Love, Hate and the Human Rights Boundaries of the Law

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Introduction

Love and hate are emotions that are universally embedded in the psychosocial experience of humanity. The theme of this conference dealing with the perils and possibilities in the 21st century of the "anthropocene crisis" may well be challenged by the affirmation of positive sentiment (affection) or its depreciation (negative sentiment), hate. Law and culture ubiquitously prescribe the boundaries of these emotions in human interaction in ways that are often unacknowledged and surprising. The importance of emotion of love or hate is its salience for the person and for the survival and success of social organization. A social process, which succeeds in reproducing and sustaining the idea of love in the biography of each individual, may perhaps be more successful in the satisfaction of human needs and aspirations. Here we broaden the idea of love and suggest that it reflects the critical importance of **affect** or affection. Perhaps a less controversial way to express this is to see affect as included in the still broader idea of postitive sentiment. The idea of positive sentiment includes such important values as compassion, empathy and affection.

It is widely accepted that newborn children may not survive the experience of the ubiquitous deprivation of affection. If they survive, they may develop pathologies, which may therefore reproduce personality types that are possibly lethal and destructive. Such personality types may in effect displace the deprivations that they have experienced in innocuous processes of childcare, in ways that make the relationship between personality, culture and politics important for morality, law and culture. Society may reproduce personality types not socialized or acculturated to the values of affection, empathy and compassion, but to a predisposition or orientation that enhances the capacity for negative sentiment and its displacement on others. In worse case scenarios, it is possible that society reproduces the psychopathological personality which finds gratification in the ruthless exercise of domination and extermination of those it imagines as threats – non-self others.

Both postitive and negative sentiment are outcomes of social process. Connecting personalities to culture has a long and distinguished pedigree in the social and behavorial sciences. Harold Lasswell, a Fellow of the World Academy of Art and Science, had a life long interest in the issues of personality, culture and their influence on politics. He had an interest in the impact of personality on politics and especially the problems of psychopathology in political leadership for public order. Additionally, Lasswell was interested in the impact of the symbols of insecurity at all levels on the political orientation of the individual.

We realize that in the war on terror there are sufficiently credible threats to security that may be used for purposes of acquiring political power by the exploitation of the dynamic of insecurity. In fact, in the war on terror in the U.S., a key statute has the short title of "The Patriot Act." The title has carried an implication that those who are disquieted by the great allocations of power to the executive may well be suspect in terms of their commitment and loyalty to patriotism in this context. There is also interest in the psychology and the function of sentiment in the terrorist, suicide bomber, torturer and mass murderer.

This presentation explores the issue of sentiment in terms of both micro and macro social relationships. Sentiment of course is emotion and emotion may be characterized by feelings that are postitive or negative or something in between. Emotions are no simple matter. For example, no one will quibble about the "value of love" however, when love is seen to be a component of sexual expression that requires restraint it may be culturally destabilizing. If psychoanalysis is

correct, the human libido unless moderated by self control reinforced by law and culture, is generally excessive and love then in this sense, is subversive of itself and social order.

All societies have some rules about the creation of ties of intimacy, how they endure, and how they are terminated. These rules in a sense seek to control and regulate the legitimate targets of affect within which the exchange of positive sentiment is anticipated. The family often seen as morally preferred in part because of the experience of the most important and defining components of human feeling and expression: love. Contemporary justification of the zone of affective expression in micro-social units is indicated in the book "The Family as a Haven in a Heartless World." (Basic Books, Inc, 1977)). However, it is in the family, however defined, that we reproduce the next generation of social participants. Their personality structures and orientations will tell us a great deal about the kind of society we reproduce. To what extent for example, do we reproduce the values of affect, empathy and compassion? To what extent do we subordinate or destroy such an orientation with the values of negative sentiment for a negative utopia? Thus, the family is a social unit that is vested with high political and cultural importance for the transmission of human values.

The values of affect, empathy and compassion, are values that require the self to transcend its boundaries and from a human rights point of view, to extend those boundaries universally or globally. The political challenge is that the reproduction of negative sentiment may feed the impulse to parochialism, an impulse that may enhance the evolution of policies and practices of human rights deprivation. Therefore the critical challenge to the future of human rights is the biographical capacity of individual to enlarge the sense of personhood via affect to include all non-self others. That would seem to be one of the important foundational stones of a culture of human rights and a foundation for human rights law. The human rights law, which seeks to prevent deprivations such as genocide, mass murder, torture, inhumane treatment or punishment, is a law that seeks to constrain the compulsions driven by negative sentiment (hate).

The Exchange of Emotion and Sentiment

As indicated above, one of the factors in human feeling and emotion namely, love is also a factor which may be culturally destabilizing. The rules relating to the management of positive sentiment are the rules that come packaged as "family law." Rules operate cross culturally. These are rules that ultimately generate control about who the legitimate targets are for the displacement and experience of the intimacies of emotion that are driven by affect and in a stronger sense, love.

The rules of incest are of universal import. There is variably in the reach of these rules in different cultural contexts. The rules prohibit certain possible targets of affect and love in terms of shared sexual and reproductive expectations. The rules favor individuals looking outside of blood or proximate relations for appropriate affective ties. (See Nagan, Conflict of Laws and Proximate Relations: A Policy Science Perspective," 8 RUTGERS CAMDEN LAW JOURNAL, 416 (1977)).

The limitation on who may establish a morally and culturally approved "affection" unit is a matter of considerable social commentary sometimes characterized as "culture wars." These issues include gender/sexual identity, reproductive freedom, gender transformation, recognizing and protecting single sex unions, or marriages, and the punishment of polygeny.

The cultural incentives to control and regulate the most intimate feelings and emotions tend to involve some degree of competition for power. Culture frequently assumes that the

foundation of its identity and stability is rooted in the cultural prescription indicating how basic human emotions such as love and affection are to be shaped and shared. There is a general resistance to changing cultural norms implicating human intimacy. Implicit in this is a collective fear that unsanctioned changes will provoke threats to cultural survival or group solidarity.

Arrangements and processes for establishing, maintaining and ending the institutional arrangements of affect through which intimacies are legitimately created are supported by confessional experience or cultural taboos sustained by totemic ritual. To the extent that control and regulation over the entire process has become secular, the politics of the modern state legislates to change the nature of the relationships of intimacy. Some changes have emerged from secular interpretations of fundamental rights. To a large extent, political authority may seek to provide progressive change for better equality and protections in different family forms. However, even political authority may be resisted. Human rights law, as well as the higher law of comparative constitutional law, provides important challenges to cultural norms and expectations about questions of sexual morality, intimacy and human dignity.

Among the most important issues about gender or sexual identity has been the depreciation of the status of women worldwide. The concern for the equality of women has by implication served to raise the general question of equality and affect in terms of men, women and other variations of gender perspective. This issue of affect and equality has generated fundamental questions about the imposed ascription of identity by culture, society or the state. The critical question is how far should the self's conception of the self be given deference in the ascription of identity by political authority which then allocates rights and obligations. These problems provide a normative challenge of mediating between traditions that are repressive and those that are supportive of a human centered deference to positive emotional values that are compatible with fundamental rights and to develop strategies for change when change is mandated by the moral priority of fundamental human rights values.

The Focus on Negative Sentiment and Human Rights Deprivations

Human Rights Deprivations, Identity and Hate

The most conspicuous fact of social organization is that human beings identify with and are invariably affiliated with a group of some sort. The reproduction of negative sentiment is about identification, groups and power. If we describe social processes as involving human beings (participants) pursuing values (desired goods, services, honors) through institutions (political parties, corporations, labor unions, colleges, hospitals, churches, etc.), based on resources (bases of power, base values), it will be apparent that institutions are often group-based and specialized to the vindication of basic values. For example, power and ideology find expression in political parties, the wealth interests in commercial actors, the professional concern for health care in the institutions of health care, education in the schools and universities, the skill interest in organized labor and professional groups, as well as the moral concern of religious or faith-based groups.[1]

The universal nature of groups in social order is as ubiquitous as the "individual," who is

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[1]*See* Harold Lasswell and Myres McDougal, Jurisprudence for a Free Society: Studies in Law, Science and Policy (New Haven: New Haven Press, 1992), Vol. I, Part II, Chapter 2 (Particular Value-Institutional Processes), at 375-507.

invariably a part of an aggregate or group.[2] Sometimes groups are easy to identify: some people are "black" and are thought to belong to the black group. Others are "white" and belong to the white group; others may be "brown" and belong to the Hispanic group, and so on. Sometimes the same person may have an ascribed "ethnic identity" based on physical characteristics, but will have voluntarily affiliated with a political party and acquire a political identity, as for example, a Republican or a Democrat. A person's income may weaken or strengthen the links of "ethnic" identity if that person's primary neighborhood and professional associations are in striking correspondence with economic and/or skill-related patterns of stratification[3]. Social organization, thus, witnesses a rich plurality of "groups" as outcomes of social process, and depending on context, a wide proliferation of individual identifications with multiple group-

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[2]The group nature of American society is well-documented and often comes under the label, "American pluralism." A critical question emerges as to the nature of national American identity and the subidentities of various groups, ethnic and otherwise, which constitute the body politic. *See, e.g.,* MICHAEL LIND, THE NEXT AMERICAN NATION: THE NEW NATIONALISM AND THE FOURTH AMERICAN REVOLUTION (New York: The Free Press, 1995).

The American people, then, constitute a genuine nation; with its own nation-state, the U.S.A., and with its own genuine, if largely inarticulate, nationalism. The interesting argument, it turns out, is not the stale debate between multiculturalists and democratic universalists about what kind of nonnational state the United States is: multi- or post? It is another controversy, a less familiar dispute, over how the "nation" in the American "nation-state" is to be defined. In this debate among nationalists, the two sides are nativists and liberal nationalists.

Id. at 7. *See also* LASSWELL & KAPLAN, POWER AND SOCIETY (New Haven and London: Yale University Press, 1950), Section 1.3: Symbols, Identification, and Personality, 10-15. Lasswell and Kaplan discuss the process of identification and group identity, stating as follows:

> An *ego* is an actor using symbols. . . . *Identification* is the process by which a symbol user symbolizes his ego as a member of some aggregate or group of egos. . . . Symbolizing distinguishes the process but does not exhaustively characterize it: other acts, externalized as well as internalized, occur in conformity with the symbolic relationship. . . .The *self* is the ego and whatever it identifies with that ego. The concept is closely to what William James designated as the "social self": A man "has as many different social selves as there are distinct groups of persons about whose opinion he cares. He generally shows a different side of himself to each of these different groups." The self as here defined is the set of these "different sides" in their inter-relatedness. It thus comprises all the roles which the ego adopts, and is characterized by specifying the individuals and groups with which the ego identifies.

Id. at 10-13 (*quoting* William James, PSYCHOLOGY (Henry Holt, 1892), Vol. I, at 294. *See generally* ETHNIC CONFLICT AND INTERNATIONAL SECURITY (Michael E. Brown, ed.) (Princeton, N.J.: Princeton University Press, 1993); Evan, *Dimensions of Participation in Voluntary Associations*, 36 SOC. FORCES 148 (1957); INTERGROUP RELATIONS: SOCIOLOGICAL PERSPECTIVES (Pierre van den Berghe, ed.) (New York and London: Basic Books, Inc., 1972); Latham, *The Group Basis of Politics: Notes for a Theory*, 46 AM. POL. SCI. REV. 376 (1952); THEODORE M. MILLS, THE SOCIOLOGY OF SMALL GROUPS (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1967); LIONEL TIGER, MEN IN GROUPS (New York: Random House; 1st Amer. ed. 1969); McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT'L. L. 1 (1959); Sommer, *Studies in Personal Space*, 22 SOCIOMETRY 247 (1959); Zimmer & Hawley, *The Significance of Membership in Associations*, 65 AM. J. SOC. 196 (1959).

[3]*See* M. McDougal, W. M. Reisman, and A. Willard, *The World Community: A Planetary Social Process*, 21 U.C. DAVIS L. REV. 807 (1988); LASSWELL & MCDOUGAL, *supra* note 32, at 141 (on wealth, 473- 508; on skill, 525- 538); LASSWELL, POLITICS: WHO GETS WHAT, WHEN, HOW (1958). The classic studies on economic stratification are to be found in the work of Marx and Engels, SELECTED WORKS, Vol. I and II (1962). *See also* KARL MARX, SELECTED WRITINGS IN SOCIOLOGY AND SOCIAL PHILOSOPHY, (T.B. Bottomore and Maximilien Rubel, eds.) (Hammondsworth, Middlesex: Penguin Books Ltd., 1956), Chapter 5 (Social Classes and Class Conflicts), at 186-209.

based processes.[4]

Groups, Power and Negative Sentiment

One of the most important outcomes of the social reality of groups is the problem of group "dominance" and group "subjugation."[5] It is often the case that "minorities" are the subjugated, at-risk class (e.g., in the U.S.), although a majority may be subjugated by a minority and consequently become the subjugated or dominated class, even though it is a majority (e.g., the Republic of South Africa during the apartheid era).[6] These problems are invariably central problems of governance and constitutional order[7] and are also key problems of world order: threats to peace and security,[8] gross violations of human rights,[9] suppression of the right to self-determination,[10] and justifications for undemocratic forms of governance.[11] In short, these problems are denials of the central precepts of international justice that come under the label "human dignity."[12]

A critical component of human rights deprivation includes the concerns for group rights, discriminations, deprivations, and the repression of groups and individuals based on "group" labels of identity remain central problems for the maintenance of international peace and security, as well as conditions that inhibit the progressive developmental agenda envisioned in the higher purposes and objectives of the Charter system. Discrimination against "minorities" is a critical concern. Although the regime of unvarnished dominance (apartheid) has now been dismantled,[13] the problems of cultural dominance are still a major international concern and have

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[4]*See generally* MCDOUGAL, REISMAN, AND WILLARD, *supra* note 3.

