

The Philosophy of the Universal Declaration

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In the recent literature on human rights, the Universal Declaration of Human Rights (Universal Declaration)¹ has been invoked as a standard by which to judge competing philosophical theories about human rights.² This makes sense, for the Universal Declaration can be said to be the enlightened conscience of mankind. If there are any data with which a theory about human rights must come to grips, it is the thirty articles of this Declaration. They contain the classical eighteenth-century civil and political rights as well as the newer social and economic rights. To gather both these kinds of rights under one philosophical umbrella is not an easy task and the efforts should be continued. If, to paraphrase Plato, we are going to call them all by the same name of human rights, then we must find something that they all have in common.

If a philosophical theory succeeded in defining a common philosophical umbrella for the various rights expressed in the Universal Declaration, it would be tempting to impose the theory's philosophical unity onto the Declaration itself. But these two philosophies need not be the same. Perhaps the United Nations representatives who drafted the Declaration in 1948 had no philosophical theory at all in common. Or perhaps there was a measure of philosophical agreement, but only with respect to some articles and not to others. And so on. There is a certain danger of reading into the Declaration a philosophical unity which may or may not have been there.

In part to guard against this danger, this essay will involve the Declaration in an investigation of a more historical character. The philosophy, if

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1. G.A. Res. 217 A (III), U.N. Doc. A/810 (1948).

2. See, e.g., Beitz, "Human Rights and Social Justice," in *Human Rights and U.S. Foreign Policy* (P. Brown and D. MacLean ed. 1979); Donnelly, "Human Rights as Natural Rights," 4 *Hum. Rts. Q.* 391 (1982).

there be such, of the delegations to the U.N. in 1948 will be examined in an effort to make an historical inquiry into the philosophy of the Universal Declaration. The point of departure will be the great debates that took place in the Third Committee of the U.N. in the fall of 1948. That committee, which included representatives of the fifty-eight nations which were at that time members of the U.N., discussed at great length the draft declaration proposed by the Commission of Human Rights, passing that draft on with some changes to the General Assembly, which adopted the Declaration on 10 December 1948. The Third Committee debates were heavily philosophical and detailed records of them exist.³ They are important not just because they explain in great detail why the Declaration reads as it does. Of equal or even greater significance is the fact that these debates tell us why the Declaration is not phrased in a way other than it in fact is. As is so often the case with formal pronouncements, much important philosophical material that was left out of the final version of the Declaration is at least as important as what was included.

NATURAL RIGHTS IN THE UNIVERSAL DECLARATION

The initial presumption is that the Universal Declaration reflects some sort of natural rights view of human rights. Of the thirty articles of the Declaration, the first twenty-one are devoted to the classical eighteenth-century civil and political rights. The social and economic rights seem, to a casual reader at least, to be tacked on at the end, like nineteenth- and twentieth-century grafts on what is basically an eighteenth-century tree. And that same casual reader cannot help but notice certain key eighteenth-century fighting words. The preamble speaks of "inherent dignity" and of "equal and inalienable rights." Article 1 asserts that "[a]ll human beings are born free and equal in dignity and rights." It further claims that all are "endowed with reason and conscience." The "spirit of brotherhood" to which it refers has the familiar ring of eighteenth-century *fraternité*.

There is a remarkable similarity between these 1948 phrases and many eighteenth-century declarations of rights. For example the Virginia Declaration of 1776 proclaims that "all men are by nature equally free and independent, and have certain inherent rights."⁴ The American Declaration of Independence of that same year states that it is "self-evident, that all men are created equal" and that "they are endowed by their Creator with certain unalienable Rights."⁵ The French Declaration of 1789 also speaks of "natural,

3. 3(1) U.N. GAOR C.3 (88th–180th mtg.) at 26–980, [hereinafter cited as *Third Committee Records*].

4. Virginia Declaration of Rights art. 1 (1776).

5. The Declaration of Independence para. 1 (U.S. 1776).

imprescriptible, and inalienable rights” and asserts that all “[m]en are born, and always continue, free and equal in respect of their rights.”⁶ Unless one wishes to yield to a premature skepticism, this similarity of language creates the presumption of a similar philosophical outlook.

This presumption is strengthened by the fact that some of the most influential members of the Human Rights Commission which drew up the draft for the Third Committee and the Assembly were very well versed in the philosophy of the eighteenth century.⁷ It is further supported by the fact that many of the representatives to the Third Committee stated that they thought France was a particularly appropriate location for discussion of rights because France was “the birthplace of the rights of man”⁸ and “the birthplace of modern ideas of freedom.”⁹ On 10 December 1948 delegates also made many favorable comparisons between the Universal Declaration they were about to adopt and the eighteenth-century declarations, particularly the French Declaration of 1789.¹⁰ Thus the similarity of language between the Universal Declaration and the eighteenth-century declarations of rights should not be taken too lightly.

The Source of Rights

More than any other single thinker, Thomas Paine shaped the thought of those who wrote the American and French declarations of rights. According to him, “all men are born equal, and with equal natural rights,”¹¹ the most important being a right to self-govern.¹² All legitimate government is founded on these original and inherent rights of man.¹³ According to Paine, these natural rights are the foundation of a man’s civil rights,¹⁴ and this natural, original foundation of government has its “divine origin of the rights of man at the creation.”¹⁵ For Paine the rights of man can be traced to the

6. Declaration of the Rights of Man and of Citizens preamble, art. I (Fr. 1789).

7. For example, at the beginning of the debates Dr. P. C. Chang of China “paid a particular tribute to the contribution to the work of preparing the draft declaration made by Professor Cassin, the representative from France, who had so ably exposed French doctrines of the eighteenth century.” *Third Committee Records supra* note 3, at 114.

8. *Id.* at 37. (Quoting Mr. Jorge Carrera Andrade of Ecuador.) Count Wiart [Belgium] hoped “that the General Assembly would adopt the declaration at its current session . . . as a tribute to France.” *Id.* at 49.

9. *Id.* at 48 (quoting Chang of China).

10. See 3(1) U.N. GAOR (181st–183d plen. mtg.) at 875–934, U.N. Doc. A/C.3/SR. 181–183 (1948).

11. Paine, *Rights of Man* 42 (E. Rhys ed. 1915) [hereinafter cited as *Rights of Man*]. The emphasis on Paine in this paragraph is not meant to preempt Rousseau’s status as *the* philosopher of the Revolution.

12. *Id.* at 17.

13. *Id.* at 46.

14. *Id.* at 44.

15. *Id.* at 40.

creation of man.¹⁶ Thus, Paine speaks of the “illuminating and divine principle of the equal rights of man” as originating “from the Maker of man.”¹⁷ Nature, God and, we should add, reason were interchangeable sources of value for Paine.¹⁸

This single, natural, divine, and transcendent source of value was typical of the Enlightenment universe of discourse and it informs the declarations of that era. In the Declaration of Independence, Thomas Jefferson and the other founding fathers expressed the view that both “the Laws of Nature and of Nature’s God” entitled them to make such a declaration.¹⁹ To them, all men were “endowed by their Creator with certain unalienable Rights;” they appealed to “the Supreme Judge of the world” and relied on “the protection of divine Providence” for a good outcome of the revolution.²⁰ The French Declaration of 1789 shared this understanding, referring three times to the Rights of Man and of Citizens as “natural rights” while also acknowledging that the rights were being declared in “the presence of the Supreme Being and with the hope of his blessing and favour.”²¹

The delegates to the Third Committee agreed that Article 1 was to be a basic statement of principle from which the rest of the Declaration was to be more or less deductible.²² Given the initial presumption of a natural rights philosophy for the Universal Declaration, one would therefore expect Article 1 to contain a reference to either Nature or God as the transcendent normative source of the rights listed in the document. Yet, there is no such appeal to either God or Nature. A slight surprise.

