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BY JOHN EPPSTEIN

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— A CATHOLIC VIEW

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DEFEND THESE HUMAN RIGHTS!

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THE UNITED NATIONS
— A CATHOLIC VIEW

By JOHN EPPSTEIN

author of

The Catholic Tradition of the Law of Nations

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Defend These Human Rights!

GROWTH OF THE MOVEMENT TO DEFEND HUMAN RIGHTS

The rise of the totalitarian State, first in Russia, then in Italy and Germany, with its increasingly grave violations, both in theory and practice, of the inalienable rights of the human person, caused Catholic moralists and sociologists in many countries throughout the nineteen-thirties to insist that *la defense de la personne humaine*, or the protection of personal rights, had become the most urgent of social causes.¹ This was somewhat different from the familiar enumeration of "the Rights of Man and the Citizen" which finds its place in several State constitutions, and which it had been proposed in some academic circles of international lawyers to make the subject of an international declaration, beginning with the European Institute of International Law, meeting in Rome in 1921. By "the human person" the Christian opponents of State absolutism meant particularly man as a *spiritual* being. The most important thing about man, to the Christian, is not his citizenship but his soul. It is precisely because of the spiritual nature of man and his immortal destiny, which quite transcends the State, that the pretensions of the Nazi, Fascist and Communist systems to dispose of

¹ See, for instance, the striking report on this subject by the Rev. F. Deloe, O. P., approved by the International Catholic Conference at The Hague, 1937, and published in English in *Foundations of International Order* (Catholic Social Guild, Oxford).

human beings like cattle, or even cogs in a machine, outraged and shocked the Christian conscience: indeed it shocked not only those who were fully conscious of what Christian civilization had done to uphold the dignity of men and women, but those also throughout the world, who, by unconscious habit, had inherited the values of that civilization.

The war gave a fresh urgency to the defense of human rights and liberties. The call to free millions of human beings from the oppression which the unjust military occupation of their countries had brought upon them stirred the consciences and fired the wills of the vast majority of honest men, especially in the United States and the British countries which did not suffer enemy occupation. This was undoubtedly the dominant intention of many gallant young soldiers and sailors who did not live to see victory.

Purpose of the War: Good Intentions Confused

That right intention, which originally aimed primarily at the liberation of the Polish people (for intervention to aid Poland had been the moral justification for the British and French declaration of war), became confused and eventually vitiated by the principal Allied governments as the war proceeded. This was due to the demagogic exaltation in official propaganda of *undefined* "Democracy," as the all-embracing purpose of the war. To the Catholic moralist, Democracy is but a *means* (the *best* means we believe) to an end. It is a particular system of civil participation in

the choice of rulers and the conduct of public life, which we hold to be the best bridle upon tyranny and the best way of enabling the maximum number of citizens to contribute to the common good. The *end* is a rightly ordered society, in which true liberty to exercise their innate rights and duties may be enjoyed by all men, and by the rich variety of associations which men form in accordance with the requirements of their nature. But who could be sure that this was implied in the "Democracy" so loudly preached by our politicians, the BBC or "Voice of America," by say, 1944?

The New Intolerance on "the Left"

The false simplification of war-time propaganda led, especially after 1941, to a lumping together of the war aims of all the Allies, the USSR and the Western Allies alike, under this title of "Democracy" which, it was supposed, would triumph so soon as "Fascism" had been laid low. But what did "Fascism" mean? Did it mean the governments and dominant parties of the enemy countries, Germany, Italy, Japan and their satellites? Or did it mean *any* opponents of this nebulous "Democracy" anywhere and everywhere?

The combination of muddled thinking and dishonesty, which more and more characterized the official vocabulary of the conquerors, enabled the Soviet Government to maintain the deceptively simple distinction between "Democrats" and "Fascists" when the fighting had ceased, as they set to work to consolidate their hold upon half the continent of Europe and to extend their

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influence, as opportunity offered, further afield. "Democrats" meant, there and everywhere, those who were subservient to Russian policy; "Fascists," all those who resented or resisted it. Meanwhile, those who from mental sloth or from political sympathy with the Soviet Government have continued to use this fatuous vocabulary in the press, literature, radio and politics of the Western World have succeeded in blinding millions of honest but ill-informed people to the central fact of the present situation; which is, that this pseudo-Democracy is itself the chief enemy and oppressor of those human rights and values which we set out to vindicate in the war.²

It is necessary to bear this paradox in mind when we come to consider the practical means by which human rights can, at this stage, be nationally and internationally safeguarded. And here a little clear thinking is required. It is more than doubtful whether any "compromise text" which the delegations of the Kremlin and its subordinate governments might accept in the United Nations Commission on Human Rights would be of any practical value, because it is those very Governments, which are the most flagrant oppressors of personal, civil and religious liberties today.

There are those who believe that there is a peculiar merit in compromise, regardless of the moral or prac-

² E.g. The wholesale uprooting or deportation of Polish and German populations; the terrorism exercised against all opponents of the Communist regimes installed in Yugoslavia and Poland; spurious elections in Rumania and Bulgaria; suppression of religious and youth organizations in Hungary; partisan bloodshed fomented in Greece and the general denial of civil and religious liberties in Eastern Europe.

tical value of the content or object of the compromise. Members of the Secretariat of the United Nations (as of the League of Nations before them) are, not unnaturally, professionally addicted to that view. But to start with the proposition, that any declaration or convention upon human rights must necessarily be something which Russian communism can accept; is to condemn such a measure to sterility. Nor, in this matter, is formal universality the first object to be sought: it is better that a declaration of this kind should only be signed, in the first instance, *by Governments who mean to keep it* and who are sustained in the signing and the keeping of it by an alert public opinion at home. Certainly the greater the number of States which adhere to it the better; but before speculating with worldly wisdom, on which Government is likely to sign or abide by an international Bill of Rights and which not, the first thing is to decide, in the light of right reason, Christian tradition and the experience of history, which of the natural rights of men most *need* defending and what is the best means of promoting that defense in national and international law.

It is not, of course, true to say that the system of government in the Soviet Union, the Communist hegemony in the Baltic States, Poland, Eastern Germany, Hungary, Yugoslavia, Rumania, and Bulgaria and the control of large areas of China by Communist armies constitute the only threats to the essential rights of man and to the rights of God in human society. That danger is present wherever there is a powerful trend in

2

the direction of *statolatry*, as Pope Pius XI called it, the idolatry of the State. It exists in any country in which the growth of bureaucratic power; the nationalization, one after another, of the means of production; the control of manpower; the substitution of official social services for private charity; the destruction by crushing taxation of the material conditions of personal and family independence, and the state monopoly of education contrive to create a mechanism of political omnipotence ready to the hand of whichever party secures the electoral majority. Unless the trend of history is miraculously reversed, the planned economy of today becomes the tyranny of tomorrow. And tyranny is none the less odious for being anonymous.

Other Dangers to Liberty on "the Right" and Elsewhere

It is not only against the "Servile State" of socialism that personal rights need to be defended. The silly creed of Fleet Street that "the Left is always right and the Right is always wrong," at least in any country but its own, will not deceive the serious student. If by "the Right" is meant the genuinely traditional forces of a nation, they have, as often as not, been the most consistent enemies of National Socialism; and where, as in Austria, Switzerland, Belgium or the Netherlands they are consciously based upon Christian principles, they are no possible danger to the fundamental freedoms and rights of man. Certainly, however, politicians of the "Right" or of the "old Order" in various countries have frequently done violence to private liberties and, by a

compromising patronage, to the Church's independence.

The Spanish Falange has many of the most objectionable features of National Socialism combined with the single-party pretensions of Fascism, properly speaking. There are also, in not a few countries, excesses of nationalism, always a potentially persecuting power. Racial hatred, whether it be the contempt of Europeans for colored peoples, or anti-Semitism, both flagrant violations of Christian charity, begets monstrous injustices. There are, in the capitalist world, constant threats to just conditions of labor and an abuse of industrial and financial power which the Popes have condemned in the sternest terms. (E. g. Pius XI in *Quadragesimo Anno*.) There is the danger, inseparable from the impact of advanced civilization upon primitive peoples, of the exploitation or corruption of the native population in colonial countries.

There is also a great danger—too little noticed by apostles of self-determination—when a veneer of Western political forms accompanies new-found national independence in Oriental countries; it is the danger of the economic subjection by the small class of political intelligentsia and business men of the mass of the illiterate poor.