[5]*See* MYRES MCDOUGAL, HAROLD LASSWELL, AND LUNG-CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY (New Haven, CT: Yale University Press, 1980), Section 3 (The Elimination of Apartheid), at 521-560.

[6]*See* JOHN DUGARD, HUMAN RIGHTS AND THE SOUTH AFRICAN LEGAL ORDER (Princeton, N.J.: Princeton University Press, 1978), Part I (Introduction: South Africa and Its People), at 4. *See also generally* DONALD L. HOROWITZ, A DEMOCRATIC SOUTH AFRICA? CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY (Berkeley and Los Angeles, CA, and Oxford, U.K.: University of California Press, 1991).

[7]*See generally* MICHAEL BROWN, ETHNIC CONFLICT AND INTERNATIONAL SECURITY, *supra* note 2. *See also* MCDOUGAL, LASSWELL, AND CHEN, *supra* note 6, Chapter 4 (The Global Constitutive Process of Authoritative Decision), 161-363.

[8]*See generally* RUMMEL, DEATH BY GOVERNMENT (New Brunswick and London: Transaction Publishers, 1994); MICHAEL BROWN, *supra* note 2. *See also* ANTONIO CASSESE, VIOLENCE AND LAW IN THE MODERN AGE (translated by S.J.K. Greenleaves) (Princeton, N.J.: Princeton University Press, 1988). For more specific examples relating to the former Yugoslavia, see BENNETT, YUGOSLAVIA'S BLOODY COLLAPSE (Washington Square, New York: New York University Press, 1995); WAR CRIMES IN BOSNIA-HERCEGOVINA, HELSINKI WATCH REPORT (New York, Washington, Los Angeles, and London: Human Rights Watch,1992); *War Crimes in Bosnia-Hercegovina*, Vol. II, Helsinki Watch Report (New York, Washington, Los Angeles, and London: Human Rights Watch, 1993); ALEXANDRA STIGLMAYER, MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA (Lincoln and London: University of Nebraska Press, 1994). *See also* THE UNITED NATIONS AND RWANDA 1993-1996, The United Nations Blue Books Series, Volume X (New York, N.Y.: United Nations, 1996).

[9]*Id.*

[10]*Id.*

[11]*Id.*

[12]*Id.*

[13]*See generally* RIGHTS AND CONSTITUTIONALISM: THE NEW SOUTH AFRICAN LEGAL ORDER (Dawid van Wyk, John Dugard, Bertus de Villiers, Dennis Davis, eds.) (Kenwyn: Juta & Co., Ltd., 1994).

once more evolved into even more brutal measures of political reaction.[14]

<u>Groups and Mass Murder</u>

In a survey map provided by the Associated Press,[15] mass killings (which are essentially the outcomes of the problems of "otherness," cultural dominance, and conflict in the 20th Century) provide a staggering specter of what would technically be called genocide, but perhaps more realistically, may be called domicide since the mass killings reflect group levels of identity, broader than indicated in the Genocide Convention. Thus, in Africa, as far back as 1904 and 1907, German colonial conquests of South-West Africa resulted in the killings of 100,000 Hereros.[16] Similarly in 1972 in Burundi, between 80,000 and 130,000 Hutus were killed.[17] In Ethiopia between 1983 and 1984, one million people perished.[18] In the context of Iraq (1915 and 1918), 1.5 million Armenians were killed.[19] Between 1939 and 1945, the Nazis killed approximately 11 million people.[20] In 1992, it is estimated that one million Muslims were killed in Bosnia.[21] In 1965 and 1966, between 500,000 and one million people were killed in Indonesia.[22] It is estimated that betweeen 60 million and 100 million people died under Communist rule in China, beginning in 1949.[23] In Latin America between 1980 and 1984, in the state of Guatemala, at least 100,000 people were killed.[24]

The problems of constitutional order, of world order, and of group dominance and subordination or extermination remain, therefore, important problems for international lawyers and specialists in the law of humanitarianism and human rights.[25] For example, the rules of international humanitarian law address a fundamental problem of how to humanize the "other" in the context of armed conflict, be it "international" or "internal." In the context of war or armed conflict, the hallmark of identification is the "other" (the enemy) and the "us" (the "we"). Thus, it may be seen that the rules of humanitarian law are concerned not with the justification of war as such, but with the limitations that international law and moral order require, viz., humane treatment for the enemy, the "other."[26]

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[14]*See, generally, e.g.,* RUMMEL, DEATH BY GOVERNMENT, *supra note 9;* CASSESE, VIOLENCE AND LAW IN THE MODERN AGE, *supra* note 9; BENNETT, YUGOSLAVIA'S BLOODY COLLAPSE, *supra* note 9; STIGLMAYER, MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA, *supra* note 9; THE UNITED NATIONS AND RWANDA 1993-1996, *supra* note 9.

[15]Arlene Levinson (from the Associated Press), *For This Century's Homicide Regimes, Genocide is a Snap*, *The Gainesville Sun*, 1G, 4G (September 24, 1995), especially the map (*Mass Killings of the 20th Century*).

[16]*Id. See especially* the map (*Mass Killings of the 20th Century*).

[17]*Id.*

[18]*Id.*

[19]*Id.*

[20]*Id.*

[21]*Id.*

[22]*Id.*

[23]*Id.*

[24]*Id.*

[25]The specific response, for example, with respect to the deprivations relating to the war in the former Yugoslavia were a key factor in the creation of the International Criminal Tribunal for the former Yugoslavia, and later, for Rwanda. *See generally* M. CHERIF BASSIOUNI AND PETER MANIKAS, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (Irvington-on-Hudson, N.Y.: Transnational Publishers, Inc., 1996); THE UNITED NATIONS AND RWANDA 1993-1996, *supra* note 9.

[26]This is illustrated in the collection of Burns H. Weston, Richard A. Falk, and Hilary Charlesworth, SUPPLEMENT OF BASIC DOCUMENTS TO INTERNATIONAL LAW AND WORLD ORDER, (St. Paul, Minn.: West Group; 3d

The central normative point of all of humanitarian law is the recognition of the "other" on the basis of a shared, common humanity. If armed conflict is occasioned by the problem of "groups" and the problems of their power-relations, then it may be acknowledged that armed conflict often includes the problem of "minorities," but more broadly, the struggle for dominance, or indeed, freedom from dominance. Moreover, among the key pillars of modern international law are (i) the rules designed to protect aliens,[27] (ii) the international law of humanitarian intervention,[28] and (iii) the international protection of minorities or rules to protect the individual.[29]

After World War II, the protection of human rights has further defined the scope of the problems to which international law must respond.[30] However, the heart and inspiration of the UDHR regime is rooted in the idea that aggression can also be an instrument of domination, and in particular circumstances, aggression identifies both groups designated as "others" and groups

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ed., 1997), 135-336. *See also* Meron, *Towards a Humanitarian Declaration on Internal Strife*, 78 A.J.I.L. 859 (1984) and HUMAN RIGHTS IN INTERNAL STRIFE: THEIR INTERNATIONAL PROTECTION (1987); WILLEMIN & HEACOCK, THE INTERNATIONAL COMMITTEE OF THE RED CROSS (1985); Forsythe, *The Red Cross as Transnational Movement*, 30 INTERNATIONAL ORGANISATION, 607 (1967); Secretary-General's Report on the Tribunal for the former Yugoslavia, Pursuant to para. 2 of S.C.Res. 808 (1993); Security Council Resolution 808, Security Council Doc. S/25704 (1993).

[27]*See* Guha Roy, *Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law*, 55 A.J.I.L. 863, 866, 888 (1961). *See also Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)* (*Provisional Measures I* (Order)), ICJ Reports 3 (April 8, 1993) and (*Provisional Measures II* (Order)), I.C.J. Reports 325 (September 13, 1993); *Anglo-Iranian Oil Co.* Case, ICJ Reports 89 (1951); *Interhandel* case, ICJ Reports 6 (1959); *Barcelona Traction, Light and Power Company, Limited*, ICJ Repports 3 (1970); *Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports 14 (1986).

[28]LOUIS B. SOHN & THOMAS BUERGENTHAL, INTERNATIONAL PROTECTION OF HUMAN RIGHTS (U.S.A.: The Bobbs-Merrill Company, Inc., 1973), Chapter III (Humanitarian Intervention), at 137-211.

[29]For a discussion on international law protection of minorities, see id., Chapter IV (International Protection of Minority Rights: The League of Nations System and Post-World-War-II Arrangements), at 213-335; PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES (Oxford: Clarendon Press, 1991). On the international laws protecting the individual, see, e.g., the following:

1. The Universal Declaration of Human Rights, G.A. Res. 217 (III 1948), U.N. GAOR, 3rd Sess., Pt. I, Resolutions, at 71, U.N. Doc. A/810 (1948); *reprinted in* 3 Weston III.A.1 (adopted by the U.N. General Assembly, December 10, 1948).
2. The U.N. Charter, 1 U.N.T.S. XVI, 1976 Y.B.U.N. 1043; 1945 Can. T.S. 7; 1945 S.A.T.S. 6; 1946 U.K.T.S. 67, Cmd. 7015, 145 B.F.S.P. 805; U.S.T.S. 993, 59 Stat. 1031; *reprinted in* 1 Weston I.A.1 (concluded at San Francisco, June 26, 1945; entered into force, October 24, 1945) especially arts. 1, 55, and 56 (provisions on human rights)
3. International Covenant on Civil and Political Rights (I.C.C.P.R.), 999 U.N.T.S. 171, 1966 U.N.J.Y.B. 193; 1977 U.K.T.S. 6, Cmnd. 6702; *reprinted in* 6 I.L.M. 368 (1967) & 3 Weston III.A.3 (adopted by the U.N. General Assembly, December 16, 196 (G.A. Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316, at 52); entered into force March 23, 1976.)
4. International Covenant on Economic, Social, and Cultural Rights, 993 U.N.T.S. 3, 1966 U.N.J.Y.B. 170; 1977 U.K.T.S. 6, Cmnd. 6702; *reprinted in* 6 I.L.M. 360 (1967) & 3 Weston III.A.2 (adopted by the U.N. General Assembly, December 16, 1966 (Annex to G.A. Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316, at 490); entered into force, January 3, 1976).

[30]*See id.* (SOHN & BUERGENTHAL), Chapter VI: The United Nations as Protector of Human Rights, 505-997, and Chapter VII: The European Convention on Human Rights, 999-1265. *See also generally* RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE (Washington: Carnegie Endowment for International Peace, Division of International Law, 1944). MYRES MCDOUGAL, HAROLD LASSWELL, AND LUNG-CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY (New Haven, CT: Yale University Press, 1980); HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT : LAW, POLITICS, MORALS, TEXT AND MATERIALS (Oxford: Clarendon Press, 1996).

often deemed to be physically undesirable.[31] Thus, the war of Nazi aggression was not simply a war of internal aggression against Jews and other groups inside Germany, it was a war of aggression against all those deemed sub-human by the ideology and practice of Nazi racialism in States large and small.[32]

A close and deadly affinity developed in the context of prejudice and racial domination on the one hand and naked aggression on the other.[33] Thus, in the aftermath of conquest, the "peace" of the concentration camp and the death camp superceded the dynamic of war and created a crisis for international law and moral order.[34] This crisis provided a deepened humanitarian concern because of the fact that grotesque violations of humanitarian values can and do happen in times of war or in levels of armed conflict, not technically "war."[35] These

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[31]For works dealing with the development and impact of the Universal Declaration of Human Rights, see N. ROBINSON, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ITS ORIGINS, SIGNIFICANCE, APPLICATION, AND INTERPRETATION (1958); E. SCHWELB, HUMAN RIGHTS AND THE INTERNATIONAL COMMUNITY: THE ROOTS AND GROWTH OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948-1963 (1964); and A. VERDOODT, NAISSANCE ET SIGNIFICATION DE LA DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME (1964).

[32]See RUMMEL, DEATH BY GOVERNMENT, *supra* note 9, Chapter 6 (20,946,000 Murdered: The Nazi Genocide State) at 111-22. The Nazi state, according to Rummel, killed most likely around 21 million people, among whom were "men, women, handicapped, aged, sick, prisoners of war, forced laborers, camp inmates, critics, homosexuals, Jews, Slavs, Serbs, Czechs, Italians, Poles, Frenchmen, Ukranians, and so on." *Id*. at 111, 113. Rummel comments on the racist beliefs of Nazi leaders, who "believed utterly in the superiority of their Aryan race." *Id*. at 118. He points to a text on Eastern Europeans that was distributed to the SS from the SS main office.

> The sub-human, this apparently fully equal creation of nature, when seen from the biological viewpoint, with hands, feet and a sort of brain, with eyes and a mouth, nevertheless is quite a different, a dreadful creature, is only an imitation of man with man-resembling features but inferior to any animal as regards intellect and soul. In its interior, this being is a cruel chaos of wild, unrestricted passions, with a nameless will to destruction, with a most primitive lust, and of unmasked depravity.