The draft prepared by the Human Rights Commission did refer to nature, stating that all human beings were “endowed by nature with reason and conscience.”²³ The insertion of the phrase “by nature” had been meant as an explicit reference to a natural rights model of human rights²⁴ but it was deleted in the Third Committee for rather pragmatic reasons. The Brazilian

16. *Id.* at 42.

17. *Id.*

18. *Id.* at 42, 130. The same confluence of ideas exists in the writings of Locke and Rousseau. See Locke, *Second Treatise*, ch. II secs. 6, 11 and Rousseau, *The Social Contract*, bk. II, ch. VI, sec. 2. For a discussion of nature as the new source of value, see C. Becker, *The Declaration of Independence* ch. II, “The Natural Rights Philosophy” (1958).

19. The Declaration of Independence para. 1 (U.S. 1776).

20. *Id.* para. 2.

21. Declaration of the Rights of Man and of Citizens preamble (Fr. 1789). Paine reports on the connection between the French and the American declarations in his *Rights of Man*. *Supra* note 11, at 77. The main link was, of course, the Marquis de La Fayette.

22. *Third Committee Records*, *supra* note 3, at 107. There was a debate in the committee about whether or not the content of Article 1 should be moved to the preamble. This move was rejected by a vote of 26 to 6, with 10 abstentions. *Id.* Most delegations wanted to see a statement of principles in the body of the declaration itself.

23. U.N. Doc. A/C.3/242 (1948).

24. Philippe de la Chapelle, *La Declaration Universelle Des Droits De L’Homme et le Catholicisme* 86 (1967).

delegation made an amendment that grounded the rights of the Declaration in man's divine origin.²⁵ A number of other delegations strongly objected to this proposal, however, because, as the Uruguayan delegate said, "no reference to a godhead should be made in a United Nations document, for the philosophy on which the United Nations was based should be universal."²⁶ As a result of the numerous objections the Brazilian delegation withdrew its proposal.²⁷ Unlike their Enlightenment counterparts, some delegates saw possible opposition between the concepts of God and nature. Accordingly they urged that in deference to the Brazilian withdrawal of the reference to God, the reference to nature should be deleted. The Chilean delegate, Hernan Santa Cruz, expressed this sentiment very clearly when he said that because of the withdrawal of the Brazilian amendment "the words 'by nature' should certainly be deleted . . . and no mention should be made of the origin of man's reason and conscience."²⁸ The deletion of the phrase "by nature" was adopted by a vote of 26 to 4, with 9 abstentions.²⁹ Instead of the eighteenth-century "nature and nature's God," the Declaration has the more secular and plainly humanistic "neither God nor Nature."³⁰

The text, without any reference to nature, does not represent the real thinking of the Third Committee. Notwithstanding the tradeoff between the references to God and nature, the statements of many delegates show that they did think human rights were grounded in nature, understood in some nontranscendent sense. There was a clear desire to derive human rights from the nature of man, rather than from some social, civil, or political source. This was, of course, in keeping with the philosophy behind the eighteenth-century declarations. Perez Cisneros of Cuba hoped that Article 1 would be changed "so that it would make clear that by man's very nature he was endowed with reason and conscience" although he agreed with the Belgian representative that "there should be no question of implying that

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25. "Created in the image and likeness of God, they [all human beings] are endowed with reason and conscience . . ." (*Third Committee Records, supra* note 3, at 55, U.N. Doc. A/C.3/215) (1948). Athayde of Brazil explained that the proposal was "simply intended to express the religious sentiments of the Brazilian people," and he felt it would "be welcomed by an overwhelming majority of the peoples in the world." *Third Committee Records, supra* note 3, at 91. The Brazilian proposal received support from the Netherlands, Bolivia, Colombia, Argentina, and Lebanon.
26. *Third Committee Records, supra* note 3, at 101. According to Soviet delegate Pavlov, "[t]he declaration should not include statements of a theological nature because such statements were not acceptable to a number of delegations. It represented the viewpoint of some nations; but the declaration should be a document to which all nations, or at least the majority, could subscribe." *Id.* at 111.
27. *Id.* at 117. The Netherlands' delegation made a similar amendment to the first recital of the preamble, a similar philosophical discussion ensued and it never came to a vote.
28. *Id.* at 120.
29. *Id.* at 125.
30. See Humphrey, "Memoirs of John P. Humphrey: The First Director of the United Nations Division of Human Rights," 5 *Hum. Rts. Q.* 387 (1983).

nature, as opposed to God, was the source of man's reason and conscience."³¹ Charles Malik of Lebanon sought to save the reference to nature by recalling "that, in drafting Article 1, the intention of the Commission on Human Rights had not been to imply that man had been endowed with reason and conscience by some entity beyond himself."³² He suggested a change in the text from "endowed by nature" to "by nature endowed." In connection with the phrase "by nature," Dr. Justine Jiminez De Arechaga of Uruguay said that "rights were derived from the nature of man and not from the acts of States."³³

It is significant to note that the phrase "by nature" was not deleted because it had an eighteenth-century flavor or because the majority of delegations felt that there was no such thing as human nature, a position more in keeping with the philosophical climate in 1948. On the contrary, the records show that a great majority, including many who voted to delete the phrase "by nature," believed with their eighteenth-century counterparts, that human rights were rooted in human nature. Dr. Karim Azkoul of Lebanon spoke for many representatives when he defended the retention of a reference to nature on the grounds that "[i]f man were endowed with reason and conscience by chance, then it could be claimed that his right to freedom and equality was equally accidental."³⁴ The Lebanese delegation proposed a version of Article 1 which expressed the real thinking of the Third Committee stating, "Since all human beings are endowed by their nature with reason and conscience, they are free and equal in dignity and rights and in their duty to act towards one another in a spirit of brotherhood."³⁵ This version states the causal connection between human nature and the concomitant characteristics of reason and conscience from which equal freedom and inherent dignity, the source of the rights listed in the declaration, are derived. The subtle but important difference between "by nature," which might be read with transcendent overtones, and the phrase, "their nature," which is more clearly humanistic, was lost in the general desire to accommodate those who favored a religious reference. The phrase "by their nature," which expressed the real thinking of the Committee, was turned down by a vote of 16 to 6, with 8 abstentions.³⁶

The discussion and several votes about the word "born" also support this interpretation. For the Iraqi delegation, the word "born" was too strong; it proposed an amendment replacing the words "are born" with the words "should be born," making Article 1 more a recommendation than a state-

31. *Third Committee Records*, *supra* note 3, at 97.

32. *Id.*

33. *Id.* at 101. Other countries which made similar remarks were China, Mexico, Egypt, United Kingdom, and France. *Id.* at 98, 121, 118, 114, 116.

34. *Id.* at 119.

35. *Id.* at 119-120.