Human Rights in the Charter

All these considerations add up to an overwhelming case *against* leaving human beings entirely to the tender mercies of the rulers of the Sovereign State and in favor of the contention that the rights of individuals should

be set forth in an international declaration and vindicated by national governments and international organizations. This was one of the seven basic principles of the "Pattern for Peace" adopted by duly authorized Catholic, Protestant and Jewish representatives in the United States on October 7, 1943. There is no need to recapitulate the strong and healthy pressure applied by unofficial organizations, both before and during the San Francisco Conference in support of that principle. The result of their endeavors is to be seen in the Preamble and in Article I of the Charter of the United Nations, as finally adopted. Here we find faith reaffirmed "in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women"—welcome admission of the primacy of Natural Law. We find the objectives of the United Nations so defined as to include "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." The Charter also lays down that the promotion of these objectives is to come within the competence of the Economic and Social Council, which is to operate under the authority of the General Assembly (Art. 62), and stipulates (Art. 68) that a Commission shall be set up "for the promotion of human rights."

That Commission was established on February 16, 1946, with a nucleus of nine members, instructed to make recommendations upon the definitive composition of the Commission. Their recommendations having been received, the Economic and Social Council re-

solved, on June 21, 1946, that this Commission should consist of the representatives of eighteen member States and that it might avail itself of the assistance of "non-governmental experts"; and it is of vital importance that a Catholic moral theologian and sociologist of the highest competence should be among those invited to assist the Commission in this capacity. The Commission's terms of reference are, to make recommendations to the Council regarding:

- a) an international bill of rights;
- b) international declarations or conventions on civil liberties, the status of women, freedom of information, and similar matters;
- c) protection of minorities;
- d) the prevention of discrimination on grounds of race, sex, language or religion;
- e) any other matter concerning human rights.

So far so good. These phrases lack the precision of scholastic language, but the inclusion of them in the general and institutional charter of a positive society of nations is an important step forward. Now it is a question of making the most of this opportunity with a view to securing:

- 1) the clearest possible definition of the inalienable rights of individuals and of families, of the Church and of human associations, and of the conditions normally essential to the exercise of those rights;
- 2) the most solemn and effective recognition and guarantee of those rights and conditions in the fundamental laws of States; and

- 3) The most effective international control or reinforcement of the loyal observance of those laws.

The Catholic Position

The Catholic position in the matter is this. There are no such things, properly speaking, as Catholic rights or non-Catholic rights; there is no such thing as Christian justice or non-Christian justice. Justice and Truth can have no qualifying adjectives. It is a question of thrashing out what *Natural Law* requires, Natural Law being the participation by man as a rational creature in the Eternal Law of his Creator. Certainly it is the Catholic position that the Christian revelation and the Holy Ghost abiding in the teaching Church help man to use his reason properly and so to discern what his own true nature is, what is required to enable him to develop according to his nature and what mutual rights and duties, in human society, arise from this nature and the moral law of God. There is a wealth of teaching on this subject in the Works of the Fathers, Doctors, and theologians of the Church, much of it endorsed by Papal authority, from the fourth century at least until today: much of it was quite consciously derived at the start from the old Stoic philosophy simply because it was found to accord with right reason and with the precepts of Christ.

But the whole end and purpose of Catholic teaching and thinking in this sphere is to determine the natural rights and duties of all men, be they Christian or Jewish or Moslem or pagan, white or black, or anything else,

just because they *are* men, and then to defend them. What is true for one is true for all. It is for this reason that in the international sphere, as in that of national and municipal life, Catholics, if they are true to their principles, must necessarily cooperate with all men of good will who honestly seek to practice and defend those rights and liberties which essentially belong to man as an intelligent being against every abuse of political power and every economic injustice. Catholics indeed have a greater obligation than others to work for justice everywhere even in countries quite remote from their personal experience, and a greater incentive, because of the Catholic doctrine of the Mystical Body of Christ, the Redeemer of all mankind, into which they must desire to see all men incorporated.

II.

HUMAN RIGHTS WHICH ARE OFTEN OVERLOOKED

It is in this spirit that we propose to examine the ideas put forward in the several drafts for a proposed international Bill of Rights which have been drawn up by different committees and organizations for submission to the United Nations. One of them, prepared by a Committee of the American Law Institute, described as representing the "principal cultures of the world" (though in fact no responsible exponent of Catholic moral philosophy is included in it) has been submitted by the Delegation of Panama; another has been drafted by the Inter-American Juridicial Committee; another submitted by the American Federation of Labor; another prepared by the Committee on Human Rights of the Commission to Study the Organization of Peace. The first of these is the thinnest and poorest from the Christian standpoint, the second the most satisfactory; but all contain a great deal concerning the right of the individual to life and liberty with which there can be cordial agreement. If we pick out certain points for emphasis, it is because, we believe, there are some matters of great importance which are often omitted from such lists of rights and would enrich an International Bill of Rights, to the advantage of all.

There is, however, one matter of criticism or at least of doubt which may be raised on these otherwise useful documents; it is that they reveal an uncritical accept-

ance, originally derived no doubt from the old Protestant doctrine of Private Judgment, of the notion that there must be no restriction *whatever* upon the expression and propagation of opinions and policies. It is time that those who do believe in the moral basis of civil society asked themselves, whether any sound principle or social purpose is really served by conceding complete freedom under the protection of the law—it could certainly not be called a right—to a body like the Communists whose dominant purpose is essentially and admittedly the destruction of morality and the social order. It is this body, moreover, which is the recognized representative and apologist everywhere of that very Power which more than any other is now violating human rights on a grand scale.

But there are three significant omissions in most of these drafts of an International Bill of Rights (though not in the Draft Declaration of the Inter-American Juridical Committee); they are the family, religious education and the right of corporations to hold property.

The Family

Subconsciously, let us hope, too many of those who, with the best intentions, are concerning themselves with

Thus Lenin, "We say with assurance that we do not believe in God. We decry all this morality borrowed from concepts exterior to class or even to humanity. Our own morality is entirely subordinated to the interests of the proletariat and the needs of the class struggle." *Address to the Third All-Russian Congress of Communist Youth*; and Stalin, "The scientific concept, dictatorship, means nothing more or less than power, which directly rests on violence, which is not limited by any laws or restricted by any absolute rules. Dictatorship means unlimited power, resting on violence and not on law," *Problems of Leninism*.

the definition of human rights have adopted the atomizing conception of *état laïc*, the secular state. This has been propagated for a century and a half by French anti-clerical rationalism and its foreign disciples and adopted, as a matter of course, by the Marxist. According to this view, there is nothing between the individual citizen and the State or nation; all intervening groups claiming to exist in their own right, all loyalties other than loyalty to the State are anathema.* Those who, while rightly reacting against the tyranny of the totalitarian State, are themselves infected with this notion, can think of nothing better than to assert the rights of individuals as such against the State. That is not at all the true conception of the natural order of Society evolved and safeguarded by the Christian tradition. According to that tradition, the *family*, not the individual, is the basis, the formative unit, the pillar of civil society, and parents have very definite rights over and duties toward their children. The statement of essential Human Rights prepared by the American Law Institute and its explanatory commentary contain not a single mention of the *family* or of *parents*. The present Pope, however, defining the primary duty of the peacemaker as that of "restoring to the human person the dignity which God conferred upon him from the beginning" lays down among "the fundamental rights of the person," "the right to marriage and to the

* The logical outcome of this view is the proposition: "The State, as the fount and origin of all rights, itself enjoys a right which knows no limits," which is No. XXXIX in The Syllabus of Errors condemned by Pius IX on Dec. 8, 1864.

attainment of the purpose of marriage; the right to wedded society and home life; the right to work as an indispensable means for maintaining *family* life." In the same statement (Radio Address, Christmas, 1942) His Holiness adds that those who desire to build a true peace "must strive to preserve, protect or restore the *unity of the family* . . . securing to every family a home, in which a healthy family life may be maintained."

The large part played by the family in Catholic thinking upon human rights is underlined by the special section devoted to the family in the very comprehensive document prepared by a committee appointed by the National Catholic Welfare Conference and submitted to the Human Rights Commission on February 2, 1947 (cf. *appendix* for full text).

- In short, the defense of the dignity and rights of the human person is bound up with the defense of that God-made society, the family, of which every human being is by birth a member and which is linked together by the most sacred ties. And the outraging of family life and the home is one of the most terrible features of the calamities which have recently befallen Europe. There has been the forcible conscription and deportation far from home of slave labor among most of the European nations by the Nazis, with its pitiful legacy of "Displaced Persons," unable to return to their families because of the new oppression of Soviet communism. There has been the atrocious destruction of the lives and homes of Jewish families by the millions. The massive, involuntary transfer of whole populations by the Rus-

sians and their puppet administrations from Eastern Poland, Eastern Germany and the Danubian countries—a process in which, only too often, parents and children have been deliberately separated—is, alas, by no means a thing of the past.