Id. at 118-19 (*quoting* IHOR KAMENETSKY, SECRET NAZI PLANS FOR EASTERN EUROPE: A STUDY OF LEBENSRAUM POLICIES (New Haven, CT: College and University Press, 1961), 38-39). Rummel continues,

> So science proved, they thought. And therefore no inferior group could be allowed to pollute their racial strain . . . . Nothing could allow the master race to be weakened. Therefore, the Jews and Gypsies must be exterminated. So must also the homosexuals and handicapped. So must also the Slavs, not only because of their biological inferiority but also to make room for the superior race to expand and grow.

Id. at 119.

[33]See International Military Tribunal sitting at Nuremberg, *reported in* TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL (1949) (the "Blue Series"); TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10 (1949) (the "Green Series"); *The Charter and Judgment of the Nurnberg Tribunal: History and Analysis*, Memorandum submitted by the Secretary-General (Lake Success, United Nations General Assembly, International Law Commission, 1949).

[34]See generally LEMKIN, *supra* note 32; MCDOUGAL, LASSWELL, AND CHEN, *supra* note 32; SOHN & BUERGENTHAL, *supra* note 30, Ch. 6 & 7; Study of the Question of the Prevention and Punishment of the Crime of Genocide (prepared, Nicodéme Ruhashyamiko, U.N. Doc. E/CN 4/Sub. 2/416 (July 4, 1978)*;* STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY (Oxford: Clarendon Press; New York: Oxford University Press, 1997).

[35]See M. CHERIF BASSIOUNI & PETER MANIKAS, THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (Irvington-on-Hudson, New York, 1996), Ch.7, Section 2 (Armed Conflict of an International Character), 448-54 and Section 3 (Armed Conflicts of a Non-International Character), 454-58.

violations also occur in times of peace.[36] As such, it became imperative that the rules of humanitarianism be extended to armed conflicts not technically "war" in the strictly legal sense.[37] Even more importantly, there was the recognition that regardless of the condition of war or peace, there remained an international obligation to respect the human rights of "others" and "non-others," for that matter.[38]

The Genocide Convention, although inspired by humanitarian values, was the first real human rights treaty.[39] It predates the UDHR (which is a U.N. Declaration).[40] The heart of the Genocide Convention in the sense of its "spirit" is that it responds to the problem of not simply discriminating or dominating "others," but extinguishing or conspiring to extinguish them.[41] In a non-technical sense, the conceptual basis of the definition of genocide must assume certain facts about the nature of social organization on a world-wide basis. First, it must assume the group nature of world society. Second, it assumes that certain enumerated categories of group identity are most intensively identified with the business of mass killings. In this latter context, the symbols of "national," "racial," "ethnical," or "religious" identity are included. These are indeed important culturally-defined symbols of identity; and one does not need a scientific study to indicate that "genocide," as defined in the Convention, requires action based on some culturally-accepted symbol of race, nationality, ethnicity, and belief system. What is critical about this legal instrument is that it must presuppose a social process of world-wide ubiquity in which

> (i) distinctions are made which are culturally understood about race, ethnicity, religion, as well as nationalism;
> (ii) these distinctions serve as the basis for providing security or insecurity, entitlements or disentitlements, the weal of social organization or the woe, and even life and death;
> (iii) these distinctions, thus, incorporate the capacity of society to
>   identify and allocate the benefits and burdens of organized social
> order to culturally identifiable targets of identity.

This leads to a troublesome, but important, point. First, "distinctions" are widespread. They are endemic to society in its most universal sense. Second, how are we to determine the how, why, which, and when of distinctions that enhance or disparage the basic humanitarian values of public order? When, for example, is a distinction "discrimination" that disparages human values? When is discrimination "domination," and when is "domination" simply a conspiracy to destroy a "group in whole or in part," or an act designed to achieve this result? These are practical questions that strike at the core of operational law when judges, national or

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[36]*Id.*

[37]*Id.*

[38]*Id.*

[39]Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277; 1951 A.T.S. 2; 1949 Can. T.S. 27; 1970 U.K.T.S. 58, Cmnd. 4421, 151 B.F.S.P. 682; S. Exec. Doc 0 818-8, at 7-12 (1949); *reprinted in* 3 Weston III.J.1 (concluded at New York, December 9, 1948; entered into force on January 12, 1951). As of January 1, 1994, 111 states were parties to the Convention; on February 10, 1986, the United States Senate gave its advice and consent to the ratification of the Convention.

[40]The Universal Declaration of Human Rights was adopted by the U.N. General Assembly on Dec. 10, 1948, whereas the Convention on the Prevention and Punishment of the Crime of Genocide was adopted December 9, 1948. *See generally* The Universal Declaration of Human Rights, *supra* note 31. *Cf.* The Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 41.

[41]*See* Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 41, at art. II and III.

international, must confront the specific prescription and application of anti-discrimination norms, anti-dominance norms (e.g., the suppression and punishment of the crime of apartheid), or the norms that relate to the processes of mass killings.

On Ethnic and Other Markers of Group Identity

It may be useful at this point to shift gears somewhat and to focus in a preliminary way upon the nature of the problem of prejudice, discrimination, group deprivations, and genocide. Since these problems depend upon a critical culturally understood symbol of ascriptive identity, it may be useful to provide some threshold clarity about the nature of the problems of group deprivations of which such forms as racial prejudice, anti-Semitism, cultural dominance, and genocide are significant outcomes.

Let us start by unpacking the most obvious label of cultural idenitification, viz., ethnic affiliation. The term "ethnic" is often defined in tautological terms - one is, so to speak, a "Serb" because one is a "Serb."[42] The Genocide Convention Implementation Act of 1987 (The Proxmire Act) provides a good illustration of the circularity and ambiguity surrounding the legal issue of group definitions.[43]

For example:

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[42]Groups are the central mechanism for providing individuals with their identity; rather than thinking about individuals "sacrificing" part of their identity when the become part of a group, [we should regard] individual identity as possible only in the context of secure group attachments... The notion of individuals apart from groups...is a product of western thought, not the human experience. MARC H. ROSS, THE MANAGEMENT OF CONFLICT: INTERPRETATIONS AND INTERESTS IN COMPARATIVE PERSPECTIVE (New Haven, CT: Yale Univ. Press, 1993).

[43]U.S.C. Title 18 - Crimes and Criminal Procedure; Section 1091. Genocide.
(a) Basic Offense. - Whoever, whether in time of peace or in time of war, in a circumstance described in subsection
    (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious
group as such
        (1) kills members of that group;
        (2) causes serious bodily injury to members of that group;
        (3) causes the permanent impairment of the mental faculties of members of the group through drugs,
torture, or similar techniques;
        (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group
        (5) imposes measures intended to prevent births within the group; or
        (6) transfers by force children of the group to another group; or attempts to do so, shall be punished as
(b) Punishment for Basic Offense. - The punishment for an offense under subsection (a) is -
        (1) in the case of an offense under subsection (a)(1),
            (FOOTNOTE 1) where death results, by death or imprisonment for life and a fine
            of not more than $1,000,000, or both; and
            (FOOTNOTE 1) So in original.
        (2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any
other case.
(c) Incitement Offense. - Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.
(d) Required Circumstance for Offenses. - The circumstance referred to in subsections (a) and (c) is that
        (1) the offense is committed within the United States; or
        (2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and
            Nationality Act (8 U.S.C. 1101)).
(e) Nonapplicability of Certain Limitations. - Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

1. the term "ethnic group" means a set of individuals whose identity as such is distinctive in terms of common cultural traditions of heritage;
2. the term "national group" means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;
3. the term "racial group" means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;
4. the term "religious group" means a set of individuals as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals.

More scientific efforts suggest membership in an ethnic "group" which exhibits: (1.) common cultural traits; (2.) a sense of community; (3.) a presumed common historical heritage; (4.) a "feeling of ethnocentrism"; (5.) ascribed group identity; and (6.) territorial identification.[44]

These criteria -- "culture," "community sense," "history," "ethnocentric feelings," "ascriptive identity" and "territorial identification" -- are simply too broad to give any precise empirical specification of the ethnic dimension of political behavior, such as behaviors that generate "conflict," "violence," and "war." They are just as circular and opaque as the legal efforts at definition. Stated bluntly, group labels are best explained when group identities are contextualized by the community's processes of effective power as well as its constitutive and "public order" characteristics. Using "ethnicity" as an operating symbol of group identity, let us "unpack" this kind of expression by contextualizing it.

A more promising approach to the "ethnic" factor in social and political processes may be to root our explanations in the psychological processes of individual and group identity.[45] From this perspective, ethnicity may be seen as an aspect of identity of politico-cultural salience. The basic elements of identity are not difficult to comprehend. First, we start with the individual self-system, the "I." The "I" is born into a family or primary kinship unit where the sense of the "I" is broadened to include those figures through whom one's intimate needs and gratifications are secured. The "I" gradually internalizes these "symbolic" parent and sibling figures as part of an ever evolving and expanding "we" self-system. However, the boundaries of the "we" are not limitless. The family or kinship unit of primary affiliation may constitute a "boundary" of the "we" for the individual self-system in which other similar units are symbolized in the negative as either the "non-we" or more affirmatively as the "other."[46]

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[44]*See* PIERRE VAN DEN BERGHE, THE ETHNIC PHENOMENON (New York: Elsevier, 1981), 237-250; MICHAEL BROWN, ETHNIC CONFLICT AND INTERNATIONAL SECURITY, *supra note* 2, at 4-5.

[45]Social Identity Theories are particularly good in explaining how minority and majority groups define themselves as such, and how majority-minority conflict develops through stages. *See* TAJFEL, HENRI HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY (Cambridge, UK: Cambridge Univ. Press, 1981); *see also* D. M. Taylor & D. J. McKirnan, *Theoretical Contributions: A Five-Stage Model of Intergroup Relation,* BRITISH JOURNAL OF SOCIAL PSYCHOLOGY, Vol. 23: 291- 300 (1984).

[46]Expanding interdependence within a divided world arena may not necessarily undermine chauvinistic identities. On the contrary, both direct and reported contacts with alien cultural mores and lifestyles may enhance preoccupation with the self. Over longer time intervals, the preoccupation with the self may lead to a reshaping of personality and culture by the incorporation of traits of the 'other.' However, this incorporation does not necessarily lead to identification with all cultures and all peoples.

Precisely how the boundaries of identity are drawn between the "I," the contingent "we," and the outgroup, "non-self" or "other" represents a great challenge. This centers on the sense of "community," the integration and cohesion of the nation state, the coherence and viability of regional alignments for the myriad purposes encompassed in the "common interest" (i.e., collaboration for security, for economic advantage, for the promotion of human rights in the broad sense of global solidarity). The ultimate challenge for those who believe in a public order that makes human dignity on a global basis its most critical priority is whether the boundaries of the "I" and the "we" can be extended with sufficient coherence and sustainability to support an identification with the solidarity and dignity of humanity as a whole. The United Nations Charter aspires to this kind of system of identity.[47]

Progress has been made in expanding the boundaries of parochial (or chauvinistic) identities to more inclusive levels.[48] Yet, in a world of ubiquitous insecurity (political, military, economic, as well as cultural) the reinvention of chauvinism and nativistic dis-identity with humanity as a whole, as well as the denial of our mutual interdependence and interdetermination, lurk around the corner in some parts of the world. The problem of "ethnic" conflict generates important empirical questions: What is the ethnic identity; what is its relationship to "political" identity? How are political and or ethnic identities shaped and developed over time? Is there such a thing as an anti-democratic, human rights denying system of identity?

The normative question, in my view, is critical to those who seek normative guidance in the description, evaluation and predictive prospects for a meaningful resolution of so-called "ethnic" conflicts: What "future" system of identity is desirable? What kind of future system of political identity should scholars and activists promote and defend for a defensible world order? In my view, the very conception of the "ethnic" remains both undefined and rather amorphous.

The phrase "ethnic identity" is often tautologically defined.[49] Ethnic identity is meant to designate "national identity," and correspondingly, national identity is ethnic identity. It will remain so unless we are willing to understand it in the context of actual social and power

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[47]The United Nations Charter incorporates the identification of solidarity and dignity of humanity as a whole in its opening paragraph:

> *We the peoples of the United Nations determined to save succeeding generations from the scourge of war*, which twice in our lifetime has brought untold sorrow to mankind, *and to reaffirm 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, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, *and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security*, and to ensure, by the acceptance of principles and the institution of methods, that armed forces shall not be used, *save in the common interest*, and to employ international machinery for the promotion of the economic and social advancement *of all peoples*, *have resolved to combine our efforts* to accomplish these aims.

Charter of the United Nations (as amended), 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1945) (signed at San Francisco on June 26, 1945; entered into force, October 24, 1945; latest amendments are at 24 U.S.T. 2225, T.I.A.S. 7739) (emphasis added).

[48]The framework of human rights identification is a typifying example. Identifications based on liberal nationalism provide potential for more inclusive identifications.

[49]For an analysis of the manipulation of the definitions of ethnicity, see WAR AND ETHNICITY: GLOBAL CONNECTIONS AND LOCAL VIOLENCE (David Turton, ed.) (Rochester, N.Y.: University of Rochester Press; San Marino (R.S.M.): Center for Interdisciplinary Research on Social Stress, 1997).

processes. What we label "ethnic" or "national" identity is more generally the appropriate culturally transmitted sign or symbol by which the individual self-reproduces the "I," the "we," and at the same time internalizes by this symbolic-cultural marker, the "other" as in another. These symbolic pegs or markers might include color, racial pedigree, group affiliations, age, birth status, language, religion, ideology, class status, caste position, gender differences and so on.

