

How to Develop World Peace Through Law†

Everyone is against war and for peace. I have never met a single sober human who favors death rather than reason as a means of persuasion. And so the debate has gone on for millennia. A new basic approach might be worth exploring. I write only about one little approach, not about solutions.

Unfortunately, among the millions of prolix words I have read from the pens of legal and political historians, I find an irritating absence of underlying demographic and cultural facts. In truth, I am bored by the present noble, high-minded, but Talmudic discourse on the subject: "How to develop world peace through law." Much of the debate would fit comfortably into the world of Hammurabi, 2067-2035 B.C., with its "eye for an eye" logic as the technique for peace, or even back to the millennia when war was waged or peace maintained by the single good or evil will of a tribal chief, political potentate, or, in later periods, kings and queens. And now we must add "dictator."

This was the ineluctable pattern of man when man was impotent to make his desires heard or read, and thus hopefully persuasive to his ruler. In this fashion, in an illiterate world, incapable of communication, England, as one example, substantially kept the "peace" for about a century. A world of illiteracy and non-communication could be operated only by the will of emperors, and emperors need not discuss matters except with emperors. Today, more than half of the nations in the world do not yet have any discernible system for peaceful succession in office.

* A.B., Williams College, LL.B., New York Law School. Member of the New York Bar since 1913.

† The material referred to and other demographic facts are to be found in *International Comparative Almanac*—authored with Judith Posner (Macmillan 1967).

This utter inability of people to select their delegates, governors, or rulers is inevitable when man's only logistics for "peace" operates in a world of ignorance where diffusion of knowledge is totally absent. Then, few roads for peace are available other than by force. Reason is futile.

The attempts through history to make international peace by law—that is, treaties—have revealed a noble but ineffective desire. I should imagine that thousands of treaties all written with high hope for eternity have lapsed or failed and that few endured.

All of the worthy pious words for a rule of law have been impotent, if for no other reason than that seldom were they based on demographic and social forces, the matrix of law as it is of peace. As Holmes said in *The Common Law*, "The secret roots of law are the juices of life."

Man is not even in agreement as to the simplest fact—the number of nations on our planet. In brief, I accept the figure of 226, which includes nations, territories, and islands. Of these 226 entities 214 are official nations about which at least some statistical information is available in United Nations sources. Of the 226 there are 12 areas occasionally referred to as "islands," "territories," etc. Area and population of these 12 are available in other than U.N. sources.

I find no valid source for even guessing the number of nations or empires at the time of the Ottoman or Roman Empires. Man did not know a simple item such as the number of separate Indian nations in the Western hemisphere.

At the start of the Christian era the total population of our planet was probably less than 100 million—including all politically second-class citizens, such as children and women. This is the size of Japan, or double France, today.¹ Literacy and knowledge were so scant that a single man or a small group of men had to exercise a virtual monopoly over peace or war, reason or force. Only under the "strong man" system could people have any type of organized society, known as a government.

In 1787, a small leisure group of literate males—the elegant of the mind—invented our own government. Among four million people there were fewer than 200,000 literates. Only 160,000 of them voted on the adoption of our Constitution and less than 200,000 were

¹ *Population and Vital Statistics Report*, Statistical Papers, Series A, Vol. XVIII, No. 4 (data available as of 1 October 1966), Department of Economic and Social Affairs, United Nations, New York, 1966.

entitled to the franchise. This was the last time such voting could occur because of the modern zeal for egalitarianism expressed in the slogan "one vote, one person" irrespective of literacy. Our mass media dishonorably interpret every revolution or rebellion on our planet by faulty comparison to our fight for freedom and subsequent sober invention of a republic.

Today Planet Earth has a population of about three billion.² At the time our nation was invented the world population was only a little more than that of Communist China today—700 million. Both figures are, of course, matters of controversy and at best honorable guesses.

