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Source: *International Journal*, Autumn, 1949, Vol. 4, No. 4 (Autumn, 1949), pp. 351-361

Published by: Sage Publications, Ltd. on behalf of the Canadian International Council

Stable URL: <https://www.jstor.org/stable/40197502>

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The Universal Declaration of Human Rights*

John P. Humphrey

The problem of human rights and fundamental freedoms has exercised philosophers, politicians, jurists, and common ordinary men since the very dawn of history. The proper delimitation of the sphere of activities of the individual and of the collectivity, the relationship of the citizen to the State, the protection of the human being, the definition and establishment of essential human dignity are questions that have been discussed since man first began to enquire into his relationship to his environment. Civilization may be defined as a steady progress towards the achievement of greater and greater liberty. The great French philosopher, the late Professor Henri Bergson, has said that creative evolution consists in all its manifestations, of a movement towards greater and greater freedom and the emancipation of the human mind and will. But while history shows that there has been a constant evolution in the direction of greater freedom and greater liberty, it is nevertheless a fact, paradoxical as it may seem, that the whole question of freedom and liberty becomes more controversial as the evolution towards their achievement progresses. Traditionally, the conflict of ideas has related to the revindications of the individual against interferences by governments with his liberties; and efforts were concentrated towards the delimitation of the powers of governments. In the philosophy which crystallized this stage, human rights and fundamental freedoms were apt to be defined in negative terms. There is now fairly wide agreement on the definition of the traditional political rights and personal liberties of the individual, although it does not follow, of course, that these rights and liberties are always respected. Today, however, the controversy wages in another sector. The individual seeks not only protection against interference by governments,

*Text of an address delivered at the annual dinner of the Canadian Institute of International Affairs, Montreal, June 4, 1949.

he looks to the collectivity for positive services. Hence, the new concepts of economic and social rights. The question, moreover, in both of its aspects, is no longer a matter of mere national concern. The experience of the second world war and the events which gave rise to it, as well as the history of the post-war years, have convinced the great majority of thinking men and women that persistent violations of human rights and fundamental freedoms in one part of the world jeopardize the rights of people in other countries and will inevitably result in a situation that will eventually threaten the peace of nations.

One special aspect of the long history of this subject has been the effort either to find or to create a law which is higher than the law of the State and which will hold governments in check when they are tempted to violate the fundamental rights of the individual. There is a great literature on this subject which one might review, but one need only mention the teachings of the great religious leaders, the doctrine of a natural law which is both anterior and superior to the positive law of the State, and the development of a positive international law which limits and controls the powers and sovereignty of Leviathan.

This international law has traditionally been defined as a law governing the relations between States. The father of international law, Hugo Grotius, thought that international law conferred rights and imposed obligations on the individual; but the whole subsequent development of the discipline was in the direction of limiting international law to the relationships of States with the result that it can be safely asserted that up until the outbreak of the first world war at least the individual had no status in international law. In the last thirty years, however, there have been developments in the science of international law which are nothing short of revolutionary. It would be imprudent indeed to assert today that the individual has no status in international law.

It follows from the above that in the traditional theory of international law and in the traditional theory and practice of international relations, human rights were a matter of domestic concern only. If a government violated these rights, that was not the business of other governments or of the international community. A government could deny its citizens the most

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fundamental rights; it could discriminate against certain classes of its citizens. It could even carry these practices to a point where a situation was created that threatened the peace of nations. Its programme of denial of fundamental rights and of discrimination might even be part of a policy of world conquest, as in the case of Nazi Germany, but yet its lawyers and its statesmen could say that this was nobody else's business; and international law recognized that plea. Human rights were a matter of domestic concern only and the individual had no status in international law. All this was part and parcel of the traditional theory of national sovereignty.

The peace settlement of 1919 opened the breach for an attack against the theory of national sovereignty. In so far as the individual was concerned, however, its innovations were of relatively minor importance. It is true that in 1919 and the years immediately following, certain international agreements were concluded which provided for the protection of certain national, racial, linguistic, and religious minorities, mainly in Central and Eastern European countries. Some of these agreements even stipulated that the States obliged thereby were to respect the human rights of all persons subject to their jurisdiction. And a system was established within the League of Nations for the implementation of these agreements. But the measure was of exceptional character, political in its inspiration, and it was not universal. The Covenant of the League of Nations, itself, moreover, confirmed by its silence the theory and practice of positive international law that human rights were still a matter of purely domestic concern.

