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THE PHILOSOPHIC BASES AND MATERIAL CIRCUM- STANCES OF THE RIGHTS OF MAN

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THE political problems faced in framing a declaration of human rights are basically philosophic. The difficulties in resolving them are characterized by the paradox that the resolution of practical problems involves philosophic commitments but agreement concerning actions to be taken need not presuppose philosophic agreement. The philosophers of the seventeenth and eighteenth centuries prepared the intellectual instruments essential to the framing of bills of rights and declarations of rights, which were eventually written into the constitutions of most of the states of the Western World. Yet agreement in the promulgation of those declarations of rights, far from signifying a general agreement in a single basic philosophy, provided a framework within which divergent philosophies, religions, and even economic, social, and political theories might be entertained and developed. The same paradox presents difficulties of a different order in the framing of a declaration of rights for the twentieth century. The fundamental problem is not found in compiling a list of human rights: the declarations of human rights that have been prepared by committees and groups who have undertaken the study of the problem and the declarations that have been submitted to the Commission on Human Rights are surprisingly similar, and little difficulty is encountered in the mere statement of the rights that ought to be included in the list. The differences are found rather in what is meant by these

rights. These differences of meanings depend on divergent basic assumptions. Opposed assumptions, in turn, both lend plausibility to and are justified by contradictory interpretations of the economic and social situation; and, finally, they lead to opposed recommendations concerning the implementation required for a world declaration of human rights.

These three sources of differences concerning the meanings of human rights, based on differences in assumptions concerning their foundations, in interpretations of facts bearing on their need and their exercise, and in means set up for their attainment, render nugatory any agreement concerning the list of human rights. Indeed, once raised, such difficulties make even agreement concerning the bare enumeration of rights impossible. The faith "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women," which is reaffirmed in the Charter of the United Nations, stands in need, if it is to be significant, of some resolution of these differences. The effectiveness of a "Declaration of Human Rights," such as is urgently needed in the world today, depends precisely on (a) its clarity in formulating an ideal which will promote and encourage respect for the rights and fundamental freedoms of all without distinction as to race, sex, language, or religion; (b) its pertinence and adaptation to the social, economic, and cultural conditions of the present; and (c) its implementation in social and political agencies. These three

conditions of the effectiveness of a declaration of human rights, moreover, are not independent of one another. Opposed philosophies lead to opposed interpretations of history and of the present. Opposed conceptions of historical processes and historical methods, conversely, are used to supply the criticism of, or to lend justification to, opposed philosophies. Political institutions are adapted to circumstances and also change them; they are consequences of philosophic principles, as well as instruments of ideological control. The debates concerning a modern declaration of rights will turn, not on questions concerning what the rights are, but on questions of basic assumption, actual fact, and appropriate implementation. The difficulties will be discovered in the suspicions, suggested by these differences, concerning the tangential uses that might be made of a declaration of human rights for the purpose of advancing special interests rather than establishing universal truths or promoting general welfare.

The focus of these oppositions and debates is, in part, determined by the tradition of human rights which received its classical expression in America and western Europe in the eighteenth century and, in part, a result of changes in the circumstances and in the ideas of men since that time. The history of human rights is long, for it is possible to trace concern with them back to the Greeks and the Romans; and most of the philosophic devices by which they were developed and on which they were grounded, like the doctrines of natural law and social contract, have like origins and evolutions. But the history of declarations of human rights is short.¹ The

¹ The brevity of the history of declarations of human rights justifies the treatment of the problem against the background of the classical statements of

difference in those two histories may serve to separate the respects in which philosophic differences are unimportant in the resolution of practical problems from the respects in which they are of crucial importance. "Natural law" does not designate a single philosophic doctrine: it receives different definitions and developments in the philosophies of Aquinas, Hobbes, and Locke, to mention only three of the numerous natural-law philosophers; and, in the controversies concerning the relation of church and state in the late Middle Ages, the doctrine of natural law was employed to defend opposed positions of papalists, imperialists, and conciliarists. The conception of natural rights, sacred and inherent in man, was written into the constitutions of the eighteenth, nineteenth, and twentieth centuries, not because men had agreed on a philosophy, but because they had agreed, despite philosophic differences, on the formulation of a solution to a series of moral and political problems. It is as easy to make a case for the derivation of the conception of human rights from the philosophies of Aquinas, Suárez, and Bellarmine as for its derivation from the philosophies of Locke or Montesquieu, and it is easy to question the historical accuracy no less than the intellectual relevance of both derivations. What is indisputable is that

western Europe. The problem in China, thus, is one of constitutional movements influenced by, or comparable to, those of the Western World (cf. Chun-Mai Carsun Chang, "Political Structure in the Chinese Draft Constitution," *Annals of the American Academy of Political and Social Science*, CCXLIII [1946], 67); the Islamic tradition was crucially influenced by the Western formulations (cf. Majid Khadduri, "Human Rights in Islam," *Annals of the American Academy of Political and Social Science*, CCXLIII [1946], 80); and, in general, the problem of declarations of human rights, as distinct from their philosophic bases, has had everywhere similar constitutional evolutions.

the declarations of human rights separated inalienable human rights which were to be protected from governmental interference from alienable rights which were delegated to the government for due compensation in the form of just and effective government.² The discussion of human rights has, as a consequence, been couched in a series of simple oppositions: "rights" have been related, or opposed, to "wrongs," to "duties," and to "laws," and the discussion of rights has been in the tradition of constitutionalism.

