THE COMMUNITY AND THE RULE OF LAW

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THE ENUMERATION OF THE MANY REASONS WHY THE WORLD HAS BECOME SMALL TODAY HAS ALMOST BECOME TIRESOME. HONGKONG IS JUST A FEW HOURS AWAY IN A JET. YOU CAN PICK UP YOUR PHONE AND GET PARIS IN A FEW MINUTES. THE TELEVISION HAS MADE IT POSSIBLE FOR YOU TO SEE HISTORY MADE AND YOU NO DOUBT SAW A CHIEF OF STATE ABROAD WHO, THROUGH SHOVEL DIPLOMACY, CAN NOW ONLY NEGOTIATE PLANS WITH A LIFT OR THE SIDEWALK WITH A CRUTCH. THE DOINGS IN THE DARKEST HAUNTS OF AFRICA ARE AS READILY AVAILABLE IN TOMORROW'S NEWSPAPER AS YESTERDAY'S STOCK MARKET'S RISES AND DECLINES OR THE TURF RESULTS FROM HILULEAH, CHURCH HILL DOWNS, OR ANY OTHER RACE TRACK THAT YOU MIGHT HAVE A LOSING INTEREST IN. IT IS PERSISTENTLY INSISTED THAT THE WORLD HAS BECOME VERY SMALL AND THAT YOU ARE AFFECTED BY THE TELEVISION MARATHONS OF A FOREIGN NATION'S PREMIER AS MUCH AS YOU ARE BY YOUR NEIGHBOR'S INDISCRETE DOG IN YOUR FLOWER BED OR THE HI-FI ENTHUSIAST DOWNSTAIRS. THE MIRACLES OF MODERN TRANSPORTATION AND COMMUNI-CATION ARE EXPATIATED UPON WITH URGENCY IN SOME QUARTERS. THE WORLD, IT IS SERMONIZED, IS REALLY JUST A SMALL COMMUNITY. THIS COSMOPOLITAN MORALIZING IS FREQUENTLY, TOO FREQUENTLY, RECEIVED THE WAY A YOUNG BOY RECEIVED THE REMONSTRATIONS OF A CERTAIN MOTHER. THE MOTHER PREPARED THE SON A SUMPTUOUS LUNCH AND HE LEFT HALF OF THE VICT-UALS ON THE PLATE. THE MOTHER EXPOSTULATED, "JOHNN TE, HOW COULD YOU LEAVE SO MUCH OF YOUR FOOD UNTOUCHED! DON'T YOU KNOW THERE ARE MILLIONS OF PEOPLE STARVING TO DEATH IN CHINA?" JOHNNIE SMUGLY QUERIED, "NAME TWO?"

OUR SMUG APLOMB AND INDIFFERENCE TO THE RADICAL TRANSFORMATIONS IN COMMUNICATION AND TRANSPORTATION ARE JUVENILE WITHOUT BEING INNOCENTLY AND ENDEARINGLY IMPERTINENT AS JOHNNIE'S ANSWER TO HIS MOTHER MIGHT BE REGARDED BY MODERN HOME JURISCOUNSELORS. INDEED, MODERN TECHNOLOGY HAS MADE THE PEOPLES IN THE FARTHEREST

at the Southwest Regional Bas association meeting held on the Tras leethern University, campus, June 5-17, 1961. Of course, there are only the personal views of the writer. CORNERS OF THE EARTH, AT LEAST, OUR NEIGHBORS. AND ALTHOUGH "COMMUNITY" MIGHT CONNOTE A MORE COMMUNAL SPIRIT OR SENTIMENTAL COMRADERIE AMONG THE PEOPLES OF THE WORLD THAN ACTUALLY EXISTS, SURELY NO NATION OR STATE CAN DISREGARD THE RELEVANCE OF ITS ACTION TO WORLD PEACE AND COMITY.