All these developments constitute the greatest single onslaught upon the institution of the Family which has occurred in European history. How many hundreds of thousands of German fathers, husbands and sons are still cruelly separated from their families as prisoners of war in Russia, and even in England and France? Nor is it only by such unjustifiable accompaniments or extensions of total war that the unity of the Family is assailed. The failure of Governments in the so-called free countries to tackle the housing problem since the war ended and, in particular, to make it possible for the young newly-wed soldiers and their wives to have a home of their own is having disastrous consequences. In England it is estimated that 20,000 additional suits for divorce have been added to the lists in the current Law Year on this account alone.

Thus, for those who really desire to protect human rights in their full sense, the promotion and protection of *family life* ought to be the primary object of many of those duties of the State to the individual citizen which we find postulated or implied in the draft declarations on Human Rights now under discussion. For instance, it is to maintain the *family* that the right to possess and bequeath property is justified, and that a just distribution of material goods is required. It is to that end that

housing schemes and grants should be directed. It is to that end that a "fair wage" must be assured in all employment: it is to that end that the incidence of taxation should be determined. Should conscription for defense or industry be required, under the stress of public necessity, then the principle of not removing husbands far from their wives, or mothers from the home, should be the general rule to be observed as far as it is humanly possible. A good model for this clause would be Article 41 of the Irish Constitution, which came into operation on December 29, 1937. The first four paragraphs of the Article read as follows:

I. 1. The State recognizes the Family as the natural, primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2. The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the State.

II. 1. In particular, the State recognizes that, by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2. The State shall, therefore, endeavor to ensure that mothers shall not be obliged by economic necessity to engage in labor to the neglect of their duties in the home.

Religious Education

The rights of parents are inextricably bound up, in the mind of the Church, with the question of education. In the natural order, it is the parents' duty to bring up their children in the fear of God, in the practice of virtue and in the knowledge necessary to enable them, in their turn, to provide for themselves and found new families. If the parents entrust their children to school teachers, those teachers act *in loco parentis* (in the parent's place) and by no other title. In the supernatural order, it is the duty of parents and godparents to see that children receive instruction in faith and morals from the Teaching Church, divinely instituted to that end. The business of the public authority is to create conditions in which those duties of parents and of the Church, which are also their rights, may be faithfully discharged. Instead of which we read: "Everyone has the right to education." What on earth does that mean? *What* education? Many young souls have lost their faith, in France and England for example, through the secular education provided for them by the State. Many millions of children are having their consciences confused and perverted today by the unnatural nonsense and anti-religious abominations thrust down their throats throughout the Soviet Union or in Yugoslavia. It would be infinitely better for them if they had no "education" at all. It were better for those State educators to have mill-stones tied about their necks and to be cast into the depths of the sea.

The last and most sacred recorded command of

Christ to His Apostles before His Ascension was to go forth and *teach* all nations; and nothing is more essential to the Church in every country than to secure the freedom and the material means which are necessary to the discharge of this mission of teaching. If, in fact, it is not possible to obtain legal recognition of this right in the fundamental laws of States, as belonging specifically to the Church (which is recognized, for instance, in Italy, Portugal, Spain, the Catholic Cantons of Switzerland, the Netherlands, and in practice in Ireland and Scotland), then it is best to fall back upon the natural law and to insist that parents have the right to send their children to the schools in which teaching conforms to their own convictions. A clause to that effect was inserted in the recent Education Act (1946⁵) in the United Kingdom, thanks to the insistence of Catholic Members of both Houses of Parliament and the good will of many of their colleagues: upon it have been based—and usually with success—the claims of the local “Catholic Parents’ and Electors’ Associations” to equality of treatment in regard to the cost and provision of transportation for children attending the Catholic schools—a matter of great moment for so scattered a Catholic population. To take another example, the American and British Occupation Authorities in Ger-

⁵ “GENERAL PRINCIPLE TO BE OBSERVED BY MINISTER AND LOCAL EDUCATION AUTHORITIES.

(Clause) 76. In the exercise and performance of all powers and duties conferred and imposed upon them by this Act, the Minister and local education authorities shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.”

many, having arbitrarily declined to recognize the continued validity of the Concordat between the Holy See and the Reich, the reopening of the confessional schools in their Zones was made entirely dependent upon the votes of the parents. Whereupon the Catholic parents voted by overwhelming majorities in favor of sending their children to Catholic schools, as did, for their part, a large number of Protestant parents in respect to the Protestant schools, to the great advantage of religion in Germany.

A provision in an International Bill or Convention upon Human Rights stipulating either positively, that all parents have the right to send their children to schools which conform to their religious convictions or, negatively, that the State shall never compel children to attend schools in which the teaching does not correspond to the beliefs of their parents, would save a principle upon which the Catholic Church can never compromise, and at the same time offer equal opportunities, as citizens, to Orthodox, Protestant, Jewish, Moslem, or other religious bodies.

Corporate Property

But education raises the whole question of school buildings, just as "freedom of worship" is quite unreal unless it implies the right to build and possess places of worship; and this is only one of the indispensable material requirements of the "association for religious purposes" or "association for educational purposes," if we may accept such a description in Natural Law, of

an ecclesiastical organization or of the Church itself. The same considerations apply to all associations formed for legitimate purposes, cultural, vocational, professional, scientific or recreational. Unless such bodies have the right to acquire and own property as *corporate persons* in law, the rights to assembly, worship, and association, though written into National Constitutions and confirmed by an International Treaty, may well be quite illusory. It has for nearly a century been the commonplace of anti-Christian Governments and Parties, to say that freedom of conscience and worship and association is guaranteed to all, and then, by confiscating the buildings, lands or other property of the Church, religious communities or other organizations, which they do not like, to make the exercise of this freedom nearly or wholly impossible. That was the trick of the *Lois laïcs* in France; that is the trick of the Constitution of the USSR; that is the trick of Rakocy and his clique of Muscovites, whose domination has been imposed upon Hungary—to protest that they are not persecuting the Church, but, by confiscating without compensation all the land, on the revenues of which the Catholic Colleges and Schools depend (and by other indirect means of pressure) to make it virtually impossible for Christian education to continue. It is the same, to an even more fantastic extent, in Yugoslavia.

In view of this long and bitter experience and of the tendency of the State-worshippers everywhere to make it difficult for any associations or organizations, which are not sufficiently subservient to Government, to have

the material means of permanent existence, it is disturbing to find either no reference to the right to property in various International Bills of Rights now in circulation or, if there be a reference, as in the draft of the American Law Institute, to find it postulated only of *individuals*. It should be laid down that all institutions, organizations and associations existing for purposes not inconsistent with the Bill of Rights as a whole, have the right in their corporate capacities to erect, acquire, and possess buildings and to own land, funds and other property necessary or convenient for the maintenance and development of their corporate life and activities. Further, as in the case of privately owned property, these possessions should not be requisitioned or sequestered by the State, in the exercise of its power of eminent domain, for a necessary public purpose, without just compensation.

Civil Rights: Precision Needed

In considering the list of rights to be safeguarded, we have not enumerated those which are accepted by all or nearly all reformers who are genuinely in revolt against the tyranny into which the power of the State has degenerated in this generation—freedom of opinion, worship and speech; freedom from arbitrary arrest; the right to a fair trial; equality of civil rights, etc. We should all be agreed upon the necessity of reaffirming these points, though to have any practical effect in the existing condition of the world, several of them would have to be phrased very much more precisely. For

example, can anyone believe that the extremely ambiguous sentiment, "Everyone has the right to take part in the government of his State" would suffice to annul the Local Government Franchise Bill introduced by the Government of Northern Ireland for the purpose of restoring a high property test, based on rateable values, as the condition of voting in municipal elections, and so depriving the bulk of the Catholic Irish in the Northern Counties and Boroughs of their right to vote? Or would it cause a comparable reform in the laws and customs of certain Southern States in the United States in relation to the Negroes? It is doubtful.

Obviously no one has the "right" to be a member of the government—a mere handful of people under any constitution—except he or she be chosen or elected according to the laws of the land for that high office. Does it mean that everyone has the right to vote for the National legislature and, when there is a separate election of the head of the State (as in the American Republics) to take part in it? Even so, such an Article would still make it possible to exclude men and women wholesale from voting in local municipal, cantonal, or provincial elections which are of great importance in many parts of the world. And here, though any international Declaration of Rights would no doubt contain some general provision against discrimination on grounds of race, color, religion, language or sex, it would be well to lay that down *specifically* in regard to the exercise of civil rights strictly speaking, i.e., the right to equal participation in civil society—voting, eligibility for

election to all public bodies, appointment to public office, and "no taxation without representation." If we are to be democratic, let us do it thoroughly.

