition encompasses participation in government and the right of privacy. While political rights may be instrumental in the achieving of individual rights, the latter may also be the means for achieving the former. Thus, political participation cannot be divorced from other rights.

With the spread of democracy and the concern for individual rights, the Writ of Habeas Corpus became institutionalized in most legal systems. This has been true of the Civil Law systems and of the Latin American states which have adopted the analogous remedy of *Amparo*.

Western civilization, including the ideals of the American and French Revolutions, spread throughout the world through the development of communication, the expansion of commerce, and European imperialism. The values expressed in the *Declaration of Independence* and the *Declaration of the Rights of Man* came to be shared universally. Thus, the protection of individual rights came to be a matter of universal concern. Within this context the need has arisen for the protection of individual rights everywhere, and the Writ of World Habeas Corpus emerges as the bulwark and shield for the protection of freedom.


20 Id.

World Habeas Corpus is the universalization of the writ which originated with the Magna Carta. The concept was first enunciated in 1931 in reaction to the rise of the Nazi dictatorship with its atavistic repudiation of all notions of human rights. It is based on the premise that man is the subject and ultimate beneficiary of domestic and international law and should have the liberty, integrity, and freedom of his person guarded and guaranteed by regionally accessible international courts created by a constitutionally ratified treaty-statute which would not impair the sovereignty of the signatory states. To root such international protection in the diverse patterns of law, the world would be divided into nine circuits (or arenas) which, aside from practical considerations of geographical proximity, would be delineated to correspond approximately to the main divisions in legal traditions, cultures, religions, and histories as suggested by Northrop. The following circuits would be established:


2. The U.S.S.R.—Eastern Europe Circuit—the Soviet Union and the Communist states of eastern Europe, including Yugoslavia.

3. The Western Europe Circuit—the non-Communist states of western Europe, Great Britain, Greenland, Iceland, Ireland, Cyprus, Crete, and Israel.

4. The Islamic Circuit—the Arab states, Iran, Turkey, Pakistan, and the Muslim populated states of Africa.

Northrop, The Taming of Nations 286-87 (1954), contends there are seven major cultural-legal units in the contemporary world: (1) the Asian solidarity of India, Ceylon, Burma, Thailand, Indo-China, South Korea, and Japan, "rooted in the basic philosophical and cultural similarity of non-Aryan Hinduism, Buddhism, Taoism, and Confucianism"; (2) the Islamic World, rooted in the religious and philosophical faith and reconstruction of a resurgent Islam; (3) the non-Islamic, non-European African world, rooted in its lesser known culture; (4) the continental European Union, grounded in a predominantly Roman Catholic culture with a secular leadership that has passed through the liberalizing influence of a philosophical thought; (5) the British Commonwealth, with its predominantly Protestant—British empirical philosophical traditions combined with the bond of unity derived through classical education, English law, the Church of England, and its Royal Family from a Stoic Christian Rome that has passed through Hooker, the Tudors and Cromwell's versions of the Protestant Reformation; (6) Pan America, rooted in the liberal constitutionalism of the common law of the United States on the one hand, and the modern equivalent of Cicero's liberal Stoic Roman legal universalism on the other hand, as expressed in governments and even education, under secular leadership; and (7) the Soviet Communist World, comprising the U.S.S.R., her Eastern European satellites, mainland China and North Korea.
5. The Southern African Circuit—the African states which are situated south of the Sahara.

6. The Non-Communist Orient Circuit—India, Japan, Burma, Ceylon, Taiwan, South Korea, Thailand, Nepal, South Vietnam, Laos, and Cambodia.

7. The Austral-Oceanic Circuit—Australia, the Philippines, Indonesia, Malaysia, Singapore, and Polynesia.

8. The Latin American Circuit—the Latin American states, including Cuba, Haiti, and the Dominican Republic.


These proposed divisions are subject to modification in the adoption and implementation of World Habeas Corpus. The states would have the right to determine the circuit in which they may prefer to be included; and, with changing political and regional alignments, states may shift their circuit membership.

Each circuit would be composed of seven judges of whom at least four would be nationals of states located within the arena over which the particular circuit court has jurisdiction. Though this may "pack the court" to favor the decisions of the national governments within any one arena, such an approach is needed to encourage states to accede to this legal structure. Moreover, this approach will insure that the decisions of the courts will reflect the prevailing social and cultural situation. At least one national from each of the world's predominant states should sit as a judge in the circuit court having jurisdiction over that state. Hence, on the U.S.S.R.-Eastern European Circuit Court one judge must be a national from the Soviet Union, while in the Communist-Orient Circuit Court one judge would be from mainland China, and in the Anglo-American Circuit Court one judge would be from the United States. Power realities would be reflected by the presence of a French and British judge in the Western European Circuit Court and an Indian and Japanese judge in the Non-Communist Orient Circuit Court. On the Austral-Oceanic Circuit Court there would be one judge from the Philippines and one from Australia. The remaining three judges of each of the circuits would be chosen from states which are outside of the particular arena.