36. *Id.* at 125.

ment of fact.³⁷ According to this view, it was more realistic to say that “human beings *should* be free and equal in dignity and rights” than to claim that they already in fact were. Soviet Union delegate Alexei Pavlov supported the Iraqi amendment because he felt that equality of rights before the law:

was determined not by the fact of birth but by the social structure of the State, which had to promulgate laws to ensure that equality. Thus, it was obvious that in the days of feudalism men had not been born free and equal. . . . [F]or the purposes of the declaration, man had to be considered a member of society.³⁸

According to this position, there really are no such things as human rights antecedent to whatever rights happened to have been spelled out in the various systems of positive law. Thus all the Declaration could and should do was to recommend to states that their citizens should be free and equal. Reading Article 1 as a manifesto, though probably in keeping with the philosophical climate of the time, went counter to the thinking of the majority of delegations however, and the proposal was rejected by a vote of 24 to 16, with 1 abstention.³⁹

For others the words “are born” were too weak. Thus the Lebanese delegation proposed to delete the word “born,” leaving only the claim that all human beings are free and equal. Dr. Karim Azkoul of Lebanon wished to avoid the “implication that people, though born equal, might lose that equality for any reason.”⁴⁰ Several delegations felt that the reference to equality in birth was too narrow. For example, Dr. Pedro de Alba of Mexico said that “a human being’s right to freedom and equality began from the moment of his conception and continued after his birth.”⁴¹ Venezuelan delegate Dr. Eduardo Plaza also argued that “human rights began with the prenatal period.”⁴² Dr. P. C. Chang whose Chinese delegation had proposed the deletion of “born” because it was too reminiscent of Rousseau, also thought it prudent to delete the word so that “the question of whether human rights began at birth or at conception would not arise.”⁴³ The majority, however, wanted to retain the word “born” and its deletion was rejected by a vote of 24 to 16, with 1 abstention.⁴⁴

Although the reasons varied, it seems that the French delegation’s explanation influenced the vote to retain a reference to birth. René Cassin of

37. The Iraqi amendment read, “All men should be free and equal in dignity and worth and should be entitled to similar treatment and opportunities.” *Third Committee Records*, *supra* note 3, at 100, U.N. Doc. A/C.3/237 (1948).

38. *Third Committee Records*, *supra* note 3, at 110.

39. *Id.* at 123.

40. *Id.* at 97.

41. *Id.* at 121.

42. *Id.* at 122.

43. *Id.* at 98, 124.

44. *Id.* at 123.

France urged its retention because the text as proposed by the Commission proclaimed the right of human beings to freedom and equality, "a right which was theirs from birth," even if that equality might later in life disappear.⁴⁵ His French colleague, Salomon Grumbach said that the use of the word "born":

meant that the right to freedom and equality was inherent from the moment of birth. The men who had drafted the Bill of the Rights of Man of 1789 had fully realized the existence of inequality and social injustice, but they had felt it essential to affirm their belief in man's inherent right to equality and freedom.⁴⁶

Thus for the French delegation at least, the word "born" was a clear reference to the French declaration of 1789 and its natural rights philosophy of human rights. The word "born" makes the same point as the word "inherent" in the first recital of the preamble. In the words of Hernan Santa Cruz of Chile, it expressed the idea, "that freedom and equality were essential attributes of human personality, regardless of whether or not those rights were always recognized."⁴⁷

The debates on Article 1, and especially the retention of the word "born," support a natural rights interpretation of the Declaration's philosophy. The difference between rights from birth and rights in the state of nature is not very great. The basic point is the same: it affirms that human beings have moral rights grounded in human nature and not in the acts of governments. Even though there was no appeal to a law of nature, the rights in the Declaration are natural rights because they are derived from the nature of man, no more in the Enlightenment sense, and no less in the manifesto sense.

The Individual and the State

The eighteenth-century philosophers did not always agree on what they meant when they spoke of a state of nature.⁴⁸ Nevertheless, there is a large area of agreement when this concept is looked upon negatively. Rights in the state of nature are conceived of as not having been derived from the state or the government. To speak of the state of nature or its concomitant natural rights means that man *qua* man rather than *qua* citizen has rights independent of those deriving from being a member of a state or subject to a

45. *Id.* at 99.

46. *Id.* at 116.

47. *Id.* at 120.

48. For example, Locke's reference to Filmer is generally thought to contain a covert attack on Hobbes' overly negative view of man in the state of nature (*Second Treatise*, ch. 1, sec. 1). Rousseau explicitly attacks Hobbes in his *Discourse on Inequality* (First part). But while Locke sees reason as man's foremost natural virtue, Rousseau is suspicious of its role and sees pity as man's natural virtue instead.

government. It was the very point of the social contract theories that the state had a purpose extraneous to itself, namely, the protection, promulgation and implementation of these antecedently existing rights. If the state did not protect these human rights, the social contract philosophers did not hesitate to announce the right of the people to institute another government that would serve its stated purpose. Since these rights are derived from the authority of nature and not from the authority of the state, the state cannot take them away except for the purpose of protecting these same rights. The idea of a contract is that both parties must fulfill the obligations assumed under the contract. A government that fails to protect the natural human rights of its people ceases to be legitimate for that reason. According to Paine:

The fact therefore must be that the individuals themselves, each in his own personal and sovereign right, entered into a compact with each other to produce a Government

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founded on a moral theory, on a system of universal peace, on the indefeasible hereditary Rights of Man.

...

[a]nd this is the only mode in which Governments have a right to arise, and the only principle on which they have a right to exist.⁴⁹

The Third Committee was forced to face up to the idea of rights against the state on at least three occasions. These situations involved the adoption of Article 29 limiting the exercise of rights, and debates on proposed articles concerning the right to petition and the right to resist oppression, each of which is discussed in detail below.

Limits on the Exercise of Rights. For those who wished to avoid what Jeremy Bentham thought were the anarchistic implications of all natural rights talk,⁵⁰ Article 29 was of crucial importance, because it admits that rights are balanced by and are correlative with duties. Thus, human rights, even when conceived of as natural rights, are not unlimited. Two votes connected with the adoption of Article 29 have special significance in relation to limits on the exercise of rights. The first vote supported a natural rights interpretation of the Declaration, while the second one introduced a corrective measure against the excessive individualism so often associated with natural rights.

49. *Rights of Man*, *supra* note 11, at 47 and 154.

50. According to Bentham, those who tried to justify the French revolution, "plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy . . . People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties." Bentham, "Anarchical Fallacies" in Melden, *Human Rights* 29 (1970).

The second paragraph of Article 29 states that the exercise of a person's rights and freedoms may be limited for the purpose "of meeting the just requirements of morality, public order and the general welfare in a democratic society." The Soviet delegation proposed to add the words "and also [for the purpose of] the corresponding requirements of the democratic state."⁵¹ Soviet delegate Alexei Pavlov defended the addition on the grounds that:

The proper coordination of the interests of the individual and society was only possible under a socialist regime. All rights laid down in the declaration would be implemented in democratic societies by the democratic States. The law was nothing without the machinery to implement it and, at the present time, that machinery was the State. It was impossible, therefore, to ignore the requirements of the democratic State.⁵²

This proposal was not well received. New Zealand delegate Mrs. A. M. Newlands objected because "an escape clause . . . should be as narrow as possible if the statement of rights and freedoms was to have any real meaning."⁵³ Melchar P. Aquino of the Philippines felt that

[t]he U.S.S.R. amendment, by raising the State above . . . society, would destroy the intent and meaning of the article. Since the definition of the "corresponding requirements" of a State would lie with that State, it could under the terms of the U.S.S.R. amendment annul all individual rights and freedoms contained in the declaration.⁵⁴

The U.S.S.R. amendment was rejected by a vote of 23 to 8, with 9 abstentions.⁵⁵ This vote and the discussion that preceded it are indicative of a preference for the philosophy of natural rights, that is, of rights held by individuals over and against the state.⁵⁶

After defining rights to be held against the state and not to be limited by the needs or laws of the state, the Committee, in its discussion of the first paragraph of Article 29, was quick to step back from an excessive individu-

51. Several other U.S.S.R. attempts to insert a reference to states rights had failed earlier. See *Third Committee Records*, *supra* note 3, at 333, 343 (art. 12); 389, 390 (art. 15); 422, 423, 428 (art. 17); 443 (art. 18). See the debates on arts. 12, 15, 17, and 18, *id.* at 327-455. A similar Saudi Arabian proposal for art. 16 was also rejected. *Id.* at 405.

52. *Third Committee Records*, *supra* note 3, at 644.

53. *Id.* at 645.

54. *Id.* at 648. Alexander Contoumas of Greece did not want the door opened to "abuses by the State" and noted that the text spoke "not of the requirements of a democratic society but of 'the requirements of morality, public order and general welfare in a democratic society.'" *Id.* at 649.