This raises the whole question, whether any short minimum statement of rights and liberties in general terms, however generous the intentions and explanations of its advocates, is really likely to be of the slightest use or whether it would probably share the fate of the Atlantic Charter, now unhappily as dead (diplomatically speaking) as mutton. The *easier* it is for the delegates of many countries to accept such a statement, the more likely are they to sign it with their tongues in their cheeks and the firm conviction that their Governments need do nothing whatever about it. For, be it remembered, what is proposed is the reversal of powerful, existing trends; all this is directed *against* the pretensions of Governments; it proposes to clip the wings of their sovereignty. In examining the need for greater precision and realism and suggesting the necessary priorities, we have concentrated upon five institutions which are a great deal more important to the full development of the human person and the exercise of his rights than old-age pensions, social insurance and education about nothing in particular: they are the Church, the Home, the Christian School, corporate rights to property and a really fair electoral system. The fact that adequate safeguards on these points will be difficult to obtain makes it all the more worth while struggling for them. There are two other matters which require special attention in the present condition of the world.

The Right of Migration

St. Augustine, seeking in the fourth century of the Christian era to define the conditions in which it may be lawful to wage war, cited, as an example, the wars of the Hebrews against the Gentiles on their return from exile in Egypt to the Holy Land, which he defended on the purely rational ground that "harmless transit" was refused to them, but this by the law of human society should in all equity be open to them.* And there is nothing more constantly accepted in the whole tradition of the Law of Nations than the right of human beings to travel and trade peacefully and settle in any part of the world. Clearly there may be exceptional circumstances, as for instance the need of prudent provisions for the social welfare of the population of a state or for public order, or physical difficulties of housing, feeding or employment which may justify temporary restrictions by a Government upon this natural right. But nothing excuses the modern attempts to *annihilate* it. Francis de Vittoria, wrestling in the sixteenth century with the new colonial problems resulting from the Spanish discoveries of America and the relations between the newcomers and the native Indians, says "It was permissible from the beginning of the world (when everything was in common) for anyone to set forth and travel wheresoever he would. Now this was not taken away by the division of property; for it was never the intention of the peoples to destroy by

* St. Augustine's Commentary on the Book of Numbers "Innoxius enim transitus denegebatur qui humanae societatis aequissimo jure patere debebat" c.f. Decretals of Gratian. Pars Sec. Causa XXIII. Qu. II. C. III.

that division the reciprocity and common uses which prevailed among men." The same author goes on to argue that if people migrating—as the Spaniards of those days were doing—to another country have children born there, "it seems that they cannot be barred either from citizenship or from the advantages enjoyed by other citizens."

In short, the good old conception of the State is that of an organization of civil society with certain necessary but very limited and relative rights over human beings. Its primary purpose is to maintain order within its frontiers so that those who live, visit, trade, or settle in that territory may pass their lives in peace.

The newcomers, from time to time, may simply be visitors, in which case, the Law of Nations requires that they be received hospitably. "It is reckoned among all nations inhumane," says Vittoria, "to treat visitors and foreigners badly without some special cause, while, on the other hand it is humane and correct to treat them well."⁷ They may be traders; and it is not too much to say that the main trend of the Christian tradition is in favor of free trade and freedom of the seas and that Taparelli d'Azeglio, the greatest modern Catholic writer upon Natural Law, expressed the mind of the Church when he wrote: "In the design of the Creator, commerce becomes the great social link which unites all nations in one single society."⁸ They may be refugees from political oppression, in which case there

⁷ *Relectio 1a "De Indis" Section 3 "De legitimis titulis."*

⁸ *Ibid.*

⁹ *Saggio Teoretico di Diritto Naturale lib. VI-1297.*

is the natural obligation, reinforced by Christian charity, to come to their aid and give them shelter, an obligation which positive law, national and international, has long recognized in the Right of Asylum. This is but a practical application of that duty to act in defense of the rights of one's fellow-men, in support of which Catholic authorities from the earliest ages have quoted that striking injunction in the *Book of Proverbs*: "Deliver them that are led to death, and those that are led to death, forbear not to deliver. If thou say 'I have not strength enough,' He that seeth into thy heart, He understandeth and nothing deceiveth the keeper of thy soul."¹⁰

Finally, families or individuals are impelled to seek new homes abroad owing to the pressure of population or economic poverty in their native countries: today the great free nations of the New World, the United States and Canada, are themselves living monuments to the liberal and humane principle which allowed and aided such migration during the nineteenth century. The present Pope, Pius XII, bases the case for such migration upon the natural "right of the family to a vital space." He says that "when families migrating from one spot to another, go elsewhere in search of a new homeland, emigration attains its natural scope.—We mean the more favorable distribution of men upon the earth's surface, suitable to colonies of agricultural workers: that surface which God created and

¹⁰ Prov. XXIV. 11, 12. See especially argument based on this in St. Ambrose, *De Officiis*, I, XXXVI.

prepared for the use of all. If the two parties, those who agree to leave their native land and those who agree to admit the newcomers, remain anxious to eliminate as far as possible all obstacles to the birth and growth of real confidence—all those affected by such a transference of people and places will profit by the transaction: the families will receive a plot of ground which will be native land for them in the true sense of the word; the thickly inhabited countries will be relieved and their peoples will acquire new friends in foreign countries; and the States which receive the immigrants will acquire industrious citizens."¹¹

Now the whole of this long-established Christian and, in the highest sense, liberal tradition of the freedom of human beings to travel, trade and settle abroad for peaceful purposes, has in recent times been frustrated by the pretensions of the Sovereign State as never before in human history. How far the cut in migration (for what then looked like valid economic grounds) from the over-populated countries of Europe and Asia by the United States and, in varying degrees, Canada, the greater Latin American countries, Australia, and South Africa in the last quarter of a century was a contributory cause of the recent war, is a study in itself. Almost all historians agree that the reduction to tiny proportions of emigration from Italy helped to breed Fascism in that country.

But that is only one way in which the right of migration is denied. Nowadays to travel abroad, still less to

¹¹ *La Solennita della Pentecoste*, June 1, 1941.

settle abroad, has become a virtual impossibility for most people, and few of us realize how the whole horrid apparatus of restriction, passports, visas, exit permits, exchange regulations, immigration quotas, and the barbed-wire entanglements of bureaucracy, through which the would-be traveler or immigrant has to fight his way, *has all grown up in a single life-time.*

The State now arrogates to itself the right, not only to take reasonable precautions with regard to people leaving or entering its territory, but to decide absolutely whether any human being may move about or not. It is one of the worst abuses of sovereignty. It finds its most extreme form in the rigid excommunication from all contact with the outer world imposed upon its subjects by the Soviet Government, a policy which utterly prevents the true and friendly understanding between the Russian people and other nations which could only come from free travel and intercourse. It finds expression in the herding of political refugees, euphemistically called Displaced Persons, in camps and the intolerable treatment meted out to them. On the one hand, representatives of the very totalitarian Governments which are the cause of their exile are permitted to try and decoy them back by promises or threats—an unprecedented violation of the Right of Asylum—; on the other hand, the "Western Powers," who protest against Communist repression in Eastern Europe, refuse to receive them into their own countries. All this amounts to a conception which sees in men and women nothing but chattels of the totalitarian

or bureaucratic State, to be retained, refused, or used only as their masters determine, to the great moral and material impoverishment of mankind. One of the most important of human rights, therefore, which now need to be reasserted and defended, is the right to travel and migrate freely for peaceful purposes, subject only to the reasonable requirements of public order and economic welfare.

Preserving Acquired Rights

The Pope declares that it is "the essential task of every public authority . . . to protect the intangible sphere of man's personal rights,"¹² and describes a Constitution conformable with the divine will as one "granting him a sphere of rights immune from arbitrary attack."¹³ Judge Edward S. Dore, in an admirable essay on "Human Rights and the Law" in the *Fordham Law Review*, March 1946, lays stress upon the fact that the former arising from man's spiritual nature and destiny, necessarily take precedence over the latter, that is positive law, which may define and make explicit, but never contravene Natural Law. "Law is reason, and that which is not reason should never be law. Thus natural law may be defined as the order discernible by reason according to which man should seek to fulfill his nature as man."