In the years immediately preceding the second world war, and during that war, the conscience of mankind was shocked not only by the mass murders and oppression for which the Nazi government was responsible in other countries, but also by the violations of human rights in Nazi Germany. That the perpetrators of these crimes would be punished and that measures should be taken to secure the international protection of human rights became one of the war aims of the Allied powers. It was also during this period that the late President Roosevelt proclaimed the Four Freedoms: freedom of speech, freedom of every person to worship God in his own way, freedom from want, and freedom from fear—everywhere in the world. These

objectives were re-enunciated in the Atlantic Charter which was drawn up off what has now become Canada's newest province. One could quote from the Declaration of the United Nations of January 1, 1942, the Moscow Declaration of 1943, the London Agreement of August, 1945, on the prosecution of war criminals including persons who had committed crimes against humanity, or the many speeches of the great leaders of the democracies.

But in spite of all the assurances that had been given, the final draft of the Dumbarton Oaks Proposals contained only one reference to human rights and fundamental freedoms. Under Chapter IX, it was provided that the new international organization "should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms." The Charter which was adopted at San Francisco, however, refers to human rights and fundamental freedoms in seven places, including Article I which says that one of the purposes of the United Nations is "to achieve international cooperation . . . in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." It is of the utmost significance that the references to human rights and fundamental freedoms in the Charter are much more elaborate than the one reference to the subject in the Dumbarton Oaks Proposals. The fact is that, in the interval between Dumbarton Oaks and San Francisco, the peoples of the world had an opportunity to scrutinize and criticize the work that had been done at Dumbarton Oaks. To San Francisco came a great number of representatives from various non-governmental organizations; and without official mandate of any kind they convinced the official representatives of governments of the necessity of expanding the original provisions in the Dumbarton Oaks Proposals concerning human rights. It is true that they did not get all they wanted but what the Charter does contain on the subject is largely due to their efforts. It is significant and appropriate that this victory of the common man, this victory of private individuals, should be a victory in the age-long struggle for the definition and establishment of human rights and fundamental freedoms.

It is one of the purposes of the United Nations "to achieve

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international cooperation . . . in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." What has the United Nations done and what does it plan to do to achieve this fundamental aim? Whatever criticisms may be directed towards the United Nations, and I know that they are many, it must be admitted that in so far as this fundamental aim of the organization is concerned, at least, a great part of the programme has already been achieved; for on December 10, 1948, the General Assembly proclaimed a solemn Universal Declaration of Human Rights as a "common standard of achievement for all peoples and all nations." In the words of Dr. Evatt, the president of the General Assembly, this Declaration "is a first step in a great evolutionary process. It is the first occasion in which the organized community of nations has made a declaration on human rights and fundamental freedoms; and it has the authority of the body of opinion of the United Nations as a whole, and millions of people, men, women and children all over the world, many miles from Paris and New York, will turn for help, guidance and inspiration to this document."

Immediately before its adoption, Mrs. Franklin D. Roosevelt, the chairman of the Commission on Human Rights, said of the Declaration that it might "well become the international Magna Carta of all men everywhere." "We hope," she said, "that its proclamation by the General Assembly will be an event comparable to the proclamation of the Declarations of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries."

Mr. Torres Bodet, the director-general of UNESCO, has said that in his opinion, the Universal Declaration of Human Rights is "the richest in promise of all the international texts to which the governments have subscribed since 1945 in order to give life to the San Francisco Charter."

The Universal Declaration of Human Rights includes among its thirty articles not only all the traditional individual liberties, like freedom of speech, fair trial and so on, but also the newer economic and social rights, like the right to work and social security.

This Declaration is not a perfect document. Some of the

rights would have been enunciated differently had the Declaration been prepared by learned legal draftsmen; and it is possible that its style might have been improved; but having regard to all the difficulties and all the circumstances, the Declaration is a better document than the most sanguine could have hoped for three years ago. It is certainly much better than I ever hoped for when nearly three years ago, I left the McGill Law Faculty to become the director of the Division of Human Rights.

This Declaration is not the work of one man or even of two or three men working in the retirement and quiet of their studies. It is the work of hundreds, indeed of thousands, of people and it represents a synthesis of the ideas and convictions of the millions of people of all races and nationalities who spoke through them. Let me tell you how the document was drafted.