To begin to understand the social process behind the formation of root identifications, one must account for the conditions that shape personality formation in early childhood.[50] Innocuous child rearing and nurturing practices may, in sum, amount to "deprivations" from the perspective of the child, but may be viewed as "normal" from the adult vantage point. Early years are crucial in the individual becoming conscious of the self (i.e., becoming aware that the self is an "I"). A vital part of early childhood development is the emergence of an awareness of individuals other than one's self (non-self others).[51] Some of these "selves" are internalized as a "we" and some as the "other" or as "they."[52] It is often thought that anxiety, insecurity and allied deprivations influence or condition the individual's conception of the self as an "I" will be defined to include "others" in the sense of the "we."[53] In other words, early years shape fundamental identification patterns and determine the essential "I" and contingent "we."[54]

Patterns of nurturance and early socialization do not take place in a vacuum.[55] Children are born into contexts in which the facts of social diversity are ubiquitous. The patterns of social

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[50]*See* ALBERT BANDURA, SOCIAL FOUNDATIONS OF THOUGHT AND ACTION: A SOCIAL COGNITIVE THEORY (Englewood Cliffs, N.J.: Prentice-Hall, 1986).

[51]Every function in the child's cultural development appears twice: first, on the social level, and later, on the individual level; first, between people (interpsychological) and then inside the child (intrapsychological). This applies equally to voluntary attention, to logical memory, and to the formation of concepts. All the higher functions originate as actual relationships between individuals. L. S. VYGOTSKY, MIND IN SOCIETY: THE DEVELOPMENT OF HIGHER PSYCHOLOGICAL PROCESSES (Cole, et al., eds.) (Cambridge, MA: Harvard University Press , 1978). Symbolic interactionism emerges from the Chicago School of Sociology in the 1930s and later, particularly from the work of George Herbert Mead. The central premises of symbolic interactionism are as follows: People understand things by assigning meaning to their experience. Human perception is always mediated by a filter of symbols. Meanings are learned in interaction between people. Meanings arise from the exchange of symbols in social groups. All social structures and institutions are created by people interacting with one another. Individual behavior is not strictly determined by prior events, but is voluntary. The mind consists of an internal conversation, which reflects interactions one has had with others. Behavior is enacted, or created in the social group in the course of interaction. One cannot understand human experience by observing overt behavior. People's understandings -- the meanings they assign events -- must be ascertained. GEORGE H. MEAD, MIND, SELF AND SOCIETY FROM THE STANDPOINT OF A SOCIAL BEHAVIORIST (Chicago: University of Chicago, 1934).

[52]*See* T. F. Pettigrew, *The Ultimate Attribution Error: Extending Allport's Cognitive Analysis of Prejudice*, PERSONALITY AND SOCIAL PSYCHOLOGICAL BULLETIN, 5, 461-476 (1979).

[53]These conceptualizations occur across contexts. Political opinions, for example, are "badges of social membership", declarations of social identity. M. BREWSTER SMITH, JEROME S. BRUNER, AND ROBERT W. WHITE, OPINIONS AND PERSONALITY (New York: Wiley, 1956).

[54]It must be pointed out that socialization continues from infancy through the end of every individual's life span as various facets of society occur across the life course of an individual. Childhood socialization is stressed here, due to its relative strength and salience to the present context. W. R. LOOFT, *Socialization in a Life-Span Perspective: White Elephants, Worms, and Will-O'-The Wisps*, GERONTOLOGIST, 13, 488-497 (1973).

[55]The average child in the United States sees over 20,000 commercials per year. R. P. ADLER, B.Z. FRIEDLANDER, G. S. LESSER, L. MERINGOFF, T. S. ROBERTSON, J. R. ROSSITER, AND S. WARD. RESEARCH ON THE EFFECTS OF TELEVISION ADVERTISING ON CHILDREN: A REVIEW OF THE LITERATURE AND RECOMMENDATIONS FOR FUTURE RESEARCH, report prepared for the National Science Foundation, Research Applications Directorate, Research applied to National Needs (RANN) -- Division of Advanced Productivity Research and Technology (Washington, D.C.: NSF: U.S. Government Printing Office, 1977).

stratification (including a consciousness of social diversity) represent a culture-context that is transmitted intergenerationally in varying degrees of symbolic intensity to every personality system.[56] The anthropology of social differentiation is much disputed. That it exists is undisputed. That it has been accentuated in contemporary society by the division of labor and specializations that attend it also commonplace. When patterns of social stratification emerge more concretely from the social process, and when these patterns have a close alignment with the distribution of power, wealth, and indeed all other base values which sustain and modify these class and caste divisions, powerful symbol-events (generated from these interactions) create the conditions under which the "I" defines the "self" by including, within the "we," groups that are most closely identified with the "class," "caste" or "ethnic" position of the kinship (or family) unit of primary affiliation.[57] The key factor which lays the foundation for the exclusivist identity lies ultimately in the seemingly innocuous patterns of child rearing and nurturing.[58]

The ability of the self to identify with an in-group and to identify and exclude an out-group appears to derive from events relating to identification patterns that are accorded a symbolic character.[59] Thus, such facts as sex, color, race, group affiliation, age, birth, language, religion, political belief, appearance, class, and intellect are the ubiquitous symbolic pegs that the individual internalizes as part of the "we."[60] The implication of this analysis is that ethnicity is a part of the socio-political processes that vest political importance to symbolic "markers" that shape patterns of affiliation, loyalty and group identity. Needless to say, the same individual may experience a multitude of "group" lives of varying levels of intensity,[61] and correspondingly internalize a plurality of "symbolic" markers as that person experiences acculturation and political socialization. But the group "label" is the critical condition of inter-group conflict and

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[56]Take a comparison between Western socialization and Japanese socialization for example. "The Western concept of 'self' refers essentially to the uniqueness of the individual, or the substance of the person, which has maintained its sameness and continuity over time and across situations, although it is recognized as a product of interaction with other humans. Whereas, the Japanese concept of 'jibun' refers to one's sharing which is something located beyond the boundary of 'self' in the Western sense. The amount of one's sharing varies depending upon dynamics of a situation. 'Jibun' does not have a definite consistent boundary." Y. MINOURA, LIFE IN-BETWEEN: THE ACQUISITION OF CULTURAL IDENTITY AMONG JAPANESE CHILDREN LIVING IN THE UNITED STATES (Ph.D. dissertation, anthropology) (Los Angeles: Univ. of California, 1979).

[57]The "knowledge-gap hypothesis" states that people of higher socioeconomic status acquire information from the media at a faster rate than do those of lower socioeconomic status, thus increasing the difference between the two groups in the amount of information held on any issue. P. J. Tichenor, G. A. Donahue, and C. N. Olien, *Mass Media and Differential Growth and Knowledge*, PUBLIC OPINION QUARTERLY, 34, 158-170 (1970).

[58]*See* HARRY C. TRIANDIS, INDIVIDUALISM AND COLLECTIVISM (Boulder: Westview Press, 1995).

[59]A simplified model of information processing is used here for relevancy and brevity. A more complex model is provided, but is not required for a basic understanding of this discussion. *See* R. S. WYER & T. K. SRULL, THE PROCESSING OF SOCIAL STIMULUS INFORMATION: A CONCEPTUAL INTEGRATION (1980), *in* PERSON MEMORY: THE COGNITIVE BASIS OF SOCIAL PERCEPTION (R. Hastie, T. M. Ostrom, E. B. Ebbersen, R. S. Wyer, Jr., D. L. Hamilton, and D. E. Carlston, eds.) (Hillsdale, N.J.: L. Erlbaum Associates, 1980).

[60]For an overview, see THE FUTURE OF SOCIAL PSYCHOLOGY: DEFINING THE RELATIONSHIP BETWEEN SOCIOLOGY AND PSYCHOLOGY (RECENT RESEARCH IN PSYCHOLOGY). (C. W. Stephan, W. G. Stephan, T. F. Pettigrew, eds.) (New York: Springer Verlag, 1991).

[61]It has been shown that to the extent that it decreases the salience of categorization on any one dimension, multiple-group categorization decreases bias. Ethnic groups were crossed with a laboratory manipulation of group membership and more intergroup bias was found when memberships along these two dimensions coincided than when they were crossed. W. DOISE, *Intergroup Relations and Polarization of Individual and Collective Judgments*, JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 12, 136-143 (1969).

genocide and mass murder.[62] In short, critical to the reproduction of mass murder and heinous human rights violations is the marking of the other and the generation of emotional support effectually (negative sentiment) to give operational effect to these dark emotions.

The Focus on Positive Sentiment/Affect, Freedom and Equality

Discriminations in law and social practice are ubiquitiously based on gender or sexual identity. From a global perspective it is largely women who are discriminated against because they are women. Other factors may contribute to the scope and virulence of unfair discriminations, e.g., race, class, crises, cultural inertia, religious myopia and more. In the context of contemporary ethnic conflict, such as that in the Balkans, women were targeted as an object of violent, strategic warmaking. Thus, the conflict produced rape camps, forced impregnation, and processes that specifically sought to depreciate the sexual idenity of women.

The discrimination which victimizes gender or sexual identity, targets a condition of being. It is a physical and biological fact. It is a fact, which can rarely be altered or changed. It therefore represents unfair discrimination based on a condition of being. This is a condition that a victim cannot alter or change or should be required to. Indeed, it should not alter or change from the perspective of the rights of personhood of the woman. This explains the salience that modern human rights law vests in the human rights of women. It is clearly analogous to other forms of human rights violations based on the ascription of identity as a condition of human rights violations.

The human rights of women are a matter of critical global concern in this millennium. Historic and cross-cultural experience underlines the global depreciated status of women. Cultural domination be it gender or sex based, is rooted in anthropormorphic norms which reify cultural experience as "patriarchial." In general this means that the cultural expectations implicating gender and sex start with an implied perspective of male preference, male regulation and often, male domination.

In a recent decision of the Constitutional Court of South Africa (Bhe v. Magistrate Khayelitsha & Ors. 2005 (1) BCLR 1 (CC), 15 Oct. 2004), the Court was confronted with an inheritance case. The wife was married under African customary law. She had children. The husband died fortuitously. Her right to inherit, on her own behalf and on behalf of her female children was challenged by a stranger. The stranger was a male (distant relative of the husband), unknown to the wife or her children. He claimed that he had a primary right to inherit as the oldest male member of the tribal clan. In this case, both the deceased and the wife lived in an urban area and were working normal jobs in the wage labor economy. For the oldest male to take would have been not only to expropriate the children of their birthright, but would have expropriated the wife's property and earnings as well. The Court ruled for the wife. The Court would not countenance a rule of custom based on male patriarchy. The principle of equality and respect in the new Constitution, trumped the customary rule.

The institution of patriarchy invariably means female subordination and in the Bhe case, exploitation and appropriation of the earnings of a woman. Matriarchial societies do exist. They are the exception not the rule. Matriarchial societies are not generally known to subordinate and

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[62]BROWN, *supra* note 2, at 6-12, discusses a three-pronged approach to pinpointing the causes of ethnic conflict (at the systemic level, the domestic level and the perceptual level), much of which is directed by the intensity of acculturation and political socialization experienced by these groups.

dominate men.[63] The culture of patriarchy is invariably reflected in the cultural and legal rules that make women second-class citizens. It may be of value to simply canvas some obvious illustrations from comparative experience to see how deeply resilient cultural rules and expectations are to change constistent with human rights standards and expectations.

In South Africa, it is a common practice (African customary law) in traditional society that a bride price must be paid by the bridegroom's family to the family of the bride. This means that a male who cannot afford an elevated "price" will have his freedom to marry limited by an inability to meet the demanded price. The institution in South Africa bride price is known as the "labola." The labola is normally given in terms of cattle. In short, a brides worth to her family and the bridegroom is measured in the currency of cows. The institution of 'labola' has a tenacious hold on traditional marriage customs and the freedoms to marry. Change will doubtless be resisted and practice will tend to ignore the claims for change.

In India, the institution of dowery, had a tenacious hold on the freedom to marry. The bride's family would have to organize a store of precious metals and jewels as part of the dowery of the bride for transfer to the family of the intended bridegroom. Marriage was often an exchange of a woman for value, for the 'privilege' of marriage. If the dowery was not sufficiently lucrative, the bride in the custody of the husband's family would simply be assigned the role of a servant. Freqently, the possibility of getting rid of a bride whose dowery was modest, provided an incentive for improvident accidents in the home of the husband. The bride "may" perish in a household accident, thus providing the husband a second opportunity of selling himself for a dowery in the marriage market. The dowery sometimes provided an incentive for scandalous human rights violations inside the family. These atrocities were difficult to police by the state. The state law now prohibits this practice, but it still apparently has some cultural traction.

In the tradition of the Common Law, a woman would often have no legal identity apart of that of the husband. The parties would marry, and became "mythically" one, but he was the one. Her property became his property. It was widely held that the married women's acts of the 19th century had less to do with protecting women's property rights from male patriarchy than with the reality that women now in the industrial labor market would make bad workers if the husband had the right to expropriate their wages. Here women's rights evolved as strut for capitalism rather than a concern for the dignity of women.

In the tradition of Islam, one of the most obvious examples of patriarchy is found in the principle that a husband may unilaterally end a marriage by simply pronouncing three ritual words (talak, talak, talak). This was not a right given to women. These examples are rather simple illustrations of the rootedness of patriarchy in cultural expectations, which validate male supremacy and female subordination.

These illustrations are not meant to obscure the complexity of gender and sex in the broader picture of social coexistence. The working categories: 'male', 'female' have a correspondence with obvious markers in psyco-social experience. These categories reinforce the processes of how we conceptualize the concept of "female" and "maleness." These categories implicate normative priorities, which are often based on the interplay of symbol, myth and religion. As cultural rules, they include a claim to cultural distinctiveness and moral preference.