It is quite in the spirit of this return to first principles, forced upon serious minds by the unprecedented

¹² *Summi Pontificatus*, October 20, 1937.

¹³ *Radio Address*, Christmas 1942.

outrages upon the fundamental liberties of man, that the proposed international Bill of Rights should lay down, briefly and broadly, certain basic principles of personal and civic freedom which have been the object of attack; that it should be concerned, in other words, with natural law, rather than with positive law, municipal or international. But this approach is not without danger if it goes no further than that.

The defender of personal rights is not faced with virgin soil. There are many growths of positive law in every State and in international practice, some indeed needing to be rooted out, some indifferent, but many good and necessary, the fruits of hard struggles in the past. The danger, especially in States where National Constitutions, laws and treaty obligations have been thrown into the melting-pot by the cataclysm of Nazi domination, the war and the Soviet invasion of Europe is this: that the present masters of these territories may use a very general international declaration on human rights (which they could without too much ingenuity profess to be observing), as the pretext for ignoring or failing to renew many precise and useful provisions which existed in the pre-war or pre-Nazi Constitutions and laws. It will be necessary, therefore, even in the shortest International Bill of Rights to safeguard *acquired rights* of individuals, associations, institutions, racial, religious and linguistic minorities and the Church itself. It would be prudent in any case to include an article similar to Article IX of the American Constitution—"The enumeration in the Constitution

of certain rights shall not be construed to deny or disparage others retained by the people."

It would be wise, further, to postulate a) that international obligations relating to the rights of persons, groups or institutions, undertaken prior to the war, or, say, March 1938, the date of the Austrian Anschluss; which was the beginning of Hitler's territorial conquest—should retain their full vigor unless replaced by new bilateral or multilateral agreements; and also b) that provisions inserted in the fundamental laws or organic laws of States under this head in virtue of earlier international treaties be preserved inviolate. The former would safeguard the various Concordats with the Holy See, unless replaced by new instruments voluntarily negotiated, and the international Labor Conventions ratified before 1938, as well as any since ratified; the latter would safeguard (legally, at least, if not actually) the rights incorporated in the fundamental laws of the Balkan States, in consequence of the Act of Berlin (1878) and later in those of Germany, Austria, Hungary and the three "Succession States" in virtue of the Treaties of Versailles, St. Germain, Neuilly and Trianon (1919-1920). The importance of the old "Minorities Clauses" of these treaties was not only that they were placed under the largely ineffectual protection of the Council of the League of Nations; but that the *general principles* upon which they were based—such as the equality of all citizens without discrimination before the law, in the exercise of their civic rights and their eligibility for public

office—had to be "*written in*" to the *fundamental laws* of the States which were newly recognized, or whose frontiers had been modified by the Peace Settlement.

The same principle should apply to the safeguarding, in the new Declaration of general obligations undertaken by the Colonial powers in the interest of the native populations (e.g. at the Congo Basin Treaty, signed at Berlin on February 26th, 1885, relating to the suppression of the slave trade, the liquor traffic and the arms traffic, and freedom for the Christian Missions and in the last Peace Settlement) as well as the various Mandates which, of course, concern a few territories only, and will no doubt soon be transformed into United Nations Trusteeship Agreements.

The object, in the whole of this field of positive international law, should be to extend to as many nations as possible, so far as they are applicable, any useful provisions for the protection or advancement of human rights already accepted by or imposed upon a certain number of them, but at least not to throw away what exists in the meantime. For that would be to make the best the enemy of the good.

III.

JURIDICAL PROTECTION NECESSARY

National Laws

The precedents recalled above suggest that the only effective method of advance is to bind Governments, as High Contracting Parties to a General Treaty, to incorporate the provisions of the Bill of Rights in the fundamental laws of their States. We propose, in other words, that the practical object of the Human Rights Commission of the United Nations should be to produce a convention "open to signature" by those States which are willing to undertake its obligations. They should undertake either to give legislative effect to the Bill as a whole, or else to lay before their legislative authorities amendments to existing laws so as to make them conform in all respects to the requirements of the Bill. They should further promise to abrogate all existing laws and administrative decrees inconsistent with it and to enact no such laws or regulations in the future. The practical experience of the International Labor Organization is a strong argument for this mode of operation. The ILO, after all, is the one major organ of the League of Nations which has survived the general débâcle; and it is no accident. For its definite achievements in the realm of industrial legislation have substantially improved the lot of great numbers of workers, men, women and children, in the fields and in the factories, in the mines and

at sea. And this has been done, first by the careful discussion of Conventions in the International Labor Conferences; then by obliging member States to bring Conventions before their legislatures for ratification—sixty-six Conventions are now in operation—then by requiring them to report to each conference upon the steps taken to implement the Conventions. No doubt, there has been an evasion of certain conventions, and the war in Europe, at least temporarily, destroyed much of their practical value. But it is broadly true to say that particular and important rights of large groups of human beings *have* been legally protected in this way. They have been provided with juridical recognition of their rights, and they have the remedy of appeal to the courts in the event of any infraction of the laws adopted, whether regarding hours of work, security against industrial accidents or disease, the weekly day of rest, unemployment insurance or any of the other safeguards of fair conditions of labor which have been agreed upon. Why should not other and more universal rights of individuals, of families and associations receive the protection of positive law in the same way?

This was the objective set before us by Pope Pius XII when he said:

A constitution conformable to the Divine will gives a man a right to *juridical security* and accordingly grants him a sphere of rights immune from all arbitrary attack . . . this supposes a tribunal and a judge taking their direction from *law carefully defined*; clear, legal principles which cannot be upset by un-

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warranted appeal to a supposed popular sentiment or by merely utilitarian considerations; and recognition of the principle that the State and its officials are under the obligation of revising and withdrawing measures incompatible with the liberty, the property, the honor and the health of individuals.¹⁴

The terms of reference of the Human Rights Commission of the United Nations are not particularly lucid, but it seems that, under paragraph (b), the preparation of one or more international conventions, i.e., general treaties, is contemplated, as well as the framing, under paragraph (a), of a Bill of Rights. The proposal put forward in this paper is that such a Convention should be drawn up, binding the contracting parties to carry out the terms of the Bill in the laws and administrative practice of their respective countries.

International Control

The same principle of providing juridical rather than political protection of human rights should be followed in the international as in the national sphere, when it comes to contriving some check by the United Nations upon the implementing of the Bill of Rights by national governments. Under the former Minorities Treaties, aggrieved persons or groups might petition the Council of the League, but the Secretariat had the power of deciding whether petitions were technically "receivable" or not, a most unsatisfactory procedure. As to the new international organization, experience

¹⁴ *Radio Address*, Christmas 1942.

has proved how remote from impartial and dispassionate justice are the political maneuvers for position, the thrusts and parries of national spokesmen in the General Assembly and its Committees and even more in the Security Council. The Court of Justice alone has a detached, legal character. The judges have supposedly been elected on their personal qualifications and not as the delegates of States; and though it remains to be seen how the Communist judges will conduct themselves, it is at least possible that the majority, who are experienced international lawyers, will succeed in judging cases on their merits, as did the members of the Nuremberg tribunal.

How is any alleged breach of the proposed Convention on Human Rights to be brought before the International Court? The High Contracting Parties might indeed agree that any question of the interpretation of Convention and of the Bill of Rights contained in it should come within the competence of the Court; but the difficulty is to decide *how* to lay before the Court any serious allegations that the terms of the Bill have not been implemented or have been violated. Article 34 of the Statute of the Court reads: "Only States may be parties in cases before the Court." One can hardly imagine a Government, against which a group of its citizens are making accusations, taking the initiative in referring the matter to the Court. Should another State take the initiative? It is certainly undesirable as a general rule that the only remedy should lie in the Government of one State laying an accusation against

another on the ground of its ill-treating its own nationals. Such a procedure might in an extreme case be the only way of bringing gross and continuous oppression to the bar of international judgment. But it is far from conducive to civil peace and unity for a group or section of the nation to be obliged to look to a foreign power as its advocate.¹⁵

Intervention in a State's internal affairs, if it be *prima facie* required on the ground of the non-observance of international obligations, should preferably be undertaken *in the name of the international community as a whole*, that is by the United Nations. But the United Nations could not act in this matter without sufficient evidence; and direct evidence could only come from the persons or organizations aggrieved. Something like the following procedure might attain the desired end.

