

THE CHALLENGE OF HUMAN RIGHTS

AN ESSAY BY

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In December, 1948, the General Assembly of the United Nations proclaimed in Paris a Universal Declaration of Human Rights. The fruit of two years' labour, the end product of the most thorough scrutiny any international document has been subjected to in recent years, it was hailed at the time by leading statesmen as a milestone in human progress and in any event as the major accomplishment of the Paris session. Why is there today such profound international concern for human rights? What are the rights set forth by the Declaration? What picture of man emerges from its clauses?

WHY IS THERE CONCERN?

We are perhaps only too aware of the terrible assaults upon human nature that recent years have witnessed. German National Socialist theory and practice with respect to what man is, outraged the conscience of the free world, and every other form of totalitarianism has raised radical questions in the minds of men. In the minds of philosophers, thinkers, jurists, and men of religion, the oppressed individuals and minorities themselves, ultimate questions have been raised.

President Roosevelt and practically every other leader of the free world declared that one of the primary aims of the recent struggle was to defeat the intolerable fascist tyranny over the mind and soul of man and to restore and insure the full stature of his dignity. This rising momentum of care crystallized at Dumbarton Oaks but only in a vague single reference to the promotion of human rights and fundamental freedoms. This was later amplified at San Francisco, however, largely in response to pressure from non-governmental religious groups, into a cascade of seven affirmations. The first of these, in the Preamble of the Charter, places the intentions of the United Nations in respect of human rights second only to its determination in respect of peace and security. This affirmation on the whole remained formal and without content. Then one of the first acts of the Economic and Social Council was to set up a Commission on Human Rights to try to fill in the formal emptiness of the Charter by elaborating an international Bill of Human Rights.

The Commission completed the first part of its task with the passing of the Declaration by the General Assembly. In the space of a few months the Declaration has already stimulated a growing body of jurisprudence and it has been appealed to in a score of international encounters. At present the Commission on Human Rights is engaged in the completion of the task originally assigned to it, namely, in devising legal and practical measures for implementing the terms of the Declaration.

POOLING OF IDEAS

The U.N. Declaration of Human Rights has, of course, illustrious predecessors. The Magna Carta, the Rights of Man and of the Citizen of the French Revolution, the American Bill of Rights and the Russian revolutionary economic and social rights—these have all proclaimed human aspirations and the dignity of man.

But there is, however, a precise difference. All these previous achievements sprang from a distinct cultural or national outlook; they were the product of a specific revolutionary movement. Our Declaration is a composite synthesis of all these outlooks and movements, and of much Oriental and Latin-American wisdom. Such a synthesis or pooling of ideas has never occurred before in history. Again, our Declaration exhibits, especially in the field of non-discrimination, a marked revulsion against the inhumanities of the fascist régime; in this respect it is the authentic expression of the spirit of the age. Finally, the Universal Declaration, by giving prominence to the so-called economic, social, and cultural rights, reflects the concern of the modern world with poverty and insecurity. It conceives man as born not only with certain inalienable individual rights and liberties, which society may not encroach upon, but also with certain inherent claims on society itself which society must fulfill. Thus society is free neither to encroach upon his person nor to neglect his claims.

We cannot here discuss at length or attempt to determine the precise contribution of each nation and type of culture to the Declaration. France was responsible for many elegancies in drafting and for the incorporation of the notions of juridical personality and social security. China sought, in general, simplicity, precision and the felicitous phrase. The United Kingdom's heart—and with it also the heart of the majority of the dominions—was more in the later practical stages of the elaboration of conventions and measures of implementation. Therefore on the theoretical level of the declaration it, for the most part, only lent its support to the more traditional individual and civil liberties. The Soviet Union's major burden was the five-fold insistence on absolute non-discrimination or equality, the improvement of the living conditions of what her representatives called "the broad masses of the people," the duties of man to society and the state, the reflection in the text of the continued struggle against fascism, and the decisive role to be played by the state in guaranteeing human rights and freedoms. These last two she was unable to see incorporated into the final text. The United States, besides championing the traditional American values, especially the supreme worth of the individual, contributed, in the person of Mrs. Roosevelt, dignity, authority, and prestige. The Latin-American countries were keen on the social and economic rights and the fundamental human values. One of them, Brazil, tried unsuccessfully to have God mentioned somewhere in the text as the author of all value and all right. India supported every attempt at strengthening the doctrine of non-discrimination especially in regard to the rights of

women, and many of the smaller countries contributed to the definition of man as a being of reason and conscience, to the Article on freedom of thought and religion, and to the rights of the family.