55. *Id.* at 663.

56. *Id.* at 642-663. Dr. Karim Azkoul of Lebanon objected because the U.S.S.R. amendment would create the impression "that the State was higher than morality, public order and general welfare and had absolute rights which were not conditioned by the requirements of the latter." *Id.* at 651.

alistic interpretation of the Declaration. The text of paragraph one of Article 29 as adopted by the Commission on Human Rights said that “[e]veryone has duties to the community which enables him freely to develop his personality.”⁵⁷ Watt of Australia suggested substituting the phrase “in which alone the free and full development of his personality is possible.”⁵⁸ The key word is, of course, “alone.” Its insertion amounts to a rejection of eighteenth-century individualism because it asserts an organic connection between the individual and either the state or society.

Fernand Dehousse of Belgium objected to the Australian amendment on the grounds that “while there was no doubt that society contributed to the development of the individual’s personality, it was no less true that that development was conditioned by other factors.”⁵⁹ Explaining his reservation about the word “alone,” Dehousse said he wanted to avoid the erroneous interpretation that “the individual could only develop his personality within the framework of society; it was, however, only necessary to recall the famous book by Daniel DeFoe, *Robinson Crusoe*, to find proof of the contrary.”⁶⁰

The Australian amendment was supported by Soviet delegate Alexei Pavlov who thought that the amendment was:

important in that it stressed the harmonious relations which should exist between the individual and the society in which he lived. The word “alone,” which had been criticized by some delegations, seemed to him excellent. It rightly stressed the fact that the individual could not fully develop his personality outside society. The example of *Robinson Crusoe*, far from being convincing, had on the contrary, shown that man could not live and develop his personality without the aid of society. Robinson had, in fact, had at his disposal the products of human industry and culture, namely, the tools and books he had found on the wreck of his ship.⁶¹

Since the Australian delegation did not wish to insist upon its amendment, the U.S.S.R. delegation took it up at this point. The amendment containing the word “alone” was adopted by a vote of 23 to 5, with 14 abstentions.⁶²

These two votes on Article 29 constitute a refinement of the classical natural rights philosophy. On the one hand, by excluding the U.S.S.R.

57. 7 U.N. ESCOR Supp. (No. 2) at 11, U.N. Doc. E/800 (28 June 1948).

58. *Third Committee Records*, *supra* note 3, at 658. Contoumas [Greece] expressed his agreement, and Eleanor Roosevelt, the U.S.A. delegate, also sought to have the word “alone” deleted. Roosevelt was backed by Chang of China who offered a reading of the text without the word “alone.” *Id.* at 659.

59. *Id.*

60. *Id.*

61. *Id.* at 659–660.

62. *Id.* at 660. Support came from Mrs. F. Corbet of the United Kingdom, who wanted to retain the word “alone” because it “stressed the essential fact that the individual could attain the full development of his personality only within the framework of society.” *Id.*

amendment which made reference to the rights of the state from the second paragraph, the Universal Declaration, like its classical predecessors, took the position that human rights were not to be limited by the state and thus were held over against the state, except insofar as limitations are necessary to preserve morality, public order, and the general welfare. On the other hand, by asserting that it is only in the context of society that an individual can fully develop his personality, as it does in paragraph one of Article 29, the Universal Declaration avoids the extreme individualism often associated with a natural rights philosophy of human rights.

The Right to Petition. Historically there is a close link between the right to petition and natural rights theories. The authors of the American Declaration complained that "in every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury."⁶³ The right is part of the First Amendment to the United States Constitution. Philosophically, too, there is a deep connection, for if it is the purpose of government to protect the natural rights of its citizens, then certainly it should be a natural right to petition the authorities in case these rights are being violated. According to Paine, "If a law be bad it is one thing to oppose the practice of it, but it is quite a different thing to expose its errors, to reason on its defects, and to shew cause how it should be repealed, or why another ought to be substituted in its place."⁶⁴ Without this right, the natural right to self-government becomes vain and empty; it is the alarm bell of the whole system of rights. Why then is it not listed in the Universal Declaration? The reasons, though in part of a practical nature,⁶⁵ do reflect a measure of philosophical blindness.

The Committee had before it two versions of the right to petition. A Cuban proposal asserted the right to petition the national authorities,⁶⁶ while a French one went further in that it asserted the right of an individual to peti-

63. The Declaration of Independence para. 1 (U.S. 1776).

64. *Rights of Man*, *supra* note 11, at 146.

65. The Commission had been pressed for time and could not, in its third and final session, adopt either a covenant or a document on measures of implementation. Many delegates wanted to postpone the article on the right to petition until these documents were ready for adoption. Fernand Dehousse of Belgium thought it was a human right and that it was within the competence of the U.N. to declare such a right, but he wanted to wait until the work on the covenant had been completed. *Third Committee Records*, *supra* note 3, at 669-670.

66. The Cuban proposal read: "Every person has the right, either individually or in association with others, to petition or to communicate with any competent authority, for reasons of either general or private interest, and the right to obtain prompt action thereon." 3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 45, U.N. Doc. A/C.3/261 (1948).

tion the United Nations authorities in case of a violation of human rights.⁶⁷ Though they did not all approve of the precise wording of the Cuban amendment, many delegations favored the inclusion of the right to petition on the national level. Had this been the only proposal, the Cuban proposal might have been adopted. The merits of the Cuban version got lost during the discussion of the French proposal, however. The French received strong backing from the delegations of Ecuador, Chile, and New Zealand.⁶⁸ The New Zealand representative, Mrs. Newlands, recognized that the right to petition "was a fundamental right" and saw no problems with its inclusion in the declaration.⁶⁹ She pointed out that the Human Rights Commission had already been reviewing human rights petitions on the request of the Social and Economic Council so that the French amendment merely formalized that practice. Furthermore, she disagreed with those delegations which did not want to include an article on the right to petition because of implementation problems because she thought the Declaration "constituted a general statement of principles and did not entail any legal obligations."⁷⁰

Most delegations, however, felt that the time was not ripe for the assertion of such a right. Perez of Cuba felt that on the international level the right to petition was "unfortunately premature."⁷¹ Campos Ortiz of Mexico thought that "it might appear to set a form of international jurisdiction above the sovereign jurisdiction of States."⁷² Others made similar comments.⁷³ Many delegations thought that the French proposal was on target in principle, but was nonetheless premature; the time was not ripe to assert such a right realistically.⁷⁴

67. The French proposal stated that:

Everyone has the right, either individually or in association with others, to petition or to communicate with the public authorities of the State of which he is a national or in which he resides. He also has the right to petition or to communicate with the competent organs of the United Nations in matters relating to human rights.

3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 45, U.N. Doc. A/C.3/244/Rev.1/Corr. 1 (1948).

68. *Third Committee Records*, *supra* note 3, at 699, 702, 704.

69. *Id.* at 704.

70. *Id.*

71. *Id.* at 695.

72. *Id.* at 696.

73. For example, Corominas of Argentina felt "[t]he world situation was not sufficiently advanced to permit the abolition of the principle of national sovereignty." *Id.* at 701. Edgar Insfran of Paraguay thought it was "a noble aspiration, [but] not one that could be realized . . . at the present." *Id.* at 700. Similar sentiments were expressed by the delegations of Mexico and the Philippines. *Id.* at 695, 702.

74. A few delegations objected on principle with the most explicit statement coming from the U.S.S.R. delegation. Alexei Pavlov felt that the charter in no way warranted the possibility envisaged by the French amendment, namely, "of a State being accused by one of its own citizens and being obliged to answer an indictment as though before a court of law." *Id.* at 698. He was backed in this by, among others, the delegations from Syria and the Byelorussian Soviet Socialist Republics. *Id.* at 705, 706.