Each High Contracting Party to the Convention on Human Rights should agree, as part of the Convention itself:—

a) that the interpretation of the Convention should be within the jurisdiction of the Court, including the investigation of any fact which, if established, would constitute a breach of the Convention;¹⁶

b) That persons, associations and organizations, alleging their failure to obtain satisfaction from the national courts in respect of the imple-

¹⁵ The fate of the Christian communities in the old Ottoman Empire (in which France was nominally the protector of the Catholics, and Russia of the Orthodox) is not a good advertisement of this method.

¹⁶ Article 36.

menting of any article of the Convention, should have the right to petition the United Nations and to forward their claim in due legal form to the Secretariat; the High Contracting Party to forward at the same time all the documents in the case and its own observations;

c) that the Secretary General, when seized of any such petition, should request the Court, through its Registrar, to designate an expert under Article 50 of the Statute to investigate the matter and report to the Court;¹⁷

d) that, if the Court having considered its expert's report, should decide that a full examination of the alleged infraction of the Convention seemed desirable, the Secretary General, in the name of the United Nations, should request the Court to give an advisory opinion on it, under Article 65 of the Statute;

e) that the High Contracting Party would give every facility to the Court and its agents in obtaining the necessary evidence, and would give effect to the advisory opinion of the Court.

¹⁷ Article 50 reads: "The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion."

IV.

CONCLUSION

All this may seem very technical and legalistic; but it is of little value to speak of the United Nations "promoting and encouraging respect for human rights and fundamental freedoms" without any clear idea of how it could be done within the framework of the existing institutions. The above suggestions may at least serve as the basis of practical discussion.

Apart from dwelling upon certain rights of individuals, families and associations which we believe particularly need to be reaffirmed, our main suggestion has been that the best way of proceeding would be to draw up a Convention, or General Treaty, upon Human Rights, and to open it to the signature of States willing to accede to it. This has been a very common procedure throughout the life of the League of Nations and at the diplomatic conferences of the past. We believe this to be greatly preferable to the attempt, at all cost, to get universality at the start, which in the existing condition of the world could only be one more hollow mockery. We must accept the fact that there is no automatic device by which we can possibly hope to secure in the immediate future the defense of men's rights and liberties. Nothing can be achieved without the education of public opinion and the healthy pressure upon governments of bodies of opinion inspired by the right prin-

ciples; and that is only possible where public opinion can, in fact, be instructed and mobilized in conditions of relative freedom. Nothing could force the Communist governments to sign such a Convention, if they decided not to, or to implement it. As to the other Governments of the world, there are not a few which have skeletons in their closets, a few of which we have rudely revealed in these pages. Should the Governments of countries, in which ordinary people and bodies of public opinion are not free to express themselves, decline to sign and ratify the proposed Convention, that is no reason at all why the Governments of free nations, and especially those which are the heirs of Christian and humane traditions, should not set about putting their own houses in order. By joining in the acceptance of those international obligations which we have proposed, they would raise high the standard of human dignity and liberty in the world. The defense and implementing of the fundamental rights of men, women and children, and the promotion of their spiritual and material well-being, is not the mere plaything of one small commission or sub-commission out of many: it is, for the Christian, the very *end and purpose of all politics*, national and international. Indeed the prevention of war itself, is, in the last analysis, a means to that end.

If that view were to gain ground and the protection of human rights, in the fullest sense of those words, came to be regarded as among the prime purposes of the United Nations, the whole moral situation of that

institution might be transformed. Ordinary men and women throughout the world might begin to feel that it was not merely a piece of inter-governmental machinery, but that they themselves had a stake in it. Like the American Constitution for the citizens of the United States, it would be something which existed to protect *their* rights. As signatures to the Convention on human rights increased and as it came to be applied in one country after another, the United Nations organization, now sadly lacking in popular confidence, might, after all, discover—that it had a soul.

Appendix

A DECLARATION OF RIGHTS

**Drafted by a Committee Appointed by the National
Catholic Welfare Conference, February 2, 1947**

(The first and second parts of this Declaration of Rights have special reference to the contents of this pamphlet.)

General Preamble

God, the Creator of the human race, has charged man with obligations arising from his personal dignity, from his immortal destiny, and from his relationships as a social being. These obligations are in reference to the Creator, to himself, to his family and fellowmen, to the State and to the community of States. For the fulfillment of these obligations man is endowed with certain natural, inalienable rights. These obligations and rights form the substance of the natural moral law which can be known by reason.

Obligations and rights are correlative. At all times the obligation to respect the rights of others operates against the arbitrary use of rights.

Suitable opportunity to discharge fundamental obligations in the various and separate situations of life is a right which cannot be justly denied. For man's use God has provided the basic resources of this world.

The unity of the human race under God is not

broken by geographical distance or by diversity of civilization, culture and economy, and the adequate use of the world's resources by all peoples is not to be denied because of these factors.

Weakness resulting from conquest or imperfection in governmental organization should not be used as a pretext to reject the fundamental rights of man or to impede their legitimate exercise.

The order of rights outlined below progresses through the individual, the family, the State and the community of States.

PART I

The Rights of the Human Person.

Preamble

The dignity of man, created in the image of God, obligates him to live in accordance with law imposed by God. Consequently, he is endowed as an individual and as a member of society with rights which are inalienable.

Among these rights are:

- 1) The right to life and bodily integrity from the moment of conception, regardless of physical or mental condition, except in just punishment for crime.
- 2) The right to serve and worship God in private and in public.
- 3) The right to religious formation through education and association.
- 4) The right to personal liberty under just law.
- 5) The right to the equal protection of just law regardless of sex, nationality, color or creed.

6) The right to freedom of expression of information and of communication in accordance with truth and justice.

7) The right to choose and freely to maintain a state of life, married or single, lay or religious.

8) The right to education suitable for the maintenance and development of man's dignity as a human person.

9) The right to petition the government for redress of grievances.

10) The right to a nationality.

11) The right of access to the means of livelihood, by migration when necessary.

12) The right of association and peaceable assembly.

13) The right to work and choose one's occupation.

14) The right to personal ownership, use and disposal of property subject to the rights of others and to limitations in the interest of the general welfare.

15) The right to a living wage.

16) The right to collective bargaining.

17) The right to associate by industries and professions to obtain economic justice and the general welfare.

18) The right to assistance from society, if necessary from the State, in distress of person or family.

PART II

The Rights Pertaining to the Family

Preamble

The family is the natural and fundamental group unit of society and is endowed by the Creator with

inalienable rights antecedent to all positive law. The family does not exist for the State, but on the other hand is not independent.

Among these rights are:

- 1) The right to marry, to establish a home and beget children.
- 2) The right to economic security sufficient for the stability and independence of the family.
- 3) The right to the protection of maternity.
- 4) The right to educate the children.
- 5) The right to maintain, if necessary by public protection and assistance, adequate standards of child welfare within the family circle.
- 6) The right to assistance, through community services in the education and care of the children.
- 7) The right to housing adapted to the needs and functions of family life.
- 8) The right to immunity of the home from search and trespass.
- 9) The right to protection against immoral conditions in the community.

PART III

The Domestic Rights of States.

Preamble

Political authority is entrusted by God to nations, which are endowed with rights and charged with the obligation of establishing justice, of promoting the general welfare of their citizens and of cooperating with other nations in furthering the universal welfare of mankind.

It is the right of all peoples that are capable of self-government to organize politically and to function as States upon equal terms with other States.

Among these rights are:

- 1) The right to enact just laws binding in conscience.
- 2) The right to establish courts of justice and to enforce the observance of law with adequate sanctions.
- 3) The right to demand of its citizens respect for the rights of minorities.
- 4) The right to tax by adequate and equitable means in order to carry out its proper functions.
- 5) The right to exercise eminent domain when demanded by the common welfare.
- 6) The right to require that its people receive an education suitable for citizenship.
- 7) The right to defend itself against domestic violence.
- 8) The right to watch over, stimulate, restrain and order the private activities of individuals and groups in the degree that is necessary for the common good.
- 9) The right to regulate operations of international economic groups functioning within its own boundaries.
- 10) The right to adopt in time of emergency special measures necessary for the common good.

PART IV

The Rights of States in the International Community *Preamble*

The human family constitutes an organic unity or a world society.

The States of the world have the right and the duty to associate and to organize in the international community for their common welfare.

The indispensable foundation of all peaceful intercourse among nations and an essential condition of juridical relations among them are common trust and respect for the plighted word. Treaties and agreements must not be considered subject to arbitrary unilateral repudiation.

Every State has certain fundamental rights in the international community.