The Economic and Social Council set up at its first session a Commission on Human Rights, as expressly provided for in the Charter of the United Nations. One of the first duties of this Commission on Human Rights was to prepare a draft of an International Bill of Rights. This Commission of eighteen members, which is now in its fifth session, has met at irregular intervals over a period of nearly three years. The Commission has had the assistance of two sub-commissions, a Sub-Commission on Freedom of Information and of the Press and a Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, plus a Drafting Committee. It was also assisted in its work by the Commission on the Status of Women; and the articles on freedom of information were drafted by the United Nations Conference on Freedom of Information which met in Geneva last year and which was a full-fledged diplomatic conference. The subject was also discussed at the Economic and Social Council and during the eighty-five meetings of the Third Committee of the General Assembly, which is, of course, a plenary committee at which all Member States are represented. On this level alone, therefore, the drafting procedure represented the contributions of several hundreds of minds. At one stage, moreover, the draft was sent to all Member Governments for comments and criticisms. Some of the specialized agencies, like the International Labour Organization and UNESCO, also contributed. And at each stage the delegates were assisted by their technical advisers and foreign offices and

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by all the paraphernalia of the United Nations Secretariat. Finally, but not the least important, there were the many non-governmental organizations which followed the drafting from the beginning and made many useful contributions.

It is no exaggeration, therefore, to say that the Universal Declaration of Human Rights is a synthesis of the contributions of many thousands of minds. I, for one, therefore, am not very impressed when a well-meaning critic points out that it might have been possible to turn a certain phrase better or that there may be some ambiguity in the enunciation of a certain right. My reply to that critic is that it is a miracle that the job was ever done at all; but perhaps I should say that, with all its apparent imperfections, the Universal Declaration of Human Rights stands as it now does because it reflects human aspirations as they really are, not in the bosom of one person or even of one group or of one nation, but of the whole community of nations. Small wonder that some people here and there may disagree with the synthesis.

There has been a great deal of discussion both in the Commission and in the General Assembly regarding the nature or character of the instrument. Is it a legally binding instrument, or has it moral force only? It has been argued and very forcibly that, since the Universal Declaration of Human Rights took the form of a resolution of the General Assembly, it can have no binding legal force. In its own words, it is merely a proclamation of "a common standard of achievement." On the other hand, it has been equally forcibly argued that the Declaration is an authentic interpretation by the General Assembly and through it by the Members of the United Nations, of the Charter provisions relating to human rights, that it confirms the principle that human rights are now a matter of international concern, and that it is even a basis for recommendation and action by the United Nations. It is also argued that the Declaration enunciates "general principles of law recognized by civilized nations" as contemplated by Article 38 of the Statute of the International Court of Justice and is therefore a source of international law. And finally, it has been argued that whatever obligations it may impose on governments it is certainly binding on the various organs of the United Nations as such.

Notwithstanding the fact that the Declaration was adopted

only six months ago, it has already been invoked in a number of debates in the General Assembly; and in one formal resolution, the General Assembly has put the Declaration on the same footing as the Charter itself. I am referring to the Assembly resolution on the treatment of people of Indian origin in the Union of South Africa, where the governments of India, Pakistan and the Union of South Africa are invited to enter into discussions at a round-table conference taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights. Articles 13 and 16 of the Declaration which provide that every one has the right to leave any country, including his own, and that men and women of full age have the right to marry without any limitations due to race, nationality or religion, are also mentioned in the resolution of the General Assembly dealing with the Soviet wives of citizens of other nationalities. An enumeration restricted to these formal references to the Declaration does not, however, give a true picture of the real situation. The principles enunciated by the Declaration were in the minds of all delegates and mentioned by some in the discussions relating to the trials of religious leaders in Bulgaria and Hungary. Human rights have been an important element in the discussions regarding the admission of new members. The Trusteeship Council has adopted resolutions concerning discrimination in certain trust territories. This was done before the adoption of the Declaration. The partition plan for Palestine contained provisions dealing with human rights. Non-governmental organizations have precipitated debates in the Economic and Social Council on the safeguarding of trade union rights. Indeed, these debates had some of the characteristics of a formal enquiry. Not only were allegations made by non-governmental organizations that trade union rights were being violated by certain countries but the governments which were accused and which were not members of the Council were invited to attend the meeting of the Council at which the question was discussed and some even made replies to the allegations. The Council is also considering the possibility of an enquiry into charges of forced labour. In the draft Declaration on the Rights and Duties of States, moreover, which is now being prepared by the International Law Commission, it is stated, in Article 6, that "every

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State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion.”

In view of all this, it can safely be said that, whatever the legal force of the Universal Declaration of Human Rights may be, there is a developing jurisprudence within the United Nations on the question of human rights and fundamental freedoms.

One should add something at this point about the repercussions of the human rights provisions of the Charter and of the Universal Declaration of Human Rights on the practice of States. Pursuant to a recommendation made by the Economic and Social Council to include provisions on human rights in the peace treaties, each one of the five peace treaties of February 10, 1947 with the so-called “axis satellites” include provisions guaranteeing the respect of human rights in the ex-enemy countries. In several Latin American countries, including Chile, Argentina, and Venezuela, the franchise has been granted to women pursuant to a recommendation of the General Assembly. In Canada, the Supreme Court of Ontario has interpreted, in the Wren case, Canada’s acceptance of the Charter of the United Nations as establishing public policy in Canada as being opposed to discrimination; and on the basis of that interpretation the Court voided a private covenant which discriminated against Jews.