Neither the Cuban amendment, which, except for its wording, was acceptable to many delegations, nor the French version, which the majority thought was premature, was ever put to a vote. A British proposal to refer the matter back to the Commission on Human Rights was voted on first and passed.⁷⁵ The proposal included instructions for further study and possible inclusion of the right to petition in a future covenant on human rights. The Cuban delegation, whose version of the article had been least objectionable, saw its cause endangered. It requested that the Committee first take a vote on the question of whether or not the right to petition was "an essential human right."⁷⁶ But Ernest Davies of the United Kingdom did not wish to yield. Upon Davies' refusal, the Cuban delegation proposed that the first paragraph of the British motion be amended to state that: "the right to petition is an essential human right, as is recognized in the constitution of a great number of countries." This change was adopted by a vote of 22 to 11, with 8 abstentions.⁷⁷

The results were once more mixed. From the point of view of a natural rights philosophy, the right to petition would seem to be an integral part of a universal declaration. By accepting the Cuban amendment to the British motion, the Committee went on record as stating that this right was an "essential human right." Many delegations wanted to postpone consideration of this article until the document on implementation measures was completed. But in numerous other instances the Committee had not hesitated to include a right in the Declaration even though the measures of implementation had not yet been worked out. Why not, then, in this case too, state the right of petition and let the matter of implementation wait? Newlands of New Zealand, who had been intimately involved in the preparation of the document on measures of implementation, saw no difficulty in this.⁷⁸ Apparently the omission of the right to petition was, in the words of Cassin, "a step backwards" when measured against the philosophy of the earlier declarations.⁷⁹

The Right to Resist Oppression. The same problem about implementation measures arose in the discussions of the possible adoption of an article affirming the right to resist oppression. Such a right is prominently listed in the classical declarations. According to the American Declaration, for example, "Governments are instituted among Men" in order to secure certain unalienable rights, and "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it."⁸⁰

75. *Id.* at 714.

76. *Id.* at 710.

77. *Id.* at 714-715.

78. See *supra* note 70 and accompanying text.

79. *Third Committee Records, supra* note 3, at 703.

80. The Declaration of Independence para. 1 (U.S. 1776).

Similarly, the French Declaration of 1789 asserts that the purpose of all political association is to preserve natural rights including the right to resist oppression.⁸¹ These documents explicitly state the natural right to resist oppression should a government fail in its appointed function of protecting other rights.

The right was, however, looked upon primarily as a social right. It is not one man, but the people who have the right to abolish the government. As Paine said: "Sovereignty, as a matter of right, appertains to the Nation only, and not to any individual; and a Nation has at all times an inherent, indefeasible right to abolish any form of Government it finds inconvenient."⁸² This does not mean, however, that the right to resist oppression should therefore not be part of a list of human rights or that the Universal Declaration is incomplete without such an article.

Though Paine intimated that the right to abolish the government really belongs to the nation, in asking how the nation or the people obtained the right to rebel, one returns to the natural rights of the individual. The right to resist oppression is, for Paine, one of those natural rights which a person "throws into the common stock as a member of society."⁸³ It is one of those rights "which, though the right is perfect in the individual, the power to execute [them] is defective – [As a result] [e]very man is a proprietor in society, and draws on the capital as a matter of right."⁸⁴ In a strict natural rights philosophy there are no emergent rights, no rights that exist only on the collective level without having been first derived from the individual through the contract. While in practice this right to resist oppression becomes functional when many people feel oppressed, in theory this right derives from the natural right of the individual to self-protection. The French Declaration simply includes it with the other natural, imprescriptible rights of man like the rights to liberty, property, and security. The listing of the right to resist oppression in a declaration really is a very explicit acknowledgement on the part of the authors that it is the purpose of government to protect and secure the rights listed. It means that governments are legitimate only so long as they fulfill their stated purpose.

This was precisely the sort of reasoning advanced by the Cuban and

81. Declaration of the Rights of Man and of Citizens art. II (Fr. 1789).

82. *Rights of Man*, *supra* note 11, at 134.

83. *Id.* at 44.

84. *Id.* at 45. Even Locke, who treats the right to resist oppression primarily as a social right, recognizes that this right too stems from the individual who had it first. Says he, justifying revolutions, "And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right and have no appeal on earth, there they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment." He adds that no one should think that "this lays a perpetual foundation for disorder: for this operates not, till the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended." Locke *Second Treatise*, ch. XIV, sec. 168.

French delegations in defense of their proposed articles on the right to resist oppression. The Cuban version was the more general of the two and simply read: "Every person has the right to resist acts of oppression or tyranny."⁸⁵ The French-Chilean version was more specific and read: "When a government seriously or systematically violates fundamental human rights and freedoms, individuals and peoples are entitled, without prejudice, to an appeal to the United Nations, to resist oppression and tyranny."⁸⁶ The Chilean delegate, Santa Cruz, observed that "the right to resist oppression was a fundamental right, which was in its proper place among the other essential rights of the individual."⁸⁷ The article received strong support from A. E. Bogomolov of the Soviet Union who said that:

Indeed, the right to resist acts of tyranny and oppression had brought about in the eighteenth century in France that vast popular movement which had thrown off the yoke of tyranny. However, the 1789 Declaration . . . was today regarded by many people as partially obsolete. That right had also formed the basis of the Declaration of the Rights of the People of the Soviet Union. More recently, the Nazi oppression, . . . had provided a further reason for mentioning that right in the declaration of human rights.⁸⁸

The right to resist acts of oppression is in effect a right to engage in revolutionary activity against a government that systematically suppresses fundamental human rights and freedoms. Such a right can therefore not be implemented by the government concerned, at least not in the way of the other rights of the Declaration. Since it could not be implemented, and since all rights in the Declaration were to be implemented by states, most delegations drew the conclusion that it should not be listed. For example, Eleanor Roosevelt, delegate from the United States, was of the opinion that "the recognition in the declaration of human rights of the right to resist acts of tyranny and oppression would be tantamount to encouraging sedition, for such a provision could be interpreted as conferring a legal character on uprisings against a Government which was in no way tyrannical."⁸⁹ Echoing Locke, Perez of Cuba sought to answer such fears by noting that his proposed additional article "was not dangerous but expressed a legitimate right which had for its object the independence and sovereignty which the free exercise of human rights should guarantee."⁹⁰ The idea was that a constitution containing such an article was self-consciously democratic and publicly

85. 3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 45, U.N. Doc. A/C.3/261 (1948).

86. 3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 103, U.N. Doc. A/C.3/307/Rev. 2 (1948).

87. *Third Committee Records, supra* note 3, at 748.

88. *Id.* at 750. Bogomolov was supported by Stephan Demchenko of the U.S.S.R., who also thought that "[i]t was impossible to speak of human rights without also referring to the right to rebel against tyranny and oppression." *Id.* at 768.

89. *Id.* at 749.

90. *Id.*

acknowledged its moral foundation by admitting the right of the people to resist its own violations of human rights.

Perez was unable to convince the other delegations. Ernest Davies of the United Kingdom said he realized “that all delegations agreed, in principle, to the additional article proposed by the Cuban delegation; nevertheless, many of them did not want the affirmation of that right to be incorporated in the declaration . . . [s]uch a step would be inopportune and dangerous; non-revolutionary democratic methods should be sufficient to do away with tyranny and oppression.”⁹¹ He shared Mrs. Roosevelt’s fear and believed that the right to petition was “not a right, but a last resort.” He felt that the first goal should be the establishment of the rule of law to “ensure the abolition of oppression and tyranny.” With Bentham, he felt that recognition of the right to resist oppression would entail “the risk of inciting anarchy.” Lastly, he thought it would be difficult “to determine where oppression and tyranny began,” especially without further definition. There was much support for this view.⁹² Noting the widespread fears aroused by his proposed article, Perez withdrew his amendment, as did the Chilean delegation. They both accepted an Argentinian resolution to refer the article back to the Commission of Human Rights for further study, a motion which began by noting that “the right to resist acts of tyranny or oppression is one of the fundamental human rights.”⁹³

The Third Committee did the same thing with the right to resist oppression as it did with the right to petition. It acknowledged both of them to be essential human rights, but refused to list them as *bona fide* parts of the Declaration.⁹⁴ This represents a reluctance to spell out and state in the open that the rights of human beings, *qua* humans, are not grounded in the acts of states or governments, but that instead the legitimacy of states and governments depends upon their allegiance and adherence to these human rights. It is in fact a hesitation about the social-contract theory of government.