Among these rights are:

- 1) The right to exist as a member of the international community and to be protected in its national life and integrity against acts of aggression by any other State or States.
- 2) The right to independence in the determination of its own domestic and foreign policies in accordance with the principles of morality, and subject to the obligations of international law.
- 3) The right to juridical equality with other States in the family of nations.
- 4) The right to membership in the organized international community and to the benefits of international cooperation.
- 5) The right to the assistance of the international community in securing the fulfillment of the terms of a just treaty or agreement.
- 6) The right to obtain from the international com-

munity redress of grievances arising from unjust treaties imposed by force.

7) The right to the revision of treaties which are no longer in accord with fundamental justice.

8) The right to recourse to the procedures of pacific settlement established by the international community for disputes which diplomatic negotiations have failed to settle.

9) The right to maintain political, economic and social intercourse with other States upon equal terms.

10) The right of access, upon equal terms, to the markets and raw materials of the world necessary for its own life as a people.

11) The right to protect its own natural resources and economic life from unjust exploitation.

12) The right to the assistance of the international community in time of economic or social distress.

13) The right to grant asylum to refugees from injustice.

STUDY CLUB OUTLINE

Lesson I

The rise of the totalitarian State in Russia, Italy and Germany since the last war caused Catholic thinkers to emphasize more and more the dignity of the human personality.

By the human person they meant man as a spiritual being. The most important thing about man is not his citizenship but his soul. Totalitarianism disposed of human beings like cattle, regarded them as cogs in a machine. Those who shared the inheritance of the Christian values of things were shocked. The war gave urgency to the battle for human rights. It was for human rights that the war was begun.

But as the war progressed the original intentions became confused and vitiated. It became impossible to know what was meant by "Democracy" glibly used as a common vocabulary by British, American and Russian propagandists. Similarly it became impossible to know what was meant by "Fascism." The false simplification of war-time propaganda lumped together the war aims of the Soviet Union and the Western Allies. When the war was over it was easy for the USSR to continue to call "democrats" those who were subservient to Soviet policy; while "Fascists" were those who resented or resisted it. Meanwhile millions of honest but ill-informed people in the Western World have become blinded to the fact that this pseudo-democracy is itself the chief enemy of those human rights which we set out to vindicate in 1939.

It is very doubtful if any "compromise" text of a bill for human rights embracing both Soviet and Western conceptions will be of any real value. There are those who believe that there is a peculiar merit in compromise, regardless of the moral or practical value of the content or object of the compromise. But to start with the proposition that any declaration or convention upon human rights must necessarily be something which Russian communism can accept is to condemn such a measure to sterility.

Dangers from the "Left" do not come only from the sphere of Communist hegemony. They exist for the human person also wherever

there is a powerful trend in the direction of statolatry. In these circumstances the growth of bureaucratic power, the nationalization of the means of production, the control of manpower, the abolition of private charities, the destruction of the material conditions of personal and family independence, the State monopoly of education, construct a mechanism of political omnipotence.

There are dangers from the "Right" as well. The Spanish Falange has many of the most objectionable features of National Socialism combined with the single-party pretensions of Fascism. Racial hatred begets monstrous injustices. There are threats in the capitalist world to just conditions of labor, and an abuse of industrial and financial power. The "old Order" has frequently done violence to private liberties and, by a compromising patronage, to the Church's independence.

All these considerations add up to an overwhelming case against leaving human beings entirely to the tender mercies of the rulers of the Sovereign State. The rights of individuals should be set forth in an international declaration and be vindicated by national governments and international organizations. The United Nations Charter has for one of its purposes the "promoting and encouraging of respect for human rights." A Commission on Human Rights has been created. The task is now 1) getting the clearest possible definition of the inalienable rights; 2) having these recognized and guaranteed by the states; 3) establishing effective international control for the enforcement of these rights.

There are no such things as "Catholic" rights, or "Christian" justice. The whole end and purpose of Catholic teaching and thinking in this sphere is to determine the natural rights and duties of all men, be they Christian or Jewish or Moslem or pagan, white or black, or anything else, just because they *are* men and then to defend them. If they are true to their principles, Catholics will cooperate with all men of good will.

Questions

What historical development after the first World War caused Catholic moralists and sociologists to emphasize the dignity of the human personality?

Why is the defense of human rights the most urgent of social causes?

What did Christian opponents of State absolutism mean by "the human person"?

What was the basic reason why the brutalities of totalitarianism shocked all those who shared the Christian tradition?

What was undoubtedly the dominant intention of many gallant soldiers who died in combat?

What was the original moral justification for the British and French declaration of war in 1939?

How did this original intention become confused and vitiated as the war progressed?

What is "democracy"? What is the end of true democracy?

How did it come about that the Soviet Union was able to call all its collaborators "democrats" and all its opponents "fascists"?

Is this pseudo-democracy the chief enemy and oppressor of those human rights and values we set out to vindicate in the war?

Are there reasons for doubting the real value of any "compromise" text of a bill for human rights subscribed to jointly by both the Russians and the Western States? If so, explain why.

Is it really necessary for *all* States to agree to such a bill before it can have any practical value?

Is the Communist system of the Soviet Union and its satellites the only threats to the essential rights of man? Where do other threats arise from?

What is statolatry? What modern trends in government serve to create a mechanism of political omnipotence?

Does the "Right" also threaten human rights? How?

Explain how these sources can threaten human rights: the Spanish Falange, nationalism, racial hatred, abuses of the capitalistic system, exploitation of colonial peoples.

Discuss the reasons why the rights of individuals should be set forth in an international declaration of human rights.

What was the "Pattern for Peace" adopted in the United States by Catholic, Protestant and Jewish leaders on October 7, 1943?

What does the United Nations Charter contain about human rights?

When was the Commission on Human Rights established? Why is it vital that Catholics take part in the work of this Commission?

What is the Commission supposed to do? Give three specific objectives to be reached through this body.

There are no such things as "Catholic" rights or "Christian" justice. Explain.

Should Catholics cooperate with all men of good will towards the fuller realization of human rights? Give several reasons.

Lesson II

It is difficult to analyze all the various human rights which have been systematically drawn up by experts in one country and another. Some, however, deserve special emphasis, particularly because they are not mentioned frequently enough, if at all. These are three: the Family, Religious Education and the Right of corporations to hold property.

It is not true that there is nothing between the citizen and the State. On the contrary there is an intervening loyalty: the Family. The Christian tradition makes the family, not the individual, the formative unit, the pillar of human society, and parents have definite rights over and duties toward their children. Some statements of human rights do not even mention the *family* or *parents*. But the Holy Father has emphasized in his addresses the role of the home in the building of a true peace. The outraging of family life and the home is one of the calamities that has befallen Europe. We think of conscription for labor, and mass deportations by the Nazis with the pitiful legacy of "displaced persons," the massive involuntary transfer of whole populations by the Russians from Eastern Europe. These have constituted the greatest single onslaught upon the institution of the Family which has occurred in European history. Hundreds of thousands of German fathers, husbands and sons are still cruelly separated from their families in Russia, and even England and France. In the free countries, too, the governments have failed to make it possible for newly-wed couples to have homes of their own. Divorce suits have been on the rise. For those who really desire to protect human rights in their full sense, the promotion and protection of

family life ought to be the primary object of a draft for human rights. For most of the other rights are aimed to maintain the family. The Irish Constitution provides a good model.

Religious education is bound up with the rights of parents. Schools act *in loco parentis* and by no other title. What on earth can be meant by "Everyone has the right to education"? Does it make no difference what kind of education they receive?

The Church has a mission to teach. In each country she needs the freedom and the material means to discharge this duty. Where it is not possible to achieve legal recognition of this right then parents must fall back upon the natural law and claim the right for schools in which teaching conforms to religious conviction. A human rights convention stipulating that all parents have the right to send their children to schools which conform to their religious convictions would be a safeguard for this important area of human values.

Freedom of worship means nothing unless it includes the right to build and possess places of worship. It also includes the right of a religious organization to exist and to have all the juridical rights attached to a corporate body. Sad experience has taught that anti-Christian governments may abolish freedom of religion by the simple process of confiscation or other means of making it impossible for Christian education to continue. It is disturbing to find no reference to this right in any of the drafts of international bills of rights now in circulation.

Questions

Name some of the draft proposals for a bill of human rights that have been prepared.

Should the right to freedom of expression be permitted to those who, like the Communists, use that freedom to suppress freedom?

What three significant omissions occur in the current draft bills of human rights?

What mistaken theory causes these draft bills to overlook the role of the family in human rights?

In Christian tradition what is the basic unit of civil society?

What has the Pope said recently about family rights?

Give the reasons for this proposition: "The defense of the dignity

and rights of the human person is bound up with the defense of the family!"

Give instances in which the family and the home have been outraged during and since the war.