The use of these oppositions has become so traditional that they are accepted as inevitable or as statements of fact; and, indeed, they are statements of fact, but based on unnoticed philosophic assumptions which are emerging in the present discussion of human rights to revive forgotten or unexplored differences. When Mr. Ribnikar, the member of the Commission on Human Rights from Yugoslavia, expressed his conception of human rights at the first session of the commission, January 27–February 10, 1947, he stressed the basic differences between the economic, social, and national life of the eighteenth century and the present underlying the opposition between the ideology of individualism and the spirit of collectivity; and he argued that it is "obvious that this common interest is more important than the individual interest, and that man can liberate himself only when the mass of a population is free." Dr. Malik, the member of the commission from Lebanon, on the other hand, sought human rights, during the same session, in the essence of man and found the chief problem of human rights in a new tyranny which has been rising in the last few decades, "the tyranny of the masses, which seems

to have an inevitable tendency of ultimately embodying itself in what I might call the tyranny of the state." This is only one of the many conflicts developed recently from the fertile opposition of man and state which had served earlier as basis for instruments designed to protect man from unwarranted infringements on his freedoms. It could be supplemented by a long list of further conflicts or by a long list of philosophic, religious, moral, economic, or social recommendations for their resolution. The problem of human rights has, in this fashion, become a philosophic problem in which differences of basic conviction make seemingly simple distinctions deceptively complex.

There are two ways in which such a problem may be treated: a philosophic solution may be sought in an agreement which resolves the basic differences, or a political frame may be sought within which agreement is possible concerning common action toward common ends, on the assumption that basic disagreements are more likely to be removed when mutual suspicions have been lessened by successful common action. The utility of a declaration of human rights depends on the possibility of separating the political from the philosophic question. The resolution of philosophic differences would require the definition of basic terms—like freedom and right—and the resolution of oppositions—like tradition and novelty—which have been variously defined and variously related in the philosophic traditions of the world. There is, among the philosophies of the world, a "utopian" or ideal tradition of analysis in which "freedom" is conceived to be a power based on knowledge of the truth; and in that tradition, which on this point is shared by philosophers as different as Augustine and Marx, to

² Charles H. McIlwain, "Bills of Rights," *Encyclopaedia of the Social Sciences*, II, 544–46.

express or to follow what is false is not to be free. There is also a "circumstantial" or material tradition of analysis in which freedom depends on the power of choice and the power to follow either of alternative modes of action; and in this tradition, in which philosophers as different as Aristotle or Mill might be found, freedom is found in a region of indifference, deliberation, and choice.³ Likewise, what is revolutionary in the context of one set of philosophic assumptions is counterrevolutionary, subversive, or even traditional in another.

The eighteenth century did not resolve these basic philosophic oppositions, but the declarations of rights which were formulated in the philosophic language of the eighteenth century did succeed in stating ideals which had a profound influence in improving the relations of men and in advancing the practice of justice. The basic problem to which the declarations of human rights were addressed was the injustice of feudal rulers and governments. They were expressions of the revolutionary movements of the century: they reserved certain inalienable rights to man and forbade governments to infringe them; they were part of a constitutional movement in which governments were conceived to depend on the consent of the governed. In like fashion, contemporary discussions of the rights of man will not resolve the basic philosophic oppositions which have continued unabated since the seventeenth century unless philosophers, professional and lay, have discovered unexpectedly a new versatility in terminologies and assumptions or a new susceptibility to the claims of reason. But a declaration of human rights could have an effect on the political and social practices of the next cen-

tury comparable to that of earlier bills of rights, provided that it is recognized that the problem has changed. A world declaration of human rights must, like the national bills of rights, be conceived within a constitutional frame, such as the Charter of the United Nations; and the basic problem then turns not merely on the relation of men to governments but on the relation of groups of men and of states to one another. In the framework of the United Nations it is the problem of how men with basically different philosophic convictions and religious beliefs, associated in divergent political organizations and committed to divergent economic systems, can co-operate in the maintenance of peace, the promulgation of justice, and the protection of fundamental human rights. The nature of that problem is seen both in the opposed assumptions implied in efforts to resolve it and in the additions that have been made in recent years to the list of human rights.

