

Winter 1971

Law and Today's Crisis-Situations

Thomas E. Davitt

Marquette University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>



Part of the [Jurisprudence Commons](#), and the [Legal History Commons](#)

Recommended Citation

Davitt, Thomas E. (1971) "Law and Today's Crisis-Situations," *Indiana Law Journal*: Vol. 46 : Iss. 2 , Article 3.

Available at: <http://www.repository.law.indiana.edu/ilj/vol46/iss2/3>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

LAW AND TODAY'S CRISIS-SITUATIONS

THOMAS E. DAVITT†

The purpose of this article is to indicate that the possibility of law, especially international, preventing threatened disasters in current crisis-situations appears to be poor. This possibility relates to both the presence of law in these areas as well as to its effectiveness if present. The basis of this evaluation is that the presence and effectiveness of law depends on a consensus-willingness to limit individual freedom in order that public values be achieved. The chances that such willingness will materialize are small. The public values at stake are the conditions which will prevail if threatened crises are avoided. As used in this article, the concept of "law," although including law in the strict sense of legislative enactments, judicial decisions and executive orders within a nation, will pertain especially to law in the broader sense of treaties and other agreements reached between nations.

I. CRISIS-SITUATIONS AND THEIR IMPLICATIONS

The crisis-situations which concern us here are among the many with which the world is confronted today. I have chosen for discussion those which seem to have the greatest implications and urgency.¹ Some refer to the survival of human life itself, and others to the maintenance of the quality of human life should it survive.

A. *Crisis-Situations*

The greatest crisis-situation of all, and one immediately related to the survival of the human race, is the threat of total annihilation from thermonuclear-radiological-biological-chemical warfare.² There is enough thermonuclear capability in existence, as is well-known, to extinguish all human life. The significance of this fact for all nations hardly needs development.

Other crisis-situations facing us relate to the quality of human life. There is the threat of great destructiveness from pollution and famine. The pollutants here involved are the ones commonly covered

†Professor of Jurisprudence, School of Law, Marquette University.

1. For a listing of the various crisis-problems in their possible order of priority, and in terms of intensity and time involved in reaching climactic proportions, see the important article by John Platt, *What We Must Do*, 166 *SCIENCE* 1115-21 (1969) to which I am much indebted.

2. Hereinafter referred to as TRBC warfare.

by the news-media, including radioactive fallout from atmospheric test explosions. The threats which the various types of pollution pose have been well publicized. Famine on a world-wide scale, will soon become a threat as significant as that of pollution unless present trends are reversed. The famine problem is not only a matter of food production, distribution and population growth, but also a matter of food poisoning from the undiscerning use of insecticides and other types of air and water contaminants.³

An additional crisis-situation with which we must contend is the threat of widespread unbearable tensions resulting from poverty and racial antagonisms. Anything like a full grasp of the poverty problem can exist only when it is seen from a world viewpoint. The injustices underlying poverty are, for those who suffer from them, a ceaseless source of resentment and tension which, unless the causes of poverty are removed, will ultimately result in an attack upon the private control of natural resources and wealth. Racial discrimination is one of the most deep-rooted and long-standing sources of tension and strife. The history of struggles between the peoples of differing races, both within nations and between them, attests to this. This antagonism is a constant cause of indignation and stress which inevitably must erupt into violence.

B. *Implications*

The implications of today's crisis-situations are not confined to individual nations, but extend into the international arena as well. Radioactive fallout from atmospheric test explosions serves as an example. Monitoring stations situated around the globe, and far removed from the site of the explosions, can determine the time and strength of the explosions. That radioactive fallout has serious deleterious effects on human and plant life is the common opinion of thermonuclear physicists, geneticists and ecologists.

Other cases with international implications are well known. Smoke from German industrial stacks was wafted by air currents to areas over Sweden. The sulphur oxide in the smoke was brought down by rainfall as sulphur dioxide in Sweden. This sulphur dioxide released the mercury contained in seed dressing which, in turn, was washed into rivers. The fish in these waters were poisoned by the mercury, forcing Swedish

3. The undiscerning discontinuance of the use of insecticides can also have an adverse effect on various types of life. For instance, the discontinued use of DDT is reported to have allowed widespread defoliation and destruction of trees by gypsy moths and canker-worms, as well as outbreaks of malaria among humans from the uncontrolled anopheles mosquito. See BARRON'S NATIONAL BUSINESS AND FINANCIAL WEEKLY, July 6, 1970, at 1, 8, 19.

authorities to regulate the amount of fish which could be safely eaten by the Swedes in a given period.