The judges would be chosen from lists of prominent jurists submitted by the states in each of the circuits. The circuit system would be capped by a Supreme Court composed of nine justices, which would
be composed of one justice from each circuit area who must be a national of a state within the circuit he represents. He would be chosen by a simple majority vote of the judges composing the circuit tribunal for that circuit.

Any detained person anywhere or any other person on his behalf could invoke the jurisdiction of the circuit court. The state detaining him need not be a member of the International Court of Habeas Corpus nor need it agree to submit to the jurisdiction of the court. However, the detaining governmental authorities could choose to intervene before the tribunal to defend the detention. For a state to intervene, it would need to bring the detenu before the court. The petition could be brought only after the exhaustion of all available municipal remedies except where such action would be obviously futile. The circuit courts could decide to continue the detention; order the petitioner released at once; or, if the detention is illegal because of a procedural defect, may, in its discretion, order the case remanded to the national courts for correction or retrial. A simple majority would be sufficient to render a decision. A circuit court decision to release the petitioner would be final and not subject to appeal. But a holding that the detention is legal and may be continued would be appealable by right to the Supreme International Court of Habeas Corpus if three of the circuit court judges dissent. If two circuit court judges dissent, the Supreme Court could review the decision at its discretion. The Supreme Court could also exercise discretionary review of circuit court determinations to remand a case to the state court for determination. A vote by at least six justices would be needed for a decision to reverse a circuit court determination.

In reaching a decision, the Circuit Courts of Habeas Corpus would determine if, under all the factual conditions and circumstances within the particular arena, the continued detention of the petitioner is reasonable as determined by a balancing of interests and values. There would be a consideration of the rights of the individual as well as the demands of society within the context of the particular jurisprudential system. On appeal, the Supreme Court would consider whether, under all the conditions, factors, and variables existing in the arena of the individual circuit court, the decision of the lower court was so unreasonable as to require its reversal. There would be a presumption in favor of the variable factual contexts existing within the particular systems of public order, the application of the test resulting in different standards of protection for each arena. In certain circuit arenas the scope of
human rights accorded international protection would be minimal; but as international conditions stabilized and economic, social, and political institutions progressed, the decision makers would tend to broaden the range of individual freedoms.

THE PRIMACY OF INDIVIDUAL PETITION

The system of World Habeas Corpus envisages the making available to the petitioner of the free right to counsel, interpreters, and other means so that he may have access to the circuit courts. The enforcement of judicial decrees has generally not been considered as part of the judicial process. When a national court enforces a decree, it does so in its administrative rather than judicial capacity. Where suits are instituted against a state or one of its autonomous subdivisions, enforcement is undertaken not by the judicial body which rendered it but by separate legislative or administrative proceedings. The only function of the court is to determine the abstract question of liability or the merits of the particular issue. This principle applies a fortiori to proceedings between states in international tribunals, both arbitral and judicial. The enforcement process can neither be undertaken nor directed by the international tribunal. Its judgments are purely declaratory. The distinguishing feature of an international tribunal is that it does not have the means for enforcement, while a national court functions for and in the name of a sovereign entity.

POLITICAL ENFORCEMENT

The enforcement of decrees of an international tribunal is political. Under the United Nations Charter, enforcement may be undertaken by the Security Council. Generally, however, coercion to compel involuntary compliance with the decrees of international tribunals is an exceptional and rarely required remedy. The same principles would apply to the enforcement of decrees involving World Habeas Corpus. Where a state refuses to adhere to a circuit court or Supreme Court

24 Article 94(2).
determination, it would be subjected to the censure of public opinion. There could also be enforcement by the appropriate regional organization, if it is functioning, or by application of sanctions pursuant to the United Nations Charter. Some states which are committed to world order and the protection of human rights, or find that such commitment is in their national self-interest, could exert their diplomatic influence to induce recalcitrant states to comply.26

Thus, the system of World Habeas Corpus would reflect the realities of the prevailing international situation. Sovereignty will be retained and not impaired even though, under the rule of law, a signatory member becomes a limited subordinate community. As with any other treaty, each state will have limited its freedom to the extent of its treaty-contract obligations. Sufficient legal tradition and precedent have shown that the world has a collective obligation as a self-governing community, as a whole, in relation to maintaining the integrity and dignity of citizens in its subordinate community areas.

THE SHIELD FOR INDIVIDUAL LIBERTY

The protection of individual rights at the international level is still in the incipient stages of development as is the situation domestically in many parts of the world. The proposed system of World Habeas Corpus reflects this situation by providing minimum protection but allowing for the maturation of the protection of human rights. The protection of human rights at the international level will ultimately depend upon the presence of effective institutions at the national level. The most effective protection is in a democratically organized state. But even under a democracy there is the danger of an abuse of powers by the administration, the executive, or even the parliament. Thus, no matter how democratic a state may be, it is necessary to provide effective machinery for the protection of individual rights. The trend toward socialization, coupled with increasing scientific development, increases the power of the state machine to intervene in the lives of the individual.