FOR SERIOUS CONSIDERATIONS WHEN MANY OF YOU ARE VALIANTLY SEEKING THE RELEASE OF SIT-INNERS AND FREEDOM RIDERS IN THE JAILS OF ALABAMA AND THE INSCRUTABLE COMMON—WEALTH OF MISSISSIPPI. BUT EVEN YOU WITH YOUR WELL DISCIPLINED PRACTICAL INTELLECTS KNOW THAT THE DISPATCH OF FEDERAL TROOPS TO LITTLE ROCK AND FEDERAL DEPUTIES TO BIRMINGHAM WAS, TO NO SMALL DEGREE, COMPELLED BY THE FACT THAT THE UNITED STATES LIVES IN A WORLD COMMUNITY. I AM NOT QUESTIONING THE DEDICATION OF OUR HONORABLE PRESIDENT AND ATTORNEY GENERAL TO THE PRINCIPLES OF LAW AND ORDER, BUT SURELY IF THEIR SENTIMENTS WERE OTHERWISE, THEIR ALLEGIANCE TO OUR NATIONAL INTEREST DICTATED SUCH ACTION.

ONE OF THE CREATEST AIDS TO OUR MORTAL STRUGGLE FOR DIGNITY AND FULL CITIZENSHIP IS THE UNBLINKING SCRUTINY OF OUR DOMESTIC LIFE BY THE MANY NATIONS OF THE WORLD.

I HAVE OFTEN WONDERED WHETHER WE WOULD HAVE HAD THE REMARKABLE UNANIMITY WE DID IN
THE BROWN CASE IF THERE WERE NOT SO MANY DARK COLORED EMERGING NATIONS AND IF WE
WERE NOT ENGAGED IN THIS COLD WAR STRUGGLE FOR THE CONQUEST OF THE MINDS OF THE
PEOPLES OF THE WORLD. ALTHOUGH WE MAY DISREGARD IT, THE WORLD COMMUNITY MEANS MUCH
TO OUR POLITICAL POSITION IN THE UNITED STATES.

THE POLITICAL RELEVANCE AND IMPLICATIONS OF THE WORLD COMMUNITY ARE NOT THE ONLY REASONS WHY WE SHOULD PAUSE TO CONSIDER AND REFLECT UPON THEM. ALTHOUGH AS PECULIARLY LEARNED MEN IN COMMUNITIES, WE MIGHT NEED TO HELP FORMULATE POLICY AND MOLD PUBLIC OPINION CONCERNING INTERNATIONAL RELATIONS, ECONOMIC AND BUSINESS

RELATIONS DEMAND KNOWLEDGE OF WORLD AFFAIRS AND INTERNATIONAL LAW IF WE ARE TO COMPETENTLY ADVISE MANY OF OUR CLIENTS WHO HAVE DEALINGS WHICH CROSS OUR NATIONAL BOUNDARIES. WHEN I WAS PRACTICING LAW IN CHICAGO A FEW YEARS AGO THE FIRST CORPORATION I ORGANIZED AND WAS COUNSEL FOR WAS AN IMPORT-EXPORT COMPANY. WHILE I WAS STILL WITH THAT COMPANY AS COUNSEL WE HAD SEVERAL TRANSACTIONS WITH CHANA, ISRAEL, INDIA, AND MEXICO. WHEN THE PROMOTERS OF THIS CORPORATION FIRST ASKED ME TO BE THEIR COUNSEL, I THOUGHT THEY WERE EITHER CRAZY OR NOT SERIOUS. HOWEVER, TWO OF THEM HAD DEGREES IN INTERNATIONAL TRADE AND ECONOMICS. I SOON REALIZED THAT THEY WERE NOT ONLY NOT CRAZY AND PLAYING, BUT THEY ALSO KNEW MORE ABOUT SOME OF THE LEGAL ASPECTS OF INTERNATIONAL TRADE THAN I.

WITH SO MANY NEWLY ESTABLISHED NATIONS IN AFRICA, IT IS ONLY NATURAL AND NORMAL TO BELIEVE THAT THEY WILL NOT BE ADVERSE TO DOING BUSINESS WITH RESPONSIBLE NECRO BUSINESS MEN IN AMERICA. MR. BRUCE CAN TELL YOU THAT ONE OF THE MOST SUCCESSFUL NECRO BUSINESS MAN AND LEADER IN OKLAHOMA HAS VAST PROPERTY CONCESSIONS AND MINERAL RIGHTS IN AN AFRICAN COUNTRY. AS HE FURTHER DEVELOPS AND PROMOTES THOSE INTERESTS HE IS GOING TO HAVE NEED FOR COUNSEL. ARE THERE MANY OF US CAPABLE OF COMPETENTLY HANDLING HIS BUSINESS?