A similar example is one which relates to the border between the United States and Mexico. A smelter plant in El Paso, Texas is alleged to have discharged large amounts of particulate and gaseous pollutants into the air which, following natural air currents, was transported down to ground levels not only in El Paso, but also in Ciudad Juarez, Chihuahua, Mexico. The pollutants—sulphur dioxide, sulphur trioxide, sulphuric acid, and various highly toxic oxides and sulphides—allegedly caused sinusitis, rhinitis, bronchitis, emphysema, dermatitis, nausea and vomiting in the inhabitants of these places.⁴

A further well known example of pollution with international significance is that of the Rhine River. Flowing through various countries which contribute to its pollution, such as the potash mines in Alsace and the industrial Ruhr Valley, the Rhine has been labeled the "sewer of Europe." A similar example is that of the Great Lakes. Their pollution has been contributed to by the bordering states of the United States and the provinces of Canada. Their state of pollution has reached the point where one lake, Lake Erie, has been declared "dead."

II. CONTROLS IN CRISIS-SITUATIONS

As the last decade has proceeded, more and more controls have been brought to bear in crisis-areas. It is obvious that these controls are necessary if threatened disasters are to be avoided.

A. Examples of Controls

The terrifying possibility that all human life can be summarily wiped out has brought at least some nations together in an effort to establish agreements which could prevent this catastrophe. The Strategic Arms Limitation Talks regarding thermonuclears, and the Geneva Accords, concerning biological and chemical warfare, are attempts to bring controls to bear in these areas.

The acuteness of the pollution problem is attested to by the series of controls it has already brought forth by legislative, judicial and executive efforts in the United States.⁵ The attempts made thus far

4. Suit was filed by the allegedly injured inhabitants as plaintiffs and the American Smelter and Refining Company as defendant in the El Paso County, Texas District Court (186th Judicial District), January 20, 1970 for one billion dollars. On February 24, 1970 at the request of the plaintiffs, the suit was dismissed without prejudice.

5. *See, e.g.*, the ENVIRONMENT REPORTER published by The Bureau of National Affairs, Washington, D. C. and the ENVIRONMENTAL LAW REPORTER published by The Environmental Law Institute, Washington, D. C.

by national and international agencies to regulate food production and distribution are further instances of efforts to create controls as a means of forestalling the threatened disaster of food shortage.

In addition, there is some evidence that society has finally become concerned not only with helping the poor as individuals, but also with helping them as a class. This new social awareness has served to initiate the enactment of legislation by various nations pertaining to areas such as welfare programs, housing facilities and common ownership of natural resources. Moreover, the day is slowly passing when race relations can be spoken of in terms of master and slave or the colonizers and the colonized. This change is reflected in national statutes, judicial decisions and international conventions.⁶ These controls limit the actions of those who consider themselves "superior" toward those whom they look upon as "inferior."

B. *Limitation of Freedom*

What these controls signify is that individuals' freedom to do as they please in the above crisis-situations is limited. Agreements regarding the use or disposal of TRBC means of warfare imply that the signatory nations are no longer free to do as their previous national policies may have dictated. Regulations concerning pollutants, food resources, ownership of resources and the equality of all races affect those who come under them in such a way that they are no longer at liberty to act as they may have previously.

C. *Kinds of Freedom Controlled*

The kind of freedom basically affected by these controls is freedom to make decisions. This is the psychological state of internal non-determination in which a man has the ability to make decisions independently of any antecedent causal determination. This is free choice, free will or free decision. The other kind of freedom pertinent in this context refers to the areas in which freedom of decision is allowed to be exercised. This freedom is the state of external nonrestraint in which one is not under various kinds of exterior restrictions or controls. Such a condition is usually designated as political, economic or religious freedom.