Canada's distinctive contribution was Professor John Humphrey, Director of the Human Rights Division of the Secretariat. It was he who compiled our first documented outline on which all our subsequent work was based. Professor Humphrey enjoys the deep respect of his colleagues for his integrity, humility, industry, and high sense of duty.

THE EXCITING DRAMA

The work on human rights is the one point in the total activity of the United Nations where the ultimate ideological issues are sharpest. What is at stake here is the determination of the nature of man; the exact emphasis that you wish to place on this or that side of him. The superficial thinkers of the nineteenth century, with rare although outstanding exceptions, believed that the age of belief was over, and that evolution, having at last emancipated man of the possibility of any dogma or faith (which they always somehow associated with superstition), had once and for all rid him of any possible future wars of religion. But hardly had two generations rolled by than the fiercest clashes in the realm of ideas and ultimate beliefs seemed to have taken possession of the world. Today men fight precisely because they disagree on their own interpretation of themselves. Man, you and I in person, our origin, our nature, our rights, our destiny: these are the great questions of the age. And these questions are nowhere more dramatically discussed than in the United Nations debate on human rights. For here responsible representatives of all the effective cultures of the world vigorously contend every comma and every shade of meaning. Nothing is more repaying to the thoughtful student of the present ideological situation than to read and ponder, in all their prolonged, dramatic richness, the records of our debates in sub-committee, in commission, in council, in committee, and in plenary. Here you have the exciting drama of man seeking to grasp himself.

THE PROBLEM OF DUTIES

Of the ultimate questions raised in debate, I wish to concentrate on three, because they seem to me to be at the basis of every other question. There is first the problem of the proper relationship between the individual and society. This raises obviously the problem of man's duties to society. Many delegations suggested we should balance every right with a corresponding duty. The Delegation of Panama actually submitted a text in which the list of duties ingeniously paralleled that of rights. In the text finally adopted, however, duties are

mentioned only once, namely in Article 29, and then in the most general terms. This is the text of paragraph one of that Article: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”

Two important matters are to be noted about this statement. It is true I am told I have duties to the community; but those duties are not simpliciter, they are not absolute—I have duties to the community “in which alone the free and full development of my personality is possible.” My duties are not to any community; they are only to the community in which my personality can be developed. Then also, it is not any development of my personality that is envisaged; even the full development of my personality is not enough. This full development must also be free. Thus in the one instance in which duties are mentioned, the supremacy of man over all society and all social claims is perfectly recognized. Society, including its supreme organized form, the state, is for the sake of man—the full, free, personal man; and not conversely.

It will now be objected, “But this is anarchism, this is extreme individualism. Is it not our trouble in modern times that the individual is making too many claims on society, that he places himself in the centre of things and wishes everything and everybody to serve him, that he is deficient in social responsibility? Should it not also be instilled into him that he has duties to his fellow men, that he should give at least as much as he should receive? True he has his rights, but society also has hers.”

IS MAN COMPLETELY LOST?

This objection is answered by pointing out that we are here dealing with the rights of man as man, and not with the rights of society or the state. The problem of human rights arose in recent years precisely because society and the state trespassed upon man, to the extent, in totalitarian states, of shocking him altogether. In our formulation we are therefore called upon to correct the excesses precisely of statism and socialism. The right amount of anarchism and individualism is exactly what statism and socialism need. It is not that we find ourselves at present in a lawless jungle with every man brutally seeking his own individual advantage without any organized lines of relation and authority and, as a result, are called upon to restore order and authority by reminding men of their duties and obligations. It is rather that we find ourselves today in a situation, all the world over, in which man’s simple, essential humanity—his power to laugh and love and think and change his mind, in freedom—is in mortal danger of extinction by reason of endless pressures from every side—governmental regulations and controls, social interferences, the maddening noises of civilization, the sheer multiplicity and crowding in of events as a result of the contraction of the world, the dizziness of his mind from the infinity of material things to which he must attend.