For the above reasons, human rights theorists confront the question of the clash between human rights mandates, and the mandate of cultural diversity, which implicates the cultural relativism of the "other." The rules 'tolerated' by cultural relativism, justified by diversity, may

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[63] The State of Kerala in India is reportedly matriarchial.

be oppressive or discriminatory with regard to women's rights. Cultural relativism is often justified by the assumed virtues of diversity as an intrinsic 'good.' If the 'good' of diversity is not self-justifying, then the reasoning is supplemented by the notion that the goodness of diversity is supported by the goodness of tolerance. Thus, the categories of maleness and femaleness become infused with culturally constructed justifications of morality and tradition. In the context of social process, these constructions - custom, tradition, or legislation - are prescribed, applied and enforced with social pressure or organized coercion which may be public, or which may be organized in the private sphere with a tacit consent of the elite in the public domain.

There is variability about issues of gender and sexuality, and their interrelationships are not simple. They also implicate complexity; they implicate intimations of what it is to be human and to experience feelings and emotions without unreflective or unrestrained social pressure or repression. For example, a person whose social markings are male for gender purposes may have a sexual orientation, which targets males, or targets both males and females. In this sense, there is a clear distinction between the notion of gender and the notion of sexual orientation. Similarly, a person conventionally marked female may have a sexual orientation, which targets other women or men and women. In this sense, the issue of gender and sexual orientation implicates a complex range of understandings about the individuals perception of the self and the social ascription of what is permissible for the self's construction of the self. Historically, people in this social group experience persecution.

Another aspect of the gender/sexual orientation issue is the case of the pre and postoperative transsexual. A pre-operative transsexual is a person whose gender and sexual orientation is either male or female, but that person is going through the preliminary procedures for eventual surgical transformation. This may involve hormone therapy and cross-dressing. What exactly is the approach of the law to a person in this situation? A post-operative transsexual is a person who wants and gets the hormonal and surgical treatment for reassignment from one gender to another.

The courts have had to grapple with what the legal effects are of such a transformation. The English courts have held that the medical procedures cannot change the biological facts. These facts are in the structure of the chromosomes of the person. If the chromosomes remain unchanged, which is invariably the case, the operation does not legally change the person from male to female or female to male. American courts have gone in a diametrically opposite direction. Those courts hold that it is not a matter of chemistry or chemical reality. The central fact of legal salience is the psychological reality of the post-operative transsexual's condition of being. If that post-operative reality is consistent with the psychological reality of what the person feels the person is, that is the reality, which is recognized and given legal effect.

Society places limits on whatever one's feelings are about one's true self. Such feelings, predispositions or orientations cannot be displaced as sexual aggression, predatory sexual practices and the abuse of others. The community and the state seek to protect its vulnerable members who may from time to time be targets of predatory behaviors regardless of the degree of maleness, femaleness or any other aspect of the gender and/or sexual orientation. This is a complex and important discourse. It seeks to understand and mediate between self's perception of the self and the appropariateness of the social and cultural expression of this indicator of personhood. To the extent that the expression of personhood in this sense, invades the boundaries of others by exploitation, coercion, or aggression such conduct must invariably be restrained or

proscribed. This is so when those "others", targeted by such conduct are vulnerable and depend on human restraint for their physical and psychological survival and well-being.

Myth, Belief and the Destruction of Affect in the Evolution of Gender and Sexual Values

The interplay in historic terms of culture in the form of politics and myth systems based on belief has invariably meant that politics is driven by both extistential claims as well as the elaborate justifications of comparative myth systems in which religion if often dominant. Culture is infected with rules and in particular, moral rules. Religion answers the question, whose rules are they? Since they are transcendent, they cannot be changed. They can be interpreted. Practical politics and its offshoot practical law will thus use such primary rules as it may selectively appropriate and implement.

The rules may provide a preference to one group of power claimants and not another. However, the governing process is structured, there will be a contestation for controlling a myth system, which validates the power be it formal and or effective. The operative rules of sexual relationships and their boundaries are thus justified by recourse to the religious myth and the moral rules that the religious/operative elite prefers. Since religion itself is an institution of critical dualism, the bridge between Man versus God. Religion invariably holds sufficient rectitude to compel social submission to religion in the culture. However, to sustain that social consequence, religious elites also use the power of religious myth to influence the dynamics of power, wealth, affect, education and all other social values. In short, religion as a form of rectitude could serve as a base of power to secure and consolidate its institutional position of preference with regard to all other social forms, and a powerful religious myth will often mandate submission to the will of God as understood by the controlling religious elite.

Religious elites seek to use their symbols and beliefs to promote themselves in power, to acquire wealth and very critically, to acquire considerable power over the most intimate and critical components of individuated humanity: the power over how we must feel. Religion often seeks to monopolize the control over the process of developing, displacing and reproducing a most misunderstood but critical component of social process and human identity. That component is the structure and process, which seeks to control and thereby regulate the giving and the receiving of "affection" (The giving and receiving of positive sentiment).

It is therefore one of the most ritualized and often sanitized elements of the dynamics of human feeling which is pre-empted by the claims of institutionalized religion. Religion continually insists cross-culturally that God or the universal spirit or however concrete or opaque the Supreme Being is symbolized, "love" itself. Other forms of displacing love are therefore innately deviations from the supreme obligation and ultimately require a distinctive religious imprimatur of either permissibility or restraint. When one uses an observer's focal lens, one sees the comparative differences that evolve from how one culure and religious tradition sanctifies certain permissibilities and punishes deviance according to the lines drawn in a particular culture and its distinctive religious experience and tradition.

Reconstructing the Adam and Eve Myth and Analagous Comparative Myth

It may be of some value therefore to start with a biblical story of Adam and Eve. This story is widely known cross culturally and directly shared with Christianity and Islam. Adam and Eve are God's creation and live in Paradise in the Garden of Eden. They are innocent and

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uncontaminated by gratification or the desire for possession. This tranquil state of innocence is ended when Satan in the form of a serpent persuades Eve to eat the forbidden fruit of the tree of knowledge and she persuades Adam to do the same. It is conventionally assumed that the knowledge acquired by Adam and Eve is about conscious sexual intimacy. Such knowledge if experienced mutually is created out of sin and correspondingly, the fruit of such knowledge (children) are conceived in sin. This is the original sin myth. The idea that children are conceived in sin is an utterly pernicious idea. More than that, the idea that a child who is innocent and who is not absolved from sin must spend eternity in purgatory is another dark fantasy, completely unbecoming of God the Creator, the loving and beneficent God.

The story is of course a religious myth and may be therefore interpreted as a myth, which is designed to teach, educate and to enlighten. This myth may do the opposite unless one gives it a construction in keeping with the apparent nature of God as God. If the story was originally a myth as a gift from God, what was the lesson that God sought to communicate? Of course, the conventional wisdom is fear God, God is vengeful and unforgiving. The innocent suffer even more than the guilty. That is only one interpretation and one that could suit the desire for social control based on the notion that every time a couple feels a natural sexual urge, they are morally flawed, laced in sin and fit for hell. Is there an alternative Construction of this "story"?

A plausible and possible more edifying alternative is that God is a God of love. The creation of Adam by God was an act of love. The creation of Eve as an aspect of both God and Adam was the creation of love inclusively. The nature of Gods love is that it is love without boundaries. Thus the love of God for Adam and Eve is an unbounded love. The love of Adam and Eve for each other and for God is an unbounded love. That is the love ideal. Love means the complete merger of the self with the other, the woman and the man and with God whose nature includes man and woman. What then disturbs this relationship of unbounded love? The metaphor of the apple is really a metaphor that the unbounded love ideal is to earned and be something that must be learned. We learn this by learning to love one another, and love is the vehicle for breaking down the barriers of otherness. When we learn true love and break down the barriers of love between a man and a woman, we also learn the pathway of unbounded love to God.

Thus, Adam and Eve in acquiring sacred knowledge actually know mature sentiment. They have received God's love as a gift. Now they must earn God's love as a component of growth and emotional maturity. They must learn to love each other in order to have children and the children must in turn grow and learn to love and replicate the cycle of love as an unbounded ideal between people amongst themselves and with God.

The boundaries between God and Adam, God and Eve, as well as the boundaries between Adam and Eve, represent the concept of human self-determination, free choice and the capacity (boundaries of selfhood) to make moral and ethical choices consistent with human responsibilities for mutual caring and development. However, the boundaries that are implicit here are the boundaries of individual self-awareness, distinctiveness and essential personhood. Thus, self-knowledge is about the importance of the ego for the human being, the ego is the foundation of the concept of respect and the concept of respect establishes that every human being has a boundary within which that person's human capacity develops.

The relationship of person-to-person and to God is in part a relationship of knowledge and awareness of wisdom and spiritual growth, which starts with the boundaries of the self. The individual must understand love and when it is experienced it creates the greatest possible achievement in human emotional experience and also one of its greatest threats. Love is not trivial. To properly experience it, it involves the inter-substitutability of the object of ones love

on a reciprocal basis. To drop the boundary is to promote unbounded love, to drop the boundary and be exploited or abused brings abuse to an acme of deprivation. It is precisely this kind of love that is characteristic of God's unbounded love. It is a matter that requires responsibility, growth, generosity and ultimate altruism. Thus the Adam and Eve myth is a powerful story and its truths are timeless. Such is the power of myth.

Finally, there is the question of Adam and Eve in the Garden of Eden with fully developed sexual organs apparently having no sexual desire. This is an odd assumption. Perhaps the better assumption is that in a certain state of nature, the relationship between Adam and Eve does not preclude the mutual giving and receiving of sexual intimacy. Since it is not exploitive, it is natural and mutual and is almost a religious expression of the unboundedness of love. However, with the recognition of boundary in the self-system, comes the recognition of ego and ego demands. These demands pit the idea that both Adam and Eve effectually compete to take something from each other. Eve is there essentially to gratify Adam from Adam's male perspective and Adam is there to gratify Eve from Eve's female perspective. Thus, the boundary would see the relationship now as a matter not of the intersubstitutability of the man and the woman in the relationship, but rather a competition as to who can get maximum gratification for self.

This is therefore corrosive of love as dissolution of boundaries and reinforces the idea of the self as an atomized entity incapable of taking the steps toward transcendent love. This therefore I would suggest is put there as the challenge of being human and is perhaps the proper meaning of the Adam and Eve myth. The boundaries of the self are necessary and do not drop automatically. God does not expect them to be dropped automatically. The boundaries are there for us to learn and grow and be worthy of the love of God and at least on earth, the love objects of one's life. In the first instance, the self must have a boundary in which it can learn to love itself and then dissolve that boundary when appropriate to broaden the circle of love inclusively. The reduction of the Adam and Eve story to an epic transgression in which is condemned in the eyes of God and which is replete with the notion that sin engulfs the innocent and the guilty alike, may be a particularly cruel distortion of a plausible construction in keeping with the idea of a loving God. Perhaps this is a high point of misunderstanding and hypocracy. Other interpretations would seem to be less offensive to common sense ideas of moral aspiration.

Tradition and Sexual Pluralism

In the Old Testament, men are assumed to have a divine sanction to have multiple wives. A man may have multiple wives concurrently. God forgave and blessed David who murdered the husband of a woman with whom he was infatuated. David was rewarded with a son, by Bathsheba. His name was Solomon who was the wisest of the wise. Solomon, too, loved women by the multitude. According to the Bible, Solomon had hundreds of wives and concubines. It is also recorded in the Bible that Solomon not only married the Pharoh of Egypt's daughter, but a substantial number of princesses from other neighboring kingdoms who were not Jewish. Possibly his wisdom reflected or anticipated the importance of cultural diversity and the love for the women of the other.

Among Solomon's great sexual experiences, was the African Queen of Sheba. Apparently, she was black. The fact that Solomon never gave up in his effort to seduce her assures us that Solomon with divine blessing was one of the great precursors of diversity and sexual integration in traditional Jewish history. Jesus of Nazareth was of course a decendent of

David/Solomon line and therefore the bloodline may include an African/Jewish line of prominence as well.

The Old Testament of the Bible does not endorse monogamy. It does not repudiate polygeny or concubinage. Religious apologists often suggest that in fact God does not approve of plural marriage because it disrupts family and social life. This however seems to be an after the fact rationalization better articulated in terms of contemporary ideas of dignity and feeling than in the psychology of antiquity.

It would appear that in Hinduism, the Hindu myths simply overmatch the Jewish tradition. Krishna, at least in popular culture, appears to be an enormously attractive prospect for women. The girls love him and he graciously reciprocates.[64] Krishna's passion and love as God is limitless. But Hinduism goes further in its mythology. In the Mahabaratha, the Queen Draupadi, reportedly a woman of astonishingly beauty and character, is married to several brothers. Thus, as a matter of principle, the Hindu myth not only permits but also actually makes a woman with multiple husbands an iconic heroine.

Islam provides for polygamy. However, the religion places a prudential limit on the number of wives that a man may have simultaneously. The holy Koran also stipulates that all women married to the same man must be treated equally. How far this goes is not precisely recorded. Some Islamic theorists hold that the standard is impossible to meet for most men and, therefore, this further limitation on polygamy is in essence a rule that prohibits it in fact although making it permissive in form.