The limitations which controls impose are, strictly speaking, on the individual person's decisional freedom. There is also a sense in which

6. See, e.g., the International Convention on the Elimination of All Forms of Racial Discrimination adopted unanimously by the General Assembly of the United Nations, 21 December 1965, U.N. Doc. A/RES/2106, XX (1966). This treaty has not as yet been ratified by the United States.

controls are spoken of as imposing limitations on a nation's freedom. Nations do not have the psychological freedom of individual persons. They do not have, from the psychological viewpoint, a national mind or a national will, even though there have been romanticists and formalists who like to think differently. In democratic nations, the citizens' freedom to form consensus-decisions, which are expressed ideally, at least, in the actions of their freely elected representatives, can be referred to as the nation's decisional freedom. In a dictatorship, the governing personnel's freedom to make decisions has been spoken of as the nation's freedom of decision.

III. PUBLIC VALUES V. PRIVATE VALUES

Limitations on decisional freedom will be effective to the extent that individual persons are willing to limit this freedom. This willingness, in turn, depends on the priorities given to public vis-a-vis private values. Today's crisis-situations have forced upon all of us a realization that public values have a priority which continuously prevails over private values.

A. *Difference*

This priority can best be appreciated when the difference between private and public values is analyzed. The key difference is their communicability. Private values are communicable to one or a few, be they individual persons or individual nations. The car I drive has a value communicable to me or to relatively few others. Gains made by one or a few nations through thermonuclear blackmail, profits deriving from technology and industry, surpluses of food, individual ownership of natural resources, and the "superiority" of some races over others, are all values which are communicable to relatively few individuals.

On the other hand, public values are communicable to all. The security of the members of any society is such a value. Various aspects of security are peace, survival of mankind, health conditions of the world, sufficiency of food for all, common ownership of natural resources under the sea or on land and the equality of races. Stated in terms of "titles," the difference between public and private values is that the objects of private values are such that only some can have titles to them, whereas the objects of public values are things to which all have title.

As well as this main difference of communicability between private and public values, there are other divergencies. By their very nature public values are the only matrix in political society within which private values can be achieved. It is within the context of security and its

various aspects that one is able to accomplish the private values of self-preservation, marriage, acquisition of knowledge, success and so forth. Private and public values, moreover, differ in respect to the efforts required to obtain them. Private values are brought about by the efforts of one person or a few persons. Public values are produced only through the co-operation of all the members of a society; the degree of co-operation determines the extent to which the public value exists.

Furthermore, private and public values differ in substance. A private value can be a collection of consumer goods or even the factories which produce them. A public value, however, is of an entirely distinct nature, in that it is an intangible asset. In addition, a private value can be diminished when it is shared, such as the meal which the family consumes. Public values, on the other hand, such as security and peace are neither diminished nor lessened, regardless of how many participate in them. Finally, private values should not be the content of law. If they are, then law becomes oppressive. For example, if law commands whom one shall marry, the result is tyranny and dictatorship. Public values, on the other hand, are the central concern of law. The sole purpose of law is to insure the security and peace of the members of a society so that private values may be attained.

B. Primacy of Public Values

The difference between public and private values can perhaps be best summarized by the over-simplified distinction between "some" and "all." Private values concern some members of a society. The root of the priority of public values is that they relate to all members of a society. This society may be a city, a state within a nation, or the nation itself. Eventually, this society could be the planned union of all nations for the purpose of bringing about mutual security and peace.

Of most importance is the fact that the fundamental reason men become members of political society is to share the public values of security and peace so that within them they can pursue their own private values. It is public values and not private values, however, which are ultimately normative in political society. Public values are not approved or disapproved in political society according to whether they are helpful or harmful to private values. It is the converse; private values are judged "good" or "bad" according to whether they are helpful or harmful to public values. Statutes controlling pollution, for instance, rest upon the premise that pollution caused by private industry is "bad" because it is injurious to public health and thus to public values.

IV. OBSTACLES TO THE ACCEPTANCE OF LIMITATIONS

The necessity of limiting freedom to pursue private values for the sake of obtaining public values has never been universally accepted. Opposition stems from both theoretical and practical reasons.