NOW THERE MAY BE STILL SOME OF YOU WHO ARE UNIMPRESSED, AND DISCOUNTING MY UNIMPRESSIVE CAPABILITIES FOR IMPRESSIVE COMMUNICATION, NEVERTHELESS, I SUSPECT THOSE OF YOU WHO ARE NOT, ARE NOT BECAUSE YOU FEEL THAT THE RULE OF LAW HAS NOT GENUINELY COME TO THE UNITED STATES AND UNTIL THAT IS THE CASE THERE APPEARS TO BE NO REASON WHY YOU SHOULD AGITATE YOURSELVES ABOUT THE RULE OF LAW IN THE WORLD COMMUNITY.

THIS VIEW, I BELIEVE, I THOROUGHLY UNDERSTAND. MY FIRST LOVE ACADEMICALLY IS POLITICAL PHILOSOPHY AND JURISPRUDENCE. (NOW BEFORE YOU DOZE EVEN MORE DEEPLY BECAUSE

YOU BELIEVE YOU ARE BEING INFLICTED WITH THE FUTILE FULMINATIONS OF A MOONSTRUCK SEPIA PHILOSOPHER, LET ME QUICKLY ADD THAT I WAS A PRECINCT WARD HEALER IN THAT MOST PRACTICAL OF PRACTICAL POLITICAL MACHINES, THE CHICAGO REGULAR DEMOCRATIC ORGANIZATION.) I HAVE NOT BEEN ABLE TO PURSUE THIS LOVE IN THE GRAND MANNER I HAVE WISHED. I AM CONSTANTLY BEING CONSTRAINED TO SPEAK, IF NOT AS AN AUTHORITY ON RACE RELATIONS AND LAW, AT LEAST AS A NEGRO LAWYER, VIEWING LAW FROM THE NEGRO'S POINT OF VIEW. THIS HAS INVARIABLY BEEN THE CASE WHENEVER I HAVE BEEN ASKED TO SPEAK TO PRIMARILY WHITE AND, SOMETIMES, COLORED AUDIENCES. I MAKE THIS OBSERVATION WITH CHAGRIN, NOT BECAUSE I AM UNINTERESTED IN THE NEGRO QUESTION OR PROBLEM, THAT IS IMPRESSIBLE AND UNTHINKABLE, BUT BECAUSE I CONSIDER MYSELF TO BE JUST ANOTHER HUMAN BEING WHO HAS A RICHT TO PURSUE HIS PECULIAR PERSONAL INTERESTS.

I MIGHT ALSO ADD THAT THE PRIMARY PURPOSE OF THIS LAW SCHOOL IS NOT TO ESPECIALLY TURN OUT GREAT CIVIL RIGHTS ADVOCATES, THOUGH THAT CERTAINLY WOULD NOT BE

A MEAN OBJECTIVE. NEVERTHELESS, THE REASONS FOR THIS POSITION ARE MANY. FIRST,

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HOWARD UNIVERSITY HAS PRACTICALLY PRE-EMPTED THIS FIELD AND ARE DOING A THOROUGHLY

COMMENDABLE AND ABLE JOB. SECOND, IF WE TRAIN OUR STUDENTS WELL ENOUGH, AND ALL OF

THEM HAVE TO TAKE CONSTITUTIONAL LAW, AND FROM TIME TO TIME A SEMINAR IN CIVIL RIGHTS

LAW IS GIVEN, THEY WILL BE ABLE TO COMPETENTLY DEAL WITH THIS PROBLEM AS MANY GRAD
UATES OF LAW SCHOOLS OTHER THAN HOWARD HAVE PROVED. AND THIRD, WE HAVE A SIGNIF
ICANT NUMBER OF WHITE STUDENTS, WHICH WE HOPE TO SUBSTANTIALLY INCREASE, WHOM WE

HOPE TO GIVE A THOROUGHLY ADEQUATE LEGAL EDUCATION WITHOUT UNNECESSARILY INSISTING

THAT THEY TAKE ON THE RESPONSIBILITY OF RICHTING THIS UNCONSCIONABLE WRONG. THE

VERY FACT THAT THEY COME TO THIS SCHOOL SUGGEST, AT LEAST, TO A SMALL EXTENT, THAT

THEY NEED NOT BE CONVERTED AND THAT THEY WILL NOT LOOK TOO UNSYMPATHETICALLY AT OUR PROCED.