One of the fundamental issues of our times is to be found in the opposition of two assumptions, made implicitly and explicitly in policies advocated for the determination of the relations of the nations of the world. On the one hand, it is assumed that there are several basic ideologies, probably reducible to two, which are in necessary conflict and opposition and which are dividing, or will eventually divide, mankind into two worlds until one overcomes the other. On the other hand, it is assumed that means can be found by which men of different basic convictions in philosophy, religion, political theory, and economic doctrine may co-operate to common ends in a single world of shared values. The first assumption requires a solution in which peace and human rights depend on the successful inculcation of a single basic

³ Cf. R. McKeon, "Discussion and Resolution in Political Conflicts," *Ethics*, LIV (1944), 246-47.

philosophy throughout the world; and the failure of efforts toward universal indoctrination in the past, even in the case of basic doctrines which seem in retrospect more attractive than the rough outlines of either form of life appears to adherents of the opposed doctrine, make it highly probable that pursuit of that solution must lead to war. The second assumption offers a solution in which peace and human rights might be preserved by means of constitutions, like those of the United Nations and the specialized agencies associated with the United Nations, if they furnish the means by which to reach agreements concerning the equitable solution of problems and the achievement of human welfare and the common good and, in so doing, facilitate the advance of common understanding and fundamental moral agreement. In the pursuit of the second solution the formulation of a declaration of human rights is of basic importance; and the nature of such a declaration takes its form from the assumption that it is possible to come to agreement concerning the rights of man and to implement such an agreement short of arriving at philosophic unanimity.

The change in the problem of human rights which is seen in this opposition of basic assumptions is further exemplified in new additions to the list of human rights. As human rights can no longer be formulated effectively on the simple opposition of man and state or on the assumption that freedoms and rights will be safeguarded adequately if governments can be persuaded to desist from certain actions, so, too, many of the rights which have become of basic importance in the nineteenth and twentieth centuries have burst through the classical definitions and safeguards of human rights. In even so brief an enumeration

as the Four Freedoms, only two—freedom of speech and expression and freedom of religion and worship—fit the frame of the earlier conception of rights or the guaranties provided for them, while two—freedom from want and freedom from fear—require a different analysis and different implementation. The treatment of problems involving rights of the latter kind during the nineteenth and early twentieth centuries is indication and symptom of the change in the basic problem of human rights, and the clarification of that difference will serve also to suggest the appropriate means for the implementation of such rights.

When rights are to be protected from the possible tyranny of governments, the problem may be solved by recognizing that certain rights are inherent in the very nature of man and by specifying the constitutional safeguards under which other rights may be delegated to the various organs of government. The rights of man are closely related to the rights of the citizen, and civil rights are both precondition and consequence of political rights. The specification of rights proper to man and the formulation of the manner in which rights proper to citizens may be exercised determine a complex relation between them, for they are, on the one hand, different in their implementation and yet, on the other hand, involved in a process of mutual delimitation which is usually expressed in the opposition of rights and duties. Civil rights are designed to guarantee the individual against arbitrary treatment: they are formulated in terms of equality before the law and the operation of due process of law; they can be defended by providing access to court decisions when they seem to be violated. Political rights are designed to relate the government to the consent of the governed: they are

formulated in the institutions of government and in the conditions, such as "free elections," by which consent is expressed; they are defended only by the constitutional frame which determines the manner of their exercise. Civil rights, like freedom of conscience and freedom of speech, were justified by their early defenders on the grounds not only that they may be granted without danger to the public peace but also that they may not be withheld without danger. The freedoms of association, assembly, press, and communications have like grounds; and, although a limitation might be set on any such freedom by invoking the interest of *salus publica*, the general tendency seemed, until recently, to be toward the spread and universalization of such freedoms. Similarly, although the manner in which a citizen may influence the government under which he lives varies with the forms of government, the trend toward democracy seemed, until recently, universal. The change that has come into these problems in recent years is not so much due to a change in these tendencies as to the introduction of differences in the interpretation of what constitutes "freedom" and "democracy."

These changes became apparent in the discussion of rights which were not part of the eighteenth-century formulations and which are not easily reduced to the formula of rights inherent in the nature of man requiring only protection from governmental interference. The problem of the new rights arose from the changed social and economic conditions due to the advance of technology and industrialization, which brought fundamental and obvious rights into conflict with extensions and interpretations of "property" rights. They have been posed variously. In practical action they have been treated by legal devices, like those by which, in