A. *Theoretical Obstacles*

The theoretical reasons are derived from several social philosophies. One such philosophy, accepted in some quarters during the past century, was opposed to any extensive governmental controls. This philosophy rested upon the assumption that men will do what is right if they know what is right and are left alone. Treatises were written stressing the "free development of individuality" as "one of the leading essentials of well-being."⁷ It was believed that the greatest threat to freedom was the imposition of others' "opinions and inclinations."⁸ It is more than historical coincidence that the leitmotif of the incipient industrial revolution became "laissez-faire."

Such eulogies on freedom erred not so much in what was said as in what was omitted. Their authors appeared to be blind to what the crisis-situations of today so clearly establish; constant limitation on individual freedom is demanded by public values. This tenet was ignored and instead individual freedom became the rallying cry. Justice came to signify whatever did not interfere with others' subjective freedom of decision. It no longer signified the obligation to respect others' objective title to things. Consequently, emphasis was placed upon preservation of individual rights rather than performance of obligations.

A further theoretical obstacle to the acceptance of limitation of freedom has been the rejection of the belief that equality is a criterion for justice. One segment of this position has maintained that human beings, regardless of race, are naturally unequal. Accordingly, some human beings are not the equal of others because by nature they are destined to be inferior. Slaves were said to be in a permanent state of inequality to their masters, and women to men.⁹ Another segment of this position holds that those of one race, the blacks, are congenitally not the equal of other races, the whites and the yellows, in mental capacity and attainment.¹⁰

7. J. MILL, ON LIBERTY, 56 (Castell, ed. 1947).

8. *Id.* 14.

9. Aristotle is the classic prototype of this kind of thinking. See his NICOMACHEAN ETHICS Books VIII-IX and his POLITICS, Book I. Understandably Aristotle has never been adopted as the patron saint of any "women's liberation movement."

10. This position appears to be held by a minority of reputable physical anthropologists. See C. COON, THE ORIGIN OF RACES (1963), and the interpretation put on it by W.

Another social philosophy which is an obstacle to accepting limitation of freedom on the international level has as its theme the communal ownership of natural resources and wealth. Such ownership, it is asserted, has been blocked by "capitalistic" nations. The righting of this wrong is one of the main inspirations of Marx and Mao Tse-Tung. The "capitalistic" nations, with their consecrated theory of private ownership of natural wealth, have perpetrated vast wrongs upon the great majority of people of the world by depriving them from what is rightfully theirs. Moreover, "capitalistic" nations are necessarily imperialistic; they must further the spread of profit-making capitalism under the guise of democracy to all nations. Any request to accept limitation on freedom in order to correct these wrongs, therefore, must be summarily rejected.

B. Practical Obstacles

There are also practical obstacles to the acceptance of limitations on decisional freedom. One of these is a reaction to the historical experience of oppressive limitation on freedom. Many of those who fled Europe and came to the United States, either as immigrants in the early days of this nation or later as refugees from Hitler's concentration camps, had been victims of various kinds of restraint and persecution. Understandably these individuals prized freedom most highly. For the remainder of their lives they wanted to be free to make their own decisions in politics, economics, religion and every other concern in their daily lives. For these people, limitations on freedom should be the exception and not the rule.

Another practical obstacle is the condition of great masses of people around the globe who are forced to live "half-lives" because of gross injustices. They are deprived of adequate food, housing and employment by countries which deny them a voice in government and rights of association. Such situations hardly enhance the probability that these people will accept limitations on their decisional freedom. A further practical obstacle to the acceptance of limitations on freedom is the position of inferiority in which some nations find themselves in relation to other nations. This is the situation of Communist China and other nations who have been denied membership in the United Nations. For these nations to accept limitation on their freedom to become the great powers they believe they are destined to be, would be to betray their deepest conviction and inspiration.

GEORGE, THE BIOLOGY OF THE RACE PROBLEM 60-64 (Montgomery, Commission of the Governor of Alabama, 1962). But for another interpretation of Coon's book see Theodosius Dobzhansky, 208 SCIENTIFIC AMERICAN 169-72 (1963).

There remains another very practical and basic obstacle to accepting limitations on freedom of decision. Every normal man has a drive to be concerned about his own welfare. He has a basic urge to pursue his own private values. Man also has a drive to live in the society of other men, to communicate with them, and to work for mutual security and peace. Unless the demands of the drive for self-development are counterbalanced by the demands of the drive for societal living, it is difficult to accept limitations on the pursuit of private values for the sake of public values.