LITERATURE IN THIS AREA, YOU WILL NOT FAIL TO SEE SIGNIFICANT CONTRIBUTIONS TO THE LITERATURE ON THIS PROBLEMS BY MANY OF OUR FACULTY MEMBERS.

THEREFORE, I DO NOT THINK OUR PERSPECTIVE OF THE PERILOUS CONDITION OF THE AMERICAN SOCIAL ORDER SHOULD BE TOO PAROCHIAL. SOMETIMES WE DISPLAY AN OVERLY SELFISH CONCERN WITH OUR PREDICAMENT WITHOUT REALIZING THAT UNLESS WE ARE WILLING TO DEMAND AND BE CONCERNED ABOUT JUSTICE FOR ALL MEN, WHEREVER THEY ARE, WE ARE NOT ENTITLED TO THE FAIR CONSIDERATION WE INDIGNANTLY DEMAND AND FIGHT FOR.

IT IS A SHAMEFUL COMMENTARY ON OUR SOCIETY THAT I HAVE FOUND IT NECESSARY TO ENGACE IN THIS EXTENDED PRELIMINARY APOLOGETICS FOR TALKING ON THE SUBJECT THAT HAS BEEN ASSIGNED ME.

THE WORLD COMMUNITY POSES GRAVE PROBLEMS FOR THE RULE OF LAW. AS ALREADY INDICATED IT MAY BE QUESTIONED WHETHER A WORLD COMMUNITY REALLY EXISTS, FOR IF A CENUINE WORLD COMMUNITY DOES EXIST THE RULE OF LAW WOULD NOT BE SO DIFFICULT TO BRING TO BEAR UPON IT. COMMUNITY MEANS THE EXISTENCE, AMONG MEN, OF ORGANIZED LIVING AND COMMON INTERESTS AND PURPOSE? THIS IS THE SINE QUA NON FOR A SOCIETY AND STATE, AND NO SOCIETY OR STATE CAN ENDURE WITHOUT ORDER, AND "ORDER" IS A MEANINGLESS CONCEPT WITHOUT LAW.

NOW WE HAVE AT THE OUTSET NOT ONLY UNCOVERED A PRACTICAL SOCIAL PROBLEM, BUT WE HAVE ALSO UNCOVERED AN ALMOST INSURMOUNTABLE PROBLEM OF LEGAL THEORY. SINCE WE HAVE SUGGESTED THAT A STATE CANNOT EXIST WITHOUT LAW, THE CONVERSE OF THIS PROPOSITION SEEMS TO INEVITABLY FOLLOW, NAMELY, LAW CANNOT EXIST WITHOUT A STATE. THIS WOULD INDICATE THAT, IF THERE IS NOT A SUPER OR WORLD STATE, THEN THERE CANNOT BE WORLD OR THE INTERNATIONAL RULE OF LAW. THOMAS HOBBES AND JOHN AUSTIN MUST BEAR MUCH OF THE BLAME FOR THIS THINKING. THOMAS HOBBES VIEWED THE EXISTENCE OF A STATE OR COVERNMENT AS DEPENDING UPON A SOVEREIGN WHO WAS GIVEN ABSOLUTE POWER TO COMMAND

AND RULE AND THE GRANTORS OR DONORS OF THIS SOVERIGNTY, THE PEOPLE, ARE REQUIRED TO GIVE UNSTINTING FEALTY AND OBEDIENCE TO THE STATE OR SOVEREIGN AND HIS COMMANDS.

JOHN AUSTIN DEFINED LAW AS THE COMMAND OF A SOVEREIGN WHO HAD POWER TO BACK UP THAT COMMAND WITH A SANCTION. ANGLO-AMERICAN JURISPRUDENCE HAS BEEN DOMINATED BY THESE GREAT THINKERS UNTIL RECENT YEARS.