The growing duty of the state to provide for the needs of the weakest sections of the population provides additional opportunities for mal-

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26 The approach could be similar to that of the influence exerted by states in the General Assembly of the United Nations. Kechane, Political Influence in the General Assembly, INT'L CONCILIATION no. 557 (1966).
administration. In nations where democracy is not solidly entrenched, similar problems exist but to a much greater extent. Governmental authorities of states which had experienced colonial rule tend to copy the methods of their former rulers in disregarding the rights of their citizens by resort to such methods as arbitrary arrest and trial, the suppression of freedom of expression, and temporary detention. The tendency of some rulers to elevate such slogans as the “common good” may lead to the sacrificing of the rights of minorities or of the individual in general.

Sean MacBride, the Secretary-General of the International Commission of Jurists, lists those institutions which are most likely to be most effective in safeguarding human rights at the national level.

1. A watchful parliament with an effective and courageous opposition.
2. A free press, not government controlled, which will not hesitate to expose injustice.
3. A constitution which spells out the rights guaranteed and delimits clearly the powers of the executive, the legislative, and the judiciary.
4. An independent judiciary, not subject to direct or indirect pressure by the executive or by parliament, charged with the function of upholding the constitution and enforcing its provisions.
5. An “Ombudsman” directly responsible to parliament and/or administrative tribunals with full powers of investigation of complaints of maladministration coupled with an appeal body, such as the French Conseil d’État.

MacBride believes that a multi-party state is needed, while others may argue that human rights can be protected in even a one-party state. A constitution is only one element and may be valueless unless it can be invoked or enforced. Judge Hubert Will of the United States District Court, Northern District of Illinois, contends that the existence

27 BAYLEY, supra note 19.

28 MacBride, National Institutions, in WORLD VETERANS FEDERATION INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS 52, 54 (1964) (hereinafter cited as WORLD VETERANS FEDERATION). In the Soviet Union, where traditions of freedom are not as well established, the tendency has been for an increase in freedom partly attributed through the influence of the democracies. This has been manifested especially in regard to procedures for the protection of the accused in criminal procedures and the introduction of the jury system. BERMAN, SOVIET CRIMINAL LAW AND PROCEDURE: THE RSFSR CODES, INTRODUCTION AND ANALYSIS (1966). But the authoritarian tendencies can be overcome only gradually, as manifested by the trial of Russian authors, Fischer, The Easy Chair, HARPER’S, 21 (Feb. 1966). Volunteer and Comrade’s squads also operate in the Soviet Union to control tribunals and catch offenders. Savitsky, The Public and the Law in the U.S.S.R., 51 A.B.A.J. 143 (1965).

29 d’Arboussier, Senegal and Human Rights Institutions, in WORLD VETERANS FEDERATION, supra note 28, at 62.
of effective private voluntary agencies, like the American Civil Liberties Union, functions as part of the watch-dog process in the protection of individual rights.\textsuperscript{30}

Though there may be instances where individual rights are arbitrarily denied in those nations where institutions for the protection of human rights are well established, their policies serve as an example for the rest of the world. As former President Truman observed,

\begin{quote}
[T]he greatest contribution that the United States has to make to its own citizens and to the citizens of the world is the heritage of freedom—freedom of speech, freedom of religion, and freedom of political belief. That heritage is not only the object of all our protective security measures, it is also the basic source of our true over-all national security.\textsuperscript{31}
\end{quote}

THE COSMO-INDIVIDUAL

A growing concern for the international protection of human rights on an international level has developed during the twentieth century. The League of Nations Mandate Arrangements, the Minorities Treaties involving the states of Central and Eastern Europe, and the International Labor Organization Conventions contained provisions involving the protection of individual rights. But in the 1930's, the notion still prevailed in too many places that human rights was primarily a matter for domestic concern. The protection of human rights, as such, was seriously neglected. The seriousness of this situation was apparent when Hitler came to power in Germany. René Cassin, the Vice President of the European Court of Human Rights and member of the French Constitutional Council, describes the situation:

Complaints were formulated against him in Geneva for the violation of guarantees laid down in regular treaties, and Hitler replied: “I am master in my own house. You have no right to interfere with me in my dealings with persons resident in Germany.” Or in other words: “I have powers of life and death over my people. It is no concern of yours.” It was then that the great conflict occurred. Since there had been no organization of human rights, human beings in Germany were left to be crushed by the power in the land. Later, it was the men of other nations, followed by the nations themselves and finally by the whole world that came into the war. Thus it was that, at the end of the war, it proved to be necessary to organize the international protection of human rights, simply because the world had gone through a blood bath owing to the lack of this precaution.\textsuperscript{32}


\textsuperscript{31} \textit{A President's Letter to a Lawyer}, 52 \textit{A.B.A.J.} 550, 551 (1966).

With the organization of the United Nations, following the end of World War II, provisions regarding the protection of human rights were incorporated into the Charter. The Preamble asserts the task of the United Nations as reaffirmation of faith “in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small.”