Today, 123 of about 226 nations are involved in Peace through Law under the bright title "The United Nations." Of the 123, 14 have less than one million citizens, with one nation having less than 100,000 people.³ Nauru, which has declined membership in the United Nations, has a population of 6,000 in 8 square miles. Of the 109 remaining nations over 90 are given only scant or no reference in the best of our world demographic statistical catalogues. Information about the nations of our world should wisely be the starting point of discourse about Peace through Law, if we deem Peace to have some relation to persuasion by reason and, at the same time, be based on the facts of life. Parenthetically, I mention that in the U.N. the largest nation in area covers nearly nine million square miles and the smallest only 109 acres.⁴ A temptation to use the persuasion of sizes and numbers cannot be overlooked in the attempt to shift envy, greed, jealousy, and all other insecurities of man from show of force to the quiet uses of reason. But area is not equivalent to humanity, nor is counting noses related to development of brains.

A tender sense of guilt is not remote from the frightening gap of economic ability to produce wealth. Until recently, economic envy as a deterrent to peace was not a factor except in rare locales. The per capita income in the year 1 A.D. could not have exceeded \$25 per annum in our terms. Today, the income in our country is over \$2,600 per capita annually. Only 28 nations in the U.N. have annual incomes of over \$500 per capita, while 32 are known to have under \$100 income per capita per annum.⁵ Just as envy is a barrier to dis-

² *Idem.*

³ *Idem.*

⁴ *Statistical Yearbook, 1965*, United Nations, New York, 1966, pp. 80-97, 24.

⁵ *Estimates of Per Capita National Income* in United States Dollars, Statistical Office of the United Nations, New York, August 1966.

course leading to peace, guilt can also disturb the meeting of the minds of negotiators, advocates, or judges. Our nation, leading all but one other nation in income, can respect Finland with over forty times the income of Ethiopia, or Greece with four times the income of Thailand,⁶ just as we can pay homage to tiny Iceland, with its 1,000 year old Parliament and its present trilingual literacy, and consequent high income. And still, as a leader of world influences, we must appreciate the guilt of affluence that prods our generosity whenever we hear of a flood or other dramatic disaster anywhere in the world. Reason can be distorted in good or evil ways by prestige and prides, by envies and guilts.

Thus, the gaps in size, in population, and in per capita income are part of the *res* which create, or at least nurse, the bridges which law—as well as armies—must cross. Even the “bridge” is an outworn concept, since force now travels by air, just as peace by reason depends increasingly on the ether.

Most of our legal historians fail to relate law to literacy and communication or at least to the gap between nations enjoying these and collateral assets. Twenty-eight U.N. nations claim 90 per cent or higher literacy, but 17 members have less than 10 per cent literacy rates. Modern peace is in a sense predicated on the logistics of communication. So we must record that we have no less than 2,800 languages (exclusive of dialects), and within some nations, scores of non-communicable languages exist. While there is no standard definition of literacy, illiteracy can be illustrated with great—and sad—accuracy: One billion adults over 15 years of age cannot read or write in any language. Not to discourage my despairing friends, I must also mention that probably 40 per cent of the 290 million people of Africa have not as yet reduced their spoken language into written form.

Written language is not unrelated to Peace by Law. Surely a consensus of leaders of nations is more readily available if their cultures can read and write, even though we have seen a people with a high degree of literacy and ability to communicate run by dictators, such as Stalin and his successors, or Hitler. The Communist nations are remote from any system of people electing their rulers. Dictators encourage literacy as an additional means for propagandizing. Word of mouth is too slow and permits confusions.