MANY, TODAY, THINK THIS DEIFINITION OF STATE AND LAW IS IMCOMPLETE AND TOO
ONESIDED. WE ALL ARE FAMILIAR WITH USAGES AND CUSTOMS WHICH DO NOT HAVE THE SANCTION
OF A CORPORATE POWER WIELDING A NIGHT STICK OR FOLLOWING ON A LEASH A POLICE DOG.
CUSTOMS AND USAGES ARE SHORTLY REMOVED FROM LAW, IN FACT, THEY VERY OFTEN COINCIDE
AND THE LATTER FREQUENTLY GETS ITS POWER AND RESPECT MORE FROM CUSTOM AND USAGE THAN
FROM THE THREAT OF FORCE.

I HAVE SPECIAL DIFFICULTY WITH THIS PROBLEM BECAUSE, ALTHOUGH I BELIEVE THE RULE OF LAW IN THE WORLD COMMUNITY IS POSSIBLE, IN FACT, IT PRESENTLY EXISTS TO A CERTAIN LIMITED EXTENT, I AM IN ESSENTIAL AGREEMENT WITH AUSTIN'S DEFINITION OF LAWAT LEAST AS IT HAS BEEN UNDERSTOOD UNTIL VERY RECENTLY. DOES THIS MEAN I AM IN FAVOR OF WORLD COVERNMENT? I DO NOT KNOW. I CANNOT SAY THAT I AM ADAMANTLY AGAINST IT, BUT SURELY I KNOW THOSE WHO CRAVE WORLD GOVERNMENT REQUENTLY CONFUSE WISHFUL THINKING WITH PRACTICAL HARD FACTS. NO ONE CAN GAINSAY THAT THE SETTLEMENT OF WORLD DISPUTES BY THE MAJOR POWERS WITH FORCE IS UNTHINKABLE. IF WORLD COVERNMENT IS THE ONLY ALTERNATIVE TO MUTUAL ATOMIC DESTRUCTION, I SAY BRING ON WORLD GOVERNMENT AS SOON AS POSSIBLE.

HOWEVER, THERE IS A TENTATIVE ALTERNATIVE SOLUTION TO THIS PROBLEM. THE RULE OF LAW ALREADY COVERNS THE WORLD COMMUNITY TO A LIMITED EXTENT. SINCE 1920 AND THE FORMATION OF THE ABORTIVE LEAGUE OF NATIONS THERE HAS BEEN THE "WORLD COURT" AT THE

HAGUE, FIRST ESTABLISHED AS THE PERMANENT COURT OF INTERNATIONAL JUSTICE, AND NOW SINCE 1945 THE UNITED NATIONS HAS TRANSFORMED IT INTO THE INTERNATIONAL COURT OF JUSTICE. CRANTED THAT SINCE THE ESTABLISHMENT OF THESE COURTS, AMONG THE THOUSANDS OF INTERNATIONAL DISPUTES THAT HAVE ARISEN ONLY A FEW SCORE WERE DECIDED BY THOSE TRIBUNALS. NEVERTHELESS, THEY DID DECIDE THOSE FEW CASES. BUT MANY INTERNATIONAL DISPUTES HAVE BEEN DECIDED OR SETTLED BY OTHER AGENCIES. IT IS ALSO OVERLOOKED THAT FREQUENTLY INTERNATIONAL LAW IS APPLIED BY NATIONAL COURTS. EX PARTE QUIRIN, 317 U.S. 1(1942), THE GERMAN SABOTEUR CASE IS AN EXCELLENT EXAMPLE OF THIS FACT. THAT CASE INVOLVED GERMAN SABOTEURS WHO LANDED SECRETLY ON OUR SHORES DURING THE SECOND WORLD WAR. THE SUPREME COURT THERE SAID, IN REFUSING TO GRANT HABEAS CORPUS TO THE GERMANS WHO WERE CONVICTED IN A UNITED STATES MILITARY COMMISSION, "FROM THE VERY BEGINNING OF ITS HISTORY THIS COURT HAS RECOGNIZED AND APPLIED THE LAW OF WAR AS INCLUDING THAT PART OF THE LAW OF NATIONS WHICH PRESCRIBES, FOR THE CONDUCT OF WAR. THE STATUS, RIGHTS AND DUTIES OF ENEMY NATIONS AS WELL AS OF ENEMY INDIVIDUALS." (27-28). I NEED NOT CITE THE MANY OTHER CASES FROM THE REPORTS OF THIS NATION AND OTHERS TO PROVE THAT NATIONAL OR MUNICIPAL COURTS VERY FREQUENTLY APPLY AND ENFORCE INTERNATIONAL LAW.