Article 1, Paragraph 3, declares that one of the purposes of the United Nations is to achieve “international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all without distinction as to race, sex, language and religion.” When this is coupled with Article 56 which asserts that “all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55(a),” some text writers have contended that member states are obliged to protect the fundamental human rights of their subjects. But these “fundamental human rights” are undefined because the delegates at the San Francisco Conference lacked the time in which to formulate a bill of rights. Though the Charter, like that of other human institutions, may be ephemeral and perishable, the experiences of World War II have established that never again will a world organization be established without any thought being given to the protection of the human being.

Though Article 2, Paragraph 7, of the Charter precludes the United Nations from interfering in matters which are “essentially within the domestic jurisdiction of any state,” it has been contended that this provision cannot be invoked since the member states have obligated themselves to promote fundamental human rights. Some have contended that intervention does not include studies and resolutions. Perhaps the sounder approach is that where a situation arises threaten-

34 Ganji, id.
35 Cassin, supra note 32.
36 Cassin, supra note 32.
ing world peace, this clause does not apply, as has been the situation in regard to apartheid in South Africa and racial discrimination in Rhodesia. Because the denial of human rights creates situations threatening world peace, Article 56 of the Charter obliges member states to promote fundamental rights and human freedom.

Beginning with the American and French Revolutions, the basic theme of world history has been the struggle by oppressed peoples throughout the world to achieve political, civil, and economic freedom. The Russian and Chinese Revolutions and the colonial revolutions following World War II are a continuation of this struggle, having international ramifications threatening world peace; and, since human rights and fundamental freedoms are so closely identified with them, they have become a matter of fundamental international concern and a proper subject for United Nations and international law consideration.

In the contemporary world it is virtually impossible to delineate matters of solely domestic or solely international concern. This has been reflected in the practice of the United Nations. As Professor Henkin has reflected:

Governments may continue to claim that how they treat their own inhabitants is of concern to them alone; increasingly it is a losing claim with little hope that it can prevail in politics if not in law. The international concern with human rights has international consequences spilling back into international behavior. The political organ of the United Nations hardly refrains from discussing any human rights issues which any member puts on the agenda, whether forced labor in the Soviet Union or the treatment of Buddhists in Viet Nam, and though obviously impossible to prove, one may assert, with whatever confidence, that the existence of the General Assembly, Economic and Social Council and the Human Rights Commission with the ever present threat of investigation and criticism help to deter governments from blatant violations. No doubt, too, new international concern with human rights influences the judgment of international institutions.

The Universal Declaration of Human Rights defines "fundamental rights and human freedom," setting forth a common standard of action for their promotion. Though the Declaration may not originally have been intended to have binding effect, its adoption by the unanimous vote of all the delegations, its invocation in subsequent General Assembly

39 Chakravarti, supra note 33.
resolutions, and its incorporation in the constitutions of many states have made it a part of customary international law. Some commentators are of the opinion that as a General Assembly resolution, the Declaration may to some of the new states constitute a document having quasi-legislative status, as would other such resolutions; while other commentators would regard it, along with all other General Assembly resolutions, as having no legal force, being only recommendatory. The sounder view is that some of the General Assembly resolutions, particularly those that are to be followed by the adoption of a convention—the two-stage approach, are intended to be expressive of international law. The Declaration would fit in this category, having been intended to precede the adoption of the covenants.

The present status of the Declaration has been succinctly summarized by Richard N. Gardner:

The Universal Declaration has become the yardstick for measuring the progress of governments and peoples in their long struggle for freedom and dignity. The United Nations has published it in the native languages of all countries. The many intergovernmental organizations recognized under the U. N. Charter as consultants to the United Nations have given it wide publicity through educational and study programs. It helped to stimulate two regional conventions: the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms—the first comprehensive regional measure incorporating human rights into law—and the Draft Inter-American Convention on Human Rights. It influenced the constitutions of at least seven states, including the Federal Republic of Germany, the peace Treaty with Japan, and the Austrian State Treaty, treaties relating to at least four African states, and the legislation of many nations around the world. It has been cited by the International Court of Justice and by courts in a number of countries. While of no binding legal force itself, it has become a basic norm in the body of human rights law now being slowly built up within nations. It has also become the working outline for the development of an international law of human rights through conventions which do have contractual force.

The United Nations has also sought the protection and promotion of human rights through the drafting of covenants. Various treaties have been adopted, beginning with the Genocide Convention which has been in force since 1951 and commits the parties to prevent and punish within their territories the destruction of any national, religious, or

ethnic group. Other United Nations conventions now in force deal with the rights of refugees, stateless persons, the political rights of women, the nationality of married women, and slavery.\footnote{Id. at 242, et seq.} Also in force are ILO conventions on forced labor and discrimination in employment and a UNESCO convention on discrimination in education. In various stages of completion are other United Nations conventions on racial discrimination, consent to and minimum age of marriage, reduction of statelessness, freedom of information, and the international right to transmit news. The United Nations and the specialized commissions have also formulated declarations or recommendations by members on specific subjects prior to their incorporation in conventions, such as the declaration on racial discrimination. Occasionally declarations have been adopted without subsequent conventions, such as on the social and physical well-being of children, where the subject matter was considered inappropriate for legal treatment.