Of the U.N. member nations there are only 34 that have daily

⁶ *Idem.*

newspaper circulation of at least 100 copies per 1,000 population. Seven U.N. nations have circulation of less than 10 per 10,000 population and 8 have no dailies at all. The non-daily newspaper is also scarcely known in at least 32 U.N. nations.⁷

To emphasize the gap in the internal ability to communicate from people to rulers, and vice versa, let me add a new figure which I deem relevant to achieve discourse toward Peace by Law. We, in our Republic, have 1,000 radios per 1,000 inhabitants; 26 U.N. member countries have less than ten radios per 1,000 inhabitants.⁸ Canada, our friendly neighbor, with a three-thousand-mile border maintained by law, not force, has almost 250 TV sets per 1,000 inhabitants, while six members of the U.N. have less than seven TV sets per 100,000 people, and 28 have no communication through this more modern method by which a ruler can communicate with "his" people.⁹

I pass no value judgment on the uses or content of press, radio, or television, but make reference to these instruments only as a means of demonstrating the extent of possible communication between three billion people and their 226 spokesmen. Movable type, radio, and television are recently created devices for rulers to be in mental touch with those they govern or assume to represent.

Similarly, the statistics for other categories—questionable as their accuracy may often be—reflect a short circuit of ideas from government to people and vice versa, as evidenced by a look at the mail bags. Luxembourg has 260 letters per annum in the bags (sent and received, foreign and domestic) for each inhabitant, while 25 U.N. nations have less than ten letters annually for each inhabitant.¹⁰

We are living in a world of utter dissimilarities. The gaps are deep and increasing. Daily calorie consumption ranges from 3,500

⁷ *UNESCO Statistical Yearbook, 1964*, UNESCO, Paris, 1966, pp. 435-50.
———, *1963*, UNESCO, Paris, 1964, pp. 391-9.

World Communications: Press, Radio, Television, Film, Paris, 1964.

⁸ *UNESCO Statistical Yearbook, 1964*, UNESCO, Paris, 1966, pp. 492-500.
World Communications: Press, Radio, Television, Film, UNESCO, Paris, 1964.

⁹ *Idem.*

Idem.

Overseas Television, Growth in 1965, Research and Reference Service, United States Information Agency, June 1966, pp. 6-9.

¹⁰ *Statistical Yearbook, 1965*, United Nations, New York, 1966, pp. 477-82.
——— *1964*, United Nations, New York, 1965, pp. 440-5.

to 1,800 per capita;¹¹ annual electric consumption is spread from 11,500 kilowatt hours to one kilowatt hour per capita.¹² Such is the nature of our world, accented by the recent slow-spreading industrial revolution. Calories bespeak the ability of man to stand erect; kilowatts tell the story of man's shift of labor from his own back to electric energy.

In brief, peace must be the result of conflicting desires compromised by representatives seated at a table in some room. But those who sit in these privileged chairs gain or hold their positions—and advocate their pleas—not in a vacuum, but in relation to their own desires or the desires of the people of the culture they represent. This is the new key concept of communication and ability to vote, so sorely needed in the literature of Peace through Law. There can and should be a constant variety of forms of selection of those at the chairs of state. There may be and must be for the next decades or centuries a variety of logistics of communication between heads of states and the people for whom they speak.

But, I suggest that Peace through Law should no longer sweep under the rug the virtually undiscussed problem of a negotiation carried on by essentially three different types of spokesmen: 1) those responsive, more or less, to the masses of people; 2) those—usually of the military—responsive only to another small power clique seeking control by coup d'état; and 3) those who disdain any process of two-way communication with the people to be affected. We live in a world where, on the average, each month one head of state is deposed by other than the use of reason, tradition, or law. Thus is discourse toward peace replaced by coup d'état—even within separate nations.

I have never blinked at the motive of client self-interest in a contest of advocacy where truth may win out. Disagreeable as it is for a stout supporter of the U.N., I must add that there are 67 U.N. nations that together have less than our U.S. total population,¹³ but the vote recorded on an issue may be 67 to one—irrespective of the

¹¹ *Production Yearbook, 1965*, Vol. 19, Food and Agriculture Organization of the United Nations, Rome, 1966, p. 259.

¹² *World Energy Supplies, 1961-1964*, Statistical Papers, Series J, No. 9, United Nations (Department of Economic and Social Affairs, Statistical Office of the United Nations), pp. 90-9.