Failure to balance the demands of these basic drives is precisely the charge which has been leveled against the people of the United States. They have been accused of being too selfish and unwilling to relinquish the pursuit of some private values for the sake of promoting public values. In America, it is claimed, there is no loner a willingness to sacrifice. What was once a united nation with a purpose has now become a jumbled mass of self-concerned egos who have lost the ability to control themselves because they lack the will to do so.¹¹

In summary, the people of the United States, and undoubtedly those of other nations, want international security and peace, but this desire is qualified by an unwillingness to sacrifice some private values. For example, people want to avoid world famine and starvation, but this desire is qualified by an unwillingness to give the time, energy, supplies and resources necessary to accomplish this end. People want to remove poverty from the face of the earth but, again, this desire is qualified by an unwillingness to surrender certain aspects of private ownership which are, in great part, a cause of poverty.

V. PROSPECTS FOR ADEQUATE LIMITATION

It may appear that the prospects for adequate limitation of freedom are favorable. In the face of current crisis-situations ideals of untrammelled freedom are becoming less of a hindrance. A distinction is now drawn between limitations which are necessary and just, and those which are not. No longer are all limitations looked upon as inevitable marks of dictatorship.

11. A. HACKER, *THE END OF THE AMERICAN ERA* (1970). When this condition of self-centeredness is present in individual citizens, it is hindrance enough to public values. But when it also exists in elected officials, whose sworn concern as officials is the public interest, it is a still greater block. Cases of elected officials betraying public values for the sake of their own private values are by no means rare. It probably always occurs in the voting of some congressmen for or against some bills "in an election year." One alleged case receiving much current publicity is the reported incident of President Kennedy refusing to consider military withdrawal from Vietnam until after he was re-elected. O'Donnell, *L.B.J. and the Kennedys*, *LIFE*, August 7, 1970, at 44.

Present situations have forced upon us all a clearer understanding of what has been true all along, namely, that limitations on freedom of decision are a constantly necessary way of political and legal life. However, several obstacles still remain. One obstacle arises from the fact that large numbers of individuals are unwilling to limit their freedom either because of their philosophy of communal ownership of natural wealth, or because of the gross injustices of poverty, racial discrimination and political partiality.

The basic reason why many are unwilling to limit their freedom is because they do not admit the prerequisite for doing so: the equality of all other men. No man is willing to give another what he perceives to be due to him unless he sees this other person as somehow his equal. The motive for being willing to accept limitation of freedom in crisis-situations, in other words, is the motive for perceiving others as equals.

There are several aspects of equality which could serve as motives in crisis-areas on an international scale. First, there is the equality of inhabitants of the same globe. Second, all men are equal insofar as they are humans as opposed to animals. Third, all men are equal, in terms of religious doctrine, inasmuch as they originate from one and the same "Father." Implied here is a living of men together in a life which is presently terrestrial but which will later be trans-terrestrial. Thus, men can expect a future reward for now treating all men as equals, or a future punishment for dealing with them now as unequals.¹² A fourth aspect of equality which could serve as a motive for accepting limitation of freedom is nationalism. All men are equal since they are members of the same nation. Finally, all are equal insofar as they are of one race. However, these last two equality-motives would not promote international public values.

The motivational worth of the first three aspects of equality appears to be poor. The equality-motive of men being co-progeny of the same father has in itself the greatest import of all the equality-motives; all inequalities dissolve before it. However, because it rests upon religious belief which a large part of the world does not share, its practical motivating appeal on an international scale will be poor.¹³ The motivating appeal of

12. It has been said that "our great principle of human equality—that maxim according to which we grant certain basic rights even to sick and inferior people, to strangers and enemies—is *not a scientific principle* It has its historical basis in the *religious* doctrine of the equality of all men before God From this religious origin it has come to its present eminent status by a long, long process of historical evolution." Brecht, *The Ultimate Standard of Justice*, in 6 *Nomos* 62, 67-68 (1963).