A special action program for the promotion of human rights has been underway involving a system of periodic human rights reporting, calling on governments to review progress and problems in their countries with the Secretary General receiving and summarizing these reports; the conducting of global research by the Commission on Human Rights, the sub-Commission on Prevention of Discrimination and the Protection of Minorities, and other United Nations bodies which have studied particular rights listed in the Declaration, examining how they are observed in member states and suggesting areas for improvement; and the conducting of a program of advisory services involving the organizing by the Secretariat of regional seminars on human rights, the awarding of fellowships and scholarships, and the providing of the services of experts to member states.

\textbf{THERE CAN BE NO VACUUM IN HUMAN RIGHTS}

But though these rights are aimed at protecting the individual, the means for their enforcement is lacking. The individual lacks the means for asserting his rights. The notion still persists, though outmoded, that the individual lacks standing to bring an action before an international tribunal, being only an object and not a subject of international law. As long as the individual remains an \textit{object}, he has the status of a slave. Only by permitting him to assert his rights can the \textit{ought's}, or
categorical imperatives of international law regarding the protection of human rights, become transformed into the "is's."

A stride toward the conferring of standing on the individual was taken with the adoption of the European Convention on Human Rights which established the European Commission on Human Rights and a European Court of Human Rights. An individual who has been denied his rights may, after the exhaustion of all domestic remedies, make application to the Commission, which will examine the matter and seek to resolve the issue by consultation. It may issue a report and then refer the matter to the Court, which may also hear matters referred to it by a Contracting Party which had filed a complaint with the Commission or by a Contracting Party against which an application has been filed. Under the Convention an individual may make application to the Commission by presenting the case in person or by inducing a government to act on his behalf. Though an individual may not present his case before the Court, he is permitted to communicate his views.

The system of World Habeas Corpus would represent an important advance in the development of international law by providing the individual with a means for seeking redress for the denial of his rights. It would reflect the fact that international law has expanded horizontally, in that it now encompasses the non-Western nations, and vertically, in that it applies to the individual.

THE OBSOLESCENCE OF "SOVEREIGNTY"

A stumbling block to the granting of individual rights in international law is the outmoded commitment to sovereignty. Many of the newer states, having recently attained their independence, are jealous of outside interference and seek to uphold their "sovereignty." However, the

46 Tucker, Has the Individual Become the Subject of International Law?, 34 U. CIN. L. Rev. 341 (1965). The refusal of the International Court of Justice to decide the matter of the status of Southwest Africa is a dramatic illustration of the limitations of standing. The inhabitants of the territory, as individuals, lacked the capacity to sue and Liberia as a former member of the League of Nations could not bring suit to determine rights under the mandate arrangement. Wall Street Journal, July 19, 1966.


interdependence of states makes notions of absolute sovereignty unworkable. Though the Soviet Union has proclaimed the importance of sovereignty in international law with the principle of equality of states as enabling international cooperation, it repudiates "absolute sovereignty." It opposes arbitrary or forcible restrictions placed on one state by another, but acknowledges that states must limit their sovereignty through the making of treaties and the incurring of international obligations.49

The present international system is not relevant to today's world. It is a world in which men are so close that only a few minutes' communication, orbiting, or shooting times separates them. It is a world which is only a tiny footstool for the beginning of man's exploration of the universe.50 Each of the seemingly sovereign political entities is mutually dependent upon each other. The thermonuclear threat has made nations militarily dependent on one another.

In effect, what has occurred is a mass exchange of hostages, leaving the population of the world's major cities subject to sudden slaughter by hostile governments. This is interdependence on a new plane of intensity: to an unbelievable and gruesome degree we now depend on each other's leaders to be rational, to be predictable, to be sane. One has only to imagine for a moment what the situation would be like today if Hitler and the Nazi Party were in charge of a military force like that of the United States or the U.S.S.R. to appreciate how desperately we depend on each other's leaders to be relatively free of paranoia, and endowed with humane qualities.51

In addition to military interdependence, there is economic and geographical interdependence. The centrally planned economies have come to rely more on certain aspects of private economy, while the states based on a free market have resorted to some planning.

As long as small distances could keep individuals or families in ignorance of the existence of others, man could feel sovereign in his limited lebensraum.52 When individuals grouped themselves into tribes, personal sovereignty was transferred to the group. This giving up of individual sovereignty may have resulted in a neurosis. The more our shrinking world demands integration, wholeness, and cooperation, the

51 Id.
greater the threat to the neurotic individual. Similar conflicts may occur as the state, a smaller unit, must integrate with the whole. The tribe, in integrating with the nation to form larger units, probably experienced similar conflicts. The fears with regard to integration could be alleviated if the neurotic ideal of autonomy or self-centeredness was replaced by a task-oriented attitude; a different motivation for accomplishment.