¹³ *Population and Vital Statistics Report*, Statistical Papers, Series A, Vol. XVIII, No. 4 (data available as of 1 October 1966), Department of Economic and Social Affairs, United Nations, New York, 1966.

ability of any one spokesman to get or receive instructions from his people.

This variety of demographic, social, cultural, educational, and other factors validates in realistic terms the necessarily undemocratic second chamber of the United Nations, the Security Council and the veto power therein. Just so, in our own Constitution, there is only one clause that can never be amended without revolution or, more gently stated, the unanimous consent of each state—a wise philosophy of Federalism—although utterly antithetical to our present slogan “one vote, one person.” I have often wondered what would happen if the votes of peace negotiators were weighted not per nation but by literacy and communication factors, the instruments of inter- and intra-response, on which true historic acceptance of peace must rest. To which the dictators of literate peoples add one more confusion: “We fear the communication from people to rulers in the event of the abolishment of the rule of ‘*ne exeat*’”—or, in modern terms, the Berlin Wall or the Russian emigration border controls, prohibiting free travel to preferred nations. Last year more than 10 million people sneaked out of their homelands for refuge in more than 80 nations. All too often our mass media refuse to see the difference between the right of exit and the right of entrance.

We need new approaches—cautious but imaginative—and only the improbable will work in an improbable world. Nothing which may give us the mighty needed leap toward law will be in conflict with all our present feeble pursuits for peace. Naturally, we should continue all the present trials and errors from BAGHDAD to NATO to SEATO to WARSAW, from Commonwealth Agreements to the approximately 100 “pacts without politics” to which our Republic is happily a party. These “pacts”—from iceberg to postal to whaling agreements—are the world at work in terms of thoughtful nations competing in ideas for their properly selfish ends—thus learning the painful exercise of give and take—without force.

I propose that we assemble all 226 nations and enter upon four months of secret discourse toward peace.

Secrecy must be the key word of the next such adventure of man toward Law and Peace. Our own Republic could not have been created in a goldfish bowl if reported by the hundred eager weeklies of 1787. The second resolution at the convention of the colonies to create our own united “nations” reads, in effect: All meetings shall be secret so that the delegates may more readily change

their minds. And change they did! All mankind of all nations suffers from a common infirmity—a reluctance to change the mind after a position has once been publicly taken. In 1787 there was not a single leak of the proceedings of the Convention. A world meeting, such as I propose, will surely show that most of the early opinions uttered will be rescinded or modified by honorable changes of mind—if meetings are secret. Only if the disparate spokesmen of all nations, big and small, rich and poor, assemble behind closed doors can we undo the evil of “Open covenants OPENLY arrived at.”

The opening document of such a secret meeting should be the statistical demographic, economic, and cultural ingredients of each nation—where available.

The first grand assembly may fail for want of a quorum, as did our first convention in Annapolis in 1786. Similarly, it may be nearly as difficult today to get to the minds of the ruled as it was in 1787 when letters from Boston to Atlanta went at times by sail to London and then back to Atlanta. Delegates may be late in their arrival—just as it took a week or so to get a quorum at Philadelphia. The record of the meetings may well suffer delayed publication—as did the debates of the Convention of 1787, which were printed only decades later.

But man now, as distinguished from 1787, has the logistics for world communication if desirable.

Telstar will call for revision of all existing law in the realms of copyright, obscenity, plagiarism, libel, and slander. Our new micro processes make the movable type of Gutenberg of 1460 appear old-fashioned. For those more impatient for peace, old-fashioned radio might be used as the means of communication. There are more than 480 million radio receiving sets in the world.¹⁴

By world-wide Telstar—less costly even than the smallest war—the three billion inhabitants of our world can become informed about the world, provided of course that dictators dare allow the information to flow to their people.

The purpose of the meeting should be simple in that no action would be called for. This would be a convention for introduction of delegates of the 226 nations regardless of whether they have obtained their position by election, by force, or by ever-recurring dictatorships.

Each nation would address the others on one topic only: How

¹⁴ *UNESCO Statistical Yearbook, 1965*, UNESCO, Paris, 1966.

to develop world peace by law. No votes would be taken—other than on one possible motion—the date and place of a future meeting.