References to the human rights provisions in the Charter have been made in certain cases recently decided by the Supreme Court of the United States. Thus, Mr. Justice Black said in a case of *Oyama vs California* that “we [the United States] have recently pledged ourselves to cooperation with the United Nations to ‘promote . . . universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.’” “How can this nation,” he said, “be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?” Finally, two of the bills the purpose of which is to implement President Truman’s civil rights programme, and which are now before the United States Senate, expressly recognize the obligations of the United States under the United Nations Charter, and specifically mention the Universal Declaration of Human Rights.

These are a few cases that have been brought to my attention. It is not an exhaustive list nor does it include all the more subtle repercussions in the formation of public opinion in various countries and the policies and practices of governments.

The above is only part of the story of what the United Nations has already done to promote respect for human rights and fundamental freedoms. For example, nothing has been said about the concern of the United Nations for the fate of refugees in different parts of the world, or about the problem of statelessness which will be discussed at the next session of the Economic and Social Council. Nor has anything been said about the Convention for the Repression and the Punishment of the Crime of Genocide which was also adopted by the Paris session of the General Assembly last year; or about the work of the United Nations Conference on Freedom of Information and the Convention on the International Transmission of News and the Right of Correction which was adopted by the General Assembly on May 13 of this year; or about the work of the Commission on the Status of Women, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities or the Sub-Commission on Freedom of Information and of the Press.

In particular, mention has not been made of the International Covenant on Human Rights which is now being drafted by the Commission on Human Rights. This Covenant will take the form of an international treaty and will be supported by machinery for implementation. It was hoped at one time that it would be possible to bring a draft of this Covenant before the next session of the General Assembly but the Commission has now adopted a programme of work which involves the submission of the draft to governments and its re-examination next spring in the light of the comments and criticisms of governments, with the result that there is now no possibility of the matter being considered by the General Assembly before the fall of 1950. Many people think that the work which the Commission is now doing on the Covenant and measures of implementation represents its most important task and will be the real test of the sincerity of the desire expressed by governments to set up effective international machinery for the protection of human rights. However, the problems which have

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to be solved and the obstacles still to be faced are formidable.

We cannot pierce the future; we can only look back to the past. Any objective review of the past gives reason for cautious optimism for the future, but we must have courage and patience. Courage has been defined as the memory of past successes. The record of the United Nations in the matter of human rights and fundamental freedoms does, I submit, show real success. We know too that we have on our side all the best men and women everywhere, whatever their race, language or religion, and we know that we are in the full stream of creative evolution.

Lake Success, New York, May, 1949.

Review Article

The British Commonwealth in a Changing World

There have been few books of outstanding importance on the British Commonwealth during the past year or so. The hundredth anniversary of the establishment of responsible government in Canada and Nova Scotia has passed without the flood of centenary volumes which usually mark such occasions; and not much that is of great moment has yet been written, or can yet be written on the far-reaching changes that have resulted from the war and the virtual breakdown of British power throughout the Orient. The problems of colonial administration in areas which remain under the rule of Britain and other European powers have attracted some attention; and one or two useful and interesting studies on the present situation and future prospects of India have been published. But most of these books are in the nature of interim reports, and very few of them are likely to be of lasting importance.

Of the books here listed* Mr. Hodson's *Twentieth-Century Empire* and

*H. V. Hodson, *Twentieth-Century Empire* (London: Faber; Toronto: Ryerson, 1948. 186pp. \$4.25, members \$3.40); Nicholas Mansergh, *The Commonwealth and the Nations: Studies in British Commonwealth Relations* (Toronto: Oxford for R.I.I.A., 1948. viii, 229pp. \$2.50, members \$2.00); Hector Bolitho (ed.), *The British Empire* (London: Batsford; Toronto: Clarke, Irwin, 1947-8. x, 246pp. \$5.00, members \$4.00); Roy Lewis, with the assistance of Arthur Frazer, *Shall I Emigrate?: A Practical Guide* (London: Phoenix House; Toronto: J. M. Dent, 1948. 288pp. \$4.50, members \$3.60); Leslie Lipson, *The Politics of Equality: New Zealand's Adventures in Democracy* (Chicago: University of Chicago Press; Toronto: W. J. Gage, 1948. xiv, 520pp. \$6.60, members \$5.95); Donald Munro (ed.), *Socialism: The British Way* (London: Essential Books, 1948. 345pp. 10s. 6d.).