THE NEW RIGHTS IN THE UNIVERSAL DECLARATION

In stating the initial presumption of a natural rights philosophy for the Declaration, it was noted that a casual reader might regard the social and economic rights as tacked on at the end. This is important, for the Declara-

91. *Id.* at 751.

92. Supporters included Argentina, Belgium, Australia, and Ecuador. *Id.* at 750, 752.

93. 3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 102–103, U.N. Doc. A/C.3/307/Rev. 2 (1948).

94. The idea of the right to resist oppression did find its way into the third recital of the preamble. It was proposed by the Cuban, Chilean, and French delegations (U.N. Doc. A/C.3/382/Rev. 1). The Declaration acknowledges that observance of human rights is necessary to avoid rebellion and revolution which is not the same thing as saying that the people have a right to rebel.

tion was meant for the common man.⁹⁵ And the common sense of that common man tells him that the most important things are usually said first. Upon reading the Declaration he cannot help but get the impression that the social, political, and cultural rights are not quite as important as the others, because except for Articles 29 and 30, they take up only the last seven articles of a Declaration containing thirty articles. Thus strictly from the point of view of order, they do seem to be of secondary importance.

Perhaps this objection could be forestalled by the following argument. The discussion so far has shown that, with some qualifications, the philosophy of the Universal Declaration is basically a natural rights philosophy. It is true that the eighteenth-century declarations for the most part ignore the social and economic rights.⁹⁶ But that was an historical and not a philosophical accident. The natural rights philosophy in which the classical civil and political rights of that era are grounded could just as well have yielded sound philosophical justifications for what today are called the new social and economic rights.⁹⁷ In fact Thomas Paine implied as much when he stated:

When it shall be said in any country in the world my poor are happy; neither ignorance nor distress is to be found among them; my jails are empty of prisoners, my streets of beggars; the aged are not in want; the taxes are not oppressive; the rational world is my friend, because I am the friend of its happiness: When these things can be said, then may that country boast its Constitution and its Government.⁹⁸

One could thus argue that by listing the new rights, the Universal Declaration has corrected the eighteenth-century oversight. Since the natural rights model underlies so much else of the Declaration, one may assume that that same philosophy also informs these new rights, unless a case can be made to the contrary.

In defense of the casual reader it must be admitted that the suspicions of the common man are not totally unfounded. A case can be made for the view that philosophically the new rights are all ranked slightly below the old ones. They are a twentieth-century graft on an eighteenth-century tree. In the Third Committee there were quite a few delegations who were bothered by the order in which the articles ultimately were approved because it tipped the scales unnecessarily toward the eighteenth century. Twice this concern flared up into a full-fledged debate. The first clash, which occurred

95. According to Ulla Lindstrom of Sweden, "It had frequently been said in the Committee that the declaration of human rights was meant for the man in the street." *Third Committee Records*, *supra* note 3, at 403.

96. The right to property is an exception.

97. See Donnelly, *supra* note 2, at 405.

98. *Rights of Man*, *supra* note 11, at 274.

when Article 3 came up for adoption, will be the focus of the following analysis rather than the second debate which occurred during the discussion of the report of a subcommittee on the order of the articles.

Article 3 now states simply: "Everyone has the right to life, liberty and security of person." To this statement, the delegations of Uruguay, Cuba, Lebanon, and Mexico presented a joint substitute amendment, which read as follows: "Everyone has the right to life, honour, liberty, physical integrity, and to the legal, economic and social security which is necessary to the full development of the human personality."⁹⁹ This amendment would have pulled the concept of social and economic rights forward, toward the very beginning of the Declaration. It thus would have lessened the initial emphasis on civil and political rights and given the reader a more balanced view of the scope of human rights. But it did not pass. The different phrases of the amendment were voted on separately and each of them was rejected. The vote on the last and crucial phrase, "and to the economic, social and other conditions necessary to the full development of the human personality," was a particularly close one of 20 to 21, with 7 abstentions.¹⁰⁰ The amendment did not carry because in the eyes of the majority of delegations it disturbed "the orderly arrangement of the text of the declaration," an arrangement which received its initial impulse from eighteenth-century thought.

It might be observed that the vote on the substitute amendment, especially on its last crucial phrase, was too close for any substantive conclusions. What the vote shows is that, as was to be expected, there was no consensus on where to put the new rights; the representatives did not agree on the status of these rights. A good many wanted to see them pulled forward, while just as many thought they could, without prejudice, be left where they were. On the surface this seems a fair reading of the vote. Closer analysis, though, reveals that the largest single block of votes that did indeed carry the vote, was made up of delegations holding less than a full-fledged natural rights model and engaging in some, however slight, philosophical ranking of the rights in the Universal Declaration.

The substitute amendment was proposed by four countries: Uruguay, Cuba, Lebanon, and Mexico. It was no accident that three of these countries were Central and South American nations. The progressive character of the Universal Declaration is in large measure due to the vigorous representation by nations from that hemisphere. In the spring of 1948, twenty Latin American countries and the United States had attended the Ninth International Conference of American States held at Bogota. That Conference

99. At first Uruguay, Cuba, and Lebanon presented one amendment, [3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 17, U.N. Doc. A/C.3/274 (1948)] and Mexico another one, [3(1) U.N. GAOR Annex 1 (Agenda Item 58) at 14, U.N. Doc. A/C.3/266 (1948)]. Mexico later joined the other three.

100. *Third Committee Records*, *supra* note 3, at 188.

adopted the American Declaration of the Rights and Duties of Man¹⁰¹ or Bogota Declaration, which asserted that all political and juridical institutions, "which regulate life in human society, have as their principle aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness."¹⁰² The document recognizes that "the essential rights of man are not derived from the fact that he is a national of a certain state, but are fundamental attributes of his human personality."¹⁰³ In the preamble, it states that "[a]ll men are born free and equal, in dignity and in rights," and that they are "endowed by nature with reason and conscience." Note how the phrase "by nature," which was deleted in the debate on Article 1 of the Universal Declaration, is retained here.

These quotes suggest a full-fledged natural rights philosophy because the rights of the Declaration are explicitly said not to be "derived from the fact of [one's being] a national of a certain state"; they are instead seen as "fundamental" and "essential" attributes of man, grounded in human nature, broadly conceived as inclusive of man's reason, conscience, and spiritual character.¹⁰⁴ The rights listed in the Bogota Declaration are equally derived from this same human nature. There is no philosophical discrimination between the civil and political rights on the one hand and the social and economic ones on the other hand. Most of the social and economic rights are listed before the more traditional political ones. All the rights are introduced in the same way and thus, by implication, are equally deduced from man's reason, conscience, and spiritual character.¹⁰⁵

The joint amendment proposed by Cuba, Mexico, Uruguay, and Lebanon was to a great extent inspired by this philosophy of the Bogota Declaration. In fact, of the twenty votes for the amendment, eleven were cast by Latin American countries.¹⁰⁶ Many of those who spoke for the amendment were representatives of these governments, including Pedro de Alba of Mexico who sought to elaborate on the American concept of the "pursuit of happiness" and felt that the Mexican proposal offered "a more timely concept which would embrace the social security of the individual."¹⁰⁷ The idea was to strengthen "the fundamental principles by the inclusion of economic concepts." The Declaration, he said, "should lay

101. Reprinted in Inter-American Commission on Human Rights, *Handbook of Existing Rules Pertaining to Human Rights*, O.A.S. Doc. OEA/Ser. L/V/II.50, doc. 6 (1980).