After the Iran-Iraq war, the Iranian Republic experienced a population loss of men who were killed or were casualties of the tragic war. The religious elite developed a policy for a more flexible and equitable distribution of men and women, given the reality of the shortage of men and the abundance of eligible women. The Aytollahs came up with the idea of limited term marriages. That is to say, a man and a woman could enter into a contract of marriage for a fixed term and then leave. If there were children, different rules would apply. This example is used because it would suggest an utterly radical idea in terms of giving and receiving of affect with the expectation of sexual intimacy.

The creators of this system, however, see themselves as fundamentalists and conservatives. Women wear coverings that clearly show a depreciation of any ostentatious projection of self in terms of attractiveness. This therefore is an important illustration of a religious elite, which is particularly attentive to the issue of the distribution of affection and respect. Perhaps this is based less on God's revealed morality than a politically astute recognition of a serious social problem. Here we have a depletion of the male population by an unfortunate war and therefore there are more eligible women than men in the marriage market. The religious elite were not going to be defeated by gender demographics. They manipulated the rules for political benefits and gave those rules a religious blessing.

Expectations Relating To Sexual Relations and Family Forms

We see in many societies today the control and regulation of affect has taken interesting twists and turns accounting in part for the survival of traditional religious beliefs. It is commonly assumed that in the Judeo-Chrisitian tradition that there is a relationship between sex and sin. We

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[64] In the Mahabaratha it is indicated that it is highly appropriate for women to experience the pleasures of appropriate sexual intimacy. There is even a suggestion that women experience eight times more pleasure than the men. I am uncertain how this statistical calculation was arrived at.

have referred to this in the story of Adam and Eve. The widely held interpretation is that the act of sexual intercourse is immoral and sinful and organized religion condems it. State policy also seeks to regulate and possibly punish it in certain contexts. Marriage provides an exception for sexual intercourse that is permissible. Permissibility does not often extend to the conception of a child. In traditional terms, whether the parents are married or not, the child is still conceived in sin. The logical consequence is that the child in utero is conceived in sin. If the child is aborted for any reason, the child is condemned to purgatory. Baptism cleanses the sin on a child, but if abortion occurs prematurely then no baptism happens and the child is consigned to purgatory. If one accepts the belief behind the myth, the prohibition of abortion is a humane outlook.

The child should be baptized to save its soul from purgatory. However, social reactionaries see the cleansing of sin as the end of the moral obligation. If the child dies in circumstances of extreme deprivation such as from hunger, exposure to cold, neglect, or is abused, that does not garner the concern of social responsibility when compared to the benefits of baptism. In Lloyd deMause's essay in the Journal of the History of Childhood, Vol. 1, p.1., deMause draws our attention to the state of childhood in the 18th century Europe. European cities had child "dumps" where the unwanted newborn children were simply discarded.[65] This myth is no longer tenable today. It has been replaced by a more powerful child-centered moral proposition, rooted in human rights that a child is a being per se.

Under the moral assumption that the right to life is absolute, a woman exercising reproductive choice may face condemnation of religion, and possibly the criminal law power of the state. The child's right to life does not extend so far as to require the state to pay for the costs of pregnancy, birth and responsibilities for care and nurture after birth. Perhaps the assumption is that the family, the husband or the partner will pay the bill. But where this does not happen, there is no further social responsibility. In particular, those who insist on the right to life oppose the right to continued life, which involves health and social services expenditures. Thus, the absolutist right to life principle is destroyed by social reactionaries who support their position selectively with pious deference to confessional beliefs.

In this sense, the new religious right like the old religious right is exercising a critical degree of control over women who bear the responsibility of pregnancy, birth and after-birth care but see no moral concern for human well-being for both mother and the child. Thus, this particular illustration is underlined in the decision of the Congress of the United States not to fund health-access legislation for millions of American children who are now at risk with no effective access to needed medical services.

In the United States today the most important family form, is the dyatic family form. The second most important family form is the single parent family form usually with the mother as the head of the household. Thus, the dilemma of how far family values extend when it comes to the allocation of social responsibility to women who bear the costs of support, child-caring and, at the same time, must be active in the workplace in order to survive or be parodied in the political market place as welfare queens.

The state of Florida is in a state of crisis over the question of how far the state will support childcare for women who are engaged in the workplace. Women at the lower end of the

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[65] It is perhaps remarkable that the concept of a child as a being per se rather than a "small" adult is a recent insight generated by deepened understanding of the human prospect. In a famous essay Lloyd deMause, the Journal of the History of Children drew attention to the fact that 17 and 18th century Europe cities had "dumps" for discarded children. Philis Aries, Centuries of Childhood showed human lack of insight into the child as a being per se.

economic spectrum may find that half their salary will be paid into childcare and is by no means obvious that cheap childcare is not a risk to the child. Yet, one of the least popular policy positions of the major political parties is the role of the state or the federal government in providing affordable and safe child care for women who want to work and want to be as self-sufficient as possible.

Taking the women's issue in another direction, when it comes to the role of the state in seeking to control and regulate intimacy, feeling and affect today, a vast number of states worldwide proclaim themselves to be states that legislate the validity of monogamous marital forms. In many traditions, this form was cemented into place by limiting access to divorce. For the wealthier citizens, the solution to this limitation on the freedom to divorce is simply to temporarily migrate to another state, meet the technical requirements of domicile, get a divorce and return home single. Thus, many jurisdictions would have at least two forms of marriage co-existing concurrently. One form is defined by economic factors is marriage for life for the poor, who are destined to experience holy deadlock. The other form of marriage is for the convenience for those with funds to afford out-of-state procedures to end the marriage. Eventually, the system of hypocrispy resulted in the concept of a no-fault divorce. In effect therefore, one could get a divorce on demand with some reasonable time delays and remarry. The result being that in form marriage is a monogamous system; in fact it is a system of extant structural polygamy. A male or female may now have multiple marital partners so long as these partners are experienced sequentially rather than concurrently.

We therefore see in this short overview that there is a factor which stands out in the control and regulation of affect. It is that controlling of affection however effective is seen as vital to the system of political identification and solidarity with either a religion, state or with patriotism which may infuse both religious values and state power with consequences that go well beyond a narrow conception of intimacy and micro-social family values. Whichever conception of marital form we consider this much is clear, without state and/or effective community intervention be it local, national, regional or international, the control and regulation of affect will be manipulated by guilt, terrorists, organized crime, social reactionaries, religious fanatics as well as by variously-situated left or right political fanatics, as well as pedophiles and psychopathological predators.

This does not state anything new. It was an insight implicit in much of Freud's work, especially his meta-psychology. In fact, Freud focused attention on precisely the question of how affect is controlled and regulated so that culture and cooperation as well as personality development may proceed in constructive ways. Thus, in his book, *Totem and Taboo* (George Routledge & Sons, London, (1919)), Freud rooted the universal restraints on the displacement of affection in terms of universally experienced incest taboo. This was a powerful insight which is today of critical value in modern society. For example, today we ideologically promote the importance of family values and correspondingly family privacy.

The state and the community are restricted from intervening in the sacred space of civic privacy, which formed the boundary of family autonomy and freedom of choice regarding interactions within the bounds of the family. In his book, *Civilization and its Discontents* (W.W Norton, Inc., NY (1989)), Freud more carefully examined the cultural implications of unrestrained sexual expression. He is particularly concerned that the cultural rules and their legal equivalents are in general a critical part of the concept of civilization itself. Of course, this defense of the rules of restraint specifically in intimate human relations is not designed to

reproduce psychopathological governmental repression. The insights concerning the universality of the incest taboo are particularly striking.

Political Culture, Personality and the Complexity and Relevance of Affect

We revisit some of the applications of Freud to the broader context of political culture. Possibly the most important and widely accepted idea in Freud's thinking was that there was an implicit insistence on the human vulnerability of humansexuality and identity. This idea itself impliedly suggestss that society be less judgmental and more tolerant of human weaknesses and vulnerabilities. The implications today seem fairly obvious. We know more about sexuality and identity and appreciate its complexity. We also understand that the ubiquity of human variability in gender and sex orientation underline the element of diversity as an existential datum. An adequate appreciation of Freud's general insights provide us with a deeper understanding of the nature of freedom, the responsibilities inherent in it at a deeper psychological level, and perhaps more than anything, Freud gave us insights to understanding the nature of childhood and the construction of identity.

Ideologically as well as in Freud's meta-psychology, there is an insistence on tolerance about human vulnerability. This may be contrasted with the role of hack specialists in rectitude and their hack political acolytes: the religious frauds and the crude prosecutors on the make who stand as a barrier to the scientific and intellectual insights that are provided to humanity as a great intellectual legacy. Freud's contribution has improved our understanding of women and the politics of sex and gender. It is at this point that we move from Freud to the legacy of Freud in a broader cultural manner.

Perhaps the most arresting insight in Freud's work is the issue of how personalities are formed or deformed in family culture and society. The Freudian tradition provides vital insights into the reproduction of human personalities, some of whom become political leaders or worst dictators. The insight here is uncomplicated. Children are born into a family unit. The child's personality will be shaped in substantial measure by the character of innocent practices of child nurturing and care. Freud's insights showed us that children are not little adults. They are beings *per se*. For example, the child's sense of time and its experience of deprivation may be completely different to a teenager or an adult. A short period of time which might be involved in neglect may be a minor matter for a mother or care-giver but may be an eternity for a child. The deprivation of food, warmth or discomfort similarly may be dramatic for the child but a minor matter for the adult. Thus, deprivations and the child's experience of time, which are interdependent issues, are also critical indicators of personality development be it normal or possibly dysfunctional.

One of the earlier efforts to apply Freudian insights more broadly is found in the work of Harold Lasswell. Before WWII, Lasswell wrote several extremely important works creatively applying Freud's ideas to the concern that political leaders may have psychopathological deficits. For example, in one of his earliest books given a brave title that could have only come from Lasswell's own youth at the time was titled: *Psychopathology and Politics* (University of Chicago Press, 1930) (Also relevant here is Lasswell's, *World Politics and Personal Insecurity* (New York: The Free Press, 1965) and *Power and Personality* (Viking Press NY 1966). Today the idea that many blood thirsty dictators have psychopathological predilections is a common place idea. Hitler, Stalin, Franco, Idi Amin, Pol Pot, Mao Tse Tung, and Pinochet come to mind. How does a society reproduce a pathological personality capable of mass murder without

conscience or remorse? Can a society invent preventive politics that can limit the damage done by such personality types? Later Lasswell looked more carefully at the social construction of personal insecurity from a global perspective. These were profoundly important insights into the applications of general psychoanalytica insights in a study of political behavior.

From the perspective of women's rights and feminism, we might look to the work of some key figures in the so-called Freudian left. Among the important of these was the psychoanalysist, Wilhlem Reich. Reich was particularly interested in why he thought certain cultures reproduced personality types that were essentially authoritarian in character. This led him to tease out the idea that in certain cultures such as the German tradition that there was a tendency to expect children to manage deprivations as a method of reproducing strong little Germans. What Reich saw was a process of reproducing authoritarian personalities in abundance or the reproduction of personalities prone to accept authoritarian culture. In a remarkable book, *The Mass Psychology of Fascism* (Orgone Institute Press, Inc, New York, 1946), Reich made the link between psycho-analysis and the political culture of authoritarianism which has influenced contemporary culture in many important ways.

Since the authoritarian style is intolerant of ambiguity, markedly passive-repressive regarding feelings of affect and intimacy, and promotes guilt and fear as a critical style of governance. It was obvious that Reich saw it as critical to challenge the moral certitude of inherited authoritarianism concerning social repression. Social repression also meant the repression of women because they were centrally the objects of male sexual desire. Thus, the sexual allure of women would itself be seen as something socially disruptive and itself a matter of assumed guilt for all women as a cultural norm. Of course, there was male repression and therefore male guilt, but these forms of self-examination were rather less judgmental. Thus, male feelings about sex although repressed could still express itself in ways that did not carry the same quantum of social guilt and condemnation as with the situation of women. Here, the assumption was that women had presumably more control over their bodies because they tolerated sex or were thought to repress feelings of pleasure since this was discouraged for women.

Reich confronted this matter so directly that even today the title of his book startles the reader. That book's title was the *The Function of the Orgasm* (Orgone Institute Press, Inc., New York, 1942). Reich argued that both men and women experience orgasms and that it is completely unscientific to suggest that men only experience orgasm and, therefore, culturally has a right to a male orgasm. On the other hand, it was clear that women, biologically and psychologically, also experience orgasms. A powerful cultural myth stipulating that there is something deeply wrong, evil or profoundly immoral in the experience of female orgasm, is both biologically and pscho-analytically a matter of fantasy or cruel political manipulation sustained by scientific ignorance. These insights took some time to percolate into the general culture but generated an important intellectual movement loosely called the Freudian Left.

Perhaps the term 'Left' overstates the matter. However, it was from these roots that the great feminist writers began to sustain a withering attack on all the bastions of cultural, psychological, legal and political dimensions of male hegemony and gender inequality. This approach touched off a critical intellectual discourse in developed societies and in different forms began to express itself globally. For example, the idea that genital mutilation is a mandate of religion is shown to have nothing to do with faith-based beliefs. It seems more to have more in common with male control, male insecurity and male domination. This is supported by an implicit social pathology covered up by the mask of tradition, cultural relativism and cultural diversity.

The emphasis on women's rights and the broader framework of gender and sexual equality and respect is underlined by the concept of struggle, concept of effective advocacy as a critical part of the culture of human rights and change. This struggle continues. It is a struggle for the dignity of most of the people on the planet. It is sometimes forgotten that the promotion of dignity and respect has radiating effects, which broaden the scope of human rights for all. The focus on women's rights is also a critical dimension of the struggle for the rights of men and more broadly, for the inclusive rights of all of humanity. The global insistence on respecting identity, the evolution and development of human rights norms of non-discrimination and equal respect became critical at all levels of social activism. That process continues today and human rights activism is a critical part of that struggle.