the United States, problems in labor regulations and public health were solved by making what had been rights of which individuals could not be deprived without due process of law proper subjects for the exercise of police power. They have been the occasion for political change, for legislative action, and for revolution. In abstract analysis they have seemed to some thinkers to involve a moral problem, in the need to relate rights to functions and obligations and to discover criteria and purposes for society,⁴ while to others they have seemed to pose an intellectual problem, in the need to constitute a kind of knowledge which does not now exist for the resolution of the problems of the "public."⁵ This variety of approaches, practical and theoretic, is indication of the nature of the problem and the diversity of implementation which is required for its solution. Even if it is stated in terms of the relation of man and the state, it is no longer a problem of rights of individuals reserved from interference by government or of rights by which individuals may secure proper influence on government but rather a problem of how far opportunities to which men have a right must be secured by governmental action. The economic and social rights, which have a place in recent formulations of the rights of man—the right to work, the right to education, to social security, to recreation, cultural opportunities, and a fair share of the advancing gains of civilization, and, in general, the freedom from want and the freedom from fear—all are rights which require that something be done if they are to be secured for their recipients. The promulgation of economic and

⁴ R. H. Tawney, *The Acquisitive Society* (London, 1937), pp. 44-45, 82-83.

⁵ John Dewey, *The Public and Its Problems* (New York, 1927), pp. 157, 166.

social rights has therefore brought them into conflict with civil and political rights, for the planning and control essential to the former impinge on some of the freedoms of choice and action that had seemed defensible under the latter. As a consequence, one of the fundamental oppositions in the discussions of human rights is between those who hold that the preservation of civil and political rights is basic even to the establishment of economic and social rights and those who hold that, unless economic and social rights are first secured, civil and political rights are an empty sham and pretense.

The means by which to secure both sets of rights and, indeed, the very meanings which they assume as their interdependences are examined present problems which would be difficult to resolve without recourse to the other aspect of our present situation and another related set of rights. The advancement of science and technology, which gave rise, as a result of changes consequent on it, to the problem of economic and social rights, has had a direct effect in the new significance that has been given to a fourth set of rights—the freedom of communication and thought; for, as political rights afford a safeguard and significance to civil rights and as economic and social rights provide means essential to the exercise of political rights, so the rights of communication and thought may prepare the resolution of differences concerning economic and social rights. The advance of science gives promise of completely transforming the conditions by which the welfare of man is secured, and the extension of information and knowledge may lead to mutual understanding and even to the removal of conflicts found in the basic assumptions of groups, cultures, and nations.

The formulation of the philosophic bases and material circumstances of human rights would be important in an effort to remove the conflicts that have arisen in the conception of human rights. It is no less important to the preparation of a declaration of human rights, even though such a declaration need not await the resolution of fundamental problems but should precede it, for the philosophic bases of human rights provide an analysis of the problem preparatory, in the one case, to resolution and, in the other case, to implementation and action. A world bill of rights is possible, if it is recognized that both the definition of the rights and progress in their achievement depend on implementation and that implementation in the case of a world bill of rights means not merely the recognition of agencies by which to protect rights or resolve conflicts among them but also recognition of the fact that, within the constitutional frame of the United Nations, rights will have different legal implementation and different philosophic interpretation in the various sovereign nations of the Organization. What is proposed as an immediate step, is the formulation of a "Declaration of Human Rights and Fundamental Freedoms" to be adopted as a General Assembly Resolution. This declaration might serve as a standard to be observed by member-states and might be incorporated in their constitutions and legislation. Most of the member-states already possess provisions in their constitutions for civil and political rights expressed in forms that are similar, even when the interpretations are highly diverse. The economic and social rights, on the other hand, have international aspects that are already subject to the operation of the United Nations and its various agencies. Civil rights could be

given an international character only if they were assigned to the jurisdiction of a world tribunal; and political rights would be internationally effective only if the citizens of the nations of the world were made citizens of the world by a change in the structure of the United Nations. In the case of economic and social rights, on the other hand, the Security Council and the Economic and Social Council are already engaged in establishing the freedom from fear and the freedom from want; and specialized agencies, like the World Health Organization, the Farm and Agriculture Organization, UNESCO, are engaged on the problems of health and education. Finally, the problems of communication, international understanding, and the use of educational, scientific, and culture instruments in the maintenance of peace are among the chief concerns of UNESCO. The promulgation of a world declaration of rights depends, as bills of rights seem always to have depended, on the existence of a broad region of interpretation, within which court decisions and administrative

and legislative actions have worked progressively to a practical definition and within which divergent philosophies have worked to less ambiguous or less conflicting theoretic bases. The declaration will not remove the sharp differences in interpretations of civil and political rights, but it will provide a ground within which they may be brought into closer approximation, if economic and social rights are established sufficiently firmly to provide a minimum of welfare and security and if freedom of communication and freedom of thought are advanced enough to contribute to universal well-being and mutual understanding. Agreement can doubtless be secured concerning the list of human rights only if ambiguities remain both because of the absence of a uniform manner of administering them and because of the absence of a single basic philosophy; but that ambiguity is the frame within which men may move peacefully to a uniform practice and to a universal understanding of fundamental human rights.

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