Why are many of the other human rights really directed to safeguarding the rights of the family? Give instances.

What provisions of the Constitution of Eire may serve as a model for safeguarding the rights of the family?

Why are the rights of the parent inextricably bound up with education?

Explain the meaning of this statement: "It would be infinitely better for them if they had no 'education' at all."

In what two ways can the Church obtain and guarantee the freedom and material means to carry on its work of teaching?

What specifically has been done in the United Kingdom and in the occupied sections of Germany?

Can there be real religious freedom and protection of family rights where the parents and the Church are not allowed the right to possess property for purposes of worship and religious education?

What method of veiled religious persecution was employed in the *Lois laïcs* in France, in the Soviet Constitution, in the Russian-occupied zones of Europe?

Why should parents and religious leaders be especially desirous to see this right laid down explicitly: "All institutions, organizations and associations existing for purposes not inconsistent with the Bill of Rights as a whole, have the right in their corporate capacities to erect, acquire and possess buildings and to own land, funds and other property necessary or convenient for the maintenance and development of their corporate life and activities"?

Further, how has experience shown the necessity for religion and parental rights to be protected by guarantees against requisitioning or sequestering of such property by the State, without just compensation?

Lesson III

There are other rights accepted by all reformers genuinely in revolt against the tyranny of the State. These include: freedom of

opinion, worship and speech; freedom from arbitrary arrest; the right to a fair trial, equality of civil rights, etc. But before these can become truly effective they would have to be phrased more precisely.

This raises the question whether any short minimum statement of rights is likely to be of the slightest use. The easier it is for the delegates of many countries to accept it, the more likely they are to sign it with tongue in cheek. For this proposal is an attempt to reverse the powerful trend to the all-embracing government control. It proposes to clip the wings of sovereignty. It should be expected that governments will try to resist or evade its provisions.

In the realm of priorities we have concentrated on four institutions: The Church, the Home, the Christian School and a really fair electoral law. These are more important to the human person's development than old age pensions, social insurance and education about nothing in particular.

The right of human beings to travel and trade peacefully, and settle in any part of the world has been constant and accepted in the tradition of the Law of Nations. Circumstances may work to restrict this at times. But nothing excuses modern attempts to annihilate it.

Francis de Vittoria in the sixteenth century explained the old tradition of migration and "to set forth and travel wheresoever he would." The Right of Asylum arises from the natural obligation, enforced by Christian charity to give shelter to the distressed. Not only political refugees but those forced to seek a better living in other lands are among those to whom the right of migration applies. The present Pope bases the case for such migration upon the natural right of the family to "vital space."

The whole of this Christian and liberal tradition has been frustrated by the pretensions of the modern State. The United States, Canada, some Latin American countries, Australia and South Africa may be mentioned in this connection. The rise of Fascism in Italy can be traced as a partial effect of the strangling of emigration from that country.

The State now arrogates to itself the right, not only to take reasonable precautions with regard to people leaving or entering its territory, but to decide absolutely whether any human being may

move about or not. It finds its most extreme form in the separation from the outside world suffered by the people of the Soviet Union. This policy of the USSR prevents the true and friendly understanding among all peoples. It also finds expression in the treatment or herding of displaced persons in camps from which they cannot move in either direction: because they are fugitives from one direction and unwelcome in the other.

One of the most important of human rights, therefore, is the right to travel and migrate freely for peaceful purposes, subject only to the reasonable requirements of public order and economic welfare.

The preserving of rights already acquired is another task in the systematic protection of human rights. Past struggles and victories have already established a fair measure of protection for many human rights. The proclamation of a general declaration of human rights could be used as a pretext for ignoring or failing to renew many precise and useful provisions which existed in the pre-war and pre-Nazi constitutions and laws.

Specific examples of what we mean can be given. We want to extend the reach of human rights beyond where they exist today. Certainly at least not to throw away what exists in the meantime.

Questions

What are some other human rights of importance?

Is it important to have precise meanings of these various human rights? Give instances.

Do you think the Atlantic Charter was evaded because each country that signed it was able to interpret it in its own way?

Is it likely that governments really welcome a restriction on their powers through declarations of human rights?

What four institutions are more important than old age pensions, and social insurance?

Is there a right of migration?

What did St. Augustine say about the right of migration?

What exceptional circumstances may justify temporary restrictions on this right?

What was the opinion of Vittoria on the right of migration?

What did Vittoria say about the way to treat visitors and foreigners?

What is the right of Asylum? What Christian basis does it possess?

What did Pope Pius XII say about the right of families to migrate and find new homes in other countries?

Has this right of migration been frustrated in recent times? Give some instances.

What extreme form of frustration of this right is found in the USSR?

Discuss the plight of "displaced persons" in connection with the right to migrate.

Discuss this proposition: "One of the most important of human rights which need to be reasserted and defended, is the right to travel and migrate freely for peaceful purposes, subject only to the reasonable requirements of public order and economic welfare."

Can human laws ever contravene natural law? Can they define and make explicit natural law?

It is true that the world is only now beginning to achieve the realization of human rights?

What is meant by "rights already acquired"? Give instances.

What article of the U. S. Constitution preserved the rights already acquired by the people prior to the Constitution?

What would be a practical procedure for preserving these acquired rights in the proposed bill of human rights?

Lesson IV

We propose that the practical object of the Human Rights Commission of the United Nations should be to produce an agreement open to signature by those States willing to undertake its obligations. The practical experience of the International Labor Organization offers an example of this method.

The method of the ILO is to first discuss the precise terms and intent of the agreement; then to require the member States to bring these conventions before their legislatures for ratification. Why should not other and more universal rights of individuals, families and associations receive the protection of positive law in the same way? The

terms of reference according to which the Human Rights Commission is supposed to work appears to suggest that this method will be in fact employed. This is a method of providing juridical rather than merely political control. The laws of the land stand behind human rights thus established.

This same method can be used in creating a check by the United Nations upon the implementation by various States of the Bill of Rights. It consists in providing juridical rather than merely political guarantees. The system established under the old Minorities Treaties was subject to arbitrariness. The Court of Justice alone has a detached legal character. It is possible that the judges will succeed in judging cases on their merits.

How should such a procedure work? It is difficult to imagine that a government against which a group of its own citizens are making complaints will take the initiative in presenting this case. And before the law "only States (not persons) may be parties in cases before the Court." On the other hand, is another country expected to take the odium of taking up the defense of the aggrieved groups? It is not conducive to civil peace and unity for a group or section of the nation to be obliged to look to a foreign power as its advocate.

A possible procedure might briefly be this: that persons, associations and organizations, alleging their failure to obtain satisfaction from the national courts in respect of implementing the provisions of the agreement, should have the right to petition the United Nations; that the Secretary General of the United Nations should request the Court to give an advisory opinion on the complaint.

All this may seem legalistic, but it is of little value to speak of the United Nations "promoting and encouraging respect for human rights and fundamental freedoms" without any clear idea how it could be done within the framework of existing institutions. At the same time we must face the fact that nothing at all can be accomplished without the education of public opinion and the pressure inspired by the right principles. If some governments do not see their way to sign such international agreements there is nothing to prevent the rest from not subscribing to them.

The defense of human rights of men, women and children and the

promotion of their spiritual and material well-being is the very end and purpose of all politics, national and international. The prevention of war itself is in the last analysis a means to that end.

Questions

What should be the practical object of the Human Rights Commission of the United Nations?

What does the experience of the International Labor Organization teach us in this connection?

What words of the Pope apply especially to the juridical and not merely political protection of the rights of peoples?

Do you think that the present powers of the Human Rights Commission include the possibility of this method? Quote the pertinent sections of the terms of reference.

What does the former Minorities Treaties teach us about the international supervision of human rights?

Give reasons why the International Court of Justice is best qualified to be the Court of Appeal for complaints against violations of human rights.

How is any alleged breach of the proposed Convention on Human Rights to be brought before the International Court?

What special problems arise at this stage?

What procedure might prove satisfactory and feasible in order to get at the facts of a complaint?

Discuss this proposition of the author: "Nothing can be achieved without the education of public opinion and the healthy pressure upon governments of bodies of opinion inspired by the right principles; and that is only possible where public opinion can, in fact, be instructed and mobilized in conditions of relative freedom."

Is it necessary to wait until *all* governments are equally ready to subscribe to the principles of human rights before any international agreement can be put in force? If not, why not?

"The defense and implementing of the fundamental rights of men, women and children, and the promotion of their spiritual and material well-being is the very end and purpose of all politics, international and national." Discuss in the light of the previous chapters.

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