102. *Id.*

103. *Id.*

104. *Id.*

105. See, e.g., *id.* art. III, VI, VIII, X, XII, XIV.

106. They were Mexico, Peru, Uruguay, Venezuela, Argentina, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, and Haiti. *Third Committee Records*, *supra* note 3, at 188.

107. *Id.* at 143.

emphasis on the social aspect and freedom of man." He felt that the joint amendment, on the one hand, "reinforced the provisions of Article Three," and on the other, it spoke of the social rights which, in his opinion, "it was indispensable to mention at the beginning of the declaration."¹⁰⁸ Cuban delegate Perez Cisneros said that he approved of the reference in Article 1 to "the first declaration of the rights of man in 1789," but felt "it must be borne in mind that man was no longer living in the eighteenth century. The twentieth century had witnessed the development of a new concept of liberty which it was important to clarify in the declaration."¹⁰⁹ He then linked this new concept of liberty to Roosevelt's four freedoms which he said were the impetus behind the phrase, "fundamental freedoms" in section 2 of Article 2 of the Charter.¹¹⁰ According to him, the new Declaration should not be a slavish repetition of the 1789 declaration; he bemoaned the fact that "the economic and social rights . . . did not appear in the first articles."¹¹¹ Emile Saint-Lot, of Haiti, "thought the draft prepared by the Commission . . . had been too greatly influenced by the individualism of Jean-Jacques Rousseau. The doctrine of individualism carried to excess had brought about the reaction of totalitarianism, and an attempt should be made to avoid either extreme."¹¹² Eleven of the votes for the joint amendment were the result of this pattern of thought.

The other nine votes came, with the exception of Lebanon, from Communist countries.¹¹³ These countries did not actively push for the incorporation of the new rights in Article 3, but they did support the joint amendment when it came to a vote. From the numerous speeches they gave in the Third Committee, it is evident that the philosophy that inspired these delegations was very different from that of the Bogota Declaration. One of the most precise statements came from Kaminsky, a Byelorussian, who spoke at great length in the General Assembly just before the Universal Declaration was adopted. He said:

It was sometimes argued that the declaration of human rights should not touch on matters of national significance because it was devoted to the rights of individual human beings. It was impossible to agree to such a view, if only because human rights could not be conceived outside the State; the very concept of right and law was connected with that of the State

. . .

108. *Id.* at 162.

109. *Id.* at 164.

110. Roosevelt's speech referring to four freedoms is reproduced *infra*, Documentary Appendix, this volume.

111. *Third Committee Records, supra* note 3, at 165-166.

112. *Id.* at 172.

113. They were Pakistan, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yemen, Yugoslavia, Byelorussian Soviet Socialist Republic, and Czechoslovakia. *Id.* at 188.

[t]he problem of the State and the individual, in its historical sense, did not exist. History had already solved that problem in his country. The State and the individual were in harmony with each other; their interests coincided.¹¹⁴

This philosophy was shared by the other seven countries aligned with the Soviet Union.¹¹⁵

The block of votes in favor of the joint amendment falls therefore into two groups. The first group consisted of the Latin American countries and Lebanon, who seem to have held a full-fledged natural rights philosophy, while the second group of Communist countries took an almost opposite stand, holding that there really were no rights apart from one's status as a citizen of a certain state. It is therefore incorrect to say that those who favored listing the rights in a different order than the present one were inspired by one common philosophical model.

There was far more philosophical agreement among those countries that were opposed to the joint amendment. That large block of twenty-one votes consisted mostly of the countries around the North Atlantic and their allies or former colonies.¹¹⁶ Their leading spokesmen were Chang of China and Cassin of France. Both of these delegates made no secret of the fact that they saw the Universal Declaration as modeled after the French Declaration of 1789. At the start of the discussion, Chang gave what was to be an influential explanation of the structure of the Declaration. He observed that:

[a]rticles 1, 2, and 3, expressed the three main ideas of eighteenth century philosophy; Article 1 expressed the idea of fraternity, Article 2 that of equality, and Article 3 that of liberty. . . . Article 3 set forth a basic principle, which was then defined and clarified in the nine following articles. . . . In that series of articles the idea of liberty was gradually and progressively enlarged; it was applied first to the individual, then to the family, and finally to the country. That series of articles therefore served to develop and clarify the idea of liberty.¹¹⁷

A reference to the new social, political, and cultural rights was therefore at this point out of place. Furthermore, added Chang, Article 22 was like Article 3 in that it "expressed a general idea which was expressed and developed" in

114. 3(1) U.N. GAOR (183d plen. mtg.) at 924, 929, U.N. Doc. A/C.3/SR.183 (1948). See also the remarks of other U.S.S.R. delegates: Mr. Bogomolov (*Third Committee Records, supra* note 3, at 758–759, 774–775) and Mr. Pavlov (*id.* at 110).

115. See the remarks by Mr. Radovanovic (Yugoslavia), 3(1) U.N. GAOR (183d plen. mtg.) at 913–914, U.N. Doc. A/C.3/SR.183 (1948); Mr. Katz-Suchy (Poland), *id.*, (182d plen. mtg.) at 903–909; Mr. Kaminsky (Byelorussian Soviet Socialist Republic), *id.* at 896–898. See also, Mr. Hoffmeister (Czechoslovakia), *Third Committee Records, supra* note 3, at 70–71; Mrs. Kalinowsky (Poland) *id.* at 761–762, Mr. Kaminsky (Byelorussian Soviet Socialist Republic), *id.* at 764–765.

116. They included France, Greece, India, Luxemburg, Netherlands, New Zealand, Norway, Panama, Philippines, Siam, Sweden, Syria, Turkey, Union of South Africa, United Kingdom, United States of America, Australia, Belgium, Canada, China, Denmark. *Third Committee Records, supra* note 3, at 188.

117. *Id.* at 154. All quotes from Chang in the following paragraph are also in *id.* at 154.

the statements of the social and economic rights that followed that article. According to this view, the Declaration contains two lead articles. Article 3 introduces the set of classical liberties, while Article 22 introduces the new nineteenth- and twentieth-century social and economic rights. The substitute amendment, said Chang, “was not in harmony with that structure.”

In this structure, the social and economic rights, though very important, do not quite have the same status as the civil and political rights. The very fact that two covering articles were deemed necessary reflects the difference in character between the two sorts of rights. This is one of the key differences between the Universal Declaration and the Bogota Declaration. In the Universal Declaration, the first twenty-one articles open with an unqualified “every,” but Article 22 asserts that “every one as a *member of society* has the right to social security.” Thus while the classical liberties and freedoms are to be deduced from reason and conscience which inhere in all human beings alike, the new rights are to be deduced from membership in a society. Furthermore, the exercise of the social and economic rights is said to be dependent on “the organization and resources of each State,” a qualification hardly applicable within the natural rights model of human rights, and if applicable in Article 22, then its omission from Article 3 must be noted and explained. If the rights are of equal status, then why are there qualifications in Article 22 which are not present in Article 3?