Men, in developing an attachment to nations, are inculcated with a sense of attachment to the unit, though some of the global areas have yet to develop this sense of national consciousness. Today, there must be a sense of involvement in a larger unit. In the case of prior civilizations, integration had reached the point where a universal order was established through the establishment of an empire; but, in the contemporary world, the notion of an empire is unacceptable. Therefore, universal integration must develop through various tasks of international cooperation.  

International law commentators have recognized that notions of sovereignty must be accommodated to changing situations. George Schwarzenberger has noted:

Legal sovereignty is essentially a negative concept. It indicates the residue of rights and discretions which are not limited by international obligations . . . . Inside each of the world camps, the sovereignty of all but the leading powers has become increasingly relative.  

Professor Friedman has concluded:

While the national state continues to be the overwhelming important form of political organization in international society . . . the national state, and its symbol, national sovereignty, are becoming increasingly inadequate to meet the needs of our time. The outward triumph of nationalism . . . contrasts with the stark realities . . . which make the national state an anachronism.  


55 Friedman, supra note 48. A similar view is expressed by O'Connell, *The Role of International Law*, 95 *Daedalus* 627, 636 (1966): "The sovereign state is an intellectual artifact; its character, its form, and its qualities derived from a theoretical exposition of political organization which is nothing if not Western, and has its roots in the Age of Reason as much as has international law. New states can hardly claim the privileges and faculties of states and yet repudiate the system from which these derive; yet this is precisely what the argument involves. It overlooks that a state, when it commences to exist as a state, does so in a structural context which gains its form from law, just as a child when born into a society becomes subjected to it by virtue of the order of being in which it is integrated."
The breakdown of sovereignty reflects the quest of man to associate with others and to expand his horizons as evidenced by programs of inter-nation educational exchange and international commerce. The increasing contacts between men serve to create common values, including the protection of human rights—a matter which becomes internationally more significant as international contacts continue to increase.

It is in this context that World Habeas Corpus may function as a ligament for world order. Today, despite the pious platitudes with regard to the international protection of human rights, individual liberties are still being trampled upon. A manifestation of this is the fact that there are today over eleven million refugees who have been uprooted from their homes and forced to live elsewhere.\textsuperscript{56} Tribal conflicts in Africa, the war in Viet Nam, and conflicts elsewhere have served to increase the total.\textsuperscript{57}

In South Africa, the imposition of the policy of \textit{apartheid} has resulted in the arbitrary detention of countless individuals and the circumventing of due process.\textsuperscript{58} In the Portugese African states of Angola, Mozambique and Portugese Guinea, there has been a continuing deterioration of individual rights.\textsuperscript{59} In Iran, a trial of individuals accused of participating in a plot to assassinate the Shah was held before a military tribunal, a questionable procedure under the Iranian Constitution; and there was denial of counsel during the investigation of the case.\textsuperscript{60} The rape and butchery of Tibet by Red China is shocking and sickening.

In Latin America the Inter-American Commission on Human Rights,


\textsuperscript{57} The Cyprus crisis led the Turkish government to deport six-thousand persons holding Greek passports who were of the Orthodox faith, along with thirty-four Jews and Catholics. Chicago Sun-Times, Sept. 23, 1965, p. 85. In Rumania, individuals are permitted to leave upon payment of a ransom. Woodstone, \textit{People for Sale}, \textit{This Week}, Oct. 10, 1965.


\textsuperscript{59} \textsc{International League for the Rights of Man}, \textit{The Rights of Man and the Wrongs of States, A Summary of the Activities 1964-65} at 4 (1965).

\textsuperscript{60} \textsc{Bulletin of the International Commission of Jurists}, June, 1966, at 19, no. 26.
an agency of the Organization of American States, found after con-
ducting hearings that there have been flagrant violations of human
rights in Cuba.\textsuperscript{61} International attention has been focused on the plight
of more than thirty journalists languishing in Cuban jails.\textsuperscript{62} Cuban
prisons have been described as approaching the horrors of the Nazi
concentration camps.\textsuperscript{63} Another Latin American nation noted for the
trampling of human rights is Haiti. The Inter-Nation Commission of
Jurists has reported that there are daily instances of denial of indi-
vidual rights.\textsuperscript{64}

Behind the Iron Curtain, though now more porous, instances of the
violation of individual rights continue. In the Soviet Union, two
American tourists accused of black market activities were confined to a
jail cell and subjected to two months of interrogation prior to their
trial.\textsuperscript{65} Another tourist who had mistakenly crossed the frontier was
sentenced to serve eighteen months in prison and died under mysterious
circumstances while in the custody of Soviet prison authorities.\textsuperscript{66} In
East Germany, American citizens in their twenties have been sentenced
to long prison terms for assisting people to escape to the West.\textsuperscript{67} A
former Czechoslovakian national who is now an American citizen,
returned to Czechoslovakia to visit relatives and was summarily im-
prisoned by the secret police, subjected to continued questioning and
was then expelled.\textsuperscript{68} The United States ambassador was denied prompt
access to a travel agent charged with espionage by Czechoslovakian
authorities.\textsuperscript{69}