THE POINT IS THAT MANY TREATIES, CUSTOMS, USAGES, AND CONVENTIONS OF THE INTERNATIONAL ORDER ARE ENFORCED OR OBEYED. AN EXCELLENT RECENT ARTICLE IN THE HARVARD

LAW REVIEW PERSUASIVELY MAKES THIS POINT. FISHER, "BRINGING LAW TO BEAR ON GOVERNMENT," 74 HARV. L. REV. 1130(1961). IT IS SAID THERE, WHETHER OR NOT COVERNMENTS

ARE THEORETICALLY CAPABLE OF LEGAL LIMITATION (THIS STEMS FROM THE ASSERTION THAT

ONLY A SOVEREIGN CAN IMPOSE LEGAL REGULATIONS OR RESTRAINTS), THEY DO REGULARLY SUBMIT

TO ADVERSE COURT DECISIONS." (1132) They could decision involving

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1) our armed Forces at his chapos isusly there is something other than IN THIS ARE A PUBLIC OPINION, NATIONAL AND INTERNATIONAL,

AND RESPECT FOR LAW ARE CRUCIAL FOR THE EXISTENCE OF THE RULE OF LAW. NO NATION WANTS TO BE REGARDED AS LAWLESS AND NONE WILL LONG ENDURE IF LAW IS NOT RESPECTED. WE HAVE ALREADY POINTED OUT THE FORCE AND POWER OF WORLD OPINION. THIS WOULD SUGGEST THAT THE RULE OF LAW MAY BE EXPANDED IN THE INTERNATIONAL ORDER IF ITS PROMULGATION AND ENFORCEMENT ARE MORE FREQUENTLY DISCUSSED AND MAN SOUGHT BY THE NATIONS OF THE WORLD.

THE RULE OF LAW CAN BE BROUGHT TO BEAR ON THE WORLD COMMUNITY IF IT IS TRANSFORMED MORE GENUINELY INTO A "COMMUNITY." THIS WILL REQUIRE MORE INTERACTION AND INTERCHANGE OF PEOPLES AND CULTURES THROUGHOUT THE WORLD. EVERYONE HAS A VITAL STAKE IN THE RULE OF AND JUST AS THE SOUTH MUST UNDERGO A GREAT EDUCATIONAL PROCESS BEFORE IT CAN BE BROUGHT UNDER THE RULE OF LAW. THE WORLD MUST GO THROUGH A GREAT EDUCATIONAL PROCESS. BUT IN THE MEAN TIME IN DEALING WITH THESE NATIONS AND THE SOUTH, THOSE WHO WOULD BRING THEM UNDER THE RULE OF LAW MUST INVESTIGATE MORE DEEPLY THEIR MENTALITY AND CULTURE IN ORDER TO BE ABLE TO ADJUST THEM TO THE SPIRIT OF THE RULE OF LAW AND HUMAN DIGNITY AS IT IS UNIVERSALLY UNDERSTOOD BY ENLIGHTENED MINDS THROUGHOUT THE WORLD. alay the I HOPE THAT I HAVE CONTRIBUTED IN A SAML WAY TO THE

REALIZATION OF THERE BEING A LIMITED WORLD COMMUNITY TODAY. I HOPE WE MAY CONTRIBUTE OUR SHARE OF CONSTRUCTIVE THINKING TO THE FURTHER REALIZATION OF A MORE CENUINE WORLD COMMUNITY. I HOPE WE MAY LEAVE THIS CONVENTION, NOT ONLY DEDICATED TO PROMOTION OF THE anymere RULE OF LAW IN THIS NATION, BUT ALSO IN THE WORLD COMMUNITY.