The invitation should come from the lawyers of the world. The U.N. cannot perform this chore because its matrix is “balance of power” without relation to demography or law. Lawyers are the high priests of reason—the inventors of rules to meet mores. The legal profession is one of social engineers skilled in the art of seeking social decencies under rules which negate force or even a show of force. The U.N. is necessarily predicated on balance of power. However, it is peculiarly true today that war is no longer waged by masses with arrows or blunderbusses, but by the aristocratic few in an electronic push-buttoned chamber. The days of the democratization of destruction are near their end, soon to be replaced by the bold consensus of opinion and the brave exchange of minds in quiet rooms. In the meanwhile the atom bomb keeps the peace, for whenever man has sanctions beyond his needs the threat of the sanctions is more valuable than the use thereof. But for the atom bomb guerrilla wars would have been replaced by old-fashioned wars like that of Hitler.

No other profession on our planet is equipped to convoke man into the paths of reason. Religions which taught peace, but all too often waged wars, are shifting closer to paths where the avenues of argument, as individual consciences, replace the anti-demographic narrow lanes of theological authority. But religious sects are disqualified because of historic divisiveness and because too often they accent rewards and punishment in a world after death rather than during life on earth. But Law—and Law alone—is both a spear for the lowly and a shield against the unreasoning mighty.

Such a convocation as I have proposed can be a modest and inexpensive 20th century crusade. The Grail is no more than the self-disclosure of the economic and cultural inventories of each of the 226 cultures.

Hopefully, these 226 unique cultures will never be merged into one common culture, nor made amenable to the degrading concept of what is called the “Common Man.” No man is ever “Common” in his potential, in a communicable world on its way to literacy, the main tool of higher standards of living. Literacy and literacy alone now distinguishes Homo at times sapiens—from all other species. A tablet of stone, a sermon on the mount, a piece of paper nailed to the door of a church, a man musing under a widespreading tree started revolutions of the spirit.

The way of Law to act in aid of Peace is for lawyers, through their spokesmen, to convoke an historic international assemblage. To the unadventurous, I say that our noble profession cannot lose even if rejected by some heads of states at this moment of history. For such a call to minds for peace will leave its impress on the minds of future men, provided only that its record be written not in legalism, but in terms of man's dreams and defeats of his shortcomings and successes. And, if all nations do not express approval, we need not be disheartened. We can recall with an historic smile that on the way to Runnymede there was a pogrom just before the King signed his illiterate "X" on the great Charter, and in our own nation we can recall that one then state never attended our great Convention of 1787!

This modest program is good even for the faint of heart. Man has learned that only the brave are unafraid of ideas, and it is the cowardly who need resort to aggression by force rather than to reason and all the other tender instruments called "Law."

I suggest that such call should be remote from fear in general and be unrelated to fear of any bomb in particular—for peace by fear is not Peace by Law. Fear can never be the matrix of enduring Peace.

The world today is ready for no more than a new kind of discourse—that is, disclosure of cultural and national insecurities and hopes. This must precede any enduring meetings of the mind. Until the demographic gaps between nations are bravely presented, and soberly recognized, Peace will always be swept under the Great Rug of our Planet. No prayer for relief should ever be so excessive as to invite polite though concealed reasons for rejection. If an advocate asks unreasonable relief, he is likely to be rejected out of hand. And relief is inevitably related to potential abilities.

The above proposal may prove to be gradually effective rather than immediately wishful—since it is aimed at the *minds* of man rather than the purported sanctity of subscribed paragraphs or red seals.

Not until the closing day of our Philadelphia Convention on September 17, 1787, did Ben Franklin speak his words of optimism:

. . . Doctr. Franklin looking towards the President's Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I

have, said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting sun.¹⁵

¹⁵ As recorded (unedited)—*Madison Minutes*, pages 482-3, Vol. IV of the Putnam edition of Madison Writings.