13. Philosophical speculations about the creation of men by God have never produced the kind of solid conviction which is necessary for motivating men to treat all other men as their brothers and as sons of God. Such motivating-conviction has come

the remaining equality aspects, co-humans and co-inhabitants, is likewise poor because both leave intact the existing inequities in society.

VI. EXPECTATIONS FOR LAW

If the odds are poor that there will be sufficient willingness to limit freedom because of a failure to recognize effectively the equality of others, then the prospects are also poor that the law will be able to effectively forestall threatened disasters, especially internationally.

A. Presence of Law

Efforts are undoubtedly being made to create law in crisis-areas. Environmental legislation serves as a good example. However, this development has encountered opposition from those individuals who prefer private over public values. The alleged attempt of oil companies to block legislation which would establish stricter requirements and supervision of both off-shore drilling and transportation is an example of efforts to prohibit regulation in a crisis-area where it is sorely needed. Likewise, the alleged attempt of automobile manufacturers to effect a general delay in legislation which would require non-pollutant or low-pollutant engines on all cars is another instance of endeavors to prevent the law's needed presence in crisis-areas.¹⁴

There are several other instances of unwillingness to limit freedom of decision. The case of Bald Head Island off the coast of North Carolina is in point. Bald Head is one of the few remaining undeveloped sea islands along the Atlantic Coast. Thus, its ecological and environmental value is high. The private owner of the island, however, refused an offer by the State of North Carolina to buy the island with the intention of

historically only from religious belief. Questions can be validly raised, therefore, concerning the motivating value of the "equality of all men" mentioned in such pronouncements as the American Declaration of Independence, the United Nations Universal Declaration of Human Rights (1948) or treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination (1965). Are such statements grounded on the philosophical idea of men being co-humans, or are they based on the religious conviction of men being brothers and sons of God? Quite obviously the idea of "equality" has to be based on the ground of men being co-humans if it is to be acceptable to individuals and nations of atheistic persuasion. But, if this is the case and if operational motivation regarding equality and brotherhood comes only from religious belief, the question must be asked as to whom such statements factually speak? Do they functionally address only those who already believe their content on religious faith and have motivational value only for them?

14. The reaction of General Motors to the charges of Ralph Nader, that the Corvair was an unsafe automobile, is a star example of private interests being concerned only with their own private values and not with public values. Instead of assessing the worth of Nader's accusations, the management of General Motors chose to try to discredit the character of Nader—a matter totally irrelevant to the justness or unjustness of Nader's charges and the unsafety or safety of the Corvair car.

turning it into a natural preserve. Instead, he sold the island to real estate developers reportedly for the same amount offered by the state.¹⁵ The developers may oppose efforts by the state to exercise its power of eminent domain. If they should do this, they would be acting consistently with their already manifested unwillingness to limit their own private interests for the sake of the public interests of the people of North Carolina.

On the international level, although attempts are being made to reach agreements in crisis-areas, there is abundant evidence of lack of co-operation. For example, even though the two great thermonuclear powers of the moment, the United States and Soviet Russia, have agreed not to conduct atmospheric thermonuclear tests, other nations, France and China, have shown no inclination to enter into these agreements. Similarly, although some 85 nations have ratified the Geneva Accords, the United States has thus far not agreed to limit its freedom in these areas by approving the Accords. Likewise, attempts of the United Nations Committee on the Peaceful Use of the Seabeds to reach international agreement on how the seabeds and their valuable resources should be used have, as of this writing, ended in failure. The private interests of individual nations have obstructed any possibility of successful accord on a set of rules for controlling the use to be made of the ocean floor.

Signs which would justify the prediction that the necessary steps will eventually be taken internationally to limit the freedom of individual nations to do as they please regarding pollution, famine, poverty and race relations are not yet visible. True, some individual nations are making efforts to alleviate present crisis-conditions within their own nations and some international attempts are also being made by groups such as the United Nations. But, thus far the concern of individual nations with their own private national values has not been counterbalanced by a concern for other nations' public international values. The crisis-problems are of such a disastrous nature, however, that international cooperation is imperative.