Under this external social and material pressure man is about to be completely lost. What is needed, therefore, is to reaffirm for him his essential humanity, to remind him that he is born free and equal in dignity and rights with his fellow men and that he is endowed by nature with reason and conscience, that he cannot be held in slavery or servitude, or subjected to arbitrary arrest, that he is presumed innocent until proved guilty, that his person is inviolable, that he has the natural right to freedom of thought, conscience, religion, and expression; and so on down the list of proclaimed rights. It is this reaffirmation, if only he heeds it, that might still save him from being dehumanized. For society and that state under modern conditions can take perfect care of themselves; they have advocates and sponsors on every side; their rights are in good hands. It is man, who is in danger of becoming extinct. It is man who is the unprotected orphan, the neglected ward, the forgotten treasure. And therefore it is good that the Declaration has not lost sight of its main objective: to proclaim man's irreducible humanity, to the end that he may yet recover his creative sense of dignity and re-establish his faith in himself.

FREEDOM AND SECURITY

The proper balance between freedom and security is the second fundamental problem. To the communists, security came first, even if that should mean the loss of freedom; to others, freedom came first, even if that should mean a certain degree of insecurity; still others believed that freedom and security need not conflict with one another, that each could be assigned its proper place in the total essence of man.

Man's social and economic needs are fully recognized in the so-called social and economic articles at the end of the Declaration. These include the rights to social security, to work, to favourable conditions of work, to just remuneration for oneself and one's family, to rest and leisure, to education and to the enjoyment of the rest and leisure, to education and to the enjoyment of the arts. Surely there is no full life without these rights. But this socialism and materialism is more than balanced on the other hand by the earlier articles which speak of freedom and dignity, of reason and conscience, of the inviolability of one's person, privacy and property, and of freedom of thought, conscience, expression, association, and assembly.

The problem here was how to stem the rising tide of materialism. This is something much deeper than Marxism or present-day communism. The most wonderful expression in literature I know of, of this conflict in the nature of man between freedom and security is Dostoyevsky's Grand Inquisitor in the *Brothers Karamazov*. It seems, Dostoyevsky writes, that man would rather be secure than free, that his freedom is a bothersome burden, that nothing irks him more, and perhaps shortens his life, than every day to have to make

responsible choices without complete certainty as to the future, and that therefore he would be far happier if some power came along and freed him of his freedom. If such a power came, people would gladly sell away their birthright freely to think, to choose, to act, to be, in order to be relieved of the anguish of insecurity. Dostoyevsky himself was wholly on the side of freedom, even if that led to sin and error and unhappiness. In fact, the price of freedom is precisely these things. But the history of modern totalitarianism vindicates Dostoyevsky's profound analysis of human nature. It shows how unworthy most people are of their God-given freedom.

THE SEDUCTIVENESS OF SECURITY

Materialism, then, is much deeper than Marxism. It is man's natural tendency to free his personal responsibility and to seek his rest in the guarantee of external things, whether they be his bank account, or his property, or the guarantee of his society or his government. It is flight from the Creator, in whom alone there is security, in the direction of creatures and things. I submit that this flight is universal today, and that Russia is only carrying it to its absolute logical conclusion. People everywhere seek their livelihood rather than the source of their life; they want to secure for themselves the endless variety of material comforts rather than the simple few virtues of the mind and spirit. The Charter speaks of "higher standards of living"; it never speaks of higher standards of feeling, or valuation, or thinking, or spiritual perception. There is a tendency, then, to interpret man in terms of material and economic conditions. The meaning of the old choice between gaining the whole world and losing one's soul is practically lost. The concupiscence of things has overwhelmed the soul. In the genesis of the Declaration we had to resist the seductiveness of security at every turn. I believe we ought to have resisted it more. But the Declaration does retain, I think, as much of the original integrity and freedom of man as is humanly possible under the terrific materialistic pressures of the age.