Cassin did not entirely agree with Chang’s explanation of Article 3, but in a different context he too made it clear that “[i]n common with the 1789 Declaration, [the Universal Declaration] was founded upon the great principles of liberty, equality and fraternity; but it was adapted to the present epoch in which individualism had been condemned by facts.”¹¹⁸ During the debate on Article 3 he stated that, in his opinion, “the first articles, . . . should enumerate the various fundamental rights, It would not be appropriate to include economic, social and cultural rights in Article 3 without also referring to the right to freedom of expression.”¹¹⁹ He later added that “[w]ith regard to the ideas of social justice and of the free development of the human personality, the French delegation would support their insertion in the declaration at the appropriate time.”¹²⁰ The implication is that the social and economic rights to be listed “at the appropriate time” are not part of the enumeration of “the various fundamental rights.” He noted that these new rights “were different in character from any rights outlined in the earlier declarations of the rights of man. They all had in common the fact that national effort and international cooperation were needed for their realization.”¹²¹

In a very similar context, Cassin gave his own version of the structure of

118. 3(1) U.N. GAOR (180th plen. mtg.) at 865, U.N. Doc. A/C.3/SR.180 (1948).

119. *Third Committee Records*, *supra* note 3, at 178.

120. *Id.* at 192.

121. *Id.* at 499.

the Declaration.¹²² He explained that the unity of the Universal Declaration was “one of a regular progression from individual rights to social rights.” Between these two end points came first a set of articles dealing with the physical protection of the individual, then a set dealing with man’s relations “to his fellow men and to things,” then “the great public freedoms and lastly social security.” “Economic and social rights,” he explained, “were almost as important as the right to freedom of thought, but to place them in the second group would break the chain of logic The articles on social rights were very well placed at the end, as the logical development from the articles on individual rights.” Again, phrases like “almost as important” and “logical development from” suggest a certain philosophical ranking.¹²³

These explanations were very influential in deciding the vote on the joint amendment for Article 3.¹²⁴ It was largely because of them that the order is as it is today; an order that does tip the philosophical scales, however slightly, toward the eighteenth century. This means that the natural rights model which underlies much of the Declaration is not of one piece; it is not, as it might have been, a full-fledged natural rights model of the Bogota kind. Should one hold such a model up as the most complete justification of human rights, then one could say that there was still a splinter of blindness left in the eyes of the North Atlantic group of countries opposing the joint resolution. Though they listed the new rights and were proud of it,¹²⁵ they did not see them as being of quite the same philosophical status as the old civil and political rights. Since this block of votes was by far the largest single ideological block, it is perhaps fair to say that the philosophy of the Declaration shares whatever merits or demerits one wishes to assign to the double status theory of rights. In either case though, it is clear that there was some fire where the common man or casual reader saw the first smoke.

CONCLUSION

The philosophy of the Universal Declaration is initially suggested by some key eighteenth-century words and phrases in the first recital and in Article 1.

122. *Id.* at 875. All quotes from Cassin in this paragraph are from this source.

123. A similar philosophical ranking can be detected in the remarks by Mrs. Newlands of New Zealand who believed that “Article 3 stated the fundamental rights of the individual and [that] Article 22 referred to the other rights which belonged to man as a member of society” (*id.* at 178), as well as in the statement by Count Wiart of Belgium who said that Article 22 “introduced new ideas, while the preceding articles revived ideas expressed in the Declaration of the Rights of Man and of Citizen of 1789 and in the American Bill of Rights” *id.* at 511.

124. More than once Chang and Cassin were thanked for their explanations of the structure of the Declaration. See, e.g., comments by Mrs. Roosevelt, *id.* at 146, by Mr. Mayhew of the United Kingdom, *id.* at 159, and Mr. Beaufort of the Netherlands, *id.* at 157.

125. See, e.g., the remarks by Mr. Watt (Australia), Mr. Perez (Cuba), Count Wiart (Belgium), 3(1) U.N. GAOR (180th plen. mtg.) at 879. Mrs. Menon (India), *id.* (181st plen. mtg.) at 893. Mr. Dehousse (Belgium) *Third Committee Records, supra* note 3, at 522.

Words like "inherent," "inalienable," "endowed," "brotherhood," and "born free and equal" are clear reminders of the classical declarations of that century and of the philosophy of natural rights which inspired them. According to this philosophy, human beings have certain moral rights, *qua* being human. These rights are therefore logically antecedent to the rights spelled out in various systems of positive law. Their origin does not lie in the legal enactments of states or legislatures, but in the nature and order of things, especially the nature of man. As natural rights that accrue to human beings by virtue of their humanity, these rights are thus more often than not defined over against the state. It is therefore no accident that there are so few references to the state in the Universal Declaration. Not only did the representatives think a covenant and measures of implementation would soon follow the Declaration, they also philosophically refused to limit the exercise of the rights in the Declaration by the "requirements of the democratic state."¹²⁶ Thus they did not want to place the state morally above human rights, but in adopting the language of Article 29 they did the exact opposite. The debates show that they placed human rights logically above or antecedent to the state. Except for a reference to the duty of the state with regard to implementation, which is the very point of international covenants, there is very little logical room for the state in a declaration of human rights, conceived of as natural rights. In this sense too, the Universal Declaration, which contains only a few incidental such references, conforms to the philosophy of its classical counterparts. These straightforward inferences from the text are backed up by numerous comments during the debate which link the philosophy of the Universal Declaration to that of the earlier declarations, especially the French Declaration of 1789. The delegations also knowingly tipped the order and arrangement of the articles toward the eighteenth-century liberties and freedoms.

Thus the presence of certain key words and phrases, the absence of substantive references to the role of the state, the philosophical comments of some of the key delegates and the order of the articles lead to the conclusion that the philosophy of the Universal Declaration is basically patterned after the eighteenth-century philosophy of natural rights, which also inspired the great American and French declarations. There are, however, important qualifications that need to be made to this generalization.

First, the word "nature," capitalized or not, does not occur in the declaration. The U.N. representatives did not see nature as a source of authority. Neither did they wish to make any reference to a deity. Any suggestion of a normative source transcendent to human nature was turned down. Nonetheless the debate on Article 1 does show that they looked upon most of the rights in the Declaration as grounded in human nature. They replaced

126. See *supra* notes 51–56 and accompanying text.

eighteenth-century deism with a twentieth-century secular humanism. In spite of the absence of the word "nature" in the text of the Declaration, it is fair to say that they looked upon most human rights as natural rights. The phrase, "by their nature" (endowed with reason and conscience) was swept away in the general desire to accommodate those who saw in any reference to nature an antireligious implication.

Second, though it is true that the rights proclaimed are seen as inherent and inalienable, and thus as held independent of the state, the Declaration does not contain the rights to petition and to resist oppression, both of which are essential ingredients of a natural rights approach to human rights. The right to resist oppression, which has a prominent place in the classical declarations was given a different mode of existence as a "last resort" in the third recital of the preamble. The omission of both of these rights indicates a hesitance on the part of the Third Committee to draw out fully the implications of the social-contract theory of the state.

Third, the international founding fathers did not accept the extreme individualism so often associated with natural rights. This is evident from the insertion of the word "alone" in the first paragraph of Article 29.

Fourth, depending on one's point of view, the greatest qualification is, of course, the very presence of the social, economic, and cultural rights in the Declaration. By including them, the representatives went consciously beyond the earlier declarations and were proud of it. They introduced these new rights with a separate covering article and looked upon them as accruing to human beings not now *qua* being human, but as being members of a society. Listing them in this way does not mean that there was a consensus about their philosophical status. There was not. Most Latin American countries felt they were just as important as the old rights, both being equally grounded in human nature. The Communist countries also gave both sorts equal status, but saw them instead as grounded in the structure of the state. These two groups shared a desire to pull the new rights forward toward the beginning of the Declaration, thus making it more truly a twentieth-century document. They were rebuffed in this attempt by the largest single ideological voting block, mostly made up of North Atlantic countries and their allies, whose delegations did not believe that the new rights were philosophically quite as important as the old ones. Unlike their Latin American colleagues, they did not see the new rights as being directly deducible from human nature.

Thus it is clear that although natural rights philosophy does inform the Universal Declaration, it does not inform all parts equally.