The issue of women's rights and gender equality is invariably tied to the complexities of intense small, micro-social relationships. The most obvious example is the concept of the family. Human reproduction is the most obvious practical condition for the creation of family ties. Women in general will monopologize reproduction in the sense that women conceive and give birth to children within or outside of marriage. Either way, the mother and child relationship functionally constitutes an elemental "family" tie. In short, a family may exist without marriage. Nonetheless, there is a close and important connectivity between the concept of marriage and the concept of family. Marriage usually presupposes the creation of a family unit. Nevertheless, a family unit does not necessarily presuppose marriage. This insight, simple as it is, is made more complex when we recognize that concepts of family and marriage are culturally universal. On the other hand, what exactly a family is one culture or in one part of history may be vastly different to the meaning given to that term cross-culturally or in another gyre. Similarly, the rituals, forms, and expectations of marriage may be vastly different in terms of culture and tradition.

Empirically, there are very wide ranges of family forms. Cultures generally appear to believe that their own family forms are cultural constants and immune to change. Sometimes, these expectations are vested with high normative commitments. Thus, issues of marriage and the family, which touch the most intimate components of shared intimacy and social responsibility, are often tenaciously defended and changes to the particular system are often viewed within that system as culturally subversive and possibly even destructive of the bonds of social solidarity. For example, the dominant form of marriage in a Western society is influenced by the tradition of monogamy, which is supported by religion. Efforts to change the monogamous relationship or to tolerate a variety of different family forms run into the strenuously asserted political debate about the "family values."

In the Islamic tradition, a form of polygamy is accepted as part of an appropriate marital form. This tradition remains strenuously defended by the Islamic religious establishment, which in other respects appears to be rather strict in the definition of sexual morality outside of marriage. Many African traditional systems also appear to be polygamous and co-exist in pluralistic societies with other religiously based marital forms. This poses a problem about the rights of parties to establish intimate relationships and the extent to which those relationships may receive the blessing of the state or the religion as officially valid unions. The problem becomes more complex when we pose the further question as to what precisely are the human rights'issues, which may be furthered or depreciated by different cross-cultural expectations about marriage, family and intimate associations. Is it appropriate to vest monogamy with an exclusive claim to virtue in the moral universe of family values? Is polygamy, which permits only the male to have more than one official female spouse a limitation on the human rights of

women, or is it an abuse of human rights on the part of the male sanctified by the law of male dominance.

Is there is something morally virtuous or superior in a dyadic male/female relationship? Does the virtue lie in the union exclusively of male and female participants? This is not obvious and perhaps there is something magical in the relationship of two persons, which is morally superior. In the latter case, we would then be confronting the question of the appropriate status of same sex or trans-sexual or other monogamous or dyadic relationships or ties. The normative question here is frequently collapsed into the gate-keeping function of the ritual of marriage. Here, the gate-keeping function expresses the depth of emotional and moral commitment to certain kinds of relationships and, at the same time, precludes others. In Christianity, this is a matter, which vests marriage with a sacramental character. When a man and a woman otherwise eligible are married by the church the marriage bond, [the vinculum] is a bond created by God and it is essentially a sacrament.

Today, marriage is largely a matter monopolized by the state. However, the state, in general, has not seen marriage as merely a matter of two parties contracting with each other to make a complicated deal for life. It is a status and the state seeks to regulate, guard and control all aspects of its creation, duration, termination and post-termination effects. Marriage is a status, which has contractual aspects, but it is vastly regulated by the state. In many other traditions, such as Islam and traditional African and Asian cultures, marriage is seen as a contract often with families being represented and settlements being agreed to. Thus, marriage is not often cross-culturally seen as vested with high religious implications but as seen in a much more exchange-oriented approach analogous to a complex institutional transaction. However, this does not mean that the cultural foundations of marriage in this sense are not strenuously defended from outside influences or forms of intervention.

When we view this background in human rights terms, we are confronted with certain difficult and certain tenaciously resilent problems. Human rights are meant to be rights of individuals. To what extent do basic micro-social structures respect individual rights in terms of choice, security, and the capacity for human development in all of its forms? Since the family is so critical to the survival and development of the human personhood including personality, the human rights issue involves not only the relationship partners but also the relationship of additional members adopted or created in the relationship. The poet, Wordsworth, with a brilliant insight said, "The child is the father of the man." Perhaps, we can underline the importance of human relations in family units by noting that it is precisely in these social units that we reproduce the next generation of social participants. Thus, within the family, within innocuous practices of nurturing, caring and rearing we are reproducing personality types, which may be the most important human resources for either a productive or a destructive future for humankind.

It is suggested that the issue of womens rights and gender seen in the context of the broader framework of intimate micro-social relationships cross-culturally and globally may well be suitable material for a modest degree of reconceptualization. This approach might provide a greater clarity about precisely what human rights law values are implicated in all the complicated relational situations and structures that constitute micro-social groups in which intense intimacies are experienced whether these are in terms of sexual exchange or in terms of exchanges that prohibit sexual intimacy [this is the relationship of parenting figures to children].

Instead of starting as conventional scholarship insists with a focus on an institution [the family] and then focusing on the culturally specific rituals of "marriage" we might start with a different focus. In doing this, we stress again that a culturally specific institution of the family in

one culture may not constitute a family in another culture. The marriage ritual of culture A may not be recognized or even respected in cultural B. It may be of value to ask the following: what fundamental expectations do human beings anticipate when small group ties are established and maintained with expectations of reciprocal emotional and psychological intimacy in which expectations of identity and sexual exchange [normally heterosexual but not exclusively] with appropriate limits occur?

The emotive drive that energizes this process is commonly called 'love.' Love without limits is of course not love. It is gratification, narcissism or extreme self-love and, on the extreme end, sexual or gender terrorism. Love is an emotion universally admired. There is universal aspiration for this emotion. The moral foundations of love imply that it expresses a human ideal of the self in relation to other selves and in ultimate expression reflects the ultimate indication of moral altruism and virtue. It is a sentiment that begins in the most elemental of human relationships and has the capacity to radiate wider expressions of positive sentiment ultimately shaping the nature of micro-social experience such as the self in the family. That experience in turn radiates into other social relationships and ties in kinship units and broader community structures ultimately extending to the structure of the nation and the state. Positive sentiment transcends the state as well as shaping the character of the state as founded on the institutionalization, protection and enhancement of positive sentiment that gravitates from love to loyalty to patriotism.

When positive sentiment transforms and transcends the state and sovereignty, we gravitate to the notion that human planetary solidarity is founded on a broad inclusive conception of love as positive sentiment, which permits identification and empathy with all of humankind and the entire eco-system, and all the sentient and non-sentient life forms that constitute the earth-space community. At the heart of love is the conception of positive sentiment from the micro-social to the global level. The institutional expression of this form of positive sentiment today is rooted in the conception of human rights in the broadest sense. This in part explains why modern human rights which emerges in terms of ostensibly secular initiatives and processes none the less finds a deeply empathic partner in virtually all religious traditions, when those traditions are not corrupted by the imperfections of human faithlessness.

The major religious traditions see some form of God or the universal spirit as the ultimate ideal of what God is. That ideal is translated in one way or another in terms of love. God is love. The ultimate ideal of Godliness is the capacity to love and be loved, on a completely selfless basis. The purest expression of positive sentiment - love between human beings and between God and human beings - cannot be limited by boundaries. Love and positive sentiment mean complete altruism, selflessness. Complete altruism of the self is merged in the ideal of love. God symbolizes love. From this perspective, the relationship of positive sentiment to human rights is often assumed but not adequately understood.

Whether we base the justification of human rights in secular, existential values about positive sentiment and love for one another, or whether that justification is based on religion rooted in God's love and redemption through love, both secular philosophy and spiritual experience converge on the centrality of love and positive sentiment as a universal moral virtue. This virtue is as well the ultimate moral foundation of human rights and human dignity. From a secular point of view, the highest aspiration of moral philosophy rests on the universal respect and dignity of the human person. From a religious point of view, the greatest human contribution to the celebration of God is the dignity and worth of the human being on a universal basis. If, according to religion, we are God's creatures, we love God and in doing so, we celebrate the

dignity, worth and the beauty of the human being in all its complexity and wondrous unfolding dimensions.

The truth is that human rights are founded on the universal centrality of the giving and receiving, the exchange and experience of positive sentiment at every level of psycho-social experience. Thus, when we look at something called 'domestic relations,' 'family law,' 'family values,' we immediately begin to focus on the form, the value implications of the particular form or the legal cultures that institutionalize particular social or cultural forms of micro-social experience. The discourse itself starting from this premise may in fact be observing or focusing with cultural biases and prejudices that presume unfamiliar forms that simply do not exist or should not exist or should be discouraged or destroyed. Thus, we obscure what we must actually do as a matter of practical, social policy to rationally promote and enhance values of love and positive sentiment. The values we contend are at the heart of human rights and a great deal of religious experience.

The approach conventionally taken is one that focuses on how the community and/or the law seek to control and regulate what the community defines as the appropriate or legitimate family form. Thus, in modern law, what we call family law is about the control and the regulation of the family and certain rights incidental to it. The central word here is control. To say that society controls the family and certain incidents involving family ties and relations is serviceable but it comes we submit at a price. To control a form and its incidental features made not be the same thing as controlling emotion, feeling, intimacy, prescribing how people must feel about each other, what level of sexual feeling may itself be controlled and regulated on the basis that such feelings express an intimacy may be criminal and may be punished.

Communities may go further and hold that controlling the sexuality of women may be critical to the control of the family and thus controlling the capacity for gratification through sexuality must be done by either psychological or legal repression or in certain cases the genital mutilation of women on a community-wide basis. Thus, we see that we may in the business of obscuring important human rights issues simply by the conceptual lens and focus that we deploy for inquiry. In short, the concern in this context is that practices, which may be indefensible from the perspective of positive sentiment and human dignity, are routinized by custom, tradition and simply convention. In this sense, reshaping the tools of inquiry is a critical component of human rights as an agent of change. Correspondingly, such an approach gives human rights advocacy a clearer objective in terms of the nature of the violation, the strategies of advocacy, the institutions of intervention and the possibility of improving the human rights landscape.

It may therefore be startling if we acknowledge the rather simple observation that culture, law and tradition seek on a universal basis to control and regulate affection which we describe as positive sentiment. In short, the community seeks to control how we feel at every level of social organization. The community seeks to control love in the sense of what intimate relationships may be established and protected or prohibited and punished. It may seek to establish what broader social ties of sentiment are included in the 'I', the 'we' and excluded in the 'other.' It will seek to do this by strengthening the 'I' and the 'we' and often demonizing the other, the enemy. Thus, solidarity, loyalty, patriotism, internationalism, humanitarianism, human rights and dignity exist on a continuum, which in varying degrees are conditioned by the dynamics of affect and positive sentiment as well as by the dynamics of otherness, prejudice, discrimination, hate and extermination.

Human Rights and Positive Sentiment: The Control and Regulation of Affection

The title of this section connects human rights law with positive sentiment. The concept of positive sentiment, like human rights, has a descriptive element to it but it is also reflective of the critical relevance of the normative implications of both human rights and affection. The second part of the title focuses on control and regulation and this means that there is an assumption that affection and power are interrelated in terms of both description and the normative implications that each concept brings to the specific description and conception of the human rights of affect.

To some extent, human rights norms when seen in terms of a fundamental normative value may not be controversial. Thus, to equate human rights with the norm of human dignity would not raise any particular intellectual concerns. It is when a specific aspect of human dignity relates to a specific aspect or conception of affect that the concerns emerge about the precise scope and content of the specific human rights conception being analyzed. One aspect of analysis that is critical is the extent to which there is at least an articulate social context, which may elucidate the problems as articulate social constructs. This is precisely the problem with the traditional focus on, for example, small group form such as the family. It may be insignificantly inclusive to adequately describe and then identify all of the specific problems that emerge from the process by which small group institutions such as families and other micro-social units are created, sustained, terminated and changed. This is obvious if we simply note that micro-social units of intimacy vary considerably from one culture to another and show considerable variance as well in terms of discernible time lines in particular cultures.

A better description of the conditions, which create such units of social organization across state lines, as well as the consequences that flow from such social relations, will give us a clearer picture of the nature of human rights problems including the issues of gender, sexuality, reproduction, children's status, property as well as psychological and material well-being. All of these issues and a great deal more generate complex and sensitive human rights issues. However, to understand these issues as problems, we must have better tools, that work cross-culturally, that permit us to mark and map problems in appropriate contexts for which there is a need for human rights advocacy and intervention. To this end, we provide a short description of the affection process itself.

The specific point of the above exercise is to illustrate that cross-culturally the affection process is an outcome which is itself contextually rooted in the concept of community and social process writ large. The task of contextually mapping affect and power requires both a map and set of markers to guide inquiry within the map. We therefore use the markers invented by Lasswell and his colleagues for general contextual mapping. These are appropriate markers for a description of community value institutional processes at any level. At the global level, that process may be described as follows:

a.　Who: human beings [comprising a multitude of identifications as well as a plurality gender-based perspectives]
b.　What: pursue all the values in social organization that they need want and claim
c.　Where: through institutions specialized in some degree to the values themselves.
d.　How: Those claims or needs are generally sustained or facilitated by the resources accessible to the demanding or claiming parties. Among the claimants will be those who want or demand power.

e.   Results: The outcomes of such a social process will be an entire framework specialized to power relationships, claiming, exercising, allocating, and institutionalizing the social dynamics of power. This outcome we call the processes of effective power.