THE ORIGIN OF HUMAN RIGHTS

The third ultimate issue is more implied than debated. It is concerned with the nature and origin of human rights. Where do they come from? Are they arbitrarily conferred upon me by some external visible agency, such as my state or parliament or the United Nations, so that this visible power can conceivably one day withdraw them from me at will, without thereby violating a higher law? Or do they belong to my essence, so that the function of any external visible power is not to create and constitute them but only to recognize and respect them, so that if in any way it violates them it will thereby trespass against the natural law of my humanity?

This is clearly the problem of natural versus positive law. If these rights are the mere product of positive law, that is of law as it happens to be at a particular stage in evolution, then clearly, since positive law changes, my rights, and therewith my very human nature, will change with it. But if, on the other hand, those rights express my nature as a human being, then there is a certain compulsion about them. They are more basic than positive law, and the laws of any society must be developed in accordance with them. Any such laws must either conform to them or else be by nature null and void. Either man has an eternal essence which can be grasped and expressed by reason, or he dissolves without any remainder into the general flux.

I need hardly tell you that the founders of the United States, deriving heavily from that great father of Anglo-Saxon political thought, John Locke, believed in natural law, and endeavoured as best they could to make positive law answerable to the law of nature. Any other view of things would have seemed utterly absurd to them. The vision of something fixed, eternal, natural, restful, is utterly blurred. I hold this change, from rest to change, is of the essence of the great spiritual crisis which is gripping the world today.

RETURN TO THE LAW OF NATURE

And yet we discern, in the doctrine of the Declaration, a partial and implicit return to the law of nature; to the idea of man whose real nature does not change and whose rights are also unchanging. A careful examination of the Preamble and of Article one will reveal that the doctrine of natural law is woven at least into the intent of the Declaration. Thus it is not an accident that the very first substantive word in the text is the word “recognition”; “Whereas recognition of the inherent dignity and of the equal and inalienable rights, etc.” Now you can “recognize” only what must have been already there, and what is already there cannot, in the present context, be anything but what nature has placed there. Furthermore, dignity is qualified as being “inherent” to man, and his rights as being “inalienable,” and it is difficult to find in the English language better qualifications to exhibit the doctrine of the law of nature than these two. Then in Article one human beings are said to be “born free and equal in dignity and rights.” Certainly the word “born” means that our freedom, dignity, and rights are natural to our being and are not the generous grant of some external power. Finally, Article one goes on to say that human beings “are endowed with reason and conscience.” Now up to the very last stage in the formation of this document the word “endowed” was followed by the Spanish translations of the phrase “by nature,” but it was finally decided to drop it. And I was more sorry than any other member when it was dropped. But the records of the debate will reveal that it was generally recognized that the very word “endowed” means “endowed by

nature,” and it was on this tacit understanding that the phrase “by nature” was dropped. I can therefore conclude from this brief exposition that there is ample room to read the doctrine of natural law into the doctrine of this Declaration.

The placing of “reason and conscience” at the very heart of the essence of man in the first Article is of the utmost importance, especially in view of the fact that in the present enlightened age man is often equated not to his “reason and conscience” but to his reflexes, impulses, desires, drives, instincts, dreams, to his sociological and national functionings, to his economic wants, to the dark forces of the nether world.

Even this modest amount of traditional doctrine had to be established in the teeth of terrific opposition. The return to the great tradition which founded not only America but also the whole of Western European civilization is not complete. The individual human soul as something eternal and infinitely precious, as capable of scaling the heights or plunging into the abyss, as wholly above every material and social determination, as capable of unbelievable transfigurations upon the touch of transcendent love and trust; it is this authentic doctrine of man to which we must whole-heartedly return if we are to be saved.

Summing up, then, the three-fold problematic of the Declaration, it appears possible to say that the Declaration incorporates the just material demands of security but not at the expense of inner freedom. It allows for man’s duties to society, but does not consider society and the state as the end of man’s existence, but man, the full and free personality, as the end of society and the state. Finally, there are distinct echoes of a distant and now half-forgotten past according to which there is a fixed order of nature and reality which it is our supreme destiny to know, love, and realize. There is evidence, then, that the Declaration overlays the legitimate material and social rumblings of modern times on the solid foundation of the traditional view of man.