B. *Effectiveness of Law*

Even when law is present in crisis-areas, there is a substantial question as to how effective it will be. Laws are effective, axiomatically, in proportion to their consensus-acceptance by the people whom they are supposed to direct. The laws in the United States prohibiting the education of children according to racially discriminating lines have

15. Reported in the New York Times, July 27, 1970, at 26, col. 2.

been rendered notably ineffective in some localities by the unwillingness of those touched by the law to limit their freedom in line with the demands of the law. Recourse has been had in the courts, but court decisions are operational to the degree that they are consensus-accepted by the people.

Treaties or other agreements between nations are likewise effective only to the extent that they are honored by the signatory parties. History is strewn with the skeletons of broken agreements. Pacts regarding fishing rights, territorial boundaries, air-space, for instance, have been frequently violated. What is more, non-aggression treaties have been honored almost as much in the breach as in the observance. It is true that in some instances there is recourse to the International Court of Justice for the purpose of giving effectiveness to international agreements which have been rendered ineffective by failure to observe them.¹⁶ However, relatively few cases have been submitted for adjudication. One possible explanation for this fact may be the proviso that the contending nations must agree to abide by the Court's decision since the Court has no physical powers of enforcement. The prospect of having to limit individual freedom may thus deter nations from submitting disputes to this international body.

Consequently, if treaties and other international agreements are to be entered into and followed, it becomes clear that there must be a willingness to limit freedom to pursue private national values in order that public international values be achieved. The reason why thermonuclear nations should limit their ability to wreak devastation on all mankind is that they have some concern not only for their own welfare but also for the welfare of all others. The reason why German lawmakers should limit the freedom of German industrialists to emit as much polluting smoke as they wish which adversely affects the Swedes,¹⁷ is that they have

16. For instance, article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 6, states that:

Any dispute between two or more States Parties over the interpretation or application of this convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall at the request of any of the parties to the dispute be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

17. Witness the closing of a soda ash plant in Saltville, Virginia because it could not meet the demands of the state's water pollution controls. The north fork of the Holston River into which the plant discharged chlorides became polluted. The state insisted that its water pollution controls be observed. The plant management likewise insisted that if it did observe the controls it could not operate economically. Closing the plant meant the loss of 600 jobs. The state stood its ground and the management was forced to close the plant. The state of Virginia preferred clean water to 600 jobs. Reported in the Wall Street Journal, July 9, 1970, at 26, col. 2.

concern not only for themselves but also for the Swedes. The reason why American smelters should reduce or eliminate pollutants from their smoke emissions which befoul the air not only over the United States but also over Mexico is that they are concerned about Mexicans and Americans.

C. *World Law*

The temptation is strong, at this juncture, to look to world law as the panacea which will remedy the ills of our crisis-ridden world. Undoubtedly there is a great need for world law which would recognize the equality of all peoples. Development of world law necessitates a world government. This government, in turn, presupposes a world society of all the nations. The government of this society, being representative of all nations, could forestall any attempt on the part of particular nations to hamper either the presence or the effectiveness of world law needed in crisis-areas.

The fact must be faced, however, that the formation of such a society requires a willingness on the part of all the member nations to limit their freedom to pursue private national values. Presently, all data indicates that nations' sentiments are to the contrary. An examination of the history of the United Nations illustrates that if its members have this willingness, it surfaces only occasionally. The failure of the United Nations Committee on the Peaceful Uses of the Seabeds to reach an agreement is an example. In summary, the willingness of nations to balance their own private interests with the public interests of all nations does not appear to be a steady and consistent element in the treaty-making process of the United Nations.

VII. CONCLUSION

The possibility of law, especially international, becoming influential enough to prevent threatened disasters in crisis-areas appears to be poor. This contention is supported by the fact that law's presence and effectiveness relies upon a consensus-willingness on the part of the people to limit their freedom to pursue private values in order to achieve public values. Underlying this unwillingness to limit freedom is a failure to recognize operationally that all individuals and nations are equal.

The remedy for our disordered condition is extra-legal and not legal. The current crisis-situations carry the message that what must be done is to *give up in order to get*. It has always been true that in political living public values have priority over private values, that men are equals, and that men must be willing to limit their freedom if they are to

live together successfully. But, as of now, the record does not show that these lessons have been learned well enough or widely enough. Tragedy is said to be the great teacher. There may still be lessons which only tragedy will teach.