Included in the dynamics of social relationships is the issue of sentiment. There is in society a dynamic, which deals with the giving and receiving of affection and positive sentiment. We may describe this briefly as human beings energized to express needs, wants, claims and demands for access to and enjoyment of affection and positive sentiment. These demands normally target the micro-social institution specialized however eptly to the giving and receiving, the promotion and enhancement of affection. The objectives of demanding affection are frequently sought through the strategies involving other bases of power such as power itself or wealth. These values other than affect serve as bases to strengthen or enhance the demands to support the claims to affection. These values as resources also promote the institutional form in which the claim is honored. That institutional form therefore provides a cultural institutionalization of what is a preferred form specialized and preferred for the experience of the demanded value. Thus, cross culturally societies may sanction a multitude of affection units (forms) that are preferred or disparaged.

In the narrowest of formulations, the affection process is a process that generally involves human agents generating claims for the reciprocal giving and receiving or exchange of positive sentiment. In many such claims, the expectation of physical, sexual exchange of biological and psychological intimacies is expected. Intimate relations also encompass intense demands for intimacy beyond the specific ties of individual emotionally and sexually driven parties. Thus, the relationships generate intense emotional demands and attachments, which require strong subordination of sexual drives while enhancing the emotional interdependence based on positive sentiment between the members of a small micro-social group.

For convenience, we may cross-culturally maintain that such outcomes may be accurately described as affection units in the sense that whatever the precise form these units are specialized however skilled they are to the giving and receiving of positive sentiment and affection. The affection process therefore is a process in which claiming, deciding about the nature and quality of human intimacy uses the methods of communication, of appropriate signs and symbols, of affect, positive sentiment, love including romantic love. In addition to the communication of the appropriate signs and symbols of affection, the behavior of the parties is sustained by expectations of collaboration so that practical conduct and behaviors enhance the reciprocal flow of positive sentiment. Thus, the affection process is a pattern both of communication and of collaboration transmitting and exchanging the symbols and ideals of love, loyalty, positive sentiment, patriotism and ultimately the love of man and God as well as the actual operational behaviors, which sustain the ideals.

The Social Process of Affection and Positive Sentiment

In the above section, we indicated that positive sentiment or affection is one of the outcomes of social organization and we call this an affection process. There is another side to this. We also spoke of social processes reproducing negative sentiment. In short, society frequently generates complex processes, which reproduce personality types suited to claiming and demanding the values of a negative utopia. Thus, history demonstrates the ubiquity of social institutions, which symbolize human indignity on a colossal scale. Thus, society ubiquitously reproduces its ideals in the form of love, altruism, affect, and at the same time reproduces the negation of those ideals, hate, self-love and narcissism and ubiquity of the genocide-prone pathological personality and terror prone. Below we provide a table, which parallels the social process of affection (positive sentiment) and the social process of negative sentiment (deprivations) to underscore the critical challenge posed by the question of the control and regulation of both positive and negative sentiment and its importance to human rights and the dignity of man on a universal basis.

The social process of positive sentiment [affection]: The Relevant Analytical Markers

1. A formal myth of love and affection. The myth may be concealed and informal, but nonetheless, it is a real myth reinforcing the symbology of togetherness of the target of love and affection and those within the 'in-group' of the community context.
2. A symbol-myth system of solidarity, affection, and positive sentiment is a crucial component of the perspectives of the community or its elite, or its traditional and opinion leaders.
3. These subjectivities or perspectives of positive sentiment are outcomes of complex behavior patterns, which are characterized by affective sentiments and strong portrayals of the target of affect as appropriate for the displacement of positive inference and meaning in terms of shared affect.
4. Indications of emergent patterns that consolidate the collaborative behaviors of the 'we' or the 'in-group,' vesting that group with the idealization of appropriate community acceptance as positive sentiment and love and the foundation for the licit family form which is also culturally preferred and valued.
5. There are further emergent, often graduated, behaviors in the primary group, which consolidate and sustain the image of community solidarity through patterns of collaboratively conditioned behavior conditioned by postitive sentiment. These include the communication of discrete signs, symbols, operational codes, myths, narratives, and reified stereotypes, which symbolize the institutionalization of the ideals of love and a positive sense of shared affect in the community.
6. The process of affection also involves the manipulation of signs, symbols, codes, myths, narratives and stories between members of the 'in-group' and between members of the 'in' and 'out-group.' Positive sentiment may be used in a way so also isolates those not included in this universe of affect and solidarity.
7. The system of generalized affective behaviors, thus, involves distinctive, and often, discrete pattern of communication of relevant signs and symbols of the 'in-group' loyalty and solidarity, as well as signs and symbols that identify, disparage, or threaten members of the 'out-group.' The patterns of communication are sustained or enhanced by collaborative operations in the exercise of public or private power. This may mean repression and exploitation for some and the power to exploit positive sentiment for base

motives on the other. Thus, solidarity and patriotism may be promoted in such a way that it underlines by implication the vulnerability and validity of victimizing others such as the social pariahs, outcasts, those who are indifferent to the situation of all others.

8. Human beings conditioned to generate positive sentiment [affection] as an ordinary aspect of personal identity are obviously desired from a human rights perspective. The predispositions of the personality inclined to positive sentiment, invariably creates environments in which micro-social relations reflect the normative priority given to the reproduction of positive sentiment or affect. Thus, innocent child rearing and nurturing in which love and affection is practiced generates personality types better suited to reproduce personality types partial to democratic political culture. On the other hand, a person may be raised in a climate of negative sentiment where repression, deprivation and fear wittingly or unwittingly reproduce insecurity and intolerance of others in the self-system. Thus, the practices of negative sentiment in family or affection units may be a dangerous social inheritance. When such personality types mature, they exhibit the partiality to anti-democratic perspectives such as authoritarianism and domination. They reproduce the cycle of negative sentiment.

9. Reproducing the cycle of positive sentiment is critical to the culture of human rights and its sustainability on a global basis. Thus, the micro-social units [affection units] ostensibly specialized to positive sentiment or love and affection are critical for a healthy and normal society that does not institutionalize compulsive, neurotic or psycho-pathological outcomes. In short, a psycho-political culture of positive sentiment reproduces in effect the social and political foundations of the culture of human rights. Perhaps even more than that, it is giving to those commited to the love of God, the religious redemption of the love ideal through human rights.[66]

The above nine points may of course be mapped with greater precision in terms of the wide range of issues and problems that are implicated in the human prospect. Implicit in what is suggested however, is a normative challenge. The critical challenge is to the boundaries of law in our time. Law, tradition, human rights law and evolving custom are not instruments of social control that are blind, deaf and dumb to the past. On the contrary, they are important challenges for the human aspect of choice and decision in avoiding the negative and affirming the positive. This means the enhancing the balanced shaping and the sharing of positive sentiment (affection). The alternative puts law and legal culture in a position of complicity in enhancing the outcomes of negative sentiment with the destructive potential for the future of our species.

My intuitive sense is that we reproduce too little affection. It will also be seen in the next section that the social process of negative sentiment (hate) and variations on this represent one of the most important challenges to world order and human rights. The power of positive sentiment is clearly challenged by the power of reproducing negative sentiment as the world becomes fragmented and polarized in culture wars and wars, which it is asserted, are inevitable conflicts about universals inherent in the ostensible clash of civilizations. We summarize the framework therefore of the social process of negative sentiment. We note parenthetically that from a human rights perspective the disidentification of the other is a short distance from the application of the strategies fed by hate and destruction for the extermination or depreciation of the other.

In human rights law, we have made progress in seeking to define the boundaries of behaviors fed by negative sentiment. These include the laws prohibiting genocide, persecution on grounds of religion, racial prejudice, apartheid and in general, crimes against humanity.[67]

The Social Process of Negative Sentiment

1. A formal systemic myth or a concealed, informal, but nonetheless, real myth reinforcing the symbology of otherness of the target 'outgroup.'
2. A symbol-myth system of prejudice, fear and hate is a crucial component of the perspectives of the dominant group or its elite and opinion leaders.
3. These subjectivities or perspectives are outcomes of complex behavior patterns, which are characterized by negative sentiments and negative portrayals of the 'other,' such that the symbolic 'other' is reinforced as a target for negative inference and meaning.
4. There are emergent patterns that consolidate the collaborative behaviors of the 'we' or the 'in-group,' vesting that group with a sense of superiority, or 'herrenvolkism,' paternalism, and further, seeking to enhance the value position of that group at the expense of the 'out-group.'
5. There are further emergent, often graduated, behaviors in the dominant group, which consolidate and sustain the image of the victim group through patterns of conflict-conditioned behavior. These include the communication of discrete signs, symbols, operational codes, myths, narratives, and reified stereotypes that such issues as racism, anti-Semitism and more.
6. The process of group deprivations also involves the manipulation of signs, symbols, codes, myths, narratives and stories between members of the 'in-group' and also between members of the 'in' and 'out-group.'
7. The system of generalized group deprivations, thus, involves distinctive, and often, discrete pattern of communication of relevant signs and symbols of the 'in-group' loyalty and solidarity, as well as signs and symbols that identify, disparage, or threaten members of the 'out-group.' The patterns of communication are sustained or enhanced by collaborative operations in the exercise of public or private power that move beyond discrimination, anti-Semitism, prejudice or hate to the possibilities of wholesale extinction of cultures and masses of human beings.
8. Human beings conditioned to generate negative sentiment as a normal aspect of the predisposition of personality invariably create environments in which micro-social relations reflect the normative priority given to the reproduction of negative sentiment. Thus, innocent child rearing and nurturing practices although covered in an ostensible mantle of love may be in fact impact on personality development so that the person that emerges is ill suited to a democratic political culture. On the contrary, the person may be raised in a climate in which repression and fear unwittingly reproduce insecurity and intolerance of others. As such personality types mature, they exhibit the partiality to authoritarianism and domination. They reproduce the cycle of negative sentiment. Therefore, the micro-social units ostensibly specialized to positive sentiment or love and affection may actually be specialized to doing the opposite. In short, such psychopathological political culture may be reproducing the 'Anti-Christ of human rights.'

Conclusion

This presentation seeks to throw light on the critical importance of feeling, emotion and sentiment as one of foundational conditions, which in positive form affirms human rights, and in negative form may be the foundation for critical human rights deprivations. I therefore used the terms love and hate. These two emotions have a dramatic impact on the boundaries of law and in turn, the boundaries of law affect on these emotions in complex and sometimes unpredictable ways.

Our focus and emphasis is on love and hate as foundational sentiments for animating sentiments which shape who we are and what we might become. Our focus therefore is on the most foundational of all the animating sentiments of humanity, the generation and the distribution of both positive and negative sentiment. By positive sentiment, we mean the shaping and sharing of affection at every level of organization but with a particular focus on micro-social affection units. The term, affection unit, permits us to focus on the universality of affect and positive sentiment in all human beings. The reference to 'affection unit' would refer to whatever micro-social structure is an outcome in any particular culture of how that culture controls and regulates the affection process.

Structures are important but they cannot presume an *a priori* moral value preference without a careful clarification of what precise issues involving the management of positive sentiment or affect. That is to say, do the structures actually enhance or depreciate the values of affection. We also suggest that other contextual factors are conditioned by such policies and practices. Moreover, an adequate description with an appropriate focus would center the centrality of the value of affection in all human relations. It would enquire into the social processes by which it is created, reproduced and distributed. It would enquire into the ways in which the affection is protected and secured as a desired or preferred social value and as such whether such outcomes enhance or depreciate human rights.

We also inquire into the processes by which the value of affection as expressed in instituationalized forms may serve as a base of power to secure other values central to the culture of human rights. Finally, it would enquire into the relevance of other values that may condition the nature of the affection process itself. Thus, enquiry would look toward the relationship between power and affect, or religion, wealth, education and enlightenment, skill, health and well-being as factors contextually relevant to the nature of the affection process itself. Perhaps this suggests a more comprehensive and novel paradigm of thinking and conceptualizing about the nature of family relations, kinship ties and other microsocial affection units in a complex world with heightened expectations for the universality of human dignity based on the culture of human rights.

We have underscored the ubiquity in social control over affect or hate in social process in communities and indeed, in the larger picture of world peace and security values. The anthropocene crisis is obvious. We claim positive sentiment with little understanding or explicit policy priority. On the other hand, in a conflict prone and enhanced global community, we experience a remarkable comfort in confronting a "we" versus "them" perspective: The essential foundation for "otherness" and for the generation of negative sentiment as normative priority. The critical question is what normative guidance in terms of the policy consequences and intellectual responsibility for those consequences we may garner from this approach. Perhaps the guidance that may be of value is the maximization principle with regard to the shaping and

sharing of the fundamental values of social co-existence. The value of affection looms large in this calculus. Are we better off promoting policies whose social consequences seek to maximize the shaping and the sharing of affection at every level of social organization? On the other hand, the dangers of human rights deprivations fed by negative sentiment generate the counterpoint question: Are we in the business of consciously, or unconsciously promoting the negative values of hate and negative sentiment? Are we effectually, promoting the shaping and the sharing of a public order of negative sentiment and deprivation? This at least is how I see the anthropocene crisis of the 21st century. In conclusion, human self-awareness and consciousness of self-determination generates critical new boundaries for law, legal culture and human rights salience.