HUMAN RIGHTS VS. NATIONAL SOVEREIGNTY

The Commission on Human Rights and the Economic and Social Council are now endeavouring to carry the cause of human rights a step forward. They have completed the first step: the elaboration of structure and theory, the definition, so to speak, of what belongs to man. But now they want to move on to the practical realm. They want to see if it is not possible, on the basis of the Declaration, to work out conventions which will be open to governments for signature and adherence, and to set up measures of implementation which will see to it that the conventions are actually observed in practice. This is a very difficult step, for it virtually amounts to an invasion of the domain of domestic jurisdiction. Hitherto human rights have fallen exclusively within the domestic law of each state, but the

conventions which we desire to work out will have the effect of lifting their subject matter from being the independent and exclusive concern of the separate sovereign states to being the common concern of all the covenanting states. But the mood of the world today is one of extreme jealousy for national sovereignty.

It has been evident that now that we have reached this crucial stage, people are losing heart. Their governments or their peoples may not support them. Certain powerful countries which by reason of their humane and Christian traditions are by nature called to lead in this field, exhibit yet a halting style; their internal social and economic problems and contradictions are too much for them. Far from having mastered these problems in order that their voice could ring clear and authentic, their problems have on the contrary so gotten the better of them that they fail to speak with conviction and authority.

FAILING LEADERSHIP

This failing leadership expresses itself in two ways. They are willing to enter into a covenant concerning a variety of rights provided an article is included which will reserve to the signatory states the right to suspend these rights when they deem this suspension "in the public interest." And they are not prepared to grant their own nationals the right of petition to the United Nations in respect of violations of human rights.

But for any government to promulgate by law human rights within its borders and at the same time to reserve to itself the freedom to suspend them when "the public interest" or "the general welfare" is at stake, is really not to be serious about human rights. There must be a core of humanity which cannot be "suspended" or "derogated from" under any circumstances, and the whole present problem of human rights is to take them outside the determination of individual governments. It was precisely in the name of "the public interest" and "the general welfare" that tyrants and dictators have always trampled upon the fundamental freedoms and rights of man.

And to say that you will not allow your own citizens to petition the United Nations, or some world court, in the case of possible violations of human rights is, it seems to me, a virtual mockery of the whole affair. For with the one hand you tell the individual, "You have such and such essential rights, and we are willing to enter into a compact with other nations about them," and with the other you tell him, "Yes, you have these rights, but one right you do not have, and that is to complain if these rights are violated!" The reality of an internationally granted right obviously carries with it the right to complain, not only before your own state, but also before the world organization which granted you that right. Anything short of this is half-hearted and unreal.

THE BAREST BEGINNING

And so it seems we are still at the barest beginning of a long and difficult historical process. The challenge of human rights is still very great. What is supremely needed is vigorous moral leadership, convinced and therefore convincing. Some of us who truly admire Canada were perturbed in Paris when a rumour got about that Canada was going to abstain on the Declaration, not because of disagreement of principle, but because, as we understood of constitutional difficulties. Later Mr. Pearson gave the lie to this rumour both by a good speech and by an affirmative vote.

It is not sufficient in modern times to be happy and self-sufficient. You must step forth and lead, and not only in material things. It is not enough to realize good institutions and to leave it to others to copy them. For man isn't only an ape; he does not only mimic the good example of others. Man is also a rational being who is moved and fired by ideas. If your institutions and traditions are not adapted for the production of a ringing message which will appeal to the minds and hearts of others and on which you can stake your whole life, then in the present world in which man is desperately hungry for truth and conviction, you cannot lead. Leadership must pass on to others, no matter how perverted and false these others might be.

If your only export in these realms is the silent example of flourishing political institutions and happy human relations, you cannot lead. If your only export is a distant reputation for wealth and prosperity and order, you cannot lead. To be able to lead and save others, you must above everything else address their minds and souls. Your tradition, rooted in the glorious Greek-Roman-Christian-Western European humane outlook, supplies you with all the necessary presuppositions for leadership. All you have to do is to be the deepest you already are. The challenge of human rights is whether Western society, conceived in the joyous liberties of the Greek city-states and nurtured on Christian charity, can still recover from the worship of false and alien gods and return to its authentic sources.