The Chinese Communist regime has also trampled upon human
rights. In addition to rape and degradation, a form of genocide
is practiced in Tibet where Tibetans are forbidden to marry one

\textsuperscript{61} Los Angeles Times, Oct. 29, 1966, at 8.
\textsuperscript{62} Chicago Tribune, June 10, 1966.
\textsuperscript{64} 25 \textsc{Bulletin of the International Commission of Jurists}, March, 1966, at 1.
\textsuperscript{65} A personal account of the experiences of one of them is presented in Chicago
\textsuperscript{66} National Security Council, Washington Report, May 23, 1966, reprinted in 112
\textsc{Cong. Rec.} 11467 (daily ed. June 1, 1966).
\textsuperscript{67} New York Times, July 1, 1966.
\textsuperscript{68} Chicago Tribune, Dec. 24, 1964.
\textsuperscript{69} Chicago Sun-Times, Nov. 20, 1966.
Reports occasionally appear of nationals from other states who have been imprisoned for considerable periods of time. A Jehovah Witness missionary reported he was subjected to a mock trial, placed in solitary confinement, and imprisoned for seven years on a spy charge. But the denial of human rights can also occur in states where principles of due process are well established. Instances of arbitrary police action have also occurred in the United States. One group of American citizens, the Indian, is not accorded full rights. During World War II, the Japanese-Americans were flung into camps and "processed" over a number of years.

*World Habeas Corpus* could be used in these and other instances to protect the rights of the individual. A tourist behind the Iron Curtain who is summarily detained could invoke the Writ of World Habeas Corpus to obtain his release, or the American ambassador could invoke the writ on his behalf. *World Habeas Corpus* would constitute an effective remedy to limit the activities of police states. A tribunal dedicated to the principles of human rights could not countenance the activities of a police state.

The legal system of *World Habeas Corpus* may be regarded as a check against arbitrary governmental action. It is an effective means for implementing the substantive international provisions as to the protection of human rights. Proposals have been made as to means for protection of individual rights which are analogous to the system of *World Habeas Corpus*. Ambassador Arthur Goldberg, Sir Muhammed Zafrulla Khan, and Chief Justice Warren have urged the establishment of regional tribunals of world courts; while the Ceylon section of the International Commission of Jurists has recommended the establishment of an "Ombudsman" in the Asian and Pacific

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The United Nations has also considered the establishment of
a United Nations High Commissioner for Human Rights.

These proposals represent a growing movement to provide the
individual with the means to assert his recognized rights under in-
ternational law. To say that the individual has rights without providing
him with a remedy is meaningless. The most effective remedy is the
Writ of World Habeas Corpus. The suggestion for an "Ombudsman"
should also be given serious consideration as a supplement to World
Habeas Corpus, as affecting administrative determinations. Implicit
in World Habeas Corpus is the recognition of the existence of an in-
ternational community.

Man as man transcends political divisions and participates in community by
virtue of human, not class, coexistence. The "urge" to law follows as a matter
of course. Law then has its starting point in man, and this is true no less of
international law than it is of the law of the state.

World Habeas Corpus can be supported by either natural law
assumptions or the norms of positive law. Adherents to both schools of
law are committed to the principles of individual rights and the recog-
nition of the existence of an international community.

The presence of a police state and the arbitrary denial of individual
rights, or the existence of a state without law, today constitutes a
threat to world peace. Thus, the racial policies of South Africa and
Rhodesia have contributed to an increase in international tensions in
Africa. Nasser's police state regime in the Middle East has contributed
to the intensification of conflicts in that area. In Latin America peace
is threatened by the police states in Haiti and Cuba. The Dominican
crisis was partly an outgrowth of the brutalities of the Trujillo regime.
The dictatorial policies of Diem contributed to the present bloody
conflict in Viet Nam. Former Vice President Nixon has acknowledged
that the key to resolving this conflict lies in the establishment of even-
handed justice.


77 The Ombudsman is an institution peculiar to Swedish jurisprudence as a check on
administrative actions and has spread to Finland, Denmark, Norway, and New Zealand.
Rec. 1407 (daily ed. Jan. 29, 1966). The idea has been considered in the United States.
Christian Science Monitor, Feb. 28, 1966. The aim is to protect the rights of citizens
against administrators. A similar type of institution exists in Poland. Gellhorn, Protecting
Citizens Against Administrators In Poland, 65 Colum. L. Rev. 1133 (1965).


Thus, *World Habeas Corpus*, as an obvious antidote to the police state, is a step in the direction of world peace. By promoting world law it also makes a contribution, a first step, toward world peace.

In a world where peace is based on the balance of terror and proposals have been advanced for alternative approaches, the role of law cannot be minimized. As a step in the promotion of world law, *World Habeas Corpus* contributes to world peace through the further evolution of the world community. As the late President Kennedy stated:

Let us focus instead on a more practical, more attainable peace, based not on a sudden revolution in human nature but on a gradual evolution in human institutions—on a series of concrete actions and effective agreements which are in the interest of all concerned . . . . For peace is a process, a way of solving problems . . . .

**CONCLUSION**

Although the United States is indeed a world power, feared and respected, on close examination one finds that internally and externally the power never reaches its potential because of the lack of a unifying overall human rights world public purpose.

Members of the United Nations, indeed the founding fathers of 1945, have always conceived of themselves as leading the world to new and higher goals. Theirs was to be a fortified experiment that would benefit all mankind. With overarching vision, they professionally assumed the solemn obligations over the lives and fortunes of ordinary

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81 A proposal has been made for the establishment of a laboratory for a project justitia as a breakthrough in world law encompassing the establishment of a scientific law laboratory for coordination of the existing fragmentary activities to research and formulate a workable system of law and courts to displace war in the settlement of international disputes; the creation of a cabinet level Department of Peace to "balance the scales" of the War Department; and the calling of an international conference on "Conservation of Humankind" to bring together government leaders on the ministerial and cabinet level who need to understand, and have the power to act on, the world's conservation need for World Peace Through Law. Springer, World Peace Through Law—Needed: A Laboratory for Project Justitia, 112 Cong. Rec. A5691 (daily ed. November 10, 1966.) One problem in the development of law is the unavailability of law books and the reporting of decisions in the developing countries. Rhyne, Law for All, 112 Cong. Rec. 14383 (daily ed. July 11, 1966). A means for alleviating this problem may be the development of computer information retrieval systems. Rhyne, Law Research by Computer, World Peace Through Law Center, (Pamphlet Series No. 4 1966).

82 GARDNER, IN PURSUIT OF WORLD ORDER 2 (1965).
people in their trust. Privileges and restraints contrary to the libertarian and democratic axioms of a free-choice world were to be exposed and corrected. Political diversities were to be recognized within the scheme of the organization. Elite control was to find its common denominator in the sanctity and integrity of individual human dignity. The experience and precedent of the democratic process was to be made available for meaningful application. It was to exercise a restraining influence against the kind of aggressive messianism that nations—emerging or emerged—seeing themselves as saviors, frequently pursue.

The Human Rights articles of the Charter, the Universal Declaration of Human Rights, the seminars, and conventions since 1945, have put a terrible burden of frustration on the Society of the United Nations. The people of the world—the more than one hundred million exiled, tortured, and exterminated since 1917—those in concentration or labor camps, prisons, and dungeons during this current era of outer space explorations—those in the future who are doomed to hopeless imprisonment, dungeons, inhuman torture, and barbaric cruelty—cry out for a world collective legal remedy that will guarantee individual security and summarily remedy arbitrary or wrongful detention or imprisonment.

It is indeed a grim commentary that the human right of individual liberty is enmeshed in disquieting chaos. Lucid, precise, and evocative exposition is regrettably absent. There have been awkward attempts at bravura, here and there, in the midst of historicist clichés, pat phrases, and academic diplomatic jargon. Instead of embarking on a single-mindedness born of true concern for solemn signatory pledges, the 122 members (as of June, 1967) have slackly allowed the United Nations to become a convenient vehicle for an apocalyptic world.

The importance of a unified world view, implemented by a concrete and realistic rule of law, still remains the issue. The United Nations has yet to get down to business to overcome the cumulative frustration in the area of the human rights of individual security.

World Habeas Corpus recognizes the extraordinarily complex political systems that constantly challenge the imagination. Ruthless power elites still occupy the institutional command posts of political, executive, and military establishments. Infinite mosaics of countervailing forces offset each other, balance each other, veto each other, to the point where there is no identifiable rulership at all. Political fortunes
have varying internal and external postures. Political power structures, orthodoxies, organizational forms, strategies and tactics still react to the ever-changing exigencies of the moment.

*World Habeas Corpus* offers a monolithic rule of law that centralizes political fragmentation without a concentration of power; that concedes but does not impair national sovereignty. It facilitates the genesis of the exertion of power by configuring and implementing the signatory pledges to respect the dignity of the individual, the cosmo-subject of the world. It repudiates the cliché that political power grows out of the barrel of a gun.

The basic premise underlying the concrete cogency of *World Habeas Corpus* constitutes an informed and reasonable man’s approach to guaranteeing individual security in world affairs and suggests a quick understanding of the United Nation’s global role. *World Habeas Corpus* is dedicated to peace while recognizing the manifold dangers of free world apathy despite deep involvement in the jungle of intrigue and in the fighting of conflicting political ideals and objectives.

The concept of *World Habeas Corpus* is timely because of its profound awareness of modern political theory that implements the motive of man—his needs—his tendencies—his natural rights in sharp contrast to the classical theory that begins usually from the nature of the state; that defines the individual as a subject thereof. In combating arbitrary detention, it challenges unbridled authority, alleged political legitimacy, and ruthless power. The proposed World Habeas Corpus Treaty-Statute meets the problems of international court jurisdiction, composition, and procedure. Trails have been blazed by many expert opinions and reports, and the time has arrived to bring all these discussions to a positive fruition. 83 We must establish an era where nations as well as individuals are